

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES TRUITT FARMS, LLC

(Case No. 11896)

A hearing was held after due notice on December 19, 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 an assisted living facility.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for an assisted living facility. This application pertains to certain real property located on the north side of Shuttle Road, Rehoboth Beach (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-3.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated November 2016, a booklet of miscellaneous exhibits, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Roger Truitt, Preston Schell, Greg Stevens, and Zac Crouch were sworn in to testify about the Application. James Fuqua, Jr., Esquire, presented the case on behalf of the Applicant and submitted additional exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the Applicant is requesting a special use exception for an assisted living facility. The proposed assisted living facility will be located on a portion of a 23 acre parcel along Shuttle Road across the road from a park-and-ride transit depot site. The assisted living facility will occupy approximately 2.5 acres of the site.
5. The Board found that Mr. Fuqua stated that the property is zoned MR (Medium Residential District) and a special use exception for assisted living facility is a permitted use.
6. The Board found that Mr. Fuqua stated that the facility will be located near the middle of the Property.
7. The Board found that Mr. Fuqua stated that the Property was previously used as a Par 3 golf course and driving range and the surrounding area is a fully developed area with a mix of commercial and residential uses. There is an Exxon gas station, County Bank, Holiday Inn, Applied Bank, Jungle Jim's Amusement Park, shopping and outlet centers located nearby. There are residential developments nearby as well including Kings Creek, Keys at Marsh Harbor, Stable Farm, and Kinsale Glen.
8. The Board found that Mr. Fuqua stated that the Truitt family has owned the Property for over a century and was previously used for agricultural purposes. 52 acres of the land were sold in 2000 and led to the development of the Kinsale Glen subdivision.
9. The Board found that Mr. Fuqua stated that the Truitt family entered into an agreement with Ocean Atlantic and Schell Brothers to develop the Property.
10. The Board found that Mr. Fuqua stated that the development will be an age-restricted community for residents aged 55 years and older and the development will include an assisted living facility. The proposed age restricted development will consist of ninety (90) units and has been previously approved by the Planning & Zoning Commission and Sussex County Council for an age-restricted subdivision.
11. The Board found that Mr. Fuqua stated that a portion of the development was reserved for future development and the site plan presented at that time represented the future site for the assisted living facility.

12. The Board found that Mr. Fuqua stated that the assisted living facility will allow residents to age in place.
13. The Board found that Mr. Fuqua stated that, if the special use exception is approved, the final site plan is subject to review by the Planning & Zoning Commission.
14. The Board found that Mr. Fuqua stated that the facility will consist of three (3) stories and will comply with all setback and height requirements.
15. The Board found that Mr. Fuqua stated that the facility will have a maximum of 88 residential units with a maximum of 120 bedrooms. The proposed building will also provide a rehabilitation area, community area, beauty salon, theater, swimming pool, café, and office space for employees.
16. The Board found that Mr. Fuqua stated that the facility will be surrounded by the homes being built in the community. The facility will also border the storm water management area and face the entrance of the community.
17. The Board found that Mr. Fuqua stated that the perimeter of the Property will have a twenty (20) feet landscape buffer.
18. The Board found that Mr. Fuqua stated that there will be eighty-eighty (88) parking spaces available for the facility which is greater than the number of spaces required for this use.
19. The Board found that Mr. Fuqua stated that attractive landscaping will be planted near the facility.
20. The Board found that Mr. Fuqua stated that the units will be rented and not sold and the facility will be managed by a senior living corporation which operates similar facility in the region.
21. The Board found that Mr. Fuqua stated that the facility is designed to target seniors eighty years of age and older.
22. The Board found that Mr. Stevens testified that he works for Vantage Point, which is the company that will run the proposed assisted living facility.
23. The Board found that Mr. Stevens testified that a market study showed the need for this type of facility in the area.
24. The Board found that Mr. Stevens testified that the average age of the residents will be eighty (80) years old.
25. The Board found that Mr. Stevens testified that the facility will provide a wellness center which is also available to local residents not living in the facility. The facility will also offer shuttle and car services for the residents. This service will lessen the impact on traffic.
26. The Board found that Mr. Stevens testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
27. The Board found that Mr. Fuqua stated that the site plan for the proposed facility is subject to site plan review under Planning & Zoning and the development for the 90 homes has already been approved.
28. The Board found that Mr. Fuqua stated that public water will be provided by Tidewater Utilities and sewer will be provided through Sussex County. Sewer capacity is available for the facility.
29. The Board found that Mr. Fuqua stated that the storm water management system will comply with Sussex Conservation District and the Delaware Department of Natural Resources and Environmental Control ("DNREC") regulations.
30. The Board found that Mr. Fuqua stated that the entrance will comply with the Delaware Department of Transportation ("DelDOT") requirements and is being designed with the facility in mind. DelDOT estimates the facility will account for approximately 329 vehicle trips per day, which is approximately 165 round trips per day from the site.
31. The Board found that Mr. Fuqua stated that, during the afternoon rush hour, the DelDOT study indicates that vehicles will use the entrance an average of one vehicle per every 1 minute 42 seconds.
32. The Board found that Mr. Fuqua stated that the traffic impact from the facility will be minimal and that the facility will use on-site transportation services for the residents.

