

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VICKI DIVITTORIO

(Case No. 11622)

A hearing was held after due notice on August 17, 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 special use exception for a garage / studio apartment.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for a garage / studio apartment. This application pertains to certain real property located on the northeast side of Red Mill Drive and Minos Conaway Road (911 Address: 31509 Red Mill Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-1.00-51.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, assessment information, a portion of the tax map of the area, and a survey dated July 29, 2010.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Vicki Divittorio was sworn in and testified regarding the Application.
4. The Board found that Ms. Divittorio testified that she plans to place a cottage consisting of 657 square feet on her property. The cottage-like structure will be for her handicapped grandmother who will receive home health care.
5. The Board found that Ms. Divittorio testified that the Property is one (1) acre in size and fenced in. The Property is located near the edge of the community.
6. The Board found that Ms. Divittorio testified that the structure will be placed near the existing dwelling.
7. The Board found that Ms. Divittorio testified that the neighbors have no objection to the Application.
8. The Board found that Ms. Divittorio testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
9. The Board found that Robert DeLacy was sworn in and testified in opposition to the Application. Mr. DeLacy testified that there are deed restrictions prohibiting this use and that he sympathizes with the Applicant but he is concerned for the future use of the structures.
10. The Board found that three (3) parties appeared in support of the Application.
11. The Board found that one (1) party appeared in opposition to the Application.
12. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a special use exception because the garage / studio apartment will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Board was not convinced by the opposition that the special use exception would somehow have a substantial adverse effect on neighboring and adjacent properties. In fact, no specific evidence, such as evidence of the effect of the unit on property values or traffic, was cited by the opposition in its presentation. The opposition cited restrictive covenants which allegedly prohibit the location of such a structure but the

Board does not have jurisdiction to enforce private restrictive covenants. Furthermore, the restrictive covenants were not submitted as part of the record either so any suggestion as to the extent of those covenants is speculative at best. Assuming, *arguendo*, that the restrictive covenants prohibit such a structure, it is still unclear as to how this apartment would have a substantial adverse effect on neighboring and adjacent properties.

- b. Rather, the Board found persuasive the testimony of the Applicant that the use would not have a substantial adverse effect on neighboring and adjacent properties.
- c. The Property consists of one acre and is located at the edge of a community near the intersection of Minos Conaway Road and Route One.
- d. The unit will be used by the Applicant's elderly grandmother and will afford her an opportunity to live near her family.
- e. The apartment appears to be of a reasonable size as it consists of 657 square feet and meets the square footage requirements of a garage / studio apartment.
- f. The neighborhood surrounding the Property is residential in character and the apartment is a residential use.
- g. Neighbors appeared in support of the Application.

The Board granted the special use exception application finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception 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 special use exception 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 October 6, 2015.