

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

**IN RE: TERRY WEAVER, SR.**

**(Case No. 12583)**

A public 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 requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch and a variance of 9.3 feet from the thirty (30) feet front yard setback requirement for proposed steps. This application pertains to certain real located on the south side of Lisa Avenue within the Holly Acres Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-135.00. 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 18, 2021, letters of support, 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 no correspondence in opposition the Application.
3. The Board found that Terry Weaver was sworn in to give testimony about the Application.
4. The Board found that Mr. Weaver testified that the Property is a small, empty lot off a private stone road and that the stone road is maintained by the homeowners.
5. The Board found that Mr. Weaver testified that he is requesting to have the porch on the front of the proposed house to maximize the space in the rear yard.
6. The Board found that Mr. Weaver testified that the house will be one level to allow the Applicants to age in place.
7. The Board found that Mr. Weaver testified that the well and the gas tank will be in the rear yard but within the building envelope.
8. The Board found that Mr. Weaver testified that the proposed house consists of approximately 2,500 square feet.
9. The Board found that Mr. Weaver testified that these improvements will not alter the character of the neighborhood.
10. The Board found that Mr. Weaver testified that there are other dwellings in the area with similar front yard setbacks.
11. The Board found that Mr. Weaver testified that there is a tax ditch along the Property and the house has to be placed away from the tax ditch. He noted that part of the tax ditch is on the Property.
12. The Board found that Mr. Weaver testified that there is a shed on the Property that will be moved.
13. The Board found that Mr. Weaver testified that there is approximately 12 – 15 feet between the edge of paving of the road and the front property line.
14. The Board found that one person appeared in support of and no one appeared 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 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 lot which includes a tax ditch. The location of the tax ditch limits the developable area of the lot and the building envelope is further limited by the need to locate the well and propane tank in the rear yard building envelope. Due to these conditions, the building envelope is limited and the Applicant needs to construct a porch and steps to provide reasonable access to the home. The unique conditions of the lot have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct proposed structures 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 has unique conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct certain structures but is 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 Applicant to construct a porch and steps on the lot. These structures will afford the Applicant with safe access to the house.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The tax ditch already exists and the Applicant was limited in the placement of the home due to the need to locate the well and gas tank in certain areas as well. These conditions resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to construct the porch and steps on the lot. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received letters of support from neighbors. Moreover, there is a large gap between the front property line and the edge of Lisa Avenue, which is a private stone road, so the encroachments are not as noticeable as they would be otherwise.
  - 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 the Applicant to construct the proposed structures. The Applicant was limited in his option to develop the Property due to the aforementioned conditions.
  - 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

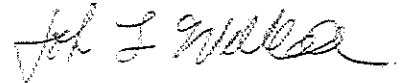
practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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