

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: H & K GROUP, INC**

**(Case No. 12729)**

A hearing was held after due notice on August 15, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a special use exception to operate a potentially – hazardous use.

Findings of Fact

The Board found that the Applicant is seeking a special use exception to operate a potentially hazardous use of a construction and demolition debris recycling facility by use of a portable crusher for a period of five (5) years. This application pertains to certain real property located on the northwest side of Thorogoods Road approximately 0.5 miles from Route 20 (911 Address: 30548 Thorogoods Road, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 233-5.00-71.02 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a letter from Scott Drumbore, a project narrative, a deed to the Property, a plot plan dated March 15, 2004, an aerial site plan dated June 2, 2022, literature on the concrete crusher, a memorandum from the Office of Planning & Zoning to Technical Advisory Committee members, letters from the Division of Public Health, the State Fire Marshal, and the U.S. Fish & Wildlife Department, Findings of Fact for Case Nos. 8573 and 6167, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and no correspondence in opposition to the Application. The Office of Planning & Zoning also received letters of no objection from some agencies.
3. The Board found that Scott Drumbore, Scott Taylor, and Chris Baker were sworn in to give testimony about the Application.
4. The Board found that Mr. Drumbore testified that the Property is known as Dagsboro Stone Yard and the current use of the Property is an aggregate material processing facility. The Applicant proposes to utilize a portable crusher to break down concrete, asphalt, and millings to create aggregate material. He noted that the Property was approved for a special use exception in 2004 and there is a history of portable crushers dating back to 1996.
5. The Board found that Mr. Drumbore testified that the materials are brought in by rail, unloaded into a pit by use of a conveyor, and processed via portable crusher to then be used as aggregate material. After the process is complete, the materials are introduced to the local market for sale.
6. The Board found that Mr. Drumbore testified that the property adjacent to the southeast is a hot asphalt mixing facility and asphalt chunks and asphalt millings are reused at the asphalt hot mix plant on the adjacent property.
7. The Board found that Mr. Drumbore testified that upwards of 25-30% of new hot mix asphalt is made up of recycled chunk asphalt or millings and the proposed use will be integral to the use of the hot asphalt mix facility adjacent. He noted that there is approximately 60,000 tons per year of hot asphalt and 50,000 tons per year of concrete utilized at the facility.



8. The Board found that Mr. Drumbore testified that this use is very similar to the existing uses on the Property and there is large equipment on site already.
9. The Board found that Mr. Drumbore testified that they anticipate that the portable crusher will operate ten (10) working days per month.
10. The Board found that Mr. Drumbore testified that the product will be managed on site.
11. The Board found that Mr. Drumbore testified that this portable crusher will be permitted through DNREC's Air Quality division and what they would be permitted to process will far exceed their actual production for the use of the portable crusher. He noted that, in the peak season, the use may pick up and, in the winter months, the use may decline.
12. The Board found that Mr. Drumbore testified that the noise generated by the portable crusher could reach 60 to 80 decibels but it is mainly from the equipment associated with the portable crusher. He noted that 60-70 decibels will not affect a normal conversation on neighboring properties and that the sound effect will decrease at a farther distance from the crusher.
13. The Board found that Mr. Drumbore testified that every site is different and accordingly noise levels will vary also.
14. The Board found that Mr. Drumbore testified that the Applicant intends to centrally locate the portable crusher as to mitigate noise to the adjacent properties and maintain distance of at least 100 feet from the property lines. He did note that the crusher is portable and may be moved around the site.
15. The Board found that Mr. Drumbore testified that the crusher will not generate detectable vibrations, heat, glares, or smoke.
16. The Board found that Mr. Drumbore testified that there are moving parts but, if you are adjacent to the equipment, you will hear it but not feel the vibrations.
17. The Board found that Mr. Drumbore testified that the material coming to the site will be of a smaller nature to begin with and not in large sizes and the materials will be fed into a hopper which begins to break down the materials before feeding it to a screen that separates the materials by size depending on their use.
18. The Board found that Mr. Drumbore testified that emissions from the machinery are monitored through DNREC Air Quality.
19. The Board found that Mr. Drumbore testified that dust would be the most notable issue that could arise from this use but they will use a water tank and spray bars to distribute water throughout the property to mitigate the dust.
20. The Board found that Mr. Drumbore testified that they respectfully request a five (5) year approval for the use.
21. The Board found that Mr. Drumbore testified that neighboring properties are zoned HI-1 and B-1 and that there is a buffer between the HI-1 and B-1 districts.
22. The Board found that Mr. Drumbore testified that this use will require no new infrastructure or uses of the site.
23. The Board found that Mr. Drumbore testified that the hours of operation would be typically 6 am to 6 pm with an eight (8) hour period of operation for the portable crusher equipment during those hours of operation. He noted that the hours are driven by State contracts and the supply of material. He also stated that there would be no night or evening operations.
24. The Board found that Mr. Drumbore testified that the distance to the rear property line from the crusher is over 800 feet and that the crusher will be over 300 feet from the property lines to the north and southwest and will be over 500 feet from the shared property line with the asphalt company.
25. The Board found that Mr. Drumbore testified that they would utilize the piles around the crusher to mitigate noise.
26. The Board found that Mr. Drumbore testified that the machine itself is two parts, the crusher and the screen.



