

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

**IN RE: THEODORE JOHN BANKS**

**(Case No. 12652)**

A public 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 variances from the front yard setback requirement for a proposed structure.

Findings of Fact

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

1. A variance of 9.9 feet from the forty (40) feet front yard setback requirement for a proposed porch;
2. A variance of 9.7 feet from the forty (40) feet front yard setback requirement for a proposed porch; and
3. A variance of 1.7 feet from the forty (40) feet front yard setback requirement for a for the proposed ramp.

This application pertains to certain real located at the west side of Whites Neck Road approximately 380 feet north of Old Mill Road (911 Address: 30708 Whites Neck Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 134-8.00-10.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a site plan of the Property dated April 14, 2021, architectural drawings, 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 the Application.
3. The Board found that Theodore Banks was sworn in to give testimony about the Application. Mr. Banks submitted pictures to the Board as well.
4. The Board found that Mr. Banks testified that he uses a wheelchair and he is installing a ramp in the rear yard near his bedroom to provide him access in the event of an emergency. The ramp will connect to a porch in the front yard that will be constructed.
5. The Board found that Mr. Banks testified that this ramp and porch are being requested so that he will have another exit to the home in case of emergency. He noted that he needs room to safely navigate his wheelchair.
6. The Board found that Mr. Banks testified that the house is 36 feet wide and was constructed in 1952 by a prior owner.
7. The Board found that Mr. Banks testified that these structures will not bother neighbors and that his family owns neighboring lands.
8. The Board found that Mr. Banks testified that the Property is served by septic and the location of the septic system limits where the porch can be constructed.
9. The Board found that Mr. Banks testified that there is approximately 10 ft. between the edge of paving of Whites Neck Road and the front property line.

10. The Board found that Mr. Banks testified that there is a well in front of the dwelling but that he hopes to put a new well in the rear of the lot.
11. The Board found that Mr. Banks testified that this porch and ramp will not cause any visibility issues for vehicular traffic on the road.
12. The Board found that Mr. Banks testified that the structures will give reasonable access to the home.
13. The Board found that Mr. Banks testified that the porch will be an open porch.
14. The Board found that no one appeared in support of or in opposition to the Application.
15. 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 the location of a septic system and the lot's historical development. The Property was developed with a house in 1952 (which was prior to the enactment of the Sussex County Zoning Code) and is served by a septic system that is located to the rear of the dwelling. The septic system occupies a portion of the building envelope and limits the Applicant's ability to expand the home to the rear to accommodate his wheelchair. These conditions have created an exceptionally limited building envelope that is further limited by the existing dwelling located on the lot. The unique conditions of the Property have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to reasonably develop the Property with a porch and handicap ramp.
  - 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 conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a porch and ramp on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to have reasonable access to the home; which is needed due to the Applicant's disability.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The Property was created by a prior owner and the house was placed on the lot prior to the Applicant's purchase of the Property. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but was created by the lot's unique characteristics and the development of the lot by a prior owner.
  - 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to reasonably develop the lot with a porch and ramp that should afford him with reasonable access to the home; particularly in the event of an emergency. The Board notes that there is a gap between the edge of paving of Whites Neck Road and the front property line so the front yard encroachment should not be as

noticeable as it otherwise would be. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

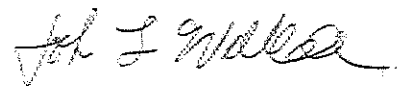
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to reasonably develop the Property with a ramp and porch to provide him with reasonable access to the home. This access is important due to the Applicant's use of a wheelchair.
- 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 March 21, 2022.