BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANN PURCELL

(Case No. 12697)

A hearing was held after due notice on June 6, 2022. 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 maximum fence height requirement.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 0.5 feet from the 3.5 feet maximum fence height requirement for a proposed fence running 32 feet along Route 1 measuring 4 feet tall; and
2. A variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a proposed fence running 95 feet along Route 1 measuring 6 feet tall.

The property is located on the north side of Cove Road at the corner of Coastal Highway (911 Address: 39535 Cove Road, #1, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number: 134-5.00-75.00-1 ("the Purcell Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, drawings of the fence, evidence of approval from the Tower Shores Board, a survey of the Purcell Property, letters of support, an aerial photograph of the Purcell Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two letters in support of and no correspondence in opposition to the Application.
3. The Board found that Ann Purcell, Barbara Goyette, and Owen Kirby were sworn in to give testimony about the Application.
4. The Board notes that, due to a commonality of facts and issues, this Application was heard at the same time as the Application for Case No. 12696 which pertains to property identified as 39532 Dune Road, #2, Bethany Beach, Delaware, and further identified as Sussex County Tax Map Parcel No. 134-5.00-74.00-2 ("the Kirby Property").
5. The Board found that Ms. Purcell testified that she and her sister own a house on the Purcell Property and that Mr. Kirby owns the house behind their home on the Kirby Property and that these properties share a common area.
6. The Board found that Ms. Purcell testified that the properties are adjacent to Coastal Highway which is why they are requesting the variance for a fence to be placed.
7. The Board found that Ms. Purcell testified that they will be sharing the fence between their properties but the Purcell Property portion will run farther along their property line than the Kirby Property portion of the fence.
8. The Board found that Ms. Purcell testified that the Purcell Property has a berm where the highway has a pull over spot next to their driveway.
9. The Board found that Ms. Purcell testified that this fence is for the safety of children and pets on their property. She noted that they have grandchildren and dogs and that the dogs tend to run once the car door is opened.
10. The Board found that Ms. Purcell testified that there are portions of the Purcell Property where there is nothing between the Purcell Property and Coastal Highway.

11. The Board found that Ms. Purcell testified that Mr. Kirby's portion of the fence will be along 20 feet of the Kirby Property and the rest of the fence will run the remainder of the Purcell Property.
12. The Board found that Ms. Purcell testified that, along the grassy area between the Purcell Property and Coastal Highway, there is a drainage ditch which fills with water causing another safety hazard.
13. The Board found that Ms. Purcell testified that, because they have a corner lot, they have to obtain additional approval for fence height.
14. The Board found that Ms. Purcell testified that they are requesting a 6 foot tall fence because their side entrance, outdoor shower, and common area are all accessed on that side of the Purcell Property.
15. The Board found that Ms. Purcell testified that landscapers and bikers use the berm adjacent to the Purcell Property for parking and that she has come out of her house and people are on the Purcell Property standing next to their outdoor shower.
16. The Board found that Ms. Purcell testified that there are some bushes at the front of the Purcell Property and a fence at the front of the driveway that is in need of repair.
17. The Board found that Ms. Purcell testified that there is no foliage between the berm and the Purcell Property driveway.
18. The Board found that Ms. Purcell testified that the speed limit is 55 mph on Coastal Highway and the berm, which is only 1-2 feet from the property line, is an extension of the highway.
19. The Board found that Ms. Purcell testified that there is a sign that says no parking but it is not abided by. She noted that landscapers have been under her home looking for shade while working.
20. The Board found that Ms. Purcell testified that the proposed fence will be placed on the Purcell and Kirby property lines bordering Coastal Highway.
21. The Board found that Ms. Purcell testified that they plan on having the fencing lower towards the corner of their road and Coastal Highway to minimize visibility issues.
22. The Board found that Ms. Purcell testified that the Kirby Property is set back farther off Coastal Highway than their lot due to the angle of the properties.
23. The Board found that Ms. Purcell testified that they own one half of a duplex and that each duplex has its own HOA. She noted that they both obtained approval from their respective HOAs for the fence and they received approval from the Tower Shores Community Board though they did not need to get approval.
24. The Board found that Ms. Purcell testified that, within the first block of Tower Shores, there is an existing fence.
25. The Board found that Ms. Purcell testified that the fence will be a vinyl picket fence.
26. The Board found that Ms. Purcell testified that they request the fence for safety reasons and not for personal preference.
27. The Board found that Ms. Goyette testified that the berm buts right up to the driveway on the Purcell Property except for a few bushes and that there is a side entrance to the home next to the berm. She noted that a picture submitted with the Purcell Application shows how close the berm and the highway are to the Purcell Property.
28. The Board found that Ms. Goyette testified that, along Coastal Highway, there are other 6 foot tall fences in other communities.
29. The Board found that Ms. Goyette testified that the fence on the Purcell Property will stop about 6 feet from Cove Road.
30. The Board found that Mr. Kirby testified that the statements from Ms. Purcell and Ms. Goyette to be true and accurate.
31. The Board found that Mr. Kirby testified that they are dog owners and they have extended family members that visit them and the common area to be fenced in is the only grassy area to be utilized for either children or pets. He also noted that the area is very restrictive when it comes to pets.

