

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

**IN RE: J.G. TOWNSEND, JR. & CO.**

**(Case No. 12066)**

A hearing was held after due notice on December 11, 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 for a convalescent home, nursing home, and / or homes for the aged.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for proposed assisted living facility. This application pertains to certain real property located on the south side of Plantation Road, approximately 600 feet south east of the intersection of Postal Lane and Plantation Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-52.00. 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, an aerial photograph of the Property, a letter dated August 3, 2017, from the Delaware Department of Transportation ("DelDOT"), a letter dated June 23, 2016, from DelDOT, a letter from McCormick Taylor, and a sketch plan dated September 2017.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Doug Motley, Ring Lardner, and Nick Hammonds were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Hutt stated that the Property is zoned AR-1 and consists of 10.39 acres. The Property is located south of the intersection of Cedar Grove Road and Plantations Road.
5. The Board found that Mr. Hutt stated that the proposed assisted living facility will not adversely affect neighboring properties.
6. The Board found that Mr. Hutt stated that, if the special use exception is approved, the Applicant will go through with the site plan review process with state and local agencies and the Planning & Zoning Commission. The project has been submitted to the PLUS process with state agencies.
7. The Board found that Mr. Hutt stated that Cedar Grove Road was recently realigned to match up with Postal Lane on the other side of Plantation Road.
8. The Board found that Mr. Hutt stated that J.G. Townsend owns the Property as well as properties on two sides of the Property. The J.G. Townsend property totals 124 acres.
9. The Board found that Mr. Hutt stated that HKLS, LLC, owns one of the properties to the north of the Property and HKLS, LLC, supports the Application.
10. The Board found that Mr. Hutt stated that the Property also borders Plantation Road on one side.
11. The Board found that Mr. Hutt stated that there is a mixture of uses in the area as there are several residential communities, doctors' offices, physical therapy offices, a church, and emergency medical services facilities. Beebe Medical has a nearby facility as well.
12. The Board found that Mr. Hutt stated that there are no wetlands or flood plains on the Property and the soils on the Property are appropriate for this facility.

13. The Board found that Mr. Hutt stated that the Property is located in the State Strategies Investment Level 2 area and the Property is located in the Environmentally Sensitive Development Overlay Zone where development is anticipated and encouraged.
14. The Board found that Mr. Hutt stated that the Property will be serviced by County sewer and central water from Tidewater Utilities.
15. The Board found that Mr. Hutt stated that a cemetery is located on or near the Property and the cemetery has been examined by an archeologist to ensure no roads or entrances disturb the cemetery.
16. The Board found that Mr. Hutt stated that no traffic impact study needs to be performed and the proposed use will result in fewer than 50 vehicular trips in any hour and fewer than 500 vehicular trips a day. DelDOT determined that the traffic impact from the facility will be "negligible".
17. The Board found that Mr. Hutt stated that there will be two access points for the site pending the site plan review process.
18. The Board found that Mr. Hutt stated that storm water management will be located on site as approved by the Sussex Conservation District and the Delaware Department of Natural Resources & Environmental Control ("DNREC").
19. The Board found that Mr. Hutt stated that the proposed building will be three (3) stories tall and will consist of 160,000 square feet with 144 units.
20. The Board found that Mr. Hutt stated that the facility will meet the height, area, and setback requirements. The proposed building will be 60 feet from Plantation Road even though only a 40 feet front yard setback is required.
21. The Board found that Mr. Hutt stated that the Applicants plan to maintain the goal of an upscale retirement facility.
22. The Board found that Mr. Hutt stated that the population has increased in this area of Sussex County.
23. The Board found that Mr. Hutt stated that there is ample room for parking on the site. 99 parking spaces will be provided even though only 74 spaces are required through the Sussex County Zoning Code.
24. The Board found that Mr. Motley testified that the Applicant researched the market for aging-in-place and there is a growing demand for these services and a lack of facilities. The occupancy of most existing facilities is around 100%.
25. The Board found that Mr. Hutt stated that there will be no negative impact on property values indicated by research on an existing Assisted Living Facility and that the facility will provide an economic benefit to the area.
26. The Board found that Mr. Motley and Mr. Lardner affirmed the statements made by Mr. Hutt as true and correct.
27. The Board found that Mr. Hutt stated that the facility will not emit noise, light, or odors other than what would normally be seen with residential uses.
28. The Board found that Mr. Motley testified there will be downward lighting and landscaping throughout the site.
29. The Board found that Mr. Lardner testified that the parking requirements stated earlier in the presentation were derived from the Sussex County Code.
30. The Board found that Mike Robertson was sworn in and testified with concerns about the Application. Mr. Robertson testified that he is concerned about the traffic and the drainage requirements.
31. The Board found that no parties appeared in support of or in opposition to the Application and that one person appeared with concerns about the Application.
32. 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 proposed 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 Applicant proposes to place an assisted living facility on a portion of a 10 acre parcel near the intersection of Cedar Grove Road and Plantation Road. The proposed assisted living facility will contain no more than 88 residential units with a maximum of 144 residential units and related service, rehabilitation, and community space.
- b. The site is located in the environmentally sensitive zone, which is one of the growth districts under the Sussex County comprehensive plan, where development is anticipated and planned.
- c. The site is zone AR-1 under the Sussex County zoning ordinance and assisted living facilities are authorized as a special use exception in the AR-1 zoning district.
- d. The site is located in an investment level 2 area under the Delaware Strategies for State Policies and Spending, which is an area where the state supports the development of a broad mix of housing options.
- e. The facility will be served by central water for domestic use and fire protection by Tidewater Utilities, a regulated public utility company.
- f. The facility will be provided sewer as part of a Sussex County sewer district and adequate capacity is available.
- g. The site is located in an area containing a mixture of uses including several residential communities, doctors' offices, physical therapy offices, a church, and emergency medical services facilities.
- h. The community will contribute to serving the needs of older county residents for this type of residential alternative.
- i. Aesthetics:
  - i. The Applicant presented pictures and schematics of other assisted living facilities which will serve as models for the facility proposed here and these pictures and schematics show that the exterior of the proposed facility will be attractive. The Board has no reason to doubt that the facility will maintain this neat appearance.
  - ii. The site is bordered by a cemetery, lands owned by the Applicant, Plantation Road, and lands owned by neighbors supporting the Application.
  - iii. The site will be landscaped and the landscaping should minimize the impact of the aesthetics of the facility.
  - iv. To the extent the facility will have an aesthetic impact on neighboring properties, the Board finds that the impact is minimal at best.
  - v. As such, there should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the facility.
- j. Traffic:
  - i. The Property is located near an intersection which was recently re-aligned. The re-alignment has improved sight lines in the area.
  - ii. All entrance and roadway improvements required by DelDOT for the assisted living facility will be the responsibility of the Applicant and will address any traffic impact.
  - iii. DelDOT has jurisdiction over the traffic impact of the facility and the Applicant will have to comply with DelDOT regulations as part of the site plan approval process. To the extent that the additional traffic along Plantation Road or Cedar Grove Road has an impact on the neighborhood, compliance with DelDOT regulations should minimize that impact.

