

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

**IN RE: BRENT BEAVER**

**(Case No. 12633)**

A public hearing was held after due notice on December 13, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 16 feet from the forty (40) feet front yard setback requirement for existing steps on a deck;
2. A variance of 20 feet from the forty (40) feet front yard setback requirement for an existing deck; and
3. A variance of 13 feet from the forty (40) feet front yard setback requirement for an existing dwelling.

This application pertains to certain real located at the northeast side of East Redden Road approximately 0.20 miles northeast of DuPont Highway (Route 113) (911 Address: 18932 East Redden Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 135-6.00-10.03 (hereinafter "the Property"). 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 7, 2021, property record history, photographs, 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 in opposition the Application.
3. The Board found that Brent Beaver was sworn in to give testimony about the Application.
4. The Board found that Mr. Beaver testified that he purchased the Property at a sheriff's sale in August 2021 with the intent to make improvements but he changed his mind and is now selling the Property. He stated that he purchased the Property "as is."
5. The Board found that Mr. Beaver testified that he has made no additions or improvements to the Property.
6. The Board found that Mr. Beaver testified that the deck was added in 1996 and did not receive a certificate of compliance. He is unsure the age of the house.
7. The Board found that Mr. Beaver testified that the encroaching structures are situated similarly to the front yard as a deck on neighboring lands.
8. The Board found that Mr. Beaver testified that there is a gap between the edge of paving and the front property line.
9. The Board found that Mr. Beaver testified that the deck measures 18 feet wide by 12 feet deep.
10. The Board found that Mr. Beaver testified that the septic system is located to the rear yard near the center of the Property.

11. The Board found that Mr. Beaver testified that that the location of the steps and deck do not cause visibility issues for vehicles traveling on East Redden Road.
12. The Board found that no one appeared in support of or in opposition to the Application.
13. 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 improved by a septic system that is located in the center of the lot. It is unclear whether the dwelling was built prior to the enactment of the Sussex County Zoning Code but, based on the history of neighboring homes and review of the photographs provided by the Applicant, it is possible the dwelling predates the Zoning Code. Nevertheless, the location of the septic system has created an exceptionally limited building envelope and restricts the reasonable use and development of the Property. The uniqueness of the Property has, thus, created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing 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 situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant recently acquired the Property at a sheriff's sale and learned that the existing structures encroach into the front yard setback area. The Applicant seeks to retain the structures but is unable to do so without violating the Sussex County Zoning Code. The Property is improved by a septic system which limits where those structures can be placed. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain those structures. The Board is convinced that the size, shape, and location of the structures are reasonable.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant only recently acquired the Property and did not create the unique conditions of the Property or place any of the structures on the lot. The dwelling was placed on the lot by a prior owner likely prior to the creation of the Sussex County Zoning Code. As previously noted, the Property's unique conditions have created the unnecessary hardship and exceptional practical difficulty. 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 variances in order to continue the reasonable use 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 has been on the Property for quite some time and the deck has been on the Property since 1996. Despite the longstanding location of those structures, no complaints were noted in the record about their locations. The Applicant intends to retain the structures in their current locations. The Board heard no evidence 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 a gap between the edge of paving of Redden Road and the front property line so that the encroachment will not be as noticeable as it 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 regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures. No additions or modifications to those structures are proposed.
- 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, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Mr. Travis Hastings and Mr. Jordan Warfel 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 February 7, 2022.