

PLANNING STAFF REPORT

Special Use Permit

SUMMARY:

Hearing Date: May 26, 2015

Applicant: Dallas Harris

Property Owner: Dallas Harris

Case Number: 10368 R (SUP 04-12-20-20)

Land Use Proposed: The applicant is requesting approval of a major revision to an existing Special Use Permit (SUP 04-12-20-20) for the construction and operation of a Sand Borrow Pit Mine conditioned with a minable area of ± 5.578 acres in total.

Property Record Number and Location: The subject property is located directly west of Shaw Highway (SR 1520), Holly Township and may be identified by Pender County PIN 3258-51-1378-0000. There is one (1) tract associated with this request totaling ± 57 acres.

Zoning District of Property: The property is currently zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance Section 5.2.3, Nonmetallic Mineral Mining & Quarrying (NAICS 2123) is permitted via Special Use Permit.

PROJECT HISTORY:

On January 18, 2005 a Special Use Permit was approved by the Pender County Commissioners for the construction and operation of a ± 23.06 acre minable area to be located on a seventy-six (76) acre parcel under the same C-Pit Mine project name (Exhibit1). Since the previous Special Use Permit approval, the mining operations on the property have been completed under North Carolina Department of Environment and Natural Resource (NC DENR); Division of Land Resources issued Mining Permit Number 71-42. The previous minable area covered in the State Mining Permit is now an existing pond.

Additionally, the property has since been subdivided and recorded in the Pender County Register of Deeds on Map Book 57 and Page 89 (Exhibit 2). The original Special Use Permit approval (SUP 04-12-20-20) was on the seventy-six (76) acre parcel whereas this is only a portion of that property totaling fifty-seven (57) acres.

PROJECT DESCRIPTION:

Dallas Harris, applicant and owner, is requesting approval of a major revision to an existing Special Use Permit (SUP) originally issued January 18, 2005 (SUP 04-12-20-20) for the excavation of 23.06 acres; this request is to excavate 5.578 acres directly adjacent to the previous dig site. This is the only requested revision to the previously approved SUP. There is one (1) tract associated with this request totaling ± 57 acres. The subject property is located directly west of Shaw Highway (SR 1520), Holly Township, and may be identified by Pender County PIN 3258-51-1378-0000.

Mining Permit

The North Carolina Department of Environment and Natural Resource (NC DENR), Division of Land Resources issued Mining Permit Number 71-42 for this project. According to NC DENR, Division of Land Resources on May 1, 2015 the previous permit on the site (Permit #71-42) is closed with no operations permitted on the site currently (Exhibit 3). A valid State Mining Permit is required prior to the issuance of Final Zoning and the applicant must work to obtain valid permits.

As prescribed in the applicant's Project Narrative, the maximum depth of excavation shall not be lower than twenty-six (26) feet below the high point located on site with an average depth of twenty-three (23) feet.

Environmental Concerns

Portions of the subject property may be located within the AE and Shaded X flood zones along the Northeast Cape Fear River and its tributaries, according to the February 16, 2007 FEMA Flood Insurance Rate Maps (FIRMs), Map Number 3720325800J, Panel Number 3258. The minable area and entire project proposal appears to be located outside of any identified flood zones. Any new development will need to comply with the National Flood Insurance Rate Program (NFIP) in accordance with the Pender County Unified Development Ordinance, and the Pender County Flood Damage Prevention Ordinance.

Site Access

The site is accessed via a thirty-five (35) foot wide road with direct access to Shaw Highway (SR 1520) which narrows to twenty-five (25) foot wide throughout the remainder of the site. Preliminary discussions with the NC Department of Transportation may require a Driveway Permit for the proposed project.

According to the applicant, mining of the resources will occur initially by excavators, and dredging once the pond is large enough. Sediment will be removed via dump trucks hauled off site through the existing gravel drive entrance to Shaw Highway (SR 1520).

Hours of Operation

According to the applicant's narrative; the proposed hours of operation will be Monday through Saturday from 6:30 AM until 6 PM. There will be a maximum of five (5) employees who operate mining endeavors on site coordinating with contractors for material pick up. There is no facility on site for mining operations which would necessitate any water or septic needs in this Special Use Permit, however portable toilets will be provided on the site.

