

MINUTES OF AUGUST 15, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 15, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Christin Scott – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Mr. Williamson and carried unanimously to approve the agenda. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Hastings – yea, Mr. Williamson – yea, Mr. Warfel – yea, and Mr. Chorman – yea.

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the June 27, 2022, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Hastings – yea, Mr. Warfel – yea, Dr. Carson – yea, Mr. Williamson – yea, and Mr. Chorman – yea.

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the June 27, 2022, meeting. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Williamson – yea, Mr. Warfel – yea, Mr. Hastings – yea, and Mr. Chorman – yea.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 12728 – Rodger Pearce seeks a special use exception for a garage / studio apartment (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Seagull Lane at the intersection of Bunting Road and Seagull Lane. 911 Address: 23004 Seagull Lane, Georgetown. Zoning District: AR-1. Tax Map: 133-6.00-56.15

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of and one (1) letter in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception for a garage / studio apartment as an administrative

request was denied due to opposition received to the request.

Mr. Blake Carey, Esquire, appeared on behalf of the Applicant.

Mr. Carey stated that he is present on behalf of Rodger and Kimberly Pearce; that they own property in Georgetown on Seagull Lane; that they are requesting the special use exception to construct a 600 sf. stand-alone dwelling for their disabled daughter Hope; that their request satisfies both the elements for reasonable request for accommodations as set forth by the Fair Housing Act as well as the criteria for a special use exception; that the structure will consist of roughly 600 sf.; that it will consist of a kitchen, living room, bedroom, and bathroom; that the structure will be placed where a shed already exists and will comply with all required setbacks; that the existing shed is just under 600 sf.; that the proposed structure will be not much of a difference from what is existing; that the location of the structure is important as the dwelling will be placed near the existing driveway as Hope is presently transported via DART busing and is dropped off as close to the house as possible; that this is necessary to verify Hope has arrived home and is inside the dwelling; that this dwelling is being specifically made for their daughter and is not intended to ever be a rental property; that the Pearces understand that, should Hope no longer reside there, they will no longer use the structure as a garage / studio apartment; that the Fair Housing Act would prohibit any local and federal government from denying housing for a reasonable accommodation based on disability; that the Applicants have submitted documentation from their daughter's primary physician outlining her disability and the necessity for the dwelling to be on the property; that Hope is diagnosed with Autism and is twenty-five (25) years old; that she currently resides with her parents who act as her guardians also; that her doctor has outlined that, as a twenty-five (25) year old, independence is critical to Hope's growth and development as an adult; that her doctor notes that Hope residing in a detached dwelling and separate from her parents will be beneficial to her self esteem and growth; that having the detached structure still on the property limits the dangers of her residing away from her parents completely; that there may be a time when Hope could be completely independent from her parents and would need to be able to care for herself should that ever happen; that the proposed structure meets all of the required zoning criteria; that the structure will not substantially affect adversely the neighboring use of property; that there are trees that line the property; that the use of this additional dwelling will not generate any additional noise; that the property will not be gaining a resident but allowing Hope to live in her own personal area; that there will be no additional traffic or parking of vehicles on the property; that Hope does not drive and receives transportation services from DART as she has previously; that there will be no aesthetic difference on the property as the structure will be replacing an existing shed; that this will actually improve the look of the property; that they respectfully ask that the Board approve the Application to allow the Pearces to construct a stand-alone structure for their daughter to be used as a dwelling; that the porch and breezeway will be facing Seagull Lane, which is the same direction that the home faces; that there will be no additional occupants on the property so the desire is to tie in to the existing septic system; that the drainage field is located on the south side of the property; that they will do what is required by both the County and DNREC; that the survey shows the existing shed which is about 576 sf. and the proposed dwelling is 600 sf.; that there will be roughly 34.9 ft. from the structure to the property line; and that there is a pool and the drain

field for the septic take up the other part of the yard where this could potentially be placed.

Mr. Rodger Pearce was sworn in to give testimony about this Application.

