

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: E. NELSON JUSTICE & LINDA JUSTICE**

**(Case No. 12643)**

A hearing was held after due notice on February 7, 2022. The Board members present were: Dr. Kevin Carson, 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 a proposed use within an existing 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 360 square feet from the 800 square foot maximum square footage requirement for a garage / studio apartment. This application pertains to certain real property located on the northwest side of Cypress Lane approximately 0.23 miles north of Old Landing Road (911 Address: 30478 Cypress Lane, Laurel) said property being identified as Sussex County Tax Map Parcel Number 232-13.00-63.01 ("the Property"). 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 of the Property dated April 22, 1992, a letter from the Applicants, a floor plan of the building dated July 16, 2021, an undated drawing 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 Nelson Justice, John Justice, and Linda Justice were sworn in to give testimony about the Application.
4. The Board found that Ms. Justice testified that she and her husband are nearly 80 years old and her husband had a fall last year that injured his back. As such, the Applicants are planning for their future and, according to Ms. Justice, the Applicants have limited income and cannot afford assisted living.
5. The Board found that Ms. Justice testified that the Applicants would like to convert an existing structure into an apartment to accommodate their needs. Their plan is for their son and daughter-in-law to move into the house on the Property and the Applicants will move into the garage / studio apartment.
6. The Board found that Ms. Justice testified that the apartment is currently an equipment shed which was formerly a barn.
7. The Board found that Ms. Justice testified that the Property consists of 5 acres.
8. The Board found that Ms. Justice testified that the apartment will be a one-bedroom apartment consisting of 1,160 square feet. She noted that the existing structure measures 30 feet by 32 feet and the pole building is the structure to become an apartment.
9. The Board found that Ms. Justice testified that their neighbors do not oppose the Application.
10. The Board found that Ms. Justice testified that she serves on the Board of Directors of the Old Church Landing Homeowners Association and the Association does not oppose the request.

11. The Board found that Ms. Justice testified that the Applicants will be converting lean-tos to porches and adding a carport.
12. The Board found that Ms. Justice testified that the Applicants have gained septic approval for a proposal.
13. The Board found that Nelson Justice testified that the building is about 50 feet east of the shed.
14. The Board found that John Justice testified that the existing building will be converted to a one-bedroom, one-bathroom apartment about 25 yards from the main house.
15. The Board found that John Justice testified that the closest neighboring home is not visible through the trees as the structure is on the farther end of the Property away from the neighbors.
16. The Board found that John Justice testified that his father broke his back and fractured his spine and he is planning to take care of his parents and their property.
17. The Board found that John Justice testified that there is designated parking.
18. The Board found that no one appeared in support of or in opposition to the Application.
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 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 5 acres as shown on the survey and tax map. The Applicants will convert an existing structure to an apartment.
  - b. The Applicants will provide a dedicated parking space for the residents 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 needed due to the size of the existing building and the conversion of that building to an apartment.
  - d. The apartment will meet all setback requirements and will be hooked up to the existing septic system on the Property. The Applicants have 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. The apartment will likely not be visible from neighboring properties due to the woods surrounding the apartment.
  - g. No evidence was presented which would demonstrate that the apartment will have a substantial adverse effect on neighboring and adjacent properties.
  - h. No one appeared in opposition to the Application.
20. 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 variance application.
  - a. The Property is unique as it is a large property consisting of approximately 5 acres and has previously been improved by structures. Due to certain existing medical conditions, the Applicants need to convert one of those structures into living space so that they can receive care from family

members. The existing structure, however, exceeds the square footage requirement for a garage / studio apartment. The Board is convinced that the Property is unique as it has been developed by a structure that will be converted to the garage / studio apartment which is larger than allowed by the Code and this unique condition has created an exceptional practical difficulty and unnecessary hardship for the Applicants.

- 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 Applicants seek to use an existing structure for a garage / studio apartment but are unable to do so without violating the Sussex County Zoning Code. More specifically, the structure is larger than allowed by the Code for such apartments but is being converted into the apartment. The Applicants have suffered from medical conditions which necessitate care and 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 / studio apartment to be used on the Property. The Board is convinced that the size, shape, and location of the garage / studio 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 Applicants. The Applicants are working within the existing developed structures on the lot to create the garage / studio apartment and those conditions have limited the Applicants' ability to convert the structure to an apartment. The unique characteristics of the Property are clear when reviewing the survey and the testimony from the Applicants and their son. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created the lot's unique characteristics and the prior development thereof. The Applicants are 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 structure has been on the Property for some time and will be converted to the apartment. The Property is a large lot that can easily accommodate the additional space. 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 Applicants have demonstrated that the variance sought will allow the garage / studio apartment to be reasonably used and for practical living space to be provided to the Applicants. The Applicants are constrained by the size of the existing structure which is larger than allowed for a garage / studio 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. 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. Mr. Jeff Chorman did not participate in the discussion or vote on this 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 April 4, 2022