

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CLEAN ENERGY USA

(Case No. 11749)

A hearing was held after due notice on April 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 54.4 feet from the sixty (60) feet front yard setback requirement for a proposed open carport. This application pertains to certain real property located on the west side of Coastal Highway approximately 1,142 feet south of Cave Neck Road (911 Address: 16192 Coastal Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-35-23.00-54.06.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated October 23, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter of opposition and no correspondence in support of the Application.
3. The Board found that John Sertich was sworn in to testify about the Application.
4. The Board found that Mr. Sertich testified that he is a representative for a solar panel company and appeared on behalf of Harvard Business Services, which is the owner of the Property. Harvard Business Services operates a LLC creation and tax planning business.
5. The Board found that Mr. Sertich testified that the Property is located along Route 1. The proposed open air carport will provide shade for the existing parking spaces closest to Route 1. Some of the employees are parking in the limited shaded spots during the summer while others are not and the owner of the Property wants to provide this amenity for his employees.
6. The Board found that Mr. Sertich testified that the carport would serve no purpose closer to the building, since the building already provides shade on those parking spaces. The property owner wants the carport so that all of the parking spaces for his employees are shaded and so that the vehicles do not get too hot.
7. The Board found that Mr. Sertich testified that, due to the existing building and another business located at the rear of the Property, the proposed location is the only available space for the proposed carport.
8. The Board found that Mr. Sertich testified that the building on the rear of the Property is sublet to another business.
9. The Board found that Mr. Sertich testified that the proposed carport will not alter the character of the neighborhood as there are other businesses located nearby. There is an antique flea market and a hotel nearby.
10. The Board found that Mr. Sertich testified that the carport will only be used for storage of cars and will house fourteen (14) parking spaces.
11. The Board found that Mr. Sertich testified that the carport will have solar panels on the top. If the carport was located closer to the building, the solar panels would be blocked by the building.
12. The Board found that Mr. Sertich testified that the existing building has solar panels on the roof and more solar panels are needed to offset the cost of electric.

13. The Board found that Mr. Sertich testified that he is unaware of many covered parking spaces in Sussex County and he is not aware of any covered parking spaces for businesses similar to Harvard Business Services.
14. The Board found that Mr. Sertich testified that the Property is unique because the proposed location of the carport is the only location where the carport can be placed which will also allow for solar panels. He believes that this problem also prevents the Property from being otherwise developed in strict conformity with the Sussex County Zoning Code.
15. The Board found that Mr. Sertich testified that solar paneling has only recently become affordable and the property owner cannot place the panels elsewhere on the Property. When the Property was developed, solar use was not viable.
16. The Board found that Mr. Sertich testified that the recent need for solar panels creates an exceptional practical difficulty to the Applicant.
17. The Board found that Mr. Sertich testified that the use will not be detrimental to the public welfare since it poses no more threat than existing structures and signs in the area.
18. The Board found that Mr. Sertich testified that the variance represents the minimum variance to afford relief.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a large lot consisting of approximately 1.6142 acres as shown on the survey provided by the Applicant. The Property is nearly rectangular in shape and is developed by two businesses, multiple buildings, and a large parking lot. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicant. Conversely, the difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code.
 - b. The Board finds that the Property is already being used in strict conformity with the Sussex County Zoning Code and that the variance is not necessary for the reasonable use of the Property. As previously noted, the Property is already heavily developed with two businesses and multiple buildings. In arguing that the variance is needed to enable reasonable use of the Property, the Applicant presented two main reasons for the need for the variance: 1) to provide shaded parking spaces for employees and 2) to offer shade-free space for solar panels. The Applicant's representative acknowledged, however, that there are already existing parking spaces, some of which are otherwise shaded. Likewise, the main building used by Harvard Business Services is serviced by solar panels. It is thus clear to the Board that the Property is already being reasonably used without a variance. Furthermore, Mr. Sertich acknowledged that he was unaware of any other similar carports in Sussex County. It is difficult for the Board to understand how this carport is necessary to enable the reasonable use of the Property when there were no examples given of other similar carports in the entire Sussex County – particularly carports for businesses which are similar to that of Harvard Business Services. The owner's desire to provide shaded

parking spaces for all of his employees clearly appears to be a "want" rather than a "need." The Property is already been reasonably used and the variance is denied.

- c. The exceptional practical difficulty was created by the Applicant. As previously discussed, there are no unique conditions to the Property which have otherwise created an exceptional practical difficulty. Rather, the difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code. The Applicant can clearly use the Property without the need for a variance.
- d. The Board has concerns about the impact of the carport on the adjacent Route 1. As proposed, the carport would be less than ten feet away from this busy thoroughfare and the Board has concerns about the effect of the carport on visibility along Route 1.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the Property is already heavily developed.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to Deny were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date May 17, 2016