

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

**IN RE: ESHAM REAL ESTATE, INC.**

**(Case No. 12192)**

A hearing was held after due notice on September 10, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.5 feet from the 3.5 feet maximum height for a fence on a through lot along Old Mill Road. This application pertains to certain real property located in the White Creek Manor Subdivision fronting on Hickman Drive and Old Mill Road (911 Address: 711 Hickman Drive, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 1-34-12.00-1043.00.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated December 6, 2017, aerial photographs of the Property, and a portion of the tax map of the area.
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 Vernon Esham was sworn in to testify about the Application.
4. The Board found that Mr. Esham testified that the fence behind the dwelling is a vinyl fence measuring 4 feet tall and that he called Sussex County about the permit and was informed that he could have a fence measuring 4 feet tall. He initially wanted to have a fence measuring 6 feet tall. When he called for an inspection, he was told that he could only have a fence measuring 3.5 feet tall.
5. The Board found that Mr. Esham testified that the fence is needed for privacy from the road.
6. The Board found that Mr. Esham testified that the Property is unique because the Property has two front yards.
7. The Board found that Mr. Esham testified that the Property cannot otherwise be developed because the homeowner association rules only allow a white, vinyl fence and vinyl fences are only available at a height of 4 feet.
8. The Board found that Mr. Esham testified that this was not created by the Applicant because he relied on information from Sussex County when building the fence.
9. The Board found that Mr. Esham testified that there are other fences in the neighborhood.
10. The Board found that Mr. Esham testified that the variance will not alter the essential character of the neighborhood as this is what the homeowners association requests to be installed.
11. The Board found that Mr. Esham testified that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Esham testified that the fence will not affect visibility on Old Mill Road.
13. The Board found that Mr. Esham testified that there is no access to Old Mill Road from the Property.
14. The Board found that Mr. Esham testified that there is approximately 5-10 feet from the edge of pavement of Old Mill Road to the property line.

15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 with road frontages on two roads and the lot has a very unique shape. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicant does not have direct access to Old Mill Road Road and only access the Property from Hickman Drive. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized fence on the lot.
  - 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 requirements even though the Applicant can only access the Property from one of those roads. The Applicant seeks to retain a reasonably sized fence 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 retain the fence on the Property. The Board is convinced that the height 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 shape and size of the lot or enact the setback requirements which have limited the height of the fence on the lot. If the lot did not border Old Mill Road, the fence would not need a variance. 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 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. There are other similar fences in the community. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the fence poses no visibility concerns on Old Mill Road as there is a gap between the edge of paving of Old Mill Road and the rear property line.
  - e. The variance 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 retain a reasonably sized fence on the Property. The fence is consistent with the requirements of the neighborhood and provides the Applicant with privacy from the nearby road.

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 November 7, 2018.