

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

**IN RE: ALLEN HARIM FOODS, LLC**

**(Case No. 11216)**

A hearing was held after due notice on June 3, 2013. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a potentially hazardous use (poultry processing facility).

Findings of Fact

The Board found that the Applicant was requesting a special use exception for a potentially hazardous use (poultry processing facility). The Applicant has requested that the aforementioned requested special use exception be granted as it pertains to certain real property located west of Road 331 (Iron Branch Road) and southeast of Iron Branch and the Town of Millsboro; said property being identified as Sussex County Tax Map Parcel Number 2-33-5.00-14.00, 15.00, & 16.00. After a hearing, the Board made the following findings of fact:

1. James Quinton and John Shahan were sworn in to testify on behalf of the Applicant and Gene Bayard, Esquire, presented the case to the Board on behalf of the Applicant.
2. The Board found that Mr. Quinton testified that the Applicant plans to renovate the existing Pinnacle Foods Facility into a state of the art poultry slaughter, cut-up and cooking operation.
3. The Board found that Mr. Quinton testified that live poultry will be brought to the facility and that all live poultry will be housed in a ventilated holding shed which will be cleaned regularly to avoid manure build-up.
4. The Board found that Mr. Quinton testified that the live receiving area is enclosed.
5. The Board found that Mr. Quinton testified that dust and odor controls will be put into place.
6. The Board found that Mr. Quinton testified that the plant will produce packaged and cooked products.
7. The Board found that Mr. Quinton testified that the use will not be a rendering plant and that rendering plants process feathers and other by-products.
8. The Board found that Mr. Quinton testified that offal by-products will be loaded directly to trucks in an enclosed building and shipped daily to an off-site rendering facility.
9. The Board found that Mr. Quinton testified that trucks will leave every three (3) hours and that an estimated forty seven (47) trucks will come in and out of the site each day.
10. The Board found that Mr. Quinton testified that no trucks will go through the Town of Millsboro.
11. The Board found that Mr. Shahan testified that the site has been used for cucumber pickling since 1972 and that trucks related to the pickle plant came in and out of the Property.
12. The Board found that Mr. Shahan testified that the Property has 107 acres of which thirteen (13) acres are wooded and eleven (11) acres are marshlands.
13. The Board found that Mr. Shahan testified that the woods and marshlands will not be disturbed and that they provide buffers to the Property.
14. The Board found that Mr. Shahan testified that the Property has approximately eighty three (83) usable acres.
15. The Board found that Mr. Shahan testified that the Applicant plans to plant additional trees along Iron Branch Road and that the plant will be hidden from neighboring residential areas.
16. The Board found that Mr. Shahan testified that the plant will be properly ventilated.

