

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

**IN RE: CONCORD FLEA MARKET, LLC**

**(Case No. 12157)**

A hearing was held after due notice on June 18, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to have an outdoor promotional activity.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for an outdoor promotional activity that consists of a flea market. This application pertains to certain real property located on the north side of Concord Road (Route 20), approximately 480 feet west of Concord Pond Road (911 Address: 10599 Concord Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 1-32-2.12-5.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the Property, 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 the Application, one (1) letter in opposition to the Application, and one (1) letter that neither supported or opposed the Application.
3. The Board found that Jeron Bryant and Rohit Patel were sworn in to testify about the Application.
4. The Board found that Mr. Bryant testified that the Property is used for the Deluxe Dairy Market and he proposes to operate a flea market on the Property. The flea market would be operated on Thursdays, Fridays, and Sundays. He plans for the hours of operation to be Thursday and Friday from 10:00 A.M. to 7:00 P.M. and Sundays from 10:00 A.M. to 5:00 P.M. The flea market would be in addition to the store and would have separate parking designated for flea market patrons. The Applicant rents the area to be used for the flea market.
5. The Board found that Mr. Bryant testified that there will be no permanent structures related to the flea market and no property will be left overnight. He intends to use tents and canopies for the flea market. One of the canopies measures 90 feet by 21 feet and the other canopies measure 10 feet by 20 feet.
6. The Board found that Mr. Bryant testified that he has been on the Property for the past 3 months and has improved the property. He is also working with Troop 5 to clean up the area and he is trying to bring the community together. He admitted that there is crime in the area but he is hopeful that the flea market will improve the area.
7. The Board found that Mr. Bryant testified that he intends to have a community garden on the site and he eventually wants to have events for the community.
8. The Board found that Mr. Bryant testified that there is separate parking for the store and the flea market. There is parking for approximately 50-60 cars for the flea market. He plans to plant sunflowers along Route 20 to prevent parking along that road. He expects a slight increase in the traffic but he does not expect it be a large increase as the flea market will not be as large scale as other local flea markets.
9. The Board found that Mr. Bryant testified that he eventually wants to fence in the Property due to crime in the area. The site has trees, bushes, and fencing but he would like to add additional fencing.

10. The Board found that Mr. Bryant testified that no site plan has been approved through Planning and Zoning but the site is approved to have a convenience store.
11. The Board found that Mr. Patel testified that he is the manager for the LLC that owns the Property and that a lease was signed permitting the flea market use. The lease states that the tenant is responsible for obtaining all necessary approvals and permits and he believes this will help the community. He noted that there is not much shopping in the area. He does not believe that the flea market will result in issues with parking or traffic.
12. The Board found that Mr. Bryant testified that the items will be stored on a trailer and the market will be shut down every night. There will be two portable bathroom facilities located on site.
13. The Board found that Mr. Bryant testified that the only employees for the flea market are himself and his wife.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. On July 9, 2018, the Board discussed and voted on the Application.
17. 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 proposed outdoor display or promotional activity 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 off Route 20 and is currently used for a convenience store. The Applicant seeks to use the Property for a flea market as well. The site consists of approximately 1.5 acres and appears large enough to accommodate the additional use.
  - b. The flea market will have reasonable hours of operation and will only be in operation 3 days a week.
  - c. The testimony was clear that there are few shopping options in the immediate area and the flea market should provide neighbors with more accessible shopping options.
  - d. As part of the project, the Applicant has cleaned up the condition of the Property and is working with local law enforcement officials to reduce crime in the area. There was no evidence that the existence of the flea market has or would somehow increase the level of crime in the area.
  - e. The Board notes that a letter in opposition was submitted but the Board was not convinced that the proposed flea market will have a substantial adverse effect on neighboring and adjacent properties. Rather, the Applicant has convinced the Board that the flea market will not substantially affect adversely the uses of neighboring and adjacent properties provided the below stated conditions are met.
  - f. The approval of this special use exception is subject to the following conditions.
    - i. The hours of operation shall be from 8:00 am – 6:00 pm.
    - ii. The days of operation for the flea market shall be only Thursday, Friday, and Sunday.
    - iii. The tents and tables used with the flea market shall be removed when not in use. Tents and tables shall not be installed until Wednesday and shall be removed by Monday.
    - iv. The special use exception for a flea market use is restricted to the areas to the east and west of the existing gas station building. Tents and tables shall not be located to the rear of the gas station building.

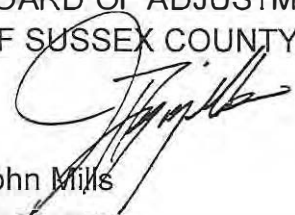
- v. All the tents and tables shall be placed within the building envelope and shall not be placed in the setback areas. The standard building setback requirements for the B-1 zone shall be used.
- vi. This approval shall be limited to one (1) year but could be renewed for a longer use if the Applicant reapplies.
- vii. The Applicant must attain all necessary agency approvals.
- viii. The use is limited to flea market use only and no special events, including concerts or festivals, may be held at this location.
- ix. The Applicant shall apply for and obtain final site plan from the Planning and Zoning Commission.

The Board granted the special use exception application for a period of one (1) year 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 with conditions for a period of one (1) year. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application with conditions. Mr. Mears did not participate in the vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
John Mills  
Chairman

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

Date September 11, 2018