

PLANNING STAFF REPORT
Zoning Map Amendment – Conditional Rezoning

SUMMARY:

Hearing Date: November 12, 2013 – Planning Board
December 9, 2013 – Board of Commissioners

Case Number: 11034 – Burton Mine

Applicant: EFS Properties, LLC

Property Owner: EFS Properties, LLC

Rezoning Proposal: EFS Properties, LLC, applicant and owner, is requesting approval of a Zoning Map Amendment for a Conditional Rezoning of 55.69 acres from RP, Residential Performance District, to RA – CD, Rural Agricultural – Conditional District for the use of a Nonmetallic Mineral Mining and Quarrying (NAICS 2123), specifically for a sand mine.

Property Record Numbers, Acreage, and Location: The subject property may be identified by Pender County PIN 3255-78-6248-000 and contains approximately 55.69 acres. The property is located along the north side of NC Highway 210, approximately 3,400 ft. northeast of the intersection of Shaw Hwy and NC Hwy 210, Rocky Point.

Planning Board Recommendation:

Staff Recommendation: The request is consistent with the 2010 Comprehensive Land Use Plan. A public meeting was held to address the potential impacts to adjacent property owners. Based off of comment from the community and the applicant, if mutually established conditions can be placed on the property to mitigate impacts, staff will recommend approval of the Conditional Rezoning request.

DESCRIPTION:

EFS Properties, LLC is requesting approval of a Zoning Map Amendment for a Conditional Rezoning of approximately 55.69 acres from RP, Residential Performance to RA, Rural Agricultural – Conditional District for the specified use of Nonmetallic Mining and Quarrying (NAICS 2123). The mine will be limited to extraction of sand material through an approximately 12.7 acre borrow pit.

According to the applicant's submitted site plan and supporting materials, the site will contain several areas associated with the sand excavation. These areas, as depicted within Table 1 below will contain areas for temporary sediment collection, stockpile areas, and the pit/excavation area. Adjacent to the excavation area, will contain an office/construction trailer for on-site staff when the mine site is active. Ingress/egress to the site will utilize a driveway connection to NC Highway 210, subject to review and approval from the NCDOT.

Table 1

CATEGORY	AFFECTED ACREAGE
Tailings/Sediment Ponds	0.86
Stockpiles	1.65
Wastepiles	0
Processing Area/Haul Roads	1.45
Mine Excavation	12.7
Other	0
Total Disturbed Acreage	16.66

It is anticipated that the mine excavation will commence and be active for approximately three years. The State Mining Application (Attachment 1) submitted is requesting a ten year approval, this is in part due to demand of the excavated material and is requested to allow for the full ten year state allowance. Excavation activities will be limited to a frontend loader and truck as there will be no explosives used on site. The maximum depth of the mine will be limited to twenty (20') feet below the natural ground level, which is a decrease from the applicant's original request of thirty (30') feet due in part to address community concerns of impacts that may be caused to wells.

The anticipated mine depth will require dewatering activities on site. The applicant has stated that this will not exceed 5,000 gallons per day (gpd). As outlined within Attachment 1, there are not any wells located within 500' of the excavation area. This is confirmed through statement provided by Pender County Utilities (November 28, 2012 phone conversation).

The project will incorporate a minimum of a 100' No Disturb Area surrounding the excavation area, stockpile, and temporary sediment trap. Any areas outside of the limits of disturbance will maintain the existing natural vegetation.

According to the Pender County Unified Development Ordinance, a public input meeting must be held with the adjacent property owners to discuss concerns and evaluate mitigating factors that may be conditioned with the application. On September 25, 2013, Mr. Charles Cazier, Professional Engineer, held the required meeting at the county administrative building, Pender County planning staff was present. The meeting was attended by four individuals in which the main topics brought up for discussion were: *effects to wells within the area; concerns of depth of mine; values of adjacent properties; and the intention of future site use.* As a resultant of the meeting and comments, the applicant has proposed to reduce the maximum mine depth from thirty (30') feet to twenty (20') feet. Also, it has been stated that the resultant of the mine will be a pond feature that could be utilized for future residential development on the tract.

As a criterion for a conditional rezoning request, mutually established conditions must be met between the applicant and the county for the project. Staff has met with the applicant to discuss the project and review proposed conditions. The applicant has verbally accepted these conditions and are proposed in this report (see item F) under EVALUATION).

EVALUATION:

- A) **Public Notifications:** Public Notice of the proposal for map change has been advertised in the Pender-Topsail Post and Voice. Adjacent property owners have been given written notice of the request, as well as a sign placed near the subject property.
- B) **Existing Zoning in Area:** The property to the east, south and west of this proposal is zoned RP, Residential Performance District, properties to the north are zoned RA, Rural Agricultural District.
- C) **Existing Land Use in Area:** The existing land use in the area includes very low density residential to the east and south and vacant/timber properties along all other bordering sides.
- D) **2010 Comprehensive Land Use Plan Compliance:** This property is classified as Rural Growth. The Rural Growth classification is defined as areas of Pender County where urban services, i.e., public water and sewer services, are not expected to be extended within the planning horizon. Rural Growth areas are where preservation of agricultural operations is a primary concern and where conflicts between agricultural and non-agricultural uses are to be discouraged. Uses that would typically be allowed in Rural Growth areas include very low-density residential development (single-family site-built, modular, and manufactured homes) on one acre or greater size lots; agriculture, forestry, churches; very limited nonresidential uses - commercial, office, or public/institutional - meeting locational criteria. Locational criteria for non-residential uses in Rural Growth areas include frontage and access to a major State highway or secondary road, location at a major rural intersection, proximity to similar existing non-residential uses, and spatial separation from non-compatible uses such as existing residential development. The subject site does have direct access to NC Hwy 210 and other non-residential uses in the surrounding vicinity include timber/forestry management and other various non-residential uses within the immediate vicinity of NC Hwy 210 and Shaw Hwy.

