

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SOUTHSTAR, L.P.

(Case No. 12344)

A hearing was held after due notice on August 5, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a special use exception to operate a concrete batch plant for a period of five (5) years. This application pertains to certain real property located on the northwest side of Coverdale Road approximately 524 feet northeast of Evans Drive (911 Address: 20956 Coverdale Road, Bridgeville) said property being identified as Sussex County Tax Map Parcel Number 4-30-23.00-82.02. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, the findings of fact for Case No. 11414, minutes for Case No. 10512, 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 & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Kyle Murray and Edward Kaye were sworn in to give testimony about the Application. Mr. James Fuqua, Esquire, presented the Application on behalf of the Applicant. Mr. Fuqua submitted exhibits to Board members.
4. The Board found that Mr. Fuqua stated that the Applicant has operated a concrete batch plant on the site for nine (9) years and that the Applicant seeks a renewal of the special use exception for five (5) years. The Board initially granted a special use exception in November 2009 and renewed the approval in July 2014.
5. The Board found that Mr. Fuqua stated that ownership of the concrete batch plant has passed from Mr. Kaye to Southstar L.P. which is owned by Chaney Enterprises.
6. The Board found that Mr. Fuqua stated that there have been no changes in the use.
7. The Board found that Mr. Fuqua stated that the plant is only a small portion of the overall site.
8. The Board found that Mr. Fuqua stated that a berm is located in the front of the Property.
9. The Board found that Mr. Fuqua stated that there are 12 full-time employees on site and 12 delivery truck drivers.
10. The Board found that Mr. Fuqua stated that the facility provides a needed product for construction in the surrounding area.
11. The Board found that Mr. Fuqua stated that the Applicant operates similar facilities in Delaware, Maryland, Virginia, and the District of Columbia and this is an appropriate location for the facility.
12. The Board found that Mr. Fuqua stated that the facility does not substantially affect adversely adjacent and neighboring properties.
13. The Board found that Mr. Fuqua stated that there have been no prior violations or complaints and that the facility is operated in a responsible and safe manner.
14. The Board found that Mr. Murray and Mr. Kaye affirmed the statements made by Mr. Fuqua as true and correct.

15. The Board found that Mr. Fuqua stated that the Applicant has an air quality permit from DNREC and the Applicant uses dust collectors.
16. The Board found that Latanya Bruce and Evelyn Wilson were sworn in to give testimony in opposition of the Application.
17. The Board found that Ms. Bruce testified that she lives in the nearby Coverdale Crossroads development. She is opposed to the concrete batch plant because of the dust created by the plant and high traffic.
18. The Board found that Ms. Bruce testified that the plant has expanded and trees were knocked down. She noted that the trees used to block views of the plant.
19. The Board found that Ms. Bruce testified that she has concerns about the impact on wildlife and children.
20. The Board found that Ms. Wilson testified that she is opposed to the concrete batch plant for the same reasons as Ms. Bruce. She argued that the plant should not be near a residential area and that the dust collectors do not work.
21. The Board found that Ms. Bruce testified that berm is high around the plant.
22. The Board found that Ms. Bruce testified that the borrow pit is deeper and that the sandy area is needed as part of the plant.
23. The Board found that Mr. Fuqua stated that there are two different uses in this area and this application is only concerning the concrete batch plant and not the sand excavation operation which is a long-standing non-conforming use surrounding the concrete batch plant. According to Mr. Fuqua, the sand excavation is a separate operation and that the sand excavation operation has expanded but the concrete batch plant has not.
24. The Board found that Mr. Murray testified that between 10-20 trucks exit the site on a daily basis.
25. The Board found that Mr. Murray testified that the Applicant uses a water truck and dust collector to keep dust down.
26. The Board found that Mr. Murray testified that the Applicant is willing to mitigate dust concerns to meet with the neighbors to address the concerns raised.
27. The Board found that no parties appeared in support of and five (5) parties in opposition to the Application.
28. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a special use exception because the facility 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 a large parcel consisting of approximately 9.70 acres and the Applicants propose to operate a concrete batch plant on site.
 - b. The Property has been used for nearly 10 years as a concrete batch plant and no complaints, other than those expressed by members of opposition at the hearing, about the plant were noted in the record.
 - c. A large berm is located to the front of the facility and there are woods, albeit a narrow strip, between the facility and the neighboring Coverdale Crossroads community.
 - d. Located between the concrete batch facility and Coverdale Crossroads is a pre-existing sand excavation facility which has been in operation for decades. Complaints from neighbors appeared to have been focused on operations from that facility rather than the concrete batch facility. Nevertheless, the sand excavation facility buffers the concrete batch facility from the neighboring community.
 - e. As is shown on the tax map, the concrete batch plant is a significant distance from neighboring residential properties and there was no

substantial evidence that the concrete batch plant has had or will have a substantial adverse effect on those properties.


- f. The number of employees who work at the plant is limited and the traffic related to the concrete batch plant appears limited as well.
- g. The opposition presented concerns about the dust from the site but it was unclear whether the dust was from the sand excavation plant or the concrete batch plant. The Applicant testified that the concrete batch plant is subject to DNREC air quality permits and regulations and that the Applicant uses water trucks to reduce dust emanating from the concrete batch plant. There was no evidence that the Applicant had been found in violation of those air quality regulations. The opposition presented no specific evidence as to the dust problems.
- h. The Property appears to have adequate space for parking.
- i. There was no evidence that the plant has a substantial adverse effect on property values or noise.
- j. The Board was not convinced that the facility would have a substantial adverse effect on neighboring and adjacent properties.
- k. The special use exception was approved for a period of five (5) years subject to the following condition:
 - i. The Applicant shall reach out to the opposition to discuss their concerns about the project.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date October 8, 2019.