

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

### **IN RE: ALICE P. ROBINSON (Case No. 11106)**

A hearing was held after due notice on December 10, 2012. The Board members present were: Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

#### **Nature of the Proceedings**

This is an application for variances from the required lot size requirement for a parcel, the minimum lot width for a parcel and the corner side yard setback requirement.

#### **Findings of Fact**

The Board found that the Applicant was seeking a variance of a 3,465 square-foot variance from the 10,000 square-foot lot size requirement, a 24.98 foot variance from the 75 feet lot width requirement, and a 5 feet variance from the 15 feet corner side yard setback requirement for proposed Lot 2, a 3,531 square-foot variance from the 10,000 square-foot lot size requirement and a 24.98 foot variance from the 75 feet lot width requirement for proposed Lot 3, a 3,596 square-foot variance from the 10,000 square-foot lot size requirement and a 24.98 lot width variance from the 75 feet lot width requirement for proposed Lot 4, and a 3,662 square-foot variance from the 10,000 square-foot lot size requirement and a 24.99 feet lot width variance from the 75 feet lot width requirement for proposed Lot 5. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located north of Route 1 (Coastal Highway) northwest corner of Terrace Road and Silver Lane, being ½ Lot 2, 3,4,5, & ½ 6 within Silver Lake Manor development; said property being identified as Sussex County Tax Map Parcel Number 3-34-20.05-325.00 & 326.00. After a hearing, the Board made the following findings of fact:

1. Alice P. Robinson and Mark Davidson were sworn in and testified on behalf of the Application. Dennis Schrader, Esquire, appeared and presented the Application on behalf of the Applicant.
2. The Board found that Mr. Schrader presented a packet of exhibits to the Board.
3. The Board found that Mr. Schrader stated that the Property consists of lots which were originally created in 1929 and that the lots were approximately 50 feet by 100 feet at that time which were consistent with normal lot sizes at that time.
4. The Board found that Mr. Schrader stated that the Applicant owns three (3) lots and two (2) half lots within the Silver Lake Manor development.
5. The Board found that Mr. Schrader stated that the Applicant wants to create four (4) lots out of her three (3) lots and two (2) half lots.
6. The Board found that Mr. Schrader stated that each of the new lots would consist of approximately 6,300 square-feet.
7. The Board found that Ms. Robinson, under oath, confirmed the statements made by Mr. Schrader.
8. The Board found that Mr. Davidson testified that he surveyed the Property and that he obtained a copy of the 1929 plot from the Office of the Recorder of Deeds.
9. The Board found that Mr. Davidson testified that he searched in Silver Lake to locate the monuments for the survey.
10. The Board found that Mr. Davidson testified that the existing lots have 200 feet of total road frontage.
11. The Board found that Mr. Davidson testified that the Applicant acquired Lots 4 & 5 in 1951 and that the Applicant acquired one-half (1/2) of Lot 6 in 1972.

12. The Board found that Mr. Davidson testified that one-half (1/2) of Lot 2 was conveyed to a neighbor since the neighbor's lot was landlocked and needed access.
13. The Board found that Mr. Davidson testified that the Applicant later purchased one-half (1/2) of Lot 2 and all of Lot 3 in 1978.
14. The Board found that Mr. Davidson testified that the adjacent lots to the North are in the city limits of Rehoboth Beach and that access to those lots is through Silver Lane.
15. The Board found that Mr. Davidson testified that there is uniqueness to the Property since the half lots are on opposite ends of the larger lots.
16. The Board found that Mr. Davidson testified that the lots do not have enough depth to allow for the minimum 10,000 square-foot requirement.
17. The Board found that Mr. Davidson testified that the proposed fifty (50) feet wide lot on the corner will only allow for a twenty five (25) feet wide building envelope.
18. The Board found that Mr. Davidson testified that the exceptional practical difficulty is the half lots are on opposite ends and therefore the Director of Planning & Zoning is unable to approve the proposed subdivision without a variance.
19. The Board found that Mr. Davidson testified that if the two (2) half lots were adjacent to each other, the Director of Planning & Zoning would have approved the fifty (50) feet wide lots.
20. The Board found that Mr. Davidson testified that seventy five (75) feet wide lots will not have enough depth to obtain the minimum 10,000 square-foot lot size.
21. The Board found that Mr. Davidson testified that the increased building area will allow the construction of a dwelling similar to other dwellings in the area.
22. The Board found that Mr. Davidson testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Regulations since the half lots are on opposite sides of the Property.
23. The Board found that Mr. Davidson testified that the existing lots are currently less than the minimum 10,000 square-foot lot size and a majority of the lots throughout the neighborhood are less than 10,000 square-foot in size.
24. The Board found that Mr. Davidson testified that the corner side yard setback requirement applies to all corner lots regardless of the size of the corner lot.
25. The Board found that Mr. Davidson testified that the variances are necessary to enable reasonable use so the Applicant may deed a proposed lot to each of her four (4) children.
26. The Board found that Mr. Davidson testified that the use will be consistent with the intent of the original 1929 subdivision plat.
27. The Board found that Mr. Davidson testified that the variance from the corner side yard will enable Lot 2 to have the same building width as the other three (3) proposed lots.
28. The Board found that Mr. Davidson testified that the difficulty was not created by the Applicant since the Applicant acquired twenty five (25) feet of Lot 6 in 1972 and the half lot of Lot 2 in 1978.
29. The Board found that Mr. Davidson testified that twenty five (25) feet of Lot 2 was deeded to Silver Lake Shores for access prior to the Applicant's acquisition of half of Lot 2.
30. The Board found that Mr. Davidson testified that the majority of the lots in the subdivision are less than 10,000 square-foot in size.
31. The Board found that Mr. Davidson testified that the corner side yard setback requirement does not allow for multiple scale lot sizes.
32. The Board found that Mr. Davidson testified that the variance will not alter the essential character of the neighborhood since the majority of the lots in the area are fifty (50) feet wide.

