

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PATRICK E. PATTERSON & JENNIFER A. PATTERSON

(Case No. 12272)

A hearing was held after due notice on March 18, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.5 feet from the fence height requirement of 3.5 feet for a proposed fence in the front yard of a through lot. This application pertains to certain real property located on the east side of Old Mill Road and the west side of Naomi Drive approximately 140 feet south of Chad Place in the White Creek Manor subdivision (911 Address: 121 Naomi Drive, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 1-34-12.00-1483.00.

1. The Board was given copies of the Application, a survey of the Property dated October 6, 2014, photographs of the Property and other fences in the area, 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 Jennifer Patterson and Patrick Patterson were sworn in to testify about the Application.
4. The Board found that Mr. Patterson testified that the request is for a variance for fence height. The Applicants propose to construct a cedar fence measuring 5 feet tall along the Old Mill Road side of the Property; which the Applicants consider the rear of the lot.
5. The Board found that Mr. Patterson testified that all the neighbors have similar fences and those fences are located a similar distance from Old Mill Road as the proposed fence.
6. The Board found that Mr. Patterson testified that bikers and pedestrians cut through the neighborhood and the fence will be used to provide the Applicants with privacy.
7. The Board found that Mr. Patterson testified that DelDOT denied an entrance off Old Mill Road.
8. The Board found that Mrs. Patterson testified that the Property is unique because it is a through lot and backs up to a busy county road.
9. The Board found that Mrs. Patterson testified that the fence will be used for privacy and the Property cannot otherwise be developed to allow for privacy without the variance.
10. The Board found that Mrs. Patterson testified that this practical difficulty was not created by the Applicants as they purchased the Property without knowing that it was considered to have two front yards.
11. The Board found that Mrs. Patterson testified that the fence will not alter the essential character of the neighborhood as there are fences on neighboring properties.
12. The Board found that Mrs. Patterson testified that a fence which would comply with the fence height requirement would not provide adequate privacy and the requested variance is the minimum amount to afford relief and allow for privacy.
13. The Board found that Mr. Patterson testified that there is approximately 25 feet from the property line to the edge of paving of Old Mill Road.

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 is subject to two front yard setback requirements even though the Property only has vehicular access from Naomi Drive. The side of the Property along Old Mill Road is effectively the rear yard of the lot but is subject to front yard setback requirements. These conditions greatly restrict the building envelope on the Property and subject the lot to greater fence height requirements than would normally be expected of a lot in a residential subdivision. While the Property is considered a through lot, the Applicants do not have direct access to Old Mill Road and only access the Property from Naomi Drive. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized fence on the lot. The Board also notes that the Applicants suffer from privacy issues from pedestrians and bikers in the area.
 - 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 even though the Applicants can only access the Property from one of those roads. 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 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 Applicants. The Board also notes that the fence will protect the Property from trespassers and will afford the Applicants with greater privacy.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the lot or enact the fence height requirements which have limited the building envelope of 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. The Applicants have also not created the issues with the trespassers.
 - 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. The fence does not present visibility concerns along Old Mill Road. 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. The Board also notes that there is approximately 25 feet from the edge of paving of Old Mill Road to the property line so the impact of the higher fence should not be as impactful as a fence that is closer to the roadway.

- 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 fence height is tall enough to provide the Applicants with reasonable privacy but the Applicants appear to have limited the height of the fence in order to minimize the need for the variance while still meeting their privacy objectives.

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. John Mills, Mr. John Williamson, 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 April 16, 2019.