

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN D. GIBSON

(Case No. 12582)

A hearing was held after due notice on July 12, 2021. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a special use exception to operate a tourist home and a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2 feet variance from the ten (10) feet side yard setback requirement on the northeast side for an existing accessory structure and a special use exception to operate a tourist home. This application pertains to certain real property located on the northwest side of Meadow Brook Lane approximately 385 feet southwest of Victoria Drive (911 Address: 607 Meadow Brook Lane, Milford); said property being identified as Sussex County Tax Map Parcel Number 1-30-3.00-5.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an undated site plan, a notice of violation from Sussex County, a deed to the Property, letters in opposition to the Application, videos and photographs, a septic permit application, a petition in opposition to the Application, 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 and two letters in opposition to the Application.
3. The Board found that John Gibson, Dewey Jackson, and John Berry were sworn in to give testimony about the Application.
4. The Board found that Mr. Jackson testified that the existing garage has been in place for a number of years and does not affect the uses of neighboring properties.
5. The Board found that Mr. Jackson testified that there is an Airbnb on the corner of Meadow Brook Lane and Wisseman Avenue.
6. The Board found that Mr. Jackson testified that some of the residents have vehicles and have assigned parking spaces on the Property.
7. The Board found that Mr. Jackson testified that there are background checks for prospective tenants.
8. The Board found that Mr. Jackson testified that there are no outdoor activities for tenants.
9. The Board found that Mr. Gibson testified that the house has nine rooms; six of which are bedrooms and he lives in one of the bedrooms. He noted that he rents the rooms out on a month-to-month basis to homeless people or people with disabilities who cannot find a home and that people stay on an average of six months.
10. The Board found that Mr. Gibson testified that many of the tenants are registered with the State for housing and waiting for an apartment.
11. The Board found that Mr. Gibson testified that he purchased the house in 2018 and he has been renting rooms since he purchased the house.
12. The Board found that Mr. Gibson testified that there are no cooking facilities in the rooms.
13. The Board found that Mr. Gibson testified that there was an RV on the Property but the RV has been removed.

14. The Board found that Mr. Gibson testified that the septic system is approved for six bedrooms. He testified that a prior septic system failed and had to be replaced in 2020. He believes the prior system failed due to too much usage and the amount of people in the home. He noted that the septic system takes up most of the back yard.
15. The Board found that Mr. Gibson testified that the garage was in its current location when he bought the house and he has not made any additions to it.
16. The Board found that Mr. Gibson testified that he is not registered as a group home and that he does not believe he can qualify as a registered group home.
17. The Board found that Mr. Gibson testified that there have been no complaints from neighbors.
18. The Board found that Mr. Gibson testified that the garage is in safe condition and he has treated it for termites.
19. The Board found that Mr. Berry testified that there are six parking spaces on the Property and that the septic system is on the northeast side of the Property. He noted that the pool and one shed have been removed from the Property.
20. The Board found that Robert Godfrey, Ruthann Godfrey, Charles Coverdale, Joann Milton, Craig Crouch, Michael Rifenburg, and Marian White were sworn in to give testimony in opposition to the Application.
21. The Board found that Mr. Godfrey read a petition of opposition and then submitted the petition signed by 24 individuals representing 18 properties into the record.
22. The Board found that Mr. Godfrey testified that he lives almost directly across the street from the subject property.
23. The Board found that Mr. Godfrey testified that the Property parks up to 7 vehicles and there are frequent visits from CHEER, Meals on Wheels, social workers, ambulances, Delaware State Police, septic tank trucks, delivery trucks, family visits, and tow trucks.
24. The Board found that Mr. Godfrey testified that he seen and heard arguments and has witnessed fights on the Property. He noted that police were called to the Property when a female exposed herself on the Property and there have been other complaints as well.
25. The Board found that Mr. Godfrey testified that he believes that the home was purchased with the intent to run an illegal group home and that the Applicant does not live at the Property but visits the Property.
26. The Board found that Mr. Godfrey testified that this is a tourist home and the house appears to be overcrowded with living conditions not advantageous for people with physical and developmental conditions.
27. The Board found that Mr. Godfrey testified that this Application does not meet the requirement of a tourist home but should apply to the State for a group home license
28. The Board found that Mr. Godfrey testified that the original septic system failed.
29. The Board found that Mr. Godfrey testified that property values will be affected.
30. The Board found that Mr. Godfrey testified that a section of the fence has been removed so that vehicles can drive around to the rear of the garage.
31. The Board found that Mr. Godfrey testified that this was a quiet residential area until the current owner moved in.
32. The Board found that Mr. Godfrey testified that the prior owner did not rent rooms.
33. The Board found that Mr. Godfrey testified that he has submitted video and pictures showing the disruption to the neighborhood.
34. The Board found that Mr. Godfrey testified that they hear arguments from the property
35. The Board found that Mr. Godfrey testified that a single mother and two children live next door to this Property.
36. The Board found that Ms. Godfrey testified that she is a realtor by profession and that she had previously shown that home to prospective clients in the past. In her