27. The Board found that Mr. Drumbore testified that there is history of portable crushers being on this site and he is unaware of any past complaints about the use.
28. The Board found that Mr. Drumbore testified that there have been meetings with DNREC about the uses on the Property and that they are here due to DNREC requesting zoning approval, which they have not requested in the past. He stated that, upon the inception of this plant in 2004, they went through all necessary agency approvals.
29. The Board found that Mr. Drumbore testified that there is a stormwater basin to the northwest end of the site and there are collection channels that run the Property to the basin.
30. The Board found that Mr. Drumbore testified that all of the original site infrastructure is there and maintained.
31. The Board found that Mr. Drumbore testified that the site can be inspected by State agencies and must follow their regulations.
32. The Board found that Mr. Drumbore testified that the Property falls away towards Wardens Branch and the stormwater basin.
33. The Board found that Mr. Drumbore testified that there is natural vegetation there also.
34. The Board found that Mr. Drumbore testified that the spray for mitigation of dust will be high pressure low volume, which will create a mist to suppress dust not to saturate the material.
35. The Board found that Mr. Drumbore testified that there will be no additional traffic expected absent delivery of the equipment.
36. The Board found that Mr. Drumbore testified that this use will not require any additional lighting but there is security lighting on site.
37. The Board found that Mr. Drumbore testified that there is additional equipment already on the Property that create equal, if not more, noise than this particular equipment.
38. The Board found that Mr. Drumbore testified that the site cannot be used without approval from DNREC
39. The Board found that Mr. Baker testified that he is here to speak to the importance of these materials to the marketplace within Sussex County.
40. The Board found that Mr. Baker testified that, due to the demand of product, this is an integral use to the housing market and construction in general.
41. The Board found that Mr. Baker testified that the railroad service in Sussex County which brings in about 90% of their materials has just now started getting back to what they would deem as normal production. He noted these shortages were due to maintenance on Amtrak lines and a labor shortage.
42. The Board found that Mr. Baker testified that he represents George & Lynch, and they are a partner to the asphalt production. He noted that George & Lynch is the primary customer of River Asphalt and that River Asphalt serves not only themselves but several other contractors for asphalt paving and he asks for consideration for approval.
43. The Board found that Mr. Baker testified that River Asphalt operates on the property adjacent to the Property and that they share an entrance for all three (3) properties, including Atlantic Concrete. He noted that the entrance at Thorogoods Road has been in existence for decades.
44. The Board found that Mr. Baker testified that the sale of materials is to construction companies as well as private homeowners.
45. The Board found that Mr. Baker testified that there is no plan to expand the uses on the Property.
46. The Board found that Mr. Baker testified that there have been no complaints from the neighboring development up until this point.



