

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN BREMSER & ZOFIA BREMSER

(Case No. 12541)

A public hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for a proposed and existing structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances from the thirty (30) feet front yard setback requirement: 1) a variance of 0.2 feet for the existing dwelling; 2) a variance of 5.2 feet for a proposed porch; 3) a variance of 6.2 feet for proposed steps; 4) a variance of 4.8 feet for a proposed garage addition; 5) a variance of 18.9 feet for a proposed garage addition; and 6) a variance of 2.6 feet for proposed garage addition. This application pertains to certain real located on the east side of Rock Elm Drive within the Keenwick Subdivision (911 Address: 38198 Rock Elm Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.12-120.00. 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 April 24, 2002, a sketch of the addition, a screen capture of a 3-D model, a letter from the Applicants, a site plan dated March 8, 2021, pictures, 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 the Application.
3. The Board found that Kevin Bremser was sworn in to give testimony about the Application.
4. The Board found that Mr. Bremser testified that he is making improvements to his home by adding a garage and a front porch, and by converting the existing garage into living space but that variances are needed to make these improvements.
5. The Board found that Mr. Bremser testified that the variances are needed from the Sussex County 30 feet front yard setback requirement but the structures will meet the community's 25 feet front yard setback requirement. He noted that the HOA considers the side of the lot adjacent to the undeveloped portion of Rock Elm Drive to be the side yard and not the front yard.
6. The Board found that Mr. Bremser testified that there is a right-of-way to the side of the Property but the road does not take up all of the right-of-way and that there is an undeveloped parcel between his lot and the road. He does not know who owns that parcel.
7. The Board found that Mr. Bremser testified that the Property is unique.
8. The Board found that Mr. Bremser testified that the covered front porch is necessary to make entering and exiting the home safe to age in place.
9. The Board found that Mr. Bremser testified that the home was built to the 30 foot front yard setback therefore a front porch and garage cannot be built without the variance.

10. The Board found that Mr. Bremser testified that he is not the original owner of the Property and did not build the existing house. He has owned the Property since 2003.
11. The Board found that Mr. Bremser testified that the variances will not alter the essential character of the neighborhood as most houses in the community are unique in design and there are many homes in the community that do not conform to the 30-foot front yard setback requirement
12. The Board found that Mr. Bremser testified that there are no complaints from neighbors and preapproval has been given by the homeowners' association.
13. The Board found that Mr. Bremser testified that the variances requests are the minimum variances to afford relief.
14. The Board found that Mr. Bremser testified that the lagoon overflowed onto the lot one time.
15. The Board found that Mr. Bremser testified that there is no area in the rear of the Property to make these improvements; which includes an additional bedroom.
16. The Board found that Mr. Bremser testified that there are no steps or HVAC that would further encroach into the setbacks.
17. The Board found that Mr. Bremser testified that he spoke with neighbors and they do not object to the proposal.
18. The Board found that Mr. Bremser testified that there was no other location on the lot where the garage could be located and that the driveway is located near the proposed garage.
19. The Board found that Mr. Bremser testified that they will leave space in the existing garage to access the garage addition from the house.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 in size, shape, and development. The lot, which is adjacent to a lagoon, has an odd shape with approximately 174 feet of road frontage along Rock Elm Drive. Rock Elm Drive, however, turns and a large portion thereof is undeveloped. As such, the south side of the lot is adjacent to undeveloped land which is effectively a paper street. The lot is also shallow as it is only 89.44 deep and the rear of the lot is adjacent to a lagoon. The odd shape of the lot has created a limited and unusually shaped building envelope. These unique characteristics limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain the existing structures and to make reasonable improvements thereto. The Board also notes that there is no other location where the garage addition could be located due to the unique conditions of the lot and the location of the driveway. Location of the garage elsewhere on the lot would be impractical.
 - 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 size, shape, and development and the buildable area thereof is limited due to these conditions. The Applicants seek to retain existing structures and to make reasonable additions thereto but are unable to do so without violating the Sussex County Zoning Code. The Board is

convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain the existing structures and to make these reasonable improvements. The additions will afford the Applicants with safer access to the home and will also provide additional storage and room in the dwelling.

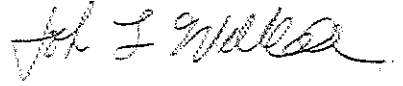
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicants did not acquire the Property until after the house was built. Furthermore, the shape and conditions of the Property predate the Applicants' ownership of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the oddly shaped building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The development of the Property by a prior owner also has limited where the addition can be placed. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but were created by the lot's unique characteristics and the development thereof by a prior owner.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to retain the existing structures on the lot and to make reasonable additions thereto. The existing structures have been on the Property for some time with no complaints noted in the record. Furthermore, neighbors and the homeowners association support the request. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 retain the existing structures and to construct reasonable additions thereto.
- 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, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date June 21, 2021