

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JILL CICIERSKI & JUNE CICIERSKI

(Case No. 11962)

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. Brent Workman, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the height requirement for fences, a special use exception to operate a commercial dog kennel, and a special use exception for a garage / studio apartment (Sections 115-23 and 115-185 of the Sussex County Zoning Code).

Findings of Fact

The Board found that the Applicant is seeking variances from the height requirement for fences, a special use exception to operate a commercial dog kennel, and a special use exception for a garage / studio apartment (Sections 115-23 and 115-185 of the Sussex County Zoning Code) on a parcel of land zoned AR-1. The property is identified as Sussex County Tax Map and Parcel Number 2-35 25.00 4.10, with a 911 address of 16808 Gravel Hill Road, Milton, Delaware.

After the hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property, a survey of the property marked by Staff showing the location and details of the requested variances and an Exhibit Book.
2. Mrs. Walls, of Sussex County, described the case and stated that the Office of Planning and Zoning has received no letters in opposition to the Application.
3. Mrs. Walls explained that the Applicant is seeking a variance from the height requirement for fences, a special use exception to operate a commercial dog kennel, and a special use exception for a garage / studio apartment (Sections 115-23 and 115-185 of the Sussex County Zoning Code) on a parcel of land zoned AR-1.
4. The Board found that the Applicants are seeking the following variances:
 - a) A variance of one (1) foot from the seven (7) foot height requirement for an existing fence.
 - b) A variance of two (2) feet from the three and a half (3.5) foot height requirement for an existing fence.
5. The Board found that the Applicants are seeking the following special use exceptions:
 - a) A special use exception for a garage studio apartment.
 - b) A special use exception to operate a commercial dog kennel.

6. Jill Cicierski and June Cicierski were sworn in and testified as the Applicants.
7. David Hutt, Esq. presented the Application on behalf of the Applicants. The Applicants affirmed Mr. Hutt's presentation.
8. The Board found that the subject property is 3.2 acres in size and that it is zoned AR-1.
9. The Board found that in April of 2017, the property was violated because the rear yard fence was seven feet four inches (7'4") tall.
10. The Board found that Mr. Hutt stated that there has not been any breeding of dogs at this location; that one of the Applicants breeds dogs out of state.
11. The Board found that a survey was submitted showing the proposed dwelling, the proposed pasture, the existing fence-in area to be used as a dog run.
12. The Board found that Mr. Hutt stated that the existing kennels are located in the proposed garage studio apartment building.
13. The Board found that Mr. Hutt stated that the type of fencing that is proposed is shown in the Applicant's Exhibit Book.
14. The Board found that Mr. Hutt stated that the pole barn is existing on the property.
15. The Board found that Mr. Hutt stated that the type of dogs that will be sold are short haired pointers.
16. The Board found that Mr. Hutt stated that the irregular topography of the property makes the property unique.
17. The Board found that Mr. Hutt stated that the surrounding lots are large with structures that are set back far from the road with usage in their front yards.
18. The Board found that Mr. Hutt stated that there is a twenty-five (25) foot right of way from the edge of the roadway paving to the front of the front yard fence, making the front yard fence thirty-five (35) feet from the edge of Route 30.
19. The Board found that Mr. Hutt stated that the variation in topography and the setback from Route 30 was not created by the Applicants.
20. The Board found that Mr. Hutt stated that the surrounding properties are used for agricultural purposes.
21. The Board found that Mr. Hutt stated that three neighbor responses in support of the application were provided.
22. The Board found that Mr. Hutt stated that there are horses kept in the pasture area creating the need for the taller fences.
23. The Board found that Mr. Hutt stated that when the puppies are born, they are kept on the property for seven (7) to eight (8) weeks, but that puppies will only be kept on the property 21-24 weeks out of the year.

