

**MEETING MINUTES
BOARD OF ZONING APPEALS
FOR CAROLINE COUNTY, MARYLAND**

DATE: August 26, 2020

PLACE: Virtual Meeting on Microsoft Teams

**BOARD MEMBERS
(PRESENT):** Michael Mann, Chairman
Mary Leavell, Vice-Chair
Karen Hardy, Member
Benjamin Butler, Alternate

ALSO, PRESENT: Crystal Dadds, Assistant Director of Codes
Robert Merriken, Board Attorney
Melanie Smith, Board's Administrative Assistant

Chairman Mann called the Caroline County Board of Zoning Appeals meeting to order at 6:07 PM. Chairman Mann introduced the Board members and staff that were present. He then explained the duties that the Board is charged with and how the meeting will proceed according to the Zoning Chapter of the Code of Public Law of Caroline County, Maryland. Ms. Dadds conducted an initial roll call of attendees.

Present in the audience were:

Randee Haggerty in opposition to the Bramble application;
Mitchell Mowell, Esq., Attorney for Ms. Haggerty;
Richard Keith, in opposition to the Bramble application;
Tom & Chris Murphy in opposition to the Bramble application;
Bill Burton in opposition to the Bramble application;
Art Schlosser in opposition to the Bramble application;
Megan Owings in support of the Bramble application;
Kim Myers in opposition to the Bramble application;
Anne Ogletree, Esq., Attorney for the applicant;
Mike Davidson, Site Manager;
Dani Walton, Lane Engineering;
Sean Callahan, Lane Engineering;

DAVID A. BRAMBLE, INC. – SPECIAL USE EXCEPTION NO. 20-0017

Chairman Mann explained that no new testimony will be heard. The Board will begin with cross examination. Mr. Mowell corrected him stating that they are on the closing statements portion of the hearing.

Anne Ogletree noted that the applicant does not have the burden to show that their project benefits the neighbors. It is up to the applicant to show that the proposed project does not increase the

burden on neighbors. Mining has already been determined by the County Commissioners to be permissible in the (R) Rural Zoning District, with the approval of a Special Use Exception. It has been shown that there is no special harm that is not inherent to any neighbor of a mining project.

Ms. Ogletree went through the conditions of a special use exception as written in Article 16 of the County Zoning Ordinance.

An application (Exhibit 3) was submitted, and the hearing was dually advertised (Exhibit 1).

Reviewing the testimony given in the initial meeting, their request does not endanger the public health, safety and general welfare. However, the major reason the public did not want this mine in their neighborhood was noise and dust.

In response to the noise complaints, the applicant submitted with their application (Applicants Exhibit 1) an email from MSHA Inspector Corena Callahan stating that the results of the June 2019 inspection indicated no issues with noise exposure exceeding allowable limits on any of the job positions sampled. Anyone can request a copy of those reports from MSHA by submitting a PIA (Public Information Act) request. They have offered to hire Vibra-Tech to do an initial noise study on the site and will have them continue to do so every 6 months until the mining is done. If they remain in compliance, they will do a study annually.

In response to the dust complaints, they will do a three-layer buffer around the Murphy Property. They will also plant and maintain Sorghum-Sudan grass within the 200' setback area along Oakland Road along the North and West sides of the Murphy Property until it reaches Map 9 Parcel 107 Lot 3 to further mediate the dust problem. The grass will be harvested and provide local farmers food for their cattle.

They have also agreed to erect a 6' privacy fence that would prevent pets or small children to enter the site as Ms. Haggerty requested. Along the fence they will also plant a row of trees 12' on center. The fence will go along the north side of the Haggerty property. A privacy fence and 3 rows of trees staggered will also conceal the two ditch areas currently visible along Cherry Lane.

These measures were taken to permit the peaceful use and enjoyment of other property owners in the neighborhood. (Exhibit 7) was the expert witness in real estate appraisals report that there will be no effect on neighboring real estate property.

The two entrances located on Cherry Lane will be closed off from traffic, except to allow the owner entry to his property as he wishes.

The project has been in existence for over 20 years. All the homes have been erected since the mine began. This is proof that the mine does not impede the normal and orderly development of neighboring properties.

The project will not overburden existing schools, police and water and sewerage; however, it may help fire departments from running out of water needed for their tanker trucks.

