

..Title

Vote to approve a quasi-judicial request by 1535 King Road LLC for a Special Use Permit on parcel 95385, zoned Heavy Industrial, located at 1535 King Rd., being approximately 18.685 acres, for an asphalt manufacture or refining plant, Cape Fear Township.

..Abstract

Introduction & Background:

A public hearing was held on February 19, 2024, and continued until March 18, 2024. Planning staff as well as Nil Ghosh, attorney for the applicant, presented the request. There were several expert witnesses that provided information as to the findings to support the use. This included a special report prepared by Spangler Environmental, Inc. that found all findings in the application were supported. A special report is required for certain uses identified in the table of permitted uses and the requirements are found in Section 17.9 of the Zoning Ordinance.

Also speaking were Jared Matthews with Curry Engineering on well water and septic, Jason Hamilton with Exalt Engineering on the traffic impact analysis, Jarvis Martin for the market analysis, and Bob Zarzecki, environmental specialist with S & EC who prepared the Environmental Impact Assessment which was reviewed by the Environmental Review Advisory Committee (ERAC) and Spangler Environmental, Inc.

There was a community meeting that was held January 4, 2022, and no one attended, and no concerns noted.

The applicant met with the Chatham County Appearance Commission on August 23, 2023, to review the proposed site plan. There were more diverse plant selections recommended and the applicant agreed to revise the plan accordingly. All other information was recommended for approval.

One citizen spoke, John Alderman, from the Hickory Mountain Township, to voice concerns because of the Sugar Lake Road plant that has ground water contamination from years ago that is still being monitored by NCDOT and local environmental health officials. Attorney Ghosh objected to allowing Mr. Alderman to speak stating he has no standing to bring expert witness due to quasi-judicial process.

Also speaking was Elaine Chioso, chair of ERAC, to provide information from their review of the EIA. Attorney Ghosh objected stating they do not have a legal requirement to provide any information on this matter. The county attorney, Bob Hageman, stated to the Board that per NCGS 160D-301A, there is no ordinance to allow information from ERAC for a quasi-judicial matter and any information provided could not be used in making a decision to approve or deny. She did not provide testimony for this item.

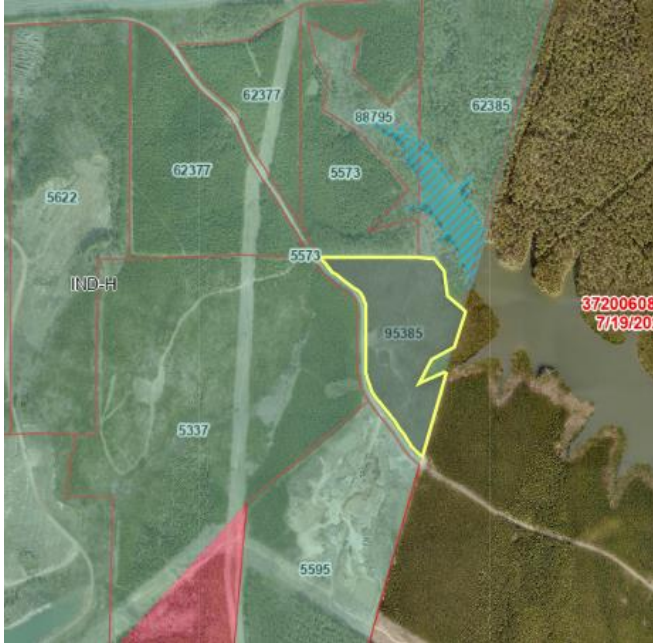
Concerns by the Board noted were for the market analysis. Commissioner Howard requested additional information about residential properties close to other asphalt plants in more rural areas. The Board voted to keep the public hearing open until the

next month to provide the applicant time to bring more market information.

Discussion & Analysis:

When determining whether a Special Use Permit request should be approved as per Section 5 Conditional Zoning Districts, the following findings must be supported.

