

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRANDYWINE SEASIDE POINTE, LLC

(Case No. 11189)

A hearing was held after due notice on April 15, 2013. 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 special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).

Findings of Fact

The Board found that the Applicant was seeking a special use exception for promotional activities as accessory uses to a speedway for a period of five (5) years. This application pertains to certain real property located northeast of Seaside Boulevard 580 feet east of Road 270A (Munchy Branch Road) and being 400 feet east of Route One (Coastal Highway); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.37. After a hearing, the Board made the following findings of fact:

1. Michael Colvin, Peter Burke, Jr. and Steve Heene were sworn in to testify about the Application.
2. Timothy Willard, Esquire, presented the Application on behalf of the Applicant.
3. The Board found that Mr. Willard submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that the Applicant is requesting a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).
5. The Board found that Mr. Willard stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties.
6. The Board found that Mr. Willard stated that the existing facility was approved in 1996 for a convalescent home and that the existing facility has been in operation for fifteen (15) years.
7. The Board found that Mr. Willard stated that the Applicant plans to add an additional 28 beds for Alzheimer's and dementia patients and that the proposed addition will be called "Reflections".
8. The Board found that Mr. Willard stated that there is an increased need for this type of care in the area as the Applicant operates a similar facility in Fenwick Island and there is a waiting list for that facility.
9. The Board found that Mr. Willard stated that the Applicant is a leader in its field.
10. The Board found that Mr. Willard stated that there will be changes made to the existing entrance of the facility as the entrance will be moved to the center of the building.
11. The Board found that Mr. Willard stated that the change in the entrance will result in a loss of six (6) beds in the old portion of the facility but will increase leisure space within the facility.
12. The Board found that Mr. Willard stated that the available parking spaces will increase from 34 parking spaces to 64 parking spaces.
13. The Board found that Mr. Willard stated that there will be an additional six (6) employees hired for the proposed expansion.
14. The Board found that Mr. Colvin testified that the site will have one (1) parking space for every four (4) beds and that the Applicant is only required to have 55 parking spaces.

15. The Board found that Mr. Willard stated that most residents no longer drive and that parking problems typically only exist during holidays such as Christmas and Mother's Day.
16. The Board found that Mr. Willard stated that the Applicant will landscape the parking lot islands and will install additional lighting in the parking lot.
17. The Board found that Mr. Willard stated that the proposed addition will have the same appearance as the existing building.
18. The Board found that Mr. Burke testified that he is the Vice President of Brandywine Seaside Pointe, LLC.
19. The Board found that Mr. Burke testified that the Alzheimer's Disease epidemic is creating problems because those who suffer from the disease are living longer.
20. The Board found that Mr. Burke testified that 40% of the residents at the Fenwick Island facility suffer from Alzheimer's Disease or related conditions.
21. The Board found that Mr. Burke testified that the proposed expansion will help the Applicant meet a demand.
22. The Board found that Mr. Burke testified that the closest facility is 25 miles away.
23. The Board found that Mr. Burke testified that only 2 or 3 current residents actually drive.
24. The Board found that Mr. Colvin testified that the water runoff from the parking lot will be directed to the existing Storm Water Management Pond and that adequate capacity for the water and sewer is available to accommodate the proposed addition.
25. The Board found that Mr. Colvin testified that Tidewater provides water to the site and Sussex County provides sewer services.
26. The Board found that Mr. Colvin testified that the proposed lighting is designed so that it does not disturb the neighboring properties.
27. The Board found that Mr. Willard stated that the Applicant obtained an appraisal comparing the Beachfield community, which is adjacent to the facility, to other similar communities adjacent to convalescent homes and the appraisal showed that there is no substantial adverse effect to the surrounding neighborhoods.
28. The Board found that Mr. Willard stated that there are Leland Cypress trees along the property line and the Applicant is willing to increase the buffer, if necessary.
29. The Board found that Mr. Willard stated that there is intense commercial activity nearby as a pharmacy, a grocery store, and a bank are very close to the Property.
30. The Board found that Mr. Willard stated that the facility is a transition property separating the residential properties in Beachfield from the nearby commercial properties.
31. The Board found that Mr. Willard stated that the facility is very secure.
32. The Board found that Mr. Heene testified that the facility is equipped with keypad entry and alarms on all doors and that any outdoor activity for the residents is within a fenced in area.
33. The Board found that Mr. Heene testified that nursing care is provided 24 hours a day / 7 days a week.
34. The Board found that Mr. Heene testified that the Applicant operates 25 facilities in five (5) states.
35. The Board found that Mr. Heene testified that the Applicant is very concerned about keeping the facility secure and will install cameras outside the facility's exit doors.
36. The Board found that Mr. Heene testified that the facility practices yearly disaster drills with the local fire department.
37. The Board found that Mr. Heene, under oath, confirmed the statements made by Mr. Willard.

