

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

**IN RE: JAMES OWENS & AMY OWENS**

**(Case No. 12441)**

A hearing was held after due notice on July 6, 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 rear yard setback requirements and from the minimum aggregate front yard and rear yard requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.58 feet from the fifteen (15) feet rear yard setback requirement for a proposed screen porch and a variance of 7.83 feet from the minimum front yard and rear yard aggregate requirements for a proposed screen porch. The application pertains to certain real property located on the northeast corner of Tower Place and Ashlyn Road within The Overlook subdivision (911 Address: 30563 Tower Place, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.00-88.00. 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 October 22, 2015, pictures, a letter from Robert Grasso, 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 James Owens was sworn in to testify about the Application.
4. The Board found that Mr. Owens testified that he purchased the townhome in 2018.
5. The Board found that Mr. Owens testified that there is an existing patio and he proposes to screen in in the western half of the porch to protect from mosquitos and bugs.
6. The Board found that Mr. Owens testified that the existing patio is 9.92 feet from the property line and the proposed porch will extend 6 inches beyond that.
7. The Board found that Mr. Owens testified that the bugs make the patio unusable at times.
8. The Board found that Mr. Owens testified that he did not realize how close the patio was to the rear property line.
9. The Board found that Mr. Owens testified that the patio cannot be screened without the variance.
10. The Board found that Mr. Owens testified that the patio was existing when the home was purchased.
11. The Board found that Mr. Owens testified that the porch will not alter the essential character of the neighborhood as there are a number of screened porches in the area.
12. The Board found that Mr. Owens testified that the variances requested are the minimum requests for a small porch to allow the Applicants and family members to enjoy the outdoor area without the nuisance of bugs.
13. The Board found that Mr. Owens testified that the porch will go 6 inches beyond the patio.
14. The Board found that Mr. Owens testified that only a portion of the patio will be screened in.

15. The Board found that Mr. Owens testified that no variance will be needed for steps because the porch will open up to the patio.
16. The Board found that Mr. Owens testified that HOA approval is needed.
17. The Board found that Mr. Owens testified that he would prefer to widen the porch but the house bumps out.
18. The Board found that Mr. Owens testified that there are no drainage issues in the area.
19. The Board found that no one appeared in support of or opposition to the Application.
20. 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 unrebutted, 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 oddly shaped, narrow, and has a bug problem. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to construct a porch over an existing patio. The porch is needed due to the bug problem which makes the patio unusable at times.
  - 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 has a unique shape and the buildable area thereof is limited due to the size and shape of the lot. The Applicants seek to construct a screen porch over a portion of an existing patio but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the reasonably sized porch to be constructed on the Property. The Board is convinced that the shape and location of the porch is also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual shape or size of the Property or create the bug problem. The unique size and shape of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by 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 porch will have no effect on the character of the neighborhood. The porch will be erected over an existing patio and will only extend 6 inches farther into the rear yard than the existing patio. There are other similar porches in the neighborhood as well. There was no evidence that the location of the porch in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that a neighbor supports the request. The Applicants will also be required to obtain homeowner association approval so the community will have a chance to further vet this application in accordance with its rules as well.

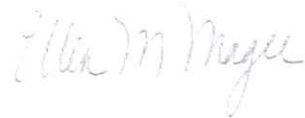
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized porch on the Property. The Applicants propose to construct the porch on the side of the rear yard where more room is available thereby minimizing the encroachment into the rear yard setback area. The porch will also not extend the width of the house and no variance is needed for steps.
- 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, Ms. Ellen Magee, 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 17, 2020.