

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STARBOARD RESTAURANT, INC.

(Case No. 12707)

A hearing was held after due notice on June 27, 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 a variance from the maximum fence height requirement for an existing and proposed fence.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a fence. The property is located on the south side of Coastal Highway approximately 210 feet north of South Street (911 Address: 19138 Coastal Highway, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 334-13.00-141.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of a plot showing the Property and the area of the proposed fence, 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 Sean Hearn and Leah Rizzo were sworn in to give testimony about the Application.
4. The Board found that Mr. Hearn testified that he resides full-time at the Property and that, prior to moving to the Property, the lot was used as an office by his grandfather.
5. The Board found that Mr. Hearn testified that, on the north side of the Property, there is a chain-link fence that runs from the alley behind him to the corner of the rear of the Property and up the side yard. He noted that the existing fence is not in the best shape and he is looking to replace the entire length of the fence with a 6 foot high wooden privacy fence.
6. The Board found that Mr. Hearn testified that, when he applied for the permit, he was told that he has a 40 foot setback from the front property line on Coastal Highway and a 30 foot setback from the alley at this rear property line.
7. The Board found that Mr. Hearn testified that he is seeking a variance in order to construct a full-height fence like most property owners can in the rear and side yards.
8. The Board found that Mr. Hearn testified that the alley is essentially a shared, dirt driveway for the Property and the adjacent neighbors and is not a named road. He noted, however, that the County has additional setback requirements for fences along this alley.
9. The Board found that Mr. Hearn testified that he wanted the fence to be placed on the property line of his rear yard and go up the side to the front of his house which would be 31 feet off the pavement.
10. The Board found that Mr. Hearn testified that the need for the variance was not created by him as the situation was existing.
11. The Board found that Mr. Hearn testified that, when he moved in, the business to the north of him was not actively open but now there are customers and staff coming and going. He noted that the business is a salon and was formerly a barbershop.

He was unable to speak with the owners of that property but their property manager indicated support of the Application to the Applicant.

12. The Board found that Mr. Hearn testified that across the street from the Property is a hotel which has flood lights on throughout the night.
13. The Board found that Mr. Hearn testified that the levels of noise, lights, and passersby is extremely heavy from the highway, neighboring businesses, and the sidewalk.
14. The Board found that Mr. Hearn testified that the trigger point for his desire to erect the fence is that his girlfriend who resides with him is being verbally harassed by passersby when she was in the side yard.
15. The Board found that Mr. Hearn testified that, at his own risk, he began constructing the fence once obtaining the permit and it has already been a dramatic improvement. He noted that he waited to get further approval before continuing and understands that he must remove the fence at his own cost what was constructed should the Application be denied. He noted, however, that the fence has allowed them to use their yard as they choose without interruption for the first time since moving in.
16. The Board found that Mr. Hearn testified that the neighbors on the south side of the Property reside and operate a business out of their property and the neighbors to the south are okay with the fence
17. The Board found that Mr. Hearn testified that there was a large homeless encampment across the highway in the woods adjacent to the Marriott hotel and that, when the homeless encampment was broken up, it displaced a large transient community who were the individuals creating issues for his girlfriend. He believes the lights at the hotel being on constantly are intended to be a deterrent.
18. The Board found that Mr. Hearn testified that there is a liquor store on the corner to the north of them and they get a lot of trash in their yard from it and that his fence will be intended to decrease that issue also but he would maintain the outside of the fence to be debris free as he currently does.
19. The Board found that Mr. Hearn testified that he and the neighbors directly adjacent to him use the rear alley.
20. The Board found that Mr. Hearn testified that the fence at the rear would be in the same place but would be higher than it currently is.
21. The Board found that Mr. Hearn testified that there may be a slight visibility issue but only the staff of the property to the north of him would be impacted. He noted that his garage already restricts view of the end of the alley and that all of the staff arrive and leave at the same time.
22. The Board found that Mr. Hearn testified that he and the southern neighbor share a driveway with a lane each.
23. The Board found that Mr. Hearn testified that the rear of each property adjacent to his, with the exception of his most adjacent neighbors, all have 6 foot tall fences that butt up to the alleyway.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. 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 with double front yard setback that was developed with a house by a prior owner. The Property is adjacent to businesses, a sidewalk, a dirt alley, and Coastal Highway. The Applicant has experienced problems with harassment from passersby, trash, noise, and lights from the adjacent sidewalk, business, highway, and passersby. Since the Property is a through lot, the Applicant is limited in where he can

locate a fence that will provide sufficient privacy for his residential use. These conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to replace a fence on the lot.

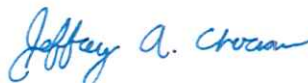
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is developed by a house and a fence is needed to provide privacy from nearby businesses and passersby as well as to provide a light, noise, and trash barrier. The lot has unique conditions as it has a double front yard. The Applicant needs a taller fence to provide privacy for the residential use but is unable to replace the existing chain link 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 replace a reasonably sized fence with a 6 foot tall privacy fence as shown on the plans presented to the Board. The Board is convinced that the location of the fence is also reasonable, which is confirmed when reviewing the plans provided by the Applicant. The Board notes that the Applicant has already experienced an improvement in his ability to use the lot since erecting the fence.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot conditions and create the unique conditions which have necessitated the privacy fence on the Property. 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 evidence 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. Neighbors appear to support the request and the fence will be located away from the edge of paving of Coastal Highway. While the fence will be close to the alley, the alley is lightly traveled and is a dirt road that functions as a shared driveway. The impact on the alley should be minimal. 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, there was evidence that there are other similar fences in the area.
- 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 replace a fence that is tall enough to provide adequate privacy for the residential use and to also adequately provide a noise, light, and trash barrier.
- 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



Jeffrey Chorman
Chair

If the use is not established within two (2)
years from the date below the application
becomes void.

Date August 15, 2022