33. The Board found that Mr. Fuqua stated that Rehoboth Fire Department will service this location and the facility does not have a negative impact to their services.
34. The Board found that Mr. Fuqua stated that the facility will have no impact on the wetlands.
35. The Board found that Mr. Fuqua stated that the wetlands are protected by some of the conditions set forth in the conditional use approval and there will be buffers from the development to the wetland areas.
36. The Board found that Mr. Fuqua stated that there are no nuisances associated with the proposed facility such as noise, loud truck traffic, or odors.
37. The Board found that Mr. Fuqua stated that other similar facilities in Sussex County do not substantially adversely affect the uses of neighboring and adjacent properties.
38. The Board found that Mr. Fuqua stated that eastern Sussex County has seen an influx of retirees and the facility is needed in this area.
39. The Board found that Mr. Fuqua stated that the facility conforms with the Land Use and Comprehensive Plan for Sussex County.
40. The Board found that Mr. Crouch and Mr. Schell, under oath, affirmed the statements made by Mr. Fuqua.
41. The Board found that Mr. Truitt testified that he is an owner of the Property and will remain an owner of the Property.
42. The Board found that Mr. Truitt testified that he plans to see that the facility will be an asset to the community.
43. The Board found that Mr. Truitt testified that his mother lived in a similar facility and it was a great way of life for her.
44. The Board found that Mr. Fuqua stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties and that "substantial" means "by a large amount or degree".
45. The Board found that Nick Iannuccilli was sworn in and testified in opposition to the Application. Mr. Iannuccilli submitted a drawing to the Board for review.
46. The Board found that Mr. Iannuccilli that he lives in a neighboring development and he is concerned for the wetlands in the area.
47. The Board found that Mr. Iannuccilli that the runoff from this project goes in the nearby creek and is not being maintained and he wants to make sure that the creek is maintained.
48. The Board found that Mr. Iannuccilli that he is not against the special use exception for the assisted living facility but he is concerned about the creek.
49. The Board found that Mr. Fuqua stated that all runoff will be collected on the site and the Applicant must comply with storm water management regulations. Sediments are removed before the water is discharged.
50. The Board found that Mr. Fuqua stated that the Applicant voluntarily created a buffer from the wetland line.
51. The Board found that Theodora Brauer was sworn in and testified in opposition to the Application.
52. The Board found that Ms. Brauer testified that DNREC recommended a buffer of one-hundred (100) feet from the wetlands.
53. The Board found that Ms. Brauer testified that the businesses mentioned by Mr. Fuqua are located on Route One and not on Shuttle Road and that Shuttle Road is a residential area except for the park-and-ride depot.
54. The Board found that Ms. Brauer testified that she is not opposed to the ninety (90) units being constructed but she does not want to see a three (3) story facility from her property.
55. The Board found that Ms. Brauer testified that there will be delivery trucks and ambulances entering and exiting the Property.
56. The Board found that Ms. Brauer testified that the use is not residential.
57. The Board found that Ms. Brauer testified that there will be employees, shuttles, and deliveries throughout the day and night.

