

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRADFORD SUTLIFFE & KRISTI SUTLIFFE

(Case No. 12718)

Hearings were held after due notice on July 18, 2022, and on September 12, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 and a variance from the maximum square footage requirement for a proposed 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 134 square feet from the maximum allowable 800 square feet for a garage / studio apartment. This application pertains to certain real property located on the northwest side of New Road across from Peach Tree Lane (911 Address: 16500 New Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number 335-7.00-6.20 ("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 site of the Property dated August 2021, 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 Kristi Sutcliffe was sworn in to give testimony about the Application.
4. The Board found that Ms. Sutcliffe testified that the Applicants are building on their property on New Road with Schell Brothers. She noted that the Property is one of ten lots but there is no homeowners association.
5. The Board found that Ms. Sutcliffe testified that the Applicants are looking to build a detached garage / studio apartment for her parents to reside in and that this apartment will allow her parents to live on the Property with them.
6. The Board found that Ms. Sutcliffe testified that the maximum allowable space for a garage / studio apartment is 800 square feet but they need additional room to provide room for a caregiver in the future. She noted that her father's health has declined in the recent years and her mother cannot handle it on her own.
7. The Board found that Ms. Sutcliffe testified that there is a proposed community behind the Property but she is unsure of when that community will be developed. According to Ms. Sutcliffe, the Property is separate from the proposed development.
8. The Board found that Ms. Sutcliffe testified that the main dwelling will be constructed first and then the cottage or garage / studio apartment will be constructed thereafter. She stated that the structure is going to be more of a cottage than a garage with living space and the plan is for it to be a first floor living situation with a kitchen, bathroom, and two (2) bedrooms.
9. The Board found that Ms. Sutcliffe testified that the Applicants explored the option of making their home larger but this is the option that they found would work better for their family. She stated that she and her husband have three (3) children who can be loud and this option would allow for her parents to remain independent but have the care that they need.

10. The Board found that Ms. Sutcliffe testified that the drawing submitted is a proposed home on the site but it is not an accurate depiction of their home being built.
11. The Board found that Ms. Sutcliffe testified that their garage will be a three (3) car garage which will have a dedicated space for her parents' vehicle.
12. The Board found that Ms. Sutcliffe testified that Schell Brothers offers detached garages but they are using a separate company because Schell Brothers will only construct a garage and not convert it to living space.
13. The Board found that Ms. Sutcliffe testified that the Applicants have discussed placing a separate panel in their garage and running a conduit to the cottage structure.
14. The Board found that Ms. Sutcliffe testified that their timeline has been pushed back but they are meeting with their community manager next week and should have more information after that. She believes that their home will not be completed until early 2023 and they would not start anything with the cottage until the house is completed.
15. The Board found that Ms. Sutcliffe testified that 800 square feet is not enough space because they will need multiple bedrooms and a caregiver requires their own space / room.
16. The Board found that Ms. Sutcliffe testified that the lot consists of $\frac{3}{4}$ of an acre.
17. The Board found that Ms. Sutcliffe testified that the Property is directly across the street from Peach Tree Lane, is different from the other nine (9) lots in this subdivision.
18. The Board found that Ms. Sutcliffe testified that the Property has a shared driveway and will be surrounded on one side and the rear by the other subdivision.
19. The Board found that Ms. Sutcliffe testified that her parents resided out-of-state and recently moved into an apartment while their home is being built.
20. The Board found that Ms. Sutcliffe testified that her father was recently diagnosed with Alzheimer's disease / dementia and her father has become a big burden for her mother to carry alone and, as an only child, it is only her as far as help goes.
21. The Board found that Ms. Sutcliffe testified that this was not something that her and her husband had anticipated when they were preparing to build a new home and they are trying to find the best solution.
22. The Board found that Ms. Sutcliffe testified that the cottage would need to be ADA compliant which would increase the square footage needed.
23. The Board found that Ms. Sutcliffe testified that her parents only have one vehicle as her father cannot drive.
24. The Board found that Ms. Sutcliffe testified that the Property will be served by well and septic and the well will be located at the front of the Property as indicated on a submitted drawing.
25. The Board found that no one appeared in support of or in opposition to the Application.
26. The Board voted to leave the public record open to allow the Applicants to provide a floor plan and updated site plan by September 5, 2022, and to have a second public hearing on the Application on September 12, 2022, where the Board would allow for questions and comments as to the floor plan and updated site plan only. On September 12, 2022, the Board held the second public hearing and Ms. Sutcliffe and Mr. Sutcliffe were sworn in to testify at that hearing as well. The Board notes that additional materials were submitted as required.
27. The Board found that Ms. Sutcliffe testified that, previously, the Applicants sought a variance of 400 square feet but, since the first hearing, the Applicants have identified a smaller footprint that they will be using. She noted that they will be making adjustments to the submitted floor plan in order to meet ADA compliance due to her father's declining health and the need for a wheelchair sooner than expected. The Applicants now request an apartment consisting of 934 square feet.

