

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: IMMANUEL SHELTER

(Case No. 11686)

A hearing was held after due notice on December 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

#### Nature of the Proceedings

This is an application for a special use exception to operate an emergency homeless shelter.

#### Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate an emergency homeless shelter. This application pertains to certain real property located on the northwest corner of Hebron Road and Burton Avenue (911 Address: 19878 Hebron Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.19-2.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated October 8, 2004, a portion of the tax map of the area, and correspondence pertaining to the Application.
2. The Board found that the Office of Planning and Zoning received three (3) letters in support of the Application and nine (9) letters in opposition to the Application.
3. Janet Idema, Maxwell Wolf, and Glenn Piper were sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review which included a copy of the Application, a copy of the deed to the Property, portions of the Sussex County Tax Map, Google Earth imagery, Building Photographs, House Plans, a Delaware 2-1-1 brochure, DSHA Sussex County Fair Housing Choice Map, DSHA Sussex County Access to Transit Map, Intake Policy and Procedures, Admission Policies, House Rules, and newspaper articles.
4. The Board found that Mr. Hutt stated that many homeless persons lived in an area referred to as "Tent City" near Wal-Mart in Rehoboth and the Applicant assisted the persons living in "Tent City" with finding alternate living arrangements.
5. The Board found that Mr. Hutt stated that the Applicant is a 501(c)(3) organization which assists homeless persons in the greater Lewes-Rehoboth Beach-Dewey Beach area and the Applicant currently operates at the Faith United Methodist Hall as a Code Purple shelter which is open from December 1 until April 1. The proposed use is not the same as a Code Purple shelter.
6. The Board found that Mr. Hutt stated that the use will not have a negative physical, financial or societal impact on the neighborhood.
7. The Board found that Mr. Hutt stated that the Property is located in the West Rehoboth community and consists of approximately ¼ acre and the Property, which is zoned B-1, is improved by a building formerly used as office space for an appraisal company. The area near the Property consists of a mixed use of businesses and residences.
8. The Board found that Mr. Hutt stated that the Delaware State Housing Authority has determined that this area is "impacted."
9. The Board found that Mr. Hutt stated that the exterior of the existing building will remain the same but the Applicant plans to add additional lighting and a privacy

fence to the Property. The interior of the existing building will be remodeled to include the installation of a comprehensive fire suppression system and to make the building FHA and ADA compliant. The shelter will have five (5) bedrooms with a capacity of twenty-two (22) people.

10. The Board found that Mr. Hutt stated that the Property is an ideal location for the shelter and the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
11. The Board found that Mr. Piper testified that he is a licensed appraiser and has worked as an appraiser for approximately twenty-three (23) years and has appeared in Delaware Courts to serve as an expert witness. He is familiar with the Property and the surrounding area.
12. The Board found that Mr. Piper testified that the use will not negatively impact the property values of the surrounding properties.
13. The Board found that Mr. Piper testified that the West Rehoboth community has improved in recent years.
14. The Board found that Mr. Piper testified that he has researched the impact of homeless shelters on property values for nearby properties. It is difficult to value properties in West Rehoboth as there are so few transactions in the community and, often, those transactions are complicated or have unique circumstances.
15. The Board found that Mr. Piper testified that he has never seen negative impact on property values from group housing and there are examples where property values have increased. His experience has shown no impact on property values from homeless shelters and many shelters and group homes fall under the radar and are not noticed by neighbors.
16. The Board found that Mr. Piper testified that the highest and best use of the building is not as an office or as a residence but as a specialty use.
17. The Board found that Mr. Piper testified that Habitat for Humanity has placed a home in the community.
18. The Board found that Mr. Piper testified that the location is within walking distance of downtown Rehoboth Beach and bus transportation is available nearby.
19. The Board found that Ms. Idema testified that she is the President of the Board for Immanuel Shelter and she has been with the organization for six (6) years. The organization currently helps homeless in the Lewes, Rehoboth Beach, and Dewey Beach area.
20. The Board found that Ms. Idema testified that housing is a basic need for people and that Code Purple shelters are only open when the temperature is below 32 degrees and persons must leave each day. The Applicant's Code Purple shelter is open to anyone. An emergency shelter differs from a Code Purple shelter because individuals are not required to leave the shelter each day and may stay up to 90 days depending on how they progress through a list of expectations. 90 days would be the maximum allowable stay at the shelter.
21. The Board found that Ms. Idema testified that all residents must go through the Central Homeless Planning System and all residents will be vetted by the Delaware State Homeless Planning Council and the HUD process which focuses on dangerousness. The residents cannot be sex offenders, have no active capiases, or have a history of violent offenses. Delaware State Police Troop 7 will also vet all potential residents to confirm that these standards are met.
22. The Board found that Ms. Idema testified that the Applicant has drafted an intake policy, admission criteria, and house rules and all residents must meet and follow the shelter's rules and regulations during their stay. No drugs, alcohol, or weapons are permitted in the shelter and residents are required to attend self-help groups, counseling, and life skills classes. Residents must also be actively seeking employment.