The State roads are equipped for truck traffic and they are not increasing their workload only the mining area. And the fence deters trespassers.

In 2018 they built a baffle to prevent silt from leaking back into the ditch. However, there is no Critical Area on the site.

Mike Davidson agreed to complete mining Phase 3 and reclaim it within 24 months of receiving all approvals to begin. He will have the County inspect the site and decide the day to start counting.

Chairman Mann asked if anyone else wanted to do a closing argument on behalf of the applicant. Mr. Davidson summarized what Ms. Ogletree stated.

Chairman Mann gave Mr. Mowell the opportunity to give his closing statement.

Mr. Mowell stated that he represented the Kent County Planning Commission for 37 years. He also represents several municipalities in Kent and Queen Anne's County. He stated that he is constantly amazed at how hard the Boards, made up of citizens, study and how it all works, and he complimented the members. He stated that zoning was a difficult topic. It's about keeping uses separated that aren't compatible. Twenty years ago, they would have never thought they would have to create permitting for solar panels for instance. You can't list every use in every district; therefore, the SUE and Variance were created. He mentioned the Peoples Court vs. Loyola of 2008 states the SUE offers flexibility to the Comprehensive Zoning Regulations by serving as a middle ground between permitted uses and prohibited uses in a particular zone. They are to be decided on a case by case basis by an Administrative Zoning body according to legislatively designed standards. Surface Mining became a concern for Caroline County and in 2017 the Comprehensive Plan was amended. The Comprehensive Plan is the constitution, whereas, the Zoning Regulations are the laws further defining the constitution.

Bramble is asking for a SUE for a Phase 3 expansion of a previously approved sand and gravel excavation business. The expansion consists of 38 acres of land on 3 parcels. At least one of the parcels were purchased after the Mineral Extraction update in the Comprehensive plan. Additionally, §175-145 states that any modification, enlargement or extension of a special use exception shall be undertaken only if approved by the Board in the same manner as for an original application.

Mr. Mowell stated that neither the general condition nor the specific conditions set out in the County Code have been met. He stated that two of the approved building sites are now to be used for mineral extraction. He said because a reclamation plan was not submitted, they must assume the two lots will not go back to residential use.

Mr. Mowell added that the residents, who are occupying their land as single-family lots, which is considered a right in the (R) Rural District, are opposed to the project. In this case a permitted use is protected over a Special Use.

David A. Bramble, Inc is asking for a 50% increase in area. This is not what was there in 1997 nor what was there in 2018. The project should be considered the same as a new and separate application from the Phase 1 and 2 approvals.

Mr. Mowell stated that if the application is approved, they would like to ensure that:

- The 24-month completion of both the mining and reclamation of Phase 3 once the work begins;
- That the promised conditions be included in the requirements of the approval.

However, Mr. Mowell believes the application should be denied.

Ms. Ogletree asked if she could do a quick rebuttal of Mr. Mowell's testimony. Mr. Merriken allowed her to rebut only what Mr. Mowell has just stated.

Ms. Ogletree referred back to the Loyola case, quoting, "The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur."

Ms. Ogletree agreed that there are issues that must be addressed, such as noise, dust, and safety. The applicant has agreed to address them with buffers, fencing, plantings and taking care of site issues that might arise. Ms. Ogletree stated that there was a reclamation plan included in the site plans that were submitted. Every requirement of the Special Use Exception is included in the package. The evidence is there. All of this must be approved by State Surface Mining and they also require a bond.

Chairman Mann asked for Mr. Keith's closing argument. Mr. Keith stated that he lives at 15200 Westbridge Court to the North of the mine. He suggested that the citizens have a difficult time finding adequate counsel to represent them. He stated that the community was ambushed with the expansion two years ago. They were not prepared for the modest project of 25 years to expand to a site working at its full potential. Therefore, the neighbors were unprepared to provide a good defense. Mr. Keith stated that he has read the code and he deduced that it leans to not approving the application. He stated that it is clear by how many people are against the expansion that this is the wrong area for such a project.

Chairman Mann interrupted Mr. Keith to explain that what he is hearing is testimony and the Board could not hear new testimony. Mr. Keith stated that he is making an argument, however, he is not a lawyer. Ms. Hardy suggested that the Board ask Mr. Merriken for his advice so they do not get into hot water by taking new testimony.

