

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID BERCH & KATHLEEN BERCH

(Case No. 12748)

A public hearing was held after due notice on October 17, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.7 feet from the thirty (30) feet front yard setback requirement for a proposed porch. This application pertains to certain real property located on the northeast side of West Stoney Run within the Keenwick Sound Subdivision (911 Address: 37843 West Stoney Run, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-19.00-697.00 ("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 June 21, 2022, a survey of the Property dated October 26, 2012, an elevation certificate, an architectural review committee request form, drawings, photographs, restrictive covenants, letters of support, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received seven (7) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that David Berch was sworn in to give testimony about the Application.
4. The Board found that Mr. Berch testified that the Applicants propose to install an 8 foot wide front porch on the existing structure.
5. The Board found that Mr. Berch testified that the existing structure was built in 1989 by a prior owner.
6. The Board found that Mr. Berch testified that the homeowners association has approved the request and the Applicants have received support from neighbors.
7. The Board found that Mr. Berch testified that the community's restrictive covenants allow the homeowners association to grant variances to allow each lot to be developed and maximize its aesthetic potential and the Applicants feel that adding a front porch rather than tearing down the house will maximize the aesthetic potential of the Property.
8. The Board found that Mr. Berch testified that the variance does not include the steps as the steps will not be covered.
9. The Board found that Mr. Berch testified that he believes that the front property line is about 10 feet from the edge of paving of West Stoney Run and he believes the closest point of the front porch will be 37 feet from the road.
10. The Board found that Mr. Berch testified that the shed was existing when the Applicants purchased the Property and is in compliance.
11. The Board found that Mr. Berch testified that the Applicants are remodeling the home and the home is sound and structural. He noted that the Applicants are the third owners of this home.

12. The Board found that Mr. Berch testified that the home is insulated all throughout and is a four season home and the Applicants plan to retire there.
13. The Board found that Mr. Berch testified that the Applicants have a 6 foot wide porch on their current home in Maryland and that, with the rocking chairs, you have to stop and sit up for people to move past you. He believes that an additional 2 feet on the porch will make it more functional.
14. The Board found that Mr. Berch testified that the porch will be covered. He noted that the Applicants looked at an open deck but prefer to be able to use their porch even in the rain.
15. The Board found that Mr. Berch testified that many of his neighbors have porches similar to his proposal and that the porches in the neighborhood vary in size.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 size, shape, and development. The lot consists of approximately 9,141 square feet and has angled lot lines. The Property is located in an residential planned community so the small lot ordinance does not apply. The existing dwelling on the lot was constructed in 1989 by prior owners and the Applicants seek to construct a small porch on the front of the home. The Applicants are constrained, however, due to the small size of the lot and the prior development thereof by a prior owner. The 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 seek to build a reasonable 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, 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 place a porch 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 this reasonably sized porch to be placed the lot. The Board is convinced that the shape and location of this porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the porch is small and the Applicants appear to have taken steps to minimize the need for the variances. Notably, most of the porch will be located within the building envelope.
 - 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.
 - 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 structure will have no effect on the character of the neighborhood. No substantial evidence that the structure would somehow

alter the essential character of the neighborhood was presented to the Board. The porch is a modest-sized porch and appears, based on the testimony, consistent with the neighborhood. Neighbors and the homeowners association have indicated support for the Application. There is also a gap between the edge of paving of West Stoney Run and the front property line thereby minimizing the impact of the front yard encroachment.

- 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 place the reasonably sized porch on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the porch but were constrained by the conditions of the lot. The proposed placement will also allow the Applicants to have a porch that is large enough to be reasonably used while limiting encroachments into the setback requirements.
- 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



Jeffrey Chorman
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date December 19, 2022.