

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD GOOD

(Case No. 12277)

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 an existing fence.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.5 feet variance from the 3.5 feet maximum fence height requirement for an existing fence along Indian Hill Lane and Flint Court. This application pertains to certain real property located on the southwest corner of Flint Court and Indian Hill Lane in the Murrays Haven subdivision (911 Address: 1 Flint Court, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 1-34-12.00-1587.00.

1. The Board was given copies of the Application, a building permit application, 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 Richard Good and William Ruppert were sworn in to testify about the Application. Mr. Good submitted exhibits to the Board including a survey dated July 31, 2018, photographs, and a drawing.
4. The Board found that Mr. Good testified that he and his wife have two German shepherd dogs and a fence is necessary for the safety of the dogs as well as the community. The dogs can jump over a fence which would comply with the Code but could not clear a fence measuring 5 feet tall.
5. The Board found that Mr. Good testified that the homeowners' association gave permission for a 5 feet tall fence to be placed on the Property so the Applicants hired a licensed fence company to install the fence.
6. The Board found that Mr. Good testified that the Property is unique because it has two front yards, Flint Court and Indian Hill Lane. Flint Court is considered the front yard and is a street with a cul-de-sac and little traffic. Indian Hill Lane is the main road in the development and has car, pedestrian, and bike traffic.
7. The Board found that Mr. Good testified that the height of the fence keeps the dogs from seeing Indian Hill Lane.
8. The Board found that Mr. Good testified that it could not be developed otherwise as that has the largest area of open space for the dogs.
9. The Board found that Mr. Good testified that the fence will not affect the visibility for the neighbors and will not alter the essential character of the neighborhood.
10. The Board found that Mr. Good testified that there have been no complaints from neighbors.
11. The Board found that Mr. Good testified that the variance requested is the minimum variance requested necessary to afford relief.
12. The Board found that Mr. Ruppert testified that he applied for a permit after the fence was installed and that this is not his usual practice but, due to impending bad weather, he built the fence prior to getting the permit.
13. The Board found that Robert Allen, who is the homeowners' association president, was sworn in to give testimony in support of the Application. Mr. Allen testified that

the fence was approved by the association and that the Applicant had to obtain approval from his immediate neighbors. Mr. Allen spoke with neighbors and they said there are no visibility concerns.

14. The Board found that one person appeared in support of and no one appeared 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 fence height requirements along both roads even though the Property only has vehicular access from Flint Court. Indian Hill Lane is effectively the side yard of the lot but treated as a corner front yard. 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. The situation is also unique because the Applicant has 2 dogs who could otherwise jump over a fence which would comply with the Code. As such, a taller fence is necessary. 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 fence height 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 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. The Board also notes that the fence will protect the public and the Applicant's dogs from traffic along those roads.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant 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 Applicant but was created the lot's unique characteristics. The Applicant also relied on his fence installer to comply with the Code only to later discover the violation.
 - 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. The homeowners' association approved of the fence and neighbors have indicated to the homeowners' association president that they do not object to the fence. The fence does not present visibility concerns along Flint Court or Indian Hill Lane and will help restrict the Applicant's dogs from running onto those roads; which should benefit travelers along that 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 the pictures presented by the Applicant demonstrate that the fence poses no visibility concerns from the adjacent roads as the fence is setback from the edge of paving a fair distance.

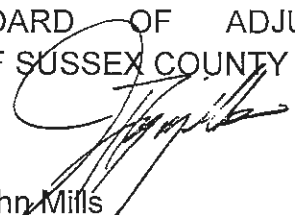
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized fence on the Property which will prevent the Applicant's dogs from jumping over the fence. No additions or modifications to the fence is proposed. The Board also notes that the Applicant has reduced the size of the fence it initially requested from the homeowners' association from 6 feet to 5 feet.

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.