- iv. DelDOT noted in its report that the traffic impact from the facility would be “negligible”.
  - v. Ultimately, it is not convincing that the facility will have a substantial adverse effect on traffic in the area.
- k. Parking:
  - i. By Code, the facility is required to have at least 74 parking spaces but the Applicant is proposing to have 99 parking spaces available for the facility. This proposal should provide ample parking for the facility. No evidence was presented that the parking associated with the facility would create a substantial adverse impact on neighboring and adjacent properties.
- l. Lighting:
  - i. All lighting associated with the assisted living facility will be directed at a downward angle to minimize the light pollution on adjacent properties. The site will also be landscaped which should lessen the impact of any lighting from the facility.
- m. Noise:
  - i. While there will likely be noise generated by the facility, the Board was not convinced that the noise generated from this activity would rise to the level of a substantial adverse affect on neighboring properties. The Applicant’s proposed use will not involve loud machinery or extensive outdoor activity. Rather, the Applicant seeks permission to build a facility for residents to live in and for members of the facility to interact. This use is consistent with the character of the neighborhood which has several residential communities, doctors’ offices, physical therapy offices, a church, and emergency medical services facilities and the noise generated by the facility should not substantially differ from those uses.
  - ii. The landscaping of the site should help to insulate noise generated by the facility from those neighbors outside the development.
- n. Emissions:
  - i. There was no evidence that there would be additional pollutants or negative environmental emissions from the proposed assisted living facility.
- o. Stormwater Runoff:
  - i. One member of the public presented concerns about the effect of the facility on drainage. No specific evidence as to the effect of the facility on drainage was presented. The Applicant, however, presented evidence that the soils are well-suited for this development. No wetlands are found on the site either.
  - ii. Furthermore, as part of the development process, the Applicant will be required to meet storm water management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Green Technology. This storm water management system should limit the impact of the facility on neighboring properties and waterways.
  - iii. The Board is convinced that compliance with the storm water regulations should minimize the impact of the facility on nearby streams and waterways.
- p. The Neighborhood:
  - i. It is clear from reviewing the record that the area is a mixed-use area. Views of the aerial maps presented by the Applicant demonstrate that there are a variety of uses nearby.


- ii. As previously noted, the site is located along Plantation Road, which also services several residential communities, doctors' offices, physical therapy offices, a church, and emergency medical services facilities
- q. Use:
  - i. The facility will be similar to other assisted living facilities in Sussex County such as Harbor Healthcare in Lewes, Cadbury on Gills Neck Road near Lewes, and Brandywine Living on Route 1. There was no evidence that those facilities had a negative impact on the uses or values of neighboring and adjacent properties.
- r. Property Values:
  - i. The Applicant presented a report from a real estate appraiser that the facility will not have a negative impact on property values in the immediate area.
  - ii. No evidence to the contrary was presented in the record.
- s. Based on the record, the Applicant has demonstrated that the proposed use set forth in the application will not substantially affect adversely the uses of neighboring and adjacent properties.
- t. The Board also adopts the proposed Findings of Fact and Conditions presented by the Applicant and incorporates those findings and conditions into this decision. A copy of those Findings of Fact and Conditions is attached hereto as Exhibit A and is incorporated by reference herein.

