

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

**IN RE: JEAN GAIL & RENEE CANNON**

**(Case No. 12526)**

A hearing was held after due notice on February 15, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception operate a tourist home.

Findings of Fact

The Board found that the Applicants are seeking a special use exception to operate a tourist home and to rent two rooms in her home. This application pertains to certain real property located on the east side of Hickory Hill Road approximately 318 feet south of Indian Branch Road (911 Address: 30951 Hickory Hill Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-9.00-25.04. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an OWTDS Site Evaluation, a drawing of the Property, property information from the Sussex County website, 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 letters in support of or in opposition to the Application.
3. The Board found that Renee Cannon was sworn in to give testimony about the Application.
4. The Board found that Ms. Cannon testified that she has rented out two bedrooms in her home on AirBnB in the past and that she has a detached garage that has been turned into a rental unit. She would like to rent this unit on AirBnB as a short-term rental for tourists.
5. The Board found that Ms. Cannon testified that the one-room garage measures 24 feet by 24 feet and can accommodate 4 guests.
6. The Board found that Ms. Cannon testified that, in addition, she would like to build a cabin to the rear of the Property as an additional short-term rental option for tourists. The cabin has been delivered to the Property but the interior has not been completed at this time. According to Ms. Cannon, the cabin measures 12 feet by 24 feet and can accommodate 4 guests.
7. The Board found that Ms. Cannon testified that there will be no cooking facilities in any of the rooms, the garage, or the cabin.
8. The Board found that Ms. Cannon testified that she plans to rent to the members of the public.
9. The Board found that Ms. Cannon testified that she had tent campers on her property last year but there will be no tent campers this coming summer.
10. The Board found that Ms. Cannon testified that the larger garage is connected to the septic system but the cabin will not be connected to the septic system. Guests in the cabin would use the restroom facilities in the main house.
11. The Board found that Ms. Cannon testified that the septic system is sized for a six-bedroom house and can accommodate all the structures on the Property. She noted that there are 5 bedrooms in the house and the garage would be the sixth bedroom.
12. The Board found that Ms. Cannon testified that she did not know the exact distance from the proposed cabin to the neighbor's property but that it is approximately 130 feet.

13. The Board found that Ms. Cannon testified that the rear of the Property is wooded and that there are farm fields adjacent to the subject property on the east and to the south which are separated from her property by a tax ditch.
14. The Board found that Ms. Cannon testified that there will be dedicated guest parking on the subject property.
15. The Board found that Ms. Cannon testified that most guests stay for the weekend and some for up to a week. She stated that there will be no long-term rentals and that most tenants will be seasonal weekend guests.
16. The Board found that Ms. Cannon testified that she will not be offering any tent camping, events, or outdoor activities but guests are permitted to use the pool.
17. The Board found that Ms. Cannon testified that the area is residential.
18. The Board found that Mark Willey and Jennifer Willey were sworn in to give testimony in opposition to the Application. They own property adjacent to the Applicant's lot. The Willeys submitted exhibits for the Board's consideration as well.
19. The Board found that Ms. Willey testified that she had a conversation with Ms. Cannon and relayed the concerns that she and her husband have regarding the use as a campground and the placement of the cabin.
20. The Board found that Ms. Willey testified that they tolerated the campground during the past summer as Ms. Cannon was trying to raise money to put in a new septic system but they did not realize that it was intended to be an ongoing venture.
21. The Board found that Ms. Willey testified that, when a cabin was delivered, they realized that this would be a continual use.
22. The Board found that Ms. Willey testified that one of the issues caused by the use as a tourist home adjacent to their property was that some guests walked their dogs on their property.
23. The Board found that Ms. Willey testified that the guests are using the pool so it looks like a commercial pool and the noise is constant and it detracts from the enjoyment of their own pool.
24. The Board found that Ms. Willey testified that the campers set up tents close to their property line and there were flashlights being directed through the master bedroom.
25. The Board found that Ms. Willey testified that the Applicant proposes a revolving door of strangers in the neighborhood.
26. The Board found that Ms. Willey testified that a recreational vehicle is also available for rent on the subject property and is advertised on AirBnB for up to six guests.
27. The Board found that Ms. Willey testified that there was a portable toilet on the subject property last summer.
28. The Board found that Ms. Willey testified that there was an issue with trash collecting on the subject property over the summer months.
29. The Board found that Ms. Willey testified that they have a fire pit on their lot but stopped using it because a family using tents on the Applicant's lot was too close.
30. The Board found that Mr. Willey testified that the shed on the Applicant's lot has electric and plumbing.
31. The Board found that Mr. Willey testified that he does not use his property for any commercial use.
32. The Board found that Mr. Willey testified that they have lived on their lot for 30 years.
33. The Board found that Mr. Willey testified that this is a rural area and that this use substantially adversely affects the use and enjoyment of his own property. He noted that he is too embarrassed to have guests over due to the use of the Applicant's property.
34. The Board found that Mr. Willey testified that he has permission from the farmer who owns the road to use the road and that, with the permission of the farmer, he has made considerable improvements to the road. He noted that the Applicant had the cabin delivered by using this roadway.