58. The Board found that Ms. Brauer testified that she is concerned for lighting and how it will impact her quality of life.
59. The Board found that Ms. Brauer testified that she believes a traffic impact study should be performed.
60. The Board found that Ms. Brauer testified that a significant portion of the Property falls within a wellhead area.
61. The Board found that Ms. Brauer testified that the use will substantially adversely affect the uses of the neighboring and adjacent properties.
62. The Board found that Ms. Brauer testified that hours of operation should be limited during construction.
63. The Board found that Ms. Brauer testified that she would like the facility to be screened so it cannot be seen from her property.
64. The Board found that Tony Latino was sworn in and testified in opposition to the Application.
65. The Board found that Mr. Latino testified that, while he welcomes the development of the site and feels the Applicant is a first-class act, he is concerned about the traffic generated by the facility.
66. The Board found that Mr. Latino testified that the use will substantially adversely affect the uses of the neighboring and adjacent properties.
67. The Board found that Mr. Latino testified that the new shopping center has already led to more accidents in the area and the traffic is already backed up as far as the park and ride with vehicles waiting to access Route One.
68. The Board found that Mr. Latino testified that he expected the golf course to eventually be redeveloped.
69. The Board found that Mr. Latino testified that he believes an assisted living is needed but he does not feel the proposed assisted living facility should be built in a resort area.
70. The Board found that Mr. Latino testified that traffic estimates should not dictate how the facility will impact the area.
71. The Board found that Mr. Latino testified that the facility could affect his property value.
72. The Board found that Mr. Latino testified that the proposed development of the Property increases residents living in that area to approximately three-hundred (300) people.
73. The Board found that Mr. Latino testified that he does not object to the 90 unit development but the addition of the facility is too much for this location.
74. The Board found that Mr. Fuqua stated that the DelDOT comments received during the PLUS process were based on the proposed ninety (90) units and the proposed assisted living facility. The one minute forty-two second intervals are a worse-case scenario used by DelDOT to determine the impact of the entire development on traffic.
75. The Board found that Mr. Fuqua stated that the Applicant proposes restrictions on the hours of operation during the construction of the facility.
76. The Board found that Mr. Fuqua stated that all lighting will likely be directed downward.
77. The Board found that Mr. Crouch testified that a wetlands delineation was conducted on the Property by a soil scientist and the delineation also shows the centerline of the creek. Exhibit "C" shows that the wetlands delineation and only about 20% of the creek mentioned by the opposition is on the Applicant's property.
78. The Board found that Mr. Crouch testified that Sussex Conservation District has a drainage ditch program to assist concerns raised by the opposition.
79. The Board found that Mr. Crouch testified that the storm water management proposal has been approved by the Sussex Conservation District.
80. The Board found that one (1) party appeared in support of the Application.
81. The Board found that five (5) parties appeared in opposition to the Application.
82. The Board tabled the discussion and vote on the Application. On February 20, 2017, the Board voted on the Application.