33. The Board found that Mr. Davidson testified that the existing dwelling owned by the Applicant is located on two (2) lots and the Applicant intends to tear it down.
34. The Board found that Mr. Davidson testified that the corner yard setback variance will allow a proposed dwelling to have a width in character with the neighborhood.
35. The Board found that Mr. Davidson testified that the variances will not substantially or permanently impair the use for development of adjacent properties since the adjacent properties are residential and are fifty (50) feet wide lots.
36. The Board found that Mr. Davidson testified that adjacent properties all have dwellings closer to the road than what is being requested.
37. The Board found that Mr. Davidson testified that the dwellings in Silver Lake Shores are only required to have a ten (10) feet front yard setback.
38. The Board found that Mr. Davidson testified that the variances will not be detrimental to the public welfare since they will not increase the density of the subdivision.
39. The Board found that Mr. Davidson testified that the proposed lots will be larger than other lots in the subdivision.
40. The Board found that Mr. Davidson testified that the reduced side yard setback will still require the proposed dwelling to sit further back on the Property than other existing dwellings in the neighborhood.
41. The Board found that Mr. Davidson testified that the variances are the least modification necessary since the lots are going back to the original lot sizes.
42. The Board found that Mr. Davidson testified that the average lot size of the proposed lots are 6,300 square-feet in size which is still larger than other existing lots in the subdivision.
43. The Board found that Mr. Davidson testified that the side yard setback will be ten (10) feet which is the required setback requirement in Medium Residential Zoning District.
44. The Board found that Mr. Davidson testified that the variances are necessary to afford relief since they will give all the lots the same building area.
45. The Board found that Mr. Davidson testified that the Applicant may build a dwelling on Lots 2 and 3 within a year.
46. The Board found that Mr. Davidson testified that most of the lots laid out in Rehoboth Beach at the time were set up as fifty (50) feet wide lots.
47. The Board found that Mr. Davidson testified that only three (3) of the nine (9) lots in Silver Lake Shores exceed 10,000 square feet in size and that one (1) of the lots in Silver Lake Shores is only 5,000 square feet in size.
48. The Board found that Mr. Davidson testified that some lots in Silver Lake Shores are not fifty (50) feet wide.
49. The Board found that Mr. Davidson testified that there is commercial property less than 200 feet to the west of the proposed lots.
50. The Board found that Mr. Davidson testified that the lots are serviced by public water and sewer available.
51. The Board found that Mr. Davidson testified that the proposal will not result in a change to the adjacent streets and that there is little-to-no-impact to traffic in the area.
52. The Board found that Mr. Davidson testified that the road in front of the proposed lots is a one-way road with westbound traffic only and that there is not any eastbound traffic.
53. The Board found that Mr. Davidson testified that there will be no adverse effect to the visibility due to the corner lot setback variance.
54. The Board found that Ken Mills was sworn in to testify in opposition to the Application.