Mr. Pearce testified that the statements made by Mr. Carey are true and correct; that the property is lined by trees on the north, west, and east sides; that you can see through the tree branches but it is an obstructed view; that the trees are Leland Cypress; that the proposed structure will be about 3-4 ft. closer to the property line than the existing shed; that Hope's cognitive ability to recognize the danger of others is a struggle; that the way the structure is proposed now it puts her front door away from the main road; that, for safety reasons, they placed the structure this way so as to not make it apparent as to her comings and goings; that they are okay with using a fence and landscaping to the rear of the structure to create a buffer between them and the neighboring property; and that they were looking to keep the footprint the same but going less than 600 sf. makes for a very small house.

Mr. Dominic Mallory was sworn in to give testimony in opposition to the Application.

Mr. Mallory testified that he believes that this has gotten out of hand; that this is the third application filed for the garage / studio apartment; that this is his third letter of opposition; that his mother wrote a letter and mailed it about two weeks ago because she was too upset to attend the public meeting; that he does not have a copy of that letter with him; that they tried to discuss their opposition with the neighbors but were not able to get anywhere which is why the case is now before the Board; that they are not opposed to the dwelling but would like it moved away from their house; that he has postponed vacations and other things because he never knows when the Applicant will file again and he only has 10 days to respond because they have been unable to talk about it and reach a compromise; that they are unsure if there will be an additional pump for the septic which will make noise; that this is a house which requires heat and air which a shed does not; that he feels like he has no other choice but to withdraw his opposition so they can all move on with their lives; and that he will now have no position on the Application.

The Board found that no one appeared in support of and one person appeared in opposition to the Application but withdrew his opposition.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12728 for the requested special use exception, pending final written decision, because the proposed use will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **special use exception be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Dr. Carson– yea, Mr. Williamson – yea, Mr. Hastings – yea, Mr. Warfel – yea, and Mr. Chorman – yea.

Case No. 12729 – H & K Group, Inc. seeks a special use exception to operate a potentially - hazardous use (construction and demolition debris recycling facility by use of portable crusher) (Sections 115-110 and 115-111 of Sussex County Zoning Code). The property is located on the northwest side of Thorogoods Road approximately 0.5 miles from Rt. 20. 911 Address: 30548 Thorogoods Road, Dagsboro. Zoning District: HI-1. Tax Parcel: 233-5.00-71.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received agency comments of no objection, one (1) letter in support, zero in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception to operate a potentially hazardous use of a construction and demolition debris recycling facility by use of a portable crusher.

Mr. Scott Drumbore was sworn in to give testimony about this Application.

