

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

### **IN RE: FLEXERA, INC. (Case No. 11058)**

A hearing was held after due notice on October 1, 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 a variance of the front yard setback requirement.

#### Findings of Fact

The Board found that the Applicant was seeking a variance of 39.3 feet from the required 40 foot front yard setback requirement for existing solar panels. The Applicant has requested that the aforementioned requested variances be granted as it pertains to certain real property located north of Road 368 (Beaver Dam Road) located in common area "B" within Forest Reach development; said property being identified as Sussex County Tax Map Parcel Number 1-34-16.00-296.03. After a hearing, the Board made the following findings of fact:

1. Finn McCabe was sworn in and testified on behalf of the Application.
2. The Board found that Mr. McCabe submitted exhibits in support of the Application.
3. The Board found that Mr. McCabe testified that a discrepancy existed during the permitting process in reference to the setback requirements.
4. The Board found that Mr. McCabe testified that the Property is unique in shape as it consists of two triangular shaped parcels.
5. The Board found that Mr. McCabe testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance.
6. The Board found that Mr. McCabe testified that the solar panels are owned by the Homeowners Association of Forest Reach.
7. The Board found that Mr. McCabe testified that the difficulty was not created by the Applicant.
8. The Board found that Mr. McCabe testified that the variance will enable reasonable use of the Property.
9. The Board found that Mr. McCabe testified that the panels have been on the lot for 2 years.
10. The Board found that Mr. McCabe testified that it will not alter the character of the neighborhood.
11. The Board found that Mr. McCabe testified that there will be no negative effect on surrounding properties.
12. The Board found that Mr. McCabe testified that a setback requirement of 5 feet was indicated on the building permit at the time of construction.
13. The Board found that William Riffell, President of the Homeowners Association, was sworn in and testified about the application.
14. The Board found that Mr. Riffell testified that he agrees with the Applicant's testimony and is not in opposition to the Application but he does have some concerns.
15. The Board found that Mr. Riffell testified that his main concern is Beaver Dam Road is scheduled to be widened and that the existing solar panels will only be 8 feet from the proposed bike path.
16. The Board found that Mr. Riffell testified that he is concerned for public safety and possible damage to the array.
17. The Board found that Mr. Riffell testified that there have been no problems in the 2 years the solar panels have been in place.

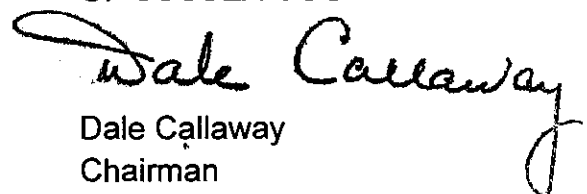
18. The Board found that Mr. Riffell testified that the Homeowners Association is against moving the panels at their cost and that the Association would prefer to leave the solar panels in their current location rather than pay to have them moved.
19. The Board found that no parties appeared in support of the Application.
20. The Board found that one (1) party appeared in opposition to the Application.
21. 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 Property is unique in shape. The variance will enable reasonable use of the Property. The difficulty was not created by the Applicant as there was a miscommunication between the Applicant and Sussex County in the permitting process as to the setback areas. The variance, if granted will not alter the essential character of the neighborhood. The variance sought is the minimum variance to afford relief.

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, and Mr. Norman Rickard. 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 November 7, 2012