

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RIVER II, LLC

(Case No. 12730)

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 Sussex Highway approximately 0.35 miles from Iron Hill Road (911 Address: 36393 Sussex Highway, Delmar) said property being identified as Sussex County Tax Map Parcel Number 532-13.00-80.06 (“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 May 21, 2009, 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, the U.S. Fish & Wildlife Department, and The Department of Natural Resources and Environmental Control, Findings of Fact for Case No. 9320-2005, 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, Chris Baker, and Anthony Taddeo were sworn in to give testimony about the Application.
4. The Board found that Mr. Drumbore testified that the Application is very similar to Case No. 12729 with the exception of the location of the site.
5. The Board found that Mr. Drumbore testified that the Applicant operates a hot mix asphalt facility in Delmar and the Application is for the use of a portable crusher and screen equipment.
6. The Board found that Mr. Drumbore testified that the current use was approved in 2002 by Case Number 7641 by the Board of Adjustment as a special use exception and that River II, LLC, took ownership of the property in 2009. He noted that the plant was existing prior to that time and the approval predates the current ownership.
7. The Board found that Mr. Drumbore testified that this this facility is looking to process 35,000 tons of asphalt millings and asphalt chunks per year and that concrete would be about 5,000 tons per year. He noted that this facility receives far less materials than their other plant and that this site would primarily be used for the recycling of asphalt.
8. The Board found that Mr. Drumbore testified that, to the north, south, and west, the properties are zoned HI-1 and, to the east, they are zoned AR-1.
9. The Board found that Mr. Drumbore testified that the Property consists of approximately eight (8) acres.

10. The Board found that Mr. Drumbore testified that the aerial plan shows the proposed location of the crusher, to which they held the same standard of maintaining at least 100 feet of distance from property lines.
11. The Board found that Mr. Drumbore testified that the operation of this site would be the same as the Case No. 12729 except there would be less production from this site.
12. The Board found that Mr. Drumbore testified that the portable crusher would operate ten (10) or fewer days a month and the equipment is the same as in Case No. 12729 and would likely be moved between this site and the former application's site.
13. The Board found that Mr. Drumbore testified that what is being requested is similar in use to the existing use on the site as there is existing portable equipment on site.
14. The Board found that Mr. Drumbore testified that the noise will be mitigated by the centralized location of the equipment and placing it within the piles of material to be processed. He noted that the average noise level would be between 60-80 decibels and that, at a distance of 100 feet from the equipment in use, a normal conversation can be had.
15. The Board found that Mr. Drumbore testified that there are no detectible vibrations, heat, or smoke associated with this equipment.
16. The Board found that Mr. Drumbore testified that the engines of this equipment are permitted and regulated by DNREC Air Quality.
17. The Board found that Mr. Drumbore testified that no glares are expected to be emitted from this equipment.
18. The Board found that Mr. Drumbore testified that the most notable of concerns from this equipment and its use would be dust but this is again controlled and permitted through DNREC and is controlled through the use of high pressure low volume water spray on the Property. He noted that they will utilize a 1,000 to 1,500 gallon tank to mitigate the dust.
19. The Board found that Mr. Drumbore testified that they request a five (5) year approval should the Board be inclined to approve the Application.
20. The Board found that Mr. Drumbore testified that Mr. Baker's letter from George and Lynch also applies to the Property.
21. The Board found that Mr. Drumbore testified that they are using this function to combat the railway delays and labor shortages they have been facing and that the materials delivered to the Dagsboro location are also utilized at this plant. He noted that the machinery is portable and, when a need arises at another location, it would be utilized there.
22. The Board found that Mr. Drumbore testified that there is a storm water permit that requires sampling by DNREC on a bi-annual basis and they are comfortable that they can comply with the guidance provided by DNREC. He noted that there are inspections that happen on the Property that are specific to the storm water management.
23. The Board found that Mr. Drumbore testified that there will be no additional traffic created by this use.
24. The Board found that Mr. Drumbore testified that there is a wooded parcel to the east of the site and that, along Sussex Highway, there are businesses as well as unmaintained vegetative area.
25. The Board found that Mr. Drumbore testified that the necessary permits still have to be obtained through DNREC.
26. The Board found that Mr. Drumbore testified that the operational hours would be 6 am – 6 pm with an eight (8) hour operating time for the portable crusher.
27. The Board found that Mr. Drumbore testified that there will be no change to the historical use on the Property and that portable crushers have been used on the site in the past.

28. The Board found that Mr. Baker testified that the Property to the north owned by the Pusey family was where the hot mix asphalt was formerly run out of prior to their purchase of the facilities. He noted that the building is now used by Terraform.
29. The Board found that Mr. Baker testified that there have been no complaints on the use of the Property.
30. The Board found that Mr. Taddeo testified that the property to the south is Window World or at least that is the last property owner he recalls seeing there.
31. The Board found that Randy Merritt was sworn in to testify about this application.
32. The Board found that Mr. Merritt testified that he was under the impression that the site has been operating this use for a long time and the term hazardous use had him concerned. He believes, however, that the Application is really for the same use that has been happening. He noted that they have never had an issue before and do not oppose the Application.
33. The Board found that no one appeared in support of or in opposition to the Application and one person appeared with no opposition to the Application.
34. 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 unrebutted, the Board determined that the Application met the standards for granting a special use exception because the proposed 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 and other properties nearby are zoned HI-1.
 - d. The Applicant has demonstrated that it will implement and / or follow necessary safeguards to protect the public health, safety, morals, and general welfare.
 - e. 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.
 - f. 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.
 - g. 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.
- h. 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.
- i. 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.
- j. Emissions:
 - i. The site is improved with a stormwater system and that system must meet Delaware stormwater regulations
- k. Traffic:
 - i. The site is already used for industrial purposes has been used industrially for many years.
 - ii. The Applicant testified that there will be no additional traffic related to this 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.
- l. Lighting:
 - i. There was no substantial evidence that the proposed use will substantially affect adversely lighting in the area. The Board notes that the hours of operation for the proposed crusher will be during daylight hours.
- m. 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 industrially zoned properties. There was evidence of support for the Application. A neighbor also testified that the use does not appear different from what is already being done on the Property.
 - iii. There was no evidence from a realtor or appraiser as to substantial adverse effect to real estate values due to the proposed use.
- n. 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.
- o. The Board received comments from some agencies which indicated that they had no objection to the request.
- p. 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.

- q. 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.
- r. The Board's approval is valid for a period of five (5) years.
- s. The Board's approval is subject to the following conditions:
 - i. The Applicant shall submit to the Office of Planning and Zoning copies of all active permits for the proposed use on the Property.

The Board approved the special use exception application with conditions 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 with conditions 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