

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

**IN RE: JOHN DAVID AMOS**

**(Case No. 11596)**

A hearing was held after due notice on June 22, 2015. 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 maximum square footage requirement for a garage / studio apartment.

Findings of Fact

The Board found that the Applicant was seeking of 332 square feet from the 800 square feet maximum allowable square footage requirement for a garage / studio apartment. This application pertains to certain real property located on the south side of Cannon Street, approximately 452 feet east of Forest Drive within the Orchard Manor Subdivision (911 Address: 28251 Cannon Street, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-35.05-18.00.

1. The Board was given copies of the Application, a letter dated July 29, 2014, from Richard Berl, Esquire, a copy of the Findings of Fact for Case No. 11451, a drawing, a portion of the tax map of the area, and pictures of the Property.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. John David Amos was sworn in to testify about the Application.
4. The Board found that Mr. Amos testified that he purchased the Property in November 2012 and that the existing garage already had an apartment at that time.
5. The Board found that Mr. Amos testified that he was granted a special use exception for garage / studio apartment in September 2014 by the Board.
6. The Board found that Mr. Amos testified that he planned to use an existing custom spiral staircase for the apartment.
7. The Board found that Mr. Amos testified that there is a knee wall on the second floor which limits some of the usable space of the apartment.
8. The Board found that Mr. Amos testified that the Planning and Zoning Office determined the staircase would not be included in the square footage for the apartment but the Building Code Department determined the staircase must be included in the square footage of the apartment.
9. The Board found that Mr. Amos testified that he was also planning to expand the living area.
10. The Board found that Mr. Amos testified that there is an existing external staircase he would like to keep for a fire escape.
11. The Board found that Mr. Amos testified that he has a tenant in the existing dwelling.
12. The Board found that Mr. Amos testified that the apartment will have living space on the first and second floor of the existing detached garage.
13. The Board found that Mr. Amos testified that, when he applied for the special use exception, he did not think the staircase was part of the 800 square feet calculation for determining the size of the apartment.
14. The Board found that Mr. Amos testified that he intends to convert some storage space on the first floor to additional living space.

15. The Board found that Mr. Amos testified that the apartment would be two floors with a kitchen on the first floor and bedrooms on the second floor.
16. The Board found that Mr. Amos testified that there is no new living space being added to the second floor.
17. The Board voted to leave the record open until July 6, 2015, for the Applicant more time to prepare his case.
18. On July 6, 2015, the Board held a second hearing on this application.
19. The Board found that Mr. Amos testified that the Property is unique in the fact that when he purchased the Property the previous owner had already converted a portion of the first floor of the garage into living space.
20. The Board found that Mr. Amos testified that the apartment has a bathroom and cooking area but no bedroom or closet. The second floor is needed to provide a bedroom but the ceiling height of the second floor reduces the practical living space area even though the entire area is used in the square footage calculation.
21. The Board found that Mr. Amos testified that an internal staircase must be installed.
22. The Board found that Mr. Amos testified that the remaining portion of the first floor of the garage will be used for the staircase.
23. The Board found that Mr. Amos testified that the proposed staircase cannot be completed without violating the square footage requirement as the proposed staircase is considered square-footage by the Building Code Department.
24. The Board found that Mr. Amos testified that he purchased the Property for the potential rental income.
25. The Board found that Mr. Amos testified that the existing structure can no longer function as a garage.
26. The Board found that Mr. Amos testified that he did not create the exceptional practical difficulty.
27. The Board found that Mr. Amos testified that the variance will not alter the character of the neighborhood since there will be no change to the exterior appearance of the structure.
28. The Board found that Mr. Amos testified that the variance will not be detrimental to the public welfare and the use will not impair the uses or development of neighboring and adjacent properties.
29. The Board found that Mr. Amos testified that the garage will increase property values in the area.
30. The Board found that Mr. Amos testified that the variance is the minimum variance to afford relief and meet the Building Code requirements.
31. The Board found that Mr. Amos testified that portions of the second floor are only 4 feet 2 inches tall and that the second floor ceiling height does not allow for accessibility to all areas thereof.
32. The Board found that Mr. Amos testified that the total square footage of the garage/studio apartment will be 1,132 square feet.
33. The Board found that no parties appeared at either hearing in support of or in opposition to the Application.
34. 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 unique due to the shape of the garage. The garage apartment, which had been created by a prior owner, consists of 2 stories and an internal staircase is needed to access both floors safely. The second floor of the garage has a unique height as portions of the ceiling are less than 5 feet tall. Large portions of the living space, for purposes of

the square footage calculation, are either unusable due to the ceiling height or will be used for the staircase. The height of the ceiling of the second floor and the need for an internal staircase have created an exceptional practical difficulty for the Applicant. The situation is also unique since a prior owner started the conversion of the garage into an apartment and that conversion has rendered the garage unusable as a 2 car garage.

- b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to use a garage for a studio apartment 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 a reasonably sized garage apartment to be retained on the Property. The Board is convinced that the size, shape, and location of the garage apartment are reasonable. The Board is also convinced that requiring the apartment to comply with the Sussex County Zoning Code would greatly limit the functionality of the space due to the need for an internal staircase and the unique ceiling height of the second floor which renders portions of that floor difficult to practically use.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not convert the garage to an apartment. Rather, the conversion was initiated by a prior owner. The Applicant also did not construct the garage and its unusual height of the second floor ceiling. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
- 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 unrebutted testimony confirms that garage will have no changes in its exterior appearance and the change in the size of the living space only affects the internal configuration of the structure. The variance will enable for more practical living area in the apartment. Additionally, the garage apartment has also been on the Property for quite some time with no complaints having been submitted into the record. It appears as though the garage apartment is likely part of the character of the neighborhood. Additionally, 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.
- e. The variance sought 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 garage apartment to be reasonably used within the current garage building. The variance will allow for a reasonably sized internal staircase to be constructed and for practical living space to be provided to the occupant of the apartment.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills,

Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

*Dale Callaway*

Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date August 18, 2015.