



Queen Anne's County

DEPARTMENT OF PLANNING & ZONING

110 Vincit St., Suite 104
Centreville, MD 21617

Telephone Planning: (410) 758-1255
Fax Planning: (410) 758-2905
Telephone Permits: (410) 758-4088
Fax Permits: (410) 758-3972

County Commissioners:

Christopher M. Corchiarino, District 4
Jack N. Wilson, Jr., District 1
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Philip L. Dumenil, District 3
James J. Moran, At Large

To: Planning Commission
From: Steven Johnson, Senior Planner
Meeting Date: January 9, 2025
File Number: SP #24-04-0125
File Name: Merrick Farm (Phase 4)
Owner: Merrick Farm, LLC
201 Iron Valley Drive
Lebanon, PA 17042
Applicant/Developer: Byler Materials, LLC
c/o Jonathan Byler
201 Iron Valley Drive
Lebanon, PA 17042
Engineer: Lane Engineering, LLC
117 Bay Street
Easton, MD 21601

General Information:

Map / Parcel / Tract: 31 / 44 / 1
Parcel Size: 348.343± acres
Location: 2251 Goldsboro Road, Barclay, MD
Zoning District: Agricultural (AG)

Proposal and Requested Actions:

The applicant is proposing a 19-acre expansion of an existing major extraction operation in the Agricultural zoning district.

The applicant is requesting Concept Plan approval and Favorable Recommendation to the Board of Appeals.

Project History:

- Minor Extraction Approval: May 22, 2008
Phase 1 Major Extraction Approval: June 9, 2011
Phase 1 Major Extraction Expansion Withdrawn (CU-010007): November 8, 2013
Phase 2 Major Extraction Approval (CU-14010003): September 15, 2014
Phase 3 Major Extraction Approval (CU-17070010): September 8, 2018
Stockpile Height and Hours of Operation Revision (BOA-19-10-0049): December 21, 2020
Phase 4 Concept Plan Submission: April 29, 2024
o STAC Meeting 1: June 5, 2024
o STAC Meeting 2: November 20, 2024
o 25-Day Submittal: December 13, 2024
o Planning Commission Hearing: January 9, 2025

## **FACTS AND FINDINGS**

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- The project site is located within the Agricultural (AG) zoning district. The AG zoning district purpose is:
  - §18:1-14.A.(1): The Agricultural (AG) District is intended to preserve and protect areas of the County that are predominately in agricultural use. The AG District is characterized by agricultural and related uses. A minimal amount of new residential development shall be allowed, provided the rural and agricultural character of the area is preserved.
  - §18:1-14.A.(2): It is intended that in the AG District, there shall be no basis under state law (COMAR §5-4-03) of this Chapter 18:1 for recourse against the effects of any normal farming operations conducted in accordance with standard and acceptable best management practices. Normal agricultural effects include, but are not limited to, noise, odor, vibration, fumes, dust, spray drift, or glare.
- Chapter 18 Appendix A: Glossary
  - *MAJOR EXTRACTION AND DREDGE DISPOSAL USE* - All extraction operations that disturb more than five acres, except extraction associated with aquaculture; dredge disposal uses that disturb more than 10 acres of land; and all nonlateral oil and gas drilling and extraction.
- The applicant is proposing an expansion to an existing major extraction operation in the AG zoning district.
  - Per §18:1-95.E.(2), all applications for a zoning permit for all industrial or agricultural support proposals requiring conditional use approval shall, in addition to what is otherwise required for a conditional use permit, be presented to the Planning Commission during a public hearing. The Board of Appeals shall not render its decision until the Planning Commission recommendations have been received and reviewed.
  - In accordance with §18:1-14.C.(7), major extraction is a conditional use in the AG zoning district.
    - Additional requirements for a major extraction conditional use are under §18:1-95.E.

### **LEGAL STATUS:**

- Mr. William Baum, Zoning Inspector, visited the site in December of 2024 for the annual site inspection of the extraction operation. According to Mr. Baum the operation is in compliance at this time and there are no violations for this property.

### **EXISTING CONDITIONS:**

- Parcel 44 Tract 1 is located at 2251 Goldsboro Road in Barclay, MD and totals 348.343 acres.
- Within the immediate vicinity of the operation, the closest single-family dwellings to the edge of the subject property are located approximately 596' to the north, 514' to the west, 477' to the east, 741' to the southeast, all on AG zoned property.
- There is 4,027 square feet of existing floor area and 12.90 acres of existing impervious area on-site.
- The operation is served by an irrigation well and septic system.
- The operation complies with the following mining setbacks:
  - 50 feet from any lot line.
  - 125 feet from any street.
  - 200 feet from any residential district boundary.
- The operation yields topsoil, common borrow, sand, and gravel.

