

BEFORE THE ENVIRONMENTAL  
PROTECTION BOARD OF THE CITY OF  
JACKSONVILLE

IN RE: Application for Noise Variance of

**Orange Park Exchange Apartments, LLC**

**ORDER APPROVING APPLICATION FOR NOISE VARIANCE**

This matter came to be heard upon the Application for Noise Variance filed by Hathaway Construction Services, Inc. (“Agent”), on behalf of Orange Park Exchange Apartments, LLC (“Applicant”), the owner of certain real property located at 4851 Collins Road, RE Nos. 099143-0100, 099142-0000, 099148-0000, 099146-0000, seeking a variance from 1) Jacksonville Environmental Protection Board (JEPB) Rule 4.209A. to allow the operation of construction and maintenance equipment during nighttime hours, 2) JEPB Rule 4.209C. to allow the operation of construction equipment during daytime hours in exceedance of sound levels established by rule, and 3) JEPB Rule 4.208 to allow operations with impulsive sounds that may exceed sound levels established by rule<sup>1</sup>.

Having duly considered both the testimonial and documentary evidence presented at the public hearing on June 7, 2021, including the Report of the Environmental Quality Division and the attachments thereto (“Staff Report”), a copy of which is attached as **Exhibit A**, the Environmental Protection Board of the City of Jacksonville hereby:

**FINDS AND DETERMINES:**

1. That the Applicant has complied with all application requirements set forth in Section 360.111 of the Jacksonville Ordinance Code.
2. That the need for the variance applied for arises out of a necessity to relieve or prevent a hardship and is based on sound technical, economic, or environmental data.
3. That the record contains sufficient substantial competent evidence to demonstrate that the Application meets, to the extent applicable and as modified by any conditions contained herein, the standards and criteria set forth in Section 360.111 of the Jacksonville Ordinance Code and that just cause exists to grant the variance.
4. That the findings and recommendations in the Staff Report for the Application, to the extent consistent with this **Order**, are hereby adopted and incorporated herein.
5. That the land to which this variance is granted is owned by **Orange Park Exchange Apartments, LLC**.

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<sup>1</sup> Environmental Quality Division staff determined during its technical review of the Petition that a variance from JEPB Rule 4.208 is necessary to conduct daytime operations.

**NOW THEREFORE**, it is **ORDERED** by the Environmental Protection Board:

The Application for Noise Variance is hereby **APPROVED** and a variance is hereby **GRANTED** to Orange Park Exchange Apartments, LLC, allowing for a variance to 1) JEPB Rule 4.209A. to operate construction and maintenance equipment during nighttime hours, 2) JEPB Rule 4.209C. to operate construction equipment during daytime hours in exceedance of sound levels established by rule, and 3) JEPB Rule 4.208 to allow operations with impulsive sounds that exceed sound levels established by rule, subject to the following restrictions and conditions:

1. This variance establishes a maximum noise level of 70 dBA for nighttime construction activities, and 75 dBA for daytime construction operations, as measured from any residential receptor, and 80 dBA as measured from any commercial receptor.
2. All equipment shall be fitted with proper exhaust systems and silencers as required by Rule 4.209 D.
3. Nighttime construction activities shall be limited to those activities necessary for concrete pours and shall not commence before to 4:00 A.M.
4. Construction equipment operated before 7:00 A.M., including concrete pump trucks, concrete mixer trucks, forklifts, loaders, etc., must have the traditional single frequency backup alarm either disabled (and use of a flagman, as allowed by OSHA), or replaced with an OSHA approved broadband (white noise) backup alarm.
5. Concrete pump trucks operated before 7:00 A.M. must not use the vehicle or other horn for signaling the start and stop of pumping.
6. Concrete mixer trucks must not air off on or near the construction site before 7:00 A.M.
7. Concrete mixer trucks used for concrete pours before 7:00 A.M. must be staged as far from residential properties as practical.
8. To minimize disturbance to residences and to the extent practical, the contractor must attempt to route concrete trucks used for concrete pours before 7:00 A.M. away from residences and shall instruct drivers (by voice or sign) to minimize acceleration while near the site.
9. The staff of the Environmental Quality Division is granted the ability to require additional noise mitigation measures if conditions warrant.
10. The Applicant shall provide the following communications to residents of sensitive receptors:

- a. Provide notification, by written or electronic means, to each residential property within 200 meters of the closest anticipated location that a concrete pump truck will be situated. The notification will be provided at least 48 hours in advance of each anticipated nighttime concrete pour.
  - b. Signage announcing upcoming nighttime construction activity displayed on site in locations visible to area residents and businesses.
  - c. Contact information for a 24-hour noise complaint hotline
11. The Applicant shall provide a monthly status report regarding the construction project to the Air and Odor Committee via email to [epb@coj.net](mailto:epb@coj.net). The status report shall include, at a minimum:
- a. The report should be for the previous months activities and be received on or before the 10th day of the month (i.e., June 10th for the month of May, July 10th for the month of June, etc.).
  - b. Number of complaints, if any, and a plan for remediation or corrective action in response to complaints, if necessary.
  - c. Project progress, including any substantial changes.
12. This variance shall expire on August 16, 2023.

