

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

**IN RE: THOMAS M. O'HAGAN**

**(Case No. 12456)**

A hearing was held after due notice on August 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 the rear yard setback requirement and from the minimum aggregate front yard and rear yard requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2 feet variance from the ten (10) feet rear yard setback requirement for a proposed screen porch and a variance of 9.27 feet from the forty (40) feet minimum aggregate front yard and rear yard requirements for a proposed screen porch. This application pertains to certain real property located on the northwest side of Tower Place approximately 488 feet east of Watch Tower Drive within The Overlook subdivision (911 Address: 30603 Tower Place, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-20.00-96.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, tax records, drawings, photographs, a survey of the Property dated May 31, 2016, drawings of the structure, an aerial photograph of the Property, 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 Thomas O'Hagan was sworn in to give testimony about the Application.
4. The Board found that Mr. O'Hagan testified that the Property is unique as there is currently a 12 foot by 14 foot patio off the rear of the house but the building setback line is only 10 feet.
5. The Board found that Mr. O'Hagan testified that the Property is adjacent to a marsh and the marsh has led to mosquito problems in the rear yard. He was unaware of the mosquito problem when purchased the house and he testified that the mosquitos have rendered the rear yard largely unusable.
6. The Board found that Mr. O'Hagan testified that the screened in porch is necessary to enable reasonable use of the Property.
7. The Board found that Mr. O'Hagan testified that the Property cannot otherwise be developed for a screen porch without the variance.
8. The Board found that Mr. O'Hagan testified that the need for the variance was not created by the Applicant but by the uniqueness of the Property.
9. The Board found that Mr. O'Hagan testified that the variances will not alter the essential character of the neighborhood as there are many screen porches in the area.
10. The Board found that Mr. O'Hagan testified that the variances requested are the minimum variances afford relief.
11. The Board found that Mr. O'Hagan testified that the porch will project no farther than the existing patio.
12. The Board found that Mr. O'Hagan testified that there were 3 villas in his townhouse building constructed at the same time and the other two have screened in porches. The middle villa had a porch constructed at the same time the villa was constructed

- (Lot 114) and Lot 115 constructed a porch later. Those porches measure 12 feet by 14 feet; which is the same size as the one proposed by the Applicant.
13. The Board found that Mr. O'Hagan testified that the angle of the lot and the house creates the need.
  14. The Board found that Mr. O'Hagan testified that the patio extends 14 feet from the house and the porch will go 12 feet from the house. He believes a smaller porch would be impractical.
  15. The Board found that Mr. O'Hagan testified that there are no steps from the porch as it exits to pavers.
  16. The Board found that Mr. O'Hagan testified that there are no drainage issues.
  17. The Board found that Mr. O'Hagan testified that homeowner association approval is needed and an application to the homeowners association has been submitted.
  18. The Board found that no one appeared in support of or in opposition to the Application.
  19. 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 as it is oddly shaped, narrow, and has a bug problem. 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.
    - 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 are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The porch is needed due to the bug problems on the site.
    - 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. 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 including 2 within the same townhouse building. 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 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 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 on the side 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; which further minimizes the need for a variance.
- 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 October 5, 2020.