

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DELMARVA POWER & LIGHT

(Case No. 11960)

A hearing was held after due notice on May 15, 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 minimum buffer and landscape requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance from the minimum buffer and landscape requirements. This application pertains to certain real property located on southwest side of Coastal Highway (Route 1) approximately 340 feet southeast of Dartmouth Drive (911 Address: 18200 Coastal Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-497.00 & 496.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, and a site plan of the Property.
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 Jim Smith and Sonia Marichic-Goudy were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including minutes of the Planning & Zoning Commission hearing dated February 23, 2017, and the Sussex County Council hearing dated March 7, 2017, deeds to the Property, Power Point presentation, agency comments, and proposed findings of fact.
4. The Board found that Mrs. Burton stated that this request is a part of the Midway Substation Expansion Project.
5. The Board found that Mrs. Burton stated that the Applicant has owned the Property since 1960 and purchased nearby property in 2015 to expand the substation. A conditional use for the expansion of the substation was approved by Sussex County Council on March 7, 2017.
6. The Board found that Mrs. Burton stated that the issues with the landscape buffer were addressed during the presentation to both the Planning & Zoning Commission and Sussex County Council as part of the conditional use application process.
7. The Board found that Mrs. Burton stated that the Applicant has safety, maintenance, and security concerns with the landscape buffer.
8. The Board found that Mrs. Burton stated that Sussex County Council imposed 4 conditions on the conditional use but did not require landscaping. The Applicant now seeks a waiver of the landscape buffer requirement.
9. The Board found that Mrs. Burton stated that the Property is unique. The Property consists of two parcels, is irregularly shaped, and is located along the Route 1 corridor in a predominately commercial zone.
10. The Board found that Mrs. Burton stated that the Property is the site of the Midway Substation and is a major electrical interconnection point. The Applicant is expanding its substation to meet its customers' service needs.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty is related to the uniqueness of the Property and there is no possibility that the

Property can be developed in strict conformity with the Sussex County Zoning Code.

12. The Board found that Mrs. Burton stated that any landscape buffer would be in close proximity to both overhead and underground utilities and propose safety hazards and risks.
13. The Board found that Mrs. Burton stated that the variance will not alter the character of the neighborhood or be detrimental to the public welfare. The Applicant has used the Property since 1960 with no landscape buffer.
14. The Board found that Mrs. Burton stated that the Planning & Zoning Commission found that the proposed substation will promote the health, safety, and welfare of Sussex County resident.
15. The Board found that Mrs. Burton stated that neighboring properties do not have a landscape buffer.
16. The Board found that Mrs. Burton stated that the variance requested represents the minimum variance necessary to afford relief.
17. The Board found that Mr. Smith, who is the Senior Public Affairs Manager for Delmarva Power, testified that the Property is the site of a major interconnection point that serves 3,000 to 4,000 customers between Five Points and Rehoboth.
18. The Board found that Mr. Smith testified that there are three concerns with the landscape buffer requirement: reliability, safety, and security.
19. The Board found that Mr. Smith testified that the Applicant refrains from planting trees and vegetation outside their substations because trees can grow into the electric infrastructure and powerlines.
20. The Board found that Mr. Smith testified that the Midway Substation transfers a significant amount of electricity to and from the site and trees located near powerlines can cause a tremendous reliability and safety problems – particularly if limbs break off during storms.
21. The Board found that Mr. Smith testified that the site also has underground utilities which need to be accessed as well.
22. The Board found that Mr. Smith testified that the Applicant has been clearing vegetation near substations and powerlines due to increase in copper theft over the past 10-15 years. The landscape buffer can provide shielding to copper thieves or other persons seeking unauthorized access to the site.
23. The Board found that Mr. Smith, under oath, affirmed the statements made by Mrs. Burton.
24. The Board found that Ms. Marichic-Goudy presented the site plan and testified that the fenced in area of the site plan is the location of all the electrical equipment. Outside of the fenced in area is the stormwater management system and the stormwater management area will be located between the substation and Route 1.
25. The Board found that Ms. Marichic-Goudy testified that the existing entrance will be used.
26. The Board found that Ms. Marichic-Goudy testified that that the buffer will be located between Route 1 and the stormwater management system and a grass / turf buffer is being proposed.
27. The Board found that no parties appeared in support of or in opposition to the Application.
28. 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 clearly unique as it is a large property consisting of 2 parcels located along Route 1 which has been used since 1960 as an electrical

substation. The Applicant now seeks to expand the substation to meet the service needs of its clients. The Applicant has received a conditional use approval for this use. Since the site is located along Route 1, the substation is subject to the landscape buffer requirement. The landscape buffer requirement, however, poses a problem for the Applicant since compliance with this requirement would require the planting of trees and other vegetation between the substation and Route 1. This vegetation poses safety, reliability, and security concerns for the Applicant. The Applicant is unable to safely expand its substation while complying with the landscape buffer requirements. The Board finds that this unique situation has created an exceptional practical difficulty for the Applicant and that the variance from the landscape buffer requirement is needed.

- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The landscape buffer requirement would pose great safety, reliability, and security concerns for the Applicant. Specifically, the landscape buffer requirement would require the Applicant to plant trees which would potentially grow into the powerlines and the substation thereby presenting safety and reliability problems – particularly during storms. The Board finds these concerns to be compelling and problematic for the Applicant's business. Likewise, the Applicant's concerns about the landscape buffer providing shielding for copper thieves is also reasonable. As such, 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 reasonably expand its substation while limiting the safety, reliability, and security concerns associated with the landscape buffer requirement. The Board is convinced that any landscaping in this buffer area would pose significant problems for the Applicant – who is an electrical service provider in the area.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant has used the Property for an electrical substation since 1960 – long before the landscape buffer requirement took effect. The Applicant now seeks to reasonably expand its substation to accommodate increased usage by its customers but cannot do so due to the landscape buffer requirement. The Board is convinced that this situation is quite unique and that the uniqueness of the Property and the situation have created the exceptional practical difficulty. Without relief from the landscape buffer requirement, it is difficult to see how the Applicant could safely operate its substation on the Property.
- 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 proposed variance from the landscape buffer will result in a front yard that is covered in turf rather than large deciduous trees and shrubs. As testified by the Applicant, there are other businesses along Route 1 which have a similar turf buffer. The relief from the landscape buffer requirement should improve the safety and reliability of the substation and thereby benefit electrical customers who are located in the nearby Lewes – Rehoboth area. 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 reasonably expand its substation on the Property in a safe manner.

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 Members 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 July 25, 2017