Below is the Zoning Map of the parcel indicating the current zoning is Heavy Industrial



1. **The alleged error in the Ordinance, if any, would be remedied by the proposed amendment with a detailed explanation of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same.** No error in the Ordinance is being claimed. The proposed use is allowed subject to approval of a special use permit.
2. **The requested special use permit is either essential or desirable for the public's convenience or welfare.** The existing road network is under capacity and the proposed use will not increase beyond the allowable capacity per NCDOT. No additional road improvements are required for this use. Lighting will be used that complies with county regulations. Nighttime operations will be conducted under special circumstances and not on a regular basis.

There are currently no residential uses adjacent or adjoining this property. Noise levels are those expected with normal activity from back up alarms from trucks, general operation noise, and traffic. Levels are expected to be under the 60 decibels allowed by the Chatham County Noise Ordinance.

An air control permit has been issued by the NC Department of Air Quality as deemed consistent with state regulatory requirements. NCDEQ will also monitored for a Spill Prevention, Control, and Counter Measure plan.

It is anticipated to utilize a well for water for fire safety.

- 3. The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.** There is one other active use opposite King Road located in the Heavy Industrial area, a sawmill mulching operation. No other uses are adjacent or adjoining. Duke Energy also owns property adjacent to this property, a portion of which is associated with nuclear facility located in Wake County.

With the new configuration of the roadway network from NCDOT due to the growth in the Moncure area, including Vinfast, having an asphalt plant closer will keep excess traffic off other roadways creating a shorter haul distance to various projects.

The map below shows the proposed reconfiguration of three major interchanges in this area as part of Phase 1



There are two existing asphalt operations in the County located on Pea Ridge Road and Sugar Lake Road.

Tax value will increase and employment opportunities will be available.

- 4. The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or part thereof.**

The maps below are as follows: Comprehensive Plan shows the property in a rural node designation; Moncure Small Area Plan shows the property in an Employment Center node designation; and from the Comp Plan showing the area within the industrial suitability area.



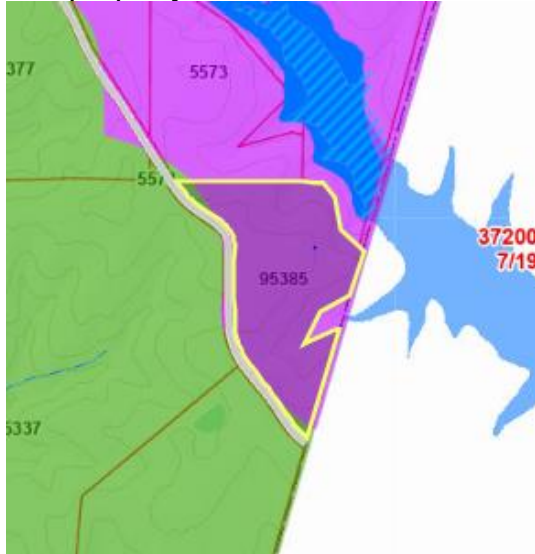
Chapter 2, page 21 – shows the property within the Industrial Suitability area being close to existing compatible uses and access to adequate transportation infrastructure.

Chapter 3, Goal 4, page 41 – encourages diversifying the tax base and providing more employment opportunity to reduce dependence on residential tax bases.

Chapter 4, page 61 – encourages clustering development in designated areas. This area is already used for industrial purposes and residential uses are not adjacent to or adjoining this property. Duke Energy owns the majority of properties surrounding this parcel and are currently under present use value with the county tax office.

Page 103 – Natural Resources – This project drains to Harris Lake watershed of the Cape Fear River Basin. The designation does not prevent land uses such as being proposed however does encourage to minimize impacts to surface waters. There will be a 100 ft protected riparian buffer around the normal pool elevation of Harris Lake as well as a 100 ft vegetated buffer around the perimeter of the property. However, stormwater measures and septic fields will be located within these areas. This project respects riparian buffers and minimizes stream crossings.

