

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAM TRUSIK

(Case No. 12396)

A hearing was held after due notice on December 16, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 3 feet from the 7 foot maximum fence height requirement for an existing fence in the rear yard setback. This application pertains to certain real property located on the north side of Angola Road approximately 0.30 miles west of Camp Arrowhead Road (911 Address: 33005 Angola Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 2-34-12.00-13.06. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated March 30, 2016, 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 Sam Trusik was sworn in to testify about the Application. Mr. Trusik submitted photographs of the fence for the Board to review.
4. The Board found that Mr. Trusik testified that the Property is adjacent to a development to the rear and the Property is unique as it rolls down to a natural swale.
5. The Board found that Mr. Trusik testified that the elevations of the properties behind him are much higher than his property. He believes that there is approximately 3 feet in elevation difference between the properties with his lot being lower than the neighboring lots.
6. The Board found that Mr. Trusik testified that he believed there was a landscape buffer to the rear yard which has been removed and that he no longer has privacy to the rear yard.
7. The Board found that Mr. Trusik testified that he hired a local builder to construct the fence but work stopped when they received a notice of violation from Planning & Zoning.
8. The Board found that Mr. Trusik testified that he planned to have a lower fence near pine trees.
9. The Board found that Mr. Trusik testified that there is approximately a 10 foot wide swale to the rear yard.
10. The Board found that Mr. Trusik testified that pine trees were removed but hardwood trees were left in the buffer area.
11. The Board found that Mr. Trusik testified that it would be a financial burden to remove the fence.
12. The Board found that Mr. Trusik testified that the Property cannot otherwise be developed for the 10 foot tall fence without the variance.
13. The Board found that Mr. Trusik testified that the height is necessary as the Property slopes down in the corner where the fence is placed.
14. The Board found that Mr. Trusik testified that the lot was not created by the Applicant.

15. The Board found that Mr. Trusik testified that the fence will not affect the adjacent properties as there is existing foliage which will block the fence from view.
16. The Board found that Mr. Trusik testified that some neighbors came to support his Application but had to leave before his case was heard.
17. The Board found that Mr. Trusik testified that the variance requested is the minimum variance request to allow the existing fence to remain.
18. The Board found that Mr. Trusik testified that the fence will be 10 feet tall then drop to 7 feet tall and that he needs 70 linear feet of fence measuring 10 feet tall.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 due to its topographical condition as compared to the neighboring properties to the rear. The lot is located adjacent to a new community which elevated approximately 3 feet higher than the Property. The new development has also led to a clearing of trees which have reduced the privacy of the Applicant's lot. These conditions are unique and related to the Property. The Applicant seeks to retain a fence along a portion of the rear of the lot at a height of 10 feet but cannot retain the fence in compliance with the Code. Normally, an applicant could construct a fence in the rear yard which would be allowed to measure 7 feet tall and, if the neighboring property was level with the Property, the 7 foot tall fence would suffice. In this case, however, additional height for a portion of the fence is needed. It is clear that the unique physical characteristics of the Property have created the unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized fence.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. 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 a new development which is located on higher ground. The Applicant seeks to retain a reasonably sized fence to provide a privacy barrier from the neighboring development 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 and exhibits provided by the Applicant. The Board also notes that a fence built in compliance with the Code would effectively appear to be a 4 foot tall fence due to the elevated topography of the neighboring property to the rear and would be ineffective. A slightly taller fence is, thus, needed.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unique topography of the lot or develop the property to the rear. The unique characteristics of the Property are clear when reviewing the exhibits submitted by the Applicant. The Board is convinced that the unnecessary hardship and exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - e. 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; particularly since the neighboring property is elevated by 3 feet. 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 no evidence was presented that the fence would produce visibility or traffic issues.

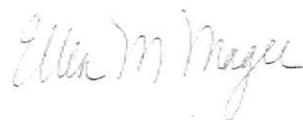
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized fence on the Property to allow for sufficient privacy from the neighboring lands. The Board notes that the fence will not extend the length of the rear yard. Rather, only a portion of the rear yard will be used for the taller fence. The Applicant otherwise plans to construct the fence in compliance with the Code.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. This variance is subject to the following condition:
 - i. The fence shall be no taller than 10 feet.
 - ii. The portion of the fence which is 10 feet tall shall extend no farther than 70 consecutive linear feet along the rear property line. Any remaining fence along the rear property line shall otherwise be constructed in compliance with the Sussex County Zoning Code.

The Board granted the variance application for 70 linear feet 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 for 70 linear feet along the rear yard. The Board Members in favor of the Motion to approve were Mr. Jeffrey Chorman, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson and Ms. Ellen Magee 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 February 18, 2020.