

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: YEKATERINA BARG

(Case No. 12493)

A hearing was held after due notice on November 16, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 7.2 feet from the ten (10) feet side yard setback requirement on the west side for an existing trellis and a variance of 8.7 feet from the ten (10) feet side yard setback requirement on the west side for an existing trellis overhang. This application pertains to certain real property located on the south side of White Pine Drive within the Pines at Long Neck Subdivision (911 Address: 136 White Pine Drive, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-859.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a deed to the Property, pictures, a letter from Donna L. Nash, a survey of the Property dated September 8, 2020, 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Yekaterina Barge was sworn in to testify about the Application. Shannon Burton, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mrs. Burton stated that the Applicant has owned the Property since March 2017 and that, in an effort to create a natural shaded play area for her children, the Applicant hired a contractor to construct a trellis.
5. The Board found that Mrs. Burton stated that, after the trellis was erected, the Applicant received a notice of violation.
6. The Board found that Mrs. Burton stated that the Applicant sought a permit which was denied as a variance would be required to bring the trellis into compliance.
7. The Board found that Mrs. Burton stated that the Property is located in the Pines at Long Neck and the Property is unique as it is a narrow rectangular lot measuring 60 feet wide and consisting of only 7,500 square feet.
8. The Board found that Mrs. Burton stated that there is no possibility that the Property can be developed in strict conformity with the code as the trellis was constructed as a shaded play area for children.
9. The Board found that Mrs. Burton stated that, if the trellis must meet setback requirements, its purpose would be defeated as the space would be too small for a play area.
10. The Board found that Mrs. Burton stated that a variance is necessary to enable the reasonable use of the Property.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant and is due to the unique conditions of the Property.
12. The Board found that Mrs. Burton stated that the Applicant had no control over the sides of the lot or the house or the placement of the house.
13. The Board found that Mrs. Burton stated that the Applicant engaged a contractor to construct the trellis.

14. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare.
15. The Board found that Mrs. Burton stated that the neighbor most affected by this variance request has submitted a letter of support.
16. The Board found that Mrs. Burton stated that the HOA has approved the construction of the trellis.
17. The Board found that Mrs. Burton stated that the variances requested are the minimum variances necessary to afford relief and allow the trellis to remain.
18. The Board found that Ms. Barg affirmed the statements made by Mrs. Burton as true and correct.
19. The Board found that Ms. Barg testified that no permit was obtained for the trellis, which was constructed this past summer.
20. The Board found that Ms. Barg testified that the dwelling on the adjoining property is approximately 10 feet away from the property line.
21. The Board found that Ms. Barg testified that there is no natural habitation yet but she plans to plant vines.
22. The Board found that Ms. Barg testified that there are no intentions to close in this structure.
23. The Board found that Ms. Barg testified that she could not place this in the rear yard.
24. The Board found that Ms. Barg testified that a smaller trellis would defeat the purpose of having a trellis.
25. The Board found that no one appeared in support of or opposition to the Application.
26. The Board tabled the Application until December 14, 2020, at which time the Board discussed and voted on the Application.
27. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot measures 60 feet wide by approximately 125 feet deep and is rectangularly shaped. The Applicant did not present evidence of unique topography or other conditions which would effectively limit her ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's intention to construct a trellis within the setback area. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
 - b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property was already developed in strict conformity with the Code. The existing dwelling complies with the Code. The Applicant, however, seeks to retain an existing trellis which was constructed in violation of the Code without a building permit. The trellis does not fit within the building envelope and will encroach into the side yard setback area. The Applicant argues that a narrower trellis would not meet her intended purposes but the Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance or that the variance was necessary to reasonably use the Property. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Perhaps the trellis would not be in the exact location where the Applicant want it to be located or be the size the Applicant wishes to be but the Property appears to have a large enough building envelope for the Applicant

to develop the Property in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.

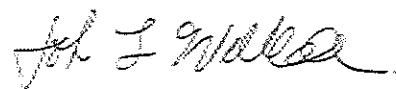
- c. The Board finds that the Applicant is creating her own exceptional practical difficulty by proposing to retain a trellis which does not fit within the building envelope. The Applicant's decision to construct this trellis in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to retain the trellis as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created her own exceptional practical difficulty.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon a motion to approve the variance application, which was duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to approve the variances were Mr. Jeffrey Chorman and Mr. John Williamson. Dr. Kevin Carson and Ms. Ellen Magee voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this application. Pursuant to Board of Adjustment Rule of Procedure 6.5, three affirmative votes are needed to approve a variance. Since the Applicant failed to convince three Board members that the variances should be approved, the motion to approve the application failed and the variance application was denied. The reasons outlined above explain the reasons for the denial.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Acting Chair

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

Date February 15, 2021