

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

**IN RE: DANIEL DAVIS & SARAH DAVIS**

**(Case No. 11927)**

A hearing was held after due notice on March 20, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement and the minimum lot width for a parcel requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 11.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 15.5 feet from the one hundred and fifty (150) feet road frontage requirement for the purpose of subdividing the parcel into two parcels and created Proposed Tract #1, and a variance of 15.66 feet from the one hundred and fifty (150) feet road frontage requirement for the purpose of subdividing the parcel into two parcels and creating Proposed Tract #2. This application pertains to certain real property located on the south side of Club House Road (Road 351) approximately 367 feet east of Bird Heaven Street (911 Address: 37384 Club House Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-73.00.

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 letter from Robert & Lynn Leahy, and a minor subdivision plan of the Property dated August 12, 2016.
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 Daniel Davis was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including a letter of no objection from the Delaware Department of Transportation ("DelDOT"), copies of decisions of the Board of Adjustment, and a minor subdivision plan of the Property dated February 4, 2017.
4. The Board found that Mrs. Burton stated that the Property is located in the MR zoning district and is improved by an existing dwelling which was constructed in or before 1970.
5. The Board found that Mrs. Burton stated that the Applicants purchased the Property in August 2016 with the understanding that the Property could be subdivided.
6. The Board found that Mrs. Burton stated that, when sewer lines were installed in the neighborhood, Sussex County officials recommended the installation of a second sewer connection. The previous owner, thus, reasonably believed that the Property could be subdivided and the previous owner marketed the Property as able to be subdivided.
7. The Board found that Mrs. Burton stated that the Property is unique as it is an oversized lot consisting of approximately 1.168 acres.
8. The Board found that Mrs. Burton stated that the minimum lot size requirement in an MR district is 10,000 square feet and the Property, if subdivided would meet the lot size requirement. The Property, however, cannot be subdivided while still meeting the lot frontage requirement of 150 feet per lot.
9. The Board found that Mrs. Burton stated that the total road frontage for the Property is 268.84 feet and the lot frontage variances are needed to subdivide the Property.

10. The Board found that Mrs. Burton stated that the existing dwelling is an existing nonconforming structure but the variance is being sought to bring the home into compliance with the Sussex County Zoning Code.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicants.
12. The Board found that Mrs. Burton stated that the variances requested are necessary to subdivide the Property and for the existing dwelling and the variances are necessary to enable reasonable use of the Property.
13. The Board found that Mrs. Burton stated that the Applicants did not construct the dwelling or create the size of the Property.
14. The Board found that Mrs. Burton stated that the Property can easily service two separate dwellings on two separate lots.
15. The Board found that Mrs. Burton stated that Sussex County approved the installation of the second sewer connection.
16. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare. The Applicants are unaware of any complaints from neighbors.
17. The Board found that Mrs. Burton stated that the request is smaller than the lot width requirement but the lot size is much larger than the minimum lots size requirement.
18. The Board found that Mrs. Burton stated that other lots in the area do not meet the lot width requirement.
19. The Board found that Mrs. Burton stated that DelDOT does not object to the proposed subdivision.
20. The Board found that Mrs. Burton stated that the variances requested are the minimum variances necessary to afford relief.
21. The Board found that Mr. Davis, under oath, affirmed the statements made by Mrs. Burton.
22. The Board found that Mr. Davis testified that he is an owner of the Property and he and his wife are new homeowners in Delaware. The Applicants want to retire in Delaware.
23. The Board found that Mrs. Burton stated that the existing sheds will be removed.
24. The Board found that Mr. Davis testified that there is a possibility he and his wife will build their dream home on the second lot but, at this time, the Applicants have no intentions of selling the second lot.
25. The Board found that Mr. Davis testified that a majority of the surrounding lots have less than one hundred and fifty (150) feet of road frontage.
26. The Board found that Mr. Davis testified that there would be no problems with setbacks if a new home is built.
27. The Board found that Mr. Davis testified that there is approximately 2 feet from the front property line and the edge of paving for Club House Road.
28. The Board found that Theresa Rogers was sworn in to testify in opposition to the Application and submitted an exhibit to the record.
29. The Board found that Ms. Rogers testified that she owns the adjacent property to the west and she operates a day care at her home.
30. The Board found that Ms. Rogers testified that one of the deciding factors in purchasing her property was the open space between her property and the existing dwelling on her neighbor's property.
31. The Board found that Ms. Rogers testified that the children at her daycare go outside regularly for recess. The play area in her yard is not fenced in.
32. The Board found that Ms. Rogers testified that she has no issues with the location of the existing dwelling but she has concerns about the location of a dwelling within 10 feet of her property.

33. The Board found that Ms. Rogers testified that, if a home was built closer to her property, it would be too close to her play area.
34. The Board found that Ms. Rogers testified that it is heavily wooded between properties but the woods are located on the Applicants' property.
35. The Board found that one (1) party appeared in support of the Application.
36. The Board found that one (1) party appeared in opposition to the Application.
37. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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, which consists of 1.168 acres as shown on the survey, is unique as it a large but narrow lot. The Property only has road frontage of 268.84 feet rather than the minimum 300 feet needed to subdivide the lot into two parcels. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicants who seek to subdivide the lot. The situation is also unique because the existing dwelling on the Property was placed on the lot by a previous owner prior to the enactment of the Sussex County Zoning Code.
  - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seek to subdivide the Property into two lots but are unable to do so without violating the Sussex County Zoning Code due to the narrowness of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable. Likewise, the variance for the existing dwelling is necessary to enable reasonable use of the Property. The dwelling has been on the Property for nearly 50 years but is located too close to the front yard property line. The dwelling cannot remain in its existing location without a variance.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size and shape of the Property nor did the Applicants place the existing dwelling on the Property. The un rebutted evidence confirms that the Property was developed with a house since at least 1970 and has existed in its current form for many years. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, the Property is quite large and could easily service two dwellings on separate lots but the Property is too narrow to meet the lot width requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicants.
  - d. 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 variance for the existing dwelling was not opposed by any neighbors and no complaints about its location were noted in the record. The lack of evidence about the location of the dwelling is telling since the dwelling has been in its existing location for nearly 50 years. The Board also notes that the front yard of the property does not match the edge of paving for the adjacent Club House Road so the front yard appears to be larger than it actually is. Likewise, the variances from the lot width requirements do not appear to affect the character of the neighborhood. The Property will be subdivided

into two lots – both of which will be only slightly smaller than the lot width requirement. The un rebutted evidence confirms that there are other lots in the neighborhood which are less than 150 feet wide. The only opposition to the proposed subdivision expressed concern about the possibility of a home being located ten feet from her side property line. The approval of the variances to allow for the subdivision, however, has no bearing on location of a home on the Property. If the Property were not subdivided, the Applicants could demolish the existing home and build a dwelling ten feet from the neighbor's property line. The Board was simply not convinced that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that DeDOT does not object to the proposed subdivision.

- e. 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 the variances will allow the Property to be subdivided into two lots. The lots are proposed to be divided in such a way as to minimize the need for the variances on the lots while still providing lot frontage that is close to the lot width requirements. Meanwhile, the variance for the dwelling is the minimum variance necessary to afford relief as the variance will allow the dwelling to remain in its present location. No additions to the dwelling are being proposed.

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 Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the discussion or vote on this 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 May 2, 2017.