

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICKIE TODD

(Case No. 11772)

A hearing was held after due notice on May 16, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the height requirement for a fence.

Findings of Fact

The Board found that the Applicant is seeking a variance a variance of 1.25 feet from the 3.5 feet maximum height requirement in the front yard for wooden fence and a variance of 2.5 feet from the 3.5 feet maximum height requirement in the front yard for a metal fence with a six (6) feet tall gate. This application pertains to certain real property located on the west side of Lewis Drive at the end of Chipmans Lane (911 Address: 244 Lewis Drive, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-12.20-12.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, a survey of the Property dated December 23, 2015, photographs of the fence and the area, and letters in support of the Application.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Rick Todd and Penny Todd were sworn in and testified that their attorney was not present on their behalf and requested that the hearing be held at a later date.
4. The Board found that four (4) parties appeared in support of the Application.
5. The Board found that no parties appeared in opposition to the Application.
6. The Board voted to leave the record open and to hold another hearing on this Application on June 6, 2016.
7. On June 6, 2016, the Board heard testimony regarding this Application.
8. Rickie Todd was again sworn in to testify about the Application. Chad Lingenfelder, Esquire, presented the case on behalf of the Applicant.
9. The Board found that Mr. Lingenfelder stated that the fence was erected to deter criminal activity in the area and eliminate noise and light pollution from the neighboring properties.
10. The Board found that Mr. Lingenfelder stated that the Property faces Route 13 and is in direct line from Chimpan Lane.
11. The Board found that Mr. Lingenfelder stated that there is a hotel and numerous commercial properties nearby and the existing commercial properties have increased traffic in the area. The Applicant has owned the Property since 1999 and, since that time, the nearby commercial properties have affected the use and enjoyment of the Applicant's property.
12. The Board found that Mr. Lingenfelder stated that the Property is located in a high crime area.
13. The Board found that Mr. Lingenfelder stated that the wooden fence is 4.25 feet and the metal fence with a gate is 6 feet tall. The height of the fence is needed to prevent trespassing on the Applicant's property and the height of the fence has kept trespassers from scaling the fence and entering the Property.
14. The Board found that Mr. Lingenfelder stated that the exceptional practical difficulty has not been created by the Applicant as the Applicant has not created

the illegal activity in the community. The Applicant has taken steps to curtail illegal activity in the area by forming a neighborhood watch group.

15. The Board found that Mr. Lingenfelder stated that the variances will not alter the essential character of the neighborhood and the fence has not impaired the uses of the neighboring an adjacent properties.
16. The Board found that Mr. Lingenfelder stated that there are other similar fences in the neighborhood.
17. The Board found that Mr. Lingenfelder stated that the wooden fence also blocks light pollution from the Property.
18. The Board found that Mr. Lingenfelder stated that the variances sought are the minimum variances necessary to afford relief.
19. The Board found that Mr. Todd affirmed the statements made by Mr. Lingenfelder and testified that he is the owner of the Property.
20. The Board found that Mr. Todd testified that there is a hotel and liquor store nearby.
21. The Board found that Mr. Todd testified that he has been attacked four (4) times in his driveway and he no longer feels safe on his own property; though he has not had any incidents since the fence was erected.
22. The Board found that Mr. Todd testified that the open gates allow for visibility and there are no visibility issues with the fence or the gates.
23. The Board found that Charles Swift and Jean Smith were sworn in and testified in support of the Application
24. The Board found that Mr. Swift testified that the neighboring hotel is a major crime area and the Neighborhood Watch program has helped lessen problems on his side of the neighborhood. He feels the fence was the right thing to do.
25. The Board found that Ms. Smith testified that she lives nearby and confirmed that there have been problems associated with the commercial properties nearby.
26. The Board found that three (3) parties appeared in support of the Application.
27. The Board found that no parties appeared in opposition to the Application.
28. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and unrebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The situation is unique as the Property is located near commercial properties and a high crime area. The Property faces Chipmans Lane and is very close to Route 13. The commercial properties have created problems with light and noise pollution and a fence in excess of the height limitation is needed to block the lights shining on the Property and to help with the noise pollution. More importantly, however, are the problems associated with the criminal activity in the area which have created an exceptional practical difficulty for the Applicant. The Property is located near a hotel and liquor store and persons using those businesses have trespassed onto the Property and attacked the Applicant. The Applicant consulted with local law enforcement and constructed a tall fence to provide better protection against this criminal activity. It is clear to the Board that the unique conditions of the area have created this exceptional practical difficulty for the Applicant and necessitates the variances.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is located in a high crime area and the fence as constructed is needed in order to prevent trespassers from entering the Property. The Applicant has been attacked on his own property multiple times and needs a fence that is taller than allowed by the Sussex County Zoning Code to prevent

trespassers from scaling the fence. A fence which complies with the Sussex County Zoning Code would likely be easier to climb than the existing fence and, thus, subject the Property to having more trespassers. The Board is convinced that the fence as constructed is necessary to enable reasonable use of the Property as the fence will deter trespassers while also blocking noise and light pollution from the Property. The Board is convinced that the shape and location of this fence are also reasonable, which is confirmed when reviewing the survey and photographs provided by the Applicant.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the criminal activity in the area which has resulted in trespassing and attacks on his property. The criminal activity has created the exceptional practical difficulty for the Applicant. Likewise, the light and noise pollution from nearby commercial businesses due to the proximity of the Property in relation to Chipmans Lane and Route 13 has presented an additional exceptional practical difficulty for the Applicant. The fence improves the usability of the Property by limiting the effects of the noise and light pollution.
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the fence will have no effect on the character of the neighborhood. There are similar fences nearby and neighbors support the Application. The overwhelming support from neighbors is particularly indicative of the need for the fence and that the fence will not alter the essential character of the neighborhood. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represents the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized fence on the Property which is tall enough to deter trespassers from accessing the Property and to block noise and light pollution.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date August 2, 2016