

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

**IN RE: GARTH TROESCHER & MADELINE TROESCHER**

**(Case No. 12430)**

A hearing was held after due notice on June 1, 2020. 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 bed and breakfast.

Findings of Fact

The Board found that the Applicants are seeking a special use exception to operate a bed and breakfast. This application pertains to certain real property located on the southeast side of Dirickson Creek Road, approximately 0.59 miles east of Millers Neck Road (911 Address: 37428 Dirickson Creek Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-21.00-20.02. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site and sediment control plan, pictures, a building permit application, a plan review report, a flood plain construction review, a letter from the Sussex Conservation District, an elevation certificate, a letter from an architect, a location survey, letters and emails in support of and 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 two letters in support of and eight letters in opposition to the Application.
3. The Board found that Madeline Troescher and Garth Troescher were sworn in to give testimony about the Application.
4. The Board found that Ms. Troescher testified that the Applicants seek to operate a bed and breakfast.
5. The Board found that Ms. Troescher testified that her husband owns a construction business which has some downtime during the year and the business drops 40% during the summer. The bed and breakfast inn would supplement the family income.
6. The Board found that Ms. Troescher testified that the bed and breakfast would be used year-round.
7. The Board found that Ms. Troescher testified that the Applicants previously applied for a conditional use for a wedding venue but they are no longer planning to use the site for that purpose. Rather, they propose to rent out rooms in their home.
8. The Board found that Ms. Troescher testified that the use will not disturb neighbors.
9. The Board found that Ms. Troescher testified that the Property is well-maintained.
10. The Board found that Ms. Troescher testified that she would be on the site when the bed and breakfast is in use.
11. The Board found that Ms. Troescher testified that four bedrooms could be rented for a total of eight people.
12. The Board found that Ms. Troescher testified that there are four other businesses on the road, including a bed and breakfast inn known as the Inn at Dirickson Creek.
13. The Board found that Ms. Troescher testified that there is adequate parking on site.
14. The Board found that Ms. Troescher testified that there are no cooking facilities in the bedrooms but the Applicants will provide breakfast to their clients.
15. The Board found that Ms. Troescher testified that a small, wooden, unlit sign would be requested for the use.

16. The Board found that Ms. Troescher testified that the request would not adversely affect the uses of neighboring and adjacent properties.
17. The Board found that Mr. Troescher testified that there is no intention to use the site for commercial parties but there will be a family wedding in the near future.
18. The Board found that Mr. Troescher testified that the house will not be used as a party house.
19. The Board found that Fred Townsend, Esquire, appeared in opposition to the Application on behalf of his clients Tom Bonsack and Kelly Bonsack. The Board also found that Mr. Bonsack and Patrick Welch testified in opposition to the Application.
20. The Board found that Mr. Townsend stated that the Bonsacks own the property to the left of the site.
21. The Board found that Mr. Townsend stated that Dirickson Creek Road neighborhood is a quiet, unique area which is secluded.
22. The Board found that Mr. Townsend stated that the Property is located off a dead end road that is unlit and is not equipped for patron traffic and delivery trucks.
23. The Board found that Mr. Townsend stated that food and supplies alone will result in additional traffic.
24. The Board found that Mr. Townsend stated that, although this property is over 3 acres, it is not well buffered from the neighbors because sound will travel easily over the water.
25. The Board found that Mr. Townsend stated that he expects guests to be on the deck and the noise will create a disruption for neighbors.
26. The Board found that Mr. Townsend stated that, if this was a more urban area, the bed and breakfast inn would be more appropriate.
27. The Board found that Mr. Townsend stated that the neighbors who support the Application are not full-time residents.
28. The Board found that Mr. Townsend stated that the bed and breakfast in the area is farther off the road and is buffered in the rear by trees. He noted that some neighbors object to the existing bed and breakfast inn as well.
29. The Board found that Mr. Townsend stated that the Applicants' house is exceedingly large.
30. The Board found that Mr. Townsend stated that the use will substantially adversely affect the uses of neighboring and adjacent properties.
31. The Board found that Mr. Townsend stated that the Board should consider the geography and the proximity of the deck to neighboring properties.
32. The Board found that Mr. Bonsack affirmed the statements made by Mr. Townsend as true and correct.
33. The Board found that Mr. Bonsack testified that he owns the adjacent property and constructed his house in 2007.
34. The Board found that Mr. Bonsack testified that the Applicants' house is lovely but the patio and deck are a large part of the Applicants' property and that patrons of the bed and breakfast would spend time on the outside deck.
35. The Board found that Mr. Bonsack testified that water amplifies sound and he can hear ordinary conversations. He believes the noise issue is substantial.
36. The Board found that Mr. Bonsack testified that traffic and parking will be issues as well but the noise is the bigger issue.
37. The Board found that Mr. Bonsack testified most neighbors oppose the request.
38. The Board found that Mr. Welch, who lives nearby, testified that he is opposed to the Application because there is a lot of foot traffic and bicycle traffic and, if there is more vehicle traffic, it will create problems.
39. The Board found that Mr. Welch testified that the patrons of the bed and breakfast will gather on the deck and the noise will travel across the water. He is concerned that patrons will meet friends at the patio as well.

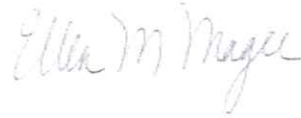
40. The Board found that no one appeared in support of and three people appeared in opposition to the Application.
41. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the 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 Property is located along a dead-end road in a secluded neighborhood. The Property is also adjacent to Dirickson Creek and contains its own pond as well. The Applicants propose to rent out rooms in their large home to guests as a bed and breakfast inn.
  - b. The Property is developed by a large outdoor gathering space. The pictures provided by the Applicant clearly demonstrate that this area can accommodate many persons. An outdoor bar area has many seats and the patio has additional seating as well.
  - c. The outdoor patio area is close to the shared property line to the northwest which is owned by members of the opposition. The opposition has presented substantial and convincing evidence that noise from the patio travels easily due to the proximity of the patio to their lot and the existence of water nearby. Mr. Bonsack testified that he can often hear ordinary conversations from the patio. The proposed use of the Property as a year-round, bed and breakfast inn where a prime gathering area and accommodation for the inn would likely be the patio area will create substantial noise and disturbance to neighboring properties. The Board notes that there is no apparent noise buffer between the properties which would reduce the noise or otherwise minimize sounds coming from the Property. The impact of the additional noise from patrons of the inn would create a substantial and adverse impact on neighboring and adjacent properties.
  - d. The Board also notes that the Property is located in a secluded, waterfront neighborhood and the use of a bed and breakfast inn 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. The bed and breakfast inn will also result in additional traffic within this secluded neighborhood.
  - e. While there is another bed and breakfast inn nearby, the neighboring inn is located on a property which is buffered by woods and limits the noise emanating from the site. Despite having wooded areas that could buffer noise (a buffer that does not exist in the present application), the opposition has noted that the existing inn is not without its own complaints and neighbors have experienced issues with noise from that site as well even though the inn is more heavily buffered. In light of the issues with the existing bed and breakfast, the neighbors' concerns that the proposed bed and breakfast inn on the Applicants' property will create additional noise beyond what is experienced with the existing inn are quite reasonable.
  - f. 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, and Mr. Brent Workman. Ms. Ellen Magee and Mr. John Williamson voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

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

Date July 7, 2020.