The Board granted the special use exception with conditions 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 with conditions was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application with conditions. Ms. Ellen Magee did not participate in the discussion or vote on this 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 February 6, 2018.

**EXHIBIT “A”**  
**Plantation Partners, LLC**  
**Proposed Findings of Fact and Conditions of Approval**  
**Case No. 12066**

**Findings of Fact**

1. The Applicant proposes to place a senior care facility on a 10.39 acre portion of a 124+/- acre parcel situated 500 feet south of the intersection of Cedar Grove Road and Plantation Road.
2. The proposed facility will contain no more than 144 residential units with a maximum square footage of 160,100 square feet.
3. The property is located within the Environmentally Sensitive Developing District Overlay Zone (ESDDOZ), a growth and developing area in the Sussex County Comprehensive Plan, where development is anticipated and planned.
4. The site is zoned AR-1 (Agricultural/Residential) under the Sussex County Zoning ordinance and assisted living facilities (referred to as “convalescent homes, nursing homes or homes for the aged”) are authorized as a special use exception in the AR-1 Zoning District.
5. The site is located in an Investment Level 2 area under the 2015 Delaware Strategies for State Policies and Spending, which is an area where the state supports the development of a broad mix of housing options.
6. The facility will be served by central water for domestic use and fire protection by Tidewater Utilities, a regulated public utility company.

7. The facility will be provided sewer as part of a Sussex County sewer district and adequate capacity is available.
8. The site is located on Plantation Road, which begins at the northern end of Route One (Coastal Highway) with the Lowe's and ends at the intersection with Route 24 (John J. Williams Highway) where the Beebe Medical Campus is located and is going to be expanded in the coming years. In between there are a doctor's offices, physical therapy offices, a community center, the emergency medical center, churches, multi-family and single family residential developments.
9. The facility will provide options for seniors who need various degrees of care and supervision and be part of an "aging in place" concept. The overall development provides older area homeowners with the option of staying at one facility as their needs may change over time. The goal is to provide a continuum of care in one facility.
10. The community will contribute to serving the needs of older county residents for this type of residential alternative. The population of Sussex County increased 9.4% in the 5 year period between 2010 and 2015. The beach areas and areas east of Rte. 113 have seen most of this population increase and the trend is expected to continue in the foreseeable future. In Sussex County, nearly one in four residents is over 65 years of age.
11. The applicant is responding appropriately to the PLUS Comments and the Office of State Planning Coordination has no objection to the proposed senior housing project.
12. The facility will be set back from the front property line adjacent to Plantation Road. This will allow for green spaces and landscaping to provide an attractive streetscape in keeping with the remainder of Plantation Road.
13. The design and exterior of the facility will be attractive as this will be an upscale facility and will integrate well with the surrounding properties.
14. The owners of the properties immediately adjacent to the site are in support of this proposed facility.
15. The nature of a senior living home is a quiet, residential use which does not generate noise, light, smells or other nuisances associated with commercial or business uses which neighboring properties might find objectionable.
16. DelDOT determined that a Traffic Impact Study was not required because there would be fewer than 500 vehicle trips per day which DelDOT states means that it "consider[s] the development's traffic impact to be negligible."
17. The facility will have access from both Cedar Grove Road and Plantation Road. All entrance and roadway improvements required by DelDOT for the facility will be the responsibility of the applicant.
18. The site has more than adequate room to provide the minimum number of parking spaces required by the Sussex County Code along with additional parking spaces for peak parking at busier times of the year such as when family members visit residents during the summer season and holidays.
19. The project will meet stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Best Available Technologies (BAT).
20. The facility will be similar to other assisted living facilities in Sussex County such as Manor House in Seaford, Cadbury on Gills Neck Road near Lewes, and

Brandywine Living at Seaside Pointe in Rehoboth. None of these facilities have had a negative impact on the uses or values of neighboring and adjacent properties.

21. A Delaware Certified General Real Estate Appraiser has opined and demonstrated through empirical data using assisted living facilities in Sussex County that these types of facilities do not have a negative impact, much less a substantial adverse effect, on property values of neighboring and adjacent properties.

22. The Applicant has demonstrated that the proposed senior housing facility will not substantially affect adversely the uses of neighboring and adjacent properties.

**(Proposed) Conditions of Approval**

The approval of this special use exception shall be subject to the following conditions:

1. The assisted living facility shall contain no more than 144 residential units within a structure(s) comprising a maximum of 160,100 square feet.

2. The primary structure for the facility shall be setback a minimum of sixty feet (60') from the property line adjacent to Plantation Road.

3. All entrances, intersections, inter-connection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements.

4. The facility shall be served as part of the Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.

5. The facility shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.

6. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.

7. The applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design.

8. Preliminary and Final Site Plans shall be subject to the review and approval of the Planning & Zoning Commission.