

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ALLAN MYERS DE, INC.

(formerly ICM of Delaware, Inc.)

(Case No. 11608)

A hearing was held after due notice on July 20, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to continue operating an asphalt batching recycling plant for a period of five (5) years.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to continue operating an asphalt batching recycling plant for a period of five (5) years. This application pertains to certain real property located on the west side of Coverdale Road, approximately 1908 feet north of Hastings Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-31-9.00-2.01. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an Existing Conditions and Rec Location Plan dated June 1, 2012, and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Thomas Rousan was sworn in and testified regarding the Application.
4. The Board found that Mr. Rousan testified that the plant is currently not in operation and has not been used in two (2) years. The Applicant plans to use it again within the next but the plant has been closed due to a lack of work. The plant will re-open when the demand for the product increases.
5. The Board found that Mr. Rousan testified that the Applicant maintains the Property regularly and could be back in operation within a week if needed.
6. The Board found that Mr. Rousan testified that the Applicant has operated on this site since 1995.
7. The Board found that Mr. Rousan testified that the use does not substantially adversely affect the surrounding and neighboring properties.
8. The Board found that Mr. Rousan testified that all permits have been kept up to date and the stormwater management pond is maintained twice a year. The Applicant meets with officials from the Department of Natural Resources and Environmental Control ("DNREC") for site walk-throughs and the Applicant keeps the Property maintained.
9. The Board found that Mr. Rousan testified that there are an existing mulch business, sand pit, and concrete plant in the area.
10. The Board found that Mr. Rousan testified that the plant cannot be seen from the road. A large berm, trees, and a gate are at the entrance.
11. The Board found that Mr. Rousan testified that the Applicant is requesting approval for a five (5) year period.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive

and un rebutted, the Board determined that the application met the standards for granting a special use exception because the asphalt batching recycling plant will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.

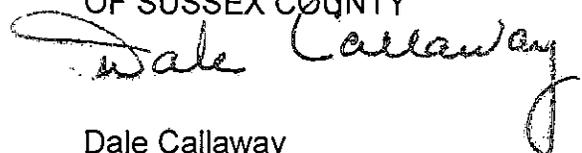
- a. The Applicant has operated an asphalt batching recycling facility on the Property since 1995; though the plant has not be in active operation for the past 2 years.
- b. The Applicant has maintained all permits associated with the facility and has regular site meetings with DNREC officials to ensure compliance with environmental regulations.
- c. The Applicant has kept the plant well-maintained and it can be operational within a week.
- d. The Property is located in an area with active industrial and commercial uses nearby such as a concrete plant, sand pit, and mulching business. Any impact on those properties from the use of this facility should be minimal, if any.
- e. The Property, as shown on the tax map, is 13.62 acres, which is a large lot. The Property is also shielded berms and a gate which hides the plant from some neighboring properties.
- f. No evidence was presented which would demonstrate that the asphalt batching recycling plant would have a substantial adverse effect on neighboring and adjacent properties. The lack of evidence opposing the application is telling since the facility has been on the Property for approximately 20 years.
- g. The approval was granted for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved for a period of five (5) years. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve 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 September 15, 2015.