- Supplementary processes include washing, screening, and dewatering.
- The equipment on-site consists of an excavator, rubber tire loader, small bulldozer, water truck, broom tractor, and hydraulic diesel dredge.
- The hours of operation are as follows:
  - January 1 – March 31 (Monday through Friday)
    - Open gates for trucks to lineup: ----- 6:45 A.M.
    - Start of full operations (including truck loading): -----7:00 A.M.
    - End of truck loading: ----- 5:00 P.M.
    - Mining may continue (without truck loading) until: ----- 8:00 P.M.
  - April 1 – December 31 (Monday through Friday)
    - Mining operations may begin (no truck loading): -----5:00 A.M.
    - Open gates for truck to lineup: -----6:45 A.M.
    - Start of full operations (including truck loading): -----7:00 A.M.
    - End of truck loading: ----- 5:00 P.M.
    - Mining may continue (without truck loading) until: ----- 9:00 P.M.
  - All Year (Saturday)
    - Open gates for trucks to lineup: ----- 6:45 A.M.
    - Start of full operations (including truck loading): -----7:00 A.M.
    - End of truck loading: -----12:00 P.M.
    - Mining may continue (without truck loading) until: ----- 3:00 P.M.
  - Sunday
    - No operations are permitted.
- The applicant previously executed a public works agreement for future road improvements and a host community agreement with the Department of Public Works.

**PROJECT DETAILS:**

- The applicant is proposing a 19-acre expansion of an existing major extraction operation.
- The expanded operation will continue to yield topsoil, common borrow, sand, and gravel.
- The proposed Phase 4 maximum limits of disturbance / mining permit area totals 119.865 acres.
  - Includes the haul road, access roads, parking spaces, material stockpile areas, and existing landscaping.
- Non-residential Floor Area (FAR):
  - Maximum permitted (12%) ----- 41.80 acres
  - Proposed ----- 0 acres
- Impervious surface area:
  - Maximum permitted (40%) ----- 139.34 acres
  - Existing (3.7%) ----- 12.90 acres
  - To be removed ----- 0.94 acres
  - Proposed ----- 0.14 acres
  - Total (3.5%) ----- 12.10 acres

- Building height:
  - Maximum permitted -----45 feet
  - Equipment, Structures, Stockpiles ----- < 45 feet
- New water and sewer are not being proposed as part of the expansion.
- As indicated on the plans, the expanded operation will continue to comply with the required mining setbacks.
- Properties adjacent to the area of expansion are predominantly associated with agricultural operations and land that is either wooded or tilled.
- Material removal rate:
  - The applicant estimates that 100 trucks bearing an average of 12 cubic yards a day, 5.5 days a week, 52 weeks a year, equates to an average yearly removal rate of 343,200 cubic yards per year. At this rate, 1,956,227 cubic yards of material will be removed by the time of final grade in 5.7 years.
- The approximate finished depth of the mine will be 70’.
- The applicant has provided an End Use Plan.
  - The End Use Plan indicates a 90.47-acre pond will remain after the mining operation.
  - A location for a future residence is also provided.
  - Sheet L-101 includes point by point responses by the applicant that address each section of conditional use code as it applies to this proposal.
- The engineer provided a sound study dated December 30, 2024. The study completed by Vibra-Tech concluded the following:
  - Noise generated by the use will not exceed residential noise daytime limits of 65 dBA at the property line as required by state code/COMAR.
  - Noise generated by the use will not exceed nighttime limits of 55 dBA at the property line as required by state code/COMAR subject to compliance with the provided standoff distances for the dredge, loader, haul truck, and excavator.
    - Dredge ----- 500 feet
    - Loader ----- 800 feet
    - Haul Truck and Excavator ----- 1000 feet
- Proposed stormwater management has been reviewed and approved by the Department of Public Works.
- The applicant is not proposing to change the current operating hours.

Parking/Roadways:

- No new parking is required.
- The length of the paved entrance remains sufficient to accommodate the “stacking” of trucks waiting to enter the site such that no trucks will be parked along the public roadway.
- The average number of truck trips will remain at 100 per day.
- Trucks leaving the site will continue to utilize the existing haul route.
  - Merrick Corner Road to MD Route 313.

- The State Highway Administration has reviewed the proposed expansion and offered no objection to its approval.

#### Environmental Details:

- The site is not located within the Chesapeake Bay Critical Area.
- The site does not contain erosion hazards, streams, wetlands, or areas of 100-year flood plain.
- The only steep slopes that exist on-site are those that were created by the mining operation.
- There are 41.08 acres of woodlands on the site. The applicant is proposing to clear 1.44 acres.
  - According to §18:2-4.B.(10), mineral extraction activities are exempt from the Forest Conservation Act.
- A letter dated 5/20/2024 from Maryland Department of Natural Resources indicates no known rare, threatened, or endangered species exist on-site.
- An existing tax ditch that runs through the center of the parcel will not be disturbed by the proposed expansion.

