

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ENVISION LAND USE, LLC

(Case No. 12008)

A hearing was held after due notice on August 21, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to expand and operate an assisted living facility and a special use exception to use a manufactured home type structure as an office.

Findings of Fact

The Board found that the Applicant is seeking a special use exception to expand and operate an assisted living facility and a special use exception to use a manufactured home type structure as an office. The property is located at the south side of Lewes-Georgetown Highway (Route 9 / 404) approximately 4,320 feet east of Harbeson Road (Route 5). 911 Address: 26890 & 26900 Lewes-Georgetown Highway, Harbeson. Zoning District: AR-1. Tax Map No.: 2-35-30.00-58.00 & 58.08. After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, minutes of previous Board meetings regarding Case Nos. 6509 and 6809, a partial site plan of the Property, property information, and literature on Peach Tree Acres and brain injuries.
2. The Board found that the Office of Planning and Zoning received fifteen (15) letters in support of the Application and received no correspondence in opposition to the Application.
3. The Board found that Bob Rosenthal and Dave Kuklish were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted an exhibit with proposed conditions 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 / convalescent facility for individuals who have suffered traumatic brain injuries and a special use exception to operate manufactured home type structure as a daycare / rehabilitation facility for a limited period of time during the time when the new facility is being constructed.
5. The Board found that Mr. Fuqua stated that the Property consists of Parcel 58.00 and 58.08 and is located on the south side of Route 9. Parcel 58.00 consists of 3.49 acres and Parcel 58.08 consists of 4.38 acres. The Property is zoned AR-1.
6. The Board found that Mr. Fuqua stated that the surrounding areas are of mixed use commercial and residential. The old Donut Connection, a bird farm, an asphalt paving & supply company, and a business park containing six (6) offices are located nearby. The Classic Auto Service business is located across the street from the Property and a railroad right-of-way is located to the rear of the site.
7. The Board found that Mr. Fuqua stated that the existing Peach Tree Acres facility is located on Parcel 58.08. Peach Tree Acres is a facility for individuals with traumatic brain injuries.
8. The Board found that Mr. Fuqua stated that, in 1998, the special use exception for Peach Tree Acres was approved for Parcel 58.00 to operate an assisted living facility for traumatic brain injuries and acquired brain injuries. In 1999, Parcel 58.08 was approved for the same use. The main facility was constructed on Parcel 58.08 and the house located on Parcel 58.00 was converted for use as a daycare and rehabilitation area for Peach Tree Acres.

9. The Board found that Mr. Fuqua stated that the facility offers care for 20 full-time residents and 15 daycare / rehabilitation persons who have suffered from traumatic brain injuries. This facility is the only such facility in Delaware and there is a current waiting list. The last resident to move into the facility moved in 4 years ago so there is a need for this type of facility.
10. The Board found that Mr. Fuqua stated that the average age of the residents is around 50 years of age and residency at the facility is not generally short-term.
11. The Board found that Mr. Fuqua stated that the Property and expansion will be constructed and owned by Envision Land Use and the facility will be operated by Peach Tree Acres. The proposal still needs site plan approval from the Planning & Zoning Commission.
12. The Board found that Mr. Fuqua stated that the existing building on Parcel 58.00 will be demolished and 2 new buildings will be constructed. The 2 new buildings will have a traditional residential look. The larger building will be 3 stories tall and will have 76 residential units, office space, physical therapy space, recreation areas, rehabilitation facilities, and dining areas. The second building will be 3 stories tall and will have 38 residential units. The total number of new residential units between the 2 buildings will be 114 units. There will be 2 types of residential units (studio suites and one bedroom units).
13. The Board found that Mr. Fuqua stated that the current facility on Parcel 58.08 would continue to operate with the proposed expansion on Parcel 58.00. The existing building on Parcel 58.00 is used for daycare and rehabilitation facilities and that building will be demolished. Those facilities will be located in one of the new buildings and the manufactured home type structure will be used for the daycare and rehabilitation facilities while the new buildings are being constructed. The new buildings will be interconnected with the existing facility and will be landscaped.
14. The Board found that Mr. Fuqua stated that the facility will be served by 2, 12 hour shifts of approximately 20 employees.
15. The Board found that Mr. Fuqua stated that the entrance off of Route 9 would continue to be used and a storm water management system will be located in the rear of the site.
16. The Board found that Mr. Fuqua stated that the Applicant will comply with any traffic improvements required by the Delaware Department of Transportation ("DelDOT"). Traffic from the facility would be related to staff, deliveries, and visitors. Residents do not drive and Peach Tree Acres operates a bus for residents.
17. The Board found that Mr. Fuqua stated that there are no sensitive environmental conditions and the use will not have any negative environmental impact.
18. The Board found that Mr. Fuqua stated that there will be no additional noise, truck traffic, odors, or heavy activity.
19. The Board found that Mr. Fuqua stated that Peach Tree Acres has been on the site for many years without adverse impact on the neighborhood and the use will not substantially affect adversely adjacent and neighboring properties.
20. The Board found that Mr. Fuqua stated that the Brain Injury Association in Delaware supports the Application.
21. The Board found that Mr. Rosenthal and Mr. Kuklish, under oath, affirm the statements made by Mr. Fuqua.
22. The Board found that Mr. Rosenthal testified that the manufactured home which will be used on the site will be constructed specifically for the Applicant and the structure will be brand new.
23. The Board found that Mr. Fuqua stated that the Applicant intends to only use the manufactured home type structure for a brief period of time until construction is complete. The Applicant requests the use of the manufactured home to be up to 5 years or within 3 months of completion of construction of the buildings, whichever comes first.

