

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM MUSSEL & KATHLEEN MUSSEL

(Case No. 12753)

A hearing was held after due notice on November 7, 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 maximum fence height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.5 feet from the 3.5 feet maximum height requirement for a proposed vinyl fence measuring 6 feet tall. The property is a corner through lot located on the south side of John Deere Drive within the Deere Country Subdivision (911 Address: 29476 John Deere Drive, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 133-15.00-34.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated April 21, 2022, photographs, 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 William Mussel was sworn in to give testimony about the Application.
4. The Board found that Mr. Mussel testified that the Property is a corner property and that he was unaware when he purchased the Property of the two (2) front yards to the Property or that the rear of the house which faces Lake View Drive was subject to a front setback.
5. The Board found that Mr. Mussel testified that the Applicants own a dog and that they had plans to place a 6 feet tall privacy fence to allow their dog to run free and for them to use their backyard. He has concerns that his dog could leap over a 3.5 feet tall fence.
6. The Board found that Mr. Mussel testified that that the proposed location of the fence is just inside a line of trees planted by the developer on the Property to act as a buffer. He noted that there is a 15 feet easement on the Property and, while the fence will be located within the 40 feet setback area, it will not be located in the easement area.
7. The Board found that Mr. Mussel testified that, should he comply with the 40 feet setback, it would leave him with approximately 9 feet between the fence and the edge of the house.
8. The Board found that Mr. Mussel testified that he is requesting the variance to be able to reasonably use the Property.
9. The Board found that Mr. Mussel testified that he is an engineer and he went through the ordinances and sketched out the sight triangle for the Property. He noted that the fence will not obstruct any view of the sight triangle.
10. The Board found that Mr. Mussel testified that, as you are leaving the development, the property on the left of John Deere Drive has a stone entry marker which is comparable to the size and location of his proposed fence.

11. The Board found that Mr. Mussel testified that there is no vehicular access to Lake View Drive from the Property and that the Applicants access the Property from John Deere Drive.
12. The Board found that Mr. Mussel testified that there is a row of trees 15 feet from the edge of the Property and there is an additional 20 feet to the edge of Lake View Drive. He estimated that the fence will be 30 to 35 feet from the edge of paving of Lake View Drive.
13. The Board found that Mr. Mussel testified that neighbors have similar fences which are 6 feet tall vinyl fences.
14. The Board found that Mr. Mussel testified that he receives his mail at the John Deere Road property line and that he considers John Deere Drive to be his front property line. He noted that he has a garage that is on the side of the house and it is accessed by the driveway on John Deere Drive.
15. The Board found that Mr. Mussel testified that he needs homeowner association approval and received it verbally from the previous homeowners association. He noted that the association is transitioning to a new Board and he represented his proposal to the new homeowner association board also.
16. The Board found that Mr. Mussel testified that there is a covenant to their community that certain material be used for fences.
17. The Board found that Mr. Mussel testified that there has been no negative feedback from anyone else in the community about the fence.
18. The Board found that Mr. Mussel testified that the fence will be used for family privacy and the safety of their dog. He noted that he would actually prefer a taller fence.
19. The Board found that Mr. Mussel testified that he plans on putting the fence within a couple of inches from the side property line.
20. The Board found that Mr. Mussel testified that the Property is subject to a 60 feet setback covenant found in the neighborhood restrictions.
21. The Board found that Mr. Mussel testified that he cannot speak to the reason the house was placed in its location as it was existing in its location when he purchased the Property.
22. The Board found that Mr. Mussel testified that he would say the Property is lower than the road but he is unsure of the measurement.
23. The Board found that no one appeared in support of or in opposition to the Application.
24. 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 corner through lot subject to a 60 feet setback requirement from John Deere Drive. While the Property is considered a through lot, the Applicants have no vehicular access to Lake View Drive and only access the lot from John Deere Drive. The Applicants also have a dog and need a fence to safely contain the dog from the traffic along Lake View Drive. There appears to be no buffer between the Property and Lake View Drive; though the Property is subject to a 15 feet easement along Lake View Drive where trees were planted by the developer. Due to the setback requirements and the lack of a buffer between the Property and Lake View Drive, the fence needs to be located closer to Lake View Drive to reasonably use the Property. The Applicants seek to construct a 6 feet tall fence to the rear of the existing dwelling to have a safe area for their dog to roam and to provide privacy from Lake View Drive. The aforesaid unique conditions of the Property have created an exceptional practical difficulty

and unnecessary hardship for the Applicants who seek to construct a fence on the lot that is tall enough to protect their dog and to provide necessary privacy for their family.

- 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 bordered on three sides by roads. The Applicants need a taller fence to protect their dog from escaping the Property and to provide privacy but the Applicants are unable to build 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 Applicants 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 Applicants.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions, enact the restrictive covenants, place the dwelling, or create the lack of buffer between Lake View Drive. Those conditions have created the 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 Applicants but were 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. The fence should provide adequate privacy and protection for the 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 Applicants' dog from leaving the Property. The Board also notes that the Applicants will have to obtain approval from their homeowners' association as well.
- 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 place a reasonably sized fence that is tall enough to keep their dog on the Property while providing a safety barrier from Lake View Drive. The Board also notes that the fence will be located outside a line of trees along Lake View Drive.
- 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 January 9, 2023.