

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

**IN RE: ROBERT BARKEY & JANET HYNES**

**(Case No. 12427)**

A hearing was held after due notice on March 16, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, 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.

Findings of Fact

The Board found that the Applicants are seeking a special use exception for an existing garage studio apartment. This application pertains to certain real property located on the southeast side of Jersey Road approximately 0.19 miles northeast of John J. Williams Highway (Route 24) (911 Address: 26508 Jersey Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-32.00-91.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Janelle Cornwell dated January 15, 2020, a survey of the Property dated September 17, 2003, a building sketch, a deed to the Property, a letter from Christin Headley dated February 4, 2020, property record information, a building permit, a memo from Jamie Whitehouse, photographs, 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 three letters in support of and one letter in opposition to the Application.
3. The Board found that Janet Hynes was sworn in to give testimony about the Application. Ms. Hynes submitted exhibits to Board members.
4. The Board found that Ms. Hynes testified that, until the constable visited the Property and informed the Applicants that the Property was in violation, she was unaware that a special use exception was required for a garage studio apartment.
5. The Board found that Ms. Hynes testified that the 3 car garage was a preexisting structure on the Property and was on the lot when the Applicants purchased the Property in 2017.
6. The Board found that Ms. Hynes testified that there is parking on the Property for the garage studio apartment.
7. The Board found that Ms. Hynes testified that there are no noise issues from the apartment.
8. The Board found that Ms. Hynes testified that, after purchasing the Property, the Applicants renovated the garage and built a deck. Initially, the Applicants intended to live in the apartment while building their house but they ended up leasing a portion of the garage to tenants.
9. The Board found that Ms. Hynes testified that the garage initially did not have living quarters but the Applicants added the living quarters.
10. The Board found that Ms. Hynes testified that approximately 1/3 of the garage is used for the apartment. Her husband operates an upholstery business in the garage as well.
11. The Board found that Ms. Hynes testified that there is a fire-rated door between the garage and the apartment.
12. The Board found that Ms. Hynes testified that the Property is served by well and septic. She alleged that she was permitted to have up to 5 bedrooms connected to the septic system.

13. The Board found that Jeremy Murdock and Dennis Murphy were sworn in to give testimony in opposition to the Application.
14. The Board found that Mr. Murdock testified that he was the previous tenant in the apartment and that the apartment consists of 750 square feet. He was unaware, though, that the apartment was not permitted.
15. The Board found that Mr. Murdock testified that he believes that the building was remodeled without permits and that it does not meet County Code. He believes that the unit is not safe because one of the bedrooms does not have a proper egress window and the door to the garage is not a fire-rated door.
16. The Board found that Mr. Murdock testified that he believes that the septic system was not designed for five bedrooms and four bathrooms.
17. The Board found that Mr. Murdock testified that the septic for the apartment clogged up daily.
18. The Board found that Mr. Murdock testified that the apartment had excessive electric bills and that the upholstery shop and the Applicants' mancave are all on the same meter as the apartment.
19. The Board found that Mr. Murphy testified that he lives across the street and he moved into the neighborhood after the apartment was created.
20. The Board found that Mr. Murphy testified that there is a great deal of traffic on the Property.
21. The Board found that Mr. Murphy testified that he believes it will have an adverse effect on his property value.
22. The Board found that no one appeared in support of and two parties appeared in opposition to the Application and that no comments were submitted electronically.
23. The Board found that Ms. Hynes testified that there are 2 bedrooms in the apartment and 3 bedrooms in the house and that the DNREC septic permit is good for up to 5 bedrooms.
24. The Board found that Ms. Hynes testified that she did not get a permit for the garage renovation or the deck even though her husband has worked in construction.
25. The Board found that Ms. Hynes testified that she does not have the permit to connect the garage bathroom to the septic system.
26. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a special use exception because the proposed use will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to deny the Application.
  - a. The Board questions the credibility of the Applicants. It is clear to the Board that the Applicants, one of whom has a construction background, renovated the garage to create an apartment, constructed a deck, and connected bathrooms from the apartment to an existing septic system without necessary permits. In light of the Applicant's construction background, the Board finds it surprising and troubling that the Applicants thought that no permits were needed for such projects.
  - b. The Applicants' credibility is also weakened by the fact that the Applicants testified that the Property was permitted for a septic system for 5 bedrooms when the septic permit clearly states that it was designed for only 3 bedrooms. There was no evidence submitted which indicates the septic system was designed for a larger capacity.
  - c. While the Applicants submitted questionable testimony about the apartment, the former tenant presented convincing testimony that the septic system was clearly not designed for this use. The former tenant testified to regular problems with the bathroom in the apartment and almost daily septic

issues. It is thus clear to the Board that the septic system is not designed for this use.

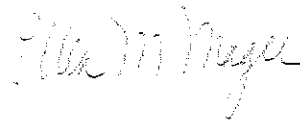
- d. In addition to concerns about the Applicants' failure to obtain necessary permits and clear disregard for County requirements (including the operation of a garage / studio apartment years before actually applying for the special use exception), the Board also has concerns about the impact of the septic system on the neighboring and adjacent properties. The Property is adjacent to Indian River and overuse of a septic system can lead to septic system failure. There is clear evidence in the record that the apartment has taxed a system simply not designed for this use. A failed septic system on the Property could create environmental and ecological problems due to the Property's close proximity to Indian River and those problems would undoubtedly substantially affect adversely the uses of neighboring and adjacent properties.
- e. Ultimately, the Applicants failed to adequately plan for the proposed use and have disregarded proper permitting requirements which would protect the tenant, the Property, neighbors, and the general public.
- f. It is clear to the Board that the proposed special use exception application would substantially affect adversely the uses of neighboring and adjacent properties.
- g. The Board also notes that it has concerns that the deck attached to the garage was built in violation of the Sussex County setback requirements.

The Board denied the special use exception application because the application failed to meet the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

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

Date May 5, 2020.