

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: MITCH SCHUE & JODY SCHUE**

**(Case No. 11814)**

A hearing was held after due notice on August 1, 2016. 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 for a commercial dog kennel.

Findings of Fact

The Board found that the Applicants are requesting a special use exception for a commercial dog kennel. This application pertains to certain real property located on the east side of Long Neck Road approximately 1,990 feet south of Banks Road (911 Address: 32567 Long Neck Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-307.03. 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, a drawing of the Property, and an aerial photograph of the Property,
2. The Board found that the Office of Planning and Zoning received one (1) letter of opposition to the Application and no correspondence in support of the Application.
3. The Board found that Mitch Schue and Jody Schue were sworn in and testified regarding the Application. Mr. and Ms. Schue submitted five (5) letters of support to the Application.
4. The Board found that Ms. Schue testified that the Applicants operate a dog daycare and the Applicants have received the appropriate licenses to operate the business. There will be no grooming or training of dogs done on the Property.
5. The Board found that Ms. Schue testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
6. The Board found that Ms. Schue testified that the dogs are not left outside alone for long periods of time. The dogs are grouped together by size and taken outside in shifts. The outside area is fenced in and the yard is kept clean of waste and the fenced in area consists of approximately one-half acre. The dogs will primarily be kept inside.
7. The Board found that Ms. Schue testified that the Property in the past was poorly maintained and the Applicants have cleaned the Property since purchase.
8. The Board found that Ms. Schue testified that an adjacent property has a large field.
9. The Board found that Ms. Schue testified that the persons in objecting to the Application are not as close to the site as those who support the Application.
10. The Board found that Ms. Schue testified that that the Property was previously used as a car sales lot.
11. The Board found that Mr. Schue testified that the Applicants do not live on the Property but if dogs stay overnight at the facility he will stay with the dogs.
12. The Board found that Mr. Schue testified that the fence in the backyard is six (6) feet tall and has barbed wire on top. There is approximately 20 feet of overgrowth between the fence and the rear property line. There are trees along the side yard.
13. The Board found that Mr. Schue testified that the brush between the properties will help buffer noise of barking dogs from neighbors. He tries to keep the dogs away from the neighboring properties and he tries to limit the barking. The dogs being cared for will be taken inside if barking becomes persistent.

14. The Board found that Mr. Schue testified that another adjacent property will be used for commercial office space and the owners do not object to the Application.
15. The Board found that Mr. Schue testified that the Applicants care for approximately 25 to 30 dogs.
16. The Board found that Mr. Schue testified that there is adequate parking.
17. The Board found that Mr. Schue testified that the Applicants are seeking approval for a period of five (5) years.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 facility 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 dogs which will use the facility will primarily be located inside the facility with limited outdoor access. To the extent the dogs go outside, the Applicants have a large fenced-in back yard for the dogs which will be appropriately supervised.
  - b. The opposition presented concerns about the noise and traffic associated with the daycare. The Board is not convinced that the concerns raised by the opposition rise to the level of substantial adverse effect on neighboring and adjacent properties. The Applicant has presented un rebutted evidence that the dogs will primarily be kept inside the facility with limited outdoor time. While the dogs will go outside from time-to-time for exercise and to go to the bathroom and will likely bark during that time, the Applicant will supervise the dogs during this time and will monitor them to prevent excessive barking. The Applicant will also limit the number of dogs who will go outside at any given time. These measures should limit the noise emanating from the site. Furthermore, there is a substantial vegetative buffer around the site which should also provide a sound barrier from the site. Ultimately, the Board is satisfied that the controls set forth by the Applicant will adequately protect neighboring properties from the sounds of the dogs barking.
  - c. The opposition's concerns about the traffic were also unconvincing to the Board. The Property is a commercially zoned property previously used for a car sales lot. No evidence was presented by the opposition that the dog daycare would increase the traffic associated with the Property more than other commercial uses. Rather, the opposition's concerns appeared to be speculative and unsupported by substantial evidence. To the extent that there were concerns about the effect of the daycare on parking, the Board finds that the site has adequate parking available for the daycare customers and there should be no issues with parking on the Property.
  - d. The number of dogs served at the daycare is limited and is reasonable.
  - e. There are other commercial properties in the area and the Applicants testified that those businesses support the Application.
  - f. No evidence was presented which convinced the Board that the dog daycare facility would have a substantial adverse effect on neighboring and adjacent properties.
  - g. The special use exception is approved for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years 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 for a period of five (5) years. 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

A handwritten signature in cursive script that reads "Dale Callaway". The signature is written in dark ink and is positioned above the printed name and title.

Dale Callaway  
Chairman

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

Date October 4, 2016