

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANK TAYLOR & LAURA TAYLOR

(Case No. 12747)

A hearing was held after due notice on October 17, 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 a variance from the maximum fence height requirement for an existing fence.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.5 ft. from the 3.5 feet maximum height requirement for an existing fence that runs along the side property line on the northwest side but projects into the front yard setback area. The property is located on the southeast side of Adams Avenue approximately 110 feet southwest of South Bay Shore Drive in Broadkill Beach (911 Address: 102 Adams Avenue, Milton) said property being identified as Sussex County Tax Map Parcel Number: 235-4.17-6.00 ("the Taylor Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, a deed and property record information for the Taylor Property, a survey of the Taylor Property dated October 3, 2019, a portion of the Sussex County Zoning Code, photographs, letters from the Office of Planning & Zoning, Findings of Fact for Case No. 12572, a building permit and Certificate of Compliance, a memo from Planning & Zoning staff with the application and materials for Case No. 12572, an aerial photograph of the Taylor Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of and one (1) letter in opposition to the Application.
3. The Board notes that the fence at issue runs perpendicular to the terminus of Adams Avenue and runs along a shared property line from lands owned by Frank and Laura Taylor and lands owned by Brenda and Allen Erdman ("the Erdmans"). The Erdman property is identified as Sussex County Tax Map No. 235-4.17-2.00 ("Erdman Property"). At issue is the portion of that fence that is located within 30 feet of the front property line adjacent to Adams Avenue. The Board notes that the fence along the front property line is 3.5 feet tall and complies with the maximum fence height requirement.
4. The Board notes that a previous application was filed by the Applicants for a fence height variance in Case No. 12572 and that that request was denied.
5. The Board found that Laura Taylor was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, presented the case on behalf of the Applicants.
6. The Board found that Ms. Peet stated that the Property is located in Broadkill Beach and that the fence in question is located between the Taylor Property and the Erdman Property. She noted that the fence is "L" shaped and runs along Adams Avenue and the side property line adjacent to the Erdman Property.
7. The Board found that Ms. Peet stated that the variance previously denied was for the portion of fence along Adams Avenue and not for the section separating the properties.

8. The Board found that Ms. Peet stated that the majority of the Taylor Property is marsh land.
9. The Board found that Ms. Peet stated that the building permit was applied for by the Applicants' contractor Backyard Works and that the permit is likely the root of a lot of confusion surrounding the Application.
10. The Board found that Ms. Peet stated that the Taylors appeared before the Board of June 21, 2021, to request a variance from the maximum fence height for a portion of fence located at the end of Adams Avenue. She argued that, in reviewing the previous land use application, audio record, and some of the follow up letters from Director Whitehouse concerning non-compliance for the remaining portion of the fence it appears that there was confusion as to whether the variance, which was requested and denied, covered the entire portion of fence and specifically the portion of fence that is located at the end of Adams Avenue and the portion that separates the properties. Ms. Peet argued that the Board's prior decision only dealt with the portion of the fence along Adams Avenue and not the portion of the fence along the side property line.
11. The Board found that Ms. Peet stated that the principles of *res judicata* relate to matters that have been adjudicated and decided and restrict a person from seeking action for the same matter that has already been decided to try and obtain a different result without showing a substantial change in circumstances or conditions affecting the property.
12. The Board found that Ms. Peet stated that the Taylors reduced the height of the fence in question after the prior hearing.
13. The Board found that Ms. Peet stated that the Erdmans share a property line with the Taylors and that the Erdmans filed a complaint with Sussex County Planning and Zoning against the Taylors' fence.
14. The Board found that Ms. Peet stated that, at the first hearing, Brenda Erdman mainly emphasized her fear that someone may hide behind the fence lying in wait to attack her and her daughter.
15. The Board found that Ms. Peet stated that the fence was installed in February 2020.
16. The Board found that Ms. Peet stated that an encroachment affecting the Erdmans was discovered and a complaint was filed with Planning and Zoning by the Erdmans in July of 2020; which was roughly six (6) months after the installation of the fence but before the letter of violation from Director Whitehouse was issued in October 2020.
17. The Board found that Ms. Peet stated that the Taylors believe that the complaint is the result of a property dispute between the Taylors and the Erdmans.
18. The Board found that Ms. Peet stated that the property dispute involves a portion of the marsh identified as Tax Map No. 235-4.17-102.00 which is adjacent to the Taylor Property and was owned by the Watkins-Burke Family Trust. She noted that the Erdmans were represented by Bill Schab and, according to her clients, they were notified by Mr. Schab of an encroachment by a piece of the Taylor's dock.
19. The Board found that Ms. Peet stated that her clients did not build the dock and they suspect that the dock has been in place since 1992 based on Google aerial map records. It is believed that the dock and encroachment have existed since then. She noted that a discussion took place between the Taylors, Mr. Schab, and Laurence Burke who is a representative of the Watkins-Burke Trust that is selling or may be interested in selling Parcel 102 and, at that time, her clients expressed interest in purchasing a portion of the property to resolve the encroachment. She stated those talks did not go anywhere but is when the less than neighborly behavior began from the Erdmans.

