

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

**IN RE: CMH HOMES D/B/A OAKWOOD HOMES**

**(Case No. 12036)**

A hearing was held after due notice on October 2, 2017. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to place a manufactured home.

Findings of Fact

The Board found that the Applicant is requesting a special use to place a manufactured home. This application pertains to certain real property located at the north side of Hoot Owl Lane approximately 500 feet east of Irons Lane (Road 348) (911 Address: 34979 Hoot Owl Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-191.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a concept plan dated July 19, 2017, pictures of the Property and the neighborhood, the building permit application, 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 the Application and five (5) letters in opposition to the Application.
3. The Board found that Gil Fleming was sworn in and testified regarding the Application. Mr. Fleming submitted an exhibit to the record.
4. The Board found that Mr. Fleming testified that the house has been constructed on site and the Applicant learned after the home was placed that the Property was an undersized lot.
5. The Board found that Mr. Fleming testified that the Applicant received a building permit prior to placing the home and that his salesperson was told by Sussex County officials that the home could be placed on the lot. According to Mr. Fleming, the Applicant did not begin construction without a permit.
6. The Board found that Mr. Fleming testified that there are no restrictive covenants prohibiting the placement of the home and that Mr. Hitch, who developed the community, approved of the plans.
7. The Board found that Mr. Fleming testified that the Applicant conducted its due diligence prior to placing the home and relied on the permit.
8. The Board found that Mr. Fleming testified that there are modular homes in the area.
9. The Board found that Mr. Fleming testified that the manufactured home is an attractive home that will not adversely affect the neighborhood.
10. The Board found that Mr. Fleming testified that the manufactured home was constructed to code requirements.
11. The Board found that Mr. Fleming testified that the home will be permanently affixed to a foundation and all wheels, axles, transportation lights, and removable towing apparatus will be removed. All utilities will be permanently connected.
12. The Board found that Mr. Fleming testified that the home is a double-wide structure and the siding is continuous to enclose any joining of the two sections.
13. The Board found that Mr. Fleming testified that the home will meet all pertinent provisions of the Sussex County Housing Code and the Fire and Health Codes of the State of Delaware.

14. The Board found that Kenneth Lieb, Charles Campbell, Nancy Butters, Angela Schab, and Norman Holte were sworn in to testify in opposition to the Application. Mr. Campbell submitted exhibits to the record.
15. The Board found that Mr. Lieb testified that Mr. Hitch no longer owns any properties in the community and that the neighbors in the community have the right to enforce the deed restrictions. All properties in the community are subject to deed restrictions.
16. The Board found that Mr. Lieb testified that he owns property adjacent to the Property and that the home is out-of-character for the neighborhood. There are older farm houses in the community.
17. The Board found that Mr. Campbell testified that he lives in the neighborhood.
18. The Board found that Mr. Campbell testified that the Applicant must demonstrate that the manufactured home does not violate restrictive covenants in the community and that Paragraph 7 of the restrictive covenants provides that no trailers are permitted in the community.
19. The Board found that Mr. Campbell testified that the building permit was issued in error and that a Planning & Zoning official told him that the home is not allowed on the Property.
20. The Board found that Mr. Campbell testified that the lot consists of approximately 17,000 square feet.
21. The Board found that Mr. Campbell testified that a "stop work" order was issued and that, after the Applicant was told that a "stop work" order had been issued, an HVAC system was hooked up to the home, a well was drilled on the Property, the lot was graded, and a driveway was installed.
22. The Board found that Mr. Campbell testified that there are 26 lots in the community and the Property is similar in size to other lots in the neighborhood.
23. The Board found that Mr. Campbell testified that there are no other mobile homes in the neighborhood. Only 2 homes have been built in the community in the past 13 years.
24. The Board found that Mr. Campbell testified that the pitch of the roof is 2:12 which is consistent with a mobile home.
25. The Board found that Mr. Campbell testified that the home will substantially affect property values in the neighborhood and that many neighbors object to the Application.
26. The Board found that Mr. Campbell testified that Mr. Hitch no longer owns a lot in the community.
27. The Board found Ms. Butters testified that she owns property in the neighborhood. Her home is a stick-built home and she has lived in the neighborhood for 32 years. Other homes in the neighborhood are most, ranch-style homes which comply with the deed restrictions.
28. The Board found Ms. Butters testified that the manufactured home will be a detriment to property values and does not fit with the character of the neighborhood.
29. The Board found that Ms. Schab testified that the home was delivered and placed on the site and the home is not a stick-built home. Neighbors were surprised when the home was placed on the Property.
30. The Board found that Ms. Schab testified that the Applicant should have stopped work when it learned of the problem.
31. The Board found that Mr. Holte testified that he lives near the Property and opposes the Application.
32. The Board found that Mr. Holte testified that he is a builder and the home is a disgrace to the neighborhood.
33. The Board found that Mr. Holte testified that the home is located on a block foundation.

