

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

**IN RE: JOSE RODRIGUEZ-SANCHEZ**

**(Case No. 12410)**

A hearing was held after due notice on February 3, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from front yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.0 feet from the forty (40) feet front yard setback requirement for an existing porch, a variance of 5.9 feet from the forty (40) feet front yard setback requirement for an existing porch, and a variance of 6.9 feet from the forty (40) feet front yard setback requirement for an existing step to the porch. This application pertains to certain real property located on the east side of Hollyville Road approximately 0.75 miles south of Mount Joy Road (911 Address: 26543 Hollyville Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-27.00-36.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, an aerial photograph of the Property, a survey of the Property dated February 19, 2019, a septic plot plan dated August 8, 2018, 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 Jose Rodriguez-Sanchez and Adamari Rodriguez were sworn in to give testimony about the Application and they presented photographs to the Board to review.
4. The Board found that Ms. Rodriguez testified that the Property is unique because the septic is on the left and the drain field is in the rear of the Property.
5. The Board found that Ms. Rodriguez testified that the dwelling could not otherwise be developed as a covered porch was necessary to keep the rain away from the front door.
6. The Board found that Ms. Rodriguez testified that the exceptional difficulty was caused by the location of the drain field in the rear of the Property.
7. The Board found that Ms. Rodriguez testified that the house is 100 years old and the new house is in the same footprint.
8. The Board found that Ms. Rodriguez testified the porch existed in 1912.
9. The Board found that Ms. Rodriguez testified the structure has been lengthened but not expanded.
10. The Board found that Ms. Rodriguez testified the porch will not alter the character of the neighborhood.
11. The Board found that Ms. Rodriguez testified the request is the minimum request to afford relief.
12. The Board found that Mr. Rodriguez-Sanchez testified that the new dwelling is on the original foundation of the prior home and the footprint of the home was not increased.
13. The Board found that Mr. Rodriguez-Sanchez testified that there is a step from the porch.

14. The Board found that Mr. Rodriguez-Sanchez testified that the house was to be remodeled but he found too much damage and that he tried to use the existing roof but it collapsed.
15. The Board found that Mr. Rodriguez-Sanchez testified that he worked with an engineer and reinforced the footers. He used the existing foundation and framed the house off that foundation.
16. The Board found that Mr. Rodriguez-Sanchez testified that there is approximately 50 feet from the step to the edge of paving of the road.
17. The Board found that one person appeared in support of and no one appeared 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 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 the septic system and historical use. The Property was previously developed by a house which pre-dated the enactment of the Sussex County Zoning Code. The Applicant sought to renovate the house but found extensive damage. He then constructed the house on the same foundation as the prior home. The porch and step are consistent with the historical use of the Property. The lot also has a limited building envelope due to the location of the septic system. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing structures on the lot
  - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain the existing structures on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain the reasonably sized structures on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or construct the original house and porch. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the prior development thereof and the Applicant needs the variances in order to reasonably develop the Property as proposed and to retain the existing structures.
  - 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 existing structures to remain in their current location. There were no complaints about the location of the structures. The pictures also demonstrate that the Applicant has improved

the Property. The Board also notes that there is a large gap between the edge of paving of the road and the front property line so the Property appears larger than it actually is. Lastly, the Board finds that no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

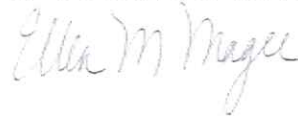
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures on the Property. No additions or modifications to the warehouse are proposed.
- 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, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

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

Date May 5, 2020.