

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: COUNTRY REST HOME, INC.

(Case No. 12194)

A hearing was held after due notice on September 10, 2018. 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 operate a convalescent home, nursing home, and / or home for the aged.

Findings of Fact

The Board found that the Applicant is seeking a special use exception operate a convalescent home, nursing home, and / or home for the aged. This application pertains to certain real property located on the east side of Hickman Road, approximately 776 feet south of University Road and at the northeast corner of University Road & Hickman Drive (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 5-30-9.00-4.00 & 5-30-4.00-23.00.

1. The Board was given copies of the Application, site plans of the Property dated March 5, 2018, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that Mark Yoder and David Heatwole were sworn in to give testimony about the Application. Mr. Yoder is the owner of the Property and Mr. Heatwole is the engineer for the project. David Hutt, Esquire, appeared on behalf of the Applicant to present the Application sworn in to testify about the Application. The Applicant submitted exhibits to the Board to review.
4. The Board found that Mr. Hutt stated that the Country Rest Home and the Greenwood Retirement Community are located across the street from the Property. The convalescent center was built in 1954 and predated the enactment of the Sussex County Zoning Code. Since 1988, numerous special use exception applications have been approved to add to the convalescent center. Country Rest Home and the Greenwood Country Retirement Community were built over 7 parcels consisting of approximately 60 acres and include a 56 bed nursing home and 47 single-family units. The facility has reached its limit, however, and needs to expand to properties located across the street. Those properties ("the Property") are the subject of this application.
5. The Board found that Mr. Hutt stated that the project will use well water and private sewer.
6. The Board found that Mr. Hutt stated that DeIDOT found that the project will result in fewer than 50 trips per hour and did not require a traffic impact study. The traffic impact is negligible.
7. The Board found that Mr. Hutt stated that the project will meet all storm water regulations.
8. The Board found that Mr. Hutt stated that there is a need for these types of facilities based on census data and there is a waiting list for the community.
9. The Board found that Mr. Hutt stated that the apartments provide a continuum of care.
10. The Board found that Mr. Hutt stated that there are no issues with the fire company.

11. The Board found that Mr. Hutt stated that the facility does not produce much noise and there are no light, noise, or smell problems from the facility.
12. The Board found that Mr. Hutt stated that the project will not affect the aesthetics of the neighborhood.
13. The Board found that Mr. Hutt stated that neighbors support the project.
14. The Board found that Mr. Yoder and Mr. Heatwole affirmed the statements made by Mr. Hutt as true and correct.
15. The Board found that Mr. Yoder testified that he has received no complaints about the facility.
16. The Board found that Mr. Yoder testified that the units will be leased.
17. The Board found that John David, Robert Layton, William B. Wright, and Jack Lucia were sworn in to give testimony in support of the Application. They testified that they or their family members reside near the Property and support the Application.
18. The Board found that Paul Reiger was sworn in to give testimony in opposition to the Application. Mr. Reiger argued that this approval should go to County Council for final review
19. The Board found that ten (10) parties appeared in support of the Application
20. The Board found that one (1) party appeared in opposition to the Application.
21. 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 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 operate an assisted living facility referred to as "convalescent homes, nursing homes, or homes for the aged" in the Sussex County Zoning Code on property consisting of 43.748 acres more or less.
 - b. The proposed facility will contain no more than 35 single-family homes and a building consisting of no more than 42,500 square feet containing 45 independent living units (22 single-family bedroom and 23 two-bedroom apartments) to allow for independent and assisted living along with ancillary uses.
 - c. The Property is located in a rural, low-density area on the Sussex County Comprehensive Plan where "farming co-exists with appropriate residential uses and permanently preserved property." The Applicant designed this project to co-existing with the existing farming and residential uses in the area.
 - d. The site is located in an Investment Level 4 area under the 2015 Delaware Strategies for State Policies and Spending, which is an area where the State does not intend to spend funds for infrastructure or other public services. This State policy should not be used as a basis for denial because the project otherwise complies with the County's ordinances and no public funds will be required for the development of this project.
 - e. The site is zoned AR-1 (Agricultural Residential) under the Sussex County Zoning Code 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.
 - f. The proposed facilities are located directly across Route 16 (Hickman Road) from the Greenwood Country Retirement Community which is owned and operated by the Applicant and contains twenty-eight (28) single-family units. Adjacent to the Greenwood Country Retirement Community is Country Rest Home which is similar to what is proposed by the Applicant with this project as it contains 19 single-family units and a nursing home with 56 beds.

- g. The facility will be served by private (on-site) wells for domestic and fire protection subject to the review and approval by the Department of Natural Resources and Environmental Control (“DNREC”) and the Delaware Division of Public Health.
- h. The facility will be served by private (on-site) sanitary sewer treatment plant and disposal system subject to DNREC regulations governing the design, installation, and operation of on-site wastewater treatment and disposal systems.
- i. The site is located on Hickman Road, which is located between the Town of Greenwood and the Maryland border. This is a typical rural area of Sussex County with a mixture of farms (the adjacent property is in an agricultural preservation district) and single-family homes. The distinguishing features of the area are a salvage yard and the aforementioned Greenwood Country Retirement Community and Country Rest Home.
- j. The facility will provide options for individuals (primarily seniors) who need various degrees of care and supervision from independent living to in-home nursing care. The facility is 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 at one location.
- k. The facility will contribute to serving the needs of older county residents for this type of residential alternative and there is a need for this type of facility; as evidenced by the lack of available space at the Country Rest Home and Greenwood Country Retirement Community.
- l. The proposed 45 unit, apartment-style facility will be set back from the front property line adjacent to Hickman Road. This will allow for green spaces and landscaping to provide an attractive streetscape in keeping with the rural nature of Hickman Road.
- m. The design and exterior of the facilities will be attractive as demonstrated by the existing structures and units at Country Rest Home and the Greenwood Retirement Community and will integrate well with the surrounding properties. Pictures of existing structures further demonstrate that the facility will well-maintained. There was no evidence of a negative aesthetic impact in the neighborhood from the facility. As such, there should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the facility.
- n. Many neighbors in the area of have submitted letters and testimony supporting the Application.
- o. The nature of an assisted living facility 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. No evidence to the contrary was submitted by the opposition.
- p. There was no evidence that there would be additional pollutants or negative environmental emissions from the proposed assisted living facility.
- q. DeIDOT has jurisdiction over the traffic impact of the facility and the Applicant will have to comply with DeIDOT regulations as part of the site plan approval process. DeIDOT determined that a traffic impact study was not required because there would be fewer than 500 vehicle trips per day which DeIDOT states means that it “consider[s] the development’s traffic impact to be negligible.” The facility will have access from Hickman Road. All entrance and roadway improvements required by DeIDOT for the facility will be the responsibility of the Applicant. To the extent that the additional traffic along Hickman Road has an impact on the neighborhood, compliance

