

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

**IN RE: ZACHARY HESS**

**(Case No. 12563)**

A hearing was held after due notice on June 7, 2021. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.5 feet from the maximum fence height requirement of 3.5 feet for a fence in the front yard setback along Clubhouse Road and a variance of 0.5 feet from the maximum fence height requirement of 3.5 feet for a fence along the side property line to the 40 foot front yard setback line from Clubhouse Road. The property is located on a through lot on the on the northwest side of Hickman Drive and the southeast side of Club House Road within the Whites Creek Manor Subdivision (911 Address: 739 Hickman Drive, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 1-34-12.00-1030.00. 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 July 6, 2020, photographs, 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 Zachary Hess was sworn in to give testimony about the Application. Mr. Hess also submitted six letters in support of the Application.
4. The Board found that Mr. Hess testified that he is seeking the variances for the safety of his children and dogs.
5. The Board found that Mr. Hess testified that the Property is unique as it is a through lot and has two front yard setbacks.
6. The Board found that Mr. Hess testified that the "rear" of the Property backs up to Clubhouse Road, which has a lot of traffic.
7. The Board found that Mr. Hess testified that, for zoning purposes, Clubhouse Road is considered a front yard but the house fronts onto Hickman Drive which is within the development and is less traveled.
8. The Board found that Mr. Hess testified that Clubhouse Road has extremely high traffic with many speeders.
9. The Board found that Mr. Hess testified that the exceptional practical difficulty was not created by the Applicant but by the fact that the Property has two front yard setback requirements.
10. The Board found that Mr. Hess testified that he has witnessed the death of animals along Clubhouse Road.
11. The Board found that Mr. Hess testified that the variances will not alter the essential character of the neighborhood as the adjacent property has a six-foot tall fence and the proposed fence would be a continuation of the neighbor's fence parallel to Clubhouse Road.
12. The Board found that Mr. Hess testified that the homeowners association permits this fence and that neighbors support the request.

13. The Board found that Mr. Hess testified that the development is Whites Creek Manor and he purchased the Property in February 2021.
14. The Board found that Mr. Hess testified that he has improved his yard by removing over 30 overgrown trees which has improved sightlines along Clubhouse Road.
15. The Board found that Mr. Hess testified that the variances are the minimum variances to keep this fence at the same height as his neighbor's fence and to protect his children and dogs from a busy road.
16. The Board found that Mr. Hess testified that fence height would be 4 feet along the side of the house.
17. The Board found that Mr. Hess testified that the shed has been removed and the concrete pad will be used for a fire pit.
18. The Board found that Mr. Hess testified that he removed trees that actually touched Clubhouse Road and that the removal of the trees improved the visibility. He likewise believes that the fence would not create any visibility issues for vehicular traffic.
19. The Board found that Mr. Hess testified that there is a 16 foot gap between the road and the fence.
20. The Board found that Mr. Hess testified that he has no direct vehicular access to Clubhouse Road.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. 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 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 Hickman Drive. The portion of the Property along Clubhouse 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 Clubhouse Road and the only variance access to the Property is from Hickman Drive. Clubhouse Road is a well-traveled road with vehicles at high speeds whereas Hickman Drive is located within a development and is lightly traveled. The Applicant has dogs and small children and the fence is needed to protect them from Clubhouse Road. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place fence on the lot.
  - 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 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 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 place a 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 provided by the Applicant. The fence is needed for the reasonable use of the Property because the Applicant has dogs and small children who could

be endangered by leaving the boundaries of the lot; particularly along Clubhouse Road.

- d. The exceptional practical difficulty and unnecessary hardship were 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. Rather, the Applicant only recently acquired 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 Clubhouse Road is a busy road and the traffic along that road have created the need for the fence to provide privacy and buffering from the traffic.
- e. 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 fence will have no effect on the character of the neighborhood. There are other similar fences in the community. The fence does not present visibility concerns along Clubhouse Road and will help restrict the Applicant's young family members and dogs from running onto Clubhouse 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. The Board also notes that the Applicant has cleared trees along Clubhouse Road which should also help with visibility. Moreover, there is approximately 16 feet from the edge of paving of Clubhouse Road to the fence so the fence should not present any visibility concerns.
- f. 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 place a reasonably sized fence on the Property, which will protect his dogs and children from Clubhouse Road. The fence will connect to neighboring fences and will be the same height and made of the same material as those fences.
- 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 Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson did not participate in the discussion or vote on this 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 August 16, 2021