

Case No: S.E. 4669
Robin Dale Surface Mining

Applicant: Chaney Enterprises

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

ZONING ORDINANCE NO. 5 - 2013

AN ORDINANCE to approve a Special Exception and Variance for Specimen Tree Removal with conditions.

WHEREAS, Application No. SE 4669, and a Variance for Specimen Tree Removal, was filed for property described as approximately 180.93 acres of land in the R-A (Residential-Agricultural) Zone, located on the south side of McKendree Road, approximately one (1) mile west of the intersection of McKendree Road and the 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 and variance, 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 as set forth herein; and

WHEREAS, the District Council has considered and hereby accepts and incorporates certain revisions offered by Applicant on or about April 5, 2013, as to Conditions 14, 16, 22, 26, 30, and 34, below; and

WHEREAS, as the basis for this action, the District Council adopts the findings of fact, conclusions of law, decision and recommendations 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 11 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 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;” 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”; and Section 27-410(a)(2), providing specific circumstances for which a surface mining Special Exception may be permitted, stating that the use “shall not be noxious, offensive, or otherwise objectionable by reasons of dust, smoke, or vibration.” Here, the District Council finds persuasive

the testimony in the hearing record concerning the school bus traffic in the mornings for certain school-age and secondary school students residing in the vicinity of the proposed use, to include school bus traffic occurring after 8:00 a.m. for timely arrival the latest school start time of 9:00 a.m. (October 18, 2011, T. 103-04; 106-07; 109-110; 114-15) The District Council further finds persuasive the testimony in the record stating that afternoon school bus traffic serving the resident student population is largely finished within the 2 o'clock hour in the vicinity of the proposed mining site. (October 18, 2011, T. 103-04; 106-07; 109-10; 114-15) Accordingly, the District Council hereby finds that there is a need to further limit the mining operations on the site to the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday, excluding federal holidays.

B. The District Council further concludes from the record that, pursuant to the prescriptions of the Zoning Ordinance concerning Special Exception approval of a surface mining use, modification to the to the decision and recommendation of the Zoning Hearing Examiner is needed in Condition 18 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 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;" 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;" and Section 27-410(a)(2), providing specific circumstances for which a surface mining Special Exception may be permitted, stating that the use "shall not be noxious, offensive, or otherwise objectionable by reasons of dust, smoke, or vibration." As such, the District Council is persuaded by evidence in the record concerning the effects of the truck traffic arriving and departing from the site of the proposed use and its impacts on existing traffic in the area and the proposed developments in the surrounding area of the proposed use. (October 7, 2011, T. 100-01; June 2011 EIR-4669 at 37-38) The District Council is also persuaded by evidence in the record that that there is annual growth in traffic along McKendree Road projected for the area, coupled with evidence in the hearing record concerning the control of fugitive dust on the site as a result of truck traffic arriving and departing the site. (June 2011 EIR, at 18 par. 4.3.5; October 7, 2011, T. 100-01) Finally, the District Council is further persuaded by evidence in the record concerning an approved use of an adjacent sit for surface mining at 150 truckloads daily. (June 2011 EIR, at 37; October 18, 2011, T. 5) Based on the evidence in the record, the District Council finds that there is need to modify condition 18 concerning the limitation of daily truck trips as a condition of approving the Special Exception application.

C. The District Council further finds evidence of proposed vehicular traffic patterns entering and leaving the site in connection with the operations of the proposed use in the record as a basis for adding a new Condition 35, below, concerning vehicular access to and from the site onto McKendree Road as a proper exercise of regulatory power in accordance with Sections 27-102, 27-317(a)(4, 5), and 27-410(a)(2) of the Zoning Ordinance. The District Council is persuaded by evidence submitted in the record that the traffic impacts be mitigated by controlling the vehicular traffic patterns flowing to and from the site in connection with its operations. (June 2011 EIR, at 38, 40-41 at Par. 5.5.2, 46 at Par. 6.5.1 (1))

D. Upon review of the record, the District Council finds that, in the interest of satisfying the important public purpose of Section 27-102(a)(11) of the Zoning Ordinance, 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,” the District Council gives great weight to the testimony in the record concerning the safety and condition of the McKendree Road Bridge over Timothy Branch that is proposed for use by truck traffic associated with the development of the site. (Exhibit 133(d)). As such, it is necessary to supplement Finding 23 of the December 10, 2012, Decision of the Zoning Hearing Examiner and impose a new Condition 33, below, to require inspection of the McKendree Road Bridge prior to commencing operation of the use proposed for the site, as well as annual inspection of the bridge by the Department of Public Works and Transportation during period of the use to promote the public safety and welfare.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

