

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD OLSON

(Case No. 12604)

A hearing was held after due notice on September 13, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

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 for a garage / studio apartment for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for a garage / studio apartment and a variance of 49 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 west side of Hopkins Road directly across from Park Pavilion Way (911 Address: 20396 Hopkins Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number 2-34-5.00-46.03. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey dated September 22, 2011, a septic plot plan dated April 10, 2015, a picture, findings of fact for Case No. 11621, findings of fact for Case No. 11673, 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 Edward Olson was sworn in to give testimony about the Application.
4. The Board found that Mr. Olson testified that he purchased the Property in 2011 and that the structure was existing at that time and was used as a garage. He noted that the garage was less than 800 square feet at that time.
5. The Board found that Mr. Olson testified that he wanted to convert the garage to an apartment for his elderly mother with dementia but she later passed away.
6. The Board found that Mr. Olson testified that the renovation was completed in September 2020 with updated windows and mechanical equipment.
7. The Board found that Mr. Olson testified that there is no basement or attic for the mechanical equipment for the garage and an addition was built to accommodate the mechanical equipment and this created the need for a variance because it enlarged the area of the garage / studio apartment.
8. The Board found that Mr. Olson testified that a certificate of occupancy was issued for the building.
9. The Board found that Mr. Olson testified that this garage / studio apartment will be a rental unit for additional retirement income and there is a dedicated parking space for the tenant.
10. The Board found that Mr. Olson testified that the Property is secluded and consists of 1.5 acres.
11. The Board found that Mr. Olson testified that the garage is not close to neighboring dwellings.

12. The Board found that Mr. Olson testified that the septic system can accommodate four bedrooms and there are three bedrooms in the main house and one bedroom in the apartment.
13. The Board found that Mr. Olson testified that the apartment is only one story tall but has a 16 foot tall ceiling so it appears from the outside as a two-story structure.
14. The Board found that Mr. Olson testified that a kitchen has been installed in the apartment.
15. The Board found that no one appeared in support of or in opposition to the Application.
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 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 Property is a large lot consisting of approximately 1.5 acres as shown on the survey and tax map. A detached garage has been located on the Property since 1995. Based on the Applicant's testimony, the Applicant intends to use the garage for an apartment for rental income.
 - b. The Applicant will provide a dedicated parking space for the resident of the apartment as required by the Sussex County Zoning Code.
 - c. The apartment appears to be of a reasonable size. While it slightly exceeds the square footage requirement for an apartment, the additional space is used for mechanical equipment related to the apartment.
 - d. The garage will meet all setback requirements and will be hooked up to the existing septic system on the Property. The Applicant has confirmed that the septic system is designed and approved to accommodate the apartment.
 - e. The neighborhood surrounding the Property is residential in character and the apartment is a residential use.
 - f. No evidence was presented which would demonstrate that the apartment has had or will have a substantial adverse effect on neighboring and adjacent properties.
 - g. No one appeared in opposition to the Application.
17. 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 because the Applicant had previously received approval to convert an existing garage into a garage / studio apartment but the size of the apartment needed to be expanded to provide space for the installation of mechanical systems related to the apartment. The Board is convinced that the loss of the usable space due to the mechanical installations is a unique situation which has created an exceptional practical difficulty and unnecessary hardship for the Applicant. The Board also notes that the Applicant did not construct the garage as it existed on the Property when the Applicant acquired the Property.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to use a garage for a studio apartment but is unable to do

so without violating the Sussex County Zoning Code. More specifically, the garage, which existed prior to the Applicant's ownership, was not designed to accommodate the mechanical equipment needed for the apartment. The Applicant needed a small addition to accommodate that equipment. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized garage apartment to be used on the Property. The Board is convinced that the size, shape, and location of the garage apartment are reasonable. The Board is also convinced that requiring the apartment to comply with the Sussex County Zoning Code would greatly limit the functionality of the living space.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or place the garage on the Property. Rather, the garage was placed on the lot by a prior owner years ago. Those conditions have limited the Applicant's ability to convert the garage to an apartment. The unique characteristics of the Property are clear when reviewing the survey and the testimony from the Applicant. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics and the prior development thereof. The Applicant was greatly constrained by the existing development of the lot.
- e. 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. The Board is convinced that the garage / studio apartment will have no effect on the character of the neighborhood. The garage has been on the Property for many years and the Applicant expanded it last year but no complaints about the addition to the garage were noted in the record. The addition is a small addition and will be used to accommodate mechanical equipment related to the apartment. Furthermore, 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.
- f. 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 the garage apartment to be reasonably used and for practical living space to be provided to the occupant of the apartment while minimizing the size of the addition to the apartment.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the special use exception and variance finding that the Application met the standards for granting a special use exception and variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception application and variance application was approved. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the special use exception and variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date November 1, 2021.