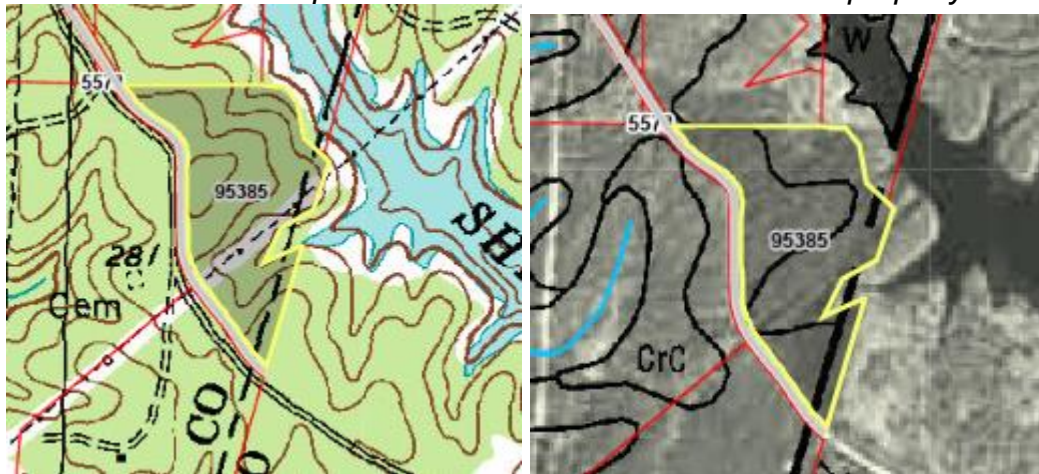
The property is located within the Local (LWA) Watershed designation



FEMA Map 3720060800L, dated July 19, 2022, shows no floodable areas



USGS and NRCS Maps shows no blue line streams on the property



- 5. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County's plans, policies, and regulations. A well will be used to**

service to the site the required setbacks from wells will be observed. A private septic system will be used for wastewater.

Diversion ditches will direct all site runoff to permitted stormwater basins with skimmers prior to discharge. Quarterly sampling at the discharge points is a requirement of by the NC Department of Environmental Quality (NCDEQ).

The aboveground fuel and liquid asphalt tanks will also be regulated and inspected by NCDEQ which all exceed any county standard requirements.

Under the Zoning Ordinance procedures, the Planning Board may review the proposal for recommendation of approval or denial to the Board of Commissioners. Special Use Permits under the quasi-judicial process are specific in that no other evidence may be presented outside of the public hearing but clarifying questions to materials submitted may be permissible. The board briefly discussed the special use permit application and thought the proposed use is consistent with the Comprehensive Plan by being located within an existing area suitable for industrial use and being currently zoned Heavy Industrial.

How does this relate to the Comprehensive Plan:

Chapter 2, page 21 – shows the property within the Industrial Suitability area being close to existing compatible uses and access to adequate transportation infrastructure.

Budgetary Impact: N/A

Recommendation/Motion:

The Planning Board voted 3-2-2 to recommend approval of a resolution approving a quasi-judicial request by 1535 King Road LLC for a Special Use Permit on parcel 95385, zoned Heavy Industrial, located at 1535 King Rd., being approximately 18.685 acres, for an asphalt manufacture or refining plant, Cape Fear Township with the following conditions:

Site Specific Conditions

1. A building permit shall be obtained and remain valid at all times within two years of the date of this approval or this approval becomes null and void.
2. The recommendations from the Chatham County Appearance Commission shall be implemented into the site plan and provided to the Planning Department at the time of applying for the Commercial Zoning Compliance Permit. The CCAC and/or planning staff may conduct site visits at any time to confirm vegetation and plantings are being maintained and continue to provide the required screening as directed by Ordinance.

Standard Site Conditions

3. The application, standards and adopted regulations of the applicable ordinances

and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes to or variations from any requirements of this permit must be approved through the Planning Department or other approving board before any such changes can take place.

4. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Watershed Protection, Building and Fire Inspections, and Environmental Health Division, etc.) shall be obtained, if required, and copies submitted to the Planning Department as part of the approval process.

Standard Administrative Conditions:

5. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
6. Continued Validity – The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
7. Non-Severability – If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
8. Non-Waiver – Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.