17. The Board found that Mr. Shahan testified that the wastewater treatment system will be constructed pursuant to the rules of the Delaware Department of Natural Resources and Environmental Control ("DNREC").
18. The Board found that Mr. Shahan testified that most dust related issues will be during the construction for remodeling and that, after construction, the site will be stabilized by the building, pavement and vegetation.
19. The Board found that Mr. Shahan testified that trailer parking will be provided mostly at the rear of the site away from any residential areas and that forklift operations and unloading will be conducted inside the proposed new building to contain noise and dust.
20. The Board found that Mr. Shahan testified that refrigerated trailers will be parked near the current shipping dock surrounded by a landscape buffer.
21. The Board found that Mr. Shahan testified that a landscape buffer will be planted along County Road 331 to help buffer noise and odor.
22. The Board found that Mr. Shahan testified that truck traffic will have a designated truck route and that the traffic design will be subject to approval from the Delaware Department of Transportation ("DelDOT").
23. The Board found that Mr. Shahan testified that the Applicant has numerous permits to obtain from other agencies prior to beginning construction such as permits for air quality systems, wastewater discharge, water allocation, and stormwater management.
24. The Board found that Mr. Shahan testified that wastewater discharge will be reduced from the current permit used by the pickle plant.
25. The Board found that Mr. Shahan testified that a nearby concrete plant has operated in the area since before the 1960's, that the current M&T Bank has offices in a large complex that was built in 1973 and that Suburban Propane has been in the area since 1973.
26. The Board found that Mr. Shahan testified that there have been numerous residential homes and developments built since the existence of the plant.
27. The Board found that Mr. Shahan testified that the Wharton's Bluff community was built around 2000 and that Possum Point was developed prior to 1953.
28. The Board found that Mr. Quinton testified that there will be two (2) shifts of employees per day, Monday thru Friday, with the occasional Saturday shift and that the building where trucks receive waste is enclosed.
29. The Board found that Ed Kee, Secretary of Agriculture, was sworn in and testified in support of the Application.
30. The Board found that Secretary Kee testified that the use is a great economic opportunity for Sussex County and that the plant will create 700 jobs including approximately 75-100 management and engineering jobs.
31. The Board found that Secretary Kee testified that the use will support local chicken and grain farmers.
32. The Board found that Secretary Kee testified that the proposed modern facility will be environmentally sound and that DNREC looks forward to reviewing the permit applications.
33. The Board found that Secretary Kee testified that he hopes that the Applicant will meet or exceed the requirements set forth by the State agencies.
34. The Board found that Secretary Kee testified that the Applicant has five (5) facilities in South Korea and that he has visited the two (2) poultry facilities in South Korea and found that the plants were modern and impressive.
35. The Board found that Secretary Kee testified that he believes the Applicant will be a good neighbor and that the State of Delaware will see that the Applicant complies with any and all requirements.
36. The Board found that Secretary Kee testified that the community will not notice any difference than the previous use.
37. The Board found that Secretary Kee testified that the Applicant will make a \$10 million to \$15 million upgrade to the wastewater system.
38. The Board found that Secretary Kee testified that the State of Delaware will hold the Applicant to a high standard and that the public will have an opportunity to comment during the permitting process.
39. The Board found that Dorothy LeCates, Lou Dolski, Wayne Morris, Ken Haynes, Rich Frohm, Mary Jane Deckler, and Craig Havener were sworn in and testified in opposition to the Application.

40. The Board found that Ms. LeCates testified that she has lived in the Possum Point area for forty two (42) years and that she is concerned about her existing well, air quality and the increase in traffic the plant will have on her property.
41. The Board found that Ms. LeCates testified that she found the odor from the pickle plant pleasant and is concerned about the odor this plant will produce.
42. The Board found that Ms. LeCates testified that she is concerned how the lighting from the plant will affect her neighborhood.
43. The Board found that Ms. LeCates testified that this area is a heavily industrialized area.
44. The Board found that Mr. Dolski testified that it is premature for this Board to approve this use without the Applicant obtaining all the other agency approvals.
45. The Board found that Mr. Dolski testified that he is concerned for the affect the plant will have on existing wells.
46. The Board found that Mr. Dolski testified that he disputes the proposed truck route and that the pickle plant did not follow the same route.
47. The Board found that Mr. Dolski testified that he has concerns about the effect on air, water, and transportation.
48. The Board found that Mr. Morris testified that he has lived in the Possum Point area his entire life.
49. The Board found that Mr. Morris testified that the pickle plant had an adverse effect on the existing wells because the plant installed shallow wells which caused wells in Possum Point to run dry.
50. The Board found that Mr. Morris testified that he feels the trucks will not follow the required truck route and that the traffic is heavy on this road since the tourists have all learned the back roads.
51. The Board found that Mr. Haynes testified that he is a long term resident of Possum Point and that he is concerned with what chemicals will be used by the proposed plant.
52. The Board found that Mr. Haynes testified that he is concerned for chemical spills into the nearby waterways and that he is concerned about storm water management and about the traffic impact.
53. The Board found that Mr. Haynes testified that the trucks will have a large impact on traffic.
54. The Board found that Ms. Daley testified that she is a resident of Wharton's Bluff and that she is concerned about the odor and dust from the live haul trucks coming to the site will have on the neighborhood.
55. The Board found that Ms. Daley testified that the roads cannot support the truck traffic.
56. The Board found that Ms. Daley testified that there are schools in the area and that the traffic does not obey the speed limits.
57. The Board found that Ms. Daley testified that there is not a current restriction to truck traffic on this road.
58. The Board found that Ms. Daley testified that there is an odor from the existing poultry plant over four (4) miles away.
59. The Board found that Mr. Frohm testified that he is a resident in Wharton's Bluff and that he purchased his property two (2) years ago and was not aware of the existing poultry plant on Route 24.
60. The Board found that Mr. Frohm testified that the odor and noise from that plant is disturbing.
61. The Board found that Mr. Frohm testified that he is concerned for his property value.
62. The Board found that Mr. Frohm testified that he has concerns about the environment, noise, disposal of waste, and traffic as well.
63. The Board found that Mr. Frohm testified that he also feels the Applicant should receive other agencies approvals prior to the approval of this Application.
64. The Board found that Ms. Deckler testified that she is concerned about the potential hazardous use and that she has concerns for water, air, river and traffic in the area.
65. The Board found that Ms. Deckler testified that the pickle plants wastewater system failed at one point and created an issue and that traffic problems plague the area.

