

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD E. RADCLIFFE and KAREN A. RADCLIFFE

(Case No. 11476)

A hearing was held after due notice on December 1, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. Mr. Brent Workman was not in attendance at this hearing.

Nature of the Proceedings

This is an application for a special use exception for a recovery home.

Findings of Fact

The Board found that the Applicants were seeking a special use exception for a recovery home. This application pertains to certain real property located northeast of Road 298 (Legion Road) and being southeast corner of Joanne Drive and Stacey Drive and being Lot 34 within John Burton Manor Subdivision (911 Address: 220 Joanne Drive, Millsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-863.00). After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, literature from Midway Baptist Church, and correspondence pertaining to the Application.
2. The Board found that the Office of Planning and Zoning received twenty-seven (27) letters in support of the Application and received six (6) letters in opposition to the Application and gave each Board member copies of all letters submitted.
3. The Board found that Donald Radcliffe, William Garnett, and Robert Buckley were sworn in and testified regarding the Application.
4. The Board found that Mr. Radcliffe testified that he is the owner of the Property and that Midway Baptist Church leases the Property from him.
5. The Board found that Mr. Garnett testified that he is the director of the recovery house.
6. The Board found that Mr. Garnett testified that the use is not a commercial business, nursing home, or substance abuse center and that the program is not a halfway house and that no health care or treatment is provided on the site.
7. The Board found that Mr. Garnett testified that there is not a health care provider or supervisor on site.
8. The Board found that Mr. Garnett testified that residents manage the Property and the finances.
9. The Board found that Mr. Garnett testified that there is no extra traffic impact on the neighborhood and that there are no large deliveries or large volumes of traffic accessing the Property.
10. The Board found that Mr. Garnett testified that volunteers offer rides to the residents in need of transportation.
11. The Board found that Mr. Garnett testified that a few residents are on probation and have probation officers visit the home but the police have not been called to the residence since the recovery home has been in operation.
12. The Board found that Mr. Garnett testified that approximately a year and a half ago the church leased the Property for this use.
13. The Board found that Mr. Garnett testified that the residence offers a drug and alcohol free home for men in recovery.
14. The Board found that Mr. Garnett testified that the use will not substantially adversely affect the use of the neighboring and adjacent properties.

15. The Board found that Mr. Buckley testified that the home is run in a democratic manner by the residents and that the home functions as a family environment.
16. The Board found that Mr. Buckley testified that the success of recovery increases in a residential setting.
17. The Board found that Mr. Buckley testified that all residents have access to the entire dwelling.
18. The Board found that Mr. Buckley testified that the residents share equal expenses and housekeeping duties while living in the home.
19. The Board found that Mr. Buckley testified that there is no limit on how long a resident may remain in the home.
20. The Board found that Mr. Buckley testified that this type of home is the functional equivalent to a single family dwelling and should be in an area for single family homes.
21. The Board found that Mr. Buckley testified that the Property is zoned for single family housing.
22. The Board found that Mr. Buckley testified that in 1988 the Federal Fair Housing Amendment Act ("FHAA") was passed and Congress determined it unlawful to discriminate against the handicapped and disabled.
23. The Board found that Mr. Buckley testified that the Congress pre-empted state and local law with FHAA to end the unnecessary exclusion of persons with handicaps from society.
24. The Board found that Mr. Buckley testified that a handicap is a physical or mental impairment which substantially limits one or more daily living activities and that addiction to alcohol, legal or illegal substances falls within the definition of handicap.
25. The Board found that Mr. Buckley testified that it is unlawful to refuse addicts rights to reasonable accommodations in rules, policies, or practices when such accommodations may be necessary.
26. The Board found that Mr. Buckley testified that the residents of the recovery home have special needs and are a protected class according to the FHAA.
27. The Board found that Mr. Buckley testified that it is not unreasonable to request a special use exception to allow six (6) or seven (7) unrelated adults to live in the same residence.
28. The Board found that Mr. Buckley testified that baseless hostility and fear are not reasons to deny this type of use.
29. The Board found that Mr. Buckley testified that the residents of the home are a good group of sober men rebuilding their lives and who are back in the workforce and getting involved with their families again.
30. The Board found that Mr. Radcliffe testified that his son previously lived in the home.
31. The Board found that Mr. Radcliffe testified that he was not aware a special use exception was required until he was contacted by the Planning and Zoning Department.
32. The Board found that Mr. Buckley testified that the home is open for six (6) residents.
33. The Board found that Mr. Buckley testified that residents are immediately expelled if they use drugs or alcohol.
34. The Board found that Mr. Radcliffe testified that the program is overseen by the Midway Baptist Church and their representatives visit the home daily.
35. The Board found that Mr. Radcliffe testified that he lives 100 feet away from the Property.
36. The Board found that Mr. Radcliffe testified that the residents are randomly drug tested by their probation officers and the Church.
37. The Board found that Mr. Buckley testified that not all residents are on probation.

