

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ERNEST MAIER, INC. dba PARKER BLOCK CO.

(Case No. 11846)

A hearing was held after due notice on September 19, 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 to operate a concrete batch plant and to use a manufactured home type structure as an office.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a concrete batch plant and to use a manufactured home type structure as an office. This application pertains to certain real property located on the south side of Millsboro Highway, east side of Mumford Road approximately 295 feet east of intersection of Mumford Road and Millsboro Highway (911 Address: 30243 Millsboro Highway, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 1-33-20.00-15.01. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, letters from the Applicant, assessment records, building permit applications, Ordinance No. 1898, a site plan dated July 13, 2016, 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 and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Rex Timmons was sworn in to testify about the Application.
4. The Board found that Mr. Timmons testified that he is part owner of Parker Block and the business has been operation since 1929. Due to the growth of the business, the proposed concrete batching plant is necessary.
5. The Board found that Mr. Timmons testified that that the hours of operation are 5:00 a.m. to 5:00 p.m., Monday through Friday and 5:00 a.m. to 1:00 p.m. on Saturdays.
6. The Board found that Mr. Timmons testified that the proposed plant will be approximately 240 feet from the neighboring property and approximately 560 feet from the nearest neighboring dwelling.
7. The Board found that Mr. Timmons testified that cypress trees have been planted to control dust and noise from the site. There will be four (4) feet berm with cypress trees planted around the perimeter of the Property as well.
8. The Board found that Mr. Timmons testified that the Applicant owns most of the surrounding property.
9. The Board found that Mr. Timmons testified that there are only two (2) other concrete plants in Sussex County and there is a need for the concrete batch plant in Sussex County.
10. The Board found that Mr. Timmons testified that the site currently has a block plant and pre-cast plant already in operation on the site and he has not received any complaints about the business.
11. The Board found that Mr. Timmons testified that the neighbor closest to the plant has no objection to the Application.
12. The Board found that Mr. Timmons testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

13. The Board found that Mr. Timmons testified that the proposed plant will be accessed by the existing entrance. There will be no increase in traffic to and from the site at this time but traffic could increase if business improves.
14. The Board found that Mr. Timmons testified that there are no concrete crushing activities on the Property.
15. The Board found that Mr. Timmons testified that the noise, dust, and traffic from the plant will not have an adverse effect on neighboring properties.
16. The Board found that Mr. Timmons testified that the existing manufactured homes are used for their office space. The units are skirted and landscaped and have a neat appearance.
17. The Board found that Mr. Timmons testified that the Applicant plans to build a permanent structure in the next two (2) years or so. The Applicant is seeking an approval for three (3) years for the manufactured homes.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 concrete batching plant and the manufactured home 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 Millsboro Highway and has been used as a concrete block plant for quite some time. The Applicant proposes to add a concrete batching plant to the rear of the Property as there has been an increased need for those services in the area.
 - b. The Applicant will take steps to mitigate any dust and noise emanating from the plant. The Applicant has planted cypress trees and partially installed a berm around the perimeter of the Property to limit the impact of dust and noise from the plant.
 - c. The Property is located near a residential property but the nearest home is approximately 340 feet away. The Property is buffered by existing trees and those portions not buffered will be buffered by the berm and the trees to be planted. The un rebutted testimony in the record also indicates that the neighbor supports the Application.
 - d. The Property consists of approximately 36 acres, which is a large lot.
 - e. The Applicant will take steps to minimize the noise from the plant. 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.
 - f. No evidence was presented which would demonstrate that the concrete batching plant or the manufactured home type structures would have a substantial adverse effect on neighboring and adjacent properties. The lack of evidence opposing the application is telling since a concrete block plant has operated on the Property for many years. If the existing plant and business had produced a substantial adverse effect on neighboring and adjacent properties, the Board would expect that there would be some evidence of such effect.
 - g. The Applicant also seeks approval for the use of temporary manufactured home type structures as offices. These structures are newer models which will be used by the Applicant until such time as a permanent facility is constructed on site. The Applicant expects to complete that construction within 2-3 years.

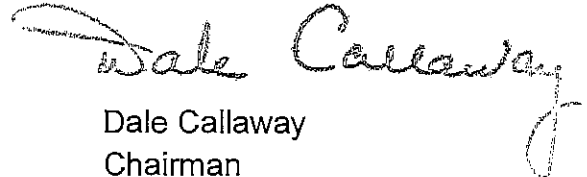
- h. The manufactured home type structures will be skirted and landscaped and will have a neat appearance. No evidence to the contrary was presented.
- i. The Board notes that the business has operated on this large property for quite some time and the use of the manufactured home type structures is consistent with the long time use of the business.
- j. The approval for the manufactured home type structures was granted for a period of three (3) years.

The Board granted the special use exception application 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. 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.

A placement permit must be obtained before
the manufactured home is placed on the property.

Date November 22, 2016