- professional opinion at that time, she believed that the home should be torn down and a new house built.
37. The Board found that Ms. Godfrey testified that the house was bought with cash and there were no inspections.
 38. The Board found that Ms. Godfrey testified that the septic system failed after approximately 18 months.
 39. The Board found that Ms. Godfrey testified that there are trucks at the Property frequently.
 40. The Board found that Ms. Godfrey testified that she witnessed a fight in the yard and she feels unsafe in her home. She also noted that a house was broken into in the neighborhood.
 41. The Board found that Ms. Godfrey testified that there was no crime in the neighborhood until the Applicant purchased the Property.
 42. The Board viewed a video presented by the Godfreys and Ms. Godfrey gave some commentary on the video and noted the frequent deliveries, noise from those deliveries, and frequent traffic from the Property.
 43. The Board found that Ms. Godfrey testified that cars often park on the side of the road due to the lack of parking on the Property. She noted that the parking lot is often full.
 44. The Board found that Mr. Godfrey testified that one car parked in a swale and had to be towed.
 45. The Board found that Ms. Godfrey testified that the community was created in the 1960s and the Property can only be used for a single-family dwelling.
 46. The Board found that Ms. Godfrey testified that she has lived in the neighborhood for 30 years.
 47. The Board found that Ms. Godfrey testified that more than 4 persons in the home creates a problem.
 48. The Board found that Ms. Godfrey testified that she witnessed a woman stripping in the yard and that there have been fights on the Property.
 49. The Board found that Ms. Godfrey testified that the garage has been on the Property for many years; and that she has no complaints about the garage.
 50. The Board found that Mr. Coverdale testified that this is a single-family home that has six or seven people living here
 51. The Board found that Mr. Coverdale testified that, when cars are parked on the road, it is difficult for him to exit his property safely.
 52. The Board found that Mr. Coverdale testified that the garage has been in place for a long time.
 53. The Board found that Mr. Coverdale testified that a lady came to his property looking for a ride to the store.
 54. The Board found that Ms. White testified that she is the property owner of 605 Meadow Brook Lane and she has owned that property for approximately 30 years. She currently rents her property as a single-family home.
 55. The Board found that Ms. White testified that she has received many comments stating what a nice neighborhood this is to live in but the pictures submitted show what it is like to be the neighbors to 607 Meadow Brook Lane.
 56. The Board found that Ms. White testified that the term tourist home conjures the image of a bed-and-breakfast and this is not a bed-and-breakfast.
 57. The Board found that Ms. White testified that approving the special use exception will devalue her property and the other nearby homes.
 58. The Board found that Ms. White testified that a section of the fence is missing and that, if that area is being used for a vehicle to access the rear of the garage, she has not given permission for anyone to drive across her property.
 59. The Board found that Ms. White testified that there was a break-in at her property about 18 months ago.

