

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT E. JOHNSTON,

TRUSTEE OF THE IGNACIO FAMILY REVOCABLE TRUST

(Case No. 11219)

A hearing was held after due notice on June 17, 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.60 feet from the ten (10) feet side yard setback requirement for an existing dwelling. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located east of Old Landing Road north of Breezewood Drive, being Lot 14, Block 8, within Breezewood at Rehoboth development; said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-364.00. After a hearing, the Board made the following findings of fact:

1. Robert Johnston and Greg Wood were sworn in to testify about the Application.
2. Adam Gerber, Esquire, presented the case to the Board on behalf of the Applicants.
3. The Board found that Mr. Gerber stated that Mr. Johnston is the Trustee of the Ignacio Family Revocable Trust which owns the Property.
4. The Board found that Mr. Gerber stated that the existing dwelling was built in 1991 and that a Certificate of Compliance was issued.
5. The Board found that Mr. Gerber stated that the Trust acquired the Property in 2009 and that the Trust intends to sell the Property.
6. The Board found that Mr. Gerber stated that a survey completed recently for settlement showed the encroachment into the side yard setback.
7. The Board found that Mr. Gerber stated that the Trust needs the variance in order to sell the Property.
8. The Board found that Mr. Gerber stated that the dwelling cannot be moved into compliance.
9. The Board found that Mr. Gerber stated that the Applicant was unaware of the encroachment when the Property was acquired in 2009.
10. The Board found that Mr. Gerber stated that the Property is narrower in the front yard than in the rear yard which makes the Property unique.
11. The Board found that Mr. Gerber stated that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Gerber stated that the difficulty was not created by the Applicant.
13. The Board found that Mr. Gerber stated that the variance will not alter the character of the neighborhood since the dwelling has been on the Property since 1991.
14. The Board found that Mr. Gerber stated that the variance is the minimum variance necessary to afford relief.
15. The Board found that Mr. Gerber stated that the existing shed has been moved into compliance.
16. The Board found that Mr. Gerber submitted exhibits to the Board.

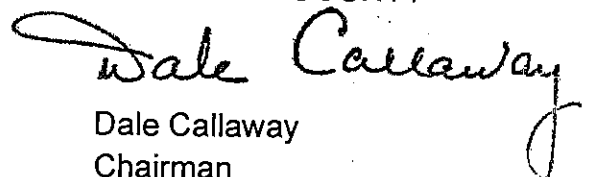
17. The Board found that Mr. Johnston confirmed the statements made by Mr. Gerber.
18. The Board found that Mr. Johnston testified that his parents were the previous owners of the Property.
19. The Board found that Mr. Johnston testified that the Trust was created in 2009.
20. The Board found that Mr. Johnston testified that he was never aware of any issues with zoning.
21. The Board found that Mr. Johnston testified that there have never been any complaints in reference to the Property.
22. The Board found that Mr. Johnston testified that a survey completed in March showed the encroachment.
23. The Board found that Mr. Wood testified that he is a local realtor who is familiar with the Property.
24. The Board found that Mr. Wood testified that he feels the variance does not alter the character of the neighborhood.
25. The Board found that Mr. Wood testified that the variance will not impair the uses of adjacent properties.
26. The Board found that Mr. Wood testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance.
27. The Board found that Mr. Wood testified that it would be detrimental to the dwelling to bring it into compliance.
28. The Board found that two (2) parties appeared in support of the Application.
29. The Board found that no parties appeared in opposition to the Application.
30. 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 based on the following reasons. The Property is unique in size and shape due to the narrowness of the front yard. The variance is necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variance will not alter the essential character of the neighborhood. The variance sought is the minimum variance 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 July 16, 2013