

**Meeting Minutes
Board of Zoning Appeals
Caroline County, MD**

DATE: Tuesday, June 20, 2023

PLACE: Health & Public Services Building
403 S. 7th Street, Room 111
Denton, Maryland 21629

BOARD MEMBERS: Karen Hardy, Chair
Benjamin Butler, Vice-Chair
Michael Mann, Sr., Member

OTHERS PRESENT: Patrick Thomas, Board Attorney
Crystal Dadds, Assistant Codes Director
Matthew Kaczynski, Development Review Coordinator
Catherine McCulley, Board Administrative Assistant

Chair Hardy opened the meeting at 6:00 pm.

Ms. Hardy read the following section of the Notice of Public Hearing:

Application No. 23-0032: A request by **Matthew Weeman** for a **Variance and Special Use Exception** in accordance with Zoning Chapter 175, Article XVI, Article XVII and Section 175-13 of the Code of Public Local Laws of Caroline County, Maryland to establish a Veterinary Hospital/Clinic within an existing building which is located closer to the property lines than the minimum required setbacks. Said property is located at 10092 New Bridge Road, Denton, Maryland and is further described as Tax Map 102, Grid 22, Parcel 332, Lot 3.

WEEMAN – VARIANCE AND SPECIAL USE EXCEPTION NO. 23-0032

Ms. Dadds read the following exhibits into the record:

- 1 Notice of Public Hearing published in the Times Record on 6.7.23 and 6.14.23
- 2 Staff Report
- 3 Application, Special Use Exception
- 4 Application, Variance
- 5 Site Plan
- 6 Floor Plan, Current
- 7 Floor Plan, Proposed
- 8 Comprehensive Plan Excerpt
- 9 Applicant Photos of Property
- 10 Other Caroline County Vet Clinic Locations
- 11 SDAT Real Property Data Sheet & Tax Map

- 12 Aerial Photograph
- 13 MDOT Entrance Approval Letter
- 14 Adjoining Property Owner Affidavit
- 15 Sign Posting Affidavit & Photographs of Property
- 16 Applicant Notice

Ms. Dadds stated no additional verbal or written testimony was received.

Mr. Kaczynski summarized the Staff Report (Exhibit 2): The applicant, Dr. Matthew Weeman, has requested a Special Use Exception Approval for a Veterinary Hospital or Clinic and a variance to the setback requirements associated with the proposed use. The property is located on Tax Map 102, Grid 22, Parcel 332, Lot 3, also known as 10092 New Bridge Road (Maryland Route 328). The applicant plans to convert the existing structure, which has historically been used as a church, into the Veterinary Hospital or Clinic and to enclose a portion of the yard with a 6-foot vinyl privacy fence to be used in conjunction with the clinic.

The proposed use of a Veterinary Hospital or Clinic requires a Site Plan Approval and a Special Use Exception Approval. Upon review, Staff has determined that the proposed use is a Minor Site Plan. If the Board of Zoning Appeals grants the Special Use Exception and Variance Applications, the applicant will make any recommended changes and submit the final site plan to the Planning Director for review and approval.

Specifics for Veterinary Hospital or Clinics include additional setback requirements which are greater than the Zoning District setback requirements. The Table of Use Regulations found in the County Code requires a 100-foot setback for enclosed areas and a 200-foot setback for open areas. The current facility does not comply with these setback requirements as the existing structure does not meet the 100-foot setback and the proposed fenced area does not meet the 200-foot setback. The County Code does not specifically call out the reasoning for these setback requirements, but it is the staff's opinion that these setbacks were intended to be for facilities with kennels. The applicant has no plans for any indoor/outdoor runs and/or kennels. Staff believe this use should be approved as submitted.

The Board had no questions for Mr. Kaczynski.

Ms. Hardy administered the oath to Dr. Matthew Weeman (12310 Bowen Drive, Greensboro, MD), Mr. Harry Smith, P.L.S. (10644 Big Stone Road, Millington, MD), and Cynthia Nickerson (10110 New Bridge Road, Denton, MD).

Mr. Smith stated Dr. Weeman wanted to purchase this property for a vet clinic and is not proposing to have any outside kennels. The property is zoned R-Rural and its existing use was as a church. A veterinary clinic does require a special use exception and a 100- and/or 200-foot setback.

