

Case No: S.E. 4647 Millville
Quarry/Bardon Inc.

Applicant: Bardon Inc. (Aggregate
Industries, Inc.)

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 6 - 2013

AN ORDINANCE to approve a Special Exception, a Variance for the Removal of Specimen Trees, and a Variance from building setback requirements.

WHEREAS, Application S.E. 4647 was filed to request permission to use approximately 456.75 acres of land in the R-R (Rural Residential) Zone, located on the south side of Accokeek Road (MD 373) and on the east side of McKendree Road, just southeast of the intersection of these roads, and west of Robert S. Crain Highway (US 301), Brandywine, Maryland, for Surface Mining; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff and Planning Board, which filed recommendations with the District Council; and

WHEREAS, a public hearing on the application was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were filed with and considered by the District Council; and

WHEREAS, the District Council issued an Order of Remand directing further evidence and testimony be taken by evidentiary hearing before the Zoning Hearing Examiner concerning the application; and

WHEREAS, after conducting an additional duly advertised public hearing pursuant to the direction of the District Council, the Zoning Hearing Examiner recommended approval of the special exception application, subject to certain conditions; and

WHEREAS, having reviewed the record, the District Council has determined that the application should be approved subject to modifications and additional conditions; and

WHEREAS, pursuant to Section 27-132 of the Zoning Ordinance and Section 25-204 of the Land Use Article, as the basis for this action the District Council adopts the findings of fact, conclusions, and decision of the Zoning Hearing Examiner in this case, with the following additions and modifications:

A. While the District Council agrees with the Examiner that this mining use should be approved, upon review of the entirety of the application, and pursuant to its authority conferred by the Zoning Ordinance, the Council has concluded from the record that modification of the decision and recommendation of the Zoning Hearing Examiner is needed in Condition 12 to ensure that the proposed conditional use satisfies the general purposes of the Zoning Ordinance recited in Section 27-102(a)(1) to “protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;” Section 27-102(a)(5) to provide “adequate light, air, and privacy;” Section 27-102(a)(6) to “promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;” Section 27-102(a)(11) to “lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the

transportation system for their planned functions;” and Section 27-317(a)(4) of the Zoning Ordinance, permitting approval of a Special Exception so long as the proposed use does not “adversely affect the health, safety, or welfare of residents or workers in the area.” The District Council finds persuasive the testimony in the record concerning noise emanating from the conveyor bridge as a result of the mining operations as it exits the property that is the subject of the proposed use to McKendree Road and associated right of way. (May 23, 2012, T. at 106-09, 110-15) Record evidence also reveals significant residential uses in various stages of development, to include Lakeview at Brandywine, as well as the Chaddsford and McKendree Village subdivisions planned for the area in the vicinity of the site of the proposed use. (May 23, 2012, T. at 15-17) Accordingly, the District Council hereby finds that, and pursuant to its authority recited in Section 27-317(a) (4) that the “use will not adversely affect the health, safety, or welfare of residents or workers in the area,” and Section 27-317(a)(5) that “the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood,” the District Council concludes that there is a need to make a one-hour modification to the start and end hours of mining operations proposed on the site on weekdays to 8:00 a.m. and 6:00 p.m., Monday through Friday, excluding federal holidays, and to limit the operations on weekends.

B. The District Council assigns great weight to the evidence within the record concerning the proposed use of belt conveyors to move raw materials mined from the site to the wash plant processing facility without the use of on-road trucks across McKendree Road. (May 23, 2012, T. at 10-11, 13, 14, 28-29, E. 77, 78) Evidence in the record supports the efficacy of the use of belt conveyor systems as an alternative approach to mining operations that is both beneficial for the public and efficient for the industry because materials may be moved without

releasing particulate matter into the air and surrounding properties and also minimizing waste. (May 23, 2012, T. at 28-29, 43-44) The Council is similarly persuaded by evidence contained in the application record concerning the approval by the Prince George's County Department of Public Works and Transportation of a stormwater concept plan associated with the proposed mining use on the property that includes the proposed belt conveyor system. (May 23, 2012, T. at 51-53, E. 82) Thus, the District Council concludes that the greatly reduced truck traffic due to the conveyor bridge obviates the need to place greater restrictions on the hours of the mining operations in order to mitigate noise and traffic impacts from the operation.