66. The Board found that Mr. Havener testified that he is a builder of twenty three (23) lots in Wharton's Bluff and that he is not opposed to more jobs but that he has concerns on how this use will integrate with the existing community.
67. The Board found that Mr. Havener testified that he wants to know who will regulate the plant and ensure the requirements are being met.
68. The Board found that Mr. Havener testified that the change in use will be an increase in shifts, odor, and truck traffic.
69. The Board found that Mr. Havener testified that the hours of operation are subject to change based on the demand.
70. The Board found that Mr. Havener testified that the increased traffic will impact the surrounding properties.
71. The Board found that Ms. LeCates testified that the Board should look at the statistics of traffic incidents on Iron Branch Road and that there has been at least one (1) death per year.
72. The Board found that Mr. Quinton testified that the Applicant cannot slaughter elsewhere and process at this location as it is not economically feasible and would create additional truck traffic.
73. The Board found that Mr. Quinton testified that the odor from the plant will smell like cooked chicken and that the plant will not have the same odor as the rendering plant in the area.
74. The Board found that Mr. Quinton testified that the truckers are employees and there will be disciplinary action if the proposed truck route is not obeyed.
75. The Board found that Secretary Kee testified that there will be approximately 75 to 100 management jobs at the site and that there will be approximately 600 manufacturing positions and that the jobs will be sourced locally.
76. The Board found that Mr. Shahan testified that there will probably be a reduction in lighting in the rear of the Property and no increased lighting elsewhere.
77. The Board found that Mr. Shahan testified that a water line from the Town of Millsboro does not currently serve the site.
78. The Board found that one (1) party appeared in support of the Application.
79. The Board found that twenty four (24) parties appeared in opposition to the Application.
80. The Board found that the Office of Planning & Zoning received eleven (11) letters in opposition to the Application and two (2) letters with concerns about the Application.
81. The Board tabled the decision on this case until June 17, 2013.
82. At its meeting on June 17, 2013, the Board discussed the Application and voted to re-open the record for the limited purpose of consultation with those agencies created for the promotion of public health and safety. The Board directed the Office of Planning and Zoning to solicit comments from those agencies for a period not to exceed thirty (30) days, and then allow the public, for a seven (7) day period thereafter, the opportunity to offer written comments related to the comments offered by those agencies.
83. The Board found that the Department of Natural Resource and Environmental Control (DNREC) submitted written comments regarding the Application within the comment period.
84. The Board found that numerous comments were submitted to the Board pertaining to the Application during the public comment period; most of which voiced general opposition to the Application.
85. At its meeting on September 23, 2013, the Board voted on the Application.
86. Based on the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a special use exception for the following reasons.
  - a. The Board shall review the plans and statements and shall not permit such buildings, structures or uses until it has been shown that the public health, safety, morals and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons. The Board, in reviewing the plans and statements, shall consult with other agencies created for the promotion of public health and safety and shall pay particular attention to

