

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAMANTHA WHALEY

(Case No. 12371)

A hearing was held after due notice on October 21, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a daycare center.

Findings of Fact

The Board found that the Applicant is seeking a special use exception to operate a daycare center. This application pertains to certain real property located on the north side of Johnson Road approximately 500 feet east of Cedar Creek Road (911 Address: 20675 Johnson Road, Lincoln) said property being identified as Sussex County Tax Map Parcel Number 3-30-15.00-63.09. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated August 23, 2019, 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 or in opposition to the Application.
3. The Board found that Samantha Whaley was sworn in to give testimony about the Application.
4. The Board found that Ms. Whaley testified that she and her mother currently operate a home daycare at this location and they have operated the home daycare for twelve years.
5. The Board found that Ms. Whaley testified that there have been no complaints about the daycare.
6. The Board found that Ms. Whaley testified that they are increasing the number of children to nine; though the request is for a daycare for twelve children.
7. The Board found that Ms. Whaley testified that the daycare currently has 2 employees who live on site. An additional employee may be required when the number of children is increased to twelve.
8. The Board found that Ms. Whaley testified that the hours of the operation will be 6 am – 5 pm, Monday to Friday.
9. The Board found that Ms. Whaley testified that there is adequate parking.
10. The Board found that Ms. Whaley testified that there will be a fenced in outdoor play area for the children.
11. The Board found that Ms. Whaley testified that Fire Marshal approval has been received and the Applicants are working with other state agencies for necessary approvals.
12. The Board found that Ms. Whaley testified that the use will not substantially affect adversely the uses of adjacent and neighboring properties.
13. The Board found that no one appeared in support of or in opposition to the Application.
14. 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 daycare 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 a daycare facility to care for 12 children.
- b. Based on a review of the aerial photograph, there is adequate parking on the Property. The Property is a significant distance from the road and there is adequate room for the children to safely play outside.
- c. The number of children served at the daycare is limited and is reasonable.
- d. The hours of the facility are reasonable.
- e. The daycare facility has a limited number of employees and will serve as a residence when not in use as a daycare.
- f. The Property is surrounded by agricultural and residential properties.
- g. No one appeared in opposition to the Application and no evidence was presented which would demonstrate that the daycare facility would have a substantial adverse effect on neighboring and adjacent properties. The lack of evidence is telling since the Property has been used as a daycare for many years.

The Board granted the special use exception application 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. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Ellen M Magee

Ellen M. Magee
Chair

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

Date December 17, 2019