

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BARRY DUKES 2ND

(Case No. 12049)

A hearing was held after due notice on November 6, 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 rifle / pistol range for a period of time not to exceed five (5) years.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a rifle / pistol range for a period of time not to exceed five (5) years. This application pertains to certain real property located at the northeast side of Dukes Lumber Road (Road 474) approximately 1,465 feet northwest of Sycamore Road (Road 476) (911 Address: 28417 Dukes Lumber Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-8.00-5.04. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and the Findings of Fact for Case No. 11031.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Barry Dukes 2nd and Evan Rogers were sworn in to testify about the Application.
4. The Board found that Mr. Rogers testified that Mr. Dukes and he are the co-owners of East Coast Defense, a business focused on fire arms training and they are requesting a renewal of a special use exception.
5. The Board found that Mr. Rogers testified that the portion of the Property is used for a shooting range and the shooting range has been used for the last 5 years.
6. The Board found that Mr. Rogers testified that Mr. Dukes and he have taken the National Rifle Association ("NRA") firearm instructors program and they are both certified range safety officers. Mr. Rogers has been a police officer in Sussex County for 9 years and is a certified instructor for law enforcement in the State of Delaware as well.
7. The Board found that Mr. Rogers testified that there have been no injuries at the range and there have been no complaints from residents in the area.
8. The Board found that Mr. Rogers testified that the range is a private range only utilized for their firearm safety class and the range is only used once or twice a month. There is a low volume of firing at the range.
9. The Board found that Mr. Rogers testified that the impact on the community is minimal and most of the neighbors in the area are family.
10. The Board found that Mr. Rogers testified that the hours of operation would be Saturdays from 8 am-4 pm once a month.
11. The Board found that Mr. Dukes testified that the most classes held on the site in a year has been 10 and that they have only had 7 classes in 2017.
12. The Board found that Mr. Dukes testified that an earthen berm measuring 12 feet tall and modeled to NRA guidelines has been constructed and maintained. The berm is a considerable distance from neighboring properties. There is a wooded area behind the berm and there is no housing behind the berm for miles.


13. The Board found that Mr. Dukes testified that the range will not have any substantial adverse effect on neighboring and adjacent properties.
14. The Board found that Mr. Dukes testified that the Applicants are certified to provide handgun training only and that is the only type of firearm used on the site.
15. The Board found that Mr. Rogers testified that his primary residence is located on the Property.
16. The Board found that Mr. Rogers testified that the range is limited to 4 shooters at a time.
17. The Board found no parties appeared in support of or in opposition to the Application.
18. 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 shooting range 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 a shooting range on the Property since 2012 and has not received any complaints from neighbors.
 - b. The hours of operation and frequency of the classes held on the site are limited and thereby reduce the impact of the classes on neighboring and adjacent properties.
 - c. The range is served by a large earthen berm which was modeled after NRA guidelines to provide safeguards from bullets fired at the range. The site is also wooded which reduces the effect of the sound from the range.
 - d. No one appeared in opposition to the Application. The lack of opposition is telling since the Property has been used as a firing range for several years.
 - e. No evidence was presented which would demonstrate that the firing range would have a substantial adverse effect on neighboring and adjacent properties.
 - f. The special use exception was approved for a period of five (5) years with the limitation that the range only be used one day per month.

The Board granted the special use exception application for a period of five (5) years with conditions 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 with conditions. The Board Members in favor 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 approve the special use exception application for a period of five (5) years with conditions.

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 January 9, 2018