24. The Board found that Mr. Hutt stated that the puppies are kept inside to avoid disease, and when let outside they will be kept in the fenced in area.
25. The Board found that Mr. Hutt stated that the Applicants intend to live in the garage studio apartment, which is less than 800 feet in size, while the construct the proposed dwelling on the property.
26. The Board found that Ms. Cicierksi testified that the horses located on the property are for pleasure.
27. The Board found that Ms. Cicierksi testified that the fences around the pasture area are see-through.
28. The Board found that Leslie Hayes was sworn in and testified in support of the Application. Mrs. Hayes testified that she is a neighbor to the property, that she also has horses on her property, and that she supports the application.
29. The Board found that Paul Rieger was sworn in to testify in opposition to the Application. Mr. Rieger testified that he does not believe that the Board of Adjustment must approve the variance since the front yard fence does not, in his opinion, require a variance.
30. The Board found that Barbara Manship was sworn in to testify in opposition to the Application.
31. The Board found that Barbara Manship testified that she is the previous owner of the property and that at the time of purchase only horse were mentioned to be on the property.
32. The Board found that Barbara Manship testified that the property should not be approved for a commercial use when the surrounding properties are all in agricultural use.
33. The Board found that Barbara Manship testified that she is concerned about the noise from the dog kennel.
34. The Board found that Joe Marino was sworn in to testify in opposition to the Application.
35. The Board found that Joe Marino testified that he is concerned about noise from the dog kennels.
36. The Board found that Joe Marino testified that he is opposed to a commercial use in an agricultural neighborhood.
37. The Board found that Joe Marino testified that it is his opinion that the Applicants have not been truthful. He testified that despite the Applicant's statements, he believes that dogs have been bred on the premises and that puppies have been advertised for sale.
38. The Board found that Joe Marino presented exhibits that support his claims.
39. The Board found that Eileen Marino was sworn in to testify in opposition to the Application.
40. The Board found that Eileen Marino testified that the Applicants currently rent out the property, and that noise from the property is currently an issue.
41. The Board found that Rhonda Manship and Richard Manship were sworn in to testify in opposition to the Application.

42. The Board found that Rhonda Manship and Richard Manship testified that their main concern is the noise from the kennel.
43. The Board found that one (1) party (aside from the Applicants) appeared in favor of the Application, and six (6) parties appeared in opposition to the Application.
44. The Board consider these Applications again on June 19, 2017.
45. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that variance of two (2) feet from the three and half (3.5) foot fence height requirement in the front yard on a parcel of land zoned AR-1 should be granted as follows:
 - A. The need for the variance is based upon the uniqueness of the property. Like the other properties in the area, this is a large lot with the buildings set back more than 200 feet from the front boundary line. This variance from the fence height requirement is necessary to utilize the front area of the property with a sufficient enclosure.
 - B. The front yard of the AR-1 zoned property cannot otherwise be developed with a conforming 3.5 foot high fence that will keep horses within the pasture area and keep the public from the horses.
 - C. The need for this variance was not created by the Applicant. The large front yard areas are common to properties along Gravel Hill Road.
 - D. The variance will not alter the essential character of the neighborhood. The front yard variance will be consistent with the other pasture fences in the neighborhood, and it will not block any views on Gravel Hill Road at intersections or curves in the Road.
 - E. This variance is the minimum variance that will afford relief, and it represents the least modification of the regulation at issue. The variance is the minimum necessary to keep horses safely enclosed within the pasture.
 - F. The primary opposition to the Application concerned the dog kennel. The objections were mainly based upon noise general by the dogs. No parties testified or presented evidence in opposition to this fence variance.
 - G. There is not sufficient evidence in the record to support a denial of this variance application.
46. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that variance of one (1) foot from the seven (7) foot fence height requirement on a parcel of land zoned AR-1 should be granted as follows:
 - A. The exceptional practical difficulty is based upon the uniqueness of the property. The property's topography is irregular, and in several places the ground level falls away from the fence.
 - B. The property cannot otherwise be developed with a conforming 7 foot high fence that is necessary for the dog run. Because of the irregular ground level, a legal 7 foot high fence would go up and down depending on the way the ground rises and dips. This would not be

uniform, and would be detrimental in appearance to the applicant's property as well as the nearby property owners.