32. The Board found that Mr. Kirby testified that the need for the fence is a safety issue for them as well.
33. The Board found that Mr. Kirby testified that the noise is one thing but there are also issues with the traffic from Coastal Highway and the drainage ditch that runs the entire length of the Kirby Property.
34. The Board found that Mr. Kirby testified that he has trees and plant growth along the Coastal Highway portion for part of his property line.
35. The Board found that Mr. Kirby testified that there is no berm adjacent to the Kirby Property but the drainage ditch is more of a concern and liability for them.
36. The Board found that Mr. Kirby testified that he does not currently have a fence on the Kirby Property and will only be placing the 20 feet of fencing along the side of the lot towards the rear of the Kirby Property.
37. The Board found that one person appeared in support of and no one appeared in opposition to Case No. 12697.
38. 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 unrebutted, 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 Purcell Property is unique due as it is a small lot on the corner of Cove Road and Route 1. The area adjacent to the Purcell Property includes a berm where vehicles and bikers often park. This berm has greatly affected the privacy of the Purcell Property as there is no buffer between the Purcell Property and Coastal Highway. The berm is close to the driveway, entrance, and outdoor shower on the Purcell Property. The Applicant has dogs and needs a fence to safely contain them from the heavy traffic along Route 1. The Purcell Property is also angled as compared to the Kirby Property to the rear so the Purcell Property is closer to the actual paving of Coastal Highway. Due to the small size of the lot and the lack of a buffer between the Purcell Property and Coastal Highway, the fence needs to be located closer to Route 1. The Applicant seeks to construct a 6 foot tall fence along a portion of the side yard to the rear of the lot to have a safe area for her dogs to roam. This fence will connect with the fence on the Kirby Property. Towards the front of the Purcell Property, the Applicant proposes a shorter fence; albeit one that exceeds the height limitations as a slightly taller fence is needed there to provide the privacy and safety not otherwise afforded by a shorter fence. The fences will located along the Coastal Highway side of the lot and along the corner front property lines away from the intersection of Route 1 and Cove Road. The proximity to Route 1 has made it difficult for the Applicant to utilize the Purcell Property as intended and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a fence on the lot that is tall enough to protect her family and pets.
    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 Purcell Property is bordered by the well-traveled Coastal Highway. The Applicant needs a taller fence to protect her family and pets 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 variances are necessary to enable the reasonable use of the Purcell Property as the variances 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. The Board notes that the taller portion of the fence runs along the corner front property line along Coastal Highway but is located away from the intersection of Cove Road and Coastal Highway.

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 Purcell 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 were created the lot's unique characteristics.
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 fences will have no effect on the character of the neighborhood. The fences will be fences that connect to the fence on neighboring lands and should provide adequate privacy and protection for the Purcell Property. 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. The Board also notes that neighbors appeared in support of the Application.
f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place reasonably sized fences that are tall enough to keep her family's dogs on the Purcell Property while providing a safety barrier from Coastal Highway.
g. The condition or situation of the Purcell Property and the intended use of the Purcell 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

Jeffrey A. Chorman

Jeffrey Chorman
Chair

If the use is not established within two (2) years from the date below the application becomes void.
Date August 1, 2022.