- protection of the county and its waterways from the harmful effects of air or water pollution of any type.
- b. The proposed use is for a poultry processing facility in an industrial area.
  - c. The site was previously used for approximately forty (40) years as a cucumber pickling plant
  - d. There are other industrial facilities in the neighborhood including a concrete plan and a propane business; both of which have been there for many years
  - e. Opposition also testified that the area is a heavily industrialized area
  - f. The Applicant has demonstrated that it will implement and / or follow necessary safeguards to protect the public health, safety, morals, and general welfare.
- g. Fire:
- i. The existing building is protected throughout by a sprinkler system which will be maintained to meet current standards
  - ii. The facility is a non-combustible building and will meet Delaware State Fire Prevention Regulations.
  - iii. The Delaware State Fire Marshal shall ensure that the Fire Prevention Regulations are met.
- h. Explosion:
- i. The Applicant presented evidence that poultry processing operations do not present any normal explosion hazards or risks and no evidence to the contrary was presented.
  - ii. The Applicant advised the Board that ammonia refrigeration system will be built to meet all current standards with ventilation and detection systems to reduce the risk of explosion if a leak were to occur
- i. Pursuant to the Applicant's application and presentation, the Applicant will address noise from the facility as follows:
- i. Trailer parking will mainly be at the rear of the site away from residential areas thereby reducing the impact of noise to residential neighbors.
  - ii. Live receiving trailers will be loaded in the existing building
  - iii. Forklift operations and unloading live poultry will be kept inside the facility to contain noise and dust
  - iv. Loaded refrigerated trailers will be parked in an area surrounded by a landscape buffer
  - v. Landscape buffers will be planted along County Road 331 to help buffer noise and odor from leaving the site
  - vi. The existing site has a buffer of trees and marsh to the north which also buffer noise and odor from the facility.
  - vii. Additional trees will be planted along Iron Branch Road
  - viii. The plant will be hidden from neighboring residential areas
- j. Vibration:
- i. The Applicant noted that there are no known causes for vibration on this site and no evidence to the contrary was presented.
- k. The Applicant addressed the handling of dust and odor from the plant as follows:
- i. Site work including dust control will be conducted in accordance with sediment and erosion control regulations promulgated by the State of Delaware. DNREC and the Sussex Conservation District will ensure that these regulations are followed.
  - ii. The site will be stabilized by either the building itself or pavement and vegetation
  - iii. The Applicant advised the Board that odors will be kept to a minimum by proper housekeeping and good airflow throughout the facility to prevent residue buildup.
  - iv. The holding shed will be cleaned regularly to avoid manure build-up.
  - v. All live poultry will be housed in a ventilated holding shed.
  - vi. Offal by-products will be loaded directly to trucks in an enclosed building and shipped daily to an off-site rendering facility/

