

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MATTHEW E. BROBST

(Case No. 12461)

Public hearings were held after due notice on August 17, 2020, and September 14, 2020. The Board members present at the meeting on August 17, 2020, were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. The Board members present at the meeting on September 14, 2020, were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.2 feet from the thirty (30) feet front yard setback requirement for a second story porch. This application pertains to certain real property located on the west side of Maple Lane within the Keenwick subdivision (911 Address: 38320 Maple Lane, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.12-112.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated May 14, 2020, pictures, a building permit, a certificate of compliance, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two letters in support of the Application and one letter in opposition to the Application.
3. The Board found that Matthew Brobst and Yvonne Brobst were sworn in to give testimony about the Application.
4. The Board found that Mr. Brobst testified that the Property is narrow.
5. The Board found that Mr. Brobst testified that he spoke with neighbors and they like the house and believe it is an improvement to the neighborhood.
6. The Board found that Mr. Brobst testified that there is an estimated 47 feet from the porch to the edge of paving and other houses along Maple Lane are closer to the road than the Applicants' porch.
7. The Board found that Mr. Brobst testified that the Applicants replaced an existing structure and the dwelling is almost in the same footprint of the original dwelling.
8. The Board found that Mr. Brobst testified that the exceptional practical difficulty will not alter the essential character of the neighborhood but give the house curb appeal and enhance the neighborhood.
9. The Board found that Mr. Brobst testified that there have been no complaints from neighbors.
10. The Board found that Mr. Brobst testified that the variance requested is the minimum variance to allow the porch to remain on the home.
11. The Board found that Mr. Brobst testified that the subdivision has more restrictive setbacks from the lagoon.
12. The Board found that Mr. Brobst testified that the homeowners association approved the request.
13. The Board found that Mr. Brobst testified that the porch allows protection from inclement weather when entering the house.
14. The Board found that no one appeared in support of or opposition to the Application.

15. The Board left the record open until September 14, 2020, at which time the Board held another hearing on the matter. Mr. and Mrs. Brobst were sworn in at that hearing as well and Mr. Brobst submitted a copy of the building plans.
16. The Board found that no one appeared in support of or opposition to the Application at the second hearing either.
17. 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 due to the size and shape of the lot and the homeowner association restrictions. The Property consists of only 5,472 square feet and is narrow. The lot is also subject to restrictive covenants which limit construction to the rear of the yard. These conditions have created an unusually shaped and limited building envelope. The unique conditions of the lot and the homeowner association restrictions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing second story porch on the lot.
 - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain the existing second story porch on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to retain the reasonably sized porch on the lot. The porch provides protection from the elements when entering the house. The Board is convinced that the size, shape, and location of the porch are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot or create the homeowner association restrictions. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the homeowner association restrictions and the Applicants need the variances in order to retain the existing porch.
 - e. 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 variance will have no effect on the character of the neighborhood. The variance will allow the existing porch to remain in its current location. The Board finds that no substantial evidence was presented which demonstrates that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the front property line does not match the edge of paving so the front yard appears larger than it actually is. As a result, the encroachment of the porch into the front yard setback is not as noticeable. Furthermore, structures on nearby properties appear to be located closer to Maple Lane than the porch.

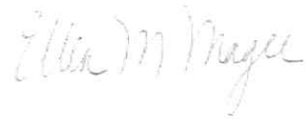
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the existing porch on the Property. No additions or modifications to the porch are proposed.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Brent Workman did not participate in the vote on this 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 November 2, 2020