38. The Board found that Mr. Buckley testified that volunteers stop by the house regularly as well.
39. The Board found that Mr. Buckley testified that the home is only open to men in recovery and that there are no females or children living in the home.
40. The Board found that Mr. Buckley testified that they need at least six (6) men living in the home to keep it in operation.
41. The Board found that Mr. Buckley testified that the Applicant seeks a reasonable accommodation to allow six (6) men to live in the home and that there are homes throughout Sussex County which house more than six (6) persons.
42. The Board found that Mr. Buckley testified that the use will not substantially adversely affect the neighboring and adjacent properties.
43. The Board found that Mr. Buckley testified that the house is power washed regularly and the grass is cut.
44. The Board found that Mr. Buckley testified that there is no loud noise emanating from the home at night.
45. The Board found that Mr. Radcliffe testified that the program is total voluntary and not funded by any State or Federal grants.
46. The Board found that Mr. Radcliffe testified that he has the ultimate control of the Property.
47. The Board found that Mr. Buckley testified that there are Alcoholics Anonymous meetings held at the house a few times per week and that there are evening meetings throughout the week.
48. The Board found that Mr. Buckley testified that each resident pays \$110.00 per week to cover expenses equally.
49. The Board found that Mr. Buckley testified that non-residents are at the house approximately three (3) times per day.
50. The Board found that Mr. Buckley testified that there is a general curfew of 10:00 p.m., unless a resident is working.
51. The Board found that Mr. Buckley testified that one of the residents has a vehicle and that there is no more traffic than is for a single-family residence.
52. The Board found that Mr. Buckley testified that the dwelling is a three (3) bedroom, two (2) bath structure.
53. The Board found that Mr. Radcliffe testified that there had been no complaints from the neighborhood until he received a letter from Ruth Briggs King.
54. The Board found that Mr. Radcliffe testified that he has owned the his house for thirty-six (36) years.
55. The Board found that Mr. Radcliffe testified that his son has been out of the Property for approximately eleven (11) to twelve (12) months.
56. The Board found that Mr. Radcliffe testified that the Property is serviced by a septic system and that there is not an issue with the septic system if there are six (6) residents.
57. The Board found that Mr. Radcliffe testified that the program is not licensed by the State of Delaware.
58. The Board found that Mr. Radcliffe testified that there is no signage on the door to the house.
59. The Board found that Mr. Buckley testified that over the past year and half they have helped approximately fifteen (15) to twenty (20) men.
60. The Board found that Mr. Buckley testified that the residents are self-regulating because they do not want to go back to jail.
61. The Board found that Mr. Buckley testified that all residents are recovering addicts and that once an addict uses the substance again, he is no longer considered disabled.
62. The Board found that Mr. Buckley testified that the house is only for those persons who are in recovery and that they will be evicted if caught using.