Dr. Weeman testified that he was interested in this property because of the open floor plan. This will allow him to have the needed walls and plumbing constructed without exterior changes. However, he did not realize the building did not meet the setback requirements. He is committed to not changing the external structure, so neighbors need not worry about any extensions of the building which would encroach on their property lines. The proposed floor plan illustrates the building's primary use which will be for small animal veterinary medicine. This will not be a facility for bringing large animals, and it will not be creating any source of noise. Dogs do bark, but there is no intention to have dogs stay

overnight or having dozens of dogs in the clinic at the same time. There are 8 exam rooms, and it would be unlikely to be utilizing all 8 simultaneously. There are four dog cages for keeping large dogs (indicating the lower left area on proposed floor plan) but that is only when they are there for surgery. Dogs will not be staying overnight. Hours of operation will be approximately 7am – 7pm. There is a fence proposed in the rear of the building with an access door leading out to that area from the inside of the building. There will also be a dumpster that will be enclosed behind the fence. The height of the fence is negotiable, and he wants the neighbors to be happy with the height. The fenced area will be used for a potty break area to keep the dogs safe since it is located on a busy road should they accidentally get loose. This also keeps an animal from encroaching on the neighboring property. There will be no runs or kennels outside and an employee will be with the animal at all times.

Ms. Hardy noted that currently the plan shows a 6-foot vinyl fence and asked if that was up for negotiation. Dr. Weeman concurred and said it made sense to put the fence near the parking area so that a truck could drive up to empty the dumpster. Mr. Smith remarked that the dumpster would be put on an existing impervious surface so that additional impervious surface would not be added.

Dr. Weeman said he wanted to answer any questions which the audience had.

Ms. Nickerson asked if the fence would be surrounding the whole building. Dr. Weeman used the site plan projected on the screen to show the fence location on the left side and rear of the building. There are five mature trees between the fence location and the Nickerson's property. The fencing will not be extending to the very back end of the lot. If the fencing needs to go back further, he was willing to move it. He plans to replace the ADA ramp because he doesn't feel the existing one is serving the purpose well.

Mr. Smith addressed the need for relief from the setback requirements. On the right side, the setback is 89.6 feet from the property line. On the left, it is 62 feet from the property line. The building and property line exist, and nothing will be added to extend the building out.

Dr. Weeman said the fence would stop at the interior of the existing parking lot. He was not planning on any changes on the Nickerson's side of the property. He referred to Exhibit 10, showing other vet clinics in Caroline County which are closer than 100 feet to neighboring properties. He thought each of these clinics had great relationships with their neighbors. Mr. Smith commented that he did rough measurements for those clinics, and neither was further than 60 feet from adjacent properties. In fact, the Denton clinic is 33 feet and the other in Ridgely is about 45-48 feet from property lines. Dr. Weeman stated that if there are not complaints coming in from these facilities, then what he is proposing is very similar. He felt people need access to more vet clinics in the county. This property is on a very busy road and State Highway did not see any issues with traffic. It is utilizable for the proposed purposes and close to the 404 corridor. He wants to make modern veterinary care affordable and accessible for the long term in Caroline County.

Mr. Smith referred to Exhibit 8, the portion of the Caroline County Comprehensive Plan which supports maintaining and enhancing existing and new businesses. He feels the applicant's request is unique because the property is now vacant which will be occupied and (unlike the church) paying taxes. The Comprehensive Plan also encourages economic development that strengthens and supports agriculture. Dr. Weeman's clinic focuses on small animals, but he also treats farm animals and goes to the farms for this care. He hopes the new clinic will allow him to take on associate veterinarians. Dr.

Weeman asked if Ms. Nickerson had any questions about the fence. She said she did not but was just curious about the “privacy fence.”

Ms. Hardy asked Ms. Dadds about fence regulations. Ms. Dadds responded that a fence can be up to 8 feet on the side and in the rear. Ms. Hardy said the fence height sounded about right. Dr. Weeman said a fence shorter than 6 feet might have worked, but for the sake of the neighbors he wanted the added coverage.

Mr. Smith contended that, for the area variance, the applicant’s case was somewhat a special condition as the building was already existing and no other veterinary clinic in the county adheres to the 100-foot setback. The condition is not a result of any action of the applicant. The granting of the variance will be in harmony with the general purpose and intent of the zoning chapter and will not be injurious to adjacent property owners (whom are here). It does not result from the conduct of the applicant or the applicant’s predecessors. It was constructed in accordance with the laws, constructed for a religious facility, and Dr. Weeman just wants to convert it. It is the minimum necessary to afford the relief.

Mr. Butler inquired when the church was built. Chair Hardy referred to the application, and said it was 1989.