Mr. Drumbore testified that this application is on behalf of H&K Inc. formerly Haines & Kibblehouse Inc.; that the property is known as Dagsboro Stone Yard; that the current use of the property is an aggregate material processing facility; that the materials are brought in by rail and unloaded into a pit by use of conveyor; that they are then introduced to the local market for sale; that the property adjacent to the southeast is a hot asphalt mixing facility; that it is a contracted partnership between H&K Inc. and George and Lynch Inc.; that the stone yard was approved via special use exception in 2004 and is referenced as Case Number 8573; that there is a history of approval for portable crushers that dates back to 1996; that the recycled materials are brought in and transported to the stone yard; that the material is processed via portable crusher to then be used as an aggregate material; that asphalt chunks and asphalt millings are reused at the asphalt hot mix plant on the adjacent property; that upwards of 25-30% of new hot mix asphalt is made up of recycled chunk asphalt or millings; that this use will be integral to the use of the hot asphalt mix facility adjacent; that there is approximately 60,000 tons per year of hot asphalt and 50,000 tons per year of concrete utilized at the facility; that this use is very similar to the existing uses on the property; that there is large equipment on site already; that they anticipate that the portable crusher will operate ten (10) working days per month; that the product resulted will be managed on site; that this portable crusher will be permitted through DNREC's Air Quality division; that what they would be permitted to process will far exceed their actual production for the use of the portable crusher; that, in the peak season, they may pick up and in the winter months the use may decline; that the noise generated could reach 60 to 80 decibels but it is mainly from the equipment associated with the portable crusher; that this information is from other onsite facilities; that every site is different and accordingly noise levels will vary also; that they look to centrally locate the portable crusher as to mitigate noise to the adjacent properties and maintain distance of at least 100 ft. from the property lines; that the crusher will not generate detectable vibrations, heat, or smoke; that there are moving parts but, if you are adjacent to the equipment, you will hear it but not feel the vibrations; that the material coming to the site will be of a smaller nature to begin with and not in large sizes; that the materials are 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; that emissions from the machinery are monitored through DNREC Air Quality; that there are no glares produced by the equipment or operation; that dust would be the most notable issue that could arise from this use; that they will use a water tank and spray bars to distribute water throughout the property to mitigate the dust; that they respectfully request a five (5) year approval if that is the direction the Board chooses to go; that the uses around this property are HI-1 and B-1; that there is a buffer between the HI-1 and B-1 districts; that this use will require no new infrastructure or uses of the site; 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; that hours are driven by State contracts and the supply of material; that there would be no night or evening operations; that the location of the crusher can vary but it will remain centralized on the property; that the distance to the rear property line from the crusher is over 800 ft.; that the crusher will be over 300 ft. from the property lines to the north and southwest; that the crusher will be over 500 ft. from the shared property line with the asphalt company; that they would utilize the piles around the crusher to mitigate noise; that the machine itself is two parts, the crusher and the screen; that there is history of portable crushers being on this site; that there have been meetings with both DNREC and Sussex County about the uses on this property; that they are here due to DNREC requesting zoning approval, which they have not requested in the past; that they had never received a special use exception in the past but are here in response to DNREC's request to permit this new equipment; that there have been no complaints in the past that he is aware of; that, upon the inception of this plant in 2004, they went through all necessary agencies approvals; that there is a stormwater basin to the northwest end of the site; that there are collection channels that run the property to the basin; that all of the original site infrastructure is there and maintained; that they can be inspected by State agencies and must follow their regulations; that the property falls away towards Wardens Branch and the stormwater basin; that there is natural vegetation there also; that the property contains its wastewater through the channels and basin; that the basin was designed as a traditional stormwater system and does discharge; 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; that there will be no additional traffic expected absent delivery of the equipment; that this will not require any additional lighting; that there is security lighting on site; that 60-70 decibels could be related to a normal conversation, at a distance of 100 ft. the level of sound would go down as sounds does in comparison to distance; that this equipment should not affect the ability of conversations on neighboring properties; that there is additional equipment already on the property that create equal, if not more, noise than this particular equipment; and that the site cannot be used without approval from DNREC.

Mr. Chris Baker was sworn in to give testimony on this application.

Mr. Baker testified that he is here to speak to the importance of these materials to the marketplace within Sussex County; that there are other competing operations in Sussex County; that, due to the demand of product, this is an integral use to the housing market and construction in general; 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; that these shortages were due to

maintenance on Amtrak lines and a labor shortage; that he represents George & Lynch, and they are a partner to the asphalt production; that George & Lynch is the primary customer of River Asphalt; that they serve not only themselves but several other contractors for asphalt paving; that he asks for consideration for approval; that River Asphalt is a property adjacent to the property in question; that they share an entrance for all three (3) properties, including Atlantic Concrete; that the entrance at Thorogoods Road has been in existence for decades; that the sale of materials is to construction companies as well as private homeowners; that there is no plan to expand the uses on this property; and that there have been no complaints from the neighboring development up until this point.

Mr. Scott Taylor was sworn in to give testimony on this application.

Mr. Taylor testified that he is the Air Quality Specialist for the H&K Group; that they have locations in Delaware, Pennsylvania, and New Jersey; that he handles all air quality permitting through the relevant State Agencies; that approximately one and a half years ago there was an anonymous complaint of an odor brought to their attention by DNREC with the question as to if anything different was being done at the plant, which there was not; that this equipment does not produce any odor; that there is oversight by DNREC for air quality and it is a separate permit that requires a public advertisement; that he is not aware of any separate permitting for water quality; and 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.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for a period of 5 years for Case No. 12729 for the requested special use exception, pending final written decision, because the proposed use will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **special use exception be granted for a period of 5 years for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, and Mr. Hastings – yea, and Mr. Chorman – yea.

