

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

**IN RE: JEFFREY W. STULL & JANICE L. STULL**

**(Case No. 12637)**

A hearing was held after due notice on December 20, 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 side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.3 feet from the fifteen (15) feet side yard setback requirement on the west side for a proposed porch. This property is located at the north side of Ward Way within the Meadow Drive Subdivision (911 Address: 8 Ward Way, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 133-16.00-288.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated January 12, 2021, a letter of approval from the Meadow Drive Homeowners Association, a letter from the Applicants, property record information, a marked-up survey of the Property showing the proposed improvement location, photographs, an aerial photograph of the Property, 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 or in opposition to the Application.
3. The Board found that Janice Stull was sworn in to testify about the Application.
4. The Board found that Ms. Stull testified that the porch will measure 6 feet wide and that a porch built into compliance with the Code would not look good aesthetically.
5. The Board found that Ms. Stull testified that the lot is very narrow and is adjacent to common area that is used for a dry, retention pond.
6. The Board found that Ms. Stull testified that the porch will have impact to neighbors.
7. The Board found that Ms. Stull testified that the homeowners' association has given approval and that approval was provided as part of the application.
8. The Board found that Ms. Stull testified that the house is located 2.7 feet from the building restriction line.
9. The Board found that Ms. Stull testified that the porch will provide needed access to the rear of the dwelling.
10. The Board found that Ms. Stull testified that the steps will be off the rear of the porch and not to the side.
11. The Board found that Ms. Stull testified that there have been no complaints from neighbors regarding the proposed porch.
12. The Board found that Ms. Stull testified that the septic system is located in the rear yard and the well is located in front of the dwelling towards the left side of the Property.
13. The Board found that Ms. Stull testified that the location of the existing dwelling has created the exceptional practical difficulty and she did not place the house on the lot.
14. The Board found that Pat Carmine and Daniel Staniewski were sworn in to give testimony in support of the Application.
15. The Board found that Ms. Carmine testified that she lives next door to the Applicant and is a member of the board of directors for the homeowners' association. She confirmed that the homeowners' association approved the request.

16. The Board found that Ms. Carmine testified that, if you just put a porch on the front, it would not look right because of the placement of the garage and that a wrap-around porch is necessary for aesthetics and will improve the appearance of the house.
17. The Board found that Ms. Carmine testified that the house was built 25 years ago.
18. The Board found that Ms. Carmine testified that there is no dwelling on the adjacent property to the side where the proposed porch will be located and that lot is a common area that will not be built on in the future.
19. The Board found that Ms. Carmine testified that the porch will improve the Property and, therefore, improve the neighborhood. She believes that the porch will fit within the character of the neighborhood.
20. The Board found that Mr. Staniewski testified that he lives across the street from the Applicant.
21. The Board found that Mr. Staniewski testified that the retention pond adjacent to the subject property is a dry pond and that the proposed porch will not affect the retention pond.
22. The Board found that Mr. Staniewski testified that the porch would improve the current dwelling.
23. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
24. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
  - a. The Property is unique due to its size, shape, and development. The Property was developed by a dwelling which occupies most of the width of the building envelope. The dwelling was placed on the Property approximately 25 years ago by a prior owner and leaves little room on the side of the dwelling for improvements. The lot is also improved by a well and septic system which occupied portions of the building envelope. The Applicants seek to construct a wrap-around porch to allow access from the front to the rear of the home. Due to the unique conditions of the lot, this porch cannot be constructed in compliance with the Code. These conditions have created a limited and unusually shaped building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a porch 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 and situation, 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 the porch on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct the porch on the lot. The Board is convinced that the shape and location of the porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the porch will afford the Applicants with reasonable exterior access from the front to the rear of the home.
  - 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

of the Property. The Applicants also did not place the dwelling, well, or septic system on the lot. Rather, those fixtures have been on the Property for many years. These conditions have created the unnecessary hardship and exceptional practical difficulty.

- 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 the porch will have no effect on the character of the neighborhood. The homeowners' association has approved the request. No substantial evidence was presented which convinced the Board that the structures would somehow alter the essential character of the neighborhood. Rather, the Board heard testimony from neighbors supporting the request. Moreover, the Property is adjacent to lands used for a dry, retention pond so the impact of the encroachment into the side yard setback would not be as noticeable as it would be otherwise.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct the porch on the lot. The Applicants have designed the porch such that steps will not project closer to the side property line than the porch thereby further minimizing any encroachment into the setback area. The Board also notes that the porch is only 6 feet wide; which is narrow.
- 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. Mr. Jordan Warfel 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 February 21, 2022