63. The Board found that Mr. Buckley testified that the Midway Baptist Church is on the lease and that the residents deal with the Church. Mr. Garnett is the representative for the Church.
64. The Board found that Ryan Gibbs, Robert John, Pastor James Noland, and Pastor Gary Hayden were sworn in and testified in support of the Application.
65. The Board found that Mr. Gibbs testified that he is a resident of the home and he is a recovering addict.
66. The Board found that Mr. Gibbs testified that the residents consider each other as family.
67. The Board found that Mr. Gibbs testified that the home provides a structured lifestyle and gives him an opportunity to better himself.
68. The Board found that Mr. Gibbs testified that his family turned his back on him so it was difficult to find a place to live.
69. The Board found that Mr. Gibbs testified that probation officers regularly visit the house.
70. The Board found that Mr. Gibbs testified that Mr. Buckley and Mr. Garnett visit the home daily and that he attends Alcoholics Anonymous meetings seven (7) days a week.
71. The Board found that Mr. Gibbs testified that there is not much traffic to the house.
72. The Board found that Mr. Gibbs testified that they do not tolerate any substance abuse and that anyone who violates the rule is immediately removed from the home.
73. The Board found that Mr. Gibbs testified that men aged 23-40 live in the house.
74. The Board found that Mr. Gibbs testified that the residents are trying to become productive members of society.
75. The Board found that Mr. John testified that he is a Board member of Midway Baptist Church.
76. The Board found that Mr. John testified that Mr. Garnett reports monthly to the church board and that the church has a fund to supplement the expenses of the house if there are not six (6) residents living there.
77. The Board found that Pastor Noland testified that he is the pastor of Axeford Community Church which is across the street from the Property.
78. The Board found that Pastor Noland testified that his son is a recovering heroin addict and that a recovery house helped his son get his life back on track.
79. The Board found that Pastor Noland testified that a recovery home gives an addict a new start away from their old environment.
80. The Board found that Pastor Noland testified that his church holds bible studies with the residents of the home.
81. The Board found that Pastor Hayden testified that he is the pastor of Midway Baptist Church and that the church has run other recovery homes.
82. The Board found that Pastor Hayden testified that there is a one (1) strike rule.
83. The Board found that Pastor Hayden testified that it is not their intention to disrupt the community.
84. The Board found that Ernest Bradley, Elizabeth Shepherd, Kenneth West, Catherine Spare, Joe Farinski, Lenny Woolridge, Sheila Vavoda, and Catherine Winebrake were sworn in and testified in opposition to the Application.
85. The Board found that Mr. Bradley testified that he has lived in the development since 1997.
86. The Board found that Mr. Bradley testified that the restrictive covenants state the development was approved for single-family dwellings only but that the Homeowners Association no longer exists.
87. The Board found that Mr. Bradley testified that there has been trouble at this house in the past.

88. The Board found that Mr. Bradley testified that in his opinion the recovery house will adversely affect property values.
89. The Board found that Mr. Bradley testified that homes have been purchased recently by persons who were unaware of the recovery house.
90. The Board found that Mr. Bradley submitted a copy of the restrictive covenants for the record.
91. The Board found that Ms. Shepherd testified that she lives in the development.
92. The Board found that Ms. Shepherd testified that she was once told that nine (9) men live in the house.
93. The Board found that Ms. Shepherd testified that other properties have been sold recently but the owners said that they would not have moved into the neighborhood had they known about the recovery house.
94. The Board found that Ms. Shepherd testified that there have been properties for sale and not selling due to the recovery house and a house on Legion Road which has been a crack house.
95. The Board found that Ms. Shepherd testified that people would go back and forth from the house on Legion Road to the Property.
96. The Board found that Ms. Shepherd testified that there was an overdose at the Property approximately six (6) months ago.
97. The Board found that Ms. Shepherd testified that she wants to feel safe in her community and that she does not feel safe.
98. The Board found that Ms. Shepherd testified that there have been numerous burglaries in the neighborhood for the past six (6) months.
99. The Board found that Ms. Shepherd testified that she drives around the neighborhood multiple times per day.
100. The Board found that Ms. Shepherd testified that one resident of the recovery house goes back and forth to a neighboring house.
101. The Board found that Ms. Shepherd testified that she cannot say how it will substantially adversely affect the neighborhood.
102. The Board found that Mr. West testified that he lives across the cul-de-sac from the Property.
103. The Board found that Mr. West testified that he has seen women at the house on multiple occasions.
104. The Board found that Mr. West testified that he moved to the development in August 2014.
105. The Board found that Mr. West testified that there have been numerous law enforcement officers at the house and that there has been a drug overdose in the house.
106. The Board found that Mr. West testified that he has seen alcohol being consumed and brought into the house.
107. The Board found that Mr. West testified that there is a lot of traffic to and from the Property.
108. The Board found that Mr. West testified that he believes that property values will drop.
109. The Board found that Mr. West testified that there are a lot of new people buying property who are unaware of the recovery house.
110. The Board found that Ms. Spare testified that she moved to the development in September 2014 and that she was not aware of the recovery house in the development at that time.
111. The Board found that Ms. Spare testified that there is a lot of foot traffic to and from the recovery house.
112. The Board found that Ms. Spare testified that there is a path on a vacant lot near her property that leads to the nearby shopping center.

