

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM SEARLE

(Case No. 12317)

A hearing was held after due notice on June 17, 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 variances from the front yard setback, side yard setback, and maximum fence height requirements for proposed and existing structures.

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 fence in the front yard of a through lot along Zion Church Road and a variance of 23.7 feet from the forty (40) feet front yard setback requirement along Zion Church Road for an existing shed. This application pertains to a through lot fronting on Fenwick Circle and Zion Church Road approximately 416 feet west of the entrance to the Fenwick West subdivision (911 Address: 37568 Fenwick Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-12.00-217.00.

1. The Board was given copies of the Application, a letter from the Applicant, a survey of the Property dated August 4, 2011, a survey of the Property dated February 12, 2016, a Certificate of Compliance, photographs, a building permit application, letters of support, 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 two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that William Searle was sworn in to testify about the Application.
4. The Board found that Mr. Searle testified that he proposes to construct a 7 foot tall vinyl fence. The fence will connect with fencing on neighboring properties and the fence will be similar to those fences.
5. The Board found that Mr. Searle testified that the Property is unique because it is a through lot with two front yards. The house faces Fenwick Circle and the Property is accessed from Fenwick Circle. There is no vehicular access to Zion Church Road.
6. The Board found that Mr. Searle testified that the fence will help with privacy and noise related to Zion Church Road, which is a noisy road.
7. The Board found that Mr. Searle testified that the Property cannot otherwise be developed for a 7 foot tall fence without the variance.
8. The Board found that Mr. Searle testified that the 7 foot tall fence will help protect grandchildren from Zion Church Road.
9. The Board found that Mr. Searle testified that the exceptional practical difficulty was not created by the Applicant but by the Property being a through lot.
10. The Board found that Mr. Searle testified that the variances will not alter the essential character of the neighborhood but will be in keeping with existing fences in the area.
11. The Board found that Mr. Searle testified that the structures will not cause any visibility issues on Zion Church Road.
12. The Board found that Mr. Searle testified that the variances are the minimum variance requests for the Applicant's fence to be consistent and match the neighbors' fences.

13. The Board found that Mr. Searle testified that there is approximately 34 feet from the edge of paving of Zion Church Road to the fence.
14. The Board found that no one 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the variance requests.
 - 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 portion 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. While the Property is considered a through lot, the Applicant does 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 shed and to place 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 setback requirements even though the Applicant can only access the Property from one of those roads. The Applicant seeks to retain a reasonably sized shed and to place a fence on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain a reasonably sized shed and to place a fence on the Property. The Board is convinced that the shape and location of the shed and 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 lot or enact the setback 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 Board also notes that Zion Church Road is a busy road and the traffic and noise along that road have created the need for the fence and shed to provide privacy and buffering from the traffic and noise.
 - d. The variances 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 shed and fence will have no effect on the character of the neighborhood. There are other sheds and similar fences in the community. The shed and fence do not present visibility concerns along Zion Church Road and will help restrict the Applicant's young family members from running onto Zion Church Road; which should benefit travelers along that road. 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. Rather, the Board received letters of support.

- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized shed and to place a reasonably sized fence on the Property. The fence will connect to neighboring fences and will be the same height and made of the same material as those fences.

The Board granted the variance application finding that the variance application 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



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date August 6, 2019.