

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

**IN RE: KEITH A. RUST**

**(Case No. 12510)**

A hearing was held after due notice on January 4, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variance from the maximum fence height requirement for an existing fence.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.5 feet from the maximum height for a fence of 3.5 feet for an existing fence. The fence is 14 feet from the front property line and 26 feet of the fence in the front yard along the side property line is not compliant with the Sussex County Zoning Code. The variance is for the portion of the fence which does not comply with the Code. The Property is located on the north side of the West Piney Grove Road, approximately 0.31 miles west of Parker Road (911 Address: 19553 West Piney Grove Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number: 1-33-5.00-6.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a notice of violation from the Sussex County Constable, a letter of no objection from Gary Conaway, photographs, a survey of the Property dated December 1, 2020, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Keith Rust was sworn in to give testimony about the Application.
4. The Board found that Mr. Rust testified that he contracted with a fence company to install a 6 foot tall fence on his property but he later learned that the contractor did not obtain a permit to install the fence. Mr. Rust also noted that he was unaware that of the fence height restriction and that he would have applied for the variance prior to the installation if he had been aware of the height restriction.
5. The Board found that Mr. Rust testified that he has received no complaints from neighbors about the fence.
6. The Board found that Mr. Rust testified that the Property is unique as it is surrounded on three sides by fields and he has experienced problems with snow and debris from the fields blowing onto his lands. He believes that the fence helps with that problem.
7. The Board found that Mr. Rust testified that snow has been a particular problem as the Property is subject to strong easterly winds that blow snow onto his lands. He testified that, at times, he has been unable to open his front door due to the snow.
8. The Board found that Mr. Rust testified that his property is surrounded by agricultural lands and a 3.5 foot tall fence would not be sufficient for protection from winds and snow during the winter.
9. The Board found that Mr. Rust testified that the exceptional practical difficulty was not created by the Applicant but by Breakwater Fence Company who failed to get a permit for installing the fence and did not verify the regulations about the height of the fence.

10. The Board found that Mr. Rust testified that granting the variance will not alter the essential character of the neighborhood.
11. The Board found that Mr. Rust testified that there are no visibility issues with the fence as it is approximately 14 feet from the edge of paving of West Piney Grove Road.
12. The Board found that Mr. Rust testified that he still has full view of the road since the fence is set back from the road.
13. The Board found that Mr. Rust testified that a 6 foot tall fence is the minimum to provide relief from the 40 plus miles per hour winds and blowing snow.
14. The Board found that no one appeared in support of or 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 due as it is bordered on two sides by agricultural lands and is across the street from other agricultural lands. The Property is also unique because it is subject to strong easterly winds which result in debris and snow from the agricultural lands blowing onto the Property. These conditions have made it difficult for the Applicant to utilize his property at times and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain a taller fence on the lot to protect against the blowing debris and snow.
  - 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 agricultural lands and is subject to strong winds which blow debris and snow onto the lot. The Applicant needs a taller fence to block the wind, snow, and debris and is unable to retain the taller fence 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 reasonable fence. The Board is convinced that the location of the fence is also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant. The Board notes that the fence runs along the side property line but terminates approximately 14 feet from the front property line.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual wind conditions. Those conditions have created that need for a taller fence and the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the materials presented to the Board. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were 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 has been on the lot for nearly a year and no complaints from neighbors were noted in the record. The neighbor closest to the fence has indicated support for the Application. The pictures also demonstrate that the fence is set back from the road so as to minimize visibility issues. 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.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the fence. No additions to the fence are proposed. The fence is also set back from the road 14 feet to minimize the need for the variance.
- 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.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chairman

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

Date March 1, 2021