

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DELAWARE ELECTRIC COOPERATIVE, INC.

(Case No. 11906)

A hearing was held after due notice on February 20, 2017. The Board members present were Mr. John Mills, Mr. Jeff Hudson, 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 15.3 feet from the sixty (60) feet front yard setback requirement along Cart Branch Road for a proposed 80,000-gallon water tank to supply fire protection water for a new 20,000 square foot warehouse that is to be constructed. This application pertains to certain real property located on the west side of Sussex Highway (Route 13), east side of Cart Branch Road and north side of Adams Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-30-14.00-16.00 & 18.01.

1. The Board was given copies of the Application, a portion of an undated survey, an aerial photograph of the Property, 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 Harold Dew and Patrick Ryan were sworn in to testify about the Application. Terry Jaywork, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets for the Board to review.
4. The Board found that Mr. Jaywork stated that the Applicant is constructing a new 20,000 square foot warehouse.
5. The Board found that Mr. Jaywork stated that Sussex County Council approved a conditional use for the warehouse and the Applicant also received site plan approval from the Planning & Zoning Commission. The site plan approval was contingent upon the Applicant receiving approval from the State Fire Marshal and the State Fire Marshal determined that the Applicant did not have sufficient water storage for the fire suppression system for the warehouse.
6. The Board found that Mr. Jaywork stated that the existing storage tank holds 48,000 gallons and 123,000 gallons of water are needed to have the sufficient amount of water storage for the fire suppression system.
7. The Board found that Mr. Jaywork stated that the new storage tank must be close enough to the existing fire protection system to allow gravity flow of water from the new tank to the existing tank. The farther away the tank is from existing pump house, the more water will be lost and the larger the tank will need to be.
8. The Board found that Mr. Jaywork stated that the proposed position is the best location for the new tank as the proposed tank will be located near the existing tank.
9. The Board found that Mr. Jaywork stated that the proposed tank will be taller than the existing tank. The proposed tank will be 40 feet tall with a railing on top.
10. The Board found that Mr. Jaywork stated that the proposed tank will be farther from the road than the existing structures on the Property. Those structures have been in place since 1982.
11. The Board found that Mr. Jaywork stated that the tank is along the Cart Branch Road side of the Property.
12. The Board found that Mr. Jaywork stated that there are only 4 houses on Cart Branch Road and there are agricultural fields and woodlands nearby.

13. The Board found that Mr. Jaywork stated that the structures were constructed in the 1980s and the setback requirements at that time were different. The setback requirements in 1982 were forty (40) feet from the front making the existing structures much closer to the road than the proposed water tank.
14. The Board found that Mr. Jaywork stated that the Applicant developed the Property over time and purchased nearby lands as the operation expanded. There is limited area for development.
15. The Board found that Mr. Dew testified that he is the manager of purchasing and storage at Delaware Electric Cooperative, Inc., and he is familiar with the new warehouse.
16. The Board found that Mr. Dew affirmed the statements made by Mr. Jaywork.
17. The Board found that Mr. Jaywork stated that the Property is unique.
18. The Board found that Mr. Jaywork stated that the Property houses all of the offices, warehousing, equipment, and storage for the Applicant.
19. The Board found that Mr. Jaywork stated that the Applicant received conditional use approval as a public service facility.
20. The Board found that Mr. Jaywork stated that the Property is an island of land because it is surrounded by road frontage on three sides and woods and wetlands on the other side.
21. The Board found that Mr. Jaywork stated that the Property is a through lot. The side of the Property facing Route 13 is generally considered the front yard and the side of the Property facing Cart Branch Road is generally considered the rear yard but both sides are considered front yards for zoning purposes.
22. The Board found that Mr. Jaywork stated that Cart Branch Road is a lightly traveled road.
23. The Board found that Mr. Jaywork stated that the setback requirements were increased in 1999 from 40 feet to 60 feet. If the setback requirements had not been increased, there would be no need for the variance.
24. The Board found that Mr. Jaywork stated that the Applicant is installing approximately 200 new electric meters per month and the Applicant's operation is growing.
25. The Board found that Mr. Jaywork stated that the proposed tank needs to be in close proximity to the existing tank and pump house and state fire regulations require a new water tank.
26. The Board found that Mr. Jaywork stated that the variance is needed to enable reasonable use of the Property.
27. The Board found that Mr. Jaywork stated that the variance will not alter the essential character of the neighborhood.
28. The Board found that Mr. Jaywork stated that the Applicant has been on the Property for decades and the Property is a large parcel.
29. The Board found that Mr. Ryan, of Ryan Architects, testified that a new tank must connect into the existing pump system in order to pump water to all buildings.
30. The Board found that no parties appeared in support of or in opposition to the Application.
31. 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 through lot with road frontages on three roads and is bordered on the fourth side by woods and wetlands. The Property is a larger parcel which has been developed over time by the Applicant as it gradually expanded its operation. The situation is also unique because the Applicant developed the Property when the setback

