

Sumter City-County Board of Zoning Appeals

January 11, 2012

BOA-11-27, Longleaf Drive Mining Operation Access, D&L Properties (County): Part I Appeal

An Appeal of the Zoning Administrator's determination that proposed mining operation fails to meet designated access requirements.



Appeals - Variance - Special Exception

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I. THE REQUEST

| | |
|---|--|
| Applicant: | D&L Properties |
| Status of the Applicant: | Property Owner |
| Request: | An Appeal of the Zoning Administrator's determination that proposed mining operation fails to meet designated access requirements. |
| Location: | Longleaf Dr. |
| Present Use/Zoning: | Undeveloped/Agricultural Conservation (AC) |
| Tax Map Reference: | 181-00-01-003 |
| Adjacent Property Land Use and Zoning: | North – Floodplain/AC South – Residential/AC East – Residential/AC West – Residential/AC |

PART I-The Appeal

II. BACKGROUND

Property owner and applicant, D&L properties, propose to develop a Sand and Dirt Mining operation on a 4.98 acre portion of a 137.52 acre tract identified as tax map 181-00-01-003 (the "Property"). The Property is located north of Cains Mill Rd., and north of two private roads named Newlevy Dr. and Follin Dr. The Property is east of Bar-zee Drive and west of Longleaf Drive.

The applicant proposes to operate a sand and dirt mining operation consistent with SIC 14, Mining & Quarrying of Non-metallic minerals. This use is listed as a conditional use in the AC Zoning District. Conditional Use and Site Plan applications (CU-11-59 and MSP-11-50, respectively) are required and were submitted on December 1, 2011. These applications are under review by Planning Staff and should be considered independent from the requests contained in BOA-11-27. The applicant has stated that the mine would serve construction sites in the area, be open for at least 4 years, and generate an estimated 72 truck trips per day.

D&L Properties, LLC initially proposed access to the mining operation via two private drives, Follin Dr. and Newlevy Dr. A BOA application for site access was also filed (BOA 11-25) but subsequently withdrawn on December 9, 2011.

Access to the site is proposed now via Longleaf Dr.

III. APPEAL

Zoning Administrator Position

On December 13, 2011, the Planning Director, acting on behalf of the Zoning Administrator, issued a formal determination on the matter (Attachment 1). In relevant portion:

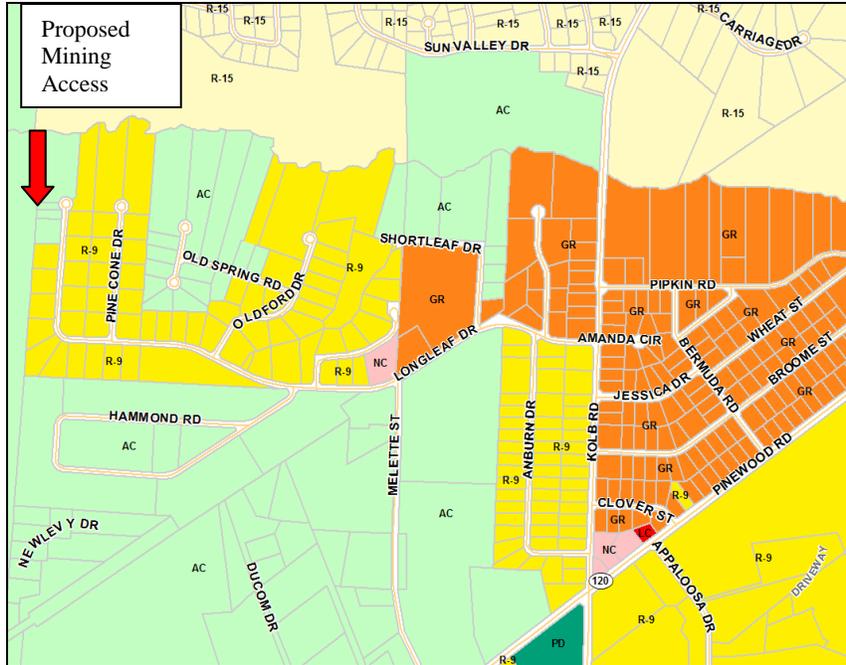
The Zoning Administrator has determined Longleaf Dr. does not meet the access requirements of the Zoning Ordinance for a Mining and Quarrying Operation under Article 3, Section 3.n.5.b and other relevant sections as noted below:

