

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAUL DAVIS & DEBORAH DAVIS

(Case No. 12484)

A hearing was held after due notice on October 19, 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 front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 9.4 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 9.9 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for existing steps, and a variance of 16.6 feet from the thirty (30) feet front yard setback requirement for existing steps. This application pertains to certain real property located on the west side of Mississippi Drive within the Plantation Park subdivision (911 Address: 37131 Mississippi Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-16.00-248.05. 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 August 27, 2020, letters of support and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five (5) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Paul Davis and Deborah Davis were sworn in to give testimony about the Application.
4. The Board found that Ms. Davis testified that a porch was added to their vacation home as an improvement for what will be a retirement home.
5. The Board found that Ms. Davis testified that the Property is unique as the lot is angular in shape, narrow in front and wider in the rear.
6. The Board found that Ms. Davis testified that, due to the narrowness of the lot frontage, the porch was designed so that it did not extend the full width of the house.
7. The Board found that Ms. Davis testified that, due to the location of the existing home, detached garage and carport on the Property, there was no other location to build a porch.
8. The Board found that Ms. Davis testified that their builder Federation Builders secured the building permit.
9. The Board found that Ms. Davis testified that the porch enhances the look of the dwelling and will be a welcoming place to visit with neighbors.
10. The Board found that Ms. Davis testified that letters of support from neighbors have been included with the Application.
11. The Board found that Ms. Davis testified that the variances are the minimum to allow the Applicants to complete building the porch and steps in the current location.
12. The Board found that Mr. Davis testified that the construction began in early August 2020.

13. The Board found that Mr. Davis testified that there is approximately 10 feet from the property line to the edge of paving.
14. The Board found that two parties appeared in support of the Application and no parties appeared 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 shape and size of the lot. The lot has an angled side property line which renders the front yard narrower than the rear yard. The front property line is also curved which thereby creates an unusual building envelope. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain a porch and steps 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 Applicants seek to retain the existing porch and steps on the lot but are 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 Applicants to retain the reasonably sized porch and steps 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 Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the prior development thereof and the Applicants needs the variances in order to reasonably develop the Property as proposed and to retain the existing structures. The Board also notes that the Applicants relied on their builder.
 - 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 and for the Applicants to complete construction thereof. There were no complaints about the location of the structures. Rather, the Board has received evidence that neighbors support the request. 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the existing structures on the Property and to complete the construction thereof.

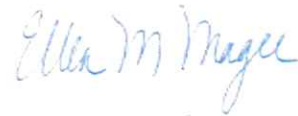
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 December 21, 2020.