

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RAYMOND ARMSTRONG & LEISA KEYS

(Case No. 12198)

A hearing was held after due notice on September 17, 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 and a variance from the maximum square foot requirement for a garage / studio apartment for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a special use exception for a garage / studio apartment and a variance of 100 square feet from the 600 square feet maximum square footage requirement for a garage / studio apartment. This application pertains to certain real property located at the end of Harmony Woods Drive, approximately 0.46 miles north of Harmony Cemetery Road (911 Address: 25216 Harmony Woods Drive, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-22.00-45.00.

1. The Board was given copies of the Application, drawings of the proposed structure, a pre-construction, as-built survey dated April 24, 2018, 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 Raymond Armstrong was sworn in to testify about the Application.
4. The Board found that Mr. Armstrong testified that he plans to build a garage / studio apartment for his mother-in-law, who uses a walker and is handicapped. The unit will have a kitchen and provide her with independent living space.
5. The Board found that Mr. Armstrong testified that the interior of the garage / studio apartment will measure 800 square feet but the covered porch adjacent to the unit will measure 5 feet by 20 feet. The variance is, thus, needed for the covered porch portion of the unit.
6. The Board found that Mr. Armstrong testified that the porch will provide his mother-in-law with safer access to the home and can be designed to allow for wheelchair accessibility if necessary. The interior of the apartment has an open-floor plan to accommodate his mother-in-law's condition as well.
7. The Board found that Mr. Armstrong testified that the proposed garage / studio will match the architecture of the house, as required by the development.
8. The Board found that Mr. Armstrong testified that the Property consists of approximately 3 acres and the nearest neighbor is ¼ miles away.
9. The Board found that Mr. Armstrong testified that the need for the variance was not created by the Applicants but is due to a request by the developer to match the design of the house.
10. The Board found that Mr. Armstrong testified that the variance will not alter the essential character of the neighborhood as it matches the house.
11. The Board found that Mr. Armstrong testified that the variance requested is the minimum variance to afford relief as the porch will eventually allow for wheelchair access.

12. The Board found that Mr. Armstrong testified that the unit will use the existing well and that DNREC has approved the septic plan.
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 3 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 garage.
 - c. The structure will be designed to have a look to fit with the character of the neighborhood, including a porch for the unit, 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. No one appeared in opposition to the Application.
 - e. The Applicants will have a designated parking space for the resident 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 Applicants are constructing the garage / studio apartment for the benefit of his aging mother-in-law who also suffers from physical handicaps which limit her mobility. The Applicants proposed to construct an 800 square feet apartment with an attached covered porch consisting of 100 square feet to provide his mother-in-law with a safe access to the home. The porch will also match other similar porches in the neighborhood. 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 Applicants. The Board also notes that the interior of the unit has been designed to accommodate the resident's disability.
 - b. Due to the unique situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct use a garage / studio apartment for his aging mother-in-law but needs additional space to allow for a usable area for his aging mother-in-law to safely access the home. His mother-in-law's condition renders a covered 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 Applicants with enough space to accommodate his mother-in-law and to provide them with functional accessibility to the unit and to allow for necessary space for her to navigate the interior of the unit as well. 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 Applicants. The Applicants did not create his mother-in-law's physical handicap and need for the porch and additional room in the interior of the unit. 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 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.
- 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 Applicants have 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 mother-in-law and afford her safe accommodations in the unit and safe accessibility to the unit from outside.

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 November 20, 2018.