

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

**IN RE: STEVE OLIVER**

**(Case No. 12596)**

A hearing was held after due notice on August 16, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.5 feet from the ten (10) feet rear yard setback requirement for a proposed screened porch on an existing concrete patio. This application pertains to certain real property located on the northwest side of Brinleigh's Way within the Admiral Chase Subdivision (911 Address: 17263 Brinleigh's Way, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-35-8.00-1178.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property dated October 5, 2020, drawings, a survey of the Property, photographs, an approval letter from the Admirals Chase Property Owners Association, and letters in opposition.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of and two letters in opposition to the Application.
3. The Board found that Steve Oliver was sworn in to testify about the Application.
4. The Board found that Mr. Oliver testified that the Property is unique as the building setback line goes through the concrete pad at the rear of the house. The concrete pad measures approximately 20 feet by 8 feet.
5. The Board found that Mr. Oliver testified that the Property is on a cul-de-sac with a curved frontage.
6. The Board found that Mr. Oliver testified that the screened porch cannot be placed on the side of the house because that is where the HVAC is located.
7. The Board found that Mr. Oliver testified that steps are not required for the screened porch.
8. The Board found that Mr. Oliver testified that his family wants to screen in the porch due to the excessive amount of bugs in the rear yard.
9. The Board found that Mr. Oliver testified that there is a stormwater ditch nearby and there are many insects in the rear yard.
10. The Board found that Mr. Oliver testified that the Applicant was previously unaware that he would not be able to screen in the patio and he assumed all lots could have porch. He noted that Evergreene was the builder and the lots were promoted as having the option to have a screened in porch but he learned at closing that he would not be able to construct a porch without a variance.
11. The Board found that Mr. Oliver testified that he had a contract for this lot and was unable to purchase a different lot.
12. The Board found that Mr. Oliver testified that the curve on the cul-de-sac makes the building set back line also curve in the front and therefore moves the house farther back on the lot.
13. The Board found that Mr. Oliver testified that there are similar screened porches in



the area and that porch will match other porches in the development.

14. The Board found that Mr. Oliver testified that the porch was approved by the Admirals Chase Homeowners Association and that he has support from his neighbors.
15. The Board found that Mr. Oliver testified that he has spoken to his nearest neighbor in the Showfield subdivision who visited his lot and has given his support.
16. The Board found that Mr. Oliver testified that there are two 20 foot buffers for a total of 40 feet of wooded land between the Admirals Chase subdivision and the Showfield subdivision.
17. The Board found that Mr. Oliver testified that the door from the dwelling is centered on the porch.
18. The Board found that Mr. Oliver testified that this is the minimum variance to screen in the existing concrete patio.
19. The Board found that John Newton was sworn in to give testimony in opposition to the Application.
20. The Board found that Mr. Newton testified that he is the nearest property owner to the Applicant with only a 20 foot buffer between their properties.
21. The Board found that Mr. Newton testified that the Applicant should have known about the building setback line cutting across one corner of his property and that a porch can be built on the patio just not as big a porch as the Applicant would like. He believes that this issue was foreseeable for the Applicant.
22. The Board found that Mr. Newton testified that the patio on this property is already smaller than the neighbor's patio and that the patios are not all uniform.
23. The Board found that Mr. Oliver testified that there is a hedgerow between his property and Mr. Newton's property.
24. The Board found that Mr. Oliver testified that he spoke with the owner of Lot 1067 and that owner did not oppose the request.
25. The Board found that no one appeared in support of and one person appeared by teleconference in opposition to the Application.
26. 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 its shape and development. The Property is pie-shaped and has a curved front yard which thereby creates an oddly shaped building envelope. The rear property line has a steep curve as well. The Property was improved by a house and patio but the patio is largely unusable due to bug problems as evidenced from the Applicant's testimony and exhibits. The Applicant seeks to enclose the patio but cannot do so in compliance with the Code. The Board finds that the Property has unique conditions as aforesaid and that these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a porch but is unable to do 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 Applicant to construct the porch. The Board is convinced that the size, shape, and location of the porch are reasonable. The Board notes that the rear of the lot has a severe angle and the front



yard is curved. The rear of the lot is also largely unusable due to bugs so the porch is needed for the Applicant to reasonably use that portion of the lot.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and needs the variance in order to reasonably use the rear portion of the lot. The Applicant was also misled by its builder when he was told that a porch could be constructed on the Property only to learn at closing that a variance would be needed for the 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 proposed porch will have no effect on the character of the neighborhood. The homeowners association has approved the request and neighbors have also indicated support. The Board notes that there was some opposition from a neighbor in a different, adjacent community but the Board was not convinced by substantial evidence that the porch would alter the essential character of the neighborhood or be detrimental to the public welfare. The two neighborhoods are separated by buffers and there is a hedgerow as well that provides a barrier. Additionally, there are similar porches located elsewhere in the Admirals Chase neighborhood. Moreover, the porch will not project farther into the rear yard than the existing patio.
- 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonable porch on the lot. The porch will be located over an existing patio and will be no larger than the patio. The porch will have no steps that otherwise project into the setback area. The Board also notes that only a small portion of the porch will encroach into the setback area. The porch is needed to provide functional outside space due to the bug problems evidenced in the record.
- 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. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance 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 October 18, 2021