

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN MCKENZIE & DEBORAH MCKENZIE

(Case No. 12145)

A hearing was held after due notice on May 21, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 8.0 inches from the forty-two (42) inch fence height requirement for a proposed fence on a corner lot. This application pertains to certain real property located on the east corner of Buckskin Trail and Covered Bridge Trail (911 Address: 27217 Buckskin Trail, Harbeson) said property being identified as Sussex County Tax Map Parcel Number: 2-35-30.00-365.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, photographs, a building permit application, and a survey of the Property dated June 26, 2017.
2. The Board found that the Office of Planning & Zoning received four (4) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Deborah McKenzie and John McKenzie were sworn in to testify about the Application.
4. The Board found that Mr. McKenzie testified that he is seeking the approval for a 3-rail fence which he intends to erect as shown in red on a survey submitted into the record. The portion of the fence which is in question is the section of fence which runs along Covered Bridge Trail and turns at the rear of the property line.
5. The Board found that Mr. McKenzie testified that a pine tree about 25 feet high is 15 feet from their property line and there are larger pine trees nearby.
6. The Board found that Mr. McKenzie testified that there is similar fencing on neighboring properties that are about 50 inches in height.
7. The Board found that Mr. McKenzie testified that he has received approval from his homeowner's association for the fence.
8. The Board found that Mr. McKenzie testified that there are other corner lots with fences in the neighborhood.
9. The Board found that no parties appeared in support of or in opposition to the Application.
10. 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 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 Property is unique as it is a corner lot. Since the Property is a corner lot, a fence which would surround the yard to the rear of the dwelling is limited to a height of 42 inches for the portions along Covered Bridge Trail and a portion of the rear of the fence. Other fences in the neighborhood are 50 inches tall and the proposed fence is similar to those fences. Notably, the proposed fence is a 3 rail fence. The unique condition of the lot has, thus, created an exceptional practical difficulty for the Applicants who seek

to build a fence similar in design and height as other fences in the neighborhood.

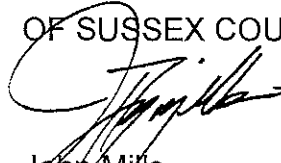
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on two sides by roads and has unique fence height requirements along the Covered Bridge Trail side of the lot even though the house faces Buckskin Trail. 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 height, shape and location of the fence are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- 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 fence requirements which have limited the height of the fence on 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 other similar fences in the community and neighbors and 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.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

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

Date August 7, 2018.