- 1) *Section 3.n.3.b states that the mining operation site must obtain “its highway access from a collector or arterial street.” Longleaf Dr. is not classified as collector or arterial street. The Zoning Ordinance defines this street, based on its purpose, trip generation, lot size and frontage as a Residential Access street with portions near Kolb Rd. meeting the residential sub collector definition (according to Zoning Ordinance Exhibits 15, 16, 17). Kolb Rd. is the nearest collector. The purpose of this requirement is to ensure reasonable and safe access to public streets for what amounts to a high truck traffic generating, commercial operation. Collector and Arterial streets are designed to convey large numbers of vehicle trips. Residential access streets are not designed to convey commercial activity. Longleaf Dr. is fundamentally a neighborhood street, at a width of approximately 22 feet paved and one mile long. The preponderance of surrounding properties are zoned R-9 (Residential 9) or GR (General Residential).*

How did the Zoning Administrator come to this conclusion? Exhibits 15, 16, 17, and 18 set forth specific criteria for each street classification. For a street to be defined as a collector, minimum standards must be met. In order to better illustrate, a side by side comparison of two relevant criteria is offered below:

| Standard | Collector | Longleaf Dr. |
|-----------------------------|------------------|-----------------------------|
| Average Daily Trips (ADT's) | 3,000 | Est. 660 (Shortleaf to End) |
| Travel Lane Width | 24' | 22' |

The Zoning Ordinance requires a mining operation to obtain its access via a collector or arterial. Longleaf Dr. is neither a collector nor an arterial. Thus, access cannot be granted for a mining operation.



This is confirmed by its Zoning Ordinance definition in Exhibit 16.

Residential Access Street-Lowest order of residential street. Provides frontage for access to lots, carries traffic having destinations or origins on the street itself. Designed to carry the least amount of traffic at the lowest speed. All or the maximum housing units shall front on this class of street.

Ultimately, we find the Zoning Ordinance quite clear on this matter. Access to collector is required for a mining operation. Longleaf Dr. is not a collector.



Longleaf Dr.

IV. Applicant Position

The Applicant contends that the Zoning Administrator erred in making the determination. This entire position can be found in Attachment 2.

Applicant: Agricultural Conservation (AC) District is the site's current zoning which covers areas of the County which are rural or agricultural in nature. Section 3.n.3b allows mining as a conditional use. The Zoning Administrator's interpretation of Section 3.n.3b must be considerate of Section 5.b.3d(3) which provides access shall be "from a paved road meeting the criteria of a collector or arterial road," not that the paved road be classified as such.

Staff Response: Section 5.b.3.d(3) is not relevant in this case as it refers to metallic mining operations under the SIC 10. The proposed operation is classified under SIC 14, non-metallic mining operations. Therefore, by Ordinance, the Zoning Administrator may not consider the section suggested by the Applicant.

Applicant: Longleaf Drive is proposed as the access for Applicant's mining operations and has served as access to the site in prior mining operations; meets the criteria of a residential subcollector or collector street (Exhibit 16, p. 209 County-Zoning & Development Standards Ordinance); and is not limited to traffic having destinations or origins only on Longleaf Drive and therefore cannot be classified as "primarily a Residential Access Street" as stated by the Zoning Administrator.

Staff Response: First, there is no record of a legal mining operation at this location, according to Planning Department records. We find no active conditional use, site plan, or business license for a mining operation at this location.

