

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 16-1660

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Route 50, Easton, Maryland, beginning at 7:00 p.m., December 19, 2016, to consider the application of **B & D SAND AND GRAVEL, LLC** (Applicant). The Applicant is requesting a special exception to continue operation of a 5.1 acre surface mine for the extraction of sand and gravel and to reapprove the expanded mining area by 4.6 acres for a total of approximately 9.7 acres. The property is located on 10775 Hiners Lane, Easton, Maryland 21601 in the Agricultural Conservation (AC) zone. The property owner is the Applicant. The request is made in accordance with Chapter 190 Zoning, Article III, §190-16, §190-70, and Article IX, §190-180 of the Talbot County Code (Code).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Louis Dorsey. David R. Thompson, Esquire, 111 East Dover Street, Easton, Maryland 21601 represented the Applicant. Elisa Deflaux, Environmental Planner, appeared on behalf of the Talbot County Office of Planning and Zoning. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for special exception with Attachment.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.

5. Notice of hearing with a list of nearby property owners attached.
6. Copy of special exception requirements from the zoning ordinance with the Applicant's response to each applicable requirement attached.
7. Staff Report.
8. Planning Commission recommendation.
9. Sign maintenance agreement.
10. Site Plan by Fink, Whitten & Associates, LLC.
11. Independent Procedure Disclosure and Acknowledgement Form.
12. Aerial photograph.
13. 2016 Surface Mining License.
14. Decision No. 829.
15. Decision No. 987.
16. Decision No. 1208.
17. Decision No. 1515.
18. Photographs from November 4, 2016 site visit.
19. Letter from Maryland Department of Natural Resources dated November 22, 2016.

Mr. Thompson reminded the Board that the sand and gravel operation at the site has been ongoing for a number of years. The Maryland Department of the Environment (MDE) permit for the operation has been renewed through 2021.

Mr. Thompson mentioned for the record the issue of preemption. He said that because the State of Maryland regulates virtually all sand and gravel extraction activities within the State the County's only

role is to determine where in the County such activities may occur. He pointed out that the Applicant's use is permitted by special exception in the AC zone.

The owners of B&D Sand and Gravel, LLC are Matt Brown and Donald Duvall. They purchased the property and mining site from the estate of Norris Taylor. Mr. Taylor had been mining the site for about 20 years. They wish to continue the mining operation, mainly for the extraction of sand. They also wish to expand the mining area consistent with an earlier decision by the Board of Appeals. (In that decision [Appeal No. 1515] the Board permitted an expanded mining area on the property but Mr. Taylor had not expanded into that area at the time of his death.)

Mr. Thompson asked the Board to consider and adopt as part of the Applicant's case each of the exhibits that are on the exhibit list. He said that Ms. Elizabeth Fink of Fink, Whitten & Associates, 8626 Brooks Drive, Unit 103, Easton, Maryland 21601, prepared most of the exhibits that were also required by the State for the mining permit. He said she was present at the hearing and available for questions but, if none, he would not call her as a witness.

Mr. Thompson asked the Board to consider whether its prior condition of a six-foot chain link fence topped with three strands of barbed wire was necessary. The condition was a part of the original approval of mining activities on the site when Mr. Taylor was the applicant (Appeal No. 829). He said that the Applicant is proposing an alternative measure that Mr. Duvall would explain in his testimony.

In response to a question from a member of the Board Mr. Thompson confirmed that in 2009 the Board of Appeals approved Mr. Taylor's application to expand the mining operation by about five acres. The current application is for the same five acres. He said Mr. Taylor was also required by that approval to install an alternate access road to the mining site. He did not comply with that requirement but Mr.

Brown and Mr. Duvall constructed the alternate access, to comply with the Board's requirement, soon after they purchased the site.

Donald Duvall, 9019 Centreville Road, Easton, Maryland 21601, testified in support of the application. He responded to a question regarding certain trees on the property. He said they had the property surveyed and the trees in question are on their property. He said they intend to leave those trees as a buffer and they have planted additional trees around the property also as a buffer for the operation. He said there is an existing chain link fence in the wooded area on the property.

Mr. Duvall said that having a chain link fence around the working area of the mine presents practical difficulties. He said they plan to continually slope or terrace the previously mined areas up to the surrounding grade. The sloping will alleviate the danger of accidental falls in all but the area actively being mined. They propose, instead, to install movable, orange safety fencing to surround the area that is actively being mined. That fencing would protect workers at the site as well as other persons who might enter the property, with or without permission.