Ms. Hardy asked Mr. Kaczynski if he had anything to add. He said no, other than to reiterate that the setback requirements in the Code are not clearly specified as to what they’re supposed to mean. But staff determined that the setbacks were intended for kennels.

Mr. Mann remarked that as a church, it met all the required setbacks, and it’s only because of the change in use that a variance is needed. Ms. Dadds confirmed this. Ms. Hardy commented that the setbacks had “generically” to do with kennels, and this is not what is being done. Mr. Mann believed no overnight kennel operations would happen, and the fenced area would provide a place for the dogs to be walked and to relieve themselves.

Dr. Weeman assured the Board no animals would be left outside. Mr. Smith asked if Planning and Codes staff was aware of any complaints lodged against other vet clinics in the county.

Mr. Mann asserted that Dr. Shriver does not have a fenced area to walk dogs. He does have an indoor area for the animals since you cannot let the animals roam throughout the building. When his dog was being treated by Dr. Shriver, the dog stayed at home and was brought to Dr. Shriver for several days in a row for treatment. This was because no one staffed the clinic at nighttime.

Ms. Dadds said no complaints had been reported toward Dr. Gardner, who is in their jurisdiction. She could not comment on others who were out of their jurisdiction.

Ms. Hardy invited the applicant add anything to his presentation. Dr. Weeman said he wanted to answer any questions anyone had.

Mr. Butler asked for an estimate for how many people would be coming in and out of the parking lot per hour.

Dr. Weeman said it is hard to give exact numbers but the absolute maximum would be 16 patients per hour. The most staff he could envision having was 20, and the building had the capacity to do that but it would be big for this region.

Ms. Hardy asked if he planned to be there every night. Dr. Weeman responded that as the business grows, he could imagine being there every night.

Ms. Hardy asked what he thought “regular hours” would be. He felt 7 am to 7 pm would allow flexibility for his staff. He did not envision having any small animal emergency hours, and large animal emergencies are almost always done on site, not in the clinic.

Mr. Butler asked if the hours would be Monday through Saturday. Dr. Weeman replied that Saturday hours would most likely be 7 am to noon. He repeated that there is no intention to turn the clinic into an emergency facility that’s operating at all hours.

Chair Hardy announced the Board would go into Deliberation, starting with the Special Use Exception.

DELIBERATION

§175-142 A(1) A written application for a special use exception has been submitted indicating the specific special use exception being sought and stating the grounds on which it is requested. The Board cited the application as Exhibit 3.

§175-142 A(2) A duly advertised public hearing has been held as prescribed by § 175-179 of this chapter. The Notice of Public Hearing was advertised on 6/7/2023 and 6/14/2023.

§175-142 A(3)(a) Will not be detrimental to or endanger the public health, safety or general welfare. Ms. Hardy felt that a vet clinic would be an asset to the community' and was an appropriate use for the former church, noting that it was unlikely someone would convert the large 5,000+ square foot space into a house. Mr. Mann and Mr. Butler agreed. Mr. Mann added the location provides safe entrance and exit from the highway, and Dr. Weeman has shown much consideration for his neighbors.

§175-142 A(3)(b) Will not be injurious to the peaceful use and enjoyment of other property in the neighborhood and will not substantially diminish or impair property values in the neighborhood. Ms. Hardy maintained that having the property used rather than sitting vacant is a benefit to the community. Dr. Weeman’s consideration for his neighbors is also beneficial. Having a veterinary clinic will bring economic benefits to the community.

§175-142 A(3)(c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. The Board did not see the project as impeding surrounding properties. A veterinary clinic is a permitted use in the district, and the County has few such clinics. Mr. Mann pointed out that one veterinarian is nearing retirement age and opening a new office would be positive for the community.

§175-142 A(3)(d) Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements. As the clinic will be on private water and sewer, it will have a minimal impact on public facilities. The chance that police or fire personnel would be called to the scene is no different from the same happening with the church. Mr. Mann noted that if there were any storm drainage

issues with the church, it would have already presented itself as a problem and the Board was not aware of any.

§175-142 A(3)(e) Conforms in all other respects to this chapter and especially to the applicable regulations of the zoning district in which it is to be located. The Board determined this use to be consistent with the Zoning in this district.

§175-142 A(3)(f) Will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area and that the granting of the special use exception will be in accordance with the "Critical Area Program for Caroline County," the critical area law and this chapter. The property is not located in the Critical Area therefore, the Board did not address this criteria.

