

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES HAIRSTON

(Case No. 12023)

A hearing was held after due notice on September 18, 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 operate a daycare facility.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a daycare facility. This application pertains to certain real property located north side of Johnson Road (Route 207), approximately 300 feet east of Marshall Street (Route 225) (911 Address: 18601 Johnson Road, Lincoln); said property being identified as Sussex County Tax Map Parcel Number 3-30-15.13-38.00. 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, and a letter from Melodie Morris.
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 Melodie Morris was sworn in and testified regarding the Application.
4. The Board found that Ms. Morris testified that the facility will serve up to twelve (12) children and the hours of operation would be from 7:00 am to 5:30 pm Monday through Friday.
5. The Board found that Ms. Morris testified that there is ample parking for the facility. The parking area is along a long driveway and there is plenty of room for cars to turn around without of backing out the driveway. The driveway is large enough to accommodate at least six (6) cars.
6. The Board found that Ms. Morris testified that all of the children will not be coming at the same time.
7. The Board found that Ms. Morris testified that the facility will have two employees.
8. The Board found that Ms. Morris testified that the proposed facility will not substantially affect adversely neighboring properties.
9. The Board found that Ms. Morris testified that an elementary school is located approximately 400 feet from the Property and there is a trucking company and multiple businesses are also located nearby along Johnson Road.
10. The Board found that Ms. Morris testified that the facility will have a fenced-in playground area.
11. The Board found that Lyle Merrick and Everett Tyrell were sworn in and testified in opposition of the Application.
12. The Board found that Ms. Merrick testified that her property is located across the street from the proposed daycare facility and her brother owns the adjoining property to her property. The Lincoln School is located next to her property and is separated by a chain-link fence.
13. The Board found that Ms. Merrick testified that the milkman is there at 4:00 am, the bread man at 5:00 am, and the dumpster at 6:00 am. Buses and traffic are also in the area most of the day.
14. The Board found that Ms. Merrick testified that Lincoln used to be a relatively residential place and the center of Lincoln is mainly residential.

15. The Board found that Ms. Merrick testified that Johnson Road (Road 207) is located in front of her property and has become a thoroughfare from Route 113 to Route 1 and there is constant traffic along Johnson Road.
16. The Board found that Ms. Merrick testified that the driveway does not appear large enough for twelve people to come and pick up their children because the only access to the Property is a pull in / back out driveway.
17. The Board found that Ms. Merrick testified that she does not feel they need any more activity in the area because of the noise and traffic associated with the school and Johnson Road.
18. The Board found that Ms. Merrick testified that the facility is not sufficient enough to help 12 kids learn and grow.
19. The Board found that Ms. Merrick testified that the owner bought the bungalow and renovated it and it looks very nice, but it is in a residential area and should not be used for a daycare.
20. The Board found that Mr. Tyrell testified that he is concerned for the welfare of the children.
21. The Board found that Mr. Tyrell testified that there is too much noise already.
22. The Board found that Mr. Tyrell testified that Johnson Road has a speed limit of 25 miles per hour but there is a shoulder on either side of the road.
23. The Board found that Ms. Morris testified that the house consists of approximately 1,300 square feet and the home was recently renovated.
24. The Board found that Ms. Morris testified that the home has adequate space for twelve (12) children. She is currently operating a daycare for six (6) children in a residential development but is moving her operation to this new location in order to expand her business. She will not be living on the Property.
25. The Board found that Ms. Morris testified that this daycare will be operated as a business instead of a home daycare.
26. The Board found that Ms. Morris testified that there are teachers from the nearby elementary school that are excited there will be a daycare nearby
27. The Board found that no parties appeared in favor of the Application.
28. The Board found that two (2) parties were in opposition of the Application.
29. 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 met the standards for granting a special use exception because the daycare 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 Property is located along Johnson Road near a school and other businesses. The testimony from both the Applicant and the opposition is clear that there is already commercial activity and children in the area. The daycare is consistent with those uses.
 - b. The opposition presented concerns about traffic and safety but those concerns appear to be speculative at best. The opposition testified that the traffic in the area has increased but there was no evidence that the daycare facility has caused this traffic increase or that the existence of the facility will substantially adversely increase traffic beyond the traffic that already exists in the area. The evidence was clear, however, that the facility will be used by a small number of people; 2 employees and up to 12 children. The 12 children will likely not be picked up or dropped off at the facility at the same time.
 - c. The opposition presented concerns about parking on the Property but the aerial photograph shows that there is ample parking on the Property as well as a shoulder along Johnson Road. The Board has no concerns that the

parking will substantially adversely impact the uses of neighboring and adjacent properties.

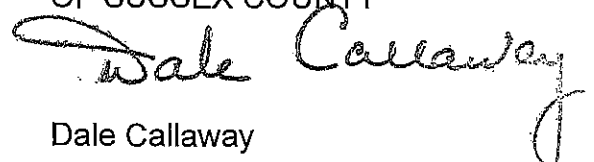
- d. The opposition complained about noise in the area from other uses but presented no substantial evidence that the daycare would increase noise pollution in the area to a level that would substantially affect adversely the uses of neighboring and adjacent properties. Rather, the hours of the facility are reasonable so any noise generated from the facility will be at reasonable hours. The facility is located in close proximity to a school and any noise generated by the daycare should be consistent with noises from the school such as children playing outside.
- e. The number of children served at the daycare is limited and is reasonable. The Applicant does not intend to have more than 2 employees so the number of people on the Property is also limited and reasonable.
- f. The playground area will be fenced-in to keep the children on the Property which should reduce the impact of the daycare on neighboring properties.
- g. There was no evidence presented that the daycare would have a substantial adverse effect on emissions, vibrations, property values, air quality, or pollution in the area.
- h. The Board was not convinced that the daycare would have a substantial adverse effect on neighboring and adjacent properties.

The Board granted the special use exception application 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. 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.

Date November 21, 2017