Mr. Merriken encouraged Mr. Keith to give legal argument on what testimony was already given rather than providing new testimony. He explained that they do want to hear from him, but he must

be careful not to give new testimony. He agreed that it may be difficult for a lay person to understand the difference.

Mr. Keith understood and desired to continue. He noted that it was said that the pit follows the Maryland mining rules and regulations. He believes the State does not put a finger on the scale of this decision, it is strictly local. It was said that land values won't go down, but he believed that statement is subjective. Not being a lawyer and not having one to represent him, he decided to stop there.

Mr. Tom Murphy questioned the legality of the rebuttal that Ms. Ogletree was provided. On October of 1993 his wife and he moved to Caroline County to create a home for their family. All was fine until the Phase 2 expansion. At the August 18, 2020 hearing everyone that supported and those that opposed the application provided testimony. The applicant's side was comprised of the Mining Operator, the Attorney, the Appraiser, all who are financially benefitting from continuing the operation. In contrast those opposing the Phase 3 expansion are neighboring homeowners. The common theme from those opposing the application was loud noise, excessive dust and increasing truck traffic, work hours not followed, promises from the Mining Operator to fix problems with no follow up, and property values decreasing. Mr. Murphy stated that it is in the decision of the Board members whether the value of sand mining is greater than the value of life for the surrounding community. He asked the Board to deny the Phase 3 application.

Ms. Dadds asked if anyone on the phone calls had any closing arguments. Ms. Myers stated that she agreed with the opposing testimony. Everyone being heard, Chairman Mann closed this portion of the meeting for deliberation.

DELIBERATION

Ms. Hardy stated that there are two very compelling opposing sides. They must move forward in any capacity. The purchase of additional lots was strategic, and she questioned the logistics. She has a list of things that she would like to include in the conditions that will protect the neighbors. To Ms. Hardy it makes sense to finish what the mine owners have started but she doubts that this allows them to do additional area. Ms. Leavell had the same concerns.

Chairman Mann recalled hearing from Ms. Ogletree that before a permit or certificate is issued the lots must be combined and in the same owner's name. He stated that the lots were residential lots, and anyone is allowed to buy them. Those lots were bought to mine rather than to build a home. If the Board is bound to allow the operation, then they must do all they can do to protect the neighbors. The neighbors that are particularly affected by the operation are those on the Westbridge side and the Murphy's who live in the center of the operation. He listed his concerns:

- the lot line issue must be reconciled; and
- once they start mining the land must be mined and reclaimed within 24 months.

Ms. Dadds referred to §175-27.1-B.2 that states anyone who intends to engage in mineral extraction shall first submit a preliminary site plan application to be reviewed by the Planning Commission. The site plan must include any parcels that the applicant needs to consolidate so that the mining facility and all mining operations will be conducted on one parcel.

Ms. Hardy appreciated the clarification and understood that the Planning Commission is responsible for some of the review and approval. She heard Ms. Ogletree and Mr. Davidson offer solutions to many of the issues and they should be included in the decision, however, the community expressed frustration that the Mining Operator doesn't always follow through on set conditions. She proposed the following conditions:

- They commit to the 24-month reclamation;
- The privacy fence should be erected;
- Do what they can to minimize the noise;
- Ensure the dust does not increase; and
- She would like there to be consequences for not complying with the set conditions. She looked up a few civil infractions that they can impose on them provided they do not follow through on any of the conditions.

She stated that the worst thing in the world is for a community to feel that the County does not follow through on their decisions or that their voice is not heard or that their concerns don't matter.

Chairman Mann appreciated that Ms. Hardy found consequences for the applicant should they not comply with the conditions the Board requires. He added that he also understands Mr. Bramble and Mr. Davidson cannot be at the site all the time; that they must rely on others at times that don't have the same commitment as the owner and operator.

Ms. Ogletree offered to provide an illustration of what they propose to do to mitigate the problems. This document will be included in the permanent file as the Screening Exhibit. Chairman Mann allowed the document to be entered into the record.

Dani Walton pointed out the 6' privacy fence along the north of and between Ms. Hawthorne's property and parcel 7 lot 3. They will also plant a row of trees 12' on center. They will continue with a page wire fence between the northern property line of parcel 106 and the southern lot line of parcel 86. The fence will continue on to Long Marsh Ditch.