Motion: Mr. Butler made a motion to approve the Special Use Exception with the following conditions:

- No overnight stays for animals.
- Hours of operation will be Monday through Saturday, 7 am – 7 pm.
- The Applicant must receive Final Site Plan Approval from the Planning Director prior to the issuance of any Building Permit and/or Zoning Certificate associated with the project.
- 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.
- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

Second: Ms. Hardy seconded the motion.

Vote: The vote was unanimous (3:0).

The Board deliberated the Variance.

§175-152 D(1) A written application for a variance has been submitted in accordance with § 175-162 of this chapter. The Board cited the Variance Application as Exhibit 4.

§175-152 D(2) A duly advertised public hearing has been held as prescribed by § 175-179 of this chapter. The Notice of Public Hearing was advertised on 6/7/23 and 6/14/23.

§175-152 B(1) Such difficulty is the result of special conditions and circumstances not generally shared by other properties in the same zoning district or in the same neighborhood and is peculiar to the property, structure or building for which the variance is requested; The Board stated that the strict application of the required setbacks would render the property unusable for the proposed clinic. The Board agreed that the required setbacks were geared more towards kennel operations and kennels were not proposed as part of this application. Without the variance, the property would not be purchased and put into use. The structure, being over 5,000 square feet, is a special condition not shared by many properties.

§175-152 B(2) and §175-152 D(3)(b) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest; The Board reported that the church, constructed in 1989, previously met all zoning requirements. Those requirements no longer fit the new proposed use. The difficulty is not a result of conduct of the applicant as he did not construct the church.

§175-152 B(3) The financial hardship to the applicant as the result of the strict enforcement of the zoning regulation(s) in question may be considered by the Board only when such financial hardship is severe and only when and if the above conditions have been found to exist; the financial hardship alone cannot serve as a basis for granting an area variance. The Board observed no financial hardship was indicated.

§175-152 D(3)(a) The granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjacent property, the character of the neighborhood or the public health, safety or welfare. Mr. Mann remarked that the only difference between the church and the new use would be the fence around one area and the sign saying it was a veterinary clinic. Ms. Hardy noted that no one attended the hearing to speak against it.

§175-152 D(3)(c) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to this chapter. The Board agreed this situation was so rare as to not warrant a change to the zoning chapter.

§175-152 D(3)(d) The variance granted is the minimum necessary to afford relief. The Board determined the variance was the minimum needed to afford relief. There are no proposed additions to the building or changes to the property; this is just a request to use the building in a different capacity.

§175-152 D(3)(e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area, and that the granting of the variance will be compatible with the Critical Area Program for Caroline County, the Critical Area Law and this chapter. The property is not in the Critical Area.

Motion: Mr. Butler made a motion to approve the Variance with the following conditions:

- No kennels or overnight stays for animals.
- Hours of operation will be Monday through Saturday, 7 am – 7 pm.
- The Applicant must receive Final Site Plan Approval from the Planning Director prior to the issuance of any Building Permit and/or Zoning Certificate associated with the project.
- 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.
- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

Second: Ms. Hardy seconded the motion.

Vote: The vote was unanimous (3:0).

At 6:57 pm, the Board briefly recessed.

Chair Hardy resumed the hearing at 7:05 pm and read the following from the Notice of Public Hearing:

Application No. 22-0017: A request by **Sustainable Land Use, LLC** for a **Special Use Exception** in accordance with Zoning Chapter 175, Article XVI, §175-26 and §175-27 of the Code of Public Local Laws of Caroline County, Maryland for the Phase 8 expansion of an existing mineral extraction facility (26.75 acres) and a reduction of the 200-foot setback in certain areas. Said property is located at 15890 Oakland Rd, Henderson, Maryland and is further described as Tax Map 9, Grid 5, Parcels 4 and 103 and is owned by Southstar Limited Partnership.

Ms. Dadds read the following exhibits into the record:

- 1 Notice of Public Hearing published in the Times Record on 6/7/23 and 6/14/23
- 2 Staff Report
- 3 Application
- 4 Narrative by Lane Engineering
- 5 Drainage Area Map
- 6 Mining Plans
- 7 Water & Sewer Application and Verification
- 8 Noise Impaction & Mitigation Analysis
- 9 Wells & Assoc. Memorandum re: traffic
- 10 SDAT Real Property Data Sheets and Tax Maps
- 11 Aerial Overlay
- 12 Aerial of Surrounding Area
- 13 Adjoining Property Owner Affidavit
- 14 Sign Posting Affidavit and Photos
- 15 Applicant Notice

