

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

**IN RE: MACINTYRE CLAN TRUST**

**(Case No. 12010)**

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 use a manufactured home type structure as storage.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to use a manufactured home type structure for storage. This application pertains to certain real property located at the east side of Rider Road (SCR 505) approximately 1,275 feet northwest of Columbia Road (SCR 76) (911 Address: 34575 Rider Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-3.00-23.01. After a hearing, the Board made the following findings 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, and the minutes for Case No. 7785.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that John MacIntyre was sworn in and testified regarding the Application. Mr. MacIntyre submitted pictures to the Board to review.
4. The Board found that Mr. MacIntyre testified that the manufactured home being proposed is an older model previously used as an office. The unit is empty and he intends to paint the exterior of the unit.
5. The Board found that Mr. MacIntyre testified that he did not obtain a permit prior to placing the unit on the Property but he was unaware that he needed a permit prior to placing the unit.
6. The Board found that Mr. MacIntyre testified that he does not believe the use will substantially affect adversely adjacent and neighboring properties.
7. The Board found that Mr. MacIntyre testified that the unit is difficult to see from the road and that trees generally block views of the unit.
8. The Board found that Mr. MacIntyre testified that he intends to use the unit for his hobbies including the storage of his record collection.
9. The Board found that Mr. MacIntyre testified that the unit is six (6) to eight (8) feet from the side property line.
10. The Board found that Mr. MacIntyre testified that he does not think he can place the unit on a foundation.
11. The Board found that Mr. MacIntyre testified that he has a shed which uses for the storage of tools.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. The Board tabled the Application until September 11, 2017, at which time the Board discussed and voted on the Application.
14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a special use exception because the manufactured home-type structure will

substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to deny the Application.

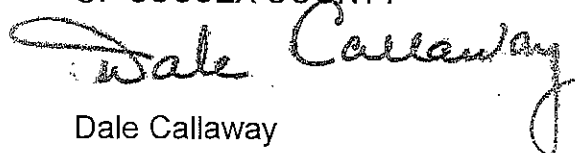
- a. The Property is a residential property consisting of approximately 1 acre in a residential area and the Applicant seeks to retain a small office trailer for storage and hobbies.
- b. Pictures of the unit demonstrate that the unit is an old and not in great condition. The unit has no foundation and is close to a neighboring property where it is an "eyesore" to a neighbor. The Board agrees with the neighbor that the unit is likely a distraction to the neighbor, particularly when he and his family use their outdoor patio. The Board was not convinced by the Applicant that he would take adequate steps to mitigate the effect of the unit on neighboring properties.
- c. The neighbor in opposition is a former realtor and submitted evidence that the unit will substantially adversely affect his property values. The Applicant submitted no evidence to the contrary.
- d. The burden to prove that the unit does not substantially affect adversely the uses of neighboring and adjacent properties lies, of course, with the Applicant. Despite being given ample opportunity to demonstrate that the unit would not substantially affect adversely the uses of neighboring and adjacent properties, the Applicant failed to present substantial evidence which convinced the Board that the structure will not have a substantial adverse effect on neighboring and adjacent properties. Rather, the neighbor submitted substantial evidence to the contrary and the Board finds that evidence credible and persuasive.

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, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman

Date November 7, 2017