38. The Board found that Sally Cooper, Gabriel Fisher, and Bill Gallop were sworn in and testified in opposition to the Application.
39. The Board found that Ms. Cooper testified that she lives in Beachfield development.
40. The Board found that Ms. Cooper testified that she is concerned about the additional parking lot, lighting and landscaping and that her property abuts the parking lot.
41. The Board found that Ms. Cooper testified that she would like to see a double row of Leland Cypress trees planted along the property line.
42. The Board found that Ms. Cooper testified that the existing fence is currently not maintained and that she would like the Applicant to maintain the fence.
43. The Board found that Ms. Fisher testified that she is concerned about increased noise and lighting issues.
44. The Board found that Ms. Fisher testified that there are no trees planted between her property and the Applicant's property and that she would like to see a double row of Leland Cypress trees planted to create a buffer.
45. The Board found that Ms. Fisher testified that she is concerned the lighting for the Property will shine on her property.
46. The Board found that Ms. Fisher testified that the Applicant should maintain the existing fence.
47. The Board found that Mr. Gallop testified that he would like to know the shift schedule and hours of operation, that the Beachfield development never received a copy of the proposed plan from the Applicant, and that the Applicant has been a great neighbor.
48. The Board found that Mr. Colvin testified that the Applicant could put a double row of Leland Cypress trees near the current trees.
49. The Board found that Mr. Colvin testified that he does not think there is enough space to plant a double row in the new area but there is enough space to plant a single row of the trees beginning at the end of the existing row of Leland Cypress trees.
50. The Board found that Mr. Colvin testified that the lighting will be taller than eight (8) feet but is designed to minimize the impact to surrounding properties and not radiate outside the parking area.
51. The Board found that Mr. Heene testified that the shifts will remain the same, which are 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.
52. The Board found that no parties appeared in support of the Application.
53. The Board found that seven (7) parties appeared in opposition to the Application.
54. The Board found that the Office of Planning & Zoning received two (2) letters in opposition to the Application.
55. Based on the findings above and the testimony presented at the public hearing, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties and for the following reasons:
 - a. The Applicant proposes to expand an already existing convalescent home. Specially, the new facility would add 28 units. The current facility has 96 units. The proposed addition would be approximately 20,000 square feet. The current facility is approximately 64,000 square feet. This expansion fills a significant demand for healthcare for the elderly and the expanded activity because of economies of scale is marginal and would not substantially affect adversely the neighbors or adjacent properties.
 - b. The use would be for a secure facility for patients with Alzheimer's or dementia related diseases and would not generate significant outdoor activity including traffic or noise.
 - c. An appraiser's report concluded that the expansion would not adversely affect property values on neighboring residential homes.


- d. The Planning Director reported that the current facility has been in operation for over ten (10) years and has had no violation or known complaints.
 - e. The site plan provides for ample parking, appropriate storm water management, and sufficient infrastructure and utilities for the expansion.
 - f. The property is located in a GR-RPC which allows for application of a special use exception for convalescent home.
 - g. The adjacent property and neighbors include significant commercial activity which would not be adversely affected by this expansion.
 - h. The applicant will maintain and / or install sufficient buffers to all residential property and install landscaping and appropriate lighting.
56. As part of its approval, the Board placed the following conditions on the special use exception:
- a. The Applicant plant a double row of six (6) foot high Leland Cypress trees along the property line; and
 - b. The Applicant maintain the fence between the Applicant's property and the Beachfield development.

The Board granted the special use exception application with the conditions stated herein finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application with the conditions stated herein was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

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

Date May 21, 2013