113. The Board found that Ms. Spare testified that she has seen residents of the recovery home drinking alcohol and that she has found empty beer cans in the nearby woods.
114. The Board found that Ms. Spare testified that she no longer feels safe to let her child play outside.
115. The Board found that Ms. Spare testified that there has been increased traffic due to the house.
116. The Board found that Ms. Spare testified that she feels the house is bad for the community.
117. The Board found that Ms. Spare testified that she has also smelled "weed" in the area.
118. The Board found that Ms. Spare testified that she feels the use substantially adversely affects the neighboring and adjacent properties.
119. The Board found that Mr. Farinski testified that there is a fence that separates the adjacent townhouses and that there is a hole in the fence and it is used to gain access between the two developments.
120. The Board found that Ms. Shepherd testified that she handed out copies of the notice of public hearing to the neighborhood and that Ms. Spare was not aware of the recovery house until she received a copy of the public notice.
121. The Board found that Mr. Woolridge testified that he moved to the development three (3) months ago.
122. The Board found that Mr. Woolridge testified that he noticed a lot of activity at the cul-de-sac and that cars sit for long periods of time in the cul-de-sac.
123. The Board found that Mr. Woolridge testified that there is a great amount of foot traffic on the pathway near neighboring townhouses.
124. The Board found that Mr. Woolridge testified that he feels the area is not safe and that fears for the safety of children in the neighborhood.
125. The Board found that Mr. Woolridge testified that the use will substantially adversely affect the neighboring and adjacent properties.
126. The Board found that Mr. Farinski testified that there has been drug activity at this property in the past and that there is a drug house nearby.
127. The Board found that Mr. Farinski testified that he is an addiction counselor and that there should be supervision in the house.
128. The Board found that Mr. Farinski testified that the Property has been a thorn in his side in the past but he has not had any problems with the current residents.
129. The Board found that Mr. Farinski testified that he has lived in the development since 2004.
130. The Board found that Ms. Vavoda testified that she lives approximately 300 feet from the Applicants' property.
131. The Board found that Ms. Vavoda testified that seven (7) days a week from 4:15 p.m. to 10:15 p.m. there are cars in and out from the Property.
132. The Board found that Ms. Vavoda testified that there is a lot of foot traffic that uses the well-worn path to a nearby shopping center in the common area not just from residents of the recovery house, but also from children in the neighborhood.
133. The Board found that Ms. Vavoda testified that she moved to the development in July 2014 and that she would not have moved here had she known about the recovery house.
134. The Board found that Ms. Winebrake testified that she has lived in the development since 2009 and that she believed the use had already been approved.
135. The Board found that Ms. Winebrake testified that she has seen strange activities around the home and that there have been medics and police called to the Property.