with DeIDOT regulations should minimize that impact. There was also no evidence submitted into the record which demonstrated that the facility would have a substantial adverse effect on traffic in the neighborhood.

- r. The site has more than adequate room to provide the minimum number of parking spaces required by the Code along with additional parking spaces for times when friends and family members visit residents including peak times during the summer, vacation season, and holidays. No evidence was presented by the opposition that the parking associated with the facility would create a substantial adverse impact on neighboring and adjacent properties.
- s. The project will meet storm water 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”).
- t. The facility will be similar to the adjacent assisted living facilities which have not had a negative impact on the uses or values of neighboring and adjacent properties.
- u. The Fire Chief and Ambulance Captain for Greenwood have confirmed that there are no issues with the Greenwood Fire Company providing Fire and Emergency Services to the proposed facility.
- v. There was no evidence, particularly expert testimony, reports, or studies, presented by the opposition that the facility would have a substantial adverse effect on property values in the neighborhood.
- w. The Applicant has demonstrated that the proposed senior housing facility will not substantially affect adversely the uses of neighboring and adjacent properties.
- x. The only concern raised by the opposition was whether the Board could actually approve a special use exception for this proposed facility. Pursuant to §115-23(b)(4) of the Code, the Board has the authority to grant special use exceptions for “Convalescent homes, nursing homes or homes for the aged.” While the Code does not specifically define “convalescent homes, nursing homes, or homes for the aged”¹, the §115-4 of the Code specifically defines “nursing and similar care facilities” and includes within that definition “assisted living facilities” and “independent care facilities”. An assisted living facility is defined as “residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication and may provide other services such as recreational activities, financial services, and transportation.” An independent care facility is defined as “a residential development of detached single-family dwelling units or multifamily dwelling units restricted to individuals or families in which all residents are older adults. Such development may contain compatible commercial elements.” These uses fit within the context of what the Applicant proposes to operate on the Property. More importantly, however, these uses are consistent with the uses of adjacent property operated as the Country Rest Home and the Greenwood Country Retirement Community which received multiple approvals from the Board under §115-23 of the Code. Copies of those approvals were even provided to the Board in the Applicant’s exhibit booklet. It is clear to the Board that the Board has the authority to grant this special use exception under the Code and that such approval is consistent with the historic interpretation of this section of Code.

¹ §115-4 of the Code defines “nursing homes” as “same as ‘convalescent home.’” There is no definition of “convalescent home.”


- y. This approval is subject to the following conditions as proffered by the Applicant:
- i. The Applicant shall consolidate Sussex County Tax Parcel Nos. 5-30-4.00-23.00 and 5-30-9.00-4.00 into one tax parcel.
 - ii. The assisted living facility shall contain no more than 35 single-family homes and a building consisting of no more than 42,500 square feet containing 22 single bedroom and 23 two-bedroom apartments to allow for aging in place along with ancillary uses.
 - iii. The 45-unit (apartment style) facility shall be set back a minimum of sixty (60) feet from the property line adjacent to Hickman Road.
 - iv. 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.
 - v. The facility (including the single-family homes and the 45-unit apartment-style building) shall be served by a privately operated, on-site sanitary sewer treatment plant and disposal system subject to regulations of DNREC governing the design, installation, and operation of on-site wastewater treatment and disposal systems.
 - vi. The facility (including the single-family homes and the 45-unit apartment-style building) shall be served by private on-site well(s) subject to DNREC approval and the Delaware Department of Public Health. The system shall be designed and installed to provide adequate drinking water and fire protection as required by applicable regulations.
 - vii. Storm water 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.
 - viii. The Applicant shall provide agricultural buffers and wetland buffers, as necessary, in accordance with the applicable regulations. The Agricultural Use Notice (3 Del. C. § 910) shall be included in all leases for units on the Property.
 - ix. The Applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design.
 - x. The Applicant shall retain as much of the existing trees and other vegetation along the boundaries of the Property unless removal is necessary for storm water management or other site conditions and shall use the vegetation to create a twenty (20) foot forested buffer along the sides and rear of the Property.
 - xi. All fire safety and protection requirements, including, but not limited to fire lanes, fire hydrants, and fire department connections, shall be reviewed, approved, and installed according to the State of Delaware Fire Prevention Regulations.
 - xii. Preliminary and Final Site Plans shall be subject to the review and approval of the Planning & Zoning Commission.

The Board granted the special use exception application 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 with conditions. The Board Members in favor were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member 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



John Mills
Chairman

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

Date November 7, 2018.