

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SANDY WILKINSON

(Case No. 12650)

A hearing was held after due notice on January 24, 2022. 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 and a variance from the minimum aggregate front yard and rear yard requirements for proposed structures.

Findings of Fact

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

1. A variance of 3 feet from the fifteen (15) feet rear yard setback requirement for a proposed screen porch; and
2. A variance of 1 foot from the forty (40) feet aggregate front and rear yard requirement for townhouse.

This application pertains to certain real property located the north side of Tower Place within the Overlook subdivision (911 Address: 30569 Tower Place, Selbyville) said property being identified as Sussex County Tax Map Parcel 533-20.00-90.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, photographs, and a survey of the Property dated September 14, 2021.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of and no correspondence in opposition to the Application.
3. The Board found that Kevin McNelis, who is the Applicant's contractor, was sworn in to testify about the Application. Mr. McNelis submitted additional photographs to the Board to review.
4. The Board found that Mr. McNelis testified that the Applicant is requesting two variances for the construction of a screen porch.
5. The Board found that Mr. McNelis testified that there is an open runoff area to the rear of the home and there are green flies which prohibit the Applicant from using the outdoor patio.
6. The Board found that Mr. McNelis testified that the porch will not project farther than the existing patio.
7. The Board found that Mr. McNelis testified that a porch of 14 feet would be consistent with the other porches.
8. The Board found that Mr. McNelis testified that the community is approximately five years old but the builder did not offer porches in its design.
9. The Board found that Mr. McNelis testified that some of the other homes have porches so this porch will not alter the essential character of the neighborhood.
10. The Board found that Mr. McNelis testified that this townhouse block is unique because it is a tighter design as compared to other townhouse blocks in the neighborhood and there are only 5 townhouses on this block.
11. The Board found that Mr. McNelis testified that the aesthetics of the porch are terrible if it was built into compliance with the Code.

12. The Board found that Mr. McNelis testified that a neighbor received a similar variance as well.
13. The Board found that Mr. McNelis testified that there are no steps that will protrude farther into the setbacks.
14. The Board found that Mr. McNelis testified that the porch would not be functional for the Applicant at 11 feet as a porch of this size is necessary to accommodate a large family comfortably. He noted that the Applicant would not be able to fit a table if the porch was built into compliance with the Code.
15. The Board found that Mr. McNelis testified that homeowner association approval will be required.
16. The Board found that Mr. McNelis testified that this home is the Applicant's full-time residence and that most of the neighbors live here part-time. He noted that the Applicant has not contacted the neighbors regarding this porch.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 as it is oddly shaped, narrow, and has a bug problem. The Board notes that this townhouse block is smaller than other townhouse blocks in the community. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to construct a porch over an existing patio. The porch is needed due to the bug problem which makes the patio unusable at times and to accommodate the Applicant's family.
 - 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 a unique shape and the buildable area thereof is limited due to the size and shape of the lot. The Applicant seeks to construct a screen porch over a portion of an existing patio 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 reasonably sized porch to be constructed on the Property. The Board is convinced that the shape and location of the porch is also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual shape or size of the Property or create the bug problem. The unique size and shape of the Property is clear when reviewing the survey and testimony. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created by the lot's unique characteristics.
 - 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 porch will have no effect on the character of the neighborhood. The porch will be erected over an existing patio and will not project farther into the rear yard than the existing patio. There are other

similar porches in the neighborhood as well. There was no evidence that the location of the porch in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the Applicant will also be required to obtain homeowner association approval so the community will have a chance to further vet this application in accordance with its rules as well.

- 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 construct a reasonably sized porch on the Property. The Applicant proposes to construct the porch in the portion of the rear yard where more room is available thereby minimizing the encroachment into the rear yard setback area. The porch will also not extend the width of the house and no variance is needed for steps.
- 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, and Mr. Travis Hastings. Mr. Jordan Warfel and Mr. John Williamson 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 March 21, 2022