THIRD PARTY EXHIBITS

- A Letter, William and Ann Collier

Mr. Kaczynski read the Staff Report (Exhibit 2):

The applicant, Sustainable Land Use, LLC, has requested a Special Use Exception for a Mineral Extraction Facility located at 15890 Oakland Road (Maryland Route 312) on Tax Map 6, Grid 24, Parcel 103, Lot 1 and Tax Map 9, Grid 5, Parcel 4; between Bridgetown and Baltimore Corner. The application involves an expansion of an existing sand, gravel and mineral extraction facility known as Bridgetown Mine. This application is for a proposed expansion of 26.75 acres, bringing the operation to a total of 358.83 acres. The development of this facility will include an additional wash plant and material stockpile areas north of the existing wash plant.

The current facility has been in operation since the Board of Zoning Appeals issued a Special Use Exception (SUE) Approval in 1994. Since that time, the facility has had multiple SUE Applications approved for expansions. The expansions were approved by the BZA in 1996, 1998, 1999, 2002, 2008 and 2014. The Applicant has outlined the BZA Approvals on Sheet G-102 of the plan set. The proposed wash plant shown on the site plan was originally proposed as part of the Phase VI expansion, approved by the BZA in December of 2008; however, this wash plant has not yet been established.

The proposed plans submitted for this application include five separate areas of expansion, labelled as Areas A-E. Area D does not conform to the 200-foot setback requirements found in § 175-27.5 of the Public Local Laws of Caroline County. Setbacks established in this section of Code may be modified on a case-by-case basis based on the facts and circumstances of the proposed extraction facility. These setback modifications must be reviewed by the Zoning Administrator and/or Planning Commission and a recommendation made to the Board of Zoning Appeals as part of the Special Use Exception process. It should be noted that the applicant has submitted a Noise Impact & Mitigation Analysis regarding the proposed expansion given the close proximity to adjacent residential structures.

The Planning Commission held a public meeting on April 12th to review the applicant's Preliminary Site Plan Application. Planning Commission approved the Preliminary Site Plan and recommended that the applicant continue moving forward with their Special Use Exception Application to the Board of Zoning Appeals (BZA). It should be noted that the Planning Commission had a discussion with the applicant about Area D not meeting the required 200-foot setback; however, they did not make any recommendations regarding the setback modification request. The Planning Commission felt the BZA should give the adjacent property owners the opportunity to discuss this setback option and provide any input as part of the public notice requirements of the Special Use Exception Application.

Mr. Kaczynski emphasized that the Planning Commission did not make a recommendation regarding the project's not meeting the setback requirement in Area D. The Planning Commission advised that the public hearing would offer an opportunity for neighbors to discuss this and provide input. In their April 12th meeting, the Planning Commission did grant preliminary site plan approval. The Planning Commission reviewed standard site plan requirements which will be revisited for the final site plan approval. Nothing they discussed would impede the Board making their decision tonight. Staff reviewed the Noise Impact and Mitigation study and felt it was sufficient, but it is up to the Board to determine that tonight. The same entrance will be used, the hours remain the same, and the number of employees is the same.

Ms. Hardy administered the oath to individuals present and joining remotely:

- Marcia Wade, 23792 Bridgetown RD, Henderson, MD
- Melissa Wetzel, 15489 Oakland RD, Goldsboro, MD
- Cheryl Tomey, Lane Engineering, 311 Oakley ST, Cambridge, MD
- Sean Callahan, Lane Engineering, 117 Bay ST, Easton, MD

- Kyle Murray, 2410 Evergreen RD, Gambrills, MD
- Patricia Bowman, 23820 Bridgetown RD, Henderson, MD

Sean Callahan, Lane Engineering, began his presentation by citing information from Caroline County's 2018 Comprehensive Plan update, the Mineral Resources Element: "The extraction of mineral by mining is a basic and essential activity making an important contribution to the economic well-being of the State and nation." From the Implementation Strategies, he quoted that the county should "Encourage expansion of sites in areas of existing operations." He emphasized that this project would expand an existing operation as defined in the Comp Plan.

For background, he explained that in 2007, a wetland delineation of the entire property was completed by the U.S. Army Corps of Engineers (Corps) and MD Department of the Environment (MDE). They staked out these boundaries. He indicated (on the projected mining plans) the areas intended to be mined for this special use exception. These areas are the "remnants" of what was left after the 2007 wetland delineation and was substantially reduced from the initial application. This 26.75 acre application was reduced from the original 47.8 acres due to wetland encroachment. The remaining areas (A, B, C, D and E) have no nontidal wetland area impacts.

