

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RYAN W. MADDOX

(Case No. 12300)

A hearing was held after due notice on May 6, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a garage / studio apartment and variance from the maximum square footage for a garage / studio apartment for a proposed structure.

Findings of Fact

The Board found that the Applicant requests a special use exception for a garage / studio apartment and a variance of 932 square feet from the maximum square footage requirement for a garage / studio apartment of 800 square feet. This application pertains to certain real property located on the north side of Gum Road approximately 577 feet west of Roxana Road (911 Address: 36215 Little Creek Lane, Frankford) said property being identified as Sussex County Tax Map Parcel 5-33-10.00-46.02.

1. The Board was given copies of the Application, a survey dated October 24, 2016, a floor plan sketch of the unit, minutes and findings of fact for Case No. 11095, 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 Ryan Maddox was sworn in to testify about the Application.
4. The Board found that Mr. Maddox testified that the Property was developed in 1974 and the existing pool house was built in 1974. He purchased the Property 2 years ago and has made no additions to the structure.
5. The Board found that Mr. Maddox testified that there is a soccer field in the rear and woods to east.
6. The Board found that Mr. Maddox testified that the building cannot otherwise be developed without the variance as the structure has been in place since 1974.
7. The Board found that Mr. Maddox testified that the exceptional practical difficulty was not created by the Applicant as no modifications have been made since he purchased the home in 2018.
8. The Board found that Mr. Maddox testified that the variance will not alter the character of the neighborhood as it has been there for 45 years.
9. The Board found that Mr. Maddox testified that he plans to use the apartment for his parents in the future and possibly as a rental in the meantime.
10. The Board found that Mr. Maddox testified that the apartment will consist of 2 floors but the second floor will be smaller. The first floor will consist of 1,144 square feet and the second floor will consist of 588 square feet. A portion of the building will be used for a garage to store his vehicle.
11. The Board found that Mr. Maddox testified that the variance requested is the minimum variance to afford relief and allow reasonable use of the building.
12. The Board found that Mr. Maddox testified that parking is available on the Property.
13. The Board found that Mr. Maddox testified that the apartment will not substantially adversely affect the uses of neighboring and adjacent properties.
14. The Board found that one person appeared in support of and no one appeared in opposition to the Application.

15. 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 1.38 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 an existing pool house that will be converted to a one-car garage.
 - c. The structure has been on the Property since 1974 and no complaints were noted in the record about the structure. The Board is convinced that the garage / studio apartment will have no substantial adverse visual impact on neighboring and adjacent properties.
 - d. There was no evidence that the apartment will have a substantial adverse effect on traffic, emissions, noise, or property values.
 - 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.
16. 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 converting an existing pool house into a garage / studio apartment for the benefit of his parents. The structure has been on the Property since 1974 and the Applicant seeks to use part of the structure for the apartment. Another portion of the building will be used for a one-car garage. This unique situation and history of the Property 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 convert an existing pool house into a garage / studio apartment for his parents but the building is larger than 800 square feet. 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. When reviewing the drawings of the property and the apartment, it is clear that the apartment is reasonable in size, shape, and location.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not construct the building. Rather, the building has been on the Property for 45 years. The construction of the pool house on the Property by a prior owner has created the exceptional practical difficulty for the Applicant.
 - 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 15, the apartment will have no adverse effect on neighboring and adjacent properties. The Property is large and the rear yard is adjacent to a soccer field. The apartment will be located in a building that has been on the Property for 45 years without a noted complaint in the

record. 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 Applicant has demonstrated that the variance sought will allow a portion of the existing pool house to be converted into an apartment. No additions to the structure are proposed.

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 of the Motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 18, 2019.