136. The Board found that Ms. Winebrake testified that there was trash strewn across the back yard of the Property.
137. The Board found that Ms. Winebrake testified that the residents walk through other people's yards.
138. The Board found that Ms. Winebrake testified that she has seen drinking and women at the house.
139. The Board found that Ms. Winebrake testified that there have been some burglaries in the area but she cannot say for sure it was anyone from the house.
140. The Board found that Ms. Winebrake testified that she is disappointed that they did not contact the neighborhood prior to opening the recovery house.
141. The Board found that Ms. Winebrake testified that she does not think the use should be approved.
142. The Board found that Mr. Buckley testified that that there is one resident who has a sister that provides him transportation and that there are no women in or occasionally visiting the house.
143. The Board found that Mr. Buckley testified that a sister of a resident transported her brother to the house and came into the residence to look around.
144. The Board found that Mr. Buckley testified that the residents police themselves and hold each other accountable.
145. The Board found that Mr. Buckley testified that there are some residents with a felony record due to drug or alcohol arrests and that the courts require drug testing for some residents three (3) times a week.
146. The Board found that Mr. Buckley testified that the others are tested every week or so.
147. The Board found that Mr. Buckley testified that any resident using drug or alcohol is immediately evicted from the Property.
148. The Board found that Mr. Buckley testified that some residents have failed their tests and been evicted.
149. The Board found that Mr. Buckley testified that the nearby path leads to a bus stop and a shopping center and that the path is also used frequently by children in the neighborhood.
150. The Board found that Mr. Buckley testified that the American Legion is located nearby and it serves alcohol.
151. The Board found that Mr. Buckley testified that the direct adjacent neighbors have no objection to the Application.
152. The Board found that Mr. Buckley testified that he offered to have a neighborhood BBQ to allow the other property owners a chance to meet the current residents.
153. The Board found that Mr. Buckley testified that there is a crack house down the street and that there was a drug overdose at another house in the area.
154. The Board found that Mr. Radcliffe testified that there have been no police calls made from or about the Property since the recovery house has been in operation.
155. The Board found that Mr. Radcliffe testified that there was a death due to an overdose in a neighboring home, but not at this property.
156. The Board found that Mr. Buckley testified that when a resident wants to start using drugs and alcohol, they typically leave the house voluntarily and that they rarely have to evict anyone from the Property.
157. The Board found that Mr. Buckley testified that he has never seen more than three (3) cars at the Property at one time and that there are no more cars on the Property than would be on a property used as a single-family house.
158. The Board found that Mr. Buckley testified that the recovery house gives the residents hope.

159. The Board found that Mr. Buckley testified that residents must be sober for thirty (30) days prior to living in the home, or come straight from a treatment facility.
160. The Board found that Mr. Buckley testified that all residents are diagnosed with substance abuse issues.
161. The Board found that Mr. Buckley testified that any resident who relapses is immediately removed from the Property, taken to a bus stop, and sent to a shelter.
162. The Board found that Mr. Buckley testified that one tenant recently left and is doing very well.
163. The Board found that Mr. Buckley testified that four residents have been sober from five (5) months to a year, about ten (10) residents have relapsed over the past year, and another five (5) residents left voluntarily to relapse.
164. The Board found that Mr. Buckley testified that the program is generally in the negative and receives loans from the church to cover the finances.
165. The Board found that Mr. Radcliffe testified that he owns two (2) lots in the development and lives on an adjacent Property at the entrance of the development.
166. The Board found that Mr. Radcliffe testified that he cares for seven (7) children at his home, who are aged one (1) to eighteen (18).
167. The Board found that Mr. Radcliffe testified that his children play outside and use the pathway and that he does not fear for their safety.
168. The Board found that Mr. Buckley testified that they were not aware of the need for a special use exception which was why this application was not filed earlier.
169. The Board found that sixteen (16) parties appeared in support of the Application.
170. The Board found that fourteen (14) parties appeared in opposition to the Application.
171. The Board tabled its decision on this Application.
172. On January 5, 2015, the Board discussed the Application.
173. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a special use exception because the proposed recovery house 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 Applicant demonstrated that the vehicular traffic impact related to the recovery house is limited and would be no greater impact than a single-family dwelling. At the present time, only one resident owned a vehicle. The home does not receive large, regular commercial deliveries. The only regular traffic to the home stems from visits from counselors, church representatives, and probation officers. These visits appear reasonable and not appreciably greater than traffic generated from a single-family residence. The opposition testified that the recovery house had led to an increase in traffic but this testimony did not convince the Board that the traffic impact was greater than traffic for a single-family dwelling nor was the Board convinced that the traffic from the home created a substantial adverse effect on neighboring and adjacent properties.
 - b. The opposition claimed that the recovery home led to an increase in foot traffic, particularly on a path to a nearby bus top and shopping center. The testimony regarding this increased foot traffic was conflicting as some members of the opposition attributed the foot traffic to the recovery house while others testified that children also use the path. Nevertheless, the Board finds that any foot traffic related to the recovery house is limited and does not rise to the level of having a substantial adverse affect on the uses of neighboring and adjacent properties. Since some of the recovery