The only area not meeting the 200-foot setback is Area D, where the setback is 90-feet. They propose to extend the existing soil excavation line from the old Phase 7 straight through resulting in a 90-foot setback instead of 200 foot. Complying with the 200-foot setback would result in an odd shaped parcel that would strand a lot of material.

Mr. Callahan referred to Exhibit 6, page 3, where answers to all questions from §175-27 Mineral Extracting Facilities were provided. He added that there were about 4 years of material to be mined in this expansion.

Regarding traffic, trucks will use the same entrance as has been used (via Oakland Road) since 1994. No county roads enter the site. Mr. Callahan quoted from Exhibit 9: "Since this project will not change any of the prior approvals related to hours of operation, load limits, and the haul route, the traffic conditions will not change as a result of this requested approval." The State Highway Administration had no comment. A sound study (Exhibit 8) indicated decibel levels above 65 decibels were exceeded only in Area D. Exhibit 8, page 8, described the eight foot tall noise barrier to be built on top of a four foot tall earth berm.

Ms. Hardy asked what noise level was experienced at the property line before the fence construction. Mr. Callahan replied 75 decibels.

Kyle Murray spoke about operations. The goal for this expansion is to utilize all remaining materials before leaving the site. No changes in operations will be made. They have been transitioning to a new type of alarm for equipment backing up so that it is less loud and annoying. He noted the Collier letter and showed on the map that the setbacks adjacent to their property was a minimum of 200 feet.

Mr. Callahan addressed the special use exception conditions for approval:

§ 175-142 A(3)(a) *Will not be detrimental to or endanger the public health, safety or general welfare.* He noted the entrance with clear sight lines in all directions and the significant natural screening provided by woodlands surrounding the property.

§ 175-142 A(3)(b) *Will not be injurious to the peaceful use and enjoyment of other property in the neighborhood and will not substantially diminish or impair property values in the neighborhood.* He stated that properties adjacent to mines have continued to be bought and sold for values higher than properties not adjacent to mines.

§ 175-142 A(3)(c) *Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district.* He contended the project would have no effect on these.

§ 175-142 A(3)(d) *Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements.* He stated the mine will not increase the burden of any of the above. Some of the tax ditches have been mined through but they are working with the Soil Conservation District to maintain those ditches.

§ 175-142 A(3)(e) *Conforms in all other respects to this chapter and especially to the applicable regulations of the zoning district in which it is to be located.* The project complies to all regulations except for their request for the setback of one area to reduced from 200 feet to 90 feet.

§ 175-142 A(3)(f) *Will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area and that the granting of the special use exception will be in accordance with the "Critical Area Program for Caroline County," the critical area law and this chapter.* The project is not in the Critical Area, and Mr. Callahan reminded the Board that the project has been reduced by 20 acres in order to stay out of nontidal wetlands.

Ms. Dadds questioned whether they have a succession plan. Mr. Murray responded that larger areas will likely be cleaned up first. Mr. Murray stated that Area D should take no longer than 6 months to excavate.

Ms. Hardy invited the audience to ask questions.

Marcia Wade (joining by phone) remarked that she did not want the project any closer to her property. Bridgetown was zoned as a village and she did not want a massive industry in the village. Currently there is a steady stream of 6-wheelers from this facility and the Cherry Lane facility traveling the road all day long. She said their traffic study should look at 304 and 312 because there are blind spots, and the trucks move through very fast. She is also concerned that this operation is ruining the ecosystem and the water aquifer. She contended they are loud and are already over the decibel level even though they are not close to her.

Mr. Callahan asked where Ms. Wade's property was located. She responded 23792 Bridgetown Road.

Mr. Murray stated that they were not getting any closer to her property and the closest proposed mining area is ½ mile away. Ms. Hardy questioned if Ms. Wade heard that. Ms. Wade replied she guessed so, but the trucks were rolling through there, very loud, at all hours of the day and night. Ms. Hardy replied that they are only allowed to be operating at certain times, and it is an allowable use, and it has been operating for 30 years. She understands Ms. Wade is unhappy about it, but this hearing is only about the expansion to allow them to complete the operation. Ms. Wade's property is about 2,000 feet away from the expansion, and she will not hear more or see more. Ms. Hardy thanked Ms. Wade for her comments.

