

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER S 71-90

IN RE:

THE HALLE COMPANIES

4TH Assessment District

Date Heard: April 24, 1990

Record Held Open Until: August 24, 1990

OPINION BY: PERKINS, TEMPORARY ADMINISTRATIVE HEARING OFFICER

DATE FILED: September ²⁷ , 1990

PLEADINGS

The Applicant, The Halle Companies (hereinafter referred to as the "Applicant"), is petitioning for a special exception to permit a sand and gravel operation in a RA, Agricultural Residential District (a special exception under Section 12-212 of the Zoning Code to permit a sand and gravel operation in a RA, Residential Agricultural District) on the property consisting 107.99 acres, more or less, fronting approximately 695 feet on the south side of Patuxent Road, and approximately 1,500 feet west of Bragers Road in the Odenton area.

PUBLIC NOTIFICATION

The Temporary Administrative Hearing Officer reviewed the file and found that copies of the required newspaper publications were present in the file. This officer further reviewed the file and found that the certification of the Office of Community Affairs required by Section 11-109 was present and appeared correct. J.A. Chisholm of The Halle Companies testified that one sign had been posted on Patuxent Road for over two weeks as required by Section 11-107(b) of the Zoning Code.

FINDINGS AND CONCLUSIONS

Kevin P. Dooley testified on behalf of the Office of Planning and Zoning and submitted the report and recommendation of that office as Planning and Zoning Exhibit #1. Mr. Dooley pointed out that this site was zoned RA, Agricultural Residential, as the result of the comprehensive zoning process of the Fourth Assessment

District, effective June 12, 1989. The Applicant proposes to mine 58.93 acres of the site. The mining operation will proceed in a southwesterly direction. Much of the southeastern portion of the property contains non-tidal wetlands and will not be disturbed. The Applicant must comply with both the specific criteria of Section 12-212 of the Zoning Regulations and the general standards of Section 12-104 of the Zoning Regulations.

This site was previously approved for a sand and gravel operation on May 28, 1985 in case numbers S285-84 and B284-84. In those cases, the Applicant, J.E. Owens III, proposed to mine about 102 acres of the site. Because the use was not in operation within two years of that decision, the previous approval was rescinded by operation of law.

Mr. Dooley was of the opinion that this proposal was similar to the proposal which had been approved in the 1985 case. However, the proposal fails to comply with two of the specific criteria of Section 12-212. First, Section 12-212(a)(4) requires that the operation be located at least 1,000 feet from any residence. At least four residential dwellings are located within that 1,000 foot setback. The closest residence is about 300 feet from the operation. Second, Section 12-212(a)(2) requires that the operation be fenced. The site plan shows only partial fencing along the perimeter of the operation.

Mr. Dooley pointed out that the presence of hydric soils along the eastern portion of the site. This reduces the area of the operation from the area approved in 1985. Further, there is a park

along the east side of the site which must be protected from the operation.

The only access to the site is from Patuxent Road. To the north of the site is located the older village of Woodwardville and the soon to be developed Piney Orchard PUD. To protect these communities, traffic to and from the site must be prohibited from using Patuxent Road to the north and west of the site. This requires that all traffic from the site make a right turn onto Patuxent Road and proceed to the intersection of Conway Road and Maryland Route 3. Further, right turns from southbound Patuxent Road into the site must be prohibited.

Mr. Dooley submitted the report of Nancy Mathews of the Environmental Section of the Office of Planning and Zoning. Ms. Mathews pointed out that there are several possible-probable non-tidal wetlands throughout the project area. There is also a wetland of special state concern adjacent to this property which requires a minimum 100 foot undisturbed buffer. Wetlands on site and the minimum 100 foot undisturbed buffer will have to be flagged before work can commence. Ms. Mathews also requested a Phase I archeological survey prior to the commence of work.

J.A. Chisholm testified to the general nature of the Applicant's proposal. He noted the similarity to the operation which was approved in the 1985 case. There is a need for a sand and gravel operation. The Applicant was willing to comply with the conditions proposed by Mr. Dooley.

Anne M. Randall of the Traffic Group testified on behalf of the Applicant. A memo from the Traffic Engineering Division found the negative declaration for traffic impact not acceptable. Her firm will complete the traffic impact study required by the Traffic Engineering Division before it can approve this special exception. The remaining issues raised by the Traffic Engineering Division will be addressed by the Applicant.

At the conclusion of the hearing, the record was held open for thirty days for three purposes. The first was for the Applicant submit a revised site plan showing the impact of the 1,000 foot setback. The second was to submit all wetland data prepared relative to the previously approved mining permit (surface mining permit #87-SE-0261 issued to Genstar Stone Products Company on July 15, 1988). The third was the submission of traffic reports addressing issues raised by the Traffic Engineering Division.

In response to the first item, the Applicant did submit a site plan with the 1,000 foot setback illustrated. The Applicant was unable to locate any wetlands data prepared relative to the Genstar mining permit. In its letter of May 9, the Applicant indicated that it retained a wetlands consultant to locate non-tidal wetland areas. Those areas were to be flagged and illustrated on a topographic exhibit. That exhibit was not received as of the record closing date, August 24, 1990. The response to the third item, the Applicant did submit a traffic impact study prepared by the Traffic Group. Further, Mr. Dooley submitted the updated comments of the Traffic Engineering Division.