83. 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 assisted living 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 Applicant proposes to place an assisted living facility on a portion of a 23 acre parcel along Shuttle Road near Rehoboth Beach. The proposed assisted living facility will contain no more than 88 residential units with a maximum of 120 bedrooms and related service, rehabilitation, and community space.
 - b. The site is located in the environmentally sensitive zone, which is one of the growth districts under the Sussex County comprehensive plan, where development is anticipated and planned.
 - c. The site is zone MR under the Sussex County zoning ordinance and assisted living facilities are authorized as a special use exception in the MR zoning district.
 - d. The site is located in an investment level 2 area under the Delaware Strategies for State Policies and Spending, which is an area where the state supports the development of a broad mix of housing options.
 - e. The facility will be served by central water for domestic use and fire protection by Tidewater Utilities, a regulated public utility company.
 - f. The facility will be provided sewer as part of a Sussex County sewer district and adequate capacity is available.
 - g. The site is located in an area containing a mixture of uses including small and large retail stores, a water park, a large park-and-ride parking lot and bus depot, and multi-family and single family residential developments.
 - h. The facility will be part of and will be centrally located within the 90 unit, age restricted community approved by the Sussex County Council as Conditional Use No. 2029, which is being developed by the Applicant.
 - i. At the public hearing for the MR rezoning and 90 unit age-restricted conditional use, the Applicant represented to the Planning & Zoning Commission and to Sussex County Council that a portion of the site was being reserved for future application for an assisted living facility. This application for a special exception for an assisted living facility is consistent with representation made by the applicant at both earlier public hearings and with the "aging in place" concept for the community.
 - j. The facility will be part of an "aging in place" concept of the overall development providing older area homeowners the option of "downsizing" by sale of their current home which may no longer be needed due to the size, maintenance requirements, or physical limitations of the owners. Those owners would have the opportunity to purchase a home designed for older owners and remain in the community and subsequently reside in the assisted living facility when living within a single family home is no longer appropriate or feasible.
 - k. The community will contribute to serving the needs of older county residents for this type of residential alternative. The population of Sussex County increased 9.4% in the 5 year period between 2010 and 2015. The beach areas and areas east of Rt. 113 have seen most of this population increase and the trend is expected to continue for the foreseeable future. In Sussex County, nearly one in four residents is over 65 years of age.
 - l. Aesthetics:
 - i. One member of the opposition expressed concern about having to view the facility and she testified that she would rather see homes than the facility. She also requested that the facility be screened from her view. To the extent the facility will have an aesthetic impact on neighboring properties, the Board finds that the impact is minimal at best.
 - ii. The facility is centrally located within the age-restricted community and is completely surrounded by dwelling units in the age restricted community, which act as a visual and physical buffer in all directions.

- iii. None of the age restricted dwellings have been constructed or sold so any future purchasers of those units will have notice and knowledge of the facility.
 - iv. The perimeter of the development will also be landscaped to provide screening of the site.
 - v. The Applicant presented pictures and schematics of other assisted living facilities which will serve as models for the facility proposed here and these pictures and schematics show that the exterior of the proposed facility will be attractive. The Board has no reason to doubt that the facility will maintain this neat appearance. Members of the opposition even indicated that they expect that the Applicant and its partners will construct a first-class facility.
 - vi. As such, there should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the facility.
- m. Traffic:
- i. The opposition expressed traffic concerns related to the facility.
 - ii. Shuttle Road is located west of Route 1 near Rehoboth Beach. Near the intersection of Shuttle Road and Route 1 are several businesses including a gas station, a bank, and an outlet shopping center. Across from the proposed development on Shuttle Road is a park-and-ride facility operated by DelDOT.
 - iii. There are several residential developments nearby with most of the residential development being located to the south, east and west of the site. There are some residences located between the site and Route 1 but most of the residential properties in the neighborhood are not located in that direction.
 - iv. The facility, as well as the approved development on the Property, will be accessed from Shuttle Road.
 - v. All entrance and roadway improvements required by DelDOT for both the age restricted development and assisted living facility will be the responsibility of the Applicant and will address any traffic impact.
 - vi. DelDOT has jurisdiction over the traffic impact of the facility and the Applicant will have to comply with DelDOT regulations as part of the site plan approval process. To the extent that the additional traffic along Shuttle Road has an impact on the neighborhood, compliance with DelDOT regulations should minimize that impact.
 - vii. The facility will also provide shuttle services for its residents and this service should help to reduce the amount of traffic from the facility.
 - viii. Ultimately, it is not convincing that the facility will have a substantial adverse effect on traffic in the area.
- n. Parking:
- i. By Code, the facility is required to have at least 45 parking spaces but the Applicant is proposing to have 88 parking spaces available for the facility. This proposal should provide ample parking for the facility. No evidence was presented by the opposition that the parking associated with the facility would create a substantial adverse impact on neighboring and adjacent properties.
- o. Lighting:
- i. All lighting associated with the assisted living facility will be directed at a downward angle to minimize the light pollution on adjacent properties. The perimeter of the development will also be landscaped which should lessen the impact of any lighting from the facility.
- p. Noise:
- i. The opposition argued that the facility will have delivery trucks and ambulances as well as employees and shuttles which will access the facility. The opposition was concerned about the effect of the noise related to the facility's use.
 - ii. While there will likely be noise generated from the occasional closing of car doors, the Board was not convinced that the noise generated