Patricia Bowman (23820 Bridgetown Road, Henderson, MD) told the Board she once wrote a letter of support for a previous owner (Mike Davidson) of the gravel pit. She along with her late husband owned dump trucks and hauled materials from this site for years. They were told they would never come close to her property if they wrote that letter of support. In 2008 she opposed the mine's expansion close to her property. However, it was approved, and they built a berm and a chain-link fence to minimize any concerns with her daycare. Now Ms. Bowman has a 5-year old autistic great-grandson who lives with her. She fears the possibility of her grandson getting thrown from his horse when the horse is spooked by trucks slamming tailgates or using jake brakes. Her grandson is extremely sensitive to noise. Once when hunters from Shrader's hunting club were shooting close to her property, a horse startled at the gunshot and broke her granddaughter's elbow. She asked Mr. Murray what the operations hours currently were. He responded that mining operations were not usually going on when the trucks left with their loads, and they should not be loading very early in the morning. She asked how close to the fence on her side they would be coming. Mr. Murray showed Ms. Bowman on the projected drawing that they would not be expanding near that fence. Ms. Bowman asked after the mining was complete, what would be done with the property.

Mr. Murray said the mined areas would become lakes because on the Eastern Shore, the water table is so high that water fills the mined areas easily. Other than stabilizing the slopes on the sides near Ms. Bowman's property, they will not return to that area.

Thomas Lord (15725 Oakland Road, Henderson, MD) complained about the frequent use of the jake brakes. Mr. Murray told Mr. Lord that any time he saw a truck leave the property and use the jake brakes, he should get the name of the truck and any numbering on the truck and call him to let him know.

Ms. Bowman asked about the slamming of tailgates. Mr. Murray replied that any tailgates she was hearing were likely off-road vehicles. Also, the plant would be moving further away from Ms. Bowman's property as they completed that mining.

Ms. Hardy asked if anyone had more questions. Ms. Dadds asked Mr. Murray what was going to happen to the manor house. He said it would not be torn down. Shrader's Hunting Club will continue to use it.

Mr. Mann asked what buffer separated the most southern portion from Route 312. Mr. Murray answered that it was now 90 feet. The berm would be built right against the tree line with the fence on top of the berm.

Mr. Murray commented that he was eager to complete the mining and the reclamation. He must continue paying on the bonds until the reclamation is concluded.

Mr. Mann asked what style of fence would be placed on the berm. Mr. Murray explained it would be a double-paneled wood fence with a fabric material between the layers that dampens the sound.

Thomas Lord inquired about the hunting club shooting over the water and whether lead ammunition was used. Mr. Mann and Ms. Hardy remarked that the Board could not address that issue and suggested he get in touch with MD Department of Natural Resources or the Shrader organization.

The Board closed the hearing for testimony and moved into deliberation.

DELIBERATION

§ 175-142 A(1) A written application for a special use exception has been submitted indicating the specific special use exception being sought and stating the grounds on which it is requested. The Board cited Exhibit 3.

§ 175-142 A(2) A duly advertised public hearing has been held as prescribed by § 175-179 of this chapter. The Board cited Exhibit 1.

§ 175-142 A(3)(a) Will not be detrimental to or endanger the public health, safety or general welfare. Ms. Hardy referenced Mr. Callahan's testimony regarding traffic not increasing in any way. She added that additional screening will be installed. Mr. Butler mentioned the neighbor's complaints about noises from slamming tailgates and use of jake brakes. Mr. Mann repeated Mr. Murray's commitment to address any complaints brought to his attention.

§ 175-142 A(3)(b) Will not be injurious to the peaceful use and enjoyment of other property in the neighborhood and will not substantially diminish or impair property values in the neighborhood. Ms. Hardy noted that properties continue to sell around mining operations and has not been proven to affect property values. Mr. Mann noted the operation has been in existence for over 30 years and the number of homes near the mining has increased in that time.

§ 175-142 A(3)(c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. Ms. Hardy felt substantial development had already been done and much of the remaining property contained wetlands which may impede development.

§ 175-142 A(3)(d) Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public

improvements. The Board agreed that no increasing burden on public infrastructure would result from this special use exception.

§ 175-142 A(3)(e) Conforms in all other respects to this chapter and especially to the Applicable regulations of the zoning district in which it is to be located. Ms. Hardy stated that the only noncompliance with zoning regulations was the setback reduction in Area D. The applicant will install sound reduction measures to remediate any impact to neighbors. The Board felt waiving the setback requirement for this area was worth the applicant being able to maximize the resources available for this operation.

The Board deliberated the specific regulations for mineral extraction and industrial uses.

§ 175-26(A) The maximum allowable plant size shall be 500,000 square feet, unless a special use exception is granted by the Board of Zoning Appeals. The application submitted indicated the plant size was far below the 500,000 square foot maximum.