60. The Board found that Ms. White testified that the garage has been there for many years and she has no complaints about the garage
61. The Board found that Mr. Rifenburg testified that he purchased the property directly across from the subject property and he intends to build a single-family home for resale.
62. The Board found that Mr. Rifenburg testified that he has concerns about what is taking place at the subject property.
63. The Board found that Mr. Rifenburg testified that this is not a facility for people with disabilities.
64. The Board found that Mr. Crouch testified that he lives approximately 600 feet from the subject property and has lived there for 27 years.
65. The Board found that Mr. Crouch testified that, in his professional life, he was CEO of Kent-Sussex Industries, Inc which provides training, employment, and transportation services for people with disabilities.
66. The Board found that Mr. Crouch testified that from his professional opinion this looks and acts like a group home but, to operate a group home, there is an accreditation process and a license must be obtained from the State of Delaware and health and safety standards must be met and staff must be trained. He has concerns for the residents.
67. The Board found that Mr. Crouch testified that he has never seen a residential house with assigned parking space
68. The Board found that Ms. Milton testified that she is a real estate broker. She does not live in the neighborhood but has sold homes in this community but believes that the proposed use will adversely affect the value of the homes in the neighborhood.
69. The Board found that Ms. Milton testified that sellers must disclose anything that adversely affects their property and the existence of this tourist home will deter buyers.
70. The Board found that Ms. Milton testified that she showed this house before Mr. Gibson purchased it and that it was in a state of disrepair with areas of mold.
71. The Board found that Ms. Milton testified that this is not a tourist home and that people do not move into a tourist home and bring all their belongings.
72. The Board found that Mr. Gibson testified that he was attracted to the neighborhood as it is a peaceful area and he apologized for any distress caused.
73. The Board found that Mr. Gibson testified that many of the tenants were living in the woods or their cars and many were in bad health and that these conditions are an improvement to where they previously lived.
74. The Board found that Mr. Gibson testified that he received permission from the neighboring tenant to remove the RV through the adjacent property.
75. The Board found that Mr. Gibson testified that the additional parking was added over two years ago and that he has made improvements to the Property.
76. The Board found that Mr. Jackson testified that many of the videos shown were older and the ambulance calls were for the same resident who had many health issues and that the videos show isolated incidents and are not everyday occurrences.
77. The Board found that Mr. Jackson testified that there is no use or damage to other properties.
78. The Board found that two persons appeared in support of and seven persons appeared in opposition to the Application.
79. 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 2018, the Applicant purchased the Property and started to rent out individual rooms for rent. Since that time, the Applicant has expanded the rental of rooms. The Applicant did so without obtaining a special use exception and only sought this application after receiving a violation notice from the Office of Planning & Zoning. Neighbors, however, have provided substantial and credible evidence that the operation of this tourist home has substantially affected adversely the uses of neighboring and adjacent properties. Neighbors have shown that the tourist home has increased traffic, noise, and disturbances in the otherwise quiet neighborhood.
- b. The Property is located in a quiet residential neighborhood that has been developed in this fashion for many years. Several longtime neighbors testified to the character of the neighborhood and the Applicant admitted that it was a quiet residential neighborhood. The Property was previously a residence but the Applicant changed its use shortly after purchasing the Property. Many of the neighbors have owned their properties for many years and credibly testified to the change in the character of the neighborhood after the Applicant started using his tourist home. The Board finds their testimony compelling and persuasive. The neighbors testified that the noise, traffic, and disturbances by the Applicant's use greatly affected their own use of their lands. Neighbors noted that crime has increased in the neighborhood, police have been called to the Property, and tensions have risen. There was undisputed evidence of fights, arguments, and even a naked person on the outside grounds of the Property. Despite the neighbors' concerns, the Applicant appeared to take little to no action to mitigate these concerns. It was quite clear to the Board that neighbors do not enjoy the quiet neighborhood they once enjoyed.
- c. In addition to concerns about the Applicant's failure to obtain necessary permits and clear disregard for County requirements (including the operation of a 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 overuse of a septic system can lead to septic system failure; a point which the Applicant acknowledged has already happened in this case. 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 thereto and those problems would undoubtedly substantially affect adversely the uses of neighboring and adjacent properties.
- d. The neighbors testified to traffic concerns as vehicles are frequently parked along the side of the road in a swale. This parking issue has created problems for at least one neighbor in navigating Meadow Brook Lane. These concerns are substantial and convincing that a substantial adverse effect to traffic exists related to the Applicant's use. The parking in the swale presents drainage concerns as well.
- e. The opposition presented testimony from a real estate broker that the existence of the tourist home would substantially adversely affect property values in the neighborhood. The Applicant presented no such evidence to the contrary. The Board finds the opposition's testimony credible and persuasive.
- f. The Board also notes that the Property is located in a quiet 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. Ultimately, by using the Property for a tourist home without prior approval, 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.
- h. It is clear to the Board that the proposed special use exception application would substantially affect adversely the uses of neighboring and adjacent properties.

80. 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 unrebutted, the Board determined that the variance application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.

- a. The Property is unique due to its shape and historical development. The lot is narrow and has been developed with a garage for at least 23 years. There was some testimony that the garage has been on the Property for an even longer period of time. The Property has a limited building envelope as it is improved by a dwelling and septic system that take up much of the building envelope. Due to these conditions, the building envelope is limited and the Applicant needs the garage for storage. The unique conditions of the lot have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain the garage on the lot.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to retain the garage but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain the garage on the lot. The garage will afford the Applicant with storage space.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot and the unusual conditions of the Property. The lot was developed by a prior owner and the garage has been on the lot for many years. These conditions resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created by the lot's unique characteristics.
- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variance will have no effect on the character of the neighborhood. The variance will allow the Applicant to retain the garage on the lot. There was no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, neighbors indicated no opposition to this request.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the garage. No additions or modifications to the garage are proposed.

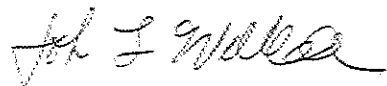
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board denied the special use exception application for a tourist home because the application failed to meet the standards for granting a special use exception and the Board approved the variance application for the existing garage because the variance application met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied and the variance application was approved. The Board Members in favor of the motion to deny the special use exception and to approve the variance application were Dr. Kevin Carson, Mr. Travis Hastings, and Mr. John Williamson. Mr. Jordan Warfel voted against the Motion to deny the special use exception application and to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 September 20, 2021