- vii. No rendering will be done on site.
- viii. The Applicant intends to use state of the art ventilation systems in the facility.
- l. Emissions:
  - i. The Wastewater Treatment System will be located at the rear of the site adjacent to the railroad to be as far away as possible from residential neighbors
  - ii. The Stormwater system will utilize existing wastewater system to treat the first flush from rain events to capture contaminants from the paved areas and meet Delaware stormwater regulations
- m. Traffic:
  - i. The Applicant testified that truck traffic will have a designated route subject to DelDOT approval and that truck drivers will be subject to disciplinary action if the route is not followed.
  - ii. Opposition to the Application did not present evidence from a traffic engineer as to any negative impact the application would have on traffic in the neighborhood.
  - iii. DelDOT will ultimately have jurisdiction over the traffic impact of the plant.
- n. Lighting:
  - i. The Applicant testified that lighting in the rear of the Property will be reduced and there will be no increase in lighting elsewhere on the site
- o. The Neighborhood:
  - i. The evidence is clear that numerous residential homes and developments were constructed after the existence of the pickle plant; though some homes pre-dated the previous pickle plant.
  - ii. The evidence shows that this area is a heavily industrialized area and has been that way for many years.
  - iii. Opposition to the Application did not present any evidence from a realtor or appraiser as to substantial adverse effect to real estate values due to the proposed plant.
- p. The Board solicited comments on the Application from the Delaware Department of Natural Resources and Environmental Control, the Delaware Department of Transportation, the Delaware Office of the Fire Marshal, the Chief Building Code Inspector for Sussex County, and the Sussex Conservation District. These agencies were created for the promotion of public health and safety.
- q. The Board received comments from DNREC which stated that:
  - i. DNREC administers several programs including air emissions permitting, well permitting, water allocations, National Pollution Elimination Discharge permits, and Large On-Site Wastewater Treatment and Disposal Systems permitting and these programs may apply to the facility.
  - ii. The facility may require approvals for any solid or hazardous wastes that may be generated, stored, and transported from the site and compliance with DNREC's Accidental Release Program.
  - iii. DNREC may also apply additional requirements on the Applicant for erosion and stormwater management depending on the physical modification to the existing building on new construction.
  - iv. The Applicant may need to obtain a modification of existing permits. If so, modifications to permits generally require public notice and an opportunity for a public hearing.
  - v. DNREC will work with the Applicant to ensure that adequate water supply for the facility will not have any negative effects on existing water supply wells in the area.
  - vi. Appropriate permits will be required for all wastewater from the plant and DNREC will work with the Applicant to make sure that the wastewater systems meet all regulatory requirements and are appropriately permitted through NPDES and LOWTDS programs.
  - vii. The facility has two (2) boilers that are currently permitted and comply with air quality regulations.

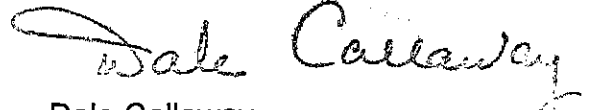
- viii. Any new equipment the Applicant intends to install must comply with all air quality regulations and permitting requirements. DNREC will require that any new equipment does not adversely affect public health or the environment
- ix. DNREC has no objections to the Board granting a special use exception to Allen Harim.
- r. The Board has consulted with DNREC, which has jurisdiction over the air and water pollution emanating from the site and over the systems and permits the Applicant intends to use, and DNREC has noted that it does not object to the Application and that it will ensure that neighboring properties are not adversely affected.
- s. Applicant has noted to the Board that, in order to construct its facility, Applicant will need to obtain the following permits and approvals from DeIDOT, DNREC, Sussex County Building Inspector, and the State Fire Marshal. Those agencies were created for the promotion of public health and safety. DNREC, through its rules and regulations, will have jurisdiction to protect the county and its waterways from the harmful effects of air and water pollution of any type. DNREC's extensive involvement in the permitting process as outlined in its letter to the Board clearly states that it will make sure that the public health, safety, morals and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.
- t. It is possible that public hearings will be necessary as part of the DNREC permitting process.
- u. Based on the record, the Applicant has demonstrated that the proposed use set forth in the Application will not substantially affect adversely the uses of neighboring and adjacent properties. Furthermore, the Applicant has demonstrated that the public health, safety, morals, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons

The Board approved the special use exception application finding that it met the standards for granting a special use exception for a potentially hazardous use.

#### Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application. Mr. Jeff Hudson did not participate in the hearing, discussion, and vote of this 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 November 5, 2013