from this activity would rise to the level of a substantial adverse affect on neighboring properties. The Applicant's proposed use will not involve loud machinery or extensive outdoor activity. Rather, the Applicant seeks permission to build a facility for residents to live in and for members of the development to interact. The opposition also argued that noise from ambulances would be related to the facility and, while it is also possible that ambulance service to the facility may be needed from time-to-time, the Board is not convinced that the ambulance service will be so frequent as to be disruptive to the neighboring properties or, more importantly, substantially affect adversely the uses of those properties.

- iii. It is also important to note that the concerns about the noise were raised by neighbors who own properties bordering the development and not owners within the development. More than likely, the noise related to the facility will be more impactful on the owners of the individual lots in the development or in the facility itself as they will be closer to the facility. Those property owners, however, will know or should know of the possibility of the noise when they purchase their lots. Meanwhile, the landscape buffer surrounding the community should help to insulate noise generated by the facility from those neighbors outside the development.
- q. Emissions:
 - i. There was no evidence that there would be additional pollutants or negative environmental emissions from the proposed assisted living facility.
- r. Stormwater Runoff:
 - i. Neighbors presented concerns about the effect of the facility on nearby streams and waterways. One neighbor, who did not oppose the facility, particularly expressed concern about the effect of the facility on a stream that he helps to maintain. Notably, however, this stream is only partially located on the Applicant's property and a significant portion thereof is located elsewhere.
 - ii. As part of the development process, the Applicant will be required to meet storm water management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Best Available Technologies (BAT). The project may consist of some infiltration practices as well as traditional wet detention ponds. This storm water management system should limit the impact of the facility on neighboring properties and waterways. Notably, the project is located within the Inland Bays Pollution Control Strategy area and the improvements will be designed to meet those regulations as well.
 - iii. The Board is convinced that compliance with the storm water regulations should minimize the impact of the facility on nearby streams and waterways.
 - iv. The Board also notes that there will be a buffer of 25 feet from the wetlands areas. This buffer is more than is required by the Code and will provide additional protection to the wetlands areas.
- s. The Neighborhood:
 - i. The site was previously used as a par 3 golf course and the Applicant recently received approval to subdivide the Property as previously discussed.
 - ii. Also, as previously noted, the site is located along Shuttle Road, which also services several residential communities, a park-and-ride facility, and commercial businesses. These uses can be found on sites located nearby.
 - iii. Members of the opposition argue that the property is in a residential area but it is clear from reviewing the record that the area is a mixed use area. In fact, the DelDOT park-and-ride facility is located directly across the street from the entrance to the site. Furthermore, views of the aerial maps presented by the Applicant demonstrate that business are located to the north of the site while many of the nearby

residences are located to the south, east, and west of the site. The assisted living facility is a residential facility and will serve as a natural transition from the commercial businesses north of the site to the residential communities to the south, east, and west.

t. Use:

- i. The facility will be similar to other assisted living facilities in Sussex County such as Manor House in Seaford, Cadbury on Gills Neck Road near Lewes, and Brandywine Living on Route 1. Like those facilities, the use results in minimal noise and no negative impact on the uses or values of neighboring and adjacent properties. The Board was not convinced by arguments made by the opposition to the contrary.

u. Property Values:

- i. The opposition argued that the assisted living facility may negatively affect property values in the area. The opposition, however, presented no expert testimony, reports, or studies from a realtor or appraiser to support this argument. Since no empirical data was presented which supports the opposition's vague conclusion, the Board was not convinced that the facility will have a substantial adverse effect on property values of neighboring and adjacent properties.
- v. Based on the record, the Applicant has demonstrated that the proposed use set forth in the application will not substantially affect adversely the uses of neighboring and adjacent properties.

The Board granted the special use exception application finding that it met the standards for granting special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved. The Board Members in favor were Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the 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 April 4, 2017