20. The Board found that Ms. Peet stated that the harassing behavior began shortly after the dock encroachment was discovered in 2020 and has continued ever since.
21. The Board found that Ms. Peet stated that the behavior includes a most recent event which led to charges against the Erdmans for harassment, conspiracy, and lewdness, when on July 24, 2022 at 12:17 am the Erdmans were caught on camera trespassing into her clients' backyard. She alleged that, during this trespassing, Mr. Erdman was completely naked and that Ms. Erdman was partially exposed and became completely naked by the end of the video.
22. The Board found that Ms. Peet stated that the existing fence has a gate that opens inward towards the marsh rather than outward towards Adams Avenue.
23. The Board found that Ms. Peet stated that there is a walkway and dock on the marshy portion of the Taylor Property and that the purpose of the fence was to deter trespassers and neighbors from accessing their dock.
24. The Board found that Ms. Peet stated that the Planning and Zoning Office determined that the front of the Taylor Property is Adams Avenue.
25. The Board found that Ms. Peet stated that the fence was installed by Backyard Works, permitted by the Building and Licensing Department and issued a certificate of compliance by Sussex County.
26. The Board found that Ms. Peet stated that the Taylor Property is unique because it is an "L" shaped property located in Broadkill Beach. She noted that the Taylor Property was formerly two (2) parcels that were combined in 1998 when the Taylors purchased the marshland parcel and combined it with the parcel where their house exists.
27. The Board found that Ms. Peet stated that the dock has been on the Taylor Property since 1992 and is on the marshland part of the lot. She noted that this dock was installed by the prior owners and repaired by the Taylors in 1998.
28. The Board found that Ms. Peet stated that, over time, with an increasing number of visitors to Broadkill Beach and increasing incidents with their neighbors, her clients decided to install the fence to deter trespassers from entering their property and dock.
29. The Board found that Ms. Peet stated that the authorization of a variance is necessary for her clients to comply with the code and to reasonably deter trespassers including the neighbors from accessing the marshland and dock, especially considering the liability concern surrounding access to the dock.
30. The Board found that Ms. Peet stated that this exceptional practical difficulty was not created by the Applicants as the Taylors hired a licensed contractor to erect the fence.
31. The Board found that Ms. Peet stated that, understandably, from the video shown, the contractor did not consider Adams Avenue to be the front yard or consider the fence to be located within the front yard setback or subject to the height limitation.
32. The Board found that Ms. Peet stated that the Sussex County Building and Licensing department created this issue by issuing a building permit that referenced multiple fence heights and locations in an incomprehensive manner.
33. The Board found that Ms. Peet stated that the fence will not alter the essential character of the neighborhood as the neighborhood is residential in nature and the fence is in character with others in immediate vicinity of the Taylor Property. She argued that the only residents affected by the fence are the Erdmans and the Erdmans recently installed trees at the property line that are at or above 5 feet tall. She also noted that there are multiple fences located near the Taylor Property including a fence that the Erdmans placed on the other side of the Erdman Property that appears to be the same height as the Taylors' fence.
34. The Board found that Ms. Peet stated that the Applicants would not be back before the Board were it not their opinion that this portion was not addressed at the last

