

..TITLE

Vote on a request from the Chatham County Board of Commissioners for a rezoning for all or a portion of parcels 11005, 79836, 85078, 85079, 11026, 10992, 11014 and 11023 owned by Minnesota Mining & Mfg (3M), containing approximately 1,670 acres and located at 4191 NC 87 S; parcels 9691, 83936 and 9257 owned by Martin Marietta, containing approximately 179 acres and located on St Luke Church Road; and parcels 10156 and 67072 owned by General Shale Inc and Cherokee Sanford Group LLC, containing approximately 382 acres and located on Rosser Road, from R-1, Residential, to IH, Heavy Industrial.

..ABSTRACT

Action Requested:

A request from the Chatham County Board of Commissioners for a rezoning for all or a portion of parcels 11005, 79836, 85078, 85079, 11026, 10992, 11014 and 11023 owned by Minnesota Mining & Mfg (3M), containing approximately 1,670 acres and located at 4191 NC 87 S; parcels 9691, 83936 and 9257 owned by Martin Marietta, containing approximately 179 acres and located on St Luke Church Road; and parcels 10156 and 67072 owned by General Shale Inc and Cherokee Sanford Group LLC, containing approximately 382 acres and located on Rosser Road, from R-1, Residential, to IH, Heavy Industrial.

Introduction & Background:

On August 15, 2016 the Board of Commissioners adopted residential zoning for approximately 388 square miles of the county that was unzoned. There were several non-residential properties that were included in the extension of zoning that became non-conforming. The Board identified three industrial operations – 3M, Martin Marietta, and General Shale – to consider for rezoning to Heavy Industrial. During the November 21, 2017 Commissioners meeting the board agreed to schedule the public hearing for the rezoning. A public hearing was held on January 17, 2017 and the Planning Board discussed the item during their February 7, 2017 meeting.

Discussion & Analysis:

Staff contacted representatives for the three industrial operations and extended the offer to rezone their properties. The representatives for the businesses indicated they were agreeable to the proposed rezoning. The specifics for each business are as follows and maps of the parcels area included as attachments:

General Shale – rezone parcels 10156 (172.27 ac) and 67072 (210 ac) from R1, Residential to Heavy Industrial.

Martin Marietta – rezone parcels 9691(98.66 ac), 83936 (9.47 ac), and 9257 (70.89 ac) from R1, Residential to Heavy Industrial.

3M – rezone all or a portion of parcels 11005 (1905.24 ac), 79836 (38.4 ac), 85078 (6.3 ac), 85079 (2.83 ac), 11026 (27.59 ac), 10992 (50.18 ac), 11014 (55.5 ac), and 11023 (40.05 ac) from R1 to Heavy Industrial.

3M is also requesting that 500 feet of property they own on the eastern boundary, which was part of the 1500 foot corridor zoning in 2007, be included in this rezoning. This is a portion of property that was zoned R1 in 2007 and includes approximately 70 acres and would leave 1,000 feet of the corridor zoning in place. This would only include property owned and controlled by 3M and no other property.

A public hearing was held on January 17, 2017 and representatives for the three industries were in attendance. One person spoke in opposition to the rezoning of property on Rosser Road and expressed concern about industrial zoning in a residential area and wanted buffers in place. Nick Robinson, attorney representing General Shale, stated that both of the General Shale properties are subject to mining permits and buffers are part of the permit approval from the NC Department of Environmental Quality (NCDEQ) Mining Program. During the meeting planning staff commented that they thought there were minimum property setbacks. After the meeting planning staff contacted NCDEQ Mining Program staff for any minimum setbacks and Judy Wehner with the Mining Program replied that “it is on a site by site case.” Commissioner Crawford commented that he had received an email from a property owner with questions about the rezoning. George Lucier, Planning Board Chair, inquired about the buffer width for 3M and Jim Zieglmeier, 3M representative, replied there is a minimum 200’ buffer.

The Zoning Ordinance includes several items that should be addressed when considering a rezoning and the following information was included in the application materials.

1. The alleged error in this Ordinance, if any, which 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 errors in the Zoning Ordinance are claimed. It is planning staff opinion this standard is met.

2. The changed or changing conditions, if any, in the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.

The proposed heavy industrial zoning district is appropriate for the types of uses currently in operation or approved for the previously listed properties that include mining and rock crushing. There are ordinances and regulations in place to protect the public health, safety and general welfare including the Watershed Protection Ordinance and Flood Damage Prevention Ordinance, as well as regulations enforced by the NC Department of Environmental Quality Mining Program. Any future uses on these properties that were not in operation prior to adoption of zoning are subject to the provisions of the Zoning Ordinance. It is planning staff opinion this standard is met.