C. The District Council is also persuaded by evidence submitted by the Applicant in the record concerning the proposed phasing of mining operations and proposed completion over a five-year period. (May 23, 2012, T. at 15, ll. 16-20, T. at 32, ll. 10-12) The District Council finds that the requested timeframe comports with the prescriptions of Section 15-814(a) of the Environment Article of the Annotated Code of Maryland that the duration of a surface mining permit "be granted for such period as requested and deemed reasonable." The District Council agrees that the stated time limitations of the surface mining use proposed by the Applicant will further ensure that the proposed conditional use satisfies the general purposes of the Zoning Ordinance recited in Section 27-102(a)(1) to "protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;" Section 27-102(a)(5) to provide "adequate light, air, and privacy;" Section 27-102(a)(6) to "promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;" Section 27-102(a)(11) to "lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;" and Section 27-317(a)(4) of the Zoning

Ordinance, permitting approval of a Special Exception so long as the proposed use does not “adversely affect the health, safety, or welfare of residents or workers in the area.” Based on the evidence in the record offered by Applicant, the District Council finds that there is need to incorporate Applicant’s proposal for a five-year, phased mining proposals as a condition of approving the Special Exception application.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

Section 1. Special Exception 4647, the Variance for the Removal of Specimen Trees, and the Variance from the building setback requirements are approved, subject to the following conditions:

1. Prior to certification of the Special Exception, the Mining Site Plan shall be revised to show proposed paving on the haul road at its entrance point onto Accokeek Road, for a distance of no less than 200 feet. Details for the paving shall also be provided on the Mining Site Plan and shall include, at a minimum, the following information: length and width of pavement (minimum of 200 feet long and 22 feet wide), type of paving material, and timing (prior to the commencement of mining).
2. A Conservation Easement shall be recorded in the Land Records in accordance with Section 25-122(d)(1)(B). The Easement shall describe, by bearings and distances, the areas of Woodland Conservation shown on the TCP2 as approved. The Easement shall be reviewed by the Environmental Planning Section prior to recordation.
3. The Applicant shall notify the M-NCPPC, Environmental Planning Section, prior to the start of reforestation for each phase of this mining operation and schedule a meeting to address reforestation and Woodland Conservation issues.
4. Prior to the start of work any phase or portion thereof, the limits of disturbance for that phase or portion thereof shall be staked on the ground or flagged on the existing trees. The Applicant or their representative shall walk the limits of disturbance with a representative of the M-NPPC, Environmental Planning Section, prior to the installation of sediment/erosion control measures and tree protective devices.

5. Prior to certification of the Special Exception, the Type II Tree Conservation Plan shall be revised as follows:
 - a. Clearly show all proposed phase lines.
 - b. Revise the worksheet as follows:
 - i. Ensure that the area of existing wooded floodplain in the tree conservation work sheet does not exceed the area of existing floodplain for any phase;
 - ii. Ensure that proposed clearing on the net tract does not exceed the existing woodland on the net tract for any phase.
 - c. Provide the symbol for regeneration in the legend.
 - d. Revise the LOD to show the preservation of all regulated Application.
 - e. Ensure that the minimum required dimensions are met for those areas counted as woodland conservation.
 - f. Have the qualified professional who prepared the plan sign and date it and update the revision box with a summary of the revisions made.
6. Prior to certification of the Special Exception, the Tree Canopy Coverage schedule shown on the Plat of Special Exception Site and Landscape Plan shall be revised to show the tree canopy requirement based on the gross tract area of the site and to demonstrate how the resulting requirement will be met.
7. Prior to certification of the Special Exception, a copy of the Sediment and Erosion Control Plan shall be submitted to M-NCPPC. The Applicant shall submit copies of the approved Sediment Control Plans to M-NCPPC for each phase of mining prior to commencement of mining in each respective phase.
8. Prior to commencement of the mining operation, a Special Permit shall be obtained from the Prince George's County Department of Public Works and Transportation. A reforestation bond shall be posted at the time issuance of the Special Permit.