Section 1. The Zoning Map of the Maryland-Washington Regional District in Prince George’s County, Maryland, is hereby amended to reflect an approved Special Exception for surface mining on the property that is the subject of Application No. S.E. 4669 pursuant to Sections 27-102, 27-317, and 27-410 of the Zoning Ordinance for Prince George’s County. In addition, and in accordance with Section 27-316 of the Zoning Ordinance for Prince George’s County, the Variance for Specimen Tree Removal is approved. The approvals set forth herein are subject to the following modified and additional conditions, which must be satisfied prior to the issuance of permits:

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 McKendree 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. The Applicant shall notify the Maryland-National Capital Park and Planning Commission (M-NCPPC), Environmental Planning Section, prior to the start of reforestation and schedule a meeting to address reforestation issues. This meeting shall address any proposed changes in species to be planted, any decrease in the quantity of trees to be planted in the event that some natural regeneration has occurred, and the need for additional or less site preparation.

3. Prior to the start of mining for any portion of the site, the limits of disturbance for the entire site 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-NCPPC, Environmental Planning Section, prior to the installation of sediment/erosion control measures and tree protective devices. The appropriate representative of the Environmental Planning Section shall be available to walk the site within five (5) business days of receiving written notice from the Applicant.

4. Prior to certification of the Special Exception, the Type II Tree Conservation Plan shall be revised as follows:

- a. Revise the worksheet so that the row labeled as “Cumulative Woodland Conservation Required” is filled-in.
- b. Revise all floodplain notes located on any sheet within the entire plan set (Sheet 1 through 13) to refer to a floodplain study number and to remove the name of the individual who prepared the study.
- c. Remove all woodland preservation hatching and labels for woodland within the floodplain.
- d. Revise Woodland Conservation areas to ensure that all areas labeled as preservation are located outside the limits of disturbance (LOD) and all areas labeled as clearing are located within the LOD. Revise the LOD as necessary so that it encompasses all areas of proposed clearing.
- e. Provide a sheet within each of the Plan subsets (landscape and TCP) to show the entire length of the proposed off-site haul road.
- f. Show all sediment and erosion control measures on the Plan (outfall pipes, rip-rap, etc.).

- g. Show temporary tree protection fence along all clearing edges including vulnerable edges along the property boundary.
 - h. Revise the symbol for the permanent reforestation signs located along the edge of all reforestation areas to be larger.
 - i. Remove the symbol for proposed treeline from the Plan.
 - j. Provide a Woodland Conservation summary table similar to Table A-6B of the Technical Manual for the Woodland Conservation Ordinance (for a summary of all woodland conservation statistics for each phase of mining).
 - k. Revise the Woodland Conservation worksheet to ensure that the areas used for calculation purposes match those shown on the Plan and as summarized in table form.
 - l. Have the qualified professional who prepared the Plan sign and date it and update the revision box with a summary of the revisions made.
5. Prior to certification of the Special Exception, a copy of the approved Sediment and Erosion Control Plan shall be submitted to M-NCPPC.
6. Prior to the 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 of issuance of the Special Permit.
7. The area to be mined shall be reclaimed in accordance with the Reclamation Plan by filling with acceptable materials as described in Prince George's County Subtitle 4, Building Code, Section 4-303 as presently codified.
8. 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 PMA, except for the areas of approved impacts, as shown on the approved Type Two Tree Conservation Plan (TCP2) and 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."

9. Prior to certification of the Special Exception, the Applicant shall provide a revised Easement Agreement demonstrating entitlement to utilize appropriate portions of Parcels 8 and 10 for access to the site from McKendree Road. Prior to commencement of grading for the mining operation, the Applicant shall record in the Land Records of Prince George's County a notice of the Easement Agreement in such form as deemed legally sufficient by the M-NCPPC Office of the General Counsel or by the County Attorney). Accordingly, the Applicant shall reconfigure a new path and circulation pattern for the haul road to the site, placing the entry and exit points of the site in closer proximity to the intersection of McKendree Road and US 301/Crain Highway.

10. A notice of easement will be recorded in the Land Records for Prince George's County, Maryland within ten days of the receipt of all zoning approvals, licenses and permits necessary for the removal of sand and gravel from the property. Said approvals, licenses and permits shall include but not be limited to final approval of Special Exception 4669 for sand and gravel mining, a Surface Mining permit, and an Operating Permit, which said approvals, licenses and/or permits are final in nature, and are not subject to further appeal, and have been issued in a manner and subject to conditions which are satisfactory to the applicant/grantee in its sole and absolute discretion.

