

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: K. HOVNANIAN'S FOUR SEASONS AT BELLE TERRE, LLC
(Case No. 12316)

A hearing was held after due notice on June 3, 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 height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.5 feet from the maximum fence height requirement of 3.5 feet for a proposed fence measuring 770 feet long along Dorman Farm Lane. This application pertains to certain real property located on the northwest corner of Dorman Farm Lane and Mulberry Knoll Road approximately 0.34 miles northwest of John J. Williams Highway (Route 24) (911 Address: N/A) said property being identified as Sussex County Tax Map Parcel Number: 3-34-12.00-16.05.

1. The Board was given copies of the Application, letters from Glenn Mandalas, Esquire, a building permit application, record plats for Four Seasons at Belle Terre Phase 1, a landscape plan for Delaware State Police Troop 7, email correspondence between Mike Irons and Planning & Zoning staff members, pictures, 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 Shannon Soderberg and Rene Van Houten were sworn in to testify about the Application. Glenn Mandalas, Esquire, presented the Application on behalf of the Applicant and he submitted exhibits to the Board to review.
4. The Board found that Mr. Mandalas stated that Dorman Farm Lane is the entrance road to the community and is adjacent to the Delaware State Police Troop 7 facility which is under construction. The proposed fence will provide screening from the Troop 7 facility.
5. The Board found that Mr. Mandalas stated that the Applicant constructed a fence along a border of the Troop 7 property and that fence was approved as a matter of right. The proposed fence will connect with the existing fencing and will consist of 770 linear feet and will be 7 feet tall.
6. The Board found that Mr. Mandalas stated that Troop 7 is affecting sales of lots in the community.
7. The Board found that Mr. Mandalas stated that the Property is narrow on this strip and opens up farther into the community.
8. The Board found that Mr. Mandalas stated that the Property is unique as it is located next to Troop 7 which is currently constructing a 25,000 square foot barracks facility and a 7,000 square foot maintenance building.
9. The Board found that Mr. Mandalas stated that the Property cannot be developed with a 7 feet tall screening fence without the variance.
10. The Board found that Mr. Mandalas stated that, due to the narrowness of the property, the Applicant cannot build lots in this area but, if the Applicant were able to build lots in this area, the Applicant would have had the right to build a 7 foot tall fence.
11. The Board found that Mr. Mandalas stated that the practical difficulty was not created by the Applicant but by the approval of the conditional use for the Troop 7 facility.

12. The Board found that Mr. Mandalas stated that the Applicant's development existed prior to the conditional use approval.
13. The Board found that Mr. Mandalas stated that the neighboring structures are out of character for the neighborhood.
14. The Board found that Mr. Mandalas stated that the variance will not alter the essential character of the neighborhood but will be more aesthetically pleasing for future homebuyers in Belle Terre.
15. The Board found that Mr. Mandalas stated that there is already a permit for 1,650 linear feet of 7 feet tall fencing and the variance will allow this fencing to be extended by 770 feet.
16. The Board found that Mr. Mandalas stated that the variance requested is the minimum variance necessary to afford relief.
17. The Board found that Mr. Mandalas stated that the fence will not cause any visibility issue for drivers leaving the subdivision.
18. The Board found that Ms. Soderberg, who is a sales consultant for the community, testified that, when entering the subdivision, potential buyers are often distracted by the very large barracks being constructed on the adjacent property and many people think it is part of the community. She noted that one prospective buyer turned around when she saw the Troop 7 facility being constructed.
19. The Board found that Ms. Soderberg testified that a screening fence would help separate the properties and give a screening buffer and help increase home sales for the community.
20. The Board found that Ms. Van Houten testified that most of the site was open farmland and the forested area of the site was clear cut but some trees were saved for a buffer. Trees are being planted throughout the community.
21. The Board found that Ms. Van Houten affirmed the statements made by Mr. Mandalas as true and correct.
22. The Board found that three (3) parties appeared in support of and no parties appeared in opposition to the Application.
23. 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 being developed residentially but adjacent to a large facility used by the Delaware State Police for Troop 7. The Property is also unique because a narrow strip of land exists to the southeast of Dorman Farm Lane and adjacent to the Troop 7 property. The community is accessed by Dorman Farm Lane. Due to the narrowness of the strip of land in this area, there is not enough space for houses to be constructed on the strip of land. If homes could be constructed in that area, a fence of 7 feet tall could be constructed between Troop 7 and Dorman Lane Road because the border would be considered the rear of the lot. The Applicant seeks to install a taller fence along the southeast border of the Property to shield the Property – and its homes – from Troop 7 facility. It is clear that the unique physical characteristics of the Property have created the exceptional practical difficulty.
 - 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 by the large Troop 7 facility and it is clear that the existence of the facility has softened interest in the homes in the Applicant's community. The Applicant seeks to construct a reasonably sized fence to provide a barrier from the Troop 7 facility 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 and exhibits provided by the Applicant.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not develop the adjacent property in such a fashion as to warrant the need for a higher fence on the Applicant's lot. Notably, the Troop 7 facility was the product of a conditional use. The Property also has no natural physical barriers which would otherwise limit the effect of the neighboring uses on the Property. The unique characteristics of the Property are clear when reviewing the exhibits submitted by the Applicant. 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. The fence is reasonable in height and it will connect to already existing fencing in the neighborhood that was permitted by right. The proposed fence will, thus, serve as a natural expansion of that fence. 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 fence will not extend to Route 24 and there was no evidence presented that the fence would produce visibility or traffic issues.
- 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 construct a reasonably sized fence on the Property which will shield much of the Troop 7 facility from view. The fence will also serve to prospective buyers as evidence that the Troop 7 facility is not part of the Applicant's community.

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 of the Motion to approve 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 June 18, 2019.