

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT BRANT

(Case No. 12614)

A public hearing was held after due notice on October 18, 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 variances from the front yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and steps and a variance of 15.5 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch. This application pertains to certain real located on the west side of Kent Road within the Indian River Acres Subdivision (911 Address: 30187 Kent Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-21.00. 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 October 17, 2017, a drawing, 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 to the Application.
3. The Board found that Robert Brant was sworn in to give testimony about the Application.
4. The Board found that Mr. Brant testified that he and his wife have owned the Property for four years and that the home will be their retirement home.
5. The Board found that Mr. Brant testified that the home is a small bungalow built 57 years ago and he wishes to elevate it one story because the Property is prone to flooding.
6. The Board found that Mr. Brant testified that the crawl space has flooded and he found a water line at 1 foot on the shed.
7. The Board found that Mr. Brant testified that the two adjacent neighbors support the request for a variance.
8. The Board found that Mr. Brant testified that the house is non-conforming as it exists.
9. The Board found that Mr. Brant testified that the footprint of the house will remain the same but the steps for the front entrance will extend approximately 7 feet in front of the house and will require a 5 foot variance.
10. The Board found that Mr. Brant testified that the steps are needed to access the house.
11. The Board found that Mr. Brant testified that there is no room to put steps on the south side of the house. He noted that the septic system is on the south side of the lot.
12. The Board found that Mr. Brant testified that all other improvements will be located within the building envelope.
13. The Board found that Mr. Brant testified that the variances will not alter the essential character of the neighborhood as the request is similar to the other properties.

14. The Board found that Mr. Brant testified that other homes are located varying distances from the road.
15. The Board found that Mr. Brant testified that there is approximately 5 feet between the edge of paving and the property line.
16. The Board found that Mr. Brant testified that the neighbor to the south had his house flood and that house is now raised.
17. The Board found that Mr. Brant testified that the current flood plain is at the edge of the house.
18. The Board found that Mr. Brant testified that the porch would be 1 foot deeper than the existing porch.
19. The Board found that Mr. Brant testified that 5 feet is the minimum variance to allow two people to be able to pass each other on the porch.
20. The Board found that Mr. Brant testified that the stairs cannot be moved as it would block the access to the garage. The garage will be located under the house.
21. The Board found that Mr. Brant testified that the steps will not project farther than the house.
22. The Board found that Mr. Brant testified that the house cannot be moved to the rear yard due to flooding.
23. The Board found that Mr. Brant testified that there is no homeowners association.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. 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 flooding and development. The Property is improved with a dwelling that was built 57 years ago and has been subject to flooding. The Applicant seeks to raise the house above the flood plain to alleviate the problems associated with flooding. The lot is also improved with a septic system on the south side of the lot. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to make reasonable improvements related to raising the home on the site.
 - 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to elevate the existing home and to make related improvements on the lot 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 house to be raised and for other improvements to be made on the lot. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. These improvements are necessary due to the flooding on the lot.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.

- 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 house has been on the Property for 57 years and there was no substantial evidence that the house and related structures would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board. Rather, the Board received letters of support from neighbors. The Board also notes that there is a gap between the edge of paving from the front property line so the front of the lot appears larger than it actually is.
- 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 elevate the dwelling and to make other improvements as proposed on the Property. No additions or modifications to those structures are proposed. The Board notes that the Applicant appears to have utilized other areas of the building envelope to minimize the encroachments.
- 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. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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 December 13, 2021.