

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
WESTERN MARYLAND LUMBER
FOR A SPECIAL EXCEPTION**

* **Case No.: 922**
* **Hearing Date: 03/02/11**

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon Western Maryland Lumber's application for a special exception for an extractive type of industry (strip mining) in the "A/C" District.

A field inspection of the subject property was conducted by members of the Board on February 24, 2011. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and to whether the proposed use would be construed in compliance with the Zoning Ordinance.

At the hearing on March 2, 2011, the Board considered the attached list of exhibits, which consisted of information gathered by the division chief and information provided by other agencies and individuals.

The proposed use will be located between the south end of Jackson Mountain Road and the east end of Old Miller Road, southeast of Barton, Maryland, and consists of two (2) tracts of land totaling seventy-seven (77) acres. The applicant owns the property where the proposed strip mine will be located. This area and surrounding areas have been subject to prior strip mining. Special exceptions for strip mining have been granted on prior occasions and the Bureau of Mines has also granted permits for the extraction of minerals from several adjacent areas to where the land will be located.

Under the provisions of Section 141-97(B)4, a surface mine is a special exception use in the "A" Zoning District. That being the case, the Board considered whether the applicant's proposed use would meet the criteria of the Zoning Ordinance. Those findings are as follows:

1. The use will be placed on two (2) tracts of land, which together exceed two hundred

sixty-nine (269) acres. Parcel A consists of one hundred forty-nine (149) acres. Parcel B consists of one hundred twenty (120) acres. The area affected by the proposed use on both lots total seventy-seven (77) acres. The minimum lot size requirements of the Ordinance are satisfied in this case.

2. At its narrowest point, the lot is in excess of two hundred feet (200') wide.
3. No residents or residential structures are nor shall be erected within three hundred feet (300') of the lot line.
4. The proposed use for Parcel A fronts Jackson Mountain Road. This is the road that is utilized to access the site. The proposed use for Parcel B fronts Old Miller Road. This is the road that is utilized to access the site.
5. That both Parcel A and Parcel B have an excess of the minimum required road frontage required under the Zoning Ordinance.
6. The setback requirements of the Zoning Ordinance are inapplicable as there are no buildings planned for this use.
7. The Board did not consider side and rear yard setback requirements due to the fact that Section 141-126 of the Zoning Ordinance provides special standards for extractive industries.
8. No stipple, storage areas, wash clearance, or other preparation areas are going to be located within five hundred feet (500') of any residence.
9. The entrance to the use from Parcel A and Parcel B will both be constructed to commercial entrance standards in accordance with the requirements of the County.
10. The applicant does not plan to place any signs or billboards on the site.
11. There are no buildable lots on this site.
12. The proposed use does not affect or encroach upon any designated wetlands.
13. The Board found that a major site plan is required for this use due to the fact that the use would require the movement of two hundred fifty (250) or more cubic yards of earth, and/or the disturbance of twenty thousand (20,000) square feet of surface area.

Having made that determination, the Board applied the criteria of Section 141-114 of the Ordinance to the site plan which was submitted by the applicant. The Board found that the site plan met those criteria. Based upon the foregoing findings, the Board found that the applicant will

comply with the criteria of the Zoning Ordinance.

The Board next considered whether “the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use, regardless of its location within the zone ...”. *Brandywine Enterprises v. County Council for Prince Georges County*, 117 Md. App. 525 (1997).

One opponent spoke at the hearing. Mr. Wayne Argo appeared at the hearing to object to the granting of the special exception. He raised several issues with the Board. First, he was concerned about the possibility of declining property values of the homes in the affected neighborhood. The Board found, in this instance, that the entire area had been strip mined in the past, and presently an ongoing strip mine operation still existed. As a result of these findings, the Board felt that any decline in property value would not be site-specific to this proposed use. Secondly, Mr. Argo raised issues about blasting in the area and about the existing road size. The Board felt that these were technical issues which would be addressed by the Bureau of Mines prior to issuing a permit to extract coal and not particularly site specific when taking into account the other strip mining operation previously discussed.

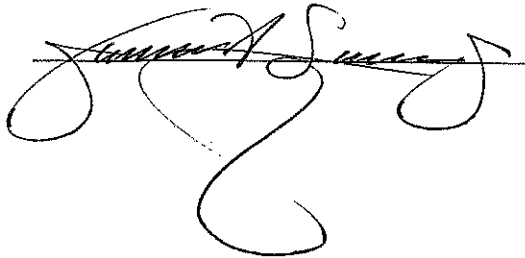
The Board found no other site specific adverse impact.

CONCLUSIONS

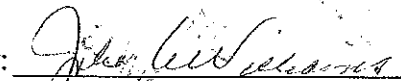
Based upon the findings set forth above, the Board voted at the conclusion of the hearing of March 2, 2011, 3-0 to grant the applicants request for a special exception for a surface mine in the “A” Zoning District. The Board conditioned its approval upon the applicant’s compliance with the terms and criteria of the Ordinance at all times. Additionally, the Applicant must also obtain the approval of all State, County, and municipal agencies whose approvals are required for the conduct of the proposed use, including, but not limited to, Soil Conservation District, Allegany County Health Department, ACDPW Roads Division, Zoning Certification, Building Codes Compliance, House Numbering, Floodplain Management, Subdivision Review and Structural/Electrical Inspection Agency.

ATTEST

BOARD OF ZONING APPEALS

A large, stylized handwritten signature in black ink, appearing to be "James J. Smith", written over a horizontal line.

By:

A handwritten signature in black ink, appearing to be "Julia Williams", written over a horizontal line.

Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List