

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH BURR & MONICA OGLE

(Case No. 12117)

A hearing was held after due notice on April 9, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a commercial dog kennel.

Findings of Fact

The Board found that the Applicants are requesting a special use exception to operate a commercial dog kennel. This application pertains to certain real property located on the south side of Pit Road, approximately 1,376 feet southeast of Old Meadow Road (911 Address: 10980 Pit Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 2-31-12.00-112.00. 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, and a probation before judgment Court Order.
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 Monica Ogle and Joseph Burr was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that a special use exception for a commercial kennel is required if the owner is breeding animals or has five (5) or more animals over six (6) months of age.
5. The Board found that Mr. Willard stated that the Applicants have bred Shiatzus and Dachshunds on the Property and these dogs are small dogs.
6. The Board found that Mr. Willard stated that the Property is improved by a ranch-style home with an attached garage. The rear yard is fenced in with a wire fence; though the Applicants plan to install a new 6 feet tall privacy fence.
7. The Board found that Mr. Willard stated that the Applicants keep small dogs in the garage and operate a grooming business on the Property. The Applicants have approval from Sussex County for the grooming business.
8. The Board found that Mr. Willard stated that Ms. Ogle has spoken with her neighbors and 13 neighbors signed a petition supporting the Application.
9. The Board found that Mr. Willard stated that the Applicants have no intention of boarding dogs on the Property and the Applicants will not house dogs for other persons for a fee.
10. The Board found that Mr. Willard stated that the Applicants propose to limit the number of dogs on the Property to 12 and that all dogs will be under 15 pounds.
11. The Board found that Mr. Willard stated that the dogs will primarily be in the home and will only be outside in the fenced-in area.
12. The Board found that Mr. Willard stated that the Applicants breed 1-2 litters per year and sell the puppies.
13. The Board found that Mr. Willard stated that there are no signs on the Property advertising the kennel and all visitors to the kennel are by appointment only.

14. The Board found that Ms. Ogle affirmed the statements made by Mr. Willard as true and correct.
15. The Board found that Ms. Ogle testified that all the dogs on the Property are her personal pets but she does breed puppies for sale.
16. The Board found that Ms. Ogle testified that an SPCA officer came to their home and the officer complemented her on how she cares for her dogs.
17. The Board found that Ms. Ogle testified that the Applicants have lived in the home for one year and seven months and she has received no complaints about her dogs.
18. The Board found that Ms. Ogle testified that the Property is almost one acre in size. There are woods and a preserve located to the rear of the Property.
19. The Board found that Ms. Ogle testified that her nearest neighbor works nights and sleeps during the day. She purchased spray collars to limit the barking of her dogs and her neighbor has not complained about the barking.
20. The Board found that Ms. Ogle testified that the dogs are not outside when the owners are not present.
21. The Board found that Ms. Ogle testified that she is concerned about theft of her dogs and the proposed fence will help alleviate that concern.
22. The Board found that Paul Reiger, Beth Kopicki, Robert Johnson, George Uccello, and William Johnson were sworn in and testified in opposition to the Application. Mr. Reiger submitted an exhibit for the Board to review.
23. The Board found that Mr. Reiger expressed concerns about the dog kennel ordinance.
24. The Board found that Ms. Kopicki testified that noise is a concern but she has never noticed anything out of the ordinary with dogs barking in the area. There are other dogs in the neighborhood. She lives five houses down from the Property.
25. The Board found that Ms. Kopicki testified that she does not object to the Application provided that the number of dogs are limited and the noise is controlled and does not increase.
26. The Board found that Ms. Kopicki testified that she had previously seen dogs on the Property but was unaware that the Property was used for a kennel.
27. The Board found that Mr. Uccello testified that he is concerned with noise but there is no problem with noise from the kennel currently. He did not know that the Applicants were using the Property for a kennel until this application was filed.
28. The Board found that Mr. Robert Johnson testified that he was alarmed by the commercial kennel use because the homes along Pit Road are very close together and the neighborhood is a quiet residential area. He does not, however, object to the Application if the noise is controlled.
29. The Board found that Mr. William Johnson testified that he was also alarmed by the sign stating commercial kennel use but he never knew the Applicants had dogs. If the Applicants keep the dogs quiet, he is okay with the use.
30. The Board found that no parties appeared in support of the Application.
31. The Board found that five (5) parties appeared in opposition to 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 weighed and considered, the Board determined that the application met the standards for granting a special use exception because the commercial dog kennel 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 Applicants have operated a limited commercial dog kennel on the Property for nearly two (2) years and have not received any complaints from neighbors.
 - b. The dog kennel will be located within an existing attached garage on the property, and the outdoor area will be completely fenced with solid fencing all around it. The dogs and the kennel area will not be visible from

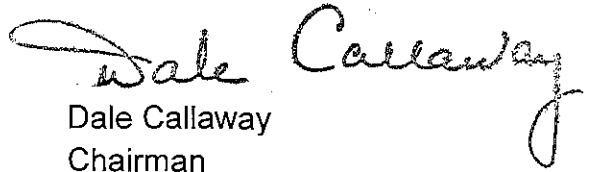
- neighboring properties or roadways. The Applicants will limit the outdoor use of the dogs to reduce the impact of the dogs on the neighborhood. The Applicants will also employ spray collars on the dogs to discourage barking.
- c. The number of dogs served at the kennel is limited and reasonable. The Applicants only serve up to 12 dogs. All dogs are owned by the Applicants and they do not board dogs for third parties; though the Applicants breed a 1-2 litters of puppies per year for sale to others.
 - d. The opposition presented concerns about the noise generating from the facility but no one presented evidence that the noise from the kennel was excessive. Rather, the opposition noted that they were largely unaware of the kennel's existence prior to learning of the Application.
 - e. The Board notes that 13 individuals have signed a petition supporting the Application.
 - f. The Applicants live on the Property and they have direct control over the kennel operations and address any minor noise issues that may come from barking dogs at the kennel.
 - g. There is no clear evidence that the use of the property as a kennel will have a substantial, adverse effect on the uses of neighboring or adjacent properties. There was not credible testimony that the use will have an adverse impact upon property values, or specific credible examples that the use will impair the use of surrounding properties.
 - h. This approval shall be valid for a period of 5 years subject to the following conditions:
 - i. No more than 12 dogs shall be housed in the kennel at one time.
 - ii. All dogs shall be less than 15 pounds.

The Board granted the special use exception application for a period of five (5) years 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 was approved for a period of five (5) years with conditions. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, 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.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date May 22, 2018