

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

**IN RE: BRIAN VINCENT**

**(Case No. 12737)**

A hearing was held after due notice on September 19, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 around a pool and for an existing fence and gate.

Findings of Fact

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

1. A variance of 3.5 feet from the maximum fence height requirement of 3.5 feet for a proposed fence along Lake View Road;
2. A variance of 2.5 feet from the maximum fence height requirement of 3.5 feet for a proposed fence along the side property line within the front yard setback from Lake View Road;
3. A variance of 0.5 feet from the maximum fence height requirement of 3.5 feet for an existing fence and gate along Springwood Drive; and
4. A variance of 1.5 feet from the maximum fence height requirement of 3.5 feet for an existing fence and gate along Springwood Drive;

The property is a through lot located on the northeast side of Springwood Drive within the Lakewood Estates Subdivision (911 Address: 29727 Springwood Drive, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 133-19.00-355.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the Property, a survey of the Property dated December 15, 2014, 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 Brian Vincent was sworn in to give testimony about the Application. Mr. Vincent submitted pictures to the Board as well.
4. The Board found that Mr. Vincent testified that the Property is a through lot with frontage on two roads. He noted that he purchased the Property at a foreclosure sale after the home had been vacant for 5 years and that, if he knew then what he knows now, he would not have bought a through lot.
5. The Board found that Mr. Vincent testified that the Property is improved by a 6 foot tall wooden fence along Lake View Road that needs to be replaced. He proposes to place a 7 foot tall vinyl fence along Lake View Road and a 6 foot tall fence along the side property lines. He also proposes to retain an existing fence and gate along Springwood Drive.
6. The Board found that Mr. Vincent testified that there is a pool to the rear of the house between the house and Lake View Drive. He noted that the pool is located at the 40 foot setback requirement and requires a fence but, if the fence for the pool was placed in compliance with the Code, the fence would be on the patio.

7. The Board found that Mr. Vincent testified that the fence is for the privacy of their pool because, at the height it is now, you can see over the fence into their pool. The Code also requires a fence at least 4 feet tall surround a pool.
8. The Board found that Mr. Vincent testified that the prior wood fence encroaches onto neighboring lands but the new fence will remain on the Property and that encroachment will be fixed.
9. The Board found that Mr. Vincent testified that the fences do not block any views of the roads.
10. The Board found that Mr. Vincent testified that the grade of Lake View Road is an issue because the road is approximately 3 feet higher than the Property. As a result, he believes that his yard lacks adequate privacy.
11. The Board found that Mr. Vincent testified that there have been no complaints about the existing fence.
12. The Board found that Mr. Vincent testified that the Property has a well in the rear yard near Lake View Road and a septic system in the front yard near Springwood Drive.
13. The Board found that Mr. Vincent testified that the concrete around the pool is slightly elevated due to the slope of the yard and they had to bring in fill dirt to level the Property when installing the pool and patio.
14. The Board found that Mr. Vincent testified that the deck around the pool is about 31 feet from the property line and the pool is at about 39 feet from the property line. He noted that they placed the pool as far back as they could from Lake View Road.
15. The Board found that Mr. Vincent testified that the back of his house has a composite deck which required an egress space between it and the pool, otherwise he would have to tear the deck off the house.
16. The Board found that Mr. Vincent testified that, in the summer months, there are feed trucks that deliver to the chicken houses behind the Property and their lights shine into their yard at night.
17. The Board found that Mr. Vincent testified that the paved portion of Lake View Road is about 18 feet to 20 feet from his property line and there is 20 feet to 22 feet from Springwood Drive to his property line.
18. The Board found that Mr. Vincent testified that there is no vehicular access from Lake View Road but there is a gate on that portion of fence that allows him access with his mower and for the maintenance of his pool.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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. The portion of the Property along Lake View Road is effectively the rear yard of the lot but is subject to two front yard setback requirements even though there is no vehicular access to Lake View Road. These conditions greatly restrict the building envelope on the Property. The lot was also developed by a prior owner and the only place where a reasonably sized pool could be located is in the area near where the pool was placed. The County Code also requires that pools have fences around them that exceed the height limitation of fences in a front yard. The Board also notes that the Property is approximately 3 feet lower than Lake View Road and vehicles traveling along Lake View Road have lights that shine into the dwelling. The higher fence should assist with that problem as the fence will provide privacy for the pool. 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 and retain fences 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 and its development by a prior owner, 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 retain a fence and gate and to place a new fence on the Property for 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 retain those structures on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The fences are needed for the reasonable use of the Property because the Applicant has constructed a pool and a privacy fence is required for the pool.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot, otherwise develop the lot, or enact the setback requirements which have limited the building envelope of the lot. Rather, the Applicant acquired the lot which was developed by a prior owner and was developed with an existing fence along Lake View Road that has become dilapidated. The unique characteristics of the Property are clear when reviewing the survey and testimony. 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. The Board also notes that the fence is needed to provide privacy for the pool which is partially needed due to the elevation of Lake View Road as compared to the Property.
- 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 structures will have no effect on the character of the neighborhood. There was no evidence that the structures would present visibility concerns along either 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. Moreover, there is a large gap from the edge of paving of the adjacent roads so the structures should not present any visibility concerns. The fence along Springwood Drive has been on the Property for some time and a similar fence along Lake View Road has been on the Property without complaint noted in the record.
- 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 retain and construct reasonably sized fences on the Property, which will meet the minimum height requirement for a pool fence.
- 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 November 21, 2022