

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

**IN RE: MEHWISH AZIZ**

**(Case No. 12678)**

A hearing was held after due notice on April 18, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 3 feet from the 3.5 feet maximum fence height requirement for an existing fence. The property is located on the southwest side of Walnut Point Lane within the Collins Creek Estates (911 Address: 31155 Walnut Point Lane, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 134-8.00-318.00 ("the Property"). 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 November 5, 2021, a letter of support, 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 and no correspondence in opposition to the Application.
3. The Board found that Mehwish Aziz was sworn in to give testimony about the Application.
4. The Board found that Ms. Aziz testified that she obtained the permit and provided it to the contractor to build the fence. She noted that she was not there when the fence was constructed.
5. The Board found that Ms. Aziz testified that an inspector was at her property and indicated that the fence should not be there. She later verified on the permit that the fence could be located there but the height was the issue.
6. The Board found that Ms. Aziz testified that she brought the front yard section of fence into compliance but the issue is with the fence along Lot 6 to the south of the Property.
7. The Board found that Ms. Aziz testified that her neighbor has no objection to the fence due to his dogs roaming the Property.
8. The Board found that Ms. Aziz testified that she has had previous issues with dogs in the past.
9. The Board found that Ms. Aziz testified that the fence was erected for privacy and safety reasons.
10. The Board found that Ms. Aziz testified that the entire side and rear yard portions of the fence are 6.5 feet tall. She noted that the fence is 6 feet tall but with the poles it is measured at 6.5 feet by the inspector.
11. The Board found that Ms. Aziz testified that the contractor, Jamie Landscaping out of Maryland, installed the fence. She noted that she provided the permit to the contractor.
12. The Board found that Ms. Aziz testified that the neighbor's dogs would be able to enter the Property if the fence was any lower in the area where the variance is requested. She has concerns because the neighbor's dogs are somewhat aggressive.

13. The Board found that Ms. Aziz testified that there are no visibility issues due to the placement of the fence and that there is a gap between the fence and edge of paving of about 2-3 feet.
14. The Board found that Ms. Aziz testified that there is no homeowners association approval required.
15. The Board found that Ms. Aziz testified that the neighbor in support of the fence is the owner of the dogs and her adjacent neighbor.
16. The Board found that Ms. Aziz testified that the lot was previously vacant before she bought it and constructed her home.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 an oddly shaped lot along a cul-de-sac next to a property where neighbors have a dog that often roams onto the Property. The Applicant has installed a fence that is tall enough to prevent the dog from accessing the Property but a portion of the fence is taller than allowed. These conditions 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 keep the dog off her property.
  - 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 an oddly shaped lot adjacent to lands where a neighbor has a dog that roams onto the Property. The Applicant needs a taller fence to prevent the dog from coming onto the Property but the Applicant 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 reasonably sized fence that will afford the Applicant with the use of the Property without interference from the neighbor's dog. 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 and the issue with the dog 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 and the issue with the dog on the neighboring lands. The Applicant also relied on her 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 neighbor most affected by the variance has indicated no objection to the relief. 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 neighbor's dog from entering 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 neighbor's dog off 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. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings 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 June 27, 2022