

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: COUNTRY REST HOME, INC.

(Case No. 12320)

A hearing was held after due notice on June 17, 2019. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. John Williamson, 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 homes for the aged.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a senior housing facility consisting of 30 single family cottage units and a building of approximately 50,000 square feet containing 15 single bedroom apartments and 25 two-bedroom apartments; these facilities being considered convalescent homes, nursing homes, and / or homes for the aged. This application pertains to certain real property located on the north side of Johnson Road approximately 0.48 miles east of Wilkins Road (911 Address: 18971 Johnson Road, Lincoln) said property being identified as Sussex County Tax Map Parcel Number 3-30-15.00-33.01.

1. The Board was given copies of the Application, a site data information sheet, variances maps, deeds, a survey of the Property dated April 11, 2019, a subdivision approval for Mission Estates and notice of voided approval, a letter from Joseph Wells regarding property values, pictures, letters of support, proposed findings of fact and conditions, a preliminary site plan dated June 14, 2019, 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 nine (9) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Mark Yoder, Jr., who is a member of the Applicant, and David Heatwole, who is the site engineer, were sworn in to give testimony about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Hutt stated that the proposed facilities will not substantially affect adversely the use of adjacent properties as the immediate uses are agricultural and residential.
5. The Board found that Mr. Hutt stated that the project will still be subject to agency approvals and site plan reviews following the approval of the special use exception. Agencies such as DelDOT, the Fire Marshal, and the Sussex Conservation District will all have input. Furthermore, the Applicant proposes, as a condition of approval, that preliminary and final site plan approval be obtained by the Planning & Zoning Commission.
6. The Board found that Mr. Hutt stated that the site consists of 32.6 acres. Christian Tabernacle Church is located directly opposite to the entrance of the Applicant's property and the Bayhealth Sussex campus is located nearby.
7. The Board found that Mr. Hutt stated that the site was previously approved for a 25 lot subdivision which was not developed because the approval expired.
8. The Board found that Mr. Hutt stated that Applicant operates Country Rest Home near Greenwood and this location is a logical place for a second facility as this is a growth area.

9. The Board found that Mr. Hutt stated that residents of the current Country Rest Home support the request and that neighbors also support the Application.
10. The Board found that Mr. Hutt stated that the soils are appropriate for this facility.
11. The Board found that Mr. Hutt stated that the facility will have a maximum of 50,000 square feet with 40 apartment style units. 15 units will be single-bedroom units and 25 units will be 2-bedroom units. The facility will be a single-story facility. The 30 cottage units will consist of 1,500 – 2,000 square feet each.
12. The Board found that Mr. Hutt stated that the facility will use well water and on-site septic but will need approval from DNREC.
13. The Board found that Mr. Hutt stated that the facility estimates 330 trips per day which is below the threshold required for a traffic impact study and that the facility does not have a large traffic impact.
14. The Board found that Mr. Hutt stated that the Property will have its own stormwater management facility to be approved by the Sussex Conservation District and the Applicant will use best management practices and best available technology.
15. The Board found that Mr. Hutt stated that there will be ample parking for visitors and residents and all lighting will be downward screened.
16. The Board found that Mr. Hutt stated that there has been a great population increase in Sussex County and that trend is expected to continue. Many new residents are older than 65 years old and this type of facility is needed.
17. The Board found that Mr. Hutt stated that the facility will provide a continuum of care and aging in place.
18. The Board found that Mr. Hutt stated that the facility is a residential-style use and will not dominate the landscape of the area.
19. The Board found that Mr. Hutt stated that a local realtor submitted a letter that the impact on property values would be neutral.
20. The Board found that Mr. Hutt stated that the facility is similar to other uses in the area.
21. The Board found that Mr. Hutt stated that the Applicant proposes a forested buffer of 30 feet along boundaries which is a similar boundary as if the property was a subdivision.
22. The Board found that Mr. Hutt stated that the Applicant would implement an agricultural use notice in all leases.
23. The Board found that Mr. Hutt stated that the noises from the facility are similar to noises from residential uses and that noises from agricultural uses are likely louder.
24. The Board found that Mr. Yoder and Mr. Heatwole affirmed the statements made by Mr. Hutt as true and correct.
25. The Board found that Mr. Hutt stated that there would be no forested buffer along the powerline easement due to maintenance needs and that there is a 150 foot easement for the powerline.
26. The Board found that Robert Layton was sworn in to give testimony in support of the Application. He lives at Country Rest Home and he testified that there is a need for this facility.
27. The Board found that Paul Reiger was sworn in to give testimony in opposition to the Application.
28. The Board found that two people appeared in support of and one person appeared in opposition to the Application.
29. 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 32.6 acres more or less.
- b. The proposed facility will contain no more than 30 single-family homes and a single-story building consisting of no more than 50,000 square feet containing 40 independent living units (15 single-family bedroom and 25 two-bedroom apartments) to allow for a continuum of care from independent to assisted living along with ancillary uses.
- c. The Property is located within a Developing Area on the Future Land Use Map in the 2018 Sussex County Comprehensive Plan, which are “newer, emerging growth areas that demonstrate the characteristics of developmental pressures.” The Applicant designed this project to co-existing with the existing farming and residential uses in the area recognizing this emerging growth in the area due to the construction of the Bayhealth hospital and medical campus.
- d. The site is located in an Investment Level 3 area under the 2015 Delaware Strategies for State Policies and Spending, which areas “include lands adjacent to or intermingled with fast-growing areas within counties or municipalities that are otherwise categorized as Investment Levels 1 or 2.” This site is in close proximity to the new Bayhealth hospital which is an Investment Level 1 area and this proposed use complements the hospital and other medical uses that will surround the hospital.
- 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 at the time the Application was submitted as a special use exception in the AR-1 Zoning District.
- f. The Applicant operates facilities on Route 16 (Hickman Road) just outside Greenwood known as the Greenwood Country Retirement Community and the Country Rest Home. The Greenwood facilities are well established and have long been well regarded for the quality of the environment they provide.
- 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 Johnson Road, east of Lincoln and south of Milford. This is a typical rural area of Sussex County with a mixture of homes, residential subdivisions, a manufactured home community and some farming operations. Directly across the street from the site is the Christian Tabernacle Church. In addition, the new Bayhealth hospital and medical campus is located in close proximity to this site.
- 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.