3. The manner in which the proposed amendment will carry out the intent and purpose of the adopted Land Use Plan or part thereof.

The *Land Conservation and Development Plan* includes the “Continuation of current activities will be supported in existing industrial and commercial areas (p 27).” The plan also identifies eight economic center locations that include the Moncure-Haywood and Goldston-Gulf areas. It is planning staff opinion this standard is met.

4. All other circumstances, factors and reasons which the applicant offers in support of the proposed amendment.

The Board of Commissioners adopted R1 and R5, Residential zoning, on August 15, 2016 that applies to approximately 388 square miles of the county that was unzoned. The previously listed properties were included in this zoning action and the uses occurring on the property were made non-conforming. After the adoption of zoning the Board agreed to initiate the process to rezone these properties to match the uses that were either in operation or approved for the sites. It is planning staff opinion this standard is met.

This is a general use rezoning case and the board should consider all of the uses that are permitted within the Heavy Industrial zoning category. In considering a rezoning case the board must also consider a consistency statement and the Commissioners must adopt one prior to taking action on the rezoning. The application includes the following response regarding conformity with the *Land Conservation and Development Plan* - The *Land Conservation and Development Plan* includes the “Continuation of current activities will be supported in existing industrial and commercial areas (p 27).” The plan also identifies eight economic center locations that include the Moncure-Haywood and Goldston-Gulf areas. It is planning staff opinion this criterion is met and that that the rezoning should be approved.

The Planning Board discussed this item during their February 7, 2017 meeting and representatives for all three industries were attendance. A property owner adjacent to one the General Shale properties also attended and addressed the board. He questioned whether heavy industrial zoning was appropriate in a residential area and requested that a 500' buffer apply to the mining operation. Nick Robinson, attorney representing General Shale, replied that the mining permit for the property required a 50' buffer; however there was a 100' buffer on the site plan that was included as part of the mining permit approval.

The Planning Board discussion included the following: the board should postpone making a recommendation until the pending amendments to the table of permitted uses were completed; whether any of the companies had mining permits pending or if all of the sites were approved for mining; and that county has traditionally rezoned property to match the existing use when residential zoning has been applied to areas that were previously unzoned. Staff commented that the amendments to the table of uses were being delayed until the rezoning request was completed by the Commissioners. All three company representatives replied that they have active mining permits for all of the properties under consideration for rezoning with the exception of 3M's mining permit expansion that has been in a permitting process for several years.

There were also questions and comments specific to the 3M property and their request to add an additional 500' strip of land to the rezoning. A 3M representative responded that they had been pursuing a mining permit expansion for several years and the overburden area included a portion of the 500' of property that was zoned residential in 2007. Planning staff commented that the encroachment of the overburden area in the residentially zoned areas was allowed under the non-conforming provisions of the Zoning Ordinance. The attorney representing 3M commented that there was no need in 2007 for the 500' strip of property to be rezoned to Heavy Industrial, but there is currently with the pending expansion, and that no-one spoke in opposition to the current rezoning request.

The Planning Board, by a vote of 8-2, recommends approval of the rezoning request and by a vote of 9-1 recommends adoption of the consistency statement included in the recommendation.

Recommendation:

The Planning Board by a vote of 9-1 recommends adoption of the following consistency statement: The *Land Conservation and Development Plan* includes the "Continuation of current activities will be supported in existing industrial and commercial areas (p 27)."

The plan also identifies eight economic center locations that include the Moncure-Haywood and Goldston-Gulf areas.

The Planning Board by a vote of 8-2 recommends approving the rezoning and adoption of an ordinance amending the zoning ordinance to rezone all or a portion of parcels 11005, 79836, 85078, 85079, 11026, 10992, 11014 and 11023 owned by Minnesota Mining & Mfg (3M), containing approximately 1,670 acres and located at 4191 NC 87 S;

parcels 9691, 83936 and 9257 owned by Martin Marietta, containing approximately 179 acres and located on St Luke Church Road; and parcels 10156 and 67072 owned by General Shale Inc and Cherokee Sanford Group LLC, containing approximately 382 acres and located on Rosser Road, from R-1, Residential, to IH, Heavy Industrial.