

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

**IN RE: MILTON ROBERSON & KATHLEEN ROBERSON**

**(Case No. 12395)**

A hearing was held after due notice on December 16, 2019. 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 a variance from the fence height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.5 feet from the 3.5 foot fence height requirement for a proposed fence in the front yard setback. This application pertains to certain real property located on the northwest corner of Double Bridges Road and Neptune Drive (911 Address: 1 Neptune Drive, Frankford) said property being identified as Sussex County Tax Map Parcel Number: 1-34-17.00-545.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, information about the proposed fence, a survey of the Property dated April 6, 2004, pictures, aerial photographs of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Kathleen Roberson and Milton Roberson were sworn in to testify about the Application.
4. The Board found that Ms. Roberson testified that the Applicants propose to construct a six-foot high fence in the front setbacks along Double Bridges Road.
5. The Board found that Ms. Roberson testified that the Property is unique as it was not originally planned by Stephens Management Company to be used as a dwelling site. Rather, the Property was originally designated as a utility lot. As such, the dimensions are differ from the other properties in the neighborhood as other lots are set back farther from Double Bridges Road.
6. The Board found that Ms. Roberson testified that Leland Cypress trees were on the Property along Double Bridges Road but DelDOT clipped the trees and caused irreparable damage. According to Ms. Roberson, the trees provided a safety, privacy, and noise buffer from Double Bridges Road.
7. The Board found that Ms. Roberson testified that the speed limit on Double Bridges Road is 45 miles per hour but cars travel much faster.
8. The Board found that Ms. Roberson testified that the fence cannot be erected without a variance.
9. The Board found that Ms. Roberson testified that the need for the variance was not created by the Applicants.
10. The Board found that Ms. Roberson testified that the fence will not be on the property line, therefore making visibility better for motorists and also creating safety for the Applicants' grandchildren.
11. The Board found that Ms. Roberson testified that the variance will not alter the essential character of the neighborhood and will contribute to public welfare.
12. The Board found that Ms. Roberson testified that the variance requested is the minimum variance to afford relief.
13. The Board found that Ms. Roberson testified that the homeowners association supports the fence over the trees.



14. The Board found that Ms. Roberson testified that that new developments have been constructed along Double Bridges Road and that has led to an increase in traffic and noise.
15. The Board found that Mr. Roberson testified that the fence will be closer to the house than the trees and will be no closer to Neptune Drive than the existing house.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 a lot near the entrance to the Ocean Farm subdivision and was originally designed as a utility lot. As such, the lot is set closer to Double Bridges Road than other lots in the neighborhood. Traffic and noise along Double Bridges Road have increased and a buffer from the traffic and noise is needed. The Applicants previously had Leland Cypress trees along the border with Double Bridges Road but those trees were clipped by DelDOT and were irreparably damaged. The trees need to be removed and the Applicants need a taller than allowed fence to provide an adequate barrier. It is clear that the unique physical characteristics of the Property have created the unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a reasonably sized fence.
  - 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 is bordered by Double Bridges Road at the entrance of the Ocean Farm community. The noise and traffic from Double Bridges Road necessitate that a fence taller than allowed under the Code is needed. The Applicants seek to construct a reasonably sized fence to provide a barrier for their lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct a reasonably sized fence on the Property. The Board is convinced that the shape and location of the fence are also reasonable, which is confirmed when reviewing the survey and exhibits provided by the Applicants. The Board also notes that a fence built in compliance with the Code would likely be ineffective to provide a noise, sound, and privacy barrier from Double Bridges Road. A slightly taller fence is, thus, needed.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unique lot or the need for the fence due to the traffic along Double Bridges Road. The Applicants previously enjoyed a barrier due to Leland Cypress trees but those trees were irreparably damaged by DelDOT and needed to be removed. The unique characteristics of the Property are clear when reviewing the exhibits submitted by the Applicants. The Board is convinced that the unnecessary hardship and exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
  - e. The variance 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 fence will have no effect on the character of the



neighborhood. The fence is reasonable in height and will be located closer to the house than the existing trees. Based on the photographs provided by the Applicants, it is clear that the fence will provide better visibility at the intersection of Double Bridges Road and Neptune Drive. The Board also notes that the homeowners association has indicated its preference to a fence over the trees. The fence should also provide a safety mechanism to keep the Applicant's grandchildren in the yard and away from neighboring properties. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received a letter supporting the Application. The Board also notes that no evidence was presented that the fence would produce visibility or traffic issues.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized fence on the Property which will provide a safe barrier from Double Bridges Road.
- 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 February 18, 2020.