

PLANNING & ZONING REVIEW NOTES

VII. D.

SUBJECT:

Request by Nicolas P. Robinson, on behalf of **General Shale Brick, Inc.** for a Conditional Use Heavy Industrial (H-Ind.) Permit to allow for mining and brick manufacture, on approximately 407 total acres (four tracts and a portion of one tract) located on Moncure Flatwood Road (SR 1924), Cape Fear Township.

ATTACHMENTS:

The following was submitted at the September 4, 2007 Planning Board meeting:

1. Application packet

The following may be viewed on the Planning Department website at www.chathamnc.org under Rezoning & Subdivision Cases, 2007:

2. Arcview zoning map
3. Appearance Commission recommendations
4. Marketing analysis prepared by Erpelding & Associates dated September 12, 2007
5. Environmental report prepared by Robin Maycock of Maycock Environmental
6. Resolution 2002-15 referencing “greenpoint” designations.

INTRODUCTION & BACKGROUND:

A quasi-judicial public hearing was held on this request September 17, 2007. No one spoke against the request but three people spoke on concerns they have. These concerns will be addressed under the discussion and analysis portion. Minutes from the public hearing can be viewed on the County webpage after October 1, 2007. The conditional use permit cannot be approved unless the conditional use zoning district request is approved. In the event the conditional use zoning district change is recommended for approval, the findings as set forth in the requirements for a conditional use permit must likewise be supported.

The facility currently owned by General Shale on the Moncure Flatwood Road has been in operation since about 1985. When zoning was completed in this area in 1990, this property became a non-conforming use and was allowed to continue in its existing capacity. The northern portion of the existing parcel (Parcel No. 61577) was included in a conditional use heavy industrial zoned district in June 1998 with a conditional use permit for steel recycling and manufacturing. The conditional use permit was never utilized therefore it has expired. The conditional use heavy industrial zoning district remained and still remains today. The northern portion of this parcel has been requested for a

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conditional use permit for the mining of materials as is being conducted on the remainder of the parcel. The existing remainder of this parcel will maintain its non-conforming status. The applicant is asking for the proposed additional parcels to be approved as a conditional use heavy industrial zoning district as well as a conditional use heavy industrial permit for the mining operations for General Shale.

DISCUSSION & ANALYSIS:

A recommendation of this request is based on the five findings as set out in the ordinance. They are:

Finding #1-The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.

Finding #2-The requested conditional use permit is either essential or desirable for the public convenience or welfare.

Finding #3-The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.

Finding #4-The requested permit will be consistent with the objectives of the Land Conservation and Development Plan.

Finding #5-Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

It is the planning staff opinion **Finding #1** may be made provided the conditional use heavy industrial zoning district is approved.

It is the planning staff opinion **Finding #2** is arguable but may be made. General Shale employs approximately 200 people and their payroll is about \$8,000,000 per year. The product that is mined from these sites is used by another major industrial company in Chatham County, Triangle Brick. With the approved, expected growth facing Chatham County, production from these two companies could increase significantly. At present this is one of the biggest employers in our county.

Per the Chatham County Tax Assessor's Office, General Shale is within the top ten tax payers in the county. If this request is approved, property value could increase and create larger tax revenue for the county.

Per the application, there will be no impact on the county's schools enrollment.

It is the planning staff opinion **Finding #3** has not been supported but may be made with conditions. The applicant states there should be no increases in the need for fire, police, or emergency services. The applicant states traffic will remain the same on the Moncure Flatwood Road but will decrease on the Corinth Road. This is because presently when the trucks leave the site on Corinth Road they must then travel to the site on the Moncure Flatwood Road to get the mix material and then they take it to be processed. If the request is approved, both types of material needed to process the brick can be obtained from the one site on Moncure Flatwood Road.

