

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

**IN RE: MICHAEL O'HOPP & DEA O'HOPP**

**(Case No. 12534)**

A hearing was held after due notice on March 1, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.5 feet from the maximum fence height requirement of 3.5 feet for a fence in a front yard setback. The Property is a through lot located on the west side of Ocean Park Lane and the east side of Coastal Highway (Route 1) within the Fenwick Acres Subdivision (911 Address: 37146 Ocean Park Lane, Fenwick Island) said property being identified as Sussex County Tax Map Parcel Number: 1-34-22.00-31.00. 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 October 28, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Michael O'Hopp was sworn in to give testimony about the Application.
4. The Board found that Mr. O'Hopp testified that the Property is a through lot that abuts Coastal Highway and Ocean Park Lane and the Property has two front yard setbacks. The rear side of the house faces Coastal Highway and the front side of the house faces Ocean Park Lane.
5. The Board found that Mr. O'Hopp testified that the side facing Ocean Park Lane is located on the cul-de-sac so the front property line has a radius thereby creating a uniquely shaped lot.
6. The Board found that Mr. O'Hopp testified that having two front yards makes it impossible to use the space behind the house to safely contain the family dogs and have enough room for them to exercise.
7. The Board found that Mr. O'Hopp testified that the Property is adjacent to a dune crossing pathway which is frequently used during the summer months. The Applicants do not want passersby to pet or grab their dog.
8. The Board found that Mr. O'Hopp testified that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. O'Hopp testified that a 5 foot tall fence is necessary for the safety of his four dogs.
10. The Board found that Mr. O'Hopp testified that the proximity to Coastal Highway would be dangerous for the dogs and for passing vehicles without the 5 foot tall fence.
11. The Board found that Mr. O'Hopp testified that the fence will not alter the essential character of the neighborhood as the development is bordered by a 6 foot tall fence and this fence will not be visible behind the 6 foot tall fence. The Applicant testified that the existing fence is in disrepair and is the HOA's responsibility to maintain.
12. The Board found that Mr. O'Hopp testified that the HOA has approved the request.



13. The Board found that Mr. O'Hopp testified that a solid fence is needed for the safety of the dogs and passing pedestrians and vehicles.
14. The Board found that Mr. O'Hopp testified that the fence height of 5 feet is necessary as some of the family dogs could jump a 42 inch tall fence.
15. The Board found that Mr. O'Hopp testified that the Applicants reside on the Property approximately six months each year.
16. The Board found that Mr. O'Hopp testified that the fence will be approximately 1.5 feet inside the current 6 foot tall fence and the existing 6 foot tall fence is approximately 20 feet from Coastal Highway. He believes that 1.5 feet is enough room to maintain the fence between the HOA fence.
17. The Board found that Mr. O'Hopp testified that HOA rules preclude the erection of a fence in a front yard so the only area where the dogs can roam is to the rear of the house.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 through lot adjacent to Coastal Highway and a heavily traveled dune crossing to the south. The lot also has a unique shape as it is located at the end of a cul-de-sac and the front yard is curved. Accordingly, the lot has a unique building envelope. The Property is also adjacent to a fence along Route 1 that is maintained by the homeowners association but the fence has fallen into disrepair. The Applicants seek to construct a 5 foot tall fence to the rear of the existing house to have a safe area for their dogs to roam. The fence will be located along the Coastal Highway side of the lot and along the side property lines. The Property is limited by homeowner association rules which preclude the erection of a fence on the Ocean Park Lane side of the Property. As such, there is no area where the Applicants can erect a fence which is tall enough for their dogs. These conditions have made it difficult for the Applicants to utilize the Property as intended and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to erect a fence on the lot that is tall enough to protect their dogs.
  - 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 the well-traveled Coastal Highway and a dune crossing. The Applicants need a taller fence to protect their dogs from passersby and to protect travelers from dogs who may roam but the Applicants are unable to build 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 Applicants to erect a reasonably sized fence. The Board is convinced that the location of the fence is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the fence runs along the side property lines and along Coastal Highway. There is a larger fence maintained by the association which is located between the proposed fence and Coastal Highway.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions



and the traffic on neighboring lands. 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 Applicants 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 will be located next to an older fence that is in disrepair and will not be seen from Coastal Highway. The homeowners association has approved the fence as well. The fence will also provide a safe barrier to keep the dogs on the Property and away from pedestrians, bikers, and vehicles along the dune pathway and Coastal Highway. This barrier should improve the safety in the area. 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized fence that is tall enough to keep their dogs on the Property.
- 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, Mr. Travis Hastings, 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 Williamson  
Chair

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

Date May 3, 2021.