

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ATLANTIC CONTRACTING AND MATERIAL CO.

(Case No. 11712)

A hearing was held after due notice on February 1, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a temporary concrete batch plant.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for a temporary concrete batch plant. This application pertains to certain real property located on the west side of DuPont Boulevard approximately 970 feet north of West Hudson Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-30-19.00-14.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the proposed plant, 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 had not received any correspondence in opposition to the Application.
3. The Board found that Winfield Patrick Smith and Dave Wilson were sworn in to testify about the Application. Dennis Schrader, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Schrader stated that the proposed plant will be located on Property along Route 113 north of Georgetown and the Property consists of approximately thirty-six (36) acres. It is currently used as a storage area.
5. The Board found that Mr. Smith testified that he is a Senior Project Manager for Atlantic Contracting & Material and the Applicant has been subcontracted for the repaving of a portion of Route 113. As part of the project, the south bound lanes of Route 113 will be demolished and repaved.
6. The Board found that Mr. Smith testified that the project will begin in February and last through June 2016. The concrete batching plant will only be needed through June and will be used to provide concrete for the subcontractors working on the road.
7. The Board found that Mr. Smith testified that the temporary plant takes longer to set up than to use. The plant will be used for approximately three (3) weeks to produce the cement needed for the Route 113 project.
8. The Board found that Mr. Smith testified that there are existing trees on the Property that will provide a buffer from the neighboring properties and the nearest residential dwelling is approximately 340 feet away from the proposed site. The Applicant has operated closer to homes in the past and he does not anticipate any problems with neighbors.
9. The Board found that Mr. Smith testified that there will be minimal dust, noise, or odors from the plant and the Applicant has obtained a permit through the Department of Natural Resources and Environmental Control ("DNREC") for air quality. The Applicant will take steps to mitigate the dust emitted from the site.
10. The Board found that Mr. Smith testified that there is minimal noise from the plant as the noise will be similar to a busy street.

11. The Board found that Mr. Smith testified that the hours of operation will be from 7:00 a.m. to 6:00 p.m., six (6) days a week.
12. The Board found that Mr. Smith testified that, weather permitting, there will be no late night operations or work on Sundays but Sunday operation may be needed based on the weather.
13. The Board found that Mr. Smith testified that there is minimal lighting proposed for the site and all lighting will not shine downwards.
14. The Board found that Mr. Smith testified that there is existing fencing along portions of the Property and a gate at the entrance of the Property.
15. The Board found that Mr. Smith testified that the use will not substantially adversely affect the uses of the neighboring or adjacent properties.
16. The Board found that Mr. Wilson testified that he is the property owner.
17. The Board found that Mr. Wilson testified that Hudson Pond Acres is located north of the Property.
18. The Board found that Mr. Wilson testified that the site was used for the same type of use in the past when Route 113 was widened. The Property is currently used as storage and as a hay field.
19. The Board found that Mr. Wilson testified that the people living in the area are looking forward to the improvements of Route 113 which is projected to be completed by Memorial Day weekend.
20. The Board found that Mr. Wilson testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
21. The Board found that Mr. Wilson testified that he affirmed the testimony made by Mr. Schrader.
22. The Board found that three (3) parties appeared in support of the Application.
23. The Board found that no parties appeared in opposition to the Application.
24. 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 temporary concrete batching 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 Property is located along Route 113 and the plant will be used to provide concrete for a road improvement project along portions of the south bound lanes along Route 113 for a short period of time. The Board notes that the project is anticipated to be completed by the end of June 2016.
 - b. The Property was previously used for a temporary batching plant when Route 113 was widened years ago.
 - c. The Applicant has obtained from DNREC an air quality permit associated with the plant and must comply with DNREC's regulations. The Applicant will take steps to mitigate any dust emanating from the plant.
 - d. The Property is located near a residential community but the nearest home is approximately 340 feet away. The Property is buffered by existing trees and there is a fence along portions of the Property. The un rebutted testimony in the record indicates that the neighbors are looking forward to the improvements to Route 113 which will result from this project.
 - e. The Property consists of approximately 36 acres, which is a large lot.
 - f. The noise from the plant will not be excessive and will be similar to noise emanating from a busy street. There was no evidence that the noise would adversely impact the uses of neighboring properties; let alone

substantially affect adversely those uses. Rather, any impact on those properties from the use of this facility should be minimal, if any.

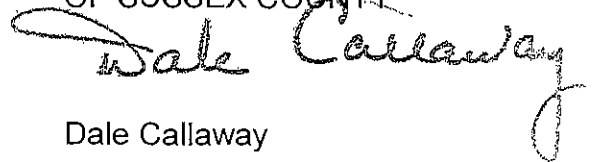
- g. There is minimal light pollution from the site and all lights will shine downwards so as to minimize the effect of lighting from the site.
- h. No evidence was presented which would demonstrate that the temporary concrete batching plant would have a substantial adverse effect on neighboring and adjacent properties. The lack of evidence opposing the application is telling since a similar facility was previously located on the Property years ago.
- i. The approval was granted for a period of six (6) months.

The Board granted the special use exception application for a period of six (6) months 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 six (6) months. 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 March 22, 2016