35. The Board found that Mr. Willey testified that that the cabin is approximately 200 feet from the shed.
36. The Board found that Mr. Willey testified that this use is not just seasonable but year-round.
37. The Board found that Mr. Willey testified that the Applicant's use is detrimental to their property values.
38. The Board found that Ms. Willey testified that there is a trampoline on the Applicant's property and that kids scream at the pool often.
39. The Board found that Mr. Willey testified that they have well water and have concerns about the effect of the Applicant's septic system on their well.
40. The Board found that Mr. Willey testified that, on busier weekends, mounds of trash have been left on the Applicant's property.
41. The Board found that Ms. Cannon testified that only the little blue bedroom would be used as a guest space for two persons inside the house. She proposes to rent out the cabin and garage during the summer season, the motor home about half of the season, and the room inside her home during the entire year. She advised the Board that she will not be renting out her purple bedroom.
42. The Board found that Ms. Cannon testified that, at maximum capacity, it could accommodate 16 guests.
43. The Board found that Ms. Cannon testified that she and her two daughters live in the home.
44. The Board found that Ms. Cannon testified that the motor home can accommodate 6 guests and she dumps waste from the motor home into the septic system.
45. The Board found that Ms. Cannon testified that the plumbing in the shed is for her chickens and may be tied to the septic system.
46. The Board found that Ms. Cannon testified that she was not concerned about the impact on the septic system because the use is not constant and that, even when guests are present, they are usually out all day experiencing tourist activities in Sussex County.
47. The Board found that no one appeared in support of and seven people appeared in opposition to the Application.
48. 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 failed to meet the standards for granting a special use exception because the proposed use will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to deny the Application.
  - a. In 2020, the Applicant appeared to operate an illegal campground whereby she rented out individual tents and a motorhome. She also rented out rooms in her house and garage without obtaining proper zoning approval. The Applicant now seeks to continue this leasing practice; though she will cease the rental of tents. Instead, she intends to lease a cabin which was recently placed on the lot. Overall, she intends to have accommodations for up to 16 people in addition to the rooms available for residents.
  - b. The Board notes that the lease of the motorhome as proposed by the Applicant is not a permitted use and is not allowable even if the special use exception was granted. Rather, the Applicant would have to seek separate zoning approval for a campground.
  - c. The Property is located in a rural area near residences and farmland. The Applicant's neighbors who are most affected by the request have owned their property for approximately 30 years and have testified to the character of the neighborhood and the use of their property. The Board finds their testimony compelling and persuasive. The neighbors testified that the noise, trash, and lack of privacy generated by the Applicant's prior usage of

her lot in a manner similar to what the Applicant currently proposes greatly affected their own use of their lands. The neighbors were reluctant to use their outdoor amenities or to have guests over due to the use of the Applicant's property. The neighbors also pointed out that this is a residential area but the intense use of the Applicant's property led to a commercial feel. For example, the usage of the pool was greater than it would normally be and the Applicant appeared to take no steps to mitigate this impact on her neighbors.

- d. The Board also has concerns about the truthfulness of the Applicant. Only after the opposition brought up the rental of the motorhome did the Applicant even mention the use of the motorhome. The Applicant's apparent failure to obtain any zoning approval for its use last year also weakens her credibility. Furthermore, the Board strongly questions the Applicant's reasoning as to how her septic system, which was designed for only 6 bedrooms, can satisfactorily accommodate her proposed use.
- e. The opposition has presented substantial and convincing evidence that noise and lack of privacy from the Applicant's use has substantially affected adversely the uses of the property. While the Applicant's proposed use is only seasonal, the use also comes at a time when the opposition will likely use their own outdoor amenities. The opposition's pool, for example, is unlikely to be used in the winter months. The Board also notes that there is some dispute as to whether the Applicant's use is actually seasonal. Regardless, there is no apparent noise buffer between the properties which would reduce the noise or otherwise minimize sounds coming from the Property or to protect the privacy of neighbors. The impact of the additional noise and privacy reduction from patrons of the Applicant's rental units would create a substantial and adverse impact on neighboring and adjacent properties.
- f. The Board also notes that the Property is located in a rural neighborhood and the use of a tourist home in this environment would alter the essential character of the neighborhood. The change in the character of the neighborhood in this instance would also create a substantial adverse effect on neighboring and adjacent properties who expect a secluded and quiet neighborhood.
- g. The Board also has serious concerns about the impact of the Applicant's proposed use on the septic system. The septic system was designed for 6 bedrooms. The house has 5 bedrooms and the Applicant intends to connect the garage to the septic system as well. The garage, however, will hold up to 4 guests. Likewise, the cabin will hold up to 4 guests. The Applicant indicated that the guests in the cabin will use the facilities in the house but that proposed use appears to be a way to avoid DNREC septic regulations. If the cabin were to be connected to the septic system, the septic system would not have the capacity to serve that area. There was no evidence submitted which indicates the septic system was designed for a larger capacity that could adequately handle these additional guestrooms. Additionally, the Applicant testified that she dumps her waste from the 6 person motorhome into the septic system and that her shed is connected to the septic system as well. The Applicant essentially seeks to use a septic system for 6 bedrooms for her 5 bedroom house and 14 other potential persons and her shed. The Board has strong concerns that the septic system is not designed for this use.
- h. In addition to concerns about the Applicants' failure to obtain necessary permits and clear disregard for County requirements (including the operation of a campground and tourist home before actually applying for the

special use exception), the Board also has concerns about the impact of the septic system on the neighboring and adjacent properties. The neighbors have well water and overuse of a septic system can lead to septic system failure. A failed septic system on the Property could create environmental and ecological problems for the Applicant's neighbors due to the Property's close proximity to the neighbors' well and those problems would undoubtedly substantially affect adversely the uses of neighboring and adjacent properties.

- i. Ultimately, the Applicant failed to adequately plan for the proposed use and have disregarded proper permitting requirements which would protect the Property, neighbors, and the general public.
- j. It is clear to the Board that the proposed special use exception application would substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application because the application failed to meet the standards for granting a special use exception.

#### Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date April 12, 2021