

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JASON BABBITT & SHANDA BABBITT

(Case No. 12322)

A hearing was held after due notice on June 17, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a proposed screened porch.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3 feet from the ten (10) feet rear yard setback requirement for a proposed screened porch. This application pertains to certain real property located on the west side of Lone Palm Way approximately 409 feet south of Barefoot Circle in the Spring Breeze subdivision (911 Address: 30365 Lone Palm Way, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.00-707.00.

1. The Board was given copies of the Application, a survey of the Property dated April 12, 2019, 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 and one (1) letter in opposition to the Application.
3. The Board found that Jason Babbitt and Shanda Babbitt were sworn in to give testimony about the Application. Ms. Babbitt submitted letters of support to the Board.
4. The Board found that Ms. Babbitt testified that the Property is unique as there is only 19.2 feet between the home and the rear property line.
5. The Board found that Ms. Babbitt testified that the Property is on the curve of the street and the house is placed on an angle allowing only 9.2 feet of building envelope for a screened porch.
6. The Board found that Ms. Babbitt testified that the Property cannot be developed for a screened porch without the variance.
7. The Board found that Ms. Babbitt testified that a screened porch is necessary as the Applicants have a child who is allergic to mosquito bites. Additionally, their elderly father and mother-in-law use a walker and cane and the porch will offer them usable outdoor space.
8. The Board found that Ms. Babbitt testified that the exceptional practical difficulty was not created by the Applicants as the developer placed the home at an angle on this lot and did not make the Applicants aware of how far back the home would be located.
9. The Board found that Ms. Babbitt testified that the variances will not alter the essential character of the neighborhood as the porch will be in the rear of the home and will not be visible from the street. The porch will also match the current dwelling.
10. The Board found that Ms. Babbitt testified that the variance requested is the minimum variance to allow for a screened porch to allow elderly parents to move comfortably and safely.
11. The Board found that Ms. Babbitt testified that neighbors do not oppose the request.
12. The Board found that Ms. Babbitt testified that the steps will be located to the side of the porch and will not encroach into the setback area.

13. The Board found that Ms. Babbitt testified that the homeowners association will not allow construction of the screened porch into the side yard.
14. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
15. 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 Property is unique as it a small lot with a limited building envelope. The Property is also subject to homeowner association rules which restrict the building of a screened porch in the side yard where some space in the building envelope is located. As such, the Applicants have even less space where the porch can be located. These unique conditions limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a porch on the lot.
 - b. Due to the uniqueness of the lot and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited buildable area due to its size, the homeowner association rules and the location of the dwelling on the lot. The Applicants seek to construct a porch 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 reasonably sized porch to be constructed on the Property. The Board is convinced that the shape and location of the porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the porch is needed because the Applicants' child has an allergy to mosquitos and the porch needs to be large enough to accommodate elderly family members who will utilize the porch.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size of the lot or the homeowner association requirements which limit the buildable area of the lot. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique conditions. The Board also notes that the lot is small so the building envelope is limited. The Applicants also did not create their child's mosquito allergy or the need for elderly family members to have safe space to navigate on a porch.
 - d. 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 porch will have no effect on the character of the neighborhood. The porch will be located to the rear of the Property and rear of the property is adjacent to common space owned by the homeowners association. The homeowners association has not objected to the relief and neighbors have not opposed the Application either. There was no evidence which convinced the Board that the location of the porch in the rear yard setback area would be detrimental to the public welfare or that the variance would somehow alter the essential character of the neighborhood.
 - e. 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 construct a porch on the Property. The porch is a reasonably sized porch and will afford the Applicants with functional outdoor space that is large enough to safely accommodate their

elderly family members. The Board also notes that the Applicants have designed the steps for the porch to protrude into the side yard within the building envelope so as to minimize the encroachment into the rear yard setback area.

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

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date August 6, 2019.