

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: PAT NICKOLS**

**(Case No. 12136)**

A hearing was held after due notice on May 7, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, Ms. Ellen Magee, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a Variance from the maximum fence height (Section 115-185 of the Sussex County Zoning Ordinance).

Findings of Fact

The Board found that the Applicant is seeking a variance of 1 foot from the maximum fence height requirement of 3.5 feet for a proposed fence on a parcel of land zoned GR General Residential. The property is identified as Sussex County Tax Map and Parcel Number 2-35-7.00-10.01, with a 24294 Reynolds Pond Road, Milton, Delaware.

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

1. The Board was given copies of the Application and a portion of the tax map of the area.
2. Jennifer Walls, of Sussex County, described the case and stated that the Office of Planning and Zoning has not received any correspondence concerning the Application.
3. The Board found that Pat Nickols was sworn in and testified that she is seeking a variance from the maximum fence height.
4. The Board found that Pat Nickols testified that he is seeking a variance of 1.0 foot from the 3.5 foot maximum fence height permitted in a front yard.
5. The Board found that Pat Nickols testified that the property has double frontage on Reynolds Pond Road and Cedar Creek Road, and that it has a unique triangular shape.
6. The Board found that Pat Nickols testified that she desires a fence to keep her dog from leaving her yard.
7. The Board found that Pat Nickols testified that the need for the variance and the exceptional practical difficulty was not created by the Applicant, but instead is the result of the double-frontage lot. With the double-frontage, the 40 foot front yard setback takes up a majority of the property.
8. The Board found that Pat Nickols testified that the variance will not alter the character of the neighborhood, or obstruct neighbor's or drivers' views along Cedar Creek Road.
9. The Board found that Pat Nickols testified that the variance is the minimum necessary to afford relief.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. 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 Variance from the maximum fence height should be granted. The findings below further support the Board's decision to grant the Variance Application:
  - a. The double-frontage of this lot makes this property unique. Although the fenced area visually appears to be the back yard, it is treated as the front yard by the zoning code.
  - b. The Applicant acquired the property configured this way; as a result, the Applicant did not create the unique characteristics of her lot.
  - c. Due to the uniqueness of this situation and the Property, it is appropriate to allow a higher fence in the location proposed by the Applicant.
  - d. The variance is necessary to enable the reasonable use of the Property and will allow the Applicant to use her property consistent with one that does not have double-frontage and that has a typical front and rear yard.
  - e. The exceptional practical difficulty was not created by the Applicant.
  - f. The variance is the minimum necessary to afford relief and represents the least modifications possible of the regulations at issue.

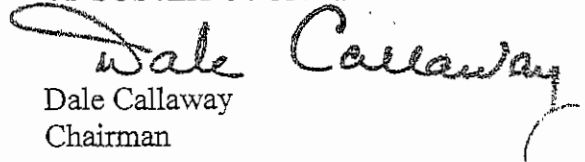
- g. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the fence will have no effect on the character of the neighborhood. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.

Based on the foregoing, the Board approved the variance from maximum fence height pursuant to Section 115-185 of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the 1.0 foot variance from the 3.5 foot maximum front yard fence height pursuant to Section 115-185 of the Sussex County Zoning Code was approved. The Board Members in favor of the approval were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Ms. Ellen Magee and Mr. Brent Workman.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within two (2)  
years from the date below the application  
becomes void.

Date July 10, 2018