

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CLEANBAY RENEWABLES, LLC

(Case No. 12294)

A hearing was held after due notice on April 15, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the maximum height requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 33 feet from the maximum height requirement of 42 feet for a portion of a proposed structure. This application pertains to certain real property located on the southwest corner of DuPont Boulevard (Route 113) and Breasure Road (911 Address: N/A) said property being identified as Sussex County Tax Map Parcel Number: 1-33-6.00-123.00 (portion of).

1. The Board was given copies of the Application, Ordinance No. 2589, drawings of the site and proposed facility, aerial photographs 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 Kristi Shaw was sworn in to testify about the Application. Demetrios Kaouris, Esquire, presented the Application on behalf of the Applicant and he submitted exhibits to the Board to review.
4. The Board found that Mr. Kaouris stated that Sussex County Council granted a conditional use to the Applicant for this site to take chicken litter and turn it into natural gas and phosphorous products to be shipped out west to augment soils.
5. The Board found that Mr. Kaouris stated that, originally, the entire building was to be 75 feet tall but a new design has been submitted and only a 40 feet portion at the rear of the building will be 75 feet tall and the remainder of the building will comply with Sussex County Code height restrictions of 42 feet. The building will be 178 feet long and the west side of the building will be taller.
6. The Board found that Mr. Kaouris stated that the west side of the Property is farther from Route 113 and is closer to the borrow pit operation on nearby lands. He believes that the visual impact will be reduced since the taller portion of the building will be farther away from Route 113.
7. The Board found that Mr. Kaouris stated that the process, which uses cutting-edge technology, takes sludge and creates phosphorus. He argued that the height is necessary to house the equipment necessary for the process of recycling the chicken litter.
8. The Board found that Mr. Kaouris stated that the building is designed to resemble agriculture buildings.
9. The Board found that Mr. Kaouris stated that the tank used for recycling the litter is 52.5 feet tall and the additional 22.5 feet is needed to house the structure that supports the tank and for the crane on top of the tank.
10. The Board found that Mr. Kaouris stated that most of the neighboring property is used either commercially or agriculturally and the area has industrial uses as well.
11. The Board found that Mr. Kaouris stated that the Property is in a unique location being adjacent to Route 113 and an asphalt plant.

12. The Board found that Mr. Kaouris stated that the tank will be enclosed for aesthetic reasons.
13. The Board found that Mr. Kaouris stated that there are some residential properties to the north so one purpose for this variance is to minimize the visual impact to those residents.
14. The Board found that Mr. Kaouris stated that the Property cannot otherwise be developed without the enclosed nutrient tank if this variance is not granted.
15. The Board found that Mr. Kaouris stated that the Applicant is growing a landscape buffer.
16. The Board found that Mr. Kaouris stated that the variance will not alter the essential character of the neighborhood as it is mostly agricultural and commercial.
17. The Board found that Mr. Kaouris stated that the standard tank is 52.5 feet tall and is necessary for the use of the site for this purpose.
18. The Board found that Mr. Kaouris stated that the variance will not be detrimental to the public welfare and will not impair the uses of neighboring and adjacent properties.
19. The Board found that Mr. Kaouris stated that the plans have been changed to make only a portion of the building at 75 feet tall, therefore, meeting the minimum variance to afford relief requirement.
20. The Board found that Ms. Shaw, who is the Applicant's director of environmental and regulatory affairs, affirmed the statements by Mr. Kaouris as true and correct.
21. The Board found that Ms. Shaw testified that the Applicant uses the nutrient recovery technology from a company called Ostara and the technology is used to recover the phosphorous out of water after the manure goes through the anaerobic digestive process. The phosphorous and nitrogen is made into a product called struvite and will be shipped out to the Midwest.
22. The Board found that Ms. Shaw testified that the process involves a reactor and a certain amount of headspace is necessary to allow the struvite to form and then fall out into the bottom of the reactor.
23. The Board found that Ms. Shaw testified that the structure is proprietary and the Applicant has no control over its size.
24. The Board found that Ms. Shaw testified that the additional space for the crane is necessary to properly utilize the tank and the crane is needed for maintenance of the system.
25. The Board found that Ms. Shaw testified that this system pulls the methane out to be used as renewable natural gas and this is a key part of the process both environmentally and financially.
26. The Board found that Ms. Shaw testified that the process produces 3 main products 1) Struvite, 2) natural gas, and 3) soil conditioner.
27. The Board found that Ms. Shaw testified that the facility will process approximately 90,000 tons of chicken litter per year from Sussex County.
28. The Board found that Ms. Shaw testified that the Applicant worked with an architect to design the facility look like a barn.
29. The Board found that Mr. Kaouris stated that the facility will not affect the nearby airport.
30. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
31. The Board tabled discussion and vote on the Application until May 6, 2019, at which time the Board discussed and voted on the Application.
32. 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.

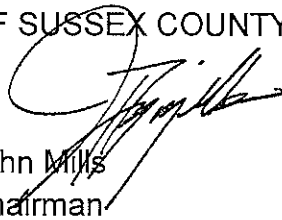
- a. The Property is zoned for a conditional use for the proposed chicken litter recycling facility and the Applicant intends to operate a large tank on the site which is needed as part of the process. The use of the Property creates a uniqueness because the process used to recycle chicken litter involves a tank which is taller than the height limitations set forth in the County Code. Due to this condition, an exceptional practical difficulty exists for the Applicant who seeks to construct its chicken litter recycling facility.
- b. Due to the uniqueness of the lot and these conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited height building envelope and the Applicant is subject to unique requirements within its industry which necessitate processing tanks and equipment which are taller than the height requirements. The Applicant seeks to construct a reasonably sized processing tank and structure 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 facility on the Property with the tank and equipment. The Board is convinced that the height of the facility is reasonable, which is confirmed when reviewing the documents provided by the Applicant. The Board specifically notes that the facility is located away from Route 113 and is closer to a nearby borrow pit.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the shape and size of the lot or create the technology for the height of the tank and equipment. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the tank and equipment height requirements.
- 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 facility will have no adverse effect on the character of the neighborhood. The area is a mixed-use community with a borrow pit, asphalt plant, agricultural, and residential uses nearby. The facility is also located adjacent to Route 113. The facility will be located away from Route 113 so it should not pose a visual problem for travelers and the facility will be located closer to the borrow pit and away from residential properties. 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. The Board also notes that the Applicant has represented that it intends to plant landscaping to further buffer the facility from neighboring properties.
- e. The variance 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 chicken litter recycling facility on the Property. The Applicant will house the tank and equipment within a building to minimize the visual impact on neighbors and the Applicant has designed the facility such that only a portion of the building will be taller than allowed under the Code. As such, the Board is convinced that the Applicant has taken effort in its design process to reduce the height of the structure while also complying with the tank and equipment height requirements.

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 of the Motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 18, 2019.