23. The Board found that Ms. Idema testified that the Applicant hopes to work with West Side New Beginnings.
24. The Board found that Ms. Idema testified that the Applicant looked at three (3) other properties for the shelter.
25. The Board found that Ms. Idema testified that in order to qualify for State funding the shelter must be located in a highly impacted area and within 1.5 miles from certain amenities such as grocery, banking, bike path, bus routes, and libraries. This location meets all of those requirements.
26. The Board found that Mr. Wolf testified that he is the reverend at All Saints Church and is involved with a task force on homeless in this area.
27. The Board found that Mr. Wolf testified that the Community Resource Center is located near Route 1 and provides employment training and it is very difficult to find an appropriate location for this type of shelter. It is particularly expensive to find a location within a mile of the Community Resource Center.
28. The Board found that Mr. Wolf testified that homeless persons are camping in the nearby woods and the shelter will help connect the homeless with job placement and other services needed.
29. The Board found that Mr. Wolf testified that he has been working with homeless people since 2001 and he has never seen a negative effect in a neighborhood from a shelter.
30. The Board found that Mr. Hutt stated that a licensed appraiser testified the shelter would not have a negative impact to the property values in the area.
31. The Board found that Mr. Hutt stated that loitering will not be an issue.
32. The Board found that Mr. Hutt stated that the daycare or after school programs will not be negatively impacted due to the screening process all residents must pass in order to stay at the shelter. Any violations to the rules and regulations results in expulsion from the shelter.
33. The Board found that Ms. Idema testified that each person at the shelter will have their own bed and dresser. Residents will receive mail at the shelter and will likely consider it to be their home for the duration of their stay. No visitors are allowed in the shelter.
34. The Board found that Ms. Idema testified that the vetting process is estimated to take a couple of days and the vetting process will prevent some homeless for coming to the shelter for help because they will already know they will not qualify or want to comply with the regulations.
35. The Board found that Ms. Idema testified that there is a similar shelter in Milton known as Casa San Francisco.
36. The Board found that Ms. Idema testified that the shelter provides the residents with job training and the Applicant helps with transportation when needed.
37. The Board found that Ms. Idema testified that the street is dark near the Property so the Applicant will install street lighting along the front of the Property. The lighting will improve safety in the community.
38. The Board found that Ms. Idema, under oath, affirmed the statements made by Mr. Hutt.
39. The Board found that Rhona Prescott, Jim Martin, John Elliott, Randy Redard, and Maryanne Zakreski were sworn in and testified in support of the Application.
40. The Board found that Ms. Prescott testified that she is a social worker and that homeless people are already in the area. There have not been any police incidents in the area involving the current homeless and that an emergency shelter is greatly needed in this area.
41. The Board found that Mr. Martin testified that he is involved with a similar shelter in Seaford near the Seaford Christian Academy and the shelter has had no negative impact to the neighborhood. According to Mr. Martin, the shelter and the center have a positive relationship and have held a successful joint event.

- The Seaford shelter is less restrictive than the proposed shelter and there have not been any incidents.
42. The Board found that Mr. Martin testified that he has worked in opening 23 transitional homes in the State of Delaware and those homes are located near parks and schools.
  43. The Board found that Mr. Elliott testified that he has been homeless since October 2015 after the loss of his mother and he currently uses the Code Purple Shelter when available. Immanuel Shelter has helped him a great deal as he is currently seeking employment. According to Mr. Elliott, this shelter would be a very positive environment.
  44. The Board found that Mr. Redard testified that he is the counselor and homeless liaison for the Cape Henlopen School District and there are a number of children in the area that are homeless. He believes there is a need for this type of shelter.
  45. The Board found that Ms. Zakreski testified that Project Home in Philadelphia runs shelters and in areas near the shelters property values have increased over the years.
  46. The Board found that Janet Maull-Martin, Marti John, Brenda Milbourne, Paul Eberhardt, Robert Paul, Chuck King, Richard Faull, Beth Doty, Tom Billing, and Laurie Bronstein were sworn in and testified in opposition to the Application. Mr. Eberhardt and Mr. Faull submitted exhibits for the Board to review.
  47. The Board found that Ms. Maull-Martin testified that she is the President of West Side New Beginnings Board of Directors and a former teacher. She does not oppose the homeless but does not believe that the shelter should not be in such close proximity to a children's community center.
  48. The Board found that Ms. Maull-Martin testified that the children may stop coming to the center with the homeless shelter so close. The shelter is approximately 150 feet from the children's center. The existence of the shelter may deter the participation of children in the programs at the children's center.
  49. The Board found that Ms. Maull-Martin testified that homeless shelters should not be located near children's centers and that the safety of the children is a great concern.
  50. The Board found that Ms. Maull-Martin testified that at the Applicant has not met the standard for a special use exception because this use will substantially adversely affect the surrounding and neighboring properties.
  51. The Board found that Ms. John testified that she purchased property in the West Rehoboth community in 2012 and she likes that the community consists of year round residents that take pride in their community.
  52. The Board found that Ms. John testified that the history of the community was troubled but the residents have united and revitalized the area. The community stabilizes when you have permanent, year-round residents and she has concerns about the temporary residents who will reside at the shelter. The shelter will bring strangers to the area and she is concerned that the temporary residents will not be invested in continuing the revitalization of West Rehoboth.
  53. The Board found that Ms. John testified that she is concerned for the safety of the residents of the community and that the shelter will adversely affect the uses of the neighboring and adjacent properties.
  54. The Board found that Ms. Milbourne testified that she lives in the area and that there are no homeless people in the area.
  55. The Board found that Ms. Milbourne testified that a number of children in the community attend the West Side New Beginnings Community Center and the center has provided a safe and educational option for children of working parents.

