

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LINDA R. STETYICK

(Case No. 12204)

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.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for a garage / studio apartment. This application pertains to certain real property located on the southeast side of Cordrey Road, approximately 432 feet south of Mount Joy Road (911 Address: 30580 Cordrey Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-321.00.

1. The Board was given copies of the Application, 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 Linda Stetyick was sworn in to testify about the Application. She submitted pictures of the Property and a letter of support from a neighbor for the Board to review.
4. The Board found that Ms. Stetyick testified that she purchased the Property in 1995 with her husband and that a permit was issued in 1996 to place a manufactured home on the property and join it to the existing cottage. The home has been used in this fashion since 1996.
5. The Board found that Ms. Stetyick testified that she recently sought a home equity line of credit and the bank sent someone to look at the house who discovered that the home had two kitchens. She was notified that this could present a zoning problem.
6. The Board found that Ms. Stetyick testified that the cottage had a kitchen / bedroom combination and is small. The cottage was initially used for a sick family member and has been used for family members visiting the Property. She has not previously sought a special use exception for this use.
7. The Board found that Ms. Stetyick testified that there is a family room which connects the cottage to the manufactured home. There is a breezeway between the home and the cottage. The structures are not separate.
8. The Board found that Ms. Stetyick testified that the cottage measures 20 feet by 30 feet and her daughter and son-in-law live in the cottage while saving money for a home. The cottage has a kitchen, which she intends to remove when her daughter and son-in-law move.
9. The Board found that Ms. Stetyick testified that the cottage is treated as a separate living space and is accessory to her main living space.
10. The Board found that Ms. Stetyick testified that the use will not substantially affect adversely the uses of the neighboring and adjacent properties.
11. The Board found that Ms. Stetyick testified that her neighbors support the Application.
12. The Board found that Toby Schlick was sworn in to give testimony. Mr. Schlick testified that Mrs. Stetyick is a good neighbor and she has made improvements to

the Property and that this special use exception would not substantially affect adversely the use of the neighboring and adjacent properties.

13. The Board found that one (1) party appeared in support of the Application and no one appeared in opposition to the Application.
14. After the hearing, the Board left the record open for the limited purpose of allowing staff to research the matter further and report back to the Board. Specifically, staff was instructed to look at the history of the building permits, the property and the code provisions at that time. On October 1, 2018, staff provided copies of the permit issued for the manufactured home as well as property record cards for the Property. The permit included a notation that there was only to be one kitchen on the Property at the time.
15. The Board found that the notice sent to the Applicant advising her of the zoning violation noted that her appropriate remedy was the filing of an application for a conditional use for a multi-family structure; not a special use exception.
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 failed to meet the standards for granting a special use exception because the use of the unit is not as a garage / studio apartment. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant seeks a special use exception for a garage / studio apartment for her existing manufactured home / cottage. The manufactured home and cottage are joined together and have been used as separate living areas with separate culinary facilities. Before the Board can determine whether the structures meet the standards for granting a special use exception, the Board must first address the threshold question of whether the proposed use is a garage / studio apartment.
 - b. Pursuant to §115-4 of the Sussex County Zoning Code, a garage / studio apartment is defined as "[a] building or use designed and used as a single apartment unit containing not more than 800 square feet of total floor area and accessory to the single-family dwelling. Garage / studio apartments do not include duplexes, tourist homes, servant quarters, or guest homes. Prior to use, a garage / studio apartment shall obtain a special use exception under the provisions of Article XXVII, Board of Adjustment, and all necessary state and local permits."¹
 - c. Based on this definition, the apartment unit must be accessory to the single-family dwelling. Under the Code, an accessory building is defined as "[a] detached / unattached subordinate building, the use of which is incidental to or customarily found in connection with and, except as otherwise provided in this chapter, is located on the same lot as the main building or principal use of the land. Examples of an accessory building may include a shed, a storage building, garage, gazebo or similar structure." See § 115-4 (emphasis added). It is, thus, clear that an accessory building must not be attached to the main building on the lot. In this case, based on the pictures and testimony provided by the Applicant, the cottage is clearly attached to the main dwelling. The cottage and the manufactured home are not separate structures. As such, the cottage cannot be considered an accessory building. The definition of a garage / studio apartment also

