

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THOMAS A. HABOWSKI

(Case No. 12658)

A hearing was held after due notice on February 21, 2022. The Board members present were: Dr. Kevin Carson, 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 maximum fence height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicant is requesting variance of 2.625 feet from the 3.5 feet maximum height requirement for a fence in the front yard setback area. The property is located on the east side of John J. Williams Highway approximately 0.89 miles north of Angola Road (911 Address: 21191 John J. Williams Highway, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 234-11.00-504.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, letters supporting the Application, a survey of the Property dated November 20, 2015, photographs, a site plan of the Property dated February 15, 2021, photographs, letters supporting 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 five letters in support of and no correspondence in opposition to the Application.
3. The Board found that Thomas Habowski was sworn in to give testimony about the Application.
4. The Board found that Mr. Habowski testified that he is seeking to place a fence on the front of his property directly across from a fire department. He believes that the fence will reduce light and noise produced from the fire department and will help with trash from the adjacent roadway.
5. The Board found that Mr. Habowski testified that he checked with his neighbors and they are in support. He believes they may seek a similar fence as well.
6. The Board found that Mr. Habowski testified that his co-habitant works long shifts as a 911 dispatcher and the lights from the fire company are disturbing to their sleep schedule.
7. The Board found that Mr. Habowski testified that the fence will be 73 ½ inches high painted metal on wooden posts and the fence will be 8 ½ feet off the roadway and blend in with trees already existing.
8. The Board found that Mr. Habowski testified that he would feel safe maintaining / servicing the fence being that close to the road.
9. The Board found that Mr. Habowski testified that the fence will be 8.5 feet from the edge of the roadway and he will move the fence if DeIDOT requires him to do so.
10. The Board found that Mr. Habowski testified that the fence is constructed of the same material as a pole barn and he believes that this fence will look much better than vinyl siding.
11. The Board found that Mr. Habowski testified that he believes any reverberating noise will be directed back at the source (the fire company).
12. The Board found that Mr. Habowski testified that the vegetation is no longer providing the desired effect and he believes that, if he planted vegetation, it would not survive.

13. The Board found that no one appeared in support of or in opposition to the Application.
14. 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 a lot adjacent to Route 24 and across the street from a fire station. The fire station produces light, sounds, and noises at all hours which makes it difficult for the Applicant and his co-habitant to sleep. The Property also receives trash from the well-traveled Route 24. While the Property has vegetation along Route 24, the vegetation does not provide adequate relief since the bulk of the canopy is above the sight lines for the lights from the fire station. The Applicant seeks to retain a fence provide a shield and buffer from noise and sounds from the fire station and Route 24. The proximity to the fire station and Route 24 has made it difficult for the Applicant to utilize the Property as intended and has created an exceptional practical difficulty and unnecessary hardship for the Applicant.
 - 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 Route 24 and is near the fire station. The Applicant needs a taller fence to provide an adequate shield and buffer from the noise and lights 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 construct 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.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot conditions, the fire station, 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.
 - 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 near existing vegetation and should not have a noticeable aesthetic effect on the neighborhood. 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. Rather, the Board received letters supporting the Application.
 - 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 construct a reasonably sized fence that is

tall enough to provide a shield and buffer from noise and lights emitting from neighboring properties.

- 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. Jordan Warfel, and Mr. John Williamson. 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 April 18, 2022