requirements were only 40 feet as opposed to the current 60 feet setback requirement. While the Property is large, the setback requirements have created a limited building envelope. Several structures on the Property were constructed prior to the enactment of the more stringent setback requirements. As such, some of these structures, including the existing water tank, are located closer than 60 feet from Cart Branch Road. The Applicant seeks to construct a new warehouse, which will meet the setback requirements, but the State Fire Marshal requires that a new water tank be constructed to meet fire suppression regulations for the warehouse. The existing tank on the Property is located near the proposed tank and the tanks must be located near each other for the system to function properly. The existing tank is almost entirely located within the 60 feet setback area. This situation is clearly unique and has further created challenges for the Applicant in its attempt to reasonably expand its operation to meet consumer demand. The Board finds that the Property's unique characteristics have created an exceptional practical difficulty for the Applicant and this difficulty has been exacerbated by the State Fire Marshal requirements and the change in the setback requirements.

- b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on three sides by roads and has unique setback requirements. The Applicant seeks to construct a water tank of a reasonable size but is 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 Applicant to construct the water tank on the Property. The Board is convinced that the shape and location of the water tank is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the tank is located a similar distance from Cart Branch Road as the existing water tank and that the variance would not be needed if the setback requirements had not changed after the Property had already been developed. The Board also finds it persuasive that the tank could not be placed elsewhere on the Property because it must be located near the existing tank and that tank already encroaches into the setback area.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant seeks to expand its operation by constructing a warehouse – which has already received necessary zoning approvals. In order to construct the warehouse, the Applicant must improve its fire suppression system and the only place to locate a new water tank to service this system is near the existing tank. The existing water tank was placed prior to the enactment of more stringent setback requirements and the tank is located within the setback area. The Applicant is unable to place the new tank elsewhere on the Property to meet both the fire suppression regulations and the setback requirements. This unique situation has created an exceptional practical difficulty for the Applicant. The Board also notes that the Property is unique as it is bordered on three sides by roads and by woods and wetlands on the other side. These conditions have greatly limited the building envelope on the Property and limited the Applicant's ability to reasonably expand its operation. The Board finds that the uniqueness of the Property and this situation have not been created by 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 Board is convinced that the water tank will have no effect on the character of the

neighborhood. Another water tank has been on the Property since 1982 in a similar location and no complaints were noted in the record about its location. From the pictures provided by the Applicant, there are other structures located a similar distance from Cart Branch Road as well. Since other structures are located a similar distance from Cart Branch Road, it is unlikely that the encroachment of the new water tank would even be noticeable. The pictures also demonstrate that the nearby properties are sparsely populated and are largely used for agricultural purposes. 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 construct a reasonably sized water tank to service its new warehouse. The Board is convinced that the Applicant explored other options for locating the water tank but cannot otherwise locate it on the Property without a 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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on this 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 April 4, 2017.