Executed on this 18<sup>th</sup> day of August 2021.



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David Wood  
Chairman,  
Environmental Protection Board

FORM APPROVED:



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Kealey A. West  
Assistant General Counsel

Copies to:

**Applicant/Owner:**  
Orange Park Exchange Apartments, LLC  
3300 NE Expressway, Building 6  
Atlanta, GA 30341

**Agent:**

Daniel Hathaway

Hathaway Construction Services, LLC

3300 NE Expressway, Building 6

Atlanta, GA 30341

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**REPORT OF THE ENVIRONMENTAL QUALITY DIVISION**  
**FOR APPLICATION FOR**  
**VARIANCE TO JEPB NOISE RULES 4.208, 4.209A, & 4.209C**  
**AUGUST 16, 2021**

The Environmental Quality Division forwards to the Air Quality Committee and the Environmental Protection Board its comments and recommendation regarding Application for Variance to JEPB Noise Rules 4.208, 4.209A and 4.209C.

***Location:*** 4851 Collins Rd.

***Real Estate Number:*** 099143 0100, 099142 0000, 099148 0000,  
099146 0000

***Applicant/Owner:*** Orange Park Exchange Apartments, LLC.

***Agent:*** Daniel Hathaway, Hathaway Construction Services, Inc.

***Staff Recommendation:*** APPROVE WITH CONDITIONS

**GENERAL INFORMATION**

*Rules from Which Variance is Sought*

Application for a variance to JEPB noise rules 4.208 (added by EQD staff), 4.209A, and 4.209C seeks to 1) allow operations with impulsive sounds that may exceed the sound levels stipulated in Rule 4.208 (55 dBA for Class A and B land use); 2) allow operations of construction equipment during nighttime hours, and 3) allow the operation of construction equipment during daytime hours that may exceed the sound level limits stipulated in Rule 4.209C (75 dBA for Class C, 65 dBA for Class A and B land use). The applicant has stipulated that they will not start concrete pours before 4 a.m.

A variance is being requested for a 24-month period ending July 26, 2023.

*Status of Applicant's Compliance with Above Rules*

EQD has not received noise complaints for this project as of August 13, 2021.

*Other Relevant Information*

The activity for which a variance is being sought is the construction of three-story apartment complex along Collins Road. The approximately 17-acre site is located on the north side of Collins Road. A trailer park is located along the western site boundary. There are single family homes to the south and across Collins Road, but the properties to the north and east are mostly forest (see attached Pictometry aerial).

## CRITERIA FOR REVIEW

Pursuant to Ordinance Code 360.111, the Environmental Protection Board shall evaluate and consider the following criteria of an application for variance.

- 1. *Are there facts which show that a variance should be granted because of one of the following reasons?***
  - a. *There is no practicable means known or available for the adequate control of the pollution involved.***
  - b. *Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time.***
  - c. *It is necessary to relieve or prevent hardship of a kind other than those provided above.***

Construction projects with large concrete pours typically desire to start the pour at night or very early in the morning. The reasons generally provided by the contractors include:

- Some pours have been known to require over 100 loads of concrete. It has been stated that with daytime traffic and limited supply of trucks during the day, large pours are difficult to coordinate during the day in Jacksonville.
- Daytime heat and afternoon showers can negatively affect the curing of concrete on large pours.
- Early morning concrete pours are safer for the workers rather than working through the heat of the day.

There is currently no practicable alternative to early morning concrete pours that address contractors' concerns.

Potential noise mitigation measures for this type of operation could include:

- Use of equipment exhausts that meet original equipment specifications and are in good repair. *This is a requirement of Rule 4.209D.*
- Traditional single frequency backup alarm either disabled (and use of a flagman, as allowed by OSHA), or replaced with an OSHA approved broadband (white noise) backup alarm for construction equipment. *Recommended as a condition of the variance for nighttime operations.*
- Limit the use of vehicle horn or any other horn for signaling the start and stop of pumping for concrete pump trucks. *Recommended as a condition of the variance for nighttime operations.*
- Restrict airing off concrete mixer trucks on or near the construction site. *Recommended as a condition of the variance for nighttime operations.*
- Locating noisy equipment away from sensitive receptors. *Recommended as a condition of the variance for nighttime operations.*
- Routing concrete trucks used for concrete pours before 7 a.m. away from residences to the extent practical and shall instruct the drivers (by voice or sign) to minimize acceleration while on and near the site. *Recommended as a condition of the variance for nighttime operations.*

- Use of sound barriers: Most of the residential receptors that will be impacted by nighttime concrete pours are single story structures, which normally benefit from the use of sound barriers. Noise modeling shows that there is a reduction in the noise impact of about 5 to 10 dBA at residential receptors by use of strategically placed sound barriers during nighttime concrete pours (see discussion of modeling results in item #6). *Not found to be feasible for this project.*

**2. *The period of time for which the variance is sought, including the reasons and facts in support thereof.***

The applicant is requesting a variance for a 24-month period, which is reasonable for a project of this size and less than the time allowed under ordinance code 360.111(b)(2).