47. The Board found that Mr. Taylor testified that he is the Air Quality Specialist for the H&K Group and that they have locations in Delaware, Pennsylvania, and New Jersey. He handles all air quality permitting through the relevant state agencies.
48. The Board found that Mr. Taylor testified that this equipment does not produce any odor.
49. The Board found that Mr. Taylor testified that there is oversight by DNREC for air quality and it is a separate permit that requires a public advertisement.
50. The Board found that Mr. Taylor testified that the spray will be continuous unless the use is not needed by unusual circumstances but it does have to be proven to be functioning upon request.
51. The Board found that no one appeared in support of or in opposition to the Application.
52. 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 potentially hazardous use of a construction and demolition debris recycling facility by use of a portable crusher 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 Board shall review the plans and statements and shall not permit such buildings, structures or uses until it has been shown that the public health, safety, morals and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons. The Board, in reviewing the plans and statements, shall consult with other agencies created for the promotion of public health and safety and shall pay particular attention to protection of the county and its waterways from the harmful effects of air or water pollution of any type.
  - b. The proposed use is for a construction and demolition debris recycling facility by use of a portable crusher in an industrial area.
  - c. There are other industrial facilities in the neighborhood including a concrete plant and an asphalt business.
  - d. The Property is adjacent to a railroad and accepts deliveries from the railroad. The site has been used in this fashion for many years.
  - e. The Applicant has demonstrated that it will implement and / or follow necessary safeguards to protect the public health, safety, morals, and general welfare.
  - f. Fire:
    - i. The Delaware State Fire Marshal submitted a letter of no objection to the request and stated that the Applicant will have to submit a site plan to that agency. The Delaware State Fire Marshal shall ensure that the Fire Prevention Regulations are met.
  - g. Explosion:
    - i. There was no evidence that the proposed use presents any risk of explosion. Notably, the Applicant testified that there is no fire associated with this use.
  - h. Pursuant to the Applicant's application and presentation, the Applicant will address noise from the facility as follows:
    - i. The proposed portable crusher will be centrally located and over 100 feet away from property lines. The crusher will be located near stockpiles of concrete, asphalt, and millings, and those piles should provide a sound barrier.
    - ii. There is existing vegetation on the site.



- i. Vibration:
  - i. The Applicant noted that there are no known causes for vibration on this site from the crusher and no evidence to the contrary was presented.
- j. The Applicant addressed the handling of dust and odor from the proposed use as follows:
  - i. Site work including dust control will be conducted in accordance regulations promulgated by the State of Delaware. DNREC will ensure that these regulations are followed. The Board notes that an air quality permit from DNREC will be required and the Applicant has presented evidence that the dust from the crusher will be mitigated by a mist from a large water tank.
  - ii. The Applicant advised the Board that there are no odors associated with this use.
- k. Emissions:
  - i. The site is improved with a stormwater system and that system must meet Delaware stormwater regulations
- l. Traffic:
  - i. The site is already used for industrial purposes and the shared road to the site off Thorogoods Road appears to have been in use for many years.
  - ii. The Applicant testified that deliveries of material will be from railroad which should minimize traffic related to the use.
  - iii. There was no evidence from a traffic engineer as to any negative impact the application would have on traffic in the neighborhood.
  - iv. DelDOT will ultimately have jurisdiction over the traffic impact of the plant.
- m. Lighting:
  - i. The Applicant testified that there will be no additional lighting on the Property related to the proposed use. The Board notes that there is already security lighting in place.
- n. The Neighborhood:
  - i. The evidence shows that this area is a heavily industrialized area and has been that way for many years.
  - ii. The neighboring properties include concrete and asphalt plants. There was evidence of support from the asphalt plant.
  - iii. There was no evidence from a realtor or appraiser as to substantial adverse effect to real estate values due to the proposed use.
- o. The Board solicited comments on the Application from agencies who are on the Technical Advisory Committee including the Delaware Department of Natural Resources and Environmental Control, the Delaware Department of Transportation, the Delaware Office of the Fire Marshal, and the Division of Health and Social Services. These agencies were created for the promotion of public health and safety.
- p. The Board received comments from some agencies which indicated that they had no objection to the request.
- q. The Applicant has noted to the Board that, in order to use the portable crusher, Applicant will need to obtain the permits and approvals from state agencies including DNREC. Those agencies were created for the promotion of public health and safety. DNREC, through its rules and regulations, will have jurisdiction to protect the county and its waterways from the harmful effects of air and water pollution of any type. DNREC's extensive involvement in the permitting process as testified to by the Applicant will make sure that the public health, safety, morals and general

welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.

- r. Based on the record, the Applicant has demonstrated that the proposed use set forth in the Application will not substantially affect adversely the uses of neighboring and adjacent properties. Furthermore, the Applicant has demonstrated that the public health, safety, morals, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.
- s. The Board's approval is valid for a period of five (5) years.

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

#### 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the special use exception for a period of five (5) years.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Jeffrey Chorman  
Chair

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

Date October 3, 2022.