- hearing and that the Taylors did not have the fence height reduced by the contractor for the section at issue tonight because they believed that it was not addressed in the variance application submitted and heard last year.
35. The Board found that Ms. Peet stated that the segment of fence in question is 30 feet long and the fence is in the same location as it was when installed in 2020. She noted that the fence along the terminus of Adams Avenue has been brought into compliance by reducing the fence height.
 36. The Board found that Ms. Peet stated that the behaviors by the Erdmans have led the Taylors to want to keep the fence at its current height even more.
 37. The Board found that Ms. Peet stated that the Erdmans' installation of the trees which abut the fence is maybe an indicator of their desire for some distance and privacy between the properties also.
 38. The Board found that Ms. Peet stated that her clients' position is that a 3.5 feet high fence would not be sufficient on the northwest side property line for privacy.
 39. The Board found that Ms. Peet stated that there are no impacts towards visibility or traffic created by the fence.
 40. The Board found that Ms. Taylor testified that the statements made by Ms. Peet were true and correct.
 41. The Board found that Ms. Taylor testified that the incident on July 24 took place in the right of way, not her backyard.
 42. The Board found that Ms. Taylor testified that the Erdmans' boat was parked in front of the end of Adams Avenue and, on this particular night, their boat was parked right in front of the portion of the fence that was reduced. She noted that the Erdmans were not on the Property but they were over enough to know that it would activate her cameras and, the next morning, the Erdmans moved the boat to the front of their house by the fence on the other side of their property. She noted that the boat is approximately 26 feet wide and 17 feet tall.
 43. The Board found that Ms. Taylor testified that they have had issues with trespassers in their back yard and animal control has been called at least five (5) times and she has stopped calling them. She also noted that the Erdmans' dogs come on the Taylor Property and left feces in the Applicants' grass.
 44. The Board found that Ms. Taylor testified that the Applicants receive general harassment and, as a result, she and her husband have not been able to enjoy their property. She noted that there have been times where she did not visit the property because of concerns about the actions of the Erdmans.
 45. The Board found that Ms. Taylor testified that the actions in the video were directed at them and Ms. Peet after they were in the neighborhood taking photos for this application.
 46. The Board found that Ms. Taylor testified that she was told to do something lewd to Ms. Erdman's husband on the video and that she wants them to know how upsetting this has been for two and a half years.
 47. The Board found that Ms. Taylor testified that Ms. Erdman has fences and a tree line on her property and that the trees installed separate the Erdmans' property and the right of way. She noted that the trees go from the corner of their fence toward Bay Shore Drive with pieces of fence in between the trees.
 48. The Board found that Ms. Taylor testified that she has been food shopping and come home to spray paint markings along the property lines.
 49. The Board found that Ms. Taylor testified that it would take a week to look at all of the harassment they have endured.
 50. The Board found that Ms. Taylor testified that the fence was put up because you can see their dock from the bridge and they were looking to deter trespassers.
 51. The Board found that Ms. Taylor testified that, before the fence was installed, the Erdmans were friendly neighbors.

