

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PROXIMITY MALT, LLC

(Case No. 12155)

A hearing was held after due notice on June 18, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 19.3 feet from the forty (40) feet rear yard setback requirement and a variance of 20.7 feet from the forty (40) feet rear yard setback requirement for an existing holding tank. This application pertains to certain real property located on the southwest corner of St. George Road and Bi-State Boulevard (Route 13). (911 Address: 33222 Bi-State Boulevard, Laurel); said property being identified as Sussex County Tax Map Parcel Number 3-32-3.00-56.00.

1. The Board was given copies of the Application, a survey of the Property dated August 2017, schematic design review meeting minutes, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Ring Lardner, Jason Lord, and Matt Musial were sworn in to testify about the Application and submitted an exhibit booklet for the Board to review.
4. The Board found that Mr. Lardner testified that the tank in question is a 400,000-gallon post-treatment holding tank.
5. The Board found that Mr. Lardner testified that the Property is unique because it is bordered on 3 sides by rights-of-ways. To the north of the property is St. George's Road and to the east of the Property is Bi-State Boulevard (Rt. 13). Norfolk Southern Railroad owns property to the west of the site. The Property is zoned LI-2.
6. The Board found that Mr. Lardner testified that the Property has on-site disposal of wastewater but the plan has been updated after consultation with DNREC and the wastewater will be disposed of off-site. During construction, the contractor installed the existing tanks incorrectly and this error was not discovered until later. The tank was designed to be located 20 feet from the rear property line.
7. The Board found that Mr. Lardner testified that this is the only location where the tanks fit and another agency dictates the location of the system and the size of the treatment plant. DNREC requires the holding tank. Strict conformance with the setbacks would result in insufficient storage for the wastewater.
8. The Board found that Mr. Lardner testified that the Property has been redeveloped from a grain facility to a malt facility. The silos on the site existed prior to the holding tank.
9. The Board found that Mr. Lardner testified that the use will not alter the essential character of the neighborhood.
10. The Board found that Mr. Lardner testified that the variances requested are the minimum variances requested in order to meet outside agency requirements. The variances are needed for the portion of the holding tank located to the rear of the Property.
11. The Board found that Mr. Lord testified that the facility is served by two tanks which are an equalization tank and a post-treatment tank. The tanks, which have metal

sides, are consistent with the size requirements implemented by DNREC. Approximately 88,000 gallons of treated wastewater will be sent to a property off-site for disposal per day.

12. The Board found that Mr. Lord testified that the tanks cannot be located elsewhere on the Property.
13. The Board found that Mr. Lord testified that the Applicant takes grain and produces malt. The grain being turned into malt creates wash water that has to be properly treated and disposed. While the process is basically washing grain, DNREC defined the wash water as wastewater which needs to be treated in accordance with DNREC regulations. These regulations require the placement of holding tanks.
14. The Board found that Mr. Lord testified that, prior to construction, the placement of the tanks was staked out and the tanks were skewed from the property lines.
15. The Board found that Mr. Musial testified that the Applicant has owned the Property since 2016 and has operated its business since December 2017. The Applicant has 16 employees and plans to increase to 22 employees.
16. The Board found that Mr. Musial testified that there have been no complaints from neighbors.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 bordered on three sides by rights-of-way. The Property also has a panhandle shape. These conditions limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain a wastewater treatment holding tank on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and borders 3 rights-of-way. The buildable area thereof is limited due to these conditions. The Applicant seeks to retain a holding tank consistent with DNREC regulations 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 a reasonably sized holding tank to remain on the Property. The Board is convinced that the shape and location of the holding tank are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The tank is needed as part of the Applicant's malt business and is required by DNREC regulations.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property or border the Property along 3 rights-of-way. The Applicant only recently acquired the Property and is redeveloping a grain facility into a malt facility. The Property was previously improved by grain silos. The Property has a unique shape which has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics. The Board also notes that the Applicant relied on professionals to design the holding tank in compliance with all regulations only to later discover this encroachment.

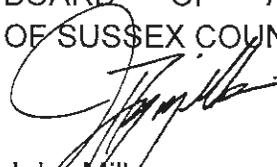
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the holding tank will have no effect on the character of the neighborhood. The holding tank will be located to the rear of the Property and the neighbor to the rear is a railroad company and that property is a right-of-way. There was no evidence that the location of the holding tank in the rear yard setback area would somehow affect the railroad right-of-way. Notably, no complaint was noted in the record about the rear yard encroachment and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the Property is zoned LI-2.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized holding tank consistent with DNREC regulations on the Property. No additions or modifications to the holding tank are proposed.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date September 11, 2018