The Applicant offers no evidence that Longleaf Dr. meets the criteria of a Collector Rd. Please refer to Staff explanation above on page 2 and 3 of this report. Longleaf Dr. is a one mile long cul-de-sac serving residential lots.

Applicant: The Zoning Administrator's denial acknowledged that Longleaf Drive "near Kolb Road" meets the residential subcollector definition. The street designation, according to the Zoning Administrator, is based on its purpose, trip generation, lot size and frontage. Therefore, since Longleaf Drive meets the criteria of a subcollector in part, it meets it for its entirety as its character is consistent for its entire length and the surrounding zoning (R-9 and GR) in parts of Longleaf is irrelevant.

Staff Response: A subcollector is not a collector; here there is a difference with a distinction. The Zoning Ordinance defines them differently in terms of average daily trips pavement width and in text definition. In any event, the Ordinance requires access to a collector, not a subcollector.

Applicant: The Zoning Administrator's denial is capricious and arbitrary in that mining operations were approved at another other location (Hill Street) without access from a collector or arterial street and at another location (Lewis Road) where operations present high truck volumes on public streets inhibiting reasonable and safe access.

Staff Response: Hill St. is a collector. Lewis Road is a collector road.

Applicant: The Applicant's site has historically been mined and Longleaf Drive used as access. The Zoning Administrator's denial amounts to be impermissible taking and unconstitutional denial of the Applicant's right to utilize its property.

Again, there is no record of a legal mining operation at this location, according to Planning Department records. We find no active conditional use, site plan, or business license for a mining operation at this location. Further, the Agricultural Conservation Zoning District lists dozens of uses which could be considered for the property. The constitutional test revolves on a right for a reasonable use of property, not an absolute one.

V. DRAFT MOTIONS for BOA-11-27, Part I, The Appeal

- A. I move that the Zoning Board of Appeals deny BOA-11-27 Part I Appeal, subject to the findings of fact and conclusions of law set forth *Staff Report* dated January 11, 2012 and in the *Order On Appeal*, dated January 11, 2012: (Note: A vote to deny **UPHOLDS** the Zoning Administrator decision).

- B. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-27.

VI. BOARD OF ZONING APPEALS - JANUARY 11, 2012

The Board of Zoning Appeals voted to deny BOA-11-27 - Part I Appeal which upholds the Zoning Administrator's decision as set forth in the Order of Appeal.

Attachments

- 1. Zoning Determination dated December 13, 2011
- 2. Applicant Position/Submission

Order on Appeal

Sumter Board of Appeals

BOA-11-27 Longleaf Dr. Mining Operation Access

Part I:

Appeal from the Interpretation of the Zoning Administrator

January 11, 2012

Date Filed: January 11, 2012

Permit Case No. BOA-11-27

The Sumter Board of Appeals held a public hearing on Wednesday, January 11, 2012 to consider the appeal of D&L Properties for an appeal of the interpretation of the Zoning Administrator as set forth on the Form 2. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

Facts:

- Appellant proposes to construct a mining operation on 4.98 acre portion of a 137 acre parcel identified as tax map 1810001003.
- The Applicant proposes to obtain access to the site via Longleaf Dr.
- A mining operation is a conditional use in the Agricultural Conservation (AC) Zoning District. One condition for approval requires that access be obtained from a collector or arterial.

Conclusions:

- Zoning Administrator is correct in her interpretation of Section 3.n.3.b and other relevant sections of the Sumter County Zoning and Development Standards Ordinance.
- Longleaf Dr. is NOT a Collector and does not meet the criteria for a Collector as set forth in Exhibits 15, 16, 17, and 18 of the Zoning Ordinance.
- Section 3.n.3.b. requires direct access to a collector or arterial street. The proposal to access Longleaf Dr. fails to meet this standard.
- Based on the foregoing, the staff report, and the public testimony, Longleaf Dr. may not be used by the mining operation to obtain access.

THE BOARD, THEREFORE, ORDERS that the appeal is **DENIED** – **GRANTED**

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.