

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

**IN RE: BARBARA MCCLAY**

**(Case No. 12044)**

A hearing was held after due notice on October 16, 2017. The Board Members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a tourist home (bed and breakfast inn).

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a tourist home (bed and breakfast inn). This application pertains to certain real property located on the east side of Doe Run, approximately 804 feet south of Woods Drive (911 Address: 34453 Doe Run, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.00-190.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning received one (1) letter of support to the Application and six (6) letters in opposition to the Application.
3. The Board found that Barbara McClay was sworn in and testified regarding the Application.
4. The Board found that Ms. McClay testified that her husband passed away and she needed additional income so she rents her home through Air BnB. Air BnB allows the landlord to learn more about the renters and she can read reviews on her guests and see who they are before renting to them.
5. The Board found that Ms. McClay testified that she is the on-site host when her guests are in the home except on three (3) occasions when she was not present. She is present 80% of the time. She limits the rentals to no more than six (6) guests for a period of no more than six (6) days. She prohibits smoking and enforces noise restrictions.
6. The Board found that Ms. McClay testified that the restrictive covenants do not prohibit the rental of homes and the restrictive covenants allow her to delegate her rights to use common areas to her tenants provided they follow the community rules. One tenant decided to use the community pool with her grandchild and daughter.
7. The Board found that Ms. McClay testified that she initially started by renting one room to one tenant. She has had a wonderful experience meeting people from all over the country and from many different backgrounds who have rented her home.
8. The Board found that Ms. McClay testified that the guests are generally coming to the area to participate in other activities outside of the home.
9. The Board found that Ms. McClay testified that the community is worried that the tenants will do something negative to the community. Her neighbors are concerned that the tenants will break into their homes.
10. The Board found that Ms. McClay testified that her primary residence is located in Pennsylvania and that one of her neighbors actually feels better that there are people at the home more frequently because Ms. McClay's home was previously burglarized on two (2) occasions.

11. The Board found that Ms. McClay testified that she has met with her community on three (3) occasions and the community's lawyer said there is nothing in their bylaws which prevents her from renting her home in this fashion. The community held a meeting in July 2017 and proposed to amend the bylaws to restrict rentals to a minimum of one (1) year but the amendment did not pass due to lack of support.
12. The Board found that Ms. McClay testified that she only rents about ten (10) days out of the month.
13. The Board found that Ms. McClay testified that, on some occasions, the tenants only stay the night and neighbors do not even realize her tenants were there.
14. The Board found that Ms. McClay testified that she does not know who is staying at her neighbors' homes.
15. The Board found that Ms. McClay testified that her use of the home does not negatively impact the neighborhood.
16. The Board found that Ms. McClay testified that she has had twenty (20) different renters but she has declined prospective tenants for not properly supervising their children.
17. The Board found that Ms. McClay testified that she was giving her tenants breakfast.
18. The Board found that Ms. McClay testified that only two (2) of her tenants have cooked on her grill when they visit. Most of her tenants eat meals out. There are no cooking apparatuses in the individual rooms.
19. The Board found that Ms. McClay testified that she did not know she needed a special use exception to run a bed and breakfast.
20. The Board found that Ms. McClay testified that the use will not substantially affect adversely the use of neighboring and adjacent properties.
21. The Board found that Ms. McClay testified that she could not determine if she would purchase a home next to an Air BnB and she did not consider having a real estate appraiser evaluate the effect of the proposed use on property values.
22. The Board found that Ms. McClay testified that the Property consists of nearly an acre. The Property has two large driveways that can accommodate 6-8 cars in each.
23. The Board found that Ms. McClay testified that the house has three (3) bedrooms and she only rents to one family at a time. The house, however, sleeps up to fifteen (15) people. She restricts the number of people who may rent the home at a given time.
24. The Board found that Ms. McClay testified that the use will not have a substantial adverse effect on noise, light, or dust in the neighborhood.
25. The Board found that Ms. McClay testified that the traffic related to the use is minimal. According to Ms. McClay, tenants typically arrive in one car and there is no additional damage to the roads.
26. The Board found that Joseph Haney was sworn in and testified in support of the Application.
27. The Board found that Mr. Haney testified that he has been a resident in the neighborhood for 17 years.
28. The Board found that Mr. Haney testified that the opposition is fearful of the unknown and of losing property values. He believes that the opposition is prejudging all potential renters as criminals or undesirables and the opposition is afraid of the unknown.
29. The Board found that Mr. Haney testified that the community held a vote to change its bylaws regarding rentals but the amendment failed.
30. The Board found that Mr. Haney testified that there are approximately 175 homes in the neighborhood and that each home sits on approximately one acre. The homes are spread apart.