24. The Board found that Kurt Brown was sworn in to testify in support of the Application. Mr. Brown testified that he suffered a brain injury in a car accident and that he is currently on the waiting list to become a resident at Peach Tree. He has friends who live at Peach Tree Acres.
25. The Board found that thirteen (13) parties appeared in support of the Application.
26. The Board found that no parties appeared in opposition to the Application.
27. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a special use exception because the assisted living facility and the manufactured home-type structure 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 proposed special use exception is for an assisted living facility / convalescent home for residents with acquired brain injuries containing no more than 114 residential units and related service, activity rooms, and daycare facilities. These facilities are in addition to existing residential units and facilities already on site.
 - b. The site is zoned AR under the Sussex County Zoning Code and assisted living facilities / convalescent homes are authorized as a special use exception in that zoning district.
 - c. The site is located in an area containing a mixture of uses including a residential subdivision and businesses such as the M&D Bird Farm, Old Wood & Co. Asphalt / Paving Equipment & Supply, the Harbeson Business Park, a closed Donut Connection, and Classic Auto Service.
 - d. The use will be an expansion of Peach Tree Acres, an existing assisted living facility for residents with traumatic brain injuries. The existing facility is located on site and was approved as a special use exception.
 - e. The facility will provide needed beneficial services to residents of Sussex County and the State of Delaware who have suffered acquired brain injuries.
 - f. The facility is centrally located near Harbeson, Delaware on Route 9, a major roadway.
 - g. The site consists of two parcels which appears to have adequate space to accommodate the Applicant's request.
 - h. All entrance and roadway improvements required by DelDOT will be the responsibility of the Applicant and will address any traffic impact.
 - i. There was no evidence of any adverse impact on neighboring and adjacent properties related to noise, odor, emissions, environmental concerns, nuisance, light, pollution, or property values. This lack of evidence is telling since the site has been used for an assisted living facility for nearly 20 years.
 - j. There was no evidence that there will be significant additional traffic generated by the use.
 - k. The number of staff required to operate the facility is reasonable and will not adversely affect the neighborhood.
 - l. The manufactured home type structure will also not substantially affect adversely the uses of neighboring and adjacent properties. The structure will be constructed specifically for the Applicant and will be appropriately landscaped. The structure will only be used for a temporary period of time while the Applicant constructs the proposed buildings.
 - m. No parties appeared in opposition to the Application and there was substantial support of the Application.
 - n. There was no evidence that these uses would substantially affect adversely the uses of neighboring and adjacent properties.


- o. The manufactured home type structure is approved for a period of five (5) years or three (3) months after completion of construction of the assisted living facilities, whichever comes first.

The Board granted the special use exception application for the manufactured home type structure for a period of five (5) years or three (3) months after completion of construction of the assisted living facilities, whichever comes first, and the Board granted the special use exception application for the assisted living facility finding that those applications 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 as noted above. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

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

A placement permit must be obtained before the manufactured home is placed on the property.

Date October 17, 2017