

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

**IN RE: TWO FARMS, INC. (Case No. 11028)**

A hearing was held after due notice on August 20, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances of the front yard setback requirement and from the buffer requirement in a highway corridor overlay zoning district.

Findings of Fact

The Board found that the Applicant was seeking a variance of 15 feet from the 60 foot front yard setback requirement for a proposed canopy and gas pumps and a variance from the buffer requirement in a highway corridor zoning district. The Applicant has requested that the aforementioned requested variances be granted as it pertains to certain real property located southeast corner of Route 13 (Sussex Highway) & Route 24; said property being identified as Sussex County Tax Map Parcel Number 3-32-1.00-101.00. After a hearing, the Board made the following findings of fact:

1. Garth Jones was present and sworn in to testify about the Application.
2. The Board found that Garth Jones testified that the Applicant proposes to place a Royal Farms gas station / convenience store on two parcels (Parcel 100 and Parcel 101). Parcel 101 is the property subject to this Application.
3. The Board found that Garth Jones testified that Parcel 100 is zoned Agricultural Residential (AR-1) and that Parcel 101 is zoned Commercial (C-1).
4. The Board found that Garth Jones testified that the Sussex County Planning & Zoning Commission recommended approval of a conditional use application submitted by Applicant for the proposed Royal Farms store and that the Sussex County Council approved the conditional use application with conditions.
5. The Board found that Garth Jones testified that the Planning & Zoning Commission rescinded the landscape buffer requirement for Parcel 100 due to safety concerns but could not rescind the landscape buffer requirement for Parcel 101 because Parcel 101 is zoned Commercial (C-1).
6. The Board found that Garth Jones testified that the Applicant seeks a variance of the landscape buffer requirement for Parcel 101 through this Application.
7. The Board found that Garth Jones testified that the Property is a corner lot.
8. The Board found that Garth Jones testified that the existing auction building located on the Property will remain and continue to operate.
9. The Board found that Garth Jones testified that the Applicant also seeks a fifteen (15) foot variance from the front yard setback requirement for the placement of gas pumps and a canopy to cover those pumps.
10. The Board found that Garth Jones testified that the Planning & Zoning Commission required that the Applicant place a fifteen (15) foot buffer from the lands of a neighbor to the east of the Property.
11. The Board found that Garth Jones testified that due to the additional buffer, the existing building, the storm water management area and the septic system, the Applicant was required to move its project closer to Route 13.
12. The Board found that Garth Jones testified that the canopy is considered an accessory structure and that only a portion of the proposed canopy will be located in the setback area.
13. The Board found that Garth Jones testified that the variance, if granted, will afford the tankers and emergency vehicles with sufficient space to maneuver on the Property.

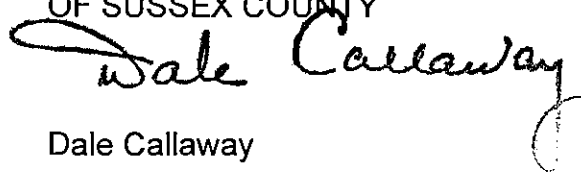
14. The Board found that Garth Jones testified that the hardship is created by the site's constraints and the conditions of the approved Conditional Use Application.
15. The Board found that Garth Jones testified that the variances will not alter the character of the neighborhood.
16. The Board found that Garth Jones testified that there is another gas station with a canopy across the street from the Property and that the pumps and the canopy are entirely in the setback area for that project.
17. The Board found that Garth Jones testified that these variances are the minimum variances to afford relief and are the least modifications of the regulation in issue.
18. The Board found that Garth Jones testified that the required landscaping would create a dangerous situation for ingress and egress to the Property.
19. The Board found that Mr. Jones submitted exhibits to the Board.
20. The Board found that no parties appeared in opposition to or in favor of the Application.
21. The Board found that a letter of concern from a neighbor was submitted to the Office of Planning & Zoning regarding the Application.
22. 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. The project is unique due to the fact that there are two adjacent parcels with separate zoning classifications. The variance will not alter the essential character of the neighborhood. The variance will enable reasonable use of the Property. The requested variance is the minimum variance needed to afford relief. The variance is the least modification possible of the regulation in issue. The variance will not be detrimental to the public welfare.

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, and Mr. Norman Rickard. Mr. John Mills 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 September 11, 2012.