9. The area to be mined shall be reclaimed in accordance with a Reclamation Plan by filling with acceptable materials as described in Prince George's County Building Code or as required by the Maryland Department of the Environment.
10. A Conservation Easement shall be recorded in the Land Records that describes the primary management area (PMA) by bearings and distances. The Conservation Easement shall contain the entirety of the PMS as shown on the approved Natural Resource Inventory except for the areas of approved impacts as shown on the approved TCP2. The conservation easement shall be reviewed by the Environmental Planning Section prior to recordation. The recorded easement document shall include the following text:

“These conservation easements are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.”
11. Prior to certification of the Special Exception, the Plat of Special Exception Site and Landscape Plan shall be revised in conformance with Section 4.6 of the Landscape Manual.
12. Noise mitigation shall be provided on-site by implementation of the following:
 - a. Mining operations on the site are restricted to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday, excluding federal holidays. There will be no operations on Saturdays and Sundays. Trucks are not permitted to arrive at the site prior to 8:00 a.m.
 - b. The 12 to 18-foot-high noise mitigation berms shall be located as shown on the plans submitted to protect nearby residential buildings and properties.
 - c. Trucks shall not use compression or “Jake” brakes both on-site and on the roadway.
 - d. Speeds on-site shall be restricted to 15 mph for all heavy vehicles.

- e. All machinery shall be kept in good working order, especially mufflers to insure quiet operation.
 - f. The volume of backup warning devices shall be minimized while still meeting OSHA (Occupational Safety and Health Administration) standards.
- 13. Prior to certification of the Special Exception, the Air Quality Report shall be revised as follows:
 - a. Provide written justification for running the dispersion model using the smallest area at the center of the site or provide the results of revised modeling to reflect the actual area of each phase with respect to the closest receptor to demonstrate that the air quality of the surrounding properties will not be adversely impacted.
 - b. Provide additional information to indicate that the five (5) receptors in the vicinity of the proposed mining, used in the dispersion model, are sufficient to represent the expected air quality impacts surrounding the entire property. Provide the results of revised modeling including additional receptor locations if warranted.
- 14. Mitigation of particulate matter emissions shall be accomplished by implementation of the following:
 - a. The haul roads shall be maintained with a water truck or other approved dust control methods.
 - b. Sweeping of the paved roads with road sweeper will occur as needed.
 - c. Open-bodied vehicles transporting materials off-site shall be covered at all times when in motion, in accordance with COMAR regulations.
 - d. The site shall have a 15 mph speed limit to reduce dust generation from travel on the unpaved portions of the proposed haul road.

- e. All mobile equipment to be used on-site shall use ultra-low sulfur diesel fuel. The fuel supplier certification of the sulfur content of each fuel delivery shall be kept on-site for the duration of the Special Exception approval period.
- 15. Equipment fueling on-site shall be done in accordance with NFPA 30 (National Fire Protection Association), Flammable and Combustible Liquids Code, Chapters 2 and 3. The mobile fueling trucks shall be operated by trained personnel holding valid oil vehicle operator's certificates as required by COMAR 26.10.01.17. Care shall be taken to minimize spillage. Refueling shall take place as far from streams and wetlands as possible.
- 16. If the operation of the subject sand and gravel mine impacts the water level in any wells within 1,000 feet of the subject mining site as verified by MDE, corrective action shall be immediately taken by the Applicant, including but not limited to, the drilling of a new well to replace the adversely affected well.
- 17. This Special Exception shall be valid for a period not to exceed five (5) years from the date of final approval. The Applicant, its successors or assigns, shall not request and shall not be eligible for any extension of the mining of sand and gravel beyond a term of five (5) years from the date of commencement of mining on the site. Reclamation of the site shall be completed by the applicant in a maximum of five (5) years after the expiration of the 5-year period of this Special Exception, which shall be set forth in a Reclamation Plan submitted by the Applicant and approved administratively by the M-NCPPC staff prior to the issuance of permits. Reclamation of the site, as set forth in the Reclamation Plan, shall return the property to commercially viable use for either agricultural purposes or development substantially similar to the property's pre-existing condition. Reclamation shall be secured by a performance bond, as a condition of and prior to the issuance of permits, submitted by the applicant to the Department of Environmental Resources in an amount equivalent to the estimated cost of reclamation (the estimated cost of reclamation shall be included in the applicant's proposed Reclamation Plan), which shall not be released to the Applicant until the Department of Environmental Resources and M-NCPPC staff determine in writing that the property has been successfully restored to commercially viable use substantially similar to the property's pre-existing condition for either agricultural purposes or development.

18. The subject property shall not be utilized as a Rubble Fill.

Section 2. This Ordinance shall take effect on the date of its enactment.

Enacted this 17th day of June 2013 by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Olson, and Toles.

Opposed: Council Members Patterson and Lehman.

Abstained:

Absent: Council Member Turner.

Vote: 6-2

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council