

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN PHELAN

(Case No. 12561)

A hearing was held after due notice on May 17, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 7.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling; 2) a variance of 21.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling; 3) a variance of 19 feet from the forty (40) feet front yard setback requirement for a proposed porch; 4) a variance of 24.5 feet from the forty (40) feet front yard setback requirement for a proposed porch; 5) a variance of 20.3 feet from the forty (40) feet front yard setback requirement for proposed steps; 6) a variance of 25.9 feet from the forty (40) feet front yard setback requirement for proposed steps; 7) a variance of 1.1 feet from the fifteen (15) feet rear yard setback requirement for an existing dwelling; and 8) a variance of 5.2 feet from the fifteen (15) feet rear yard setback requirement for proposed steps. This application pertains to certain real property that is located at the intersection of Cedar Creek Road (Route 30) and Cabbage Pond Road approximately 658 feet south of Benson Road (911 Address: 8952 Cedar Creek Road, Lincoln); said property being identified as Sussex County Tax Map Parcel Number 230-14.00-68.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, setback information request form, a site plan dated March 17, 2021, a survey of the Property dated June 18, 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 no letters in support of or in opposition to the Application.
3. The Board found that Kevin Phelan was sworn in to give testimony about the Application.
4. The Board found that Mr. Phelan testified that he intends to make improvements to the existing house by adding a covered porch which will measure 6 feet by 10 feet and that he intends to change the orientation of the front entrance on the house.
5. The Board found that Mr. Phelan testified that the reason for changing this is in part due to the placement of the new septic system and also for safer access to the house because of the driveway placement.
6. The Board found that Mr. Phelan testified that the septic drainfield takes up a portion of the rear yard.
7. The Board found that Mr. Phelan testified that the lot is non-conforming and is developed by a house that was placed in the 1950s or 1960s by a prior owner.
8. The Board found that Mr. Phelan testified that the setbacks only allow for an approximately 14 ft. x 14 ft. buildable area.
9. The Board found that Mr. Phelan testified that the variances will not alter the essential character of the neighborhood as it will be rebuilt in the same footprint as the existing dwelling.
10. The Board found that Mr. Phelan testified that the addition of a porch will improve the neighborhood.

11. The Board found that Mr. Phelan testified that the variances are the minimum variances to afford relief to add a porch and change to the entrance to the home for safety purposes.
12. The Board found that Mr. Phelan testified that the proposed porch will not have an adverse effect on visibility for vehicular traffic.
13. The Board found that Mr. Phelan testified that he is unsure of the distance between the edge of paving and the property line.
14. The Board found that no one appeared in support of or 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 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 due to its size, shape, and development. The lot is a small lot measuring only 5,552 square feet and is located at the intersection of two roads. Due to the shape and size of the lot, the buildable area is extremely small and oddly shaped. Moreover, the Property was developed by a dwelling prior to the enactment of the Sussex County Zoning Code and the home needs some reasonable improvements thereto. The Property's building envelope is further limited by the location of a septic system in parts of the building envelope. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to develop the lot as proposed.
 - 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 unique conditions which limit the developable options for the home, porch, and steps. The Applicant seeks to retain a dwelling and to construct steps and a porch but is 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 Applicant to develop the Property as proposed. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. These conditions have resulted in a limited development options for the Applicant and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the testimony presented by the Applicant. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created by the lot's unique characteristics. The Board also notes that the Applicant did not place the existing house on the lot as that house has been on the Property for over 50 years.
 - 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 structures will have no effect on the character of the neighborhood. The testimony indicates that the existing home has been on the Property for many years. There was no substantial evidence as to why

the variances for these structures would alter the alter the essential character of the neighborhood.

- 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 Applicant has demonstrated that the variances sought will allow him to retain the house and to construct new steps and a porch on the lot. The Applicant is limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas. The Board notes that the Applicant was limited by the building envelope and the location of the septic drain field.
- 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, Mr. Jordan Warfel, Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings did not participate in the discussion or vote on this 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 August 2, 2021