

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

**IN RE: PGSD, LLC**

**(Case No. 11882)**

A hearing was held after due notice on November 21, 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 14 feet from the sixty (60) feet front yard setback requirement for a proposed gas canopy and gas pumps. This application pertains to certain real property located on the north side of Lighthouse Road (Route 54) approximately 530 feet east of Old Mill Bridge Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-76.03, 76.06, & 77.00.

1. The Board was given copies of the Application, a survey dated May 10, 2006, a survey of the Property dated October 17, 2016, an aerial photograph of the area, and a portion of the tax map.
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 Mike Ryman was sworn in to testify about the Application.
4. The Board found that Mr. Ryman testified that the Applicant proposes to develop the Property for a Royal Farms gas station.
5. The Board found that Mr. Ryman testified that the Property was created when neighboring lands were developed.
6. The Board found that Mr. Ryman testified that the Property is unique as it is a narrow property for a commercial lot.
7. The Board found that Mr. Ryman testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mr. Ryman testified that, if the gas pumps were moved to fit within the building envelope, there would not be sufficient room for drive aisles or room for safe maneuvering of vehicles. Fuel trucks need sufficient room to maneuver on the Property as well.
9. The Board found that Mr. Ryman testified that the building has been placed as far towards the rear of the Property as possible so as to minimize the variance needed.
10. The Board found that Mr. Ryman testified that the Applicant did not create the exceptional practical difficulty.
11. The Board found that Mr. Ryman testified that a right-of-way acquisition by the Delaware Department of Transportation ("DelDOT") reduced the size of the front yard. DelDOT took an additional twenty (20) feet for the right-of-way and, had DelDOT not taken the additional right-of-way area, no variance would be needed.
12. The Board found that Mr. Ryman testified that the condition was not created by the Applicant.
13. The Board found that Mr. Ryman testified that the variance will not alter the essential character of the neighborhood. Other businesses in the area are located closer to Route 54 than is being proposed by the Applicant.
14. The Board found that Mr. Ryman testified that the proposed Royal Farms store is one of the smaller models used by Royal Farms.

15. The Board found that Mr. Ryman testified that Royal Farms is under contract to purchase the Property.
16. The Board found that Mr. Ryman testified that the storm water management area on the Property is used to service the neighboring development and the storm water management pond limits the usable area of the Property as well.
17. The Board found that Mr. Ryman testified that the Property has frontage on three (3) roads and the multiple entrances to the site limit the buildable area of the lot as well.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 smaller commercial lot with frontage on three roads. These unique conditions have led to a smaller building envelope. The small building envelope is exacerbated by the fact that DelDOT has taken a portion of the Property for a right-of-way acquisition. Had there not been a right-of-way acquisition, no variance would be needed. The Property is also unique because it contains a stormwater management pond which services a neighboring community. This pond is located in an area which could otherwise be used for the commercial business. The existence of the pond has, thus, also limited the buildable area of the lot. The Board finds that the unique physical conditions of the Property have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variance so that it can develop the Property for a Royal Farms store. Royal Farms sells gasoline and the variances are needed for the gas canopy and fuel pumps. The Applicant is unable to fit those structures in the building envelope while providing safe travel lanes for vehicles on the site. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the gas canopy and fuel pumps to be placed on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. Rather, the difficulty was created by the unique physical conditions of the Property; particularly its small size, its frontage on three roads, the location of a stormwater management pond servicing neighboring lands, and the loss of a significant portion of the Property due to a DelDOT taking. The DelDOT taking has posed a particular challenge for the Applicant because, without the taking, the Property could have been developed as proposed without a variance. The unique situation and physical conditions of the Property have thus created the exceptional practical difficulty for the Applicant.
  - d. 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 gas canopy and fuel pumps will be located a similar distance from Route 54 as other commercial buildings in the neighborhood, including a gas station nearby. The granting of the variance should benefit the users of the Royal Farms store as it will reduce congestion on the site and will provide safer drive aisles. 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.

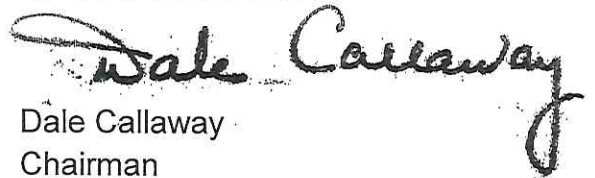
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place the fuel pumps and gas canopy on the Property while providing safe travel lanes for its customers. The Board also notes that the Applicant plans to place the store farther towards the rear yard to minimize the need for the variance. Additionally, the Applicant plans to use one of its smaller model stores so as to reduce the need for the variance.

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. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 2/7/2017