28. The Board found that Ms. Sutcliffe testified that the floor plan accommodates two (2) bedrooms and two (2) bathrooms because they are still accommodating for a potential caregiver in the future and the additional square footage is a necessity as a caregiver requires its own space.
29. The Board found that Ms. Sutcliffe testified that, surrounding the Property, are other homes with detached garage structures that are similar in size to what they are proposing.
30. The Board found that Ms. Sutcliffe testified that the Applicants have considered placing them inside of the home with an addition but they have three (3) children and are trying to keep their lives as normal as possible with her parents living on the Property and they believe it is the healthiest option for their family is to have a detached structure on the Property for her parents.
31. The Board found that Ms. Sutcliffe testified that her father has fallen a lot recently and they are concerned with placing in any manner that would require stairs.
32. The Board found that Mr. Sutcliffe testified that, due to his father-in-law's health and current use of a cane, the most feasible option is a single-floor living situation with the option to add wheelchair access when needed.
33. The Board found that Mr. Sutcliffe testified that that their children are aged twelve (12), ten (10), and seven (7) and his father-in-law is eighty-two (82) years old and, with his current state, the children and associated noise would be too much.
34. The Board found that Mr. Sutcliffe testified that the Applicants believe that this is the best option for their families because his father-in-law has not been in close quarters with small children for an extended time in almost forty (40) years.
35. The Board found that Mr. Sutcliffe testified that this structure would be fully ADA compliant and, once approved, they would be seeking for wider doorways and ramps rather than stairs.
36. The Board found that Mr. Sutcliffe testified that the structure will look similar to the home.
37. At the September 12, 2022, meeting, the Board found that no one appeared in support of or in opposition to the Application.
38. 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 Property is a lot consisting of approximately 0.75 acres as shown on the survey and tax map. The Applicants intend to construct a garage / studio apartment that will be similar in size and aesthetics to a detached garage for use by the Applicants' aging parents.
 - 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 to comply with ADA requirements and to provide living space for a live-in caretaker.
 - d. The apartment will meet all setback requirements and will be hooked up to the utilities on the Property.
 - 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 will have a substantial adverse effect on neighboring and adjacent properties.

- g. No one appeared in opposition to the Application.
39. 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 situation is unique as the Applicant's father suffers from dementia-related issues and needs full-time caretaking. The Applicants have young children and cannot accommodate them in the parents in the home but need to keep them nearby. The increased size of the apartment beyond the maximum allowable square footage is to provide for wider halls and doorways to meet the American with Disabilities Act and to provide for living space for a live-in caretaker. While the Applicants could apply for a special use exception for a medical hardship to place a manufactured home on the Property, given the size and shape of the Property and the location of utilities, it is doubtful that such a home could be placed on the lot without a variance either. These conditions have 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 construct a garage / studio apartment that will meet ADA requirements and provide living space for a caretaker but are unable to do so without violating the Sussex County Zoning Code. The Applicants' parents 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 limited space and buildable area on the lot to create the garage / studio apartment and those conditions have limited the Applicants' ability to construct the apartment. The Board also notes that the Property has limited space to place a manufactured home to meet an emergency situation also. The unique characteristics of the Property and the need for the structure are clear when reviewing the survey and the testimony from the Applicants. 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 unique situation. The Applicants are greatly constrained by the size, shape, and utilities 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 will be constructed to look similar to the home and will be similar in size to detached garages found on other nearby lots. The Property appears able to accommodate the structure. 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 lot and the need for ADA compliance and a live-in caretaker.
- 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.
- h. The Board finds that this approval is a reasonable accommodation to an person with a disability.

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 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 application.

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. Mr. Jordan Warfel voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date November 7, 2022.