

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

**IN RE: ROBERT DEBES & CATHERINE DEBES**

**(Case No. 12766)**

A hearing was held after due notice on December 12, 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 rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2 feet from the ten (10) feet rear yard setback requirement for a proposed porch extension. This application pertains to certain real property located on the northwest side of Plover Lane within the Estuary Subdivision (911 Address: 24062 Plover Lane, Frankford) said property being identified as Sussex County Tax Map Parcel 134-19.00-812.00 ("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, a drawing of the floor plan, a portion of an undated survey of the Property, a site and grading plan of the Property dated December 24, 2020, and photographs.
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 Robert Debes and Catherine Debes were sworn in to testify about the Application.
4. The Board found that Mr. Debes testified that the outside porch measures approximately 10 feet by 12 feet and needs to be enlarged to accommodate the Applicants' disabled daughter who has cerebral palsy and uses a motorized wheelchair.
5. The Board found that Mr. Debes testified that the home has a gas fireplace and that, for their daughter to fit on the porch and have any type of maneuverability, the Applicants would not be able to place any furniture to utilize the space because the space is too tight. The Applicants seek to expand the porch so their daughter will have a way to get in and out of the house safely and easily as well as to provide a means by which their daughter will be able to enjoy sitting outside.
6. The Board found that Mr. Debes testified that, to reasonably use the space, they need to extend the porch by 2 feet and make the roof come out 2 feet farther. The porch will be expanded to the side yard 4-6 feet as well.
7. The Board found that Mr. Debes testified that, before the fireplace was installed, the porch was still too small for reasonable use because her wheelchair needs to be able to do a 360 degree turn.
8. The Board found that Mr. Debes testified that, if any furniture was placed in the porch, there will not be any room for their daughter's wheelchair.
9. The Board found that Mr. Debes testified that the Applicants have spoken with their neighbors and everyone has been positive about the proposal.
10. The Board found that Mr. Debes testified that the concrete paver patio is not currently existing.
11. The Board found that Mr. Debes testified that, if they do not move the porch outward and only expanded into the side yard, it will be too slim for their daughter to

- reasonably use.
12. The Board found that Mr. Debes testified that the Property slopes towards the rear yard approximately 2 feet behind the end of the proposed porch.
  13. The Board found that Mr. Debes testified that the Applicants will also need to obtain approval from their homeowners association.
  14. The Board found that Mr. Debes testified that they will be installing all-season, easy breeze windows.
  15. The Board found that Mr. Debes testified that the builder placed the home.
  16. The Board found that Mr. Debes testified that a 14 feet deep porch is the minimum needed to reasonably use the porch in a wheelchair. They would prefer a larger variance but believe that a variance of 2 feet is the minimum necessary to afford relief.
  17. The Board found that Ms. Debes testified that the outside porch measures 8 feet by 10 feet.
  18. The Board found that Ms. Debes testified that the Applicants will install easy breeze windows and a 36-inch door. The addition will include steps with a railing and a ramp to allow the Applicants' daughter handicap access. She noted that the ramp will not encroach into the setbacks.
  19. The Board found that Ms. Debes testified that they lose 2 feet of the porch due to the fireplace and they were not aware when they were asked about adding the fireplace that the fireplace would make the porch unusable.
  20. The Board found that Ms. Debes testified that the Applicants will not be placing a table just a chair for them to sit in as they live without tables, even in their home, so that they keep things open for their daughter.
  21. The Board found that no one appeared in support of or in opposition to the Application.
  22. 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 as it is smaller lot consisting of 7,500 square feet that was developed with a home placed by a contractor. The home includes a gas fireplace that protrudes 2 feet from the rear of the home and limits the useable space of the porch. The Applicants need a larger porch due to their daughter's disability which renders the existing porch unusable. If not for the gas fireplace protrusion, the porch could likely be built into compliance with the Code while affording the Applicants with enough space to reasonably use the porch. The lot's unique conditions, however, limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to reasonably expand their porch to accommodate their disabled daughter.
    - 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 size and development and the buildable area thereof is limited due to the size and development of the lot. The Applicants seek to construct an addition to their porch 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 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

Applicants. The Board notes that that, as the porch is currently constructed, the Applicants' daughter is unable to use the porch because it does not afford her with enough room to safely maneuver her motorized wheelchair. The purpose of the porch has been frustrated and the expansion is needed for that porch to reasonably be used.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size of the Property or build the home. The Board notes that the protrusion of the gas fireplace off the rear of the home particularly limits that Applicants' ability to reasonably use the existing porch as intended. The unique size and conditions of the Property are clear when reviewing the survey and testimony. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique characteristics and the unique situation caused by their daughter's disability.
- 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 porch will be slightly expanded and most of the expansion will be within the building envelope. The rear of the Property is adjacent to a wooded buffer for the community so the encroachment is not as noticeable as it would otherwise be. 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 variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the Applicants 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 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 a reasonably sized porch addition on the Property. The Applicant proposes to construct most of the porch addition in the portion of the side yard and rear yard portions of the building envelope and only a small portion of the porch addition will encroach into the setback area. The porch will also not extend the width of the house and no variance is needed for steps or ramp as those structures will be built within the building envelope.
- 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.
- h. The Board also finds that the approval is a reasonable accommodation to a person with a disability.
- i. The Board's approval is subject to the condition that the Applicants submit to the Office of Planning & Zoning a copy of the homeowner association's approval of this proposed addition.

The Board granted the variance application with condition 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 with condition. The Board Members in favor of the motion to approve 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 variance application with condition.

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 February 6, 2023.