#### Buffering/Lighting/Signage:

- The applicant will remove an evergreen screening buffer west of the existing operation and is not proposing to replace it at this time.
  - The western boundary of the expansion is greater than 2,400 feet from Maryland Route 313.
    - The proposed expansion is not easily visible from the roadway or adjacent properties.
  - The applicant intends to make application for a larger Phase 5 expansion within 12 months.
    - Construction of landscaped berms will be included in the proposal.
- No new site lighting is proposed.
- Signage:
  - Current signage is represented on sheets G-105 and V-101.
  - Proposed signage is represented on sheet C-101. The signage will meet standards found in Articles XII and XIV of the Zoning Code.

#### **2022 COMPREHENSIVE PLAN:**

- Chapter 4: Land Use
  - Map 4-9, Comprehensive Plan Map: Countywide Land Use: Identifies the expansion area as Rural Agriculture Areas.
- Chapter 5: Environmental Resources
  - The State's Land Use Article requires inclusion of a mineral resources element that identifies undeveloped land that should be kept in its undeveloped state until the land can be used to (or assist in) providing a continuous supply of minerals, identifies appropriate post-excavation uses for the land, and incorporates land use policies and recommendations for related regulations. Page 5-22
  - Mineral deposits of sand and gravel found in the County provide opportunities to support local and regional development and infrastructure needs while contributing to the local economy. Page 5-22
  - Map 5-12, Potential Mineral Recovery Areas: Identifies the property as Qu – Upland Deposits (Eastern Shore), gravel, sand, silt, and clay.

**CONCLUSION:**

No agencies that have reviewed this Concept Plan have offered objections to its approval.

**SUGGESTION FOR RESOLUTIONS:**

**Concept Plan:**

RESOLVED, that the Planning Commission, regarding the request by Byler Materials, LLC for Concept Plan approval for a 19-acre expansion of an existing major extraction operation in the Agricultural zoning district, which is more particularly described in Planning & Zoning file SP #24-04-0125, hereby finds:

1. The Concept Plan **IS / IS NOT** consistent with the goals and objectives of the Queen Anne’s County 2022 Comprehensive Plan.
2. The Concept Plan **IS / IS NOT** consistent with the Queen Anne’s County Zoning & Subdivision Regulations.

***(\*SELECT ANY OTHER FINDINGS FROM STAFF REPORT\*)***

... and hereby **GRANTS / DENIES** Concept Plan approval subject to the following conditions:

1. Proper controls and methods are maintained to minimize truck “mud” tracking or dust plumes in dry times with wind drift suppression.
2. The facilities continue to be adequately designed and maintained to free dirt and debris from the wheels and undercarriage of trucks prior to entering Merrick Corner Road.
3. All Soil Conservation District approvals are maintained.
4. The hours of operation will be consistent with the approval of conditional use case number BOA-19-10-0049. Any changes require additional approvals.
5. Haul trucks shall adhere to the approved haul route as discussed and presented.
6. The use of the dredge, loader, haul truck, and excavator during nighttime hours must adhere to the standoff distances outlined in the staff report and in the sound study dated December 6, 2024.
7. Material storage piles cannot exceed 45’ in height.
8. The Applicant submits as-built updates to the Board of Appeals and Department of Planning & Zoning yearly on the anniversary of Board of Appeals approval or on a schedule determined by the Board of Appeals.
9. The applicant agrees to an annual inspection.
10. All State permits are in place prior to final permitting by Queen Anne's County.
11. Any legal documents are reviewed and approved by the Planning Commission attorney.
12. Any future mining phases or changes to the end use plan must return to the Planning Commission for a recommendation to the Board of Appeals for an amendment to the conditional use.
13. Any and all financial sureties for reclamation, landscaping, stormwater management, and enforcement, etc., are in place before final permits are granted.
14. There shall be no truck parking on Merrick Farm Road. No stacking or parking outside of the gate, no Jake brakes, and no tailgate slamming either on site or on the public road. The Applicant shall post a sign with a notice regarding these restrictions.
15. Any requirements by the Queen Anne's County Roads Department must be satisfactorily addressed.
16. If the applicant fails to submit an application to the Department of Planning and Zoning for the

Phase 5 expansion within twelve months of approval, densely planted evergreen trees must be installed in accordance with 18:1-95.E.(8)(d) along the western boundary of the LOD to provide screening. The vegetation shall be maintained to assure the plantings remain alive and healthy during the operation period. The applicant shall provide a cash deposit, surety bond, or letter of credit for the landscaping.

17. Any outstanding documentation or comments stemming from agency reviews are addressed prior to Board of Appeals submittal.

Recommendation to the Board of Appeals:

RESOLVED, that the Planning Commission, regarding the request by Byler Materials, LLC for a 19-acre expansion of an existing major extraction operation in the Agricultural zoning district, which is more particularly described in Planning & Zoning file SP #24-04-0125, hereby forwards:

...a **FAVORABLE / UNFAVORABLE** Recommendation to the Board of Appeals under Sections 18:1-14.C.(7) and 18:1-95.E.