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Visual impacts and screening have been reviewed by the Appearance Commission and you may view their comments on the Planning Department's website. The landscaping plan shows an 80 foot natural buffer around the perimeter of the conditional use permit property but requests to maintain the 25 foot buffer around the areas that were "grandfathered" back in 1990. There is a 50 foot natural buffer along the roadway of Moncure Flatwood Road shown on the site plan. These standards comply with the minimum design guidelines currently adopted by the county. The zoning ordinance requires a 100 foot building setback from all property lines within the heavy industrial zoned districts and this can be seen on the site plan supplied by the applicant. There were concerns expressed by the residences adjacent to the existing site and the proposed additional parcels for visual screening as well as concerns for dust control. The site plan does show a dust control retention pond on the site. Any changes or additions will be addressed in the conditions for approval.

An environmental report was submitted by Maycock Environmental and the report in its entirety may be viewed on the Planning Department website. There is an intermittent stream channel noted on the 32.3 acre parcel and a marginally intermittent stream channel and an unnamed tributary on the 51 acre parcel. The report indicates should adequate storm water management practices using approved best management practices (BMP's) be installed, this would prevent any adverse impacts to water quality in Gulf Creek. On the 109 acre site, there exists three heads of small drainage ways but no evidence of a stream or wetland area is observed. However, the proposed Basin "J" did show a manmade disturbance with the existing haul road that had wetland features and naturalized vegetation. The report goes on to say this would not be considered a jurisdictional wetland. On the 72 acre parcel, an upland storm water conveyance (ephemeral/intermittent drainage feature) was observed and was draining to the southeast of this site. There were no wetlands observed although there was evidence of "ponding" that was seen in the power line easement. Buffers along these stream, tributary, or channel areas have not been shown on the submitted site plan nor have they been addressed in the application.

Per the environmental report, the observance of wildlife, specifically the Bachman's Sparrow, indicates the species has not been seen since 1993. It is listed as a Federal Species of Concern which has not been supported to cause a listing for protection. The four-toed salamander was observed by the Natural Heritage Program in a seepage area near the road of the facility. This is not their preferred area to thrive but may survive in isolated wetlands and spring seeps. The Loggerhead Shrike has not been observed since the 1980's. It is listed as a State Species of Concern not Federal. This information has also been stated by the NC Wildlife Resources Commission and the NC Natural Heritage Program.

A marketing analysis has also been provided and may be viewed on the Planning Department website. The result of the report indicates there are no anticipated adverse effects to be made against the properties in the area of the mining facility. This summary is based on the existing operation since 1985 therefore creating acknowledgment and acceptance within the market. The report states the increased operations is not anticipated to decrease the value of neighboring properties.

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Based on information provided by the Office of The State of Archaeology there may exist the possible need for an archaeological survey based on records they hold in their office. That information may be obtained from them by the applicant.

Two of the proposed parcels for mining operations were previously used as Game Lands. There are still Game Lands adjacent to these properties. The NC Wildlife Resources Commission has provided information on how to protect these areas and is willing to advise them on measures that may be taken to achieve this. This report may be viewed on the Planning Department website. There is also a resolution signed by the Board of Commissioners in 2002 designating these areas as “greenprint” protection designations. The resolution number 2002-15 may be viewed on the website.

Any noise concerns are enforced by the Chatham County Sheriff’s Office.

There are to be no harmful chemicals, biological, or radioactive agents generated on the properties per the application.

The application states no new advertising signs are proposed but there may be some on-site direction signage needed

There is no proposed additional lighting requested per the application.

It is the planning staff opinion **Finding #4** may be made based on the information provided in the request for Conditional Use Heavy Industrial Zoning District. The operations, current and proposed, comply with the regulations and development guidelines as set forth in the Land Conservation and Development Plan as described in said application. This request, in combination with the existing operation, will utilize approximately 1% of impervious surface. The watershed classification of WSIV-PA allows for up to 36% impervious surface and there are no floodable areas noted per FEMA map information.

It is the planning staff opinion **Finding #5** has not been supported. There may be added conditions to clarify or increase some aspects of this finding. The application states there is to be no need for water to the facility; public or private or wastewater management. In speaking with the Environmental Health Division, the applicant may be required to install rest room facilities at the site. The Environmental Health Division will advise if this will be a requirement or not.

