

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JAMES AZATO (Case No. 11139)**

A hearing was held after due notice on January 28, 2013. 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 variances of the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 14.5 feet from the 15 foot side yard setback requirement and a variance of 19 feet from the 20 foot side yard setback requirement for an existing carport and lean to. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located southwest of Road 312 (River Road) approximately 840 feet southeast of Road 313A (Downs Landing Road); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.00-329.00. After a hearing, the Board made the following findings of fact:

1. James Azato and Lynn Azato were sworn in and testified on behalf of the Application.
2. The Board found that James Azato testified that the carport was constructed on the Property eight (8) years ago.
3. The Board found that James Azato testified that the neighbor who filed a complaint regarding the encroachment is on the opposite side of the encroachment.
4. The Board found that James Azato testified that he has the support of his other neighbors.
5. The Board found that James Azato testified that he shares a driveway with a neighbor on the encroaching side of the Property.
6. The Board found that James Azato testified that he was not aware building permits were not obtained by the contractor he hired to construct the carport and that he relied on the contractor to obtain the necessary permits and approvals.
7. The Board found that James Azato testified that there is a large tree on the Property which prevents the carport from complying with the setback requirement and that the Property is unique due to the existing tree.
8. The Board found that Lynn Azato testified that the existing dwelling is L-shaped and creates an exceptional practical difficulty to comply with the setbacks.
9. The Board found that Lynn Azato testified that the carport cannot be constructed in strict conformity and still be accessed.
10. The Board found that Lynn Azato testified that the garage could not be accessed if the carport was moved.
11. The Board found that Lynn Azato testified that the variances will enable reasonable use of the Property.
12. The Board found that Lynn Azato testified that the use does not impair the use of neighboring properties and is not detrimental to the public welfare.
13. The Board found that Lynn Azato testified that the carport and the lean to do not alter the character of the neighborhood.
14. The Board found that James Azato testified that there is an existing pump house on the Property to the rear and cannot be otherwise developed.
15. The Board found that Lynn Azato testified that the carport is in line with the existing driveway and is used to store their motor home.

16. The Board found that Lynn Azato testified that, if the variances are not granted, they will have to remove the carport and lean to.
17. The Board found that Lynn Azato testified that the variances requested are the minimum variances necessary to afford relief.
18. The Board found that four (4) parties appeared in support of the Application.
19. The Board found that no parties appeared in opposition to the Application.
20. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.
21. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. There are unique physical conditions on the Property. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant because the builder created the problem. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.

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

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the 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 February 19, 2013