31. The Board found that Mr. Haney testified that the community is not a gated community and persons are free to come and go as they please.
32. The Board found that Mr. Haney testified that, if there was a problem with the renters, systems are in place just like in any community where the police would be called and issues would go through the courts and things would be dealt with between the homeowner and the tenants.
33. The Board found that Mr. Haney testified that the request will not substantially affect adversely the use of neighboring properties.
34. The Board found that Walter Lindsay, Karen Gastil, James Meehan, Laurence Fedorka, Brenda Meehan, Walt LaFontaine, and Edgar Carr were sworn in and testified in opposition of the Application. Ms. Gastil submitted an exhibit to the Board.
35. The Board found that Ms. Gastil testified that she and her husband purchased property in the neighborhood in 1985 and constructed a home in 1995. The community has a homeowners association and restrictive covenants and Article 6 of the restrictive covenants prohibit businesses in the community. She believes that a bed and breakfast inn is a business.
36. The Board found that Ms. Gastil testified that the neighborhood is a quiet residential community with retirees and the neighborhood is not set up for businesses.
37. The Board found that Ms. Gastil testified that the Applicant has operated the business since 2016.
38. The Board found that Ms. Gastil testified that the special use exception will affect property values.
39. The Board found that Mr. Lindsay testified that he is concerned that, if one home is allowed to be used in this fashion, other homes will follow suit. He believes that the existence of multiple tourist homes will result in additional traffic and noise and will decrease his property value.
40. The Board found that Mr. Meehan testified that he has lived in the neighborhood for five (5) years.
41. The Board found that Mr. Meehan testified that there is noise when the Applicant's children are in town setting off fireworks.
42. The Board found that Mr. Meehan testified that the Applicant joined Air BnB in September 2016 and Air BnB requires users to contact neighbors, homeowners associations, and local zoning officials. The Applicant was made aware of this requirement but claimed she did not know the requirement.
43. The Board found that Ms. Meehan testified that she is concerned that, if the tourist home is approved, other homes will be used for businesses.
44. The Board found that Ms. Meehan testified that, prior to purchasing her home, she contacted the homeowners association to ask about rental properties and she was told that rental properties in the neighborhood were long-term rental properties.
45. The Board found that Ms. Meehan testified that her previous neighborhood had many short-term rental units and it made it difficult to live in the neighborhood.
46. The Board found that Ms. Meehan testified that the proposed special use exception will adversely affect property values in the neighborhood.
47. The Board found that Ms. Meehan testified that a neighbor, who is a property management company owner, advised her that a homeowner in a different community lost a sales contract when the buyer learned that there was an Air BnB in the neighborhood. She is concerned of a similar impact in this neighborhood.
48. The Board found that Mr. Fedorka testified that he is a licensed realtor in the state of Pennsylvania and he purchased a home in the Woods on Herring Creek. In his experience in real estate, when you allow a business to open in a residential neighborhood, things change. His concern is that if you have one tourist home in the neighborhood you can have others.