- l. The Applicant proposes a thirty (30) foot forested buffer along all the boundaries of the site except its boundary with the adjacent power lines which will remain open for sanitary sewer and for access and maintenance of the power lines.
- m. The design and exterior of the facilities will be attractive and will integrate well with the surrounding properties as they will be similar to the existing structures and units at the Country Rest Home and the Greenwood Country Retirement Community.
- n. Owners of properties in the surrounding area are in support of the proposed facility.
- 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. The facility will have access from Johnson Road (SCR 207). All entrance and roadway improvements required by DeIDOT for the facility will be the responsibility of the Applicant.
- r. 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.
- s. 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.
- t. 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").
- u. 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.
- v. The Applicant has demonstrated that the proposed senior housing facility will not substantially affect adversely the uses of neighboring and adjacent properties.
- w. This approval is subject to the following conditions as proffered by the Applicant:
 - i. The assisted living facility shall contain no more than 30 single-family detached units and a building consisting of no more than 50,000 square feet containing no more than 40 units to allow for aging in place along with ancillary uses.
 - ii. The 40-unit facility shall be set back a minimum of seventy-five feet (75') from the rear property lines of the homes between the facility and Johnson Road.
 - iii. All entrances, intersections, inter-connection, roadway and multi-modal improvements required by DeIDOT shall be completed by the Applicant in accordance with DeIDOT's requirements.
 - iv. The facility (including the single-family detached homes and the multi-unit building) shall be served by a privately operated, on-site sanitary sewer treatment plant and disposal system subject to the

Department of Natural Resource and Environmental Control's regulations governing the design, installation and operation of on-site wastewater treatment and disposal systems.

- v. The facility (including the single-family detached homes and the multi-unit building) shall be served by private on-site well(s) subject to the approval of the Delaware State Department of Natural Resources and Environmental Control and the Delaware Division of Public Health. The system shall be designed and installed to provide adequate drinking water and fire protection as required by applicable regulations.
- vi. 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.
- vii. The Applicant shall provide agricultural 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
- viii. The Applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design. The Applicant shall provide a thirty foot (30') forested buffer along all boundaries of the Property except for the boundary adjacent to the power lines which shall remain open for sanitary sewer and maintenance of the power lines.
- ix. 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.
- x. 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. John Mills, Mr. John Williamson, 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



Ellen M. Magee
Chair

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

Date August 6, 2019.