

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JUUST SOOUP MINISTRIES, INC.

Case No. 10878 – 2011

A hearing was held after due notice on November 7, 2011. The Board members present were: Mr. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman, and Mr. Jeff Hudson.

Nature of the Proceedings

This is an application for a special use exception to allow the serving of foods at a custom cooking facility approved as a home occupation (not as commercial use).

Finding of Facts

The Board found that the Applicant was requesting a special use exception to determine whether or not an existing home occupation would permit the Applicant to serve meals on the premises south of Route 18 (Lewes Georgetown Highway) 195 feet south of Road 290 (Cool Spring Road). After a hearing, the Board made the following Findings of Fact:

1. Dale Dunning testified that she has prepared food for the homeless, unemployed, and anyone in need of a meal for over 12 years. Meals are served in church halls and approximately 17 other sites throughout the state of Delaware. No fees are charged. The Applicant prepares all the food herself and has volunteers that help serve the food and also help with clean-up.
2. The Applicant would like to use the new facility on Monday, Thursday and Friday to serve between the hours of 11:00 a.m. to 2:00 p.m. She would also like to serve on holidays and special occasions, such as Thanksgiving and Christmas, and for special occasions such as birthdays or other milestones in the lives of people she serves. The Applicant typically feeds as many as 50–70 people daily. Usually 6 or 7 volunteers are available to serve meals.
3. There is adequate parking on the property.
4. Mr. Lank identified the limited approvals in effect. In early August he advised the builder that the site would be approved for a single-family dwelling, as well as an attached unit to be used by a family member, connected to the same utilities as the main dwelling and without separate cooking facilities. He explained that the Applicant can cook on site and deliver with a Home Occupation approval from the Director. On September 1, 2011 he told a representative of the Builder that she could apply for a special use exception to expand the home occupation.
5. Several individuals testified in opposition.

The Board made the following Conclusions of Law:

1. The case was filed under §115-210(A)(3)(i), which allows for the Board to determine whether a proposed use not specifically included in the Zoning Code is “in keeping with” other uses which are specifically permitted. The Board has the power to decide in the first instance whether a proposed use is in keeping with another permitted use.
2. The Director approved the property for use as a non-commercial home occupation as defined in §115-4. Specifically, “custom baking” is permitted as a home occupation, which was the basis for the Director’s approval. However, that same definition of home occupation limits the activity to family members on the premises, and prohibits any group assembly or activity. The Applicant is only permitted to cook on the premises for off-premise delivery, and has requested that it be permitted not only to cook meals, but to serve them on the premises.
3. Under the Code, a “home occupation” includes several different possible uses. However, Section 2 reads as follows: “A home occupation, however, shall not be interpreted to include nursing homes, convalescent homes, rest homes, restaurants, tea rooms, tourist homes or similar establishments.”
4. Serving meals on the premises would be almost the equivalent of a restaurant, which would be contrary to the Code.
5. The Board also believed that a conditional use or change of zone would have been more appropriate in order to address the many other factors that would come into

play, such as parking, storm water management, traffic concerns, hours of operation, and things of that nature.

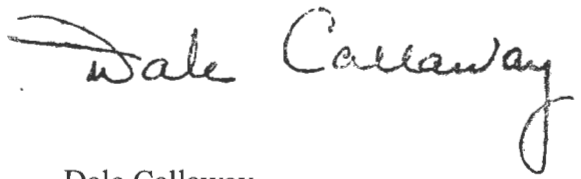
6. The Board also determined that even if the proposed use was appropriate for a special use exception, the Applicant had not met its burden of showing that the use would not substantially affect adversely uses of other properties.

The Board denied the request.

Decision of the Board

Upon motion duly made and seconded, the application was denied. The Board members voting in favor of denial were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman, and Mr. Hudson; voting against denial – none.

**BOARD OF ADJUSTMENT
OF SUSSEX COUNTY**



Dale Callaway
Chairman

Date December 28, 2011