As this is a new dig site on a previously closed mining permit, the original conditions of SUP 04-12-20-20 are not applicable and the conditions associated with the proposed \pm 5.578 acre minable project area shall be considered in their merit alone. Any further modification to the mining area (size and/or depth) or any other change to this permit will require Pender County Board of Commissioners review and approval. The subject property must comply with all federal and state permits as applicable.

EVALUATION:

- A. *Public Notifications:*** Advertisements for the proposal have been placed in *The Pender Post/Topsail Voice*. Adjacent property owners were notified by first class mail and a public hearing sign was placed at the project site on Shaw Highway (SR 1520).
- B. *Basis for Granting SUP:*** See Attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revision and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. *Unified Development Ordinance Compliance:*** The property is currently zoned RA, Rural Agricultural zoning district and Nonmetallic Mineral Mining & Quarrying (NAICS 2123) is permitted via Special Use Permit. Additionally, the mining facility has been a previously approved mining facility, permitted through DENR.
- D. *2010 Comprehensive Land Use Plan Compliance:*** The subject property is classified as Rural Growth in the *2010 Comprehensive Land Use Plan*. The Rural Growth land use classification defines those areas of the County where urban services such as public water and sewer are not expected to be provided, this limiting any surrounding residential development to low density. Incompatible residential and non-residential land uses in Rural Growth areas can be accommodated through spatial separation from existing residential development. The SUP revision request is also supported by goals and policies within the *2010 Comprehensive Land Use Plan*:
- **Policy 1A.1.5** – The County supports a pro-business/pro-growth attitude, balance by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.
- This SUP revision request does not conflict with any goals and policies in the 2010 Pender County Comprehensive Land Use Plan.
- E. *Existing Land Use in Area:*** The project area of the submitted Special Use Permit Application on the subject property is surrounded by an existing mine to the south (Special Use Permit 04-12-20-20 and State Mining Permit #71-41), and vacant undisturbed land to the north, west and east. There are some low density single family residential properties to the northeast of the property on Shaw Highway (SR 1520).
- F. *Site Access Conditions:*** The property has direct access to Shaw Highway (SR 1520) via an existing thirty-five (35) foot wide road narrows to twenty-five (25) foot wide throughout the remainder of the site. Preliminary discussions with the NC Department of Transportation may require a Driveway Permit for the proposed project.

G. Conditions To Consider In Issuing the Special Use Permit For This Project:

1. The project shall comply with all requirements of the Pender County Unified Developed Ordinance including Section 6.3 Major Site Development Contents.
2. No project activity shall commence on the site including clearing and grading until a Final Zoning Permit has been issued.
3. One standard highway warning signs stating “Trucks Entering Highway” must remain permanently placed approximately 1,000 feet north and south of the mine entrance along Shaw Highway (SR 1520) for the duration of the project. Signs should meet all NCDOT sign and ROW encroachment standards.
4. The project shall not result in any visible sedimentation beyond the project boundary.
5. No mining or earth disturbing activities shall take place outside the project boundary shown of this site plan.
6. The hours of operation for this project shall be limited to 6:30 AM to 6PM, Monday through Saturday.
7. Any further modification to the mining area (size and/or depth) or any other change to this permit will require Pender County Board of Commissioners review and approval.
8. Any new development within the AE or Shaded X will need to comply with the National Flood Insurance Rate Program (NFIP) in accordance with the Pender County Flood Damage Prevention Ordinance.
9. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
10. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
11. The term of this permit shall be valid for a period of 10 years from the date of issuance of a final zoning permit unless otherwise renewed by Pender County.
12. All other applicable local, state, and federal permits as required.

Attachment A

3.12.3 Procedures for Reviewing Applications

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.
- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
 - 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
 - 2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
 - 3. The proposed use shall not constitute a nuisance or hazard;
 - 4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
 - 5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
 - 6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
 - 7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
 - 8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

3.12.4 General Provisions Concerning Special Use Permits

- B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified.
- H. Revisions - Major revisions to a Special Use Permit must be submitted to the Board of Commissioners. All legal notice and application fee requirements must be met for major revisions. Revisions that are considered minor revisions to an approved Special Use Permit may be reviewed and approved by the Administrator after basic submission requirements have been completed. All revisions approved by the Administrator must meet the original conditions of the permit as approved by the County Commissioners and current provisions of the Zoning Ordinance. The addition of an accessory structure less than 1000 sq. ft., addition of parking or other ancillary facilities or uses or the addition of similar product lines are examples of revisions that may be considered minor revisions.