56. The Board found that Ms. Milbourne testified that she is concerned about increased traffic to the area.
57. The Board found that Ms. Milbourne testified that the shelter will hurt the growth of the community and she has concerns that the shelter will affect the safety and property values in the community.
58. The Board found that Ms. Milbourne testified that she believes the police have been called to Immanuel Shelter at its other location seven times.
59. The Board found that Mr. Eberhardt testified that he lives on Burton Road and that there are fifty-one (51) occupied homes in the area.
60. The Board found that Mr. Paul testified that he owns property in the area and he is concerned the vetting process will not work.
61. The Board found that Mr. Paul testified that there are twenty-seven (27) states that have banned homeless shelters from being less than 500 feet from a community center where children attend.
62. The Board found that Mr. Paul testified that parents will be afraid to take their children to the community center if the homeless shelter is approved.
63. The Board found that Mr. Paul testified that the West Rehoboth community is fragile and has experienced problems with drugs in the past.
64. The Board found that Mr. Paul testified that hundreds of people use the nearby bike path and feels this use will jeopardize the safety of the bike path.
65. The Board found that Mr. Paul testified that there are no homeless people in the West Rehoboth area.
66. The Board found that Mr. King testified that he is the President of the Homeowners Association for Sea Coast Court which is adjacent to the Property. He is concerned the shelter will adversely affect his community's property values.
67. The Board found that Mr. King testified that there is a drug sting operation currently in the Applicant's parking lot.
68. The Board found that Ms. Doty testified that she has worked with the homeless for years and they are a difficult population to work with.
69. The Board found that Ms. Doty testified that the revitalization of this community will be adversely affected by the homeless shelter. Hundreds of thousands of dollars have been spent on improvements in the neighborhood and the community has seen a drop in drug activity since the revitalization. There has been a significant decrease in the number of service calls from Troop 7 in recent years.
70. The Board found that Ms. Doty testified that she works with the land trust in the community to build affordable housing in the area and the shelter will hurt the trajectory of the improvement. The shelter will also change the perception of the West Rehoboth neighborhood. The shelter is perceived as a negative impact on the neighborhood.
71. The Board found that Mr. Billing testified that he is a nearby resident and that the shelter will affect the stability of the neighborhood. He is concerned about safety. The street is dark and there are no sidewalks. The infrastructure is poor for this type of use and the community is already fragile.
72. The Board found that Ms. Bronstein testified that the use will substantially adversely affect the uses of the neighboring and adjacent properties.
73. The Board found that Ms. Bronstein testified that she works with the West Side New Beginnings Community Center and the children in the area come from low income homes.
74. The Board found that Ms. Bronstein testified that there are no statistics on how a shelter affects the community center because shelters are not permitted within so many feet of children's centers and schools. Safety of the children is a huge concern.

