

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

**IN RE: DONNIE BARE & BJ LIEBNO-BARE**

**(Case No. 12761)**

A hearing was held after due notice on November 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for proposed structures and the maximum fence height requirement for existing and proposed fences.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 10 (ten) feet from the forty (40) feet front yard setback requirement for a proposed deck on a through lot;
2. A variance of 0.5 feet from the maximum fence height requirement of 3.5 feet for an existing and proposed fence; and
3. A variance of 2.5 feet from the maximum fence height requirement of 3.5 feet for an existing and proposed fence.

The property is a through lot located on the north side of Breakwater Run within the Keenwick Sound Phase II Subdivision (911 Address: 36725 Breakwater Run, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 533-19.00-472.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 30, 2013, a letter from the Applicants, a drawing of the proposed deck, minutes for Case No. 8339, an administrative correction process form, Findings of Fact for Case Nos. 9087-2005, 8977-2005, and 11120, 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 B.J. Liebno-Bare and Donnie Bare were sworn in to give testimony about the Application.
4. The Board found that Ms. Liebno-Bare testified that the Applicants purchased the Property as a second home in 2013 and that they intend to move to the Property at some point in the future.
5. The Board found that Ms. Liebno-Bare testified that the Applicants propose to construct a deck measuring 10 feet by 10 feet off the house facing Route 54. She noted that the deck will be 18 inches off the ground and will be even with a sliding glass door. According to Ms. Liebno-Bare, the deck will be in the same area as an existing concrete patio.
6. The Board found that Ms. Liebno-Bare testified that, when applying for the variance for their deck, the Applicants discovered that the fence was also at issue.
7. The Board found that Ms. Liebno-Bare testified that the Applicants would like to replace the existing fence with a 6 feet tall privacy fence on the Route 54 side of the Property and that the Applicants would like to replace the other fence along the side property line with a 4 feet tall chain link fence.

8. The Board found that Ms. Liebno-Bare testified that the Applicants propose the privacy fence along Route 54 due to the new development along Route 54, which includes a Royal Farms and a bank, and the additional pedestrian traffic, noise, and lights from Route 54.
9. The Board found that Ms. Liebno-Bare testified that there has been a recent increase in break-ins in properties in their development along Route 54. She noted that at least 2 neighbors have experienced shed break-ins. The Applicants believe that the privacy fence will help to deter break-ins on the Property.
10. The Board found that Ms. Liebno-Bare testified that the deck will be used to allow the Applicants to sit in the yard while their dogs are out and that the deck will allow them to better enjoy the Property.
11. The Board found that Ms. Liebno-Bare testified that the Applicants have consulted with their neighbors and their neighbors have no issue with the deck or the fence.
12. The Board found that Ms. Liebno-Bare testified that the chain link fence was on the Property when the Applicants purchased the Property and they want to update the fence so it looks nicer than what is existing.
13. The Board found that Ms. Liebno-Bare testified that the Applicants consider the front of their property as Breakwater Run.
14. The Board found that Ms. Liebno-Bare testified that, from their property line to the edge of paving on Route 54, is approximately 10 to 12 feet. She noted that, on the other side of their property line, is a drain, a sidewalk, and then Route 54 and that they have no vehicular access to Route 54.
15. The Board found that Ms. Liebno-Bare testified that the patio is two (2) or three (3) steps down from the house while the deck will be even with the first level of the house.
16. The Board found that Ms. Liebno-Bare testified that the Applicants would like the deck to be level with the house because she will be having her knee replaced and her husband has been having issues with his knee and foot. She believes that the deck will afford them a safer and more reasonable access in and out of their house.
17. The Board found that Ms. Liebno-Bare testified that the Applicants have experienced issues with both noise and lights from Route 54 but their main reason for the fence is privacy as there are a lot of people walking along Route 54.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 Route 54 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 Route 54. These conditions greatly restrict the building envelope on the Property. The lot was also developed by a prior owner with a fence that needs replacement. The Applicants also have dogs and need fences to safely contain the dogs from the traffic along Route 54. Properties along Route 54 are improved by commercial businesses and a sidewalk between the Property and Route 54 often has pedestrians. The noise and lights from Route 54 and the pedestrian access limit the privacy of the Property. The Applicants are also concerned with recent thefts in the area and reasonably believe that the fence will help deter such activity on 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 dogs to roam and to provide privacy from Route 54. The unique conditions of the Property also limit the

Applicants' ability to construct a small deck that will provide them with safer access to the rear of the dwelling. The aforesaid unique conditions of the Property have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to construct fences on the lot that is tall enough to protect their dogs 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 2 sides by roads. The Applicants need taller fences to protect their dogs from escaping the Property and to provide privacy but the Applicants are unable to build the taller fences without violating the Sussex County Zoning Code. The Applicants also need a deck rather than a patio due to changes in their physical conditions which make it difficult for them to use stairs. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct reasonably sized fences and a deck. The Board is convinced that the location of the fences and deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. These structures should afford the Applicants with reasonable use of the portion of the Property fronting on Route 54.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions, place the dwelling, or create the lack of buffer between Route 54. Those conditions have created the need for taller fences and the exceptional practical difficulty and unnecessary hardship. Moreover, the Applicants have experienced health problems which require the construction of a deck as opposed to a patio but cannot do so due to the double front yard setback requirements. 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 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 should provide adequate privacy and protection for the Property. No substantial evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Furthermore, these barriers should improve the safety in the area by preventing the Applicants' dogs from leaving the Property. The Board also finds that the deck will not alter the essential character of the neighborhood as the deck is located in the same area as an existing patio and effectively elevates the uncovered, outdoor seating area by a few feet.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to place reasonably sized fences that are tall enough to keep their dog on the Property while providing a safety barrier from Route 54 and that the deck will afford them better access to the home.

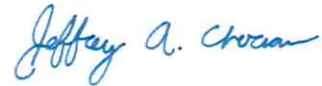
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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, and Mr. Jordan Warfel. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings and Mr. John Williamson did not participate in the discussion or vote on this 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 23, 2023.