

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

**IN RE: JEFFREY E. KRAUS**

**(Case No. 12280)**

A hearing was held after due notice on March 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.5 feet from the 3.5 feet height requirement for an existing fence in the front yard of a through lot. This application pertains to certain real property located on the north side of Fenwick Circle in the Fenwick West subdivision, also on the south side of Zion Church Road approximately 290 feet east of New Road (911 Address: 37592 Fenwick Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-12.00-220.00.

1. The Board was given copies of the Application, a drawing of the Property, photographs of the Property, letters supporting the request, 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 Jeffrey Kraus and Rebecca Kraus were sworn in to testify about the Application.
4. The Board found that Mr. Kraus testified that the fence is 6 feet tall and replaced an older, chain link fence which was on the Property when the Applicants purchased the lot. The fence is located on the Zion Church Road side of the lot.
5. The Board found that Mr. Kraus testified that the Property is unique because it is a through lot with two front yards and setbacks of 40 feet on both sides. He was not aware that the lot was a through lot when he purchased the Property. The lot fronts on Fenwick Circle and Zion Church Road. Mr. Kraus considers the fence to be located in his rear yard (Zion Church Road).
6. The Board found that Mr. Kraus testified that this situation was not created by the Applicant as there was an existing fence when he purchased the Property.
7. The Board found that Mr. Kraus testified that a neighbor obtained a variance for fence height.
8. The Board found that Mr. Kraus testified that the fence is set back 10 feet from the property line and the fence is back far enough so as not to impede sight lines for neighbors entering Zion Church Road.
9. The Board found that Mr. Kraus testified that the Property is located in the Fenwick West subdivision and he uses the subdivision entrance to access the property. There is no direct access to Zion Church Road from the Property.
10. The Board found that Mr. Kraus testified that the variance will not alter the essential character of the neighborhood as many of the neighbors also have similar fences.
11. The Board found that Mr. Kraus testified that there are no objections from neighbors.
12. The Board found that Mr. Kraus testified that it is necessary to have a fence measuring 6 feet tall to protect his dogs from the traffic on Zion Church Road which has a speed limit of 50 miles per hour.

13. The Board found that Mrs. Kraus testified that the fence has been in place for about seven years and the neighbors have commented on the improvements that have been made to the lot. She believes that the fence helps keep the dogs safe.
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 two front yard setback requirements even though the Property only has vehicular access from Fenwick Circle. The side of the Property along Zion Church 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 Zion Church Road and only access the Property from Fenwick Circle. 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 Zion Church Road.
  - 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.
  - 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 Zion Church Road and will help restrict the Applicant's dogs from running onto Zion Church Road; 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 lack of evidence is telling since the fence has been on the lot for several years.

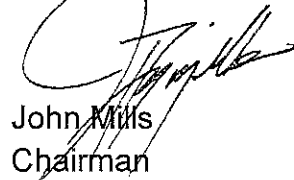
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized fence on the Property. No additions or modifications to the fence are proposed.

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 Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on this 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 2, 2019