75. The Board found that Ms. Bronstein testified that enforcement of the regulations is an issue if not properly governed.
76. The Board found that Mr. Hutt stated that safety concerns have been addressed by the Applicant. Residents must be vetted prior to staying at the shelter to protect the neighboring community.
77. The Board found that Mr. Hutt stated that the Applicant is aware of the West Side New Beginnings Community Center and would like to collaborate with them.
78. The Board found that Mr. Hutt stated that the heart of the Application is provide a safe environment.
79. The Board found that Mr. Hutt stated that a similar shelter in Seaford with less regulations works well with a nearby center.
80. The Board found that Mr. Hutt stated that no proof has been submitted to show the property values will decrease due to the homeless shelter.
81. The Board found that Mr. Hutt stated that the Applicant looked at four other sites.
82. The Board found that Ms. Idema testified that the definition of homeless includes persons who couch surf or reside with family members in an unstable situation.
83. The Board found that eighteen (18) parties appeared in support of the Application.
84. The Board found that twenty-eight (28) parties appeared in opposition to the Application.
85. The Board tabled the Application until January 25, 2016.
86. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has considered and weighed, the Board determined that the application failed to meet the standards for granting a special use exception because the proposed homeless shelter will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.

a. Traffic:

- i. The Applicant produced evidence that up to 22 individuals will live in the shelter which is anticipated to have five (5) bedrooms. The individuals are anticipated to stay at the shelter from 30 to 60 days, up to a maximum of 90 days and will be required to leave the shelter daily for work and appointments as needed. The Applicant presented testimony that many of the residents will likely bike or walk to a bus shelter for transportation to work and appointments. The bus shelter is located less than a mile from the Property. (Conflicting testimony was presented as to the actual distance from the homeless shelter to the bus stop but it was clear that the bus stop was within a mile of the site). As a result, the traffic in the neighborhood will be significantly increased. This increase in traffic is particularly troubling since the adjacent Hebron Road has no shoulder or sidewalks. The opposition has presented convincing testimony that the traffic along Hebron Road has been problematic and dangerous. The opposition cited that there have been numerous pedestrian and bicycle accidents in the area. The addition of the homeless shelter will likely exacerbate the traffic and safety concerns in the area.

b. Character of the Neighborhood:

- i. The proposed homeless shelter is to be located on land near residential properties and an operating children's center (West Side New Beginnings).
- ii. The West Rehoboth community is a neighborhood with a long history – one which is recognized as important by the Board. At

various points in time, however, the area suffered from crime and drug problems. Much effort and emphasis has been placed on improving the West Rehoboth community in recent years. These efforts have proven effective as the West Rehoboth community has also experienced a significant decrease in crime in recent years – including a 69% reduction in service calls to West Rehoboth over the last 5 years. It is likely that such a decrease in crime is attributed to programs such as West Side New Beginnings which help give youth in West Rehoboth positive direction. The Board is concerned that the substantial adverse effect on the West Side New Beginnings program will be amplified to the overall West Rehoboth community.

- iii. The homeless shelter is proposed to be located approximately 150 feet from West Side New Beginnings, which is a children's center used for educational programs for children in the area. Children often bike or walk to and from West Side New Beginnings unattended by an adult or are dropped off by a school bus nearby. Other children are transported to the Center by their parents or family members. As part of the West Side New Beginnings program, children are active in the community outside of the confines of the children's center. Participants engage in clean-up activities, fundraisers, and outdoor recreation in West Rehoboth. The opposition expressed concerns, however, that the proposed homeless shelter located so close to the children's center will have a chilling effect on the participation of children in the programs at West Side New Beginnings. The opposition argued that parents will be reluctant to send their children to West Side New Beginnings due to the homeless shelter and participation in West Side New Beginnings will decline. This argument is both persuasive and convincing. A decline in participation at West Side New Beginnings will undoubtedly have a substantial adverse effect on the use of that neighboring property. A decline in the participation at West Side New Beginnings will also likely lead to the slowing or halt of the momentum of the revitalization of the West Rehoboth community. Furthermore, the Board recognizes that children are an important and vulnerable class of people that the government has a compelling interest in protecting. Ensuring the safety and protection of this particularly vulnerable population requires an affirmative showing by the applicant as to how this particular use will not substantially affect adversely this particular population. We believe that this particularized showing has not been made and, as a result, this proposed shelter will likely have a negative effect on the children's center and the vulnerable population served there.
- iv. The Breakwater Junction bike trail is also located nearby and members of the opposition expressed concern that the homeless shelter would deter use of the trail; which has been a popular recreational trail used by tourists.
- v. The Board also notes that there is significant opposition within the nearby West Rehoboth Community to the Application. The Board received correspondence and a petition signed by 68 neighbors objecting to the Application. The voice of the community is one which does not appear to support the shelter and the Board has taken this factor into consideration as well.


- c. Ultimately, and for the above stated reasons, the application for a special use exception should be denied because the proposed homeless shelter will substantially affect adversely the uses of neighboring and adjacent properties, and in addition, the particularly vulnerable population of nearby children enrolled at the already established West Side New Beginnings children's center.

The Board denied the special use exception application finding that it 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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard. Mr. John Mills voted against the Motion to deny the special use exception.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

Date March 22, 2016