The two farm entrances on each side of Parcel 107, lot 1 will not be used for mining purposes. The two ditch openings on Cherry Lane will be screened with a 6' privacy fence and 3 rows of trees staggered 12' on center.

Ms. Walton next referred to parcel 97 which is owned by the Murphy's and located in the center of the operation. They will plant 3 rows of trees staggered 12' on center to fully screen the northern property line and a quarter of the southwest property line.

Sorghum Sudan grass will be planted within the 200' setback beginning at parcel 18 along the north and west property lines of parcel 97 and continuing to the eastern most farm access lane from Cherry Lane. The Sorghum grass will be cut annually and harvested and used for cow feed.

Mr. Mann asked when they will install the proposed buffers. Mr. Davidson stated they will install it once they have all approvals to move forward with the mining. This is when the Zoning Certificate is released. They will invite the County Codes Enforcement Officer there to verify the

conditions were met with the fencing and the trees. The grass will be planted the following April/May. The proposed trees are 6' tall white pines.

Ms. Dadds corrected Mr. Davidson. The Zoning Certificate will not be released until all the conditions are met which includes the fencing and planting.

Mr. Davidson stated that they will have a noise consultant do a study at the beginning of the Phase 3 operation until Phase 3 is reclaimed. Ms. Ogletree had contacted Vibra-tech to do a current study and then biannually if they aren't in compliance. This will be reduced to annual visits if they remain in compliance. The reports will be submitted to the Planning and Codes Department and this will continue as long as the mine is active. The dust measurements will be left to MSHA.

Ms. Ogletree asked the neighbors to please call the office, Goldsboro Materials, if they have any issues so they can be resolved. She reiterated that the lots must also be combined to be one parcel with one owner before the Zoning Certificate is released. Ms. Leavell asked when did Mr. Davidson hope to start. He said that it could be March 2021, when they would begin the fence and plantings.

Ms. Hardy asked to discuss the buffer line to the North of the property. Ms. Ogletree stated that they are asking that the 200' setback be reduced to 101'. Ms. Hardy asked who a reduced setback would affect? The applicant named the parcel owners who approved of the project and signed a paper in favor of the application.

Chairman Mann was not in favor of the setback. He believes the setbacks were put into place for a good reason and he felt that approving for it to be reduced by half was extreme. He understood their desire to get all the product they can from a single lot rather than moving to a second site. Chairman Mann was concerned about the safety of the drivers with 7200 lb. loads traveling in and out of the site along the area. He hasn't seen any evidence that this was safe.

Mr. Callahan explained that the site plan is completed by a licensed engineer. With his signature he deems the project safe and sound. This analogy is incorporated into the approval of the plan. Mr. Davidson added that under MSHA rules they would have to build a 6' tall berm to prevent trucks from slipping into the mine. They currently run 30'-50' from the mine, but there are berms protecting them.

Ms. Leavell is concerned that if they are not approved for a variance to the setback they will be back before them for yet another expansion. Mr. Mann suggested they all take a 5-minute break. The meeting recessed at 7:59 PM and reconvened at 8:05 PM.

Upon returning to the meeting the Board agreed to go through the requirements one by one. First Chairman Mann read the Staff Report into the record.

Chairman Mann opened with the discussion of §175-127.

§175-127 – MINIMUM REQUIRED STANDARDS FOR A MINERAL EXTRACTION FACILITY

Except for 27.3, 27.5 and 27.6 the remaining requirements under this section is a function of the Planning Commission and the conditions can be found in their staff report.

§175-27.3 The applicant has applied for a Special Use Exception (Exhibit 3). (Exhibit 14) is the list of notified property owners within 1000’.

§175-27.5 Chairman Mann read the minimum required standards for an extraction facility. G. allows for a modification of the established setbacks on a case by case basis by the Board of Zoning Appeals. Chairman Mann was hesitant to approve the applicants request to reduce the buffer along the haul road from 200’ to 101’ but after hearing a berm is required to protect the trucks as they travel alongside the pit, he felt comfortable approving their request. Ms. Leavell concurred.