52. The Board found that Ms. Taylor testified that Ms. Erdman previously text her to use their dock for crabbing but they noticed that when others were using it they would be chased off by Ms. Erdman. Eventually, the Taylors decided they wanted to stop everyone from accessing their dock.
53. The Board found that Ms. Taylor testified that she does not want to see into the Erdman Property anymore which was not an initial concern when installing the fence.
54. The Board found that Ms. Taylor testified that she understood their application last year to be just the front portion.
55. The Board found that Brenda Erdman was sworn in to testify in opposition to the application.
56. The Board found that Ms. Erdman testified that the previous testimony given by herself and her husband still holds true.
57. The Board found that Ms. Erdman testified that Ms. Taylor has her Ring camera pointed directly at the Erdman Property and that she and her husband go skinny dipping on the other side of their property. She noted that, when they go outside of their house, the Taylors' camera light comes on and is recording them. Ms. Erdman has had enough of Ms. Taylor watching and listening to them.
58. The Board found that Ms. Erdman testified that Ms. Taylor has been harassing her and the charges referred to were her and Mr. Erdman skinny dipping and getting onto their own boat.
59. The Board found that Ms. Erdman testified that her husband threw a ball one day which hit the Taylors' fence and the police showed up at Ms. Taylor's request.
60. The Board found that Ms. Erdman testified that she has been living with this since 2019 when Ms. Taylor accused her of having her crab traps on their dock but the crab traps were not hers and she never accessed the dock after being asked to stop.
61. The Board found that Ms. Erdman testified that there is no expectation of reasonable privacy anymore.
62. The Board found that Ms. Erdman testified that, when the incident in July occurred, Ms. Taylor was in Pennsylvania and had the Ring camera video on and watched the entire thing to have them arrested. She noted that the charges are pending because what she did was illegal.
63. The Board found that Ms. Erdman testified that Ms. Taylor parks her car and boat on the road and that every once in a while they park their boat on the road only if they are doing things at the front of their property.
64. The Board found that Ms. Erdman testified that maybe Ms. Taylor should have parked her vehicles there instead of installing the fence.
65. The Board found that Ms. Erdman testified that the fence was installed to spite her and her husband and that testimony was included at the previous hearing.
66. The Board found that Ms. Erdman testified that the dock was not there when they bought the property and that DNREC has confirmed to her that there has never been a permit for a dock.
67. The Board found that Ms. Erdman testified that the trees are not regulated like a fence is and the trees were placed so that Ms. Taylor cannot see every time the Erdmans leave their property.
68. The Board found that Ms. Erdman testified that she has two (2) Labradors and a blind Jack Russell Terrier and that her Jack Russell Terrier went on the Taylor Property once and pooped but she picked up the poop. She also noted that one of her Labradors likes to chase cats and there are approximately 14 cats that run stray in their neighborhood and the Taylors put food out for the cats. She stated this is also part of the reason they planted the trees.
69. The Board found that Ms. Erdman testified that some of the information stated by Ms. Peet has been misrepresented.

70. The Board found that Ms. Erdman testified that the frustration of being watched on their own property every time they step out of their house or her dog runs across the property line.
71. The Board found that Ms. Erdman testified that Ms. Taylor has never called animal control on any other neighbors dogs.
72. The Board found that Ms. Erdman testified that she has no reason to go on Ms. Taylor's property.
73. The Board found that Ms. Erdman testified that, if she or her daughter were hurt because of a sexual predator, and there are plenty of them in this state, someone will have to be responsible for that. She argued that, if you cannot see over a fence, you cannot defend yourself.
74. The Board found that Ms. Erdman testified that she does not feel that a taller fence allows for more privacy.
75. The Board found that Ms. Erdman testified that she has a garden on her property and, when watering the other night, she could see that she was being recorded.
76. The Board found that Ms. Erdman testified that their backdoor is the main door to their home.
77. The Board found that Ms. Erdman testified that the trees are planted to obstruct the view by the Taylors but you can see through the trees.
78. The Board found that Ms. Erdman testified that the trees also to stop her dogs from going on the Taylor Property.
79. The Board found that Ms. Erdman testified that, according to Ms. Taylor there were issues with trespassers before the fence but she has only had people come up to her and ask about using the dock to which she replied it was not her dock and, at that point, they were neighborly. She noted that there could be ten (10) people on the dock and she would not be aware of it.
80. The Board found that Ms. Taylor testified in response to the opposition's testimony that she did not watch the video until the next morning and the camera it is a Ring camera not some highly technical surveillance camera and that it is a stationary camera locate on the other side of her house. She noted that Ms. Erdman has flags that activate her camera.
81. The Board found that Ms. Taylor testified that the Erdmans park their boat on the street also as seen in previous photos submitted and that someone could hide behind the Erdmans' boat.
82. The Board found that Ms. Taylor testified Mr. Erdman began to argue with her about the dogs and the fence and that Mr. Erdman told her they are going to buy the property behind them and that, if they do not resolve the issue with the fence and the dock, then this will continue.
83. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
84. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for use which materially affect the merits of the request.
 - a. The Board previously denied a variance of 1.5 feet from the 3.5 feet maximum fence height requirement for an existing fence. See the Board's decision in Case No. 12572.
 - b. Contrary to the arguments posited by the Applicants' counsel, the Board's prior approval addressed not only the portion of the fence along Adams Avenue – which has since been brought into compliance with the Code – but the Board's decision also addressed the portion of the fence along the northwest side property line that was located within 30 feet of Adams Avenue. The Board's prior decision addressed the entirety of the

encroaching fence including those portions along Adams Avenue and along the side property line. Nevertheless, the Board finds that a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for use which materially affect the merits of the request has arisen since the Board's prior decision.

