

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARGARET TAYLOR (Case No. 11018)

A hearing was held after due notice on August 6, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a determination of existence of use.

Findings of Fact

The Board found that the Applicant was seeking a determination that the current use of property as five (5) apartments and one (1) residential trailer is a pre-existing non-conforming use. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located southeast of corner of Bi-State Boulevard (Route 13A) & Horsey Road; said property being identified as Sussex County Tax Map Parcel Number 3-32-3.00-62.00. After a hearing, the Board made the following findings of fact:

1. Margaret Taylor appeared at the hearing and testified on behalf of the Application.
2. John Sergovic, Esquire, appeared on behalf of the Applicant and presented the Application to the Board.
3. The Board found that the Applicant submitted a binder of exhibits to the Board.
4. The Board found that Mr. Sergovic stated that the Property was once a gas station in 1947 and that the Property has historically been maintained a multi-family use.
5. The Board found that Mr. Sergovic stated that the Applicant received a notice of violation in 2010 and that the Applicant does not want to evict her current tenants.
6. The Board found that Mr. Sergovic stated that the Planning & Zoning Commission and the County Council denied her Conditional Use Application for multi-family use and recommended she apply to the Board of Adjustment for determination as to whether the current use pre-dated the enactment of the Sussex County Zoning Code.
7. The Board found that Richard Shockley testified that he lived in the apartments in 1977 for approximately eight (8) months and that there were other tenants living there as well, including five (5) different families at one time.
8. The Board found that Danny Mills was testified that he has lived in the apartments located on the Property since 2001 and that since that time the trailer, two (2) apartments and the house have been occupied.
9. The Board found that Mr. Sergovic stated that the Tax Assessment records included in the binder show that in the 1970's one building had two (2) units, the old gas station had two (2) units on the first floor and one (1) unit on the second floor.
10. The Board found that Mr. Sergovic stated that the binder submitted has written affidavits from previous tenants, current tenants, and relatives of the previous owner attesting to the use of the Property as multi-family use prior to the enactment of the Sussex County Zoning Code.
11. The Board found that Jennifer Bollinger was sworn in and testified that she is a current resident in Apartment C on the Property and that she also lived in the apartments from 2006 to 2008.
12. The Board found that Ms. Bollinger provided a written statement which is included in the binder.

13. The Board found that Gary Hastings testified that he is a current resident in Apartment E on the Property and that he has lived on the Property for two (2) years.
14. The Board found that Mr. Hastings testified that his apartment is approved for Section 8 housing and is regularly inspected to maintain Section 8 status.
15. The Board found that Mr. Hastings testified that he is handicapped and has a ground floor apartment for easy access and that his nephew Ronnie Hastings lived in an apartment on this property approximately 12 to 15 years ago.
16. The Board found that Mr. Hastings provided a written statement which is included in the binder.
17. The Board found that Lindsey Bounds testified that she is a current resident in Apartment D on the Property and that she moved into the apartment in May 2012.
18. The Board found that Ms. Bounds provided a written statement which is included in the binder.
19. The Board found that Mr. Sergovic introduced additional written statements of tenants into the record.
20. The Board found that Margaret Taylor testified that she purchased the Property in 2006 and that she has been familiar with the Property since she was 16 years old.
21. The Board found that Ms. Taylor testified that she worked in the small café on the Property in the 1950's and that the owners lived in the rear of the building while renting out other apartments on the Property at the time.
22. The Board found that Ms. Taylor testified that, for as far back as she can remember, the apartments have been rented out but that of the most previous tenants have passed away.
23. The Board found that Ms. Taylor testified that that when she purchased the Property she was advised the apartments existed.
24. The Board found that Melvin Green testified that he has completed maintenance work on the Property and he upgraded the apartments. Mr. Green testified that the remodeling of the apartments took approximately four (4) months to complete.
25. The Board found that John Sergovic stated that there is no evidence of abandonment of the multi-family use for over a two (2) year period.
26. The Board found that Amy Gambrell testified in opposition to the Application.
27. The Board found that Ms. Gambrell testified that she owns the property directly across the street from the Property and that she has lived there since 1989.
28. The Board found that Ms. Gambrell testified that until 2006 she never saw anyone living in the apartments but the manufactured home was always occupied.
29. The Board found that Ms. Gambrell testified that the apartments have been completely remodeled.
30. The Board found that Keith Messick testified in opposition to the Application.
31. The Board found that Mr. Messick testified that he has lived in the area since 1995 and that he has never seen anyone living in the apartments.
32. The Board found that Janet Littleton testified in opposition to the application and stated that she purchased nearby property in 2000 and the Property appeared vacant at that time.
33. The Board found that Ms. Taylor testified that when she purchased the Property in 2006, two (2) people lived in the wood building and one (1) person lived in the brick building and that the only time the apartments were vacant was during the four (4) month period for renovations.

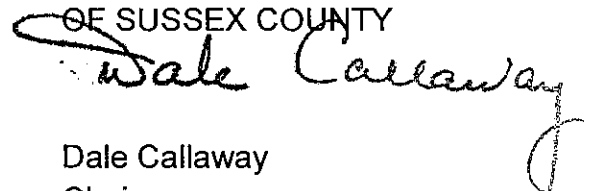
34. The Board found that Ms. Gambrell testified that she never saw anyone living in the structures from 1989 to 2006 and that the renovation took approximately 4 to 6 months to complete.
35. The Board found that Jennifer Bollinger testified that the Applicant has installed security cameras and has had no further trouble with problem tenants.
36. The Board found that Mr. Sergovic stated that the manufactured home on the Property was replaced in 1985.
37. The Board found that Margaret Taylor, under oath, confirmed the statements by Mr. Sergovic.
38. The Board found that seven (7) parties appeared in support of the Application.
39. The Board found that three (3) parties appeared in opposition to the Application.
40. After discussing the matter, the Board tabled its decision on the Application until August 20, 2012.
41. At the Board's meeting on August 20, 2012, the Board discussed the Application.
42. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Property was used for multi-family purposes of five (5) residential units and one (1) residential manufactured home prior to the enactment of the Sussex County Zoning Code and that said use has continued since that time without a lapse of at least two (2) years. As such, the Board determined that the aforementioned use was a pre-existing, non-conforming use allowable under the Sussex County Zoning Code.

The Board determined that the current use of the Property for multi-family purposes of five (5) residential units and one (1) residential manufactured home is a pre-existing, non-conforming use.

Decision of the Board

Upon motion duly made and seconded, the application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the motion to approve the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the below this application becomes void.

Date September 11, 2012.