49. The Board found that Mr. Fedorka testified that the tourist home will increase traffic and usage of the pool because tenants have permission to access the recreation facilities.
50. The Board found that Mr. Fedorka testified that the homeowners pay an annual fee for the pool and road and he can see the fees escalating due to the additional cost of needing to maintain those facilities.
51. The Board found that Mr. LaFontaine testified that he bought a lot in the community because it is a quiet neighborhood.
52. The Board found that Mr. LaFontaine testified that he is concerned about the liability related to tenants using the road, pools, and other amenities.
53. The Board found that Mr. LaFontaine testified that granting the Applicant's request will open the door to other tourist homes in the neighborhood and that will devalue the properties in the neighborhood.
54. The Board found that Mr. Carr testified that he has been a resident in the neighborhood for over 13 years.
55. The Board found that Mr. Carr testified that the approval of this application will result in a change in how the Board views other applications in the neighborhood.
56. The Board found that Mr. Carr testified that there is a loss of value when there is a loss of control.
57. The Board found that Mr. Carr testified that there are 175 lots in the community and the Board should consider the voice of the community.
58. The Board found that Mr. Carr testified that some homeowners have rented their homes out through local real estate agents but they are long-term rentals.
59. The Board found that Mr. Fedorka testified that there are two (2) homes in the neighborhood that are rented for one year or more with leases.
60. The Board found that one (1) person appeared in support of the Application.
61. The Board found that fourteen (14) people appeared in opposition to the Application.
62. 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 tourist home 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 proposed tourist home is located in a large, quiet residential community with community amenities. The neighborhood has generally been used by the owners of the properties or long-term renters of the homes. Other than the Applicant's tourist home, there was no evidence presented of other short-term rentals in the neighborhood.
  - b. The Board heard testimony from a realtor who opined as to the negative effects of tourist homes on nearby property values. This evidence was persuasive that the proposed tourist home will have a substantial adverse effect on property values. The Applicant, who has the burden of demonstrating that the proposed tourist home will not have a substantial adverse effect on neighboring and adjacent properties, presented no evidence such as reports, appraisals, studies, or expert testimony to refute this testimony. More importantly, the Applicant presented no such substantial evidence to meet her initial burden regardless of the testimony by the opposition.
  - c. The Board shares the concern of neighbors about the effect of the tourist home on the character of the neighborhood.
    - i. The Applicant testified that she could have up to 15 people in her home; a number which is shocking considering that the home only has 3 bedrooms. While the Applicant testified that she would limit the

number of tenants to no more than 6, she also testified that she has allowed up to 8 persons at one point. Furthermore, there was no restriction which would limit the number of people the Applicant could allow to stay in the home. It would also likely be difficult for Sussex County officials to enforce a restriction.

- ii. The opposition was rightfully concerned that the number of people who may stay in the tourist home would substantially affect adversely the uses of neighboring and adjacent properties. The community has community facilities such as pools and roads which would be used by the Applicant's tenants and these systems would be disproportionately taxed by the Applicant and her tenants. This disproportionate use would result in additional costs to the Applicant's neighbors who share those maintenance costs.
- d. The Board also shares the concerns of the opposition that the approval of this tourist home will result in other homeowners in the neighborhood seeking similar relief. Approval of the Application would likely result in changes within the neighborhood. By opening the door for tourist homes in this neighborhood, neighbors will be tempted to seek similar relief and the effect of multiple tourist homes in the neighborhood would no doubt greatly impact community amenities. Perhaps, more importantly, however, is the effect of tourist homes on the general character of the neighborhood. No longer will neighbors have an opportunity to meet and know each of their fellow neighbors. The community would be mixed with long-term residents and short-term tenants who stay as little as one night. Developing and maintaining a community feel in such an environment would be challenging at best and would likely result in a community where neighbors feel distant. Presently, the neighborhood generally has long-term residents or individuals who use their homes as second residences – and not as short-term rentals. These homeowners serve and participate in a homeowners association which, given the activity resulting from this application, appears to be an active organization. The approval of a single tourist home, not to mention other tourist homes which may result if this application was approved, would likely lead to a chilling effect on the community. Ultimately, the effect of the tourist home on this sense of community is a substantial adverse effect.
- e. The Board also notes that there is significant opposition within the community to the Application. The voice of the community is one which does not appear to support the Application and the Board has taken this factor into consideration as well.

The Board denied the special use exception application 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 Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date December 19, 2017.