**3. *The damage or harm resulting or which may result to the person requesting the variance from compliance with the rule.***

See the application.

**4. *The requirements which the person requesting the variance can meet and the date when the person can comply with these requirements.***

See the application.

**5. *The steps the person seeking the variance is taking to meet the requirements from which the variance is sought and when compliance will be achieved.***

The contractor committed to the following noise mitigation measures as of the date of this report (including those provided supplemental to the application):

- Nighttime construction activities are limited to concrete pours, not to start prior to 4 a.m.

The applicant will be able to comply with Rule 4.209A by December 2021. The applicant will likely not be able to comply with Rule 4.208 and 4.209C noise limits for the duration of the project.

**6. *Any beneficial or adverse impact to residents and the environment in the affected area resulting from the Board's requiring compliance or granting a variance.***

Due to the reasons identified in item #1 above, it is unlikely that the project can be constructed in compliance with Rule 4. Therefore, a noise variance would be required to continue the project. There is no impact to the environment by granting the variance but there will be some temporary impact to residents.

EQD used a noise model (iNoise V2021) to predict the noise impact to residents from operation of construction equipment during the nighttime hours. The applicant requests a variance from



Rule 4.209A for activities related to nine nighttime concrete pours. The planned location of each pour is depicted in attached site plan (MASTER SITE PLAN markup) from the applicant. We modeled one of the pours that appears to be representative of the typical predicted impact to residents. The concrete pour was modeled with and without the use of sound barriers. Modeling results indicate a moderate to significant reduction in the noise impact to nearby residential properties using a sound barrier.

No barriers: Predicted impact at closest residential buildings is 60 to 65 dBA for about a dozen residential trailers and 55 to 60 dBA for another couple of dozen.

Barriers: The model predicted sound levels below 55 dBA for all residential trailers. The barrier modeled was 16 feet high by about 820 feet long. Variations in height and length were not modeled. However, due to the limited number of pours to be done prior to 7 a.m., the limited space on site, and the fact that the pours will not start before 4:00 a.m., the use of barriers for this project is not feasible.

**7. *Economic or social impacts of granting or denying the variance.***

See the application.

**8. *Will granting the variance likely cause the health of the citizens to be in imminent danger?***

No.

**SUPPLEMENTAL INFORMATION**

The following documents are attached to this report:

- Application for Variance from JEPB Rules
- 4851 Collins Rd Pictometry
- Master Site Plan markup
- Noise model no barriers
- Noise model 16-foot barrier west

**RECOMMENDATION**

Based on the foregoing, it is the recommendation of the Environmental Quality Division that Application for Variance to JEPB Rules 4.208, 4.209A, and 4.209C be APPROVED with the following CONDITIONS.

1. The variance application and presentation, and the commitments therein, shall be adopted and incorporated as part of the conditions of this Variance.

2. The variance establishes a maximum noise level of 70 dBA for nighttime construction operations and 75 dBA for daytime construction operations, as measured from any residential receptor, and 80 dBA as measured from any commercial receptor.
3. All equipment will be fitted with proper exhaust systems and silencers as required by Rule 4.209D.
4. Nighttime construction activities will consist of only those related to concrete pours and will not commence before 4 a.m.
5. Construction equipment operated before 7 a.m., including concrete pump trucks, concrete mixer trucks, forklifts, and loaders, etc., must have the traditional single frequency backup alarm either disabled (and use of a flagman, as allowed by OSHA), or replaced with an OSHA approved broadband (white noise) backup alarm.
6. Concrete pump trucks operated before 7 a.m. must not use the vehicle horn or any other horn for signaling the start and stop of pumping.
7. Concrete mixer trucks must not air off on or near the construction site before 7 a.m.
8. Concrete mixer trucks used for concrete pours before 7 a.m. must be staged as far from residential properties as practical.
9. To minimize disturbance to residences to the extent practical, the contractor will attempt to route concrete trucks used for concrete pours before 7 a.m. away from residences and shall instruct the drivers (by voice or sign) to minimize acceleration while on and near the site.
10. The Environmental Quality Division is granted the ability to require additional noise mitigation if conditions warrant.
11. Communications to residents of sensitive receptors to include:
  - a. Provide notification, by written or electronic means, to each residential property within 200 meters of the closest anticipated location to residences that a concrete pump truck will be situated. The notification will be provided at least 48 hours in advance of each anticipated nighttime concrete pour.
  - b. Signage announcing upcoming nighttime construction activity will be displayed on site in locations visible to area residents and businesses, advising the dates and times of potential nighttime pours.
  - c. Contact information for 24-hour hotline.
12. Petitioner shall provide a monthly status report of the construction project to the Air & Odor Committee via email to [epb@coj.net](mailto:epb@coj.net). The report shall include:
  - a. Report should be for the previous month and received on or before the 10<sup>th</sup> day (e.g., June 10<sup>th</sup> for the month of May, July 10<sup>th</sup> for the month of June, etc.).
  - b. Number of complaints and any plan for remediation or corrective action in response to complaints.
  - c. Project progress, including substantial changes.
13. This variance shall expire on August 16, 2023.