

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: REBECCA WRIGHT

(Case No. 12540)

A hearing was held after due notice on April 12, 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 an existing fence.

Findings of Fact

The Board found that the Applicant is requesting a variance of 0.5 feet from the 3.5 foot maximum height requirement for a fence in the front yard setback. The property is located at the intersection of Coastal Highway (Route 1) and Dodd Avenue within the Ann Acres Subdivision (911 Address: 20994 Dodd Avenue, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-20.13-92.00. 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, photographs, letters in opposition to the Application, 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 and nine (9) letters in opposition to the Application.
3. The Board found that Rebecca Wright was sworn in to give testimony about the Application.
4. The Board found that Ms. Wright testified that she is seeking a six inch height adjustment for the safety of her children and dogs.
5. The Board found that Ms. Wright testified that she hired a licensed fence company to install the fence and the fence company stated that permits were not required. The fence was installed in November 2020 and she later learned that the fence company did not obtain the necessary permits.
6. The Board found that Ms. Wright testified that the Property is adjacent to Route 1 where cars drive fast. She expressed safety concerns for her dogs and children due to the proximity of Route 1 from the Property.
7. The Board found that Ms. Wright testified that she has large dogs which can clear a 3.5 foot tall fence and that they can even touch the top of the fence at 4 feet.
8. The Board found that Ms. Wright testified that a split rail fence was installed to allow for safety and visibility and that pictures have been submitted to show that visibility is not an issue.
9. The Board found that Ms. Wright testified that there are other fences along Route 1 with a height greater than four feet.
10. The Board found that Ms. Wright testified that the uniqueness of the Property is that it is on a busy main road.
11. The Board found that Ms. Wright testified that the lot measures 50 feet by 100 feet.
12. The Board found that Ms. Wright testified that the fence was purposefully set back from Dodd Avenue so there would be no impact to visibility at the stop sign.
13. The Board found that Ms. Wright testified that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Ms. Wright testified that she bought the Property in 2020 and improved the dwelling.



15. The Board found that Ms. Wright testified that she chose a split rail fence to allow for better visibility.
16. The Board found that Ms. Wright testified that the side yard where the fence is located is the largest area on the property to allow safe access for children and dogs.
17. The Board found that Ms. Wright testified that the proximity to a major highway makes this dangerous for both children and dogs.
18. The Board found that Ms. Wright testified that the rear of the Property is narrow and has large trees that could not be contained in the fenced area due to the growth of the trees and roots.
19. The Board found that Ms. Wright testified that the setback to Coastal Highway was not created by the Applicant.
20. The Board found that Ms. Wright testified that the variance for the fence will not alter the essential character of the neighborhood and does not impair any neighbor.
21. The Board found that Ms. Wright testified that the natural wood and split rail with wire mesh was chosen in order to provide an aesthetically improved look and provide full visibility.
22. The Board found that Ms. Wright testified that landscaping is planned to add further improvement to the curb appeal.
23. The Board found that William Percy Burton was sworn in to give testimony in opposition to the Application.
24. The Board found that Mr. Burton testified that the fence causes visibility issues when entering onto Coastal Highway.
25. The Board found that Mr. Burton testified that he has lived on Dodd Avenue for many years and there was never a fence there before.
26. The Board found that Mr. Burton testified that he is not opposed to a fence but he is opposed to the location of the fence and that he believes 6 inches will not make a difference.
27. The Board found that Ms. Wright testified that pictures have been provided showing the visibility from the stop sign on Dodd Avenue and that the pictures show that there are no visibility issues.
28. The Board found that Ms. Wright testified that there is 1 foot between the fence and the sidewalk.
29. The Board found that no one appeared in support of and two people appeared in opposition to the Application.
30. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 a small lot with large trees on the corner of Dodd Avenue and Route 1. The Applicant has children and dogs and needs a fence to safely contain them from the heavy traffic along Route 1. Due to the small size of the lot and the existing trees, the fence needs to be located closer to Route 1. The Applicant seeks to retain a 4 foot tall fence to the side of the existing house to have a safe area for her dogs to roam and her children to play. The fence is located along the Coastal Highway side of the lot and along the corner front property lines and is located approximately 1 foot from the sidewalk. The proximity to Route 1 has made it difficult for the Applicant to utilize the Property as intended and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain a fence on the lot that is tall enough to protect her dogs and children.
  - 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. The Applicant needs a taller fence to protect her dogs and children from passersby and to protect travelers from dogs who may roam but the Applicant is 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 Applicant to retain 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 corner front property line along Coastal Highway. The fence is only 6 inches taller than allowed under the Code
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant 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 Applicant but was created the lot's unique characteristics. The Applicant also relied on its builder to construct the fence in compliance with the Code only to later learn of the violation.
- 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 a split-rail fence with a wire mesh that has greater visibility than a privacy fence. Opposition complained about the location of the fence but a fence, albeit six inches smaller, is allowed to be located in this location without a variance. While the neighbors expressed concerns about the visibility from the Dodd Avenue and Coastal Highway intersection, the fence is located approximately 30 feet from that intersection and the pictures submitted into the record demonstrate that visibility at that intersection will not be impacted by a 6 inch increase in the height of the fence. No substantial evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Furthermore, this barrier should improve the safety in the area by preventing the Applicant's dogs from leaving the Property.
- 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 a reasonably sized fence that is tall enough to keep her 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. John Williamson, and Mr. Brent Workman. Mr. Jeffrey Chorman and Mr. Travis Hastings 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 June 7, 2021