The following goals and policies within this plan support the rezoning request and proposed use:

- a. Policy 1A.1.5: The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.
 - b. Policy 3A.1.3: Support the inclusion in the UDO of conditional zoning which provides more flexibility for the land owner/developer and the County to mutually agree upon specific development conditions and requirements. (Conditional zoning is a method that incorporates all the site-specific standards directly into the zoning district regulations and then applies that zoning district only to the property that is the subject of the rezoning petition.)
- E) **Unified Development Ordinance Compliance:** Article 3.4.4 of the Unified Development Ordinance provides for standards that shall be followed by the Planning Board before a favorable recommendation of approval for a conditional rezoning can be made. The applicant will be expected to furnish the results of the public input meeting prior to a public hearing being conducted.

F) *Conditions To Approval of Petition:*

1. Maximum depth of the pit/excavation area will be limited to twenty (20') feet in depth measured from the natural ground level.
2. Hours of operation shall be from 7am to 7pm Monday through Saturday.
3. Mining/extraction activities on-site shall be limited to ten (10) years.
4. Material mined/extracted shall be limited to sand only.
5. The project shall comply with all applicable requirements as outlined in the Pender County Unified Development Ordinance.
6. No junk, debris, trash, inoperable vehicles, recycled or salvaged materials shall be stored on the site.
7. All operations must follow federal, state, and local standards, regulations, ordinances, permits, statutes, and/or laws.
8. As shown on the site plan submitted for the project, a No Disturb Buffer of at least 100' shall be maintained around the permitted Pit/Excavation Area.

3.4.4 Review Criteria for Conditional Rezoning

When evaluating an application for the creation of a conditional zoning district, the Planning Board and Board of Commissioners shall consider the following:

1. The application's consistency to the general policies and objectives all adopted Land Use Plans and Unified Development Ordinance.
2. The potential impacts and/or benefits on the surrounding area, adjoining properties.
3. The report of results from the public input meeting.

G) *Summary & Staff Recommendation:* This proposal consists of a Zoning Map Amendment for a conditional rezoning of 55.69 acres from RP, Residential Performance, to RA-CD, Rural Agricultural – Conditional District, for the use of a Nonmetallic Mineral Mining and Quarrying (NAICS 2123), specifically for a sand mine. The request complies with the criteria set forth in Article 3.4.4 of the Unified Development Ordinance. The request is consistent with the 2010 Comprehensive Land Use Plan.

TECHNICAL REVIEW COMMITTEE (TRC) RESPONSES:

Cape Fear Council of Governments RPO

The Cape Fear RPO has no comment, provided that the applicant complies with all requirements of NCDOT for driveway access.

Four County Electric Company

No response.

NC DENR Division of Coastal Management

No response.

NC DENR Division of Forestry

No response.

NC DENR Division of Land Resources

No response.

NC DENR Division of Waste Management

No response.

NC DENR Division of Water Quality

No response.

NC DOT Division of Highways

No response.

NC DOT Transportation Planning Branch

No response.

NC Office of State Archaeology

No response.

NC Wildlife Resources Commission

No response.

Pender County Building Inspections

No response.

Pender County Emergency Management

No response.

Pender County Environmental Health

A port a potty is a very temporary/emergency situation. If they are going to have a trailer with power and water, they need to fill out an application for a new septic system and, I am assuming, a well application.

Pender County Fire Marshal

No response.

Pender County Floodplain Manager

After speaking with John Gerber and Randy Mundt (NFIP contacts), it was determined that a flood study doesn't have to be done. It was concluded that as long as there wasn't a structure being placed within the Approximate A SFHA, a flood study wouldn't be necessary. However, a boundary survey with the delineated Approximate A zone will still need to be submitted and what development will occur in that area i.e. "stockpiling".

Pender County Parks and Recreation

No response.

Pender County Public Library

No response.

Pender County Public Utilities

No response other than cited reference through Mining Application. "A 28 November 2012 phone call, with Mr. Bob Forand, of the Pender County Public Utilities Department, confirmed that there are no wells within 500 linear feet of the excavation area".

Pender County Schools

No response.

Pender County Sheriff's Department

No response.

Pender County Soil and Water Conservation District

Soil & Water sees no problem with request.

Progress Energy Corporation

No response.

US Army Corps of Engineers

No response.

Wilmington Metropolitan Planning Organization

No response.

Planning Board

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Boney: ___ Williams: ___ Baker: ___ Edens: ___ Marshburn: ___ McClammy: ___ Nalee: ___