

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: ANTHONY W. BAILEY**

(Case No. 12072)

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a garage / studio apartment and a variance from the maximum square footage requirement for a garage / studio apartment.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for a garage / studio apartment and a variance of 400 square feet from the 800 square feet maximum size for a garage / studio apartment. This application pertains to certain real property located on the northwest side of Pine Haven Drive, approximately 900 feet east of the intersection of Pine Haven Drive and Deep Branch Road. (911 Address: 22606 Pine Haven Drive, Georgetown); said property being identified as Sussex County Tax Map Parcel 2-34-8.00-28.00.

1. The Board was given copies of the Application, a drawing of the Property, photographs of the Property, a Certificate of Compliance, a survey of the Property dated October 2, 2017, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and two (2) letters in opposition to the Application.
3. The Board found that Anthony Bailey and Douglas Catts were sworn in to testify about the Application.
4. The Board found that Mr. Bailey testified that the special use exception and variance request pertain to an existing pole building on the Property which was previously used for agricultural purposes related to his prior alpaca farm. Due to economic conditions, the Applicant no longer operates this farm and has decided to repurpose the pole building into a garage / studio apartment. There is potential that the Property may be used as a farm again in the future but there are no plans at this time.
5. The Board found that Mr. Bailey testified that the Property is also improved by a manufactured home, which is delapidated and was previously used by his farmhand when the Property was used for the alpaca farm. The Applicant intends to remove the manufactured home from the Property.
6. The Board found that Mr. Bailey testified that Pine Haven Drive is a crush and run drive maintained by 3 of the property owners
7. The Board found that Mr. Bailey testified that the pole building consists of 1,200 square feet and is larger than the existing trailer which is only 490 square feet. The pole building has been erected and has been in use as an apartment.
8. The Board found that Mr. Bailey testified that the garage / studio apartment will result in no additional traffic since there was previously 2 units on the Property.
9. The Board found that Mr. Bailey testified that the septic was updated to accommodate both units.
10. The Board found that Mr. Catts testified that he is a tenant of a neighboring farm and is familiar with the area. Mr. Catts noted that he is purchasing adjacent property and plans to raise cattle on his lands.

11. The Board found that Mr. Catts testified that the Applicant has an onsite farmhand and the Property has horse stables, an agricultural building, a manufactured home, and a house.
12. The Board found that Mr. Catts testified that it is impossible to bring farm equipment back to the site due to the size of the road. He also noted that the alpaca market crashed.
13. The Board found that Mr. Bailey testified that he will have a dedicated parking space for the tenant of the unit.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 garage / studio apartment is located in an agricultural / residential area on a large property that consists of approximately 17.98 acres. The Property is a large lot and can clearly hold a dwelling and garage / studio apartment. Notably, the Property was previously used as an alpaca farm and a manufactured home on the Property was used as a second residence for a farm employee. As such, the Property has been used for 2 residential units for some time.
 - b. The apartment will be located in an existing pole building so no new structures will be constructed on the lot. The Applicant also intends to remove an existing manufactured home from the Property.
 - c. The pictures demonstrate that the pole building is an attractive structure and will not be easily seen from neighboring properties. The Board is convinced that the garage / studio apartment will have no substantial adverse visual impact on neighboring and adjacent properties.
 - d. The Applicant will have a designated parking space for the residents of the apartment as required by the Code.
 - e. Neighbors expressed concerns about the effect of the apartment on the neighborhood. Those concerns focused primarily on the traffic on Pine Haven Drive and the dust generated by that traffic. The opposition presented no specific evidence as to how the existence of the garage / studio apartment would increase the traffic and dust along Pine Haven Drive such that it would rise to a substantial adverse effect on neighboring and adjacent properties. It is difficult for the Board to see how the use of the pole building as an apartment of only 1,200 square feet would create so much additional traffic and dust that the uses of neighboring and adjacent properties would be substantially adversely affected. Importantly, the Property was previously used as an alpaca farm and likely had greater traffic from that use than as a result of an additional residential unit.
 - f. No evidence was presented which convinced the Board that the garage / studio apartment will have any adverse effect on neighboring and adjacent properties; let alone a substantial adverse effect.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 situation is unique as the Applicant is converting an existing 1,200 square foot pole building into a garage / studio apartment. The pole building

was previously used for agricultural purposes when the Applicant operated an alpaca farm on the Property. The alpaca market crashed and the Property was difficult to adequately use for other farm purposes due to the narrowness of Pine Haven Drive which provides access to the farm. The Applicant now seeks to repurpose an existing structure on the Property. The Board also notes that Pine Haven Drive is narrow and, thus, it is difficult to reasonably access the Property with farm equipment. The Board notes that the uniqueness of the situation and the Property have created an exceptional practical difficulty for the Applicant.

- b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to convert an existing pole building into a garage / studio apartment but is unable to do so without a variance because the pole building is larger than the maximum allowable square footage for a garage / studio apartment. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to make this conversion without having to remove approximately 1/3 of the pole building. The survey and pictures submitted by the Applicant demonstrate that the apartment is reasonable in size, shape, and location; particularly since the parcel is so large.
- c. The exceptional practical difficulty was not created by the Applicant. The Property is a large parcel accessed from a private driveway that is too narrow for farm equipment to adequately pass. The Property was previously used for a farm and the Applicant seeks to repurpose an existing pole building for a garage / studio apartment. The pole building already exists but is larger than the maximum allowable size of a garage / studio apartment. The Board finds that these conditions have created an exceptional practical difficulty for 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. As previously noted in Paragraph 15, the apartment will have no adverse effect on neighboring and adjacent properties. The Property is very large and the apartment will be quite a distance from the nearest property and road. The apartment will look aesthetically pleasing. No evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. A neighbor has also indicated support for the Application.
- 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 existing pole building to be converted to a garage / studio apartment. No additions or modifications to the structure are proposed. The Applicant also intends to remove the existing manufactured home.

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

Decision of the Board

Upon motion duly made and seconded, the special use exception and variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception and variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018