

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

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

(Case No. 12037)

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

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 west side of Julie Court, approximately 886 feet southwest of Peppers Corner Road (911 Address: 34481 Julie Court, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-18.00-76.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a concept plan of the Property dated July 3, 2017, a building permit application, a portion of the tax map of the area, and photographs of the Property.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of the Application and two (2) letters in opposition to the Application.
3. The Board found that Gil Fleming, James Brown, and Stacy Brown were sworn in and testified regarding the Application. Mr. Brown submitted an exhibit to the record.
4. The Board found that Mr. Fleming testified that Mr. Brown acquired a building permit to place a manufactured home on the Property and a doublewide manufactured home was placed on the Property. He was notified after the home was placed that the building permit was obtained in error.
5. The Board found that Mr. Brown testified that he lost his house in a fire and his wife is disabled. The home which was destroyed was located on a different parcel.
6. The Board found that Mr. Brown testified that he has owned the Property for several years.
7. The Board found that Mr. Brown testified that the restrictive covenants do not prohibit doublewide manufactured homes and the home meets the community's square footage requirement.
8. The Board found that Mr. Brown testified that the home is the only home he can afford.
9. The Board found that Mr. Brown testified that the permit was issued in error.
10. The Board found that Mr. Brown testified that the home consists of 1,300 square feet and is on a permanent, block foundation. There is no hitch underneath the home. All wheels, axles, and towing apparatus have been removed. The home is anchored to the foundation and is only missing steps. Utilities are connected to the home.
11. The Board found that Mr. Brown testified that the home does not affect neighboring properties and the home is not out of character for the neighborhood. Other nearby homes are ranch-style dwellings.
12. The Board found that Mr. Brown testified that his aunt owns 4 lots across the street and she does not object to the Application.

13. The Board found that Mr. Brown testified that the Property consists of approximately ½ acres.
14. The Board found that Mr. Fleming testified that the home consists of 2 sections and is connected by siding and that the home complies with all building and housing codes.
15. The Board found that Mr. Brown testified that the home will not substantially affect adversely the uses of neighboring and adjacent properties.
16. The Board found that Sandra Prettyman and Nicole Harrell were sworn in to testify in opposition to the Application. Ms. Harrell submitted exhibits to the Board.
17. The Board found that Ms. Harrell testified that she lives in the community and did not place a manufactured home because it is against the restrictive covenants.
18. The Board found that Ms. Harrell testified that she has lived in the community for over 10 years and the home may affect the value of her property.
19. The Board found that Ms. Harrell testified that she is a realtor and that lots in manufactured home communities sell for less than lots developed with stick-built homes.
20. The Board found that Ms. Harrell testified that there are ranch-style homes in the neighborhood and the home is out of character for the neighborhood.
21. The Board found that Ms. Prettyman testified that she lives in a different development. She believes that Oakwood Homes should have known that the home needed a special use exception before placing the home.
22. The Board found that two (2) parties appeared in support of the Application.
23. The Board found that two (2) parties appeared in opposition to the Application.
24. The Board tabled the Application 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.
25. 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 neighboring 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 placed on any numbered 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 1973 and this interpretation of the restrictive covenants – specifically as to the term “trailer” - is consistent with the longstanding interpretation in Pine Manor Estates.

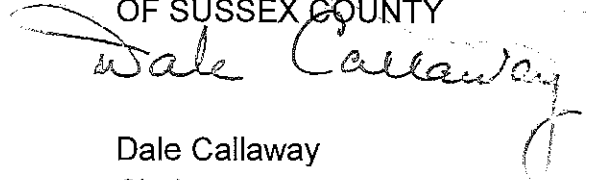
- ii. The Board also notes that the term “trailer” has evolved to the new term of “manufactured home.” Under Sussex County Code §115-4, as amended in 2010, the term “manufactured home” is also known as “house trailer, single-wide, double-wide, mobile home.” Sussex County Council amended the Zoning Code 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. A neighbor even testified that she did not build a manufactured home because such homes are prohibited under the restrictive covenants.
- 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.
- 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 Pine Manor Estates. 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

A handwritten signature in cursive script that reads "Dale Callaway". The signature is written in dark ink and is positioned over the printed name and title.

Dale Callaway
Chairman

Date January 23, 2018.