

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY L. CONAWAY, LLC

(Case No. 12276)

A hearing was held after due notice on March 18, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback and side yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 13.4 feet from the fifty (50) feet side yard setback requirement on the southeast side for an existing chicken house; 2) a variance of 1.3 feet from the fifty (50) feet side yard setback requirement on the southwest side for an existing chicken house; 3) a variance of 0.3 feet from the fifty (50) feet front yard setback requirement for an existing chicken house; 4) a variance of 50 feet from the fifty (50) feet side yard setback requirement on the west side for an existing manure shed; 5) a variance of 10.41 feet from the forty (40) feet front yard requirement for a proposed solar panel foundation; and 6) a variance of 14.75 feet from the forty (40) feet front yard setback requirement for a proposed solar array. This application pertains to certain real property located on the northeast side of E. Piney Grove Road, approximately 511 feet northwest of Governor Stockley Road (911 Address: 22358 E. Piney Grove Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number 1-33-10.00-9.02.

1. The Board was given copies of the Application, a survey of the property dated December 4, 2018, a deed to the Property, 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 Gary Conaway and Allen Hazzard were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mrs. Burton stated that the Applicant wishes to make energy efficient improvements to his existing agriculture operations by installing a solar array on the Property. The Applicant will be applying for a grant from USDA to help off-set the cost of these improvements.
5. The Board found that Mrs. Burton stated that the Property is an irregular shaped lot making it unique. The Property consists of approximately 5 acres of land and is used for the existing poultry operation.
6. The Board found that Mrs. Burton stated that the solar array can only be installed in the front of the Property because the connection point is located there and the efficiency would be lost if it were to be moved. The roofs of the chicken houses are not structurally sound enough to take the weight of the solar array.
7. The Board found that Mrs. Burton stated that grant requirements state that the solar panels must be on the property which is benefiting from it and this is the only physical location on the Property that will work.
8. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property.

9. The Board found that Mrs. Burton stated that the Property cannot be developed in strict conformity with Sussex County Code without the requested variances and the variances are necessary to enable the reasonable use of the Property.
10. The Board found that Mrs. Burton stated that the non-conforming chicken houses and manure shed cannot be relocated.
11. The Board found that Mrs. Burton stated that the need for the variances was not created by the Applicant as two of the poultry houses have been in place since 1983, the third since 1986, and the manure shed since 1992.
12. The Board found that Mrs. Burton stated that these variances will not alter the essential character of the neighborhood or be detrimental to the public welfare.
13. The Board found that Mrs. Burton stated that the existing improvements have been in place for more than 26 years.
14. The Board found that Mrs. Burton stated that the Applicant and family members own most of the surrounding properties.
15. The Board found that Mrs. Burton stated that the requested variances represent the minimum variances to afford relief.
16. The Board found that Mr. Conaway affirmed the statements made by Mrs. Burton as true and correct.
17. The Board found that Mr. Hazzard, from Solaire, LLC, testified that the solar panels will be placed on the Property facing due south and that, if the panels were placed on the rear of the Property, they would be shaded by the chicken houses and would also cause a setback issue.
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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for that structure.
 - a. The Property is unique due to its shape and historical use. The Property has been historically used for poultry operations and, recently, the Applicant sought to make energy improvements to the operations by installing solar arrays. The Applicant is obtaining a grant from the USDA which requires that the panels be located on the property which will benefit from the arrays. If the panels were located in the rear of the Property, sunlight would be blocked by the location of the poultry houses. Additionally, the arrays cannot be placed on the roofs of the poultry houses due to structural concerns. These conditions have greatly limited the location where the solar arrays may be located on the Property. Meanwhile, the other structures have been on the Property for many years. These unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to retain existing structures on the lot and to place solar panels 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures on the lot related to its poultry operation and to construct solar panel arrays on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow these reasonably sized structures to remain on the lot and for the Applicant to make reasonable improvements to the lot by adding the solar arrays. The Board is convinced that the shape and location of these structures are also

reasonable, which is confirmed when reviewing the survey provided by the Applicant.

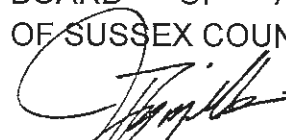
- c. The exceptional practical difficulty was not created by the Applicant. The Property is used as part of the Applicant's poultry operation and the Applicant and the Applicant's family members own adjacent lands. The Property is used by Applicant with the other lots as part of its active farming operation. The poultry houses and manure shed were placed on the lot many years ago and these conditions have resulted in a limited building envelope on the Property where the solar arrays can be located. These conditions have created the exceptional practical difficulty.
- 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 structures will have no effect on the character of the neighborhood. The poultry houses and manure shed have been on the Property for at least 26 years. The Board notes that there were no complaints noted in the record about those structures. The solar arrays will be added to the lot as part of the poultry house operation but those arrays will be consistent with the use of the Property. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing poultry houses and a manure shed on the Property. No additions or modifications to the existing structures are proposed. The Board is also convinced that the Applicant explored other possible locations for the solar arrays but were unable to find a location that met the USDA grant requirements and were visible to sunlight.

The Board approved the variance application for the pole building finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application for the pole building was approved. The Board Members in favor of the motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on this 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 April 16, 2019.