Among other things, the report of the Traffic Group indicates that the intersection of Maryland Route 424 and Route 3 operates at level of service "E" in the morning peak hour and at level of service "F" in the evening peak hour. All traffic from the Applicant's site would be directed toward this intersection. The report recognized that the intersection, even with proposed improvements, will continue to operate at failing levels of service with the existing and background traffic. The report concluded that, under worst-case conditions, traffic from the Applicant's proposed operation will have "only a minimal impact on the intersection of Md. 3 and Md. 424".

Specific Criteria

Section 12-212 permits a sand and gravel operation as a special exception in a RA, Residential Agricultural district. With reference to the specific criteria required by that Section, I find, based upon the testimony of Mr. Dooley that the proposed operation can comply with those specific criteria. With regard to the issue of the 1,000 foot setback, unless the Applicant requests a variance from that requirement, it will have to comply with it. With regard to fencing the site, this is addressed by Mr. Dooley's recommended condition that actively used areas be surrounded by a fence measuring at least six feet (reduced from eight feet) in height.

General Standards

Section 12-104 provides that this special exception may be granted only if the general requirements of Subsections (1) through

(10) of that Section are met. With reference to each of those Subsections, I find as follows:

(1) Public Health, Safety and Welfare: The sand and gravel operation is one of those activities required for new construction. The public health, safety and welfare is served by construction and re-construction of roads, buildings and other capital projects.

(2) Compatibility With the Appropriate and Orderly Development of the District: A significant portion of this site consists of non-tidal wetlands. There is a wetland area of special state concern near this site. Adjoining the site to the east is a County park. Without clear delineation of the areas of non-tidal wetlands, this Hearing Officer cannot make the finding that this project is compatible with the appropriate and orderly development of the zoning district. The areas of non-tidal wetlands may be so extensive that a sand and gravel operation is inappropriate for this site.

(3) Noise, Fumes, Vibration or Light: With the conditions recommended by Mr. Dooley and with the requirements of the State of Maryland before a surface mining permit is issued, this requirement is not a factor.

(4) Conflict with Existing or Programmed Public Facility, Public Service, School or Road: The adequacy of the existing highway system for this proposed use is a critical issue. I find that the inadequacies of the site entrance and Patuxent Road can be addressed by meeting the conditions required by the Traffic Engineering Division. However, the failing levels of service at

the intersection of Maryland Routes 3 and 424 during the morning and evening peak hours are fatal. The Applicant argues that the impact of this operation on those levels of service would be minimal. The level of service at this intersection will be made worse by the addition of 21 or 22 truck trips during each peak hour. For that reason, I find that the roadways are not adequate for this proposed use. The result is that there is a conflict between this proposal and the existing road facilities.

(5) Adequacy of and Suitable Access to Electric, Sewer, Storm Drainage, or Water Service: This is not an issue in this request.

(6) Adequacy of Water and Wastewater Facility: This is not an issue in this request.

(7) Adequacy of On-site Water, Sewerage, Storm Drainage or Power Plant: These issues will be addressed as part of the surface mining permit application.

(8) Written Recommendations of Health Department, Department of Public Works, and the Department of Utilities: The Applicant has received the written recommendations of these three departments.

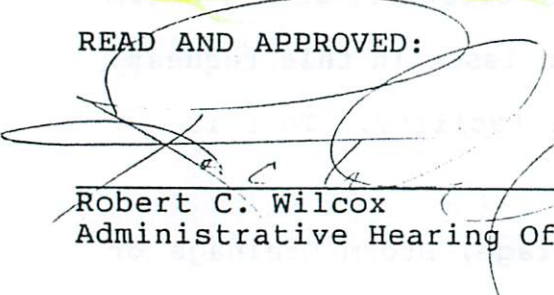
(9) Public Need: I am satisfied from the testimony of Mr. Chisholm that there is a public need for a sand and gravel operation within Anne Arundel County.

ORDER

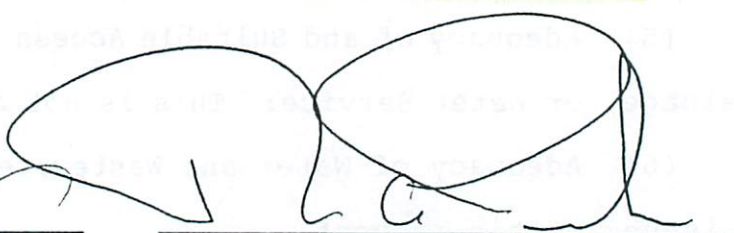
Pursuant to the application of The Halle Companies for a special exception to permit a sand and gravel operation (a special exception under Section 2-212 of the Zoning Code to permit a sand

and gravel operation in a RA, Residential Agricultural district) on the property as described in the application, and pursuant to the advertising, notice to community associations, posting of the property, and a public hearing, all in accordance with the provisions of law, it is this 21st day of September, 1990 ORDERED by the Temporary Administrative Hearing Officer of Anne Arundel County, that the Application for a special exception, as set out above, on the property described in the application, be and the same is hereby DENIED.

READ AND APPROVED:



Robert C. Wilcox
Administrative Hearing Officer



Roger A. Perkins
Temporary Administrative
Hearing Officer

NOTICE TO APPLICANT:

Within thirty (30) days from the date of this Decision, any person, firm, corporation or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.