

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RALPH GALBREATH & SUSAN GALBREATH

(Case No. 12636)

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 and proposed structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance 6.9 feet from the thirty (30) feet front yard setback requirement for an existing porch; and
2. A variance of 11.0 feet variance from the thirty (30) feet front yard setback requirement for proposed steps.

This application pertains to certain real located at the northeast side of Indian Queen Lane with the Blackwater Village Subdivision (911 Address: 34020 Indian Queen Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 134-11.00-337.00 (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 September 22, 2021, an administrative corrective variance approval dated November 2, 2021, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Ralph Galbreath and Thomas Bowden were sworn in to give testimony about the Application.
4. The Board notes that the Applicants previously received administrative variances for the existing pool, shed, and deck because the Planning & Zoning Department issued certificates of compliance in error.
5. The Board found that Mr. Bowden, who is the Applicants' contractor, testified that he recently opened his business and that this project coincided with the birth of his daughter so he was not on site for nine days.
6. The Board found that Mr. Bowden testified that putting the roof on the porch rendered the porch non-compliant and, therefore, a variance is required. He noted that this encroachment was discovered by a County inspector when inspecting a neighbor's dwelling and that work has ceased pending the outcome of this hearing.
7. The Board found that Mr. Bowden testified that the placement of the dwelling is pushed to the front of the Property due to the location of the septic system located adjacent to the rear of the dwelling.
8. The Board found that Mr. Bowden testified that the porch was added in July 2021 but the steps have not yet been added.
9. The Board found that Mr. Bowden testified that the porch cannot be built without a variance.
10. The Board found that Mr. Galbreath testified that the house was built in 1991.

11. The Board found that Mr. Galbreath testified that he wanted to make improvements to the Property by adding a new roof, siding, and porch and that the Applicants are hoping to get approval so that they can continue with the construction.
12. The Board found that Mr. Galbreath testified that he retained Mr. Bowden to build the porch and that he later learned of the encroachment. Mr. Galbreath expected Mr. Bowden to build the structures in compliance with the Code.
13. The Board found that Mr. Bowden testified that, if the steps were moved, it would not be symmetrical and would be out of character for the neighborhood. He noted that the porch has an "A" frame with four posts and that the steps will line up with the frame of the porch.
14. The Board found that Mr. Bowden testified that he spoke with the president of the homeowners' association and the structures have been approved.
15. The Board found that Mr. Galbreath testified that there is approximately 10 feet from the edge of paving of Indian Queen Lane to the front property line. He does not believe that the porch and steps will not cause any visibility issues on Indian Queen Lane.
16. The Board found that Mr. Galbreath testified that the location of the septic system creates the practical difficulty as the system takes up most of the rear yard.
17. The Board found that Mr. Galbreath testified that he received approval from the homeowners' association to build a porch on the dwelling and that there are three letters of support from neighbors.
18. The Board found that Mr. Galbreath testified that he needs the covered porch to provide cover when he enters the house during inclement weather.
19. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
20. 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 due to its development and location of a septic system. The Property, which is not a large lot, is only 10,800 square feet but does not benefit from the Small Lot Ordinance. The lot was developed by a house and related structures years ago and much of the rear of the lot is used for a septic system. These conditions limit the developability of the Property. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to reasonably improve the Property with a covered porch and steps.
 - 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 Applicants seek to construct a covered porch and steps on the lot 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 those 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 Applicants. The Board notes that the porch will be located off the front of the house and will provide the Applicants with safe access to the house during inclement

weather. The Applicants are constrained by the location of the existing house on where this porch could be located.

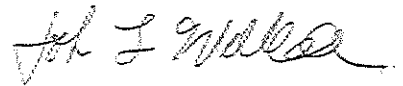
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Board further notes that the Applicants retained a contractor to construct these improvements only to later learn of the encroachments.
- 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 porch will be set back approximately 33 feet from the edge of paving of the adjacent road as there is a gap of approximately 10 feet from the edge of paving of Indian Queen Lane to the front property line. There was no evidence that the variances would alter the essential character of the neighborhood or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Applicants have designed the porch with an "A" frame and the Applicants' contractor testified that the porch will be consistent with the character of the neighborhood. No evidence to the contrary was presented. Lastly, there appears to be a mechanism by which the design needs approval from the homeowners' association and that should further insure that the design meets the neighborhood's standards.
- 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 place a small, covered porch and steps on the Property. The porch is only 7.8 feet deep and provides reasonable covered access to the home. Notably, the porch and steps do not occupy the entire width of the house either so the square footage of the encroachment is limited.
- 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, 2012.