

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SOMERSET GREEN HOLDINGS, LLC

(Case No. 12041)

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of three (3) feet from the seven (7) feet height requirement for a fence. This application pertains to certain real property located at the northeast corner of Shady Road and Plantations Road (Route 10) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-687.00.

1. The Board was given copies of the Application, a site plan of the Property, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Ronald Alexander was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Hutt stated that the Property consists of approximately 6.5 acres and is located near the Lowe's home improvement store at Five Points and the Lewes Park & Ride facility. The Property is zoned C-1 (Commercial).
5. The Board found that Mr. Hutt stated that the Property is planned to be developed as a townhome development known as Somerset Green. The development will consist of 53 townhomes.
6. The Board found that Mr. Hutt stated that the infrastructure and four (4) model homes have been constructed.
7. The Board found that Mr. Hutt stated that the Applicant proposes to install a fence that measures ten (10) feet tall rather than seven (7) feet tall as allowed in the Code.
8. The Board found that Mr. Hutt stated that the fence will serve as a visual barrier as well as a barrier for noise, dust, and light from Lowe's and the Park & Ride Facility.
9. The Board found that Mr. Hutt stated that deliveries are made to the rear of the Lowe's facility.
10. The Board found that Mr. Hutt stated that a fence measuring ten (10) feet tall is less likely to be scaled without the assistance of a ladder.
11. The Board found that Mr. Hutt stated that Ryan Homes is constructing the homes in the development and Ryan Homes has constructed a similar fence near Bayside Americana to buffer a drugstore and McDonald's restaurant from a similar community.
12. The Board found that Mr. Hutt stated that a residential fence can only be seven (7) feet tall but a commercial fence could be taller.
13. The Board found that Mr. Hutt stated that the general manager of Lowe's supports the Application.
14. The Board found that Mr. Hutt stated that the Property is unique because it is developed by a residential community but is adjacent to a large retail business and the park and ride facility.

15. The Board found that Mr. Hutt stated that the topography is flat so there is no physical barrier to otherwise provide a barrier.
16. The Board found that Mr. Hutt stated that a seven (7) feet tall fence does not provide an adequate barrier and the variance is necessary to enable the reasonable use of the Property.
17. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant because the Applicant did not create the light, noise, and dust from the neighboring properties.
18. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood.
19. The Board found that Mr. Hutt stated that the proposed fence is shorter than the outdoor storage fence used by Lowes.
20. The Board found that Mr. Hutt stated that the variance requested is the minimum variance necessary to afford relief.
21. The Board found that Mr. Hutt stated that a ten (10) feet tall fence will provide a barrier to the first floor of the dwellings.
22. The Board found that Mr. Alexander, under oath, affirmed the statements made by Mr. Hutt.
23. The Board found that Mr. Hutt stated that the rear entrance to Lowes is an easement over the Property. The easement area will be fenced off as well.
24. The Board found that Mr. Hutt stated that the ten (10) feet tall fence will be along the shared property line on the northwest side of the Property but the fence will gradually reduce in height to 3.5 feet near the entrance.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. 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 being developed residentially but adjacent to a large retail business and a park and ride facility. The Property is relatively flat so there is no physical barrier between those neighboring uses and the neighboring uses emit noise, dust, and light onto the Property. The Applicant seeks to install a taller fence along the northwest border of the Property to shield the Property – and its townhomes – from the noise, dust, and light from neighboring properties. It is clear that the unique physical characteristics of the Property have created the exceptional practical difficulty.
 - 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 by a large retail business and a park and ride facility which emit noise, light, and dust in the area. The Applicant seeks to construct a reasonably sized fence to provide a barrier from these uses but is 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 Applicant to construct a reasonably sized 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not develop the adjacent properties in such a fashion as to warrant the need for a higher fence on the Applicant's lot. The Property is also flat so there are no natural physical barriers which would otherwise limit

the effect of the neighboring uses on the Property. The unique characteristics of the Property are clear when reviewing the exhibits submitted by the Applicant. The Board is convinced that the exceptional practical difficulty was not created by the Applicant 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. The fence is reasonable in height and the neighbor most affected by the variance supports 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized fence on the Property.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion of or vote on this 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 December 19, 2017.