

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VICTOR ARTUCHOV & ARMINE HOVHANNISYAN

(Case No. 12154)

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the fence height requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a proposed fence on a corner lot. This application pertains to certain real property located the northeast corner of the intersection of Lavinia Street and Sand Hill Road (Road 319). (911 Address: 15775 Lavinia Street, Milton) said property being identified as Sussex County Tax Map Parcel Number: 2-35-20.00-13.06.

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, pictures of the proposed fence, a deed to the Property, and a survey of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Victor Artuchov was sworn in to testify about the Application. John Sergovic, Esquire, presented the Application on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Sergovic stated that the Property is unique because it is a corner lot and there is a short angle between Lavinia Street and Sand Hill Road.
5. The Board found that Mr. Sergovic stated that the Applicants have occupied the home since April 2018 and have noticed that drivers use the Property to turn around their vehicles.
6. The Board found that Mr. Sergovic stated that the Applicants are proposing to place a fence within twenty (20) feet of the front yard to deter trespassing.
7. The Board found that Mr. Sergovic stated that the exceptional practical difficulty was not created by the Applicants.
8. The Board found that Mr. Sergovic stated that the Property is heavily wooded but the Applicants have cleared some of the Property and the visibility of the corner has been heavily enhanced after being cleared. The fence will be located between the two existing rows of trees.
9. The Board found that Mr. Sergovic stated that the proposed fence will be an open rail wrought iron fence.
10. The Board found that Mr. Sergovic stated that the fence will keep their large dog in the yard as well. According to Mr. Artuchov, the dog is 4 feet tall. The fence will also serve as a means to protect the joggers in the neighborhood from the dog.
11. The Board found that Mr. Sergovic stated that the Property cannot be properly developed or secured without a variance and the variance requested is the minimum variance necessary to afford relief.
12. The Board found that Mr. Sergovic stated that there are no neighbor objections to the proposed fence.
13. The Board found that Mr. Artuchov affirmed the statements made by Mr. Sergovic as true and correct.

14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. 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 the lot has an odd shape. These conditions greatly restrict the building envelope on the Property. The situation is also unique because the Applicants have experienced problems with persons turning around in their driveway. These trespassers pose safety concerns for the Applicants. Furthermore, the Applicants also own a large dog and a fence which meets the height requirement will actually be shorter than the dog itself. A taller fence is thus needed. It is clear to the Board that these unique conditions have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized fence on the lot.
 - b. 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 two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to construct a reasonably sized fence but are unable to do so 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 on the Property. The Board is convinced that the shape and location of the fence are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that a fence measuring only 3.5 feet tall would not allow them to adequately house their large dog.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the Applicants have experienced problems with trespassers and the height of the fence should deter those trespassers.
 - d. 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 pictures of the proposed fence indicate that it is an attractive fence that will be not deter visibility in the neighborhood. Neighbors support this application. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized fence on the Property. The Board is also convinced that the Applicants have designed the placement of the fence to minimize the encroachments into

the setback areas and to minimize the disturbance of the fence on neighboring properties. The Board notes that the fence will be a wrought iron fence with openings to provide greater visibility.

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 were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

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

Date August 7, 2018