There are to be no additional roads installed to serve the facility. Existing roadways/drives will continue to be utilized and an approved NCDOT permit was issued previously for the current operation.

The application indicates detention basins are noted on the site plan. The site plan does show some detention basins but only three are marked. There is no description as to the measurement they will control. Per the Chatham County Erosion and Sedimentation Control Office, there will not be any permitting required by their office. The state land quality office manages and maintains the mining permit and is responsible for enforcement of any runoff or erosion issues that may arise during any clearing or operations from General Shale.

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It is the planning staff opinion the application has not been fully supportive of all findings. Finding #3 has not been supported based on the lack of acknowledgement and protection measures for the creeks, channels, tributaries, or any other features as noted in the environmental report. This finding may be met through conditions placed on the permit (See condition #6). Finding #5 has not been supported based on information not confirmed from the Environmental Health Division on whether rest room facilities are needed. It has also not been supported on the requirement for storm water management. All required detention areas have not been identified and supplied on the site plan where new land disturbances will be made. This finding may be met through conditions placed on the permit (See condition #2, #5, #10). Therefore, the planning staff recommends approval of the permit along with the below listed conditions.

RECOMMENDATION:

The Planning Board has up to three (3) meetings to make a recommendation to the Board of Commissioners. It is the recommendation of the Planning staff that this application request be approved with the attached conditions. If the Planning Board's recommendation is to be a favorable one, it is requested the Planning Board review any additional conditions imposed upon the request at this time:

- 1) Recommendations from the Appearance Commission shall be followed as indicated in the design guidelines. The buffers areas shown as 25 foot vegetated buffers shall also be increased to meet the current standards of the design guidelines of 80 feet adjacent to any residentially zoned parcel. Any additional plantings shall be done at the next optimal planting season following the approval date and shall be maintained to thrive and provide the appropriate screening as required. Prior to planting, a list of proposed vegetation shall be provided to the Planning Department and the Appearance Commission to ensure the correct types of vegetation are being planted for this area and these soil types. The Appearance Commission with the Planning Department may review the landscaping and screening after one year of the initial planting to verify appropriate measures have been taken as requested. Should there be any changes in the landscaping for effectiveness of screening and environmental protections, they shall be given to the applicant at that time and the applicant will be given ample opportunity to take the corrective measures.
- 2) All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Assessment, Archaeological survey, Environmental Health Division, etc.) shall be obtained and copies submitted to the Planning Department prior to land disturbing activity.
- 3) A determination from the Office of The State Archaeological Division shall be provided to the Planning Department and the applicant prior to beginning any additional land disturbing activity. Should such a survey be required, no land disturbing activity may begin until said survey has been completed and any required protective measures taken. This may involve only the areas of concern where the other areas that do not require any further investigation may continue in developing the property for mining use.

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- 4) The applicant shall install a minimum of 100 feet of rock/gravel along the entrance road for dust control or measures required by the Division of Land Quality in the mining permit (whichever is more stringent) and install other measures necessary to control dust.
- 5) Storm water management shall be placed and installed to meet the 2 year 24 hour storm event. A storm water management plan shall be provided to the Director of Public Works prior to beginning any additional land disturbing activity.
- 6) Stream buffers shall be established according to the County Water Supply Watershed Regulations according to stream delineations established in the field using Division of Water Quality criteria. A map showing said streams shall be supplied to the Planning Department prior to land disturbing activity in the areas of streams.
- 7) Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
- 8) Any and all lighting shall comply with the “draft” lighting guidelines applicable at the time of approval as described in the application.
- 9) Utility and Access Easements – Easement documents as required by the County for any public utilities used or furnished to the project area shall be recorded prior to the issuance of a certificate of occupancy.
- 10) Silt Control – The applicant and/or landowner shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.
- 11) Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County’s actions or procedures in considering and acting upon this application.
- 12) Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
- 13) Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued Determination with the plans and conditions listed above.

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- 14) Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

- 15) Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.