

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHERINE BENTON

(Case No. 12648)

A hearing was held after due notice on February 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, and Mr. Jordan Warfel.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a special use exception to operate to operate her home as an Airbnb. This application pertains to certain real property located at the northwest side of Creek Road within the Blackwater Village Subdivision (911 Address: 34085 Creek Road, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 134-11.00-358.00 ("the Property"). 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 letter from the Applicant, building plans for the home dated June 21, 2016, a boundary survey plan of the Property, photographs, letters in opposition of the Applicant, proposed restrictive covenant, 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 and twenty-seven letters in opposition to the Application.
3. The Board found that Steve Benton and Katherine Benton were sworn in to give testimony about the Application.
4. The Board found that Ms. Benton testified that her attorney told her that the homeowners association had no laws against operating an Airbnb but she was unaware of needing County approval / permit.
5. The Board found that Ms. Benton testified that she purchased the home from her parents.
6. The Board found that Ms. Benton testified that the home has two rooms with their own entrance and bathroom and that the Property can accommodate nine cars in the driveway.
7. The Board found that Mr. Benton testified that he is the previous owner of the Property, and that, as the previous owner, he rented the Property through Airbnb before with no issues. He noted that the complaint was only driven after Ms. Benton told a neighbor that her plan was to operate an Airbnb.
8. The Board found that Mr. Benton testified that the community considered but did not approve an amendment to the restrictive covenants to limit rentals. According to Mr. Benton, the restrictive covenants do not prohibit short-term rentals.
9. The Board found that Mr. Benton testified that the house, which was built in 2017, is up to current code and looks great.
10. The Board found that Mr. Benton testified that the roads in the community have been turned over to the State.
11. The Board found that Mr. Benton testified that the postman backs up on the streets.
12. The Board found that Mr. Benton testified that the directly surrounding properties do not have an issue with this use.
13. The Board found that Ms. Benton testified that she operates a salon out her home also and that her business has between 2-4 persons a day currently Monday through Thursday.

14. The Board found that Ms. Benton testified that the home could accommodate six people for the two rentable rooms.
15. The Board found that Ms. Benton testified that she was operating this tourist home for a month before being found in violation.
16. The Board found that Ms. Benton testified that the listing indicates 1 vehicle per room.
17. The Board found that Ms. Benton testified that the typical rental was for 2-3 days.
18. The Board found that Ms. Benton testified that her family runs an event planning business and wedding venue but the home is not used as a wedding venue.
19. The Board found that Ms. Benton testified that there is no outdoor equipment for use of the renters but there is an outdoor patio.
20. The Board found that Ms. Benton testified that Airbnb has an approval process for both the host and guests.
21. The Board found that Mr. Benton testified that the Property was busier when his children lived there and there were more individuals residing at this home when he owned it and there were no complaints.
22. The Board found that Mr. Benton testified that the driveway is paved and is 33 feet wide. He believes that the driveway can accommodate lots of vehicles.
23. The Board found that Mr. Benton testified that the streets are 16 feet wide.
24. The Board found that Mr. Benton testified that the Property is 135 feet by 80 feet with well and septic.
25. The Board found that Mr. Benton testified that no homeowner association approval is needed.
26. The Board found that Mr. Benton testified that two of the bedrooms have exterior access and interior access that can be closed off. He noted that there is no cooking in the rental rooms.
27. The Board found that Betty Duncan and Gary Hornbacher were sworn in to give testimony in opposition the Application.
28. The Board found that Ms. Duncan testified that she has been on the homeowner association board since 2013 and that there was a petition sent to homeowners to amend the restrictive covenants to ban short-term rentals. The amendment did not pass.
29. The Board found that Ms. Duncan testified that the entire house is being advertised for rent – not just the 2 rooms.
30. The Board found that Mr. Hornbacher testified that this is a deed restricted community, with an active board of directions and covenants and bylaws. He noted that the homeowner association restrictions are silent on short-term rentals.
31. The Board found that Mr. Hornbacher testified that the Bentons never sought out approval and then were petitioned to stop by the homeowners association for not following procedures.
32. The Board found that Mr. Hornbacher testified that the Application indicates no substantial impact on the neighbors but that is inaccurate due to the nature of the neighborhoods design and roadways. He believes that there has been a substantial impact on neighbors.
33. The Board found that Mr. Hornbacher testified that the neighborhood has a unique road structure with dead-end streets. He noted that DeIDOT accepted the roads but only paved to the current width and the homeowner association maintains the rest.
34. The Board found that Mr. Hornbacher testified that the community was created in 1974 and that the community did not permit on-street parking until 2016.
35. The Board found that Mr. Hornbacher testified that he has experienced difficulty turning around at the end of the cul-de-sac.
36. The Board found that Mr. Hornbacher testified that this use will create a loss of privacy and affect the sense of community.
37. The Board found that Ms. Benton testified that she is involved in the community.

38. The Board found that Ms. Benton testified that she has high-end clients at her salon and is picky with her guests.
39. The Board found that Ms. Benton testified that others turn around in her driveway.
40. The Board found that Ms. Benton testified that the use will not create much traffic.
41. The Board found that Ms. Benton testified that she only rents 2 rooms and not the entire house.
42. The Board found that Ms. Benton testified that that she specializes in wedding hair.
43. The Board found that one person appeared in support of and five persons appeared in opposition to the Application.
44. The Board tabled the Application until February 21, 2022, at which time the Board discussed and voted on the Application. At that meeting, Mr. Jeffrey Chorman advised the Board that he had reviewed the record and testimony and was prepared to vote on the Application.
45. 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 Applicant recently purchased the Property and started to rent out individual rooms for rent without obtaining proper approvals from Sussex County. In addition to being used as a tourist home, the Property is also used as the Applicant's residence and for her home-based hair salon.
 - b. Neighbors 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 and disturbances in the otherwise quiet neighborhood.
 - c. The Property is located in a quiet residential neighborhood that has been developed in this fashion for many years. The neighborhood has a unique street system whereby the roads are narrow and terminate at cul-de-sacs. The Property is located near the end of one such street.
 - d. Due to the narrowness of the roads, traffic can become congested. Opposition presented evidence that vehicles have difficulty turning around in the cul-de-sac, particularly large trucks, and that the cars parked on or adjacent to the Applicant's property have exacerbated those problems. The Applicant and her father also testified to the fact that navigation along the streets near the Property is often difficult. Mr. Benton noted that even the postman has to back down the street at times. Meanwhile, the opposition presented photographs and evidence that the Property is overburdened with vehicles at times. Moreover, there are no sidewalks in the neighborhood so the narrow streets are also shared by pedestrians. These concerns are substantial and convincing that a substantial adverse effect to traffic exists related to the Applicant's use.
 - e. The Board notes that it must consider the Applicant's full intended use of the Property as both her residence, her salon, and a tourist home. The addition of the tourist home to these other uses has created a substantial adverse impact on neighboring and adjacent properties.
 - 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.

The Board denied the special use exception finding that it 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, and Mr. Jordan Warfel. Mr. Travis Hastings voted against the Motion to deny the special use exception application. Mr. John Williamson 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 April 18, 2022