11. Noise mitigation shall be provided on-site by implementation of the following:

- a. The mining of sand and gravel shall be limited to the hours of 9:00 a.m. through 3:00 p.m., Monday through Friday. The use of McKendree Road by any employees of the mining company or any other persons in connection with the operations or business concerning the use proposed on the site are limited to the hours of 9:00 a.m. through 3:00 p.m. There shall be no mining operations on Saturdays, Sundays, or federal holidays, and there shall further be no use of McKendree Road by any employees of the company or any other persons in connection with the operations or business concerning the use proposed on the site on Saturdays, Sundays, or on federal holidays.
- b. Trucks shall not use compression or "Jake" brakes either on-site or on the roadway.
- c. Speeds on-site shall be restricted to 15 miles per hour for all heavy vehicles.
- d. All machinery shall be kept in good working order, especially mufflers, to ensure quiet operation.

- e. The volume of backup warning devices shall be minimized while still meeting OSHA (Occupational Safety and Health Administration) standards.
- f. Acceleration for trucks entering the highway shall be held to a minimum.

12. The Mining, Site, Landscape and Type II Tree Conservation Plans shall be revised to clearly label all abutting properties with the following information: lot or parcel identification, current owner, and if it is subject to the agreement between the Applicant and the Dobson family. The properties included in the agreement shall also be provided in list form on the cover sheet of each Plan subset (i.e. the Landscape Plan set, the TCP Plan set, etc.).

13. Should residential development commence on any part of abutting property now owned by the Dobson family at any time during the duration of the mining operation, those berms needed to buffer noise at required levels abutting the area of the Dobson property being residentially developed shall be installed by the Applicant or its successors. Those portions of the berms required to buffer residential development shall be installed and completed prior to issuance of the first building permit on the property being residentially developed.

14. Mitigation of particulate matter emissions shall be accomplished by implementation of the following:

- a. The haul road shall be maintained with a water truck or other approved dust control methods. During the time between May 15 and September 15 of each year, or during any other dry periods when appropriate, the haul road shall be maintained with a water truck three (3) times daily, unless weather conditions do not warrant that frequency of watering as a dust control measure.
- b. Sweeping of the paved roads with road sweeper will occur as needed.
- c. Open-bodied vehicles transporting materials shall be covered at all times when in motion. Alternate means may be employed to achieve the same results as would covering the vehicles.
- d. For a distance of 50 feet prior to the point where the haul road across the Dobson family property is paved, the Applicant shall install and maintain a 2" aggregate rip-rap for the entire width of the haul road in order to facilitate removal of dirt and dust from the undercarriage of dump

trucks. The construction of this 50 foot section shall conform to the standard specified on the Sediment and Erosion Control Plan as approved by the Soil Conservation District.

- e. The site shall have a 15 mile per hour speed limit to reduce dust generation from travel on the unpaved portions of the proposed haul road.
- f. 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 Code of Maryland (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 adversely impacts the water level in any wells within a one-mile radius of the subject mining site, as verified by the Maryland Department of the Environment (MDE) or the Prince George's County Department of Environmental Resources ("DER"), 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. At McKendree Road and the site entrance, the Applicant shall provide a "No Left Turn" turn prohibition sign for trucks exiting the site.

18. The applicant is limited to a maximum number of twenty-five (25) truckloads per hour pursuant to its proposed use on the site, with a maximum of one hundred fifty (150) truckloads per day.

19. The access roadway should be overlaid to a minimum width of 22 feet for a distance of 200 feet. The overlay and any needed signage and pavement markings shall be done to the standards of the Prince George's County Department of Public Works and Transportation (DPW&T).

20. The Applicant will provide three (3) additional copies of the final report detailing the Phase IB archeological investigations prior to any ground disturbance or the approval of any grading permits.

21. All required sediment and erosion control measures shall be installed within any mining Phase area (as shown on the approved special exception site

plan) in accordance with approved sediment and erosion control plans prior to the onset or any clearing or grading operations within said Phase.

22. Sediment and erosion control measures abutting the unnamed tributary along the northwest boundary of the property shall be inspected by the Applicant daily and a log of said inspections shall be maintained by the Applicant. The Applicant agrees to post these logs on its website on a weekly basis, or in the alternative, to mail copies of the logs on a weekly basis to the Accokeek, Mattawoman, Piscataway Creeks Community Council, Inc.

23. Prior to the commencement of mining within Phase I, the Applicant shall obtain an inspection from the Maryland Department of the Environment and submit a report of said inspection confirming that all perimeter sediment and erosion control measures within Phase I have been properly installed. A copy of said report shall be filed with the Environmental Planning Section of M-NCPPC.