Mr. Thompson said that chain link fence topped with barbed wire is expensive to install and even more expensive to move. They are unsightly and once installed they tend to remain. He suggested the movable, orange fencing surrounding the active mining area would be more likely to alert persons to any potential danger.

Mr. Duvall said that MDE inspects the property about every two weeks. The Applicant is required to file regular reports with MDE regarding the mining and reclamation activities.

In response to a question from a Board member Mr. Duvall said that the amount of traffic to the site will not increase as a result of the larger mining area. The mining activity will not increase but will gradually move to the newer, unmined area as sand and gravel is removed. He said that the material they

mine from the site will, for the most part, be used by their separate excavation business. In response to another question he said that there is an existing berm around a portion of the property that they will continue to enlarge with spoil for the mining activities. In addition to buffering, the berm serves as a means to maintain runoff on the property in compliance with MDE requirements. The berms are and will be planted with grass that can be easily maintained.

Mr. Duvall said that they had one other sand and gravel mine. They finished all mining activities at that site last year and they have completed all of the necessary reclamation actions on the site. The MDE requires a bond for any mining activities in the State to insure completion of necessary reclamation. They have done so and no longer have to maintain a bond for that site. He said they have never had any compliance issues with MDE.

Ms. Deflaux questioned the need for certain conditions imposed upon the former owner. The Board considered conditions and concluded that most were unnecessary, except for those set forth below, given the extensive State regulation of the site's activity.

Mr. Duvall confirmed that the property is in compliance with the 200 foot setback requirement.

No one appeared in opposition to the proposal.

There being no further evidence, the Board considered the application. Upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. It is a permitted special exception use and sand and gravel extraction activities have been approved continuously for this site since 1991.

3. The proposed use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The use has been continuously monitored and permitted by the State. The State recently renewed the permit.
4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. The proposed use is compatible with the nearby residential commercial, maritime, and agricultural properties. It is a large, well screened property.
5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The Applicant has already taken appropriate and adequate steps to improve access to the site, reduce any dust created by access, and protect persons on the site from any dangerous aspects resulting from the mining activity.
6. The use will not have significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection, or other public facilities or services. Any traffic associated with the use will be minimal. The proposed use will not require the addition of water and sewer facilities to service the site. Existing police and fire protection are sufficient for any foreseeable emergency needs created by the use.

7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic.
8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity.
9. Any vehicle access to proposed off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. The proposal will not result in any increase in commercial and truck traffic using residential streets and will not create a hazard to developed residential areas.
10. The proposed use will not adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife.
11. The proposed use will not adversely affect any adjacent existing agricultural uses. The use should have no such impact.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **B & D SAND AND GRAVEL, LLC** (Appeal No. 16-1660) is **GRANTED** the requested special exception, consistent with the evidence submitted to the Board of Appeals and subject to the following conditions. (The conditions set forth herein apply to the Applicant and to any of its successors or assigns.)

1. The Applicant shall obtain and keep current all Federal, State, and local permits for the surface mining activity as applicable.
2. The Applicant shall apply for and comply with the requirements of a Major Site Plan approval from the Talbot County Planning Commission and Planning Office.
3. The Applicant shall furnish a reclamation plan, along with a surety bond, both in a form acceptable to Talbot County to insure completion of the reclamation plan.
4. This special exception shall continue until the completion of all mining activities on the site and the site is reclaimed in accordance with all Federal, State, and local requirement as long as the Applicant maintains proper permits and licenses from those authorities. The Applicant shall provide copies of the permits to the Talbot County Planning Office as they are obtained.


The vote of the Board of Appeals was five to zero to grant the special exception subject to the aforementioned conditions.

GIVEN OVER OUR HANDS, this 24th day of January, 2017.

TALBOT COUNTY BOARD OF APPEALS



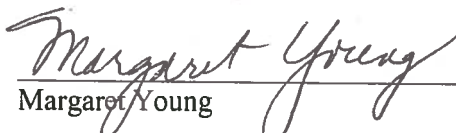
 Paul Shortall, Jr., Chairman



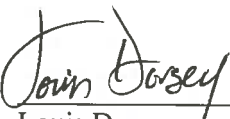
 Phillip Jones, Vice Chairman



 John Sewell



 Margaret Young



 Louis Dorsey