

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK J. CLARK & SANDRA J. CLARK

(Case No. 11959)

A hearing was held after due notice on May 15, 2017. 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 on a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.5 feet from the 3.5 feet fence height requirement on a through lot. The proposed fence would be six (6) feet tall. This application pertains to certain real property located on the southwest side of Mulberry Lane approximately 367 feet northwest of Cedar Drive (Route 30) (911 Address: 34032 Mulberry Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-556.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey dated December 31, 2016, a portion of the tax map, a letter from Solutions Property Management dated March 13, 2017, a petition supporting the Application, literature regarding the fence, and pictures of the Property.
2. The Board found that the Office of Planning & Zoning received three (3) signatures and a letter from the property management company in support of the Application and no letters in opposition to the Application.
3. The Board found that Sandra Clark was sworn in to testify about the Application.
4. The Board found that Mrs. Clark testified that she is requesting a height variance for a fence that will be six (6) feet tall. The proposed fence will line the rear yard around the pool.
5. The Board found that Mrs. Clark testified that the Board previously approved a variance for the pool.
6. The Board found that Mrs. Clark testified that the Property is a through lot which makes it unique.
7. The Board found that Mrs. Clark testified that the Sussex County Zoning Code restricts the height of a fence to 3.5 feet tall but a fence must be 6 feet tall to surround a pool.
8. The Board found that Mrs. Clark testified that the proposed fence will enclose in their backyard where the pool will be located.
9. The Board found that Mrs. Clark testified that the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mrs. Clark testified that neighboring properties have existing privacy fences. Neighbors and the homeowners association support the Application.
11. The Board found that Mrs. Clark testified that the proposed fence will enhance the aesthetics of the rear yard and will match other nearby privacy fences.
12. The Board found that Mrs. Clark testified that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mrs. Clark testified that the Property is adjacent to Plantations Road but there is no direct vehicular access to Plantations Road.
14. The Board found that Mrs. Clark testified that the fence will serve as a deterrent for persons walking along Plantations Road from using the pool.

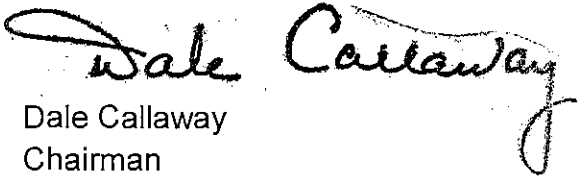
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is a lot with road frontages on two roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct vehicular access to Plantations Road and only access the Property from Mulberry Lane. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized fence on the lot to surround their pool.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to construct a reasonably sized fence but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct a fence on the Property. The Board is convinced that the shape and location of the fence are also reasonable, which is confirmed when reviewing the survey and exhibits provided by the Applicants. The Board also notes that the Sussex County Zoning Code requires that a fence surrounding a pool be 6 feet tall – as proposed by the Applicants – but, since the Property is a through lot, a fence can only be 3.5 feet tall in a front yard. The Property's unique classification as a through lot, even though it only have vehicular access to one road, greatly limits the Applicants' ability to reasonably develop the Property.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
 - d. The variance 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 privacy fences in the community and neighbors and the homeowners association support this application. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized fence on the Property. As noted above, a fence surrounding a pool must be 6 feet tall and the proposed fence meets that minimum height requirement.

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 July 25, 2017