C. The exceptional practical difficulty was not created by the applicant. The variation of a couple of inches here and there across the length of the fence is due to the irregular ground level, which was not created by the applicant.

D. The variance will not alter the essential character of the neighborhood. This fencing will not be visible from the street and it does not adversely impact neighboring properties or views. The fence is also set back at least 200 hundred feet from properties of other ownership.

E. This variance is the minimum variance that will afford relief and it represents the least modification of the regulation at issue. The variance eliminates the minor encroachments over the 7 foot height limit that occur in places over the course of the entire fence line. It also allows for minor changes in measurement in the event of erosion or other changes in the topography under the fence.

F. The primary opposition to the applications for this property concerned the dog kennel. The objections were mainly based upon noise generated by the dogs. No parties testified or presented evidence in opposition to this fence variance.

G. There is not sufficient evidence in the record to support a denial of this variance application.

47. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the special use exception for a garage apartment on a parcel of land zoned AR-1 should be granted as follows:

A. This garage apartment is located in an outbuilding on the 3.2 acre property. Its outward appearance is not substantially different from the several outbuildings that exist on neighboring and adjacent properties.

B. The proposed garage apartment is set back several hundred feet from the front of the property, and it is also at least 200 feet from the nearest property of other ownership to the north of the property. On the west, the garage apartment is at least 100 feet from property of other ownership.

C. The only opposition to the applications for this property concerned the dog kennel. The primary objections were based upon noise generated by the dogs. No parties testified or presented evidence in opposition to the garage apartment.

D. There was no evidence in the record that the proposed garage apartment will substantially adversely affect the uses of adjacent and neighboring properties.

48. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the special use exception for a commercial dog on a parcel of land zoned AR-1 should be granted as follows:

A. The applicant testified that the kennel will be located on their 3.2 acre parcel that is zoned AR-1 Agricultural Residential.

B. The dog kennel will be located within an existing building on the property, and the outdoor area is completely fenced with solid fencing all around it. The dogs and the kennel area will not be visible from neighboring properties or roadways.

C. The applicants stated that each litter of puppies will usually only be kept on the property for 7-8 weeks before they are sold. Also, there will only be puppies on the property for 21-24 weeks out of each year.

D. The applicants stated that they intend to construct their own home on the property, and the proposed location of the home is shown on the site plan submitted with the application. This will enable the applicants to have direct control over the kennel operations and address any minor noise issues that may come from barking dogs at the kennel.

E. The use as a kennel is consistent with other agricultural uses that are permitted on properties in this area. This includes horses that are kept on a neighboring property. This use is appropriate in a rural, agricultural area such as this, where homes are situated on tracts of land of an acre or more. In most cases, the surrounding properties are 2 or 3 acres in size.

F. The proposed kennel is set back several hundred feet from the front of the property, and the dog runs are also at least 200 feet from the nearest property of other ownership to the north of the property and the kennel building is further away. On the west, the kennel is at least 100 feet from property of other ownership.

G. There is no clear evidence that the use of the property as a kennel will have a substantial, adverse effect on the uses of neighboring or adjacent properties. There was not credible testimony that the use will have an adverse impact upon property values, or specific credible examples that the use will impair the use of surrounding properties. There was also testimony in the record from a neighbor that the use would not adversely affect the use of her property.

Decision of the Board

Upon motion duly made and seconded, variances from the height requirement for fences, a special use exception to operate a commercial dog kennel, and a special use exception for a garage / studio apartment (Sections 115-23 and 115-185 of the Sussex County Zoning Code) were approved. The Board Members in favor of the approval were Mr. Dale Callaway, Mr. John Mills and Mr. Norman Rickard.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway

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.