55. The Board found that Jane Patchell, Esquire, presented on behalf of the neighboring homeowners who oppose the Application and stated that there are concerns for additional traffic problems.
56. The Board found that Ms. Patchell stated that the traffic pattern currently has two (2) one-way roads converging in front of the Property.
57. The Board found that Ms. Patchell stated that many owners obtain half lots to combine with regular lots and that the average lot width in the development is seventy five (75) feet.
58. The Board found that Ms. Patchell stated that the Applicant never acquired four (4) full lots.
59. The Board found that Ms. Patchell stated that Lots 4 and 5 and half of Lot 6 are used as one (1) home site and that the Applicant was aware that the half lots could not be improved.
60. The Board found that Ms. Patchell stated that a case in Superior Court, Yost vs. Pomilio (Sept. 20, 2011), held that an undersized lot is not unique and does not support a variance approval.
61. The Board found that Ms. Patchell stated that the Applicant's lots are not unique since other lots in the neighborhood have the same issues with depth and narrowness.
62. The Board found that Ms. Patchell stated that the Applicant has failed to meet the uniqueness standard.
63. The Board found that Ms. Patchell stated that the Property could be subdivided into two (2) lots without the need for any variance.
64. The Board found that Ms. Patchell stated that, in another case, BET, Inc. vs. Board of Adjustment, the Supreme Court affirmed the Board's decision that a property can be developed in strict conformity and that the difficulty was created by the Applicant.
65. The Board found that Ms. Patchell stated that the Court in BET found that the applicant in that case would be able to reasonably use the property even if the use was not the same as the use the applicant sought.
66. The Board found that Ms. Patchell testified that the Applicant in this case could reasonably use the Property without the need for a variance.
67. The Board found that Ms. Patchell testified that the Applicant has shown no exceptional practical difficulty.
68. The Board found that Ms. Patchell stated that the Verleysen vs. Board of Adjustment case referenced that an Applicant cannot create a self-imposed hardship.
69. The Board found that Ms. Patchell stated that the Applicant is creating her own hardship and that the proposed subdivision will alter the character of the neighborhood.
70. The Board found that Ms. Patchell stated that the proposed development will result in an increase of run off into Silver Lake.
71. The Board found that Ms. Patchell stated that the Applicant has not met the standards for granting a variance.
72. The Board found that Ms. Patchell stated that there is limited parking in the area.
73. The Board found that Ms. Patchell stated that most lots in the neighborhood are not fifty (50) feet wide.
74. The Board found that Ms. Patchell stated that the one-way street is very narrow.
75. The Board found that Ms. Patchell stated that the Property is in the Environmentally Sensitive Overlay District and the stability of the nearby lake is a concern.
76. The Board found that Ms. Patchell stated that neighbors are opposed to the additional lot.

77. The Board found that Ms. Patchell stated that she sees subdividing based on 1929 rules as obsolete.
78. The Board found that Ms. Patchell stated that a letter from Wingate Surveyor about a discrepancy of an older survey could create a boundary line dispute, which in turn would create a domino effect in the neighborhood.
79. The Board found that Ms. Patchell submitted exhibits for the Board to review.
80. The Board found that Ken Mills, under oath, confirmed the statements made by Ms. Patchell.
81. The Board found that Peter Gambrell was sworn in and testified in opposition to the Application.
82. The Board found that Mr. Gambrell testified that he owns property north of the Property and across Silver Lane.
83. The Board found that Mr. Gambrell testified that the topography of the area causes massive flooding to his property when it rains.
84. The Board found that Mr. Gambrell testified that most lots in the area are seventy five (75) feet lots.
85. The Board found that Mr. Gambrell testified that the proposed subdivision will have an adverse affect to the neighborhood.
86. The Board found that Mr. Gambrell testified that a dwelling built that close to the tiny twelve (12) foot paved road will have a dramatic effect to the neighborhood.
87. The Board found that Mr. Gambrell testified that there are mostly two (2) story dwellings in the neighborhood.
88. The Board found that Joe Fillapek was sworn in and testified in opposition to the Application.
89. The Board found that Mr. Fillapek testified that he lives in Silver Lake Shores and that one lot in Silver Lake Shores is only 5,000 square feet in size.
90. The Board found that Mr. Fillapek testified that his dwelling is built on Lots 8 & 9 and that there are eight (8) lots in the development.
91. The Board found that Mr. Fillapek testified that there are only two (2) lots less than 7,500 square-feet in size.
92. The Board found that Mr. Fillapek testified that the character of the neighborhood is larger lots.
93. The Board found that no parties appeared in support of the Application.
94. The Board found that eight (8) parties appeared in opposition to the Application.
95. The Board found that the Office of Planning & Zoning received (8) letters of opposition to the Application.
96. The Board voted unanimously that the case be left open for the limited purpose of acceptance of submission of letters by the Applicant's attorney Dennis Schrader and the opposition's attorney Jane Patchell, regarding the court cases cited in the hearing to the Board's counsel.
97. The Board found that Dennis Schrader and Jane Patchell submitted letters to the Board's counsel regarding the court cases cited in the hearing.
98. Mr. Dale Callaway advised the Board that he reviewed the Application and exhibits and listened to the audiotape of all of the testimony of the public hearing.
99. On January 28, 2013, Mr. Sharp reviewed the cases that were referenced at the public hearing and the letters submitted by the attorneys for the Applicant and the opposition to the Board. The Board discussed the Application.
100. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance.
101. For the Variance Requests from the Minimum Lot Width Requirement, the Board found that
  - a. The Property is unique because there are two (2) twenty-five (25) feet residual portions of lots on opposite sides of the Property;
  - b. An exceptional practical difficulty exists because the original subdivision was designed for fifty (50) feet wide lots and the smaller residual lots are located on opposite sides of the Property.

- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance because the residual lots are located on opposite sides of the Property and are too small to be developed.
- d. The variances are necessary to enable reasonable use.
- e. The difficulty was not created by the Applicant. In 1972, the Applicant acquired twenty five (25) feet of Lot 6. In 1974, twenty five (25) feet of Lot 2 was deeded to Silver Lake Shores for access to the development. In 1978, the Applicant acquired the remaining twenty five (25) feet of Lot 2 and all of Lot 3.
- f. The variances will not alter the essential character of the neighborhood.
- g. The variances will not substantially or permanently impair the appropriate use for development of adjacent property. The adjacent properties are residential and some lots are fifty (50) feet wide.
- h. The variances will not be detrimental to the public welfare.
- i. The variances represent the least modification of the regulation at issue.
- j. The variances are the minimum variances necessary to afford relief.

102. For the Variance Requests from the Minimum Lot Size Requirement, the Board found that

- a. The Property is unique because there is not enough depth to the existing lots that would allow for the minimum 10,000 square-foot lot size. The original lot sizes of the subdivision were less than 10,000 square-feet.
- b. An exceptional practical difficulty exists because there is not enough depth to obtain the minimum 10,000 square-foot lot area.
- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance because the lots as currently recorded are less than 10,000 square-feet in size.
- d. The variances are necessary to enable reasonable use. The use of the Property will be consistent with what the original 1929 subdivision plat intended to have with the lot sizes.
- e. The Applicant did not create the difficulty. The lots, as plotted in the subdivision, are less than 10,000 square-feet.
- f. The variances will not alter the essential character of the neighborhood. The character of the neighborhood is that lots are less than 10,000 square-feet.
- g. The variances will not substantially or permanently impair the appropriate use for development of adjacent property. The majority of adjacent properties are less than 10,000 square-feet.
- h. The variances will not be detrimental to the public welfare.
- i. The variances represent the least modification of the regulation at issue.
- j. The variances are the minimum variances necessary to afford relief.

103. For the Variance Request from the Corner Yard Setback Requirement, the Board found that

- a. The Property is unique because the fifty (50) feet lot width without the variance will only allow for a twenty five (25) feet building envelope for a dwelling.
- b. An exceptional practical difficulty exists because a variance is needed in order to have the building envelope necessary to build a dwelling in the character of other dwellings in the neighborhood.
- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance. The corner lot requirement is set up as a "one size fits all" regulation but does not follow the pattern of the development.
- d. The variance is necessary to enable reasonable use. The corner lot variance will allow Lot 2 to have the same building width as the other fifty (50) feet wide lots in the neighborhood.
- e. The Applicant did not create the difficulty. The corner lot requirement in the Code does not allow for the multiple scales of lot sizes that are recognized in the Code.
- f. The variance will not alter the essential character of the neighborhood. The variance will allow the dwelling to have width that is in line with other homes in the neighborhood.



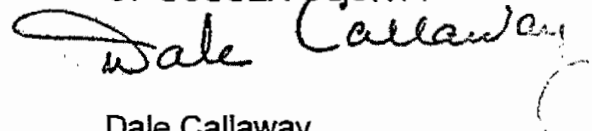
- g. The variance will not substantially or permanently impair the appropriate use for development of adjacent property. The adjacent properties are also developed and, in some cases, sit closer to the road.
- h. The variance will not be detrimental to the public welfare. There will be no negative impact on traffic flow.
- i. The variance represents the least modification of the regulation at issue.
- j. The variance is the minimum variance necessary to afford relief. This variance will afford the Applicant the ability to give to each of her children the same size lot and building area.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date March 19, 2013