

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

**IN RE: MATTHEW BUSILLO & PATRICIA BUSILLO**

**(Case No. 12581)**

A hearing was held after due notice on July 12, 2021. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 12.5 feet from the thirty (30) feet yard setback requirement for a proposed covered porch; 2) a variance of 12.4 feet from the thirty (30) feet yard setback requirement for a proposed covered porch; 3) a variance of 14.5 feet from the thirty (30) feet yard setback requirement for a proposed steps; 4) a variance of 14.4 feet from the thirty (30) feet yard setback requirement for a proposed steps; and 5) a variance of 0.9 feet from the five (5) feet side yard setback requirement on the southeast side for an existing garage. This application pertains to certain real property located on the south side of 3<sup>rd</sup> Street within the Bay Vista Subdivision (911 Address: 37416 3<sup>rd</sup> Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-46.00. 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 April 1, 2021, a building permit documentation, an undated survey of the Property, a certificate of compliance, property record information, drawings, 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 Matthew Busillo and Patricia Busillo were sworn in to give testimony about the Application.
4. The Board found that Mr. Busillo testified that the Applicants seek to place a covered concrete slab porch with an overhang on the front of their house to provide protection when bringing luggage or groceries inside. He noted that the porch will measure 5 feet by 15 feet and will not be screened in.
5. The Board found that Mr. Busillo testified that there is no homeowners association for this neighborhood but neighbors are in support of the request.
6. The Board found that Mr. Busillo testified that the existing dwelling was built before 1955 and was existing on the Property when the Applicants purchased the lot in 2012. According to Mr. Busillo, the garage is also very old as it has windows that he believes predate the enactment of the Sussex County Zoning Code.
7. The Board found that Mr. Busillo testified that granting the variances will not create visibility issues on the street.
8. The Board found that Mr. Busillo testified that there are homes in the area that are closer to the road than what is proposed.
9. The Board found that Mr. Busillo testified that the current landing is approximately 3 feet deep.
10. The Board found that Mr. Busillo testified that he has received no complaints about the garage.
11. The Board found that no one appeared in support of or in opposition to the Application.

12. 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 un rebutted, 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 a small lot that was developed with a dwelling and garage many years ago, likely prior to the enactment of the Sussex County Zoning Code. The dwelling encroaches into the front yard setback area and the garage encroaches into the side yard setback area. The Applicants need a slightly larger (and covered) landing to provide safer entry into the home but are unable to construct these improvements without a variance. The lot is a small lot measuring only 5,000 square feet and the buildable area is limited by the small lot size and the historical development of the lot. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to construct a reasonably sized porch and steps 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a small lot and was developed by a dwelling and garage many years ago. The Applicants seeks to retain the garage and to construct a porch and steps on the Property 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 Applicants to retain a reasonably sized garage and to construct a porch and steps on the Property. 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 Applicants. The Board also notes that the existing porch is small and uncovered and the proposed porch will allow for safer access to the home.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot or place the existing dwelling and garage on the lot. Those structures were placed on the lot by a prior owner years ago. Those conditions have limited the building envelope of the lot, which is an already small lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created the lot's unique characteristics. The Applicants were greatly constrained by the existing development of the lot and the small size thereof.
  - 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 dwelling and the garage have been on the Property for many years and no complaints about those structures were noted in the record. The structures will be similarly situated to other structures in this neighborhood. There was no evidence that the structures would present visibility concerns along 3<sup>rd</sup> Street. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is an existing landing and steps

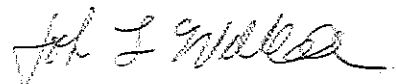
- on the house which project into the front yard setback area and the proposed landing and steps is only slightly larger than what currently exists.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized garage and to construct a porch and steps. The additions are reasonable in size and will afford the Applicants safer access to the home. The Board notes that the Applicants were constrained by the prior development and the unique conditions of the lot.
  - 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. Travis Hastings, Mr. Jordan Warfel, Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman 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 September 20, 2021.