§ 175-26(B) Employees. The total number of employees per plant shall not exceed 500, unless a special use exception is granted by the Board of Zoning Appeals. The number of on-site employees is approximately 5-10.

§ 175-27.1(A) A person who intends to engage in mineral extraction shall first submit a preliminary site plan application to the Department of Planning and Codes for review by the Planning Commission (for major mineral extraction facilities) and/or Zoning Administrator (for minor mineral extraction facilities).The Board received a staff report, and no additional concerns were expressed.

§ 175-27.3(B) Notwithstanding § 175-144, an applicant shall have 18 months from final site plan approval to obtain a zoning certificate and/or building permit and to commence development of the mining facility before such special use exception shall become null and void. The applicant did not request additional time to commence development.

§ 175-27.1(D) Special use exceptions granted by the Board shall run coextensively with a state-issued permit. The Board agreed the special use exception coincided with a state permit.

§ 175-27.3 Notice of the hearing before the Board of Zoning Appeals on the special use exception application shall be provided to the name and address on record with the State Department of Assessments and Taxation of every property owner whose property, or any portion thereof, is within 1,000 feet for major mineral extraction or 500 feet for minor mineral extraction of the boundary line of any properties on which mineral extraction operations or an accessory use or operations related to such mineral extraction operations are to be conducted The Board cited Exhibit 13.

§ 175-27.3(A). The Board of Zoning Appeals shall review the approved site plan as part of the application for special use exception and may make modifications or impose off-site improvements and/or additional requirements deemed necessary by the Board to satisfy the

special use exception criteria. (See §§ 175-142 and 175-143.) The Board stated the site plan had been reviewed and that they had no further requirements.

§ 175-27.3(D) Special use exceptions granted by the Board shall run coextensively with a state-issued permit. The Board addressed this above (§ 175-27.1(D)).

§175-27.5(A) No land disturbance, except for the purpose of constructing a buffer yard, e.g., berms and landscaping that has been approved by the Zoning Administrator (for minor mineral extraction) or the Planning Commission (for major mineral extraction), shall occur within 200 feet of the right-of-way (ROW) line of any public road. Absent an established right-of-way line, the distance shall be measured from the edge of the traveled portion of the roadway. The Board stated this was true, except for Area D for which the applicant has requested a waiver.

§175-27.5(B) No land disturbance, except for the purpose of constructing a buffer yard that has been approved by the Zoning Administrator or the Planning Commission, shall occur within 200 feet of a lot line regardless of the ownership of the parcels. Answered above.

§ 175-27.5 (F) Extraction sites in the Critical Area shall be referred to the Critical Area Commission for review. Any requirements established by the Critical Area Commission shall be included in the final site plan. The Board agreed this was not located in the Critical Area.

§ 175-27.5 (G) Setbacks established in this section may be modified on a case-by-case basis by the Board of Zoning Appeals as part of the special use exception process after recommendation by the Zoning Administrator and/or Planning Commission and based on the facts and circumstances of record. Ms. Hardy felt a waiver should be granted for the 350-foot area along Rt. 312 (Area D) in which the buffer did not meet the requirement as it was a small area that would still be buffered by an existing tree buffer. Mr. Mann stated that they would also be adding a berm and fence along this area. The letter submitted by a neighbor objecting to having a smaller setback was not going to be affected by it on their property.

Motion: Mr. Mann made a motion to approve the Special Use Exception for the mining operation to continue in Areas A, B, C, D and E with the following conditions:

- in Area D, an 8-foot fence will be erected to control noise level;
- continue all preexisting conditions imposed by previous Boards of Zoning Appeals as cited on Exhibit 6, page 2 of 17;
- the Applicant must obtain a final site plan approval from the Caroline County Planning Commission;
- the Applicant's proposed lot line revision plat must be signed and recorded into land records prior to applying for any Building Permit and/or Zoning Certificate;
- 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; and

- any conditions imposed by the Board will be enforced prior to the issuance of any Building Permit and/or Zoning Certificate associated with this application.

Second: Mr. Butler seconded the motion.

Vote: 3-0

The Board thanked everyone for attending the hearing.

Reviews and Approvals

The Board approved and accepted the May 16th minutes and Swann decision.


The meeting adjourned at 8:36 pm.

BOARD OF ZONING APPEALS

Karen Hardy, Chair



Karen Hardy, Chair



Minutes prepared by:
Catherine McCulley, Board Administrative Assistant