

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: 36 BUILDERS d/b/a INSIGHT HOMES (Case No. 11054)

A hearing was held after due notice on October 1, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance of the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 4.8 feet from the required 10 foot side yard setback requirement for an existing air conditioning unit, a 0.6 foot variance from the required 10 foot side yard setback requirement for an existing dwelling, and a 0.09 foot variance from the required 10 foot rear yard setback requirement for an existing morning room. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located north of Route 88 (Cave Neck Road) north of Riverstone Drive, being Lot 168 within Windstone development; said property being identified as Sussex County Tax Map Parcel Number 2-35-22.00-1140.00. After a hearing, the Board made the following findings of fact:

1. Christina Wagner of 36 Builders was sworn in and testified on behalf of the Application.
2. The Board found that Ms. Wagner testified that the Applicant sought the variances for a dwelling that was placed on the Property.
3. The Board found that Ms. Wagner testified that the surveyor did not outline the correct setback requirements for the Property on the survey and that the Applicant has never had an issue with the surveyor prior to this issue.
4. The Board found that Ms. Wagner testified that the Applicant has built 40 dwellings in the development.
5. The Board found that Ms. Wagner testified that the Property was vacant for years.
6. The Board found that Ms. Wagner testified that there is no uniqueness to the Property as it is a normal sized lot.
7. The Board found that Ms. Wagner testified that the Applicant obtained a building permit and a temporary Certificate of Compliance on the dwelling.
8. The Board found that Ms. Wagner testified that the air conditioning unit can be moved.
9. The Board found that Ms. Wagner testified that the neighbors have no objection to the Application.
10. The Board found that Ms. Wagner testified that the Applicant relied on the surveyor for the placement of the dwelling.
11. The Board found that Ms. Wagner testified that the Applicant was not aware of the encroachment into the setback areas until the Applicant applied for the Certificate of Compliance.
12. The Board found that no parties appeared in opposition to or in support of the Application.
13. The Board took the case under advisement and discussed the case.
14. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Applicant failed to meet the standards for granting a variance.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. John Mills, and Mr. Norman Rickard. Mr. Jeff Hudson voted against the Motion to Deny the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date November 7, 2012