§175-27.6 No studies have been required by the Zoning Administrator or Public Works Director to date.

§175-27.7 A Zoning Certificate is a condition of approval.

§175-27.8, 9 Chairman Mann read the conditions of this sections.

§175-26 PERFORMANCE STANDARDS FOR INDUSTRIAL USES.

Review and approval of the conditions in this section is a function of the Planning Commission.

ARTICLE 16 SPECIAL USE EXCEPTION

- §175-142 (1) An application was submitted. (Exhibit 3).
(2) A duly advertised public hearing was held. (Exhibit 1).
(3)

A – Ms. Leavell heard testimony that the noise and the dust levels complied with MSHA and County Planning inspections. Extending and heightening the fence with a privacy fence will prevent trespassing. The operation will not create additional traffic.

B – The applicant provided an expert appraiser report to support that the operation will not impair property values in the neighborhood. There were those that disagreed, but Ms. Hardy added that there was no substantiation from the opponent’s side.

C – Chairman Mann heard testimony that showed two homes have recently been built next to the mine, showing there is no impediment to the normal and orderly development and improvement of the surrounding areas.

D – Phase 3 will have no impact on schools. The area is secured and should not impact police. They are a source of water for fighting fires if necessary. The Army Corp of Engineers inspected the drainage ditches and Bramble made all necessary adjustments. There is no increased traffic proposed, therefore the affects to the road will not change.

E – Ms. Hardy stated that they are asking to do what they have already been approved to do. Ms. Leavell stated that they have gone above and beyond by contacting the Army Corp of Engineers to locate wetland areas.

F – There was nothing to address because the property is not in the Critical Area. Ms. Leavell added that they did build a baffle to prevent sediment from leaching out.

§175-143 – The requested use of a mineral extraction facility is designated as a permitted use subject to a Special Use Exception in the (R) Rural Zone according to 175 Attachment 3:3.

§175-144 – see §175-27.3B - the applicant shall have 18 months from final site plan approval to obtain a zoning certificate and/or building permit and to commence development before the Special Use Exception shall become void.

The Board discussed the conditions of approval:

- Mr. Mann entered the “Screening Exhibit” into the record as Applicant’s Exhibit 2 for a visual of the following conditions as written in red. This includes erecting privacy fencing and page fencing in designated areas and planting trees and sorghum grasses in specific areas.
- The two access roads from Cherry Lane is prohibited from being used by any heavy trucks/equipment or vehicles used for mining.
- Hours of operation for Phase 1 & 2 will remain unchanged – On weekdays they will prepare for work beginning at 6 AM, they may start loading trucks at 7 AM, work will cease at 5 PM, and the employees should be gone by 5:30 PM; On Saturdays they will prepare for work at 6:30 AM, load trucks at 7 AM and work will commence and employees will have left the property by noon.
- However, mining of the area depicted on the site plan as “Mining Area West” is not permitted on Saturday’s.
- The applicant will contract with Vibra-tech to do an initial noise study and then a study every six months until Phase 3 is complete. Should they comply the first year; then they may decrease the study requirement to annually. The reports will be submitted to the Planning & Codes Department.
- The 8-acre “Mining Area West” will be mined and reclaimed within 24 months of receiving the Zoning Certificate.
- File a lot line revision plat and it must be signed and recorded into land records prior to applying for any Building Permit and/or Zoning Certificate.
- Obtain a final site plan approval from the Caroline County Planning Commission.
- A building permit and or zoning certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements to conform with State and local public laws.
- Ms. Hardy added that the County Codes Enforcement Officer will inspect the site twice a year for noise, dust and general conditions.

Motion: Ms. Leavell motioned to approve the application with the conditions as listed above.

Second: Ms. Hardy seconded the motion.

In Favor: The motion was approved unanimously (3-0).

Motion: Ms. Leavell motioned to approve the request to reduce the setback along the haul road from 200' to 101'.

Second: Ms. Hardy seconded the motion.

In Favor: The motion was approved unanimously (3-0).

ADJOURNMENT

Motion: Ms. Hardy made a motion to adjourn the meeting at 9:21 PM.

Second: Ms. Leavell seconded the motion.

In Favor: The motion was approved unanimously (3-0).

The meeting was adjourned at 9:21 PM.



Minutes prepared by Melanie Smith