

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

**IN RE: JOHN H. MELLING, JUNITA G. MELLING &**

**SARAH L. GUTERMAN**

**(Case No. 12168)**

A hearing was held after due notice on July 23, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, 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.

Findings of Fact

The Board found that the Applicants are seeking a special use exception for a garage / studio apartment. This application pertains to certain real property located on the north side near the end of Millcreek Road, approximately 1.03 miles north of Shell Bridge Road (911 Address: 6145 Millcreek Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 4-32-2.00-20.00.

1. The Board was given copies of the Application, a Sussex County Tax Division Work Request, a drawing of the Property, photographs, property record information, 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 one (1) letter in support of the Application or no correspondence in opposition to the Application.
3. The Board found that Juanita Melling was sworn in to testify. Shannon Carmean Burton, Esquire presented the Application on behalf of the Applicants and submitted exhibit booklets to the Board.
4. The Board found that Mrs. Burton stated that the apartment consists of less than 800 square feet. The apartment is accessory to the dwelling on the lot and has been on the Property for approximately 40 years.
5. The Board found that Mrs. Burton stated that the Property consists of 7.018 acres and is in a rural area and there are few neighbors. The State of Delaware owns nearby property used for the Nanticoke Wildlife Preserve.
6. The Board found that Mrs. Burton stated that the apartment was on the Property when purchased by the Applicants in February 2018.
7. The Board found that Mrs. Burton stated that all the kitchen equipment was removed from this apartment to bring it into compliance prior to the purchase by the Applicants but that equipment will be returned if the Application is approved.
8. The Board found that Mrs. Burton stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties.
9. The Board found that Mrs. Burton stated that the Applicants plan to rent this apartment seasonally and there is parking for the apartment.
10. The Board found that Mrs. Burton stated that the apartment is visible only to the neighbor who supports the Application.
11. The Board found that Ms. Melling affirmed the statements made by Mrs. Burton as true and correct.
12. The Board found that Ms. Melling testified that the parcel was purchased as 3 separate parcels but were combined into one lot due to a lending requirement.
13. The Board found that no parties appeared in support of or 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 7 acres. The Property is a large lot and can clearly hold a dwelling and garage / studio apartment.
  - b. The apartment will be located in an existing building which has been on the Property for many years.
  - c. The Applicants will have a designated parking space for the resident of the apartment as required by the Code.
  - d. The apartment is only visible to one neighbor and that neighbor supports the Application.
  - e. 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. The lack of evidence is telling since the structure has been on the lot for many years and the Board would expect evidence of a substantial adverse effect if such effect existed.

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, 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 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 September 18, 2018.