¹ Note that this definition was added in 2008 to provide an "additional type of affordable housing in residential districts." This relief was not available in 1996 when the manufactured home was added to the Property.

specifically excludes duplexes. See §115-4.² The exclusion of duplexes from the garage / studio apartment definition was, thus, clearly intentional by Sussex County Council and this exclusion deserves examination by the Board. The Code does not define the term “duplex” but a duplex is generally defined as “a house divided into two parts with a separate entrance for each”³ or a “house having separate apartments for two families, especially a two-story house having a complete apartment on each floor and two separate entrances.”⁴ Based on the evidence presented to the Board, it is clear that the cottage and manufactured home constitute one combined structure being used as two separate residences. Accordingly, the structure is, in effect, a duplex. Since duplexes are specifically excluded from the garage / studio apartment definition, the Board is unable to grant the Applicant the relief sought.

- d. Of great importance to this analysis is Sussex County’s historical focus on restricting the number of culinary facilities on properties within certain zoning districts. The Sussex County Code has historically defined a multiple-family dwelling as “a building designed for or occupied exclusively by two or more families living independently of each other. Multiple-family dwellings shall be considered as apartments, garden apartments, condominiums, duplexes, or similar structures.” See §115-4 (prior to December 2, 2014). The definition of “multi-family dwelling” was changed in 2014 pursuant to Ordinance No. 2374 and it included a more detailed definition. The revised definition specifically provides that such dwellings are “designed and occupied exclusively by two (2) or more of the following living independently of each other, each with single culinary facilities.” See §115-4. Likewise, the Code defined a single-family dwelling as “a detached building designed for or occupied exclusively by one family.” A “family” was previously defined as “an individual or two or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities or a group of not more than 4 persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-sharing basis. Domestic servants, employed and residing on the premises shall be considered as part of the family.” See §115-4 (prior to December 2, 2014). This definition was also amended by Ordinance No. 2374 to state, in part, that a single family dwelling is “a detached dwelling designed or occupied by not more than one (1) of the following as a single housekeeping unit with single culinary facilities.” The Code, thus, places importance on the number of culinary facilities within a dwelling and restricts properties which have multiple culinary facilities.
- e. It is clear to the Board that the Applicant has on her property a single structure used for two residences. The manufactured home and cottage are connected; though they have separate entrances and separate kitchen facilities. Though the cottage has not been rented out by the Applicant, it has been used as a separate residence. Accordingly, the structure is meets the definition of a multi-family dwelling. Furthermore, it is also clear to the Board that the Applicant seeks approval for a special use exception for a garage / studio apartment but this application is misplaced. The relief of a

² Tourist homes, servants’ quarters, and guest homes are also specifically excluded; though it is clear to the Board that the Property is not being used for these uses. Accordingly, the Board’s analysis will focus on the Applicant’s current and proposed use.

³ See Google.com.

⁴ See Dictionary.com.

garage / studio apartment applies in situations where the apartment is housed in a separate building from the single-family dwelling. An example of such an apartment would be a loft apartment above a detached garage. What the Applicant proposes, however, is more or less a duplex. The cottage and manufactured home are one structure with 2 separate residences and 2 separate culinary facilities. While the Sussex County Code does not clearly define a duplex, it is abundantly clear in the Code that a garage / studio apartment is not a duplex.

- f. The Board also notes that the fact that the Applicant has used the Property in this fashion since 1996 is also irrelevant to the use. The building permit issued for the manufactured home in 1996 clearly states that the dwelling "must be inspected and have only 1 kitchen." There was no evidence that dwelling complied with the permit. Furthermore, the remedy of a garage / studio apartment was not even available in 1996. Ordinance 1958 which created the garage / studio apartment special use exception was not adopted until March 2008. Rather, the Code's historical focus on limiting the number of culinary facilities within dwellings on lands in Sussex County was in effect at all times.
- g. While the Applicant has used the Property in this fashion for many years, the use is simply contrary to the Code and the relief she seeks from the Board is unavailable. The Applicant may have other remedies under the Code which she may wish to pursue but a special use exception for a garage / studio apartment is not one.
- h. Since the Applicant's proposed use is not a garage / studio apartment, the Board need not determine whether the proposed use will substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application because the relief sought by the Applicant is unavailable in the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the motion to deny 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 deny 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 December 11, 2018.