

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

**IN RE: NASIR MAHMOOD (ASLENDER GARCIA)**

**(Case No. 12588)**

A hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for a special use exception to place a manufactured home.

Findings of Fact

The Board found that the Applicants are seeking a special use exception to place a second manufactured home on a farm of less than 50 acres. This application pertains to certain real property located on the south side of Asketum Branch Road approximately 0.40 miles west of Shortly Road (911 Address: 20050 Asketum Branch Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-9.00-38.00. 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, 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 Nasir Mahmood was sworn in to give testimony about the Application.
4. The Board found that Mr. Mahmood testified that the Property is used for agricultural purposes and that a second manufactured home is necessary for housing farmworkers.
5. The Board found that Mr. Mahmood testified that there are four poultry houses on the Property and there are other agricultural uses in the area.
6. The Board found that Mr. Mahmood testified that looking after chicken houses is a 24-hour job and that, by having two manufactured homes, the work can be split in half.
7. The Board found that Mr. Mahmood testified that the manufactured home is more than 300 feet away from adjacent property and will not affect the use of neighboring properties.
8. The Board found that Mr. Mahmood testified that the septic system is approved for three bedrooms. He noted that the existing manufactured home has 2 bedrooms and the proposed manufactured home will have one bedroom. Both homes will be served by a well.
9. The Board found that Mr. Mahmood testified that the manufactured homes are single-wide homes.
10. The Board found that Mr. Mahmood testified that, though both manufactured homes are the same size, there is a different layout in each home.
11. The Board found that Mr. Mahmood testified that he has not communicated with his neighbors.
12. The Board found that Mr. Mahmood testified that the second manufactured home is a used dwelling and is on the Property but has not yet been hooked up to utilities. According to Mr. Mahmood, there is no one living on the Property at this time.
13. The Board found that Mr. Mahmood testified that the manufactured home is lightly used.
14. The Board found that Mr. Ruffus Guffey was sworn in to give testimony in opposition to the Application.



15. The Board found that Mr. Guffey testified that he owns three properties on Asketum Branch Road, including property to the east and across the road, and that his family has been farming for 300 years in the State of Delaware.
16. The Board found that Mr. Guffey testified that the subject property is very poorly maintained. He wants to see the Property better maintained.
17. The Board found that Mr. Guffey testified that the manufactured homes are at least 20 years old and are very dilapidated. He noted that they are already on the Property.
18. The Board found that Mr. Guffey testified that he has no problems with the agricultural use but the homes are in poor shape.
19. The Board found that Mr. Guffey testified that the Applicant's proposed use devalues his properties.
20. The Board found that Mr. Guffey testified that the manufactured home was placed 2 years ago and has not moved.
21. The Board found that Mr. Guffey testified that there are weeds up to the windows of the poultry house.
22. The Board found that Mr. Guffey testified that the manufactured homes are eyesores and the homes affect the values of his properties.
23. The Board found that Mr. Mahmood testified that he wants the second manufactured home so that the workers can live at and clean up the Property.
24. The Board found that Mr. Mahmood testified that he plans to set the manufactured home when approved.
25. The Board found that Mr. Mahmood testified that there are 2 homes on the lot and that one home will remain in its current location and the other will be moved.
26. The Board found that Mr. Mahmood testified that other home is not yet hooked up to the septic system and that no one lives in that home.
27. The Board found that Mr. Mahmood testified that he will require the tenant to cut the grass and maintain the home.
28. The Board found that no one appeared in support of and two people 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 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. The Board notes that Sussex County Code § 115-23(c)(11) requires that the Applicant demonstrate that the proposed second manufactured home will not adversely affect the values or uses of adjacent properties. This standard is higher than the standard typically required of other special use exceptions in the Sussex County Zoning Code. While the Board finds that this lower standard has not been met, the Board also finds that the higher standard required of other special use exceptions have not been met either.
  - b. The Applicant proposes to place a second, older manufactured home on his 44 acre farm for use by his farm workers. The undisputed testimony is that the home is over 20 years old and is a single-wide home that has been on the Property for approximately 2 years. The opposition presented credible and convincing testimony that that second manufactured home is in poor condition and that the Applicant has failed to adequately maintain the home and the Property. The Applicant did not deny that the Property has not been properly maintained. The opposition credibly testified that the second manufactured home is an eyesore. It was apparent to the Board that the second manufactured home has detracted from the opposition's enjoyment of his lands.

- c. The opposition owns nearby lands and noted that the existence of the dilapidated manufactured homes has adversely affected the property values of his property. The Applicant presented no evidence to the contrary. Since one of the critical standards that the Applicant was required to meet was to show that the proposed use did not adversely affect the values of neighboring properties, the Applicant has failed to meet this standard.
- d. The Property is located in a rural area near residences and farmland. The Applicant's neighbor who was most affected by the request has owned lands in the area for many years and testified to the character of the neighborhood and the use of their property. The Board finds the opposition's testimony compelling and persuasive. The opposition testified that the Property has suffered from poor maintenance and the placement of the second manufactured home has only exacerbated this problem.
- e. 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. Jordan Warfel, and Mr. John Williamson. 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 October 18, 2021.