34. The Board found that Mr. Campbell testified that the permit was improperly issued and appears to have been issued to a lot in a manufactured home park.
35. The Board found that Mr. Fleming testified that Mr. Hitch reviewed the specifications of the home and approved the same and that there was no homeowners association to confer with about the proposal. The lack of a homeowners association was confirmed by Mr. Campbell.
36. The Board found that Mr. Fleming testified that the Applicant learned of the issue with the permit after the home had already been set on the Property and that the Applicant incurred thousands of dollars of costs when it learned of the problem.
37. The Board found that Mr. Fleming testified that the Applicant did install an HVAC system, well, and driveway after learning of the problem and that the well and driveway are land improvements. According to Mr. Fleming, the project was almost complete when the Applicant learned of the problem.
38. The Board found that Mr. Fleming testified that a permit was issued by Sussex County and the Applicant relied on that permit and that the Applicant would not have installed the footers had a permit not been issued.
39. The Board found that Mr. Fleming testified that the home was placed on the Property on August 24<sup>th</sup> and that the Applicant was informed of the problem on September 13<sup>th</sup>.
40. The Board found that Mr. Fleming testified that the home is not a "trailer" and there is no restriction against manufactured homes in the neighborhood.
41. The Board found that Mr. Fleming testified that someone from Sussex County made a mistake and that the Applicant relied on that mistake.
42. The Board found that two (2) parties appeared in support of the Application.
43. The Board found that fifteen (15) parties appeared in opposition to the Application.
44. The Board left the record open for the limited purpose of allowing the Office of Planning & Zoning to provide a copy of the building permit. The case was thereafter tabled until November 20, 2017, at which time the Board discussed and voted on the Application. Board Member Ellen Magee reviewed the record and listened to the audio of the hearing and participated in the vote.
45. 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. Property Values:
    - i. The opposition presented evidence from a realtor that the home will substantially affect adversely the property values in the neighborhood. The testimony is clear that this neighborhood consists of ranch-style homes and the manufactured home appears to be out of character for the neighborhood. It is reasonable to conclude, as the realtor did, that the values of homes in the neighborhood would be substantially adversely affected by the proposed home.
    - ii. The Applicant presented no substantial evidence such as data or reports from real estate professionals to contest the reports presented by the opposition. It is the Applicant's burden to demonstrate that the home will not substantially affect adversely the uses of neighboring and adjacent properties and the Applicant has failed to meet its burden.
  - b. Character of the Neighborhood:
    - i. The home is located in a community which has restrictive covenants which dictate that "no trailer...shall be permitted on any lot."

Manufactured homes in previous generations were referred to as “trailers” and the Board finds that the term “trailer” as originally intended in the restrictive covenants means that no manufactured homes are permitted in the community. The Board notes that the restrictive covenants were implemented in 1974 and this interpretation of the restrictive covenants – specifically as to the term “trailer” - is consistent with the longstanding interpretation in Iron Acres.

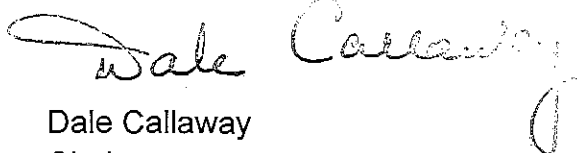
- ii. The Board also notes that the term “trailer” has evolved to the new term of “manufactured home.” Under Sussex County Code §115-4, as amended in 2010, the term “manufactured home” is also known as “house trailer, single-wide, double-wide, mobile home.” Sussex County Council amended the Zoning Code in 2010 by Ordinance No. 2152 which deleted the words “House Trailer”, “Single-Wide”, “Double-Wide”, “Mobile Home”, or “Trailer” wherever found in the Sussex County Zoning Code and replaced them with the word “Manufactured Home”. This change in terminology at the government level is consistent with the evolution of the term “trailer” to “manufactured home.”
- iii. It is notable that there are no manufactured homes in the neighborhood. Rather, the neighborhood has ranch style homes. The proposed home is out of character for the neighborhood and would substantially affect adversely the uses of neighboring and adjacent properties by violating the uniformity of homes in the neighborhood as set forth in the restrictions.
- c. The Applicant argues that it relied to its detriment on bad advice from Sussex County officials. The Applicant, however, is a sophisticated party who sells manufactured homes and arranges for the installation of those homes on properties in Sussex County. The Applicant knew or should have known the applicable zoning requirements. Delaware law is clear that there will be relatively few, if any, cases where a landowner will not be held responsible for knowing what the applicable land restrictions are. The general rule is that a permit issued illegally, or in violation of the law, or under a mistake of fact does not confer a vested right upon the person to whom it is issued, even though that person has made substantial expenditures in reliance thereon. Every person is presumed to know the extent of power of the municipal authorities.
- d. The fact that the Applicant placed the home is simply irrelevant to the issue of whether the home substantially affects adversely the uses of neighboring and adjacent properties. As noted above, the Applicant has failed to meet its burden of proof and demonstrate that it has met the special use exception standard.
- e. Even if the Applicant was able to demonstrate that the home would not substantially affect adversely the uses of neighboring and adjacent properties, the Applicant must also demonstrate that the home is not specifically prohibited by the restrictive covenants in Iron Acres. See Sussex County Code §115-20(A)(1). As noted above, the Applicant failed to meet that standard.

The Board denied the special use exception application finding that it failed to meet the standards for granting a special use exception and because the restrictive covenants prohibit the proposed manufactured home.

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, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, 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 January 23, 2018.