

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DELAWARE ELECTRIC COOPERATIVE, INC.

(Case No. 11941)

A hearing was held after due notice on April 3, 2017. 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 22 feet from the sixty (60) feet front yard setback requirement along Cart Branch Road for an existing generator to be replaced on a through lot. This application pertains to certain real property located on the west side of Sussex Highway (Route 13), on the east side of Cart Branch Road and both sides 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 plan dated February 2017, 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 Jack Jester was sworn in to testify about the Application. Terry Jaywork, Esquire, presented the case on behalf of the Applicant. Mr. Jaywork submitted a Power Point presentation for the record.
4. The Board found that Mr. Jaywork stated that the Applicant wants to install a gas fire generator to replace the diesel fire generator. The generator is an emergency backup generator.
5. The Board found that Mr. Jaywork stated that the Applicant provides electricity to over 93,000 customers and the Applicant maintains a 455 kilowatt emergency generator at its headquarters to provide power in the event of a power failure. The generator has been on the Property since 1998.
6. The Board found that Mr. Jaywork stated that new air quality emissions standards have been enacted and the generator failed inspections related to those regulations. The Applicant was served with an environmental violation by the Department of Natural Resources & Environmental Control ("DNREC"). The Applicant tried to remediate the problem to no avail so the Applicant opted to replace the generator with a new generator.
7. The Board found that Mr. Jaywork stated that the proposed generator meets the new DNREC requirement.
8. The Board found that Mr. Jaywork stated that the generator has to be placed in the proposed location for three critical reasons: 1) voltage sensors on the site are located in this area and are needed to detect a loss in power and to trigger the operation of the generator, 2) the transformer will be located close to the proposed generator, and 3) the existing generator cannot be removed until the new generator is place and running.
9. The Board found that Mr. Jaywork stated that the angle of the property line creates a closer setback on one corner of the generator.
10. The Board found that Mr. Jaywork stated that the west neighboring lot is also owned by the Applicant.

11. The Board found that Mr. Jaywork stated that the generator will only run during testing and power outage and that the new generator will be cleaner and quieter than the existing generator.
12. The Board found that Mr. Jester, under oath, affirmed the statements made by Mr. Jaywork.
13. The Board found that Mr. Jester testified that an ammonia issue triggered the request for a new generator.
14. The Board found that Mr. Jester testified that there is no other place to locate the generator without redesigning or redeveloping the current systems.
15. The Board found that Mr. Jaywork stated that the Property is unique and the Property cannot otherwise be developed.
16. The Board found that Mr. Jaywork stated that the Applicant is required by law to provide reliable electrical service to its customers.
17. The Board found that Mr. Jaywork stated that the generator will help the Applicant meet those duties in times of power outages.
18. The Board found that Mr. Jaywork stated that the exceptional practical difficulty was not created by the Applicant.
19. The Board found that Mr. Jaywork stated that Sussex County amended its ordinance after the Applicant acquired the Property and installed its facilities and the amendments to the ordinance increased the setback requirement.
20. The Board found that Mr. Jaywork stated that the Applicant has attempted to use the existing generator but continued use is not feasible.
21. The Board found that Mr. Jaywork stated that the variance will not alter the essential character of the neighborhood.
22. The Board found that Mr. Jaywork stated that the Applicant has received no complaints about its activities.
23. The Board found that Mr. Jaywork stated that the generator is a small structure in relation to the other structures on the Property.
24. The Board found that Mr. Jaywork stated that the existing generator and fuel tanks will be removed.
25. The Board found that Mr. Jaywork stated that the variance requested is the minimum variance necessary to afford relief.
26. The Board found that no parties appeared in support of or in opposition to the Application.
27. 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 generator, are located closer than 60 feet from Cart Branch Road. The Applicant seeks to construct a new generator but the generator must be located near the existing generator due to the infrastructure already in place. This situation is clearly unique and has further created challenges for the Applicant in its attempt to meet new environmental regulations

enacted after the generator was originally placed on the Property. 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 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 new generator 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 generator on the Property. The Board is convinced that the shape and location of the generator is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the generator is located a similar distance from Cart Branch Road as the existing generator 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 generator could not be placed elsewhere on the Property because it must be located near the existing generator.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant seeks to replace an existing generator which no longer complies with environmental regulations. In order to construct the generator, the Applicant must place the new generator near the existing generator. The existing generator was placed prior to the enactment of more stringent setback requirements and the generator is located within the setback area. The Applicant is unable to place the new generator elsewhere on the Property to meet the three critical conditions of the placement of the generator. 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 update its generator. 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 generator will have no effect on the character of the neighborhood. Another generator has been on the Property since 1998 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 generator 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 generator to

service its operation in the event of a power outage. The Board is convinced that the Applicant explored other options for locating the generator 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. 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 May 16, 2017