home residents do not have vehicles, it is not unexpected that they may have to walk to a nearby bus stop or shopping center. This means of transportation is no different than a resident of a single-family dwelling that does not have vehicular means of transportation. The Board finds that the foot traffic impact related to the recovery house is minimal at best and has no adverse effect on neighboring and adjacent properties

- c. Residents of the neighborhood testified about issues with alleged drug use, alcohol abuse, and burglaries in the neighborhood but the Board was not convinced that these issues arose from the residents of the recovery home. The opposition claims that police have been called to the recovery home and that there has been an increase in criminal activity in the neighborhood. The opposition, however, provided no evidence of police reports to substantiate these claims. Furthermore, neighbors allege that another nearby property is used as a drug house and the Board was not convinced that the alleged increase in crime was attributable to the recovery house. To the contrary, evidence presented by the Applicants and their supporters demonstrate that the residents who have left prison are not interested in returning to jail and they police themselves. Probation officers also regularly check on the residents who are on probation to make sure that the residents are compliant with the terms of their probation.
 - d. The Applicants presented testimony that the recovery house is well-maintained, the grass is cut and that no loud noise emanates from the home. The Board found this testimony credible and persuasive.
 - e. Testimony from some members of the opposition indicated that they were unaware that the recovery home was in the neighborhood until recently even though the home had been in operation for a year and a half. This evidence supports the finding that the recovery house has no substantial adverse effect on neighboring and adjacent properties.
 - f. There is no signage on the exterior of the home which would distinguish the recovery home from other homes in the neighborhood. Accordingly, the home appears to look like a single-family dwelling.
 - g. No evidence was presented that the existence of the recovery house has led to a decrease in property values. Rather, testimony was offered from individuals who purchased their homes after the recovery house came into operation. Two members of the opposition testified that the recovery home will lead to a decrease in property values but presented no evidence, such as data showing the sales of neighboring properties, to support that contention.
 - h. The Board was not convinced that any evidence of a substantial adverse effect had been presented. Rather, the concerns raised by the opposition appeared grounded in fear and innuendo instead of evidence of a substantial adverse effect.
 - i. Ultimately, the Board found that the recovery house has no substantial adverse effect on neighboring and adjacent properties.
174. The Board approved the special use exception for a recovery house for up to six (6) residents which is all the Applicants have requested. The evidence demonstrates that the three (3) bedroom home is adequate for six (6) residents. The testimony from the Applicant also indicates that the septic system can support six (6) residents in the home.
175. The Board also finds that the approval of the special use exception represents a reasonable accommodation to a protected class under the Fair Housing Act. The Applicants have demonstrated that the recovery home will only be used by recovering addicts. A handicap is a physical or mental impairment which

substantially limits one or more daily living activities and addiction to alcohol, legal or illegal substances falls within the definition of handicap. Addicts, such as the residents of this recovery house, are a protected class under the Fair Housing Act. The Applicants have demonstrated that only recovering addicts are allowed to reside in the home and that the residents are tested regularly to ensure that they are no longer using drugs or alcohol. Residents who use drugs and alcohol are immediately removed from the residence. The Board is convinced that the home is being used by members of a protected class and that adequate safeguards are in place to ensure that the home will only be used by members of a protected class. Furthermore, the Board is convinced that the request for a special use exception constitutes a reasonable accommodation under the Fair Housing Act.

The Board granted the special use exception application with conditions 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 was approved with the limitation that only six (6) residents may live in the recovery house at one time. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. No Board Members voted against the Motion to approve the special use exception application. Mr. Brent Workman did not participate in the discussion or vote of this 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 March 3, 2015.