

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

**IN RE: MARTHA ROTHENBERG**

**(Case No. 12156)**

A hearing was held after due notice on June 18, 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 structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.0 foot from the seven (7) feet maximum fence height requirement for a proposed 270 feet long fence. This application pertains to certain real property located on the south side of Clay Road, approximately 500 feet west of Kings Highway. (911 Address: 34166 & 34170 Clay Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 3-34-6.00-46.00.

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, pictures of the Property and neighboring property, property record card information, a Certificate of Compliance, and a survey of the Property dated April 19, 2016.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Martha Rothenberg was sworn in to testify about the Application and she submitted exhibits for the Board to review.
4. The Board found that Ms. Rothenberg testified that she plans to erect a privacy fence along the east and south sides of the Property. The east side of the Property abuts a large parking lot and a doctor's office. The doctor's office has a security light on at all times and the light projects onto the Applicant's property. She has spoken with the doctor's office about the lighting but her neighbor will not adjust the lighting.
5. The Board found that Ms. Rothenberg testified that there is road noise from nearby Kings Highway and Route 1 and the proposed fence will dampen the noise and highway traffic as well.
6. The Board found that Ms. Rothenberg testified that the location of the lights on the doctor's office requires her to have a fence measuring 8 feet tall in order to block the lighting. A taller fence will block more noise as well. Her neighbor's property has an existing fence where she will start the proposed fence. The fence will begin well past the forty (40) feet front yard setback requirement and will measure 270 feet along the rear and east side of the Property.
7. The Board found that one (1) party appeared in support of the Application.
8. The Board found that no parties appeared in opposition to the Application.
9. 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 adjacent to a commercial property used for a doctor's office. The neighboring property has security lighting which projects onto the Applicant's lot and there are no trees or other vegetation to otherwise block the lighting. A fence which complies with the height

requirement would not block the lighting. The Property is also near commercial properties, Route 1, and Kings Highway and a taller fence will provide an improved noise buffer from the noises emanating from those businesses and traffic. It is clear to the Board that these unique conditions have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized fence on the lot.

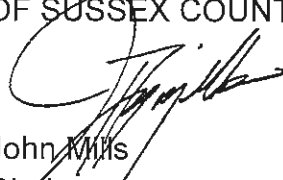
- b. Due to the uniqueness of the lot and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is adjacent to a commercial property with security lights that project onto the Applicant's lot. The Applicant seeks to construct a reasonably sized fence to block this lighting, as well as to buffer noise from nearby businesses and traffic, 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 provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the security lighting on neighboring property which has necessitated the taller fence. The unique characteristics of the Property are clear when reviewing the pictures presented by the Applicant. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the neighboring property's lighting. The Board also notes that the Property is near other businesses and busy roadways and the fence will also help buffer noise from them as well.
- 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. Nearby properties are commercial lots and the fence provides an enhanced buffer between the commercial and residential properties. 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 represent 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 Applicant has tried, in avail, to convince his neighbor to adjust the lighting so that the fence would not be needed. The Applicant has also minimize the need for the variance by only requesting a variance along the east side and a portion of the rear yard of the Property where that additional one foot of fencing is needed.
- f. The Board notes that the variance is approved for a fence measuring 270 feet along the east side and rear property lines.

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 September 11, 2018