

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN YODER

(Case No. 12129)

A hearing was held after due notice on April 16, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, 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 foot 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 240 feet from the 800 maximum square footage requirement for a proposed garage / studio apartment. This application pertains to certain real property located on the west side of North Union Church Road, approximately 1,266 feet south of Abbott's Pond Road. (911 Address: 8084 North Union Church Road, Milford); said property being identified as Sussex County Tax Map Parcel Number 1-30-6.00-24.06.

1. The Board was given copies of the Application, a drawing of the proposed structure, a permit from the Delaware Department of Natural Resources & Environmental Control ("DNREC"), 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 or in opposition to the Application.
3. The Board found that Kevin Yoder was sworn in to testify about the Application.
4. The Board found that Mr. Yoder testified that he proposes to construct a one-car garage with a studio apartment for his parents. The apartment will consist of 800 square feet and will have a screened porch adjacent to the living space. The screened porch will measure 12 feet by 20 feet.
5. The Board found that Mr. Yoder testified that the Property is a little over 2 acres in size and that there is plenty of room on the Property for the structure.
6. The Board found that Mr. Yoder testified that he later learned that the screened porch would be considered living space and part of the garage / studio apartment square footage calculation and the addition of the screened porch causes the proposed garage studio apartment to exceed 800 square feet.
7. The Board found that Mr. Yoder testified that he obtained verbal approval from DNREC for connection of the proposed structure to the existing septic system. A large portion of the rear yard will be used for the septic system.
8. The Board found that Mr. Yoder testified that the structure is designed with a gabled roof to maintain a rural look.
9. The Board found that Mr. Yoder testified that his neighbors support the Application and he also spoke with another neighbor about the Application.
10. The Board found that Mr. Yoder testified that his parents enjoy being outdoors but his mother has difficulty with the sun. There are also bugs in the yard so the screened porch is desirable. His parents often use a gazebo at their current home and he wanted to have a similar option for them at this location.
11. The Board found that Mr. Yoder testified that the apartment will have a designated parking space.
12. The Board found that four (4) parties appeared in support of the Application.
13. The Board found that no parties appeared in opposition to the Application.

14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and un rebutted, 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 property that consists of approximately 2 acres. The Property is a large lot and can clearly hold a dwelling and garage / studio apartment.
 - b. The apartment will be located in a portion of a proposed one-car garage.
 - c. The structure will be designed to have a rural look to fit with the character of the neighborhood and the structure will be located near the center of the Property. The Board is convinced that the garage / studio apartment will have no substantial adverse visual impact on neighboring and adjacent properties.
 - d. Neighbors appeared in support of the Application.
 - e. The Applicant will have a designated parking space for the residents of the apartment as required by the Code.
 - f. No evidence was presented which demonstrated that the garage / studio apartment will have any adverse effect on neighboring and adjacent properties; let alone a substantial adverse effect.
15. 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 situation is unique as the Applicant is constructing the garage / studio apartment for the benefit of his aging parents. His parents enjoy the outdoors but his mother has difficulty with the sun and needs adequate coverage. The Applicant proposed to construct an 800 square feet apartment with an attached screened porch consisting of 240 square feet to provide his parents with some functional outdoor space. The porch, however, is considered as part of the living space for the square footage calculation. The actual indoor living area will otherwise comply with the square footage requirement. This unique situation has created an exceptional practical difficulty for the Applicant.
 - b. Due to the unique situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct use a garage / studio apartment for his aging parents but needs additional space to allow for a usable area for his parents to enjoy the outdoors. His mother's condition renders a screened porch necessary. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will provide the Applicant with enough space to accommodate his parents and to provide them with functional outdoor space. When reviewing the drawings of the property and the apartment, it is clear 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 Applicant did not create his mother's aversion to the sun and need for a screened porch. The additional space afforded by this variance accommodates that need.
 - 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 14, 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 have a similar appearance as other structures in the neighborhood and will look aesthetically pleasing. 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. Neighbors have 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 apartment to be constructed as proposed and that the size of the apartment is large enough to accommodate his parents while still affording them with functional areas to enjoy the outdoors.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception and variance application. Mr. John Mills did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

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

Date June 19, 2018