

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: J. MICHAEL YODER AND JILL YODER

(Case No. 12219)

A hearing was held after due notice on October 15, 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 footage requirement 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 and a variance of 552 square feet from the maximum square footage requirement of 800 square feet for a garage / studio apartment. This application pertains to certain real property located on the southeast side of Woodyard Road, approximately 677 feet northeast of Greenhurst Farm Road (911 Address: 10222 Woodyard Road, Greenwood); said property being identified as Sussex County Tax Map Parcel 5-30-5.00-19.02.

1. The Board was given copies of the Application, a drawing of the proposed garage / studio apartment, a site plan dated August 30, 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 the Application or in opposition to the Application.
3. The Board found that J. Michael Yoder was sworn in to testify about the Application. David Hutt, Esquire, appeared on behalf of the Applicants and submitted exhibit booklets to the Board.
4. The Board found that Mr. Hutt stated that the special use exception application is for the garage / studio apartment to allow Mr. Yoder's parents to live near the Applicants. Mr. Yoder's father is suffering from declining health and, as his health declines, he needs to live in a one level home. His current home has steps and level and his physician advises that a single-level home is needed. The proposed apartment will allow for the Applicants to provide care for them.
5. The Board found that Mr. Hutt stated that Property is located approximately $\frac{3}{4}$ miles from Route 13 and there are single-family homes, farms, and poultry houses in the neighborhood. The adjacent lands are low lying wooded lands.
6. The Board found that Mr. Hutt stated that the Property originally consisted of 2 lots but has been combined into 1 lot.
7. The Board found that Mr. Hutt stated that the garage / studio apartment will measure 43 feet by 60 feet and exceeds the square footage requirement. The Applicant reduced the size of the apartment and now only seeks a variance of 552 square feet as compared to the 630 square feet originally sought.
8. The Board found that Mr. Hutt stated that the unit is designed to allow for wheelchair accessibility with wider doors – which adds to the square footage of the unit. A handicap ramp will be installed as well and there will be a second bedroom to provide space for a caretaker.
9. The Board found that Mr. Hutt stated that the unit is designed to look like the house.
10. The Board found that Mr. Hutt stated that the Property is unique because it is oddly shaped and has a low-lying area which cannot hold a septic system.

11. The Board found that Mr. Hutt stated that the uniqueness of the Property creates a need for the variance and that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicants.
13. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood. The neighborhood is a rural area and the unit fits within the character of the neighborhood. The unit is also located a significant distance from the nearest neighboring home.
14. The Board found that Mr. Hutt stated that the variance requested is the minimum variance necessary to afford relief.
15. The Board found that Mr. Hutt stated that the use will not substantially adversely affect the uses of neighboring or adjacent properties and that neighbors support the Application.
16. The Board found that Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct.
17. The Board found that nine (9) people appeared in support of and no one appeared in opposition to the Application.
18. 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 unrebutted, 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 1.57 acres. The Property is a large lot and can clearly hold a dwelling and garage / studio apartment. Notably, the Property previously consisted of 2 parcels and was combined into 1 lot some time ago.
 - b. The apartment will be located in garage which will be constructed to look like the existing dwelling on the lot. The Board is convinced that the garage / studio apartment will have no substantial adverse visual impact on neighboring and adjacent properties.
 - c. The Applicants will have a designated parking space for the residents of the apartment as required by the Code.
 - d. Neighbors support the Application and 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.
19. 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 unrebutted, 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 Property is unique in shape and condition. The lot was originally 2 lots but was combined into 1 lot. A portion of the Property, however, is undevelopable due to low-lying areas which make it impossible to place a septic system. Accordingly, while the Property originally was designed to handle 2 lots, the Applicants could not build homes on the 2 lots. This unique condition has created a problem for the Applicants who wish to construct a garage / studio apartment for their aging parents who suffer from medical problems. Due to these medical problems, the unit needs to be a single-level unit with handicap accessibility. The need for handicap accessibility results in wider doors and hallways and a handicap ramp. A

second bedroom is also proposed for a caretaker. Due to these conditions, the unit will be larger than allowed under the Code. The Board finds that the unique conditions of the Property and the Applicants' unique situation have created an exceptional practical difficulty.

- 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 Applicants seeks to construct a reasonably sized garage / studio apartment but are unable to do so without a variance because the unit will be 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 Applicants to construct a unit which will provide adequate living space for their aging parents who suffer from physical problems. The site plan and drawing submitted by the Applicants demonstrate that the apartment is reasonable in size, shape, and location; particularly in light of the parcel's size.
- c. The exceptional practical difficulty was not created by the Applicants. The Property has unique physical conditions which limit its developable area. The Property was originally 2 lots but could not be re-subdivided due to these conditions. The Applicants also did not create the physical conditions which render a garage / studio apartment larger than allowed under the Code necessary. The Board finds that these conditions have created an exceptional practical difficulty for the Applicants.
- 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 18, 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. 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. Rather, neighbors have 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 them to construct a garage / studio apartment large enough to meet the needs of their aging parents. The Board notes that the Applicant has reduced the size of the unit to minimize the need for the variance.
- f. The Board also finds that the Applicants' family members who will reside in the unit suffer from a disability and that the variance approval represents a reasonable accommodation.

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 December 18, 2018.