Case No. 12730 – River II, LLC seeks a special use exception to operate a potentially hazardous use (construction and demolition debris recycling facility by use of a portable concrete crusher) (Sections 115-110 and 115-111 of the Sussex County Zoning Code). The property is located on the northwest side of Sussex Highway approximately 0.35 miles from Iron Hill Road. 911 Address: 36393 Sussex Highway, Delmar. Zoning District: HI-1. Tax Parcel: 532-13.00-80.06

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

agency comment letters of no objection, one (1) letter in support of and none in opposition to the Application and zero mail return. The Applicant is requesting a special use exception to operate a potentially hazardous use of construction and demolition debris recycling facility by use of a portable concrete crusher.

Mr. Scott Drumbore was previously sworn in to give testimony about this Application.

Mr. Drumbore testified that this application is very similar to Case No. 12729 with the exception of the location of the site; that River II operates a hot mix asphalt facility in Delmar; that the Application is for the use of a concrete crusher and screen equipment; that the current use was approved in 2002 by Case Number 7641 by the Board of Adjustment as a special use exception; that River II, LLC took ownership of the property in 2009 but the plant was existing prior to that time; that the approval predates the current ownership; 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; that this facility receives far less materials than their other plant; that this site would primarily be looking at the recycling of asphalt; that, to the north, south, and west the properties are zoned HI-1 and, to the east, they are zoned AR-1; that the parcel consists of approximately eight (8) acres; that the aerial plan shows the proposed location of the crusher, to which they held the same standard of maintaining at least 100 ft. of distance from property lines; that the operation of this site would be the same as the Case No. 12729 except there would be less production from this site; that the record was built on the Case No. 12729; that the portable crusher would operate ten (10) or fewer days a month; that the equipment is the same as in Case No. 12729 and would likely be moved between this site and the former applications site; that what is being requested is similar in use to the existing use on the site; that there is existing portable equipment on site; that the noise will be mitigated by the centralized location of the equipment and placing it within the piles of material to be processed; that the average noise level would be between 60-80 decibels; that, at a distance of 100 ft. from the equipment in use, a normal conversation can be had; that there are no detectible vibrations, heat, or smoke associated with this equipment; that the engines of this equipment are permitted and regulated by DNREC Air Quality; that no glares are expected to be emitted from this equipment; that the most notable of concerns from this equipment and its use would be dust; that this is again controlled and permitted through DNREC and is controlled through the use of high pressure low volume water spray on the property; that they will utilize a 1,000 to 1,500 gallon tank to mitigate the dust; that they request a five (5) year approval should the Board be inclined to approve the Application; that Mr. Baker's letter from George and Lynch also applies to this property; that they are using this function to combat the railway delays and labor shortages they have been facing; that the materials delivered to the Dagsboro location are also utilized at this plant; that the machinery is portable and when a need arises at another location it would be utilized there; that there is a storm water permit that requires sampling by DNREC on a bi-annual basis; that they are comfortable that they can comply with the guidance provided by DNREC; that there are inspections that happen on the property that are specific to the storm water management; that there will be no additional traffic created by this use; that there is a wooded parcel to the east of the site; that, along Sussex Highway, there are businesses as well as unmaintained vegetative area; that the necessary permits still have to be obtained through DNREC; that there is also

a storm water permit associated with this site; that the operational hours would be 6 am – 6 pm with an eight (8) hour operating time for the portable crusher; 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.

Mr. Chris Baker was previously sworn in to give testimony on this application.

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; that the building is now used by Terraform; and that there have been no complaints on the use of this property.

Mr. Anthony Taddeo was sworn in to testify about this application.

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.

Mr. Randy Merritt was sworn in to testify about this application.

Mr. Merritt testified that he was under the impression that the site has been operating this use for a long time; that the term hazardous use had him concerned; that the Application is really for the same use that has been happening; and that they have never had an issue before and do not oppose the Application.

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.

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the Application for Case No. 12730 for a period of 5 years with the condition that the Applicant submit to the Board all necessary approval letters from DNREC for the requested special use exception, pending final written decision, for the following reasons:

1. The proposed use will not substantially adversely affect the uses of neighboring and adjacent properties.
2. The Applicant has demonstrated that the health, safety, and welfare of the County will be properly protected.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception be granted for a period of 5 years with conditions for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Hastings- yea, Mr. Warfel – yea, Dr. Carson – yea, Mr. Williamson – yea, and Mr. Chorman – yea.

ADDITIONAL BUSINESS

Meeting adjourned at 7:38 p.m.