24. Prior to the commencement of mining within Phase I, the Applicant shall notify the Environmental Planning Section of the M-NCPPC that all perimeter sediment and erosion control measures within Phase I have been installed. The Environmental Planning Section shall be provided an opportunity prior to the commencement of mining (based upon five (5) business days notice) to observe these installed perimeter sediment and control measures.

25. No discharge from the mining site into the unnamed tributary adjoining the northwest boundary of the mining site shall occur except in strict conformance with a discharge permit issued by the Maryland Department of Environment.

26. The Applicant shall install a staggered and offset double row of American Holly and Red Cedar trees on that portion of the Dobson property abutting the southeast boundary of Lot 36 within Timber Village Subdivision. The exact location of this tree planting area shall be coordinated with staff of M-NCPPC, the Applicant, and the owner of Lot 36. These trees shall be planted ten (10) feet on center and shall be a minimum of 8 feet in height at the time of planting. The trees shall be installed prior to the commencement of mining operations.

27. Prior to the issuance of permits, subject to review and approval by the Department of Public Works and Transportation, and any other required review agency, the Applicant shall restripe to eastbound approach of McKendree Road at US Route 301 in order to create a longer right-turn lane on McKendree Road for vehicles turning right onto southbound US Route 301. The length of the additional striping shall be determined by the Department of Public Works and Transportation.

28. Prior to the issuance of permits, subject to review and approval by the Department of Public Works and Transportation and any other required review agency, the Applicant shall, at its sole expense, install school bus shelters at the

pickup locations along McKendree Road for The Rose Creek Estates, Timber Village and Robinswood subdivisions.

29. Berms of sufficient height to mitigate noise in conformance with COMAR, Title 26 Standards shall be installed along that portion of the western boundary of the subject property which abuts other sand and gravel mining sites if those sites cease to be mined or if the Applicant does not obtain a valid easement from the owner of said mining site(s) waiving the requirement to install berms or if those properties are developed with homes while the subject property is being actively mined. Further, if deemed necessary by the Department of Public Works and Transportation (DPWT), the applicant shall install surface and internal drainage systems, diversion ditches, and any other methods deemed reasonably necessary by the Department of Public Works and Transportation in order to prevent flooding and soil erosion and movement in connection with mining activities at the site.

30. Prior to the issuance of permits, the Applicant shall process at staff level a revision to the NRI and a revision to the mining site plan, including a revision to the Type Two Tree Conservation Plan, in order to provide an additional 25 feet of stream buffer and the resulting delineation of the PMA. Further, prior to the issuance of permits, the Applicant shall file with M-NCPPC staff an amended NRI and an amended mining site plan to provide an additional 25 feet of PMA around the two (2) existing identified PMA areas located at the northeast boundary of the mining site.

31. Prior to certification of the Special Exception, the NRI tables and computations shall be revised to include the new land area added to the special exception for the haul road across the Dobson property.

32. If, prior to the commencement of mining, the subject property reverts to the Rural Tier by operation of law, all limits of disturbance shall be revised to ensure that there are no additional impacts to regulated environmental features based on the required 25-foot expansion of the stream buffers and resulting delineation of the PMA. This requirement shall apply only in the event that the PMA setback area is not pre-empted by the Maryland Department of Environment's Mining Permit.

33. Prior to the issuance of permits and the commencement of any use of vehicles on McKendree Road in connection with the operations or business for the proposed use on the site, the Applicant shall obtain an inspection of the McKendree Road Bridge from the Prince George's County Department of Public Works and Transportation ("DPWT"), at the Applicant's expense, to confirm that the McKendree Road Bridge is in full compliance with the most recent National Bridge Inspection Standards published by the Federal Highway Administration. Further inspections by DPWT shall be conducted annually prior to July 1 to ensure the continued compliance with all requirements of the National Bridge

Inspection Standards, or all use of vehicles on McKendree Road in connection with operations or business at the site shall cease until the inspection is performed and a determination of compliance is made by DPWT. Should DPWT determine that the McKendree Road Bridge is not fully compliant with all prescriptions of the National Bridge Inspection Standards, all use of vehicles on McKendree Road in connection with operations or business at the site shall cease until the bridge is brought in compliance at Applicant's expense.

34. 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.

35. Any vehicles used in connection with operations or business conducted with the proposed use at the site shall not turn left onto McKendree Road when exiting the site. Instead, all vehicles shall exit the site by right turn onto McKendree Road. Any vehicles in connection with the operation or business at the site entering the site from McKendree Road shall only approach entry to the site from the east from the direction of US 301/Crain Highway, and shall enter the site by left turn only.

36. 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 13th day of May 2013 by the following vote:

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

Opposed: Council Members Lehman and Patterson.

Abstained:

Absent: Council Members Olson and Turner.

Vote: 5-2

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