- c. Since that decision was rendered, the Applicants have reduced the height of the fence along Adams Avenue. That portion of the fence now complies with the Sussex County Zoning Code.
- d. In addition, since the prior decision was rendered, relations between the Taylors and the Erdmans have unfortunately deteriorated. The Taylors have filed charges against the Erdmans for certain behaviors and the Erdmans have admitted to skinny dipping. These circumstances are a substantial change in the circumstances or conditions affecting the property and thereby allow the Board to revisit this matter.
- e. As such, the Applicants may proceed with this new application.

85. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 Taylor Property is a uniquely shaped lot in Broadkill Beach where much of the rear of the lot is considered marshland. The rear of the lot is adjacent to the Erdman Property and the Taylors have a contentious relationship with the Erdmans. As a result of the contentious nature between these two neighbors, a taller than normal fence is requested. The location of Adams Avenue in proximity to the division between the Erdman Property and the Taylor Property is also unique as Adams Avenue is a dead end street that is lightly used. The Taylors and the Erdmans park vehicles and boats on Adams Avenue and Adams Avenue provides some buffering between the properties but the Code also restricts the height of a fence along shared property lines within 30 feet of a front yard. Due to the location of the Erdman Property, Adams Avenue, and the Taylor Property, it would be difficult to place a fence that would provide the necessary privacy and buffer while still complying with the Sussex County Zoning Code. These conditions and the circumstances have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain a fence on the lot that is tall enough to provide necessary privacy from their neighbors.
- 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 the dispute between neighbors, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants need a taller fence to provide adequate privacy and to protect them from trespassing dogs but the Applicants are 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 Taylor Property as the variance will allow the Applicants to retain 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 Applicants. The Board notes that the taller portion of the fence runs along the side property line adjacent to the Erdman Property.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions

and the need for the fence. The Applicants have experienced trespassers and a contentious relationship with the Erdmans. Those conditions have created that need for a taller fence and the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Taylor 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 Applicants 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 fence will have no effect on the character of the neighborhood. The fence should provide adequate privacy and protection for the Taylor Property. The neighbor most affected by the fence objects but that neighbor has also planted privacy trees and has argued that the Taylors spy on their property. The neighbor also admitted that her dogs have come onto the Taylor Property. The Board finds no credible reason as to why a fence would be detrimental to the Erdmans. Ms. Erdman argued that she would not be able to see beyond the fence and speculated that some unknown sexual predator may attack her or her children. Yet, at the same time, the Erdmans have erected their own buffers, have a fence on the other side of their lot, and park a large boat on Adams Avenue; all of which could also present visibility concerns. The Board finds Ms. Erdman's claims specious. Ultimately, 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 situation by providing a buffer between the two neighbors.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized fence that will provide privacy for their lot.
- g. The condition or situation of the Purcell Property and the intended use of the Taylor 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.
- h. The Board notes that this approval pertains only to the fence along the side property line between the Taylor Property and the Erdman Property. This approval does not grant the Taylors the right to install a taller fence along Adams Avenue.

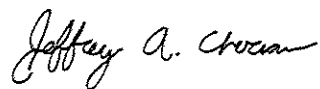
The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, Board determined that there has been a substantial change of conditions or other conditions or in the proposed use or plans for use which materially affect the merits of the request. The Board Members in favor of the Motion to allow the Application to proceed were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. Mr. Jordan Warfel voted against the Motion to allow the Application to proceed.

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, and Mr. John Williamson. Mr. Jordan Warfel 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 December 19, 2022.