

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

**IN RE: CHAD A. RUBIN**

**(Case No. 12746)**

A hearing was held after due notice on October 3, 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 to the maximum square footage for a proposed garage / studio apartment.

Findings of Fact

The Board found that the Applicant is seeking a special use exception and variance of 208 square feet from the 800 square feet maximum square footage for a garage / studio apartment. This application pertains to certain real property that is a corner lot located on the corner of Old Landing Road and Dry Brooke Drive (911 Address: 35526 Dry Brook Drive, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 334-12.00-191.00 ("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 deed to the Property, tax record information, a survey of the Property dated May 17, 2022, a portion of the Zoning Code, aerial photographs, plans, building permit, certificate of occupancy, rendering of the proposal, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five (5) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Chad Rubin was sworn in to give testimony about the Application. Makenzie Peet, Esquire, appeared on behalf of the Applicant.
4. The Board found that Ms. Peet stated that the Applicant wishes to make improvements to the Property by constructing a single-family home on the Property and this approval would allow him to do so.
5. The Board found that Ms. Peet stated that the Property consists of 25,690 square feet, more or less, and is a corner lot located at the intersection of Old Landing Road and Dry Brooke Drive. She noted that the Property is located adjacent to the subdivision known as Cedar Valley and that the Property is also located nearby to the subdivisions of Redden Ridge, Arnell Creek, Breezewood, and the Landing. She argued that the Property is located nearby a more dense area of development.
6. The Board found that Ms. Peet stated that there is a bed and breakfast with accessory structures across from the Property also.
7. The Board found that Ms. Peet stated that, as you travel Old Landing Road towards the highway, the uses intensify with stores from Atlantic Liquors to Walmart.
8. The Board found that Ms. Peet stated that Section 115-4 of the Sussex County Zoning Code defines a garage / studio apartment as a building or use designed and used as a single apartment unit containing not more than 800 square feet of total floor area and accessory to the single-family dwelling.
9. The Board found that Ms. Peet stated that, within the zoning district in question, garage / studio apartments can be permitted administratively and that the only reason her client is before the Board is because the structure is in excess of the 800 square feet limitation and cannot be granted administratively.



10. The Board found that Ms. Peet stated that the existing garage / studio apartment on the Property creates a unique circumstance as it is located in the center rear yard of the Property and is the only dwelling on the Property.
11. The Board found that Ms. Peet stated that the existing structure creates a practical difficulty for the Applicant to construct a single-family dwelling on the Property.
12. The Board found that Ms. Peet stated that the nature of the zoning for the area is residential and the existing and proposed structures are within the character of the neighborhood.
13. The Board found that Ms. Peet stated that permitting the garage / studio apartment with additional square footage will not hinder the ability of neighboring properties to be developed.
14. The Board found that Ms. Peet stated that this structure has been on the Property since 2016 without issue and there are letters of no objection from neighboring property owners.
15. The Board found that Ms. Peet stated that the Applicant cannot construct his dwelling until the existing is deemed as an accessory structure.
16. The Board found that Ms. Peet stated that the current structure cannot accommodate the Applicant's family and guests due to the size limitation making the designation of an accessory dwelling unit all the more important.
17. The Board found that Ms. Peet stated that the previous owner built the structure and the intentions based off the permit was that the previous owner was going to construct a single family dwelling on that lot as well but that never came to fruition.
18. The Board found that Ms. Peet stated that the variance will not alter the essential character of the neighborhood, that the variance will not substantially or permanently impair the appropriate use of the Property, and that the variance will not be detrimental to the public welfare.
19. The Board found that Ms. Peet stated that the existing structure is located within an agricultural and residential area.
20. The Board found that Ms. Peet stated that garage / studio apartments are granted through administrative approval indicating that they are within the character of the neighborhood.
21. The Board found that Ms. Peet stated that they have enough space on the lot to construct the single family dwelling and keep the structure with the garage studio apartment. She noted that the structures will meet the setback requirements.
22. The Board found that Ms. Peet stated that the variance is the minimum request to afford relief as the structure is already existing.
23. The Board found that Ms. Peet stated that the garage / studio apartment has one (1) parking space which is a requirement.
24. The Board found that Ms. Peet stated that the Property is serviced by public water and sewer.
25. The Board found that Ms. Peet stated that the shed and HVAC on the Property are within compliance.
26. The Board found that Ms. Peet stated that the property owners plan to reside in the existing structure while building their new home.
27. The Board found that Ms. Peet stated that the Applicant may rent out the apartment in the future or retain it for storage and his growing family. She noted that the alternative option would be to convert the existing structures living space to a guest house but there is an economic cost to the removal of the cooking ability and the property owners' need to retain the ability to cook for their intended use now and in the future.
28. The Board found that Ms. Peet stated that on the rendering submitted the crossed out section would not be included.



29. The Board found that Ms. Peet stated that, when driving by the Property, you can clearly see that it is a garage with an apartment above it on the lot and not a dwelling as it appears on the aerial maps.
30. The Board found that Ms. Peet stated that the lot is well manicured with a nice fence.
31. The Board found that Mr. Rubin testified that the statements made by Ms. Peet are true and correct.
32. The Board found that Mr. Rubin testified that they did not look at putting any additional walls up to reduce the square footage but there is no place to put a wall to reduce the square footage of the apartment.
33. The Board found that Mr. Rubin testified that 44 square feet of the current living space is stairs that go to the second floor.
34. The Board found that Mr. Rubin testified that the way the apartment is laid out makes it difficult to reduce the square footage.
35. The Board found that Mr. Rubin testified that the apartment is one large room with a door to the outdoor deck on the farthest side from the stairs.
36. The Board found that Mr. Rubin testified that they will be using the same builder as the existing structure to keep the look of the Property consistent.
37. The Board found that Mr. Rubin testified that it is a three (3) car garage with an apartment above it and that the property to the south of the Property has a four (4) car garage with an apartment above it.
38. The Board found that no one appeared in support of or 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 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 residential lot consisting of approximately 25,690 square feet as shown on the survey and tax map. The Applicant will retain an existing garage / studio apartment over a 3 car garage and will construct a dwelling on the lot.
  - b. The apartment appears to be of a reasonable size though will exceed the limitations in the Sussex County Zoning Code for a garage / studio apartment.
  - c. The apartment meets all setback requirements and is hooked up to the existing utilities on the Property.
  - d. The neighborhood surrounding the Property is residential in character and the apartment is a residential use.
  - e. The apartment will be used by an Applicant's family when visiting.
  - f. A parking space is dedicated to the occupant of the apartment.
  - g. The apartment has been on the Property for 6 years without complaint noted in the record.
  - h. The Board was not convinced that smells, noise, or traffic related to the apartment would rise to the level of creating a substantial adverse effect on neighboring and adjacent properties.
  - i. No substantial evidence was presented which convinced the Board that the apartment will have a substantial adverse effect on neighboring.
40. 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 was previously developed with a 3 car garage and a garage / studio apartment by a prior owner. The Applicant seeks to construct a dwelling on the Property but, due to the size of the apartment, a variance is needed. The apartment exists over the 3 car garage and, based on the evidence and testimony presented, it appears that the size of the apartment cannot be reduced. Consequently, the existing structure 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 Applicant.
- 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 an existing structure for a garage / studio apartment but is 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 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 Applicant. The Applicant is working within the existing developed structures on the lot to create the garage / studio apartment and those conditions have limited the Applicant's 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 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 is 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 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 Applicant has 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 Applicant. The Applicant is 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. 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



Jeffrey Chorman  
Chair

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

Date December 12, 2022.