

Approved by the Board of Adjustment on August 27, 2009

***BUTNER
BOARD OF ADJUSTMENT
MINUTES***

The Butner Board of Adjustment held its regular Board Meeting on January 29, 2009, at 7:00 p.m. in the South Granville Water & Sewer Authority Meeting Room, 209 West C Street, Butner, N. C.

Members Present: Ernest Thompson, Chairman
Herman (Buddy) Weaver, Vice Chairman
William (Bill) Crosby
Marty Daniel
James Russell
Constance Wortham

Member Absent: John Glenn, Jr.

Alternates Present: Jane Frost (served in the absence of John Glenn)
Chandler Wynne

Alternate Absent: Ronald (Ron) Daniels

Staff Present: Melissa Hodges, Town Planner

Town Manager: Tommy Marrow

Town Attorney: James (Jim) Wrenn, Jr.

MEETING CALLED TO ORDER

At 7:00 p.m., Chairman Ernest Thompson, called the meeting to order. Mr. John Wimbush, Town Councilman, gave the invocation and led the group with the pledge of allegiance.

BOARD APPROVES THE JANUARY 29, 2009 BOARD OF ADJUSTMENT MEETING AGENDA

Board Member, William Crosby, made a motion to approve the January 29, 2009 Board of Adjustment Meeting Agenda as presented. It was seconded by Board Member, Marty Daniel, and was unanimously carried.

PUBLIC HEARING

SUP-08-002 BOARD GRANTS SPECIAL USE PERMIT REQUEST FOR CAROLINA SUNROCK QUARRY EXPANSION, OFF B STREET

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Chairman Ernest Thompson announced that Carolina Sunrock, LLC is requesting a special use permit to expand the existing rock quarry to an additional 135.5 acres zoned Heavy Industry. The subject property is adjacent to the existing Quarry property on the northeastern side. The property does not have public road frontage and is accessed only by rail and other adjacent properties on B Street. More specifically, the property is identified as Tax Map #087603027772.

At this point, Chairman Thompson called the public hearing to order.

Ms. Melissa Hodges, Town Planner, stated that Carolina Sunrock is requesting a Special Use Permit to expand the existing rock quarry operation with an additional 135.5 acres. The concept plan shows the property with an 100 foot buffer and with notes addressing the use specific standards from Section 7.3.4 of the Land Development Ordinance (LDO). Ms. Hodges noted the following pertinent information:

- Upon discussion with the applicant, I found the proposed extractive industry does not include any permanent structures or permanent roads. The equipment to process the rock will remain at its current location;
- The proposed quarry expansion does not require any new permanent roads, parking, storm water, or landscaping requirements;
- The application is considered complete;
- The applicant submitted the full application, as well as an addendum it added to the application with information they wanted to have available to those interested in the expansion; and
- To the best of the Town's Staff's knowledge, it does not conflict with any of the Town's rules or ordinances.

Ms. Hodges continued to state that as an extractive industry, there are use specific standards listed in Section 7.3 of the LDO that must be met, such as Section 7.3.4. (A), and these additional standards are:

1. Extractive Industry uses shall be located at least 300 feet from any residential district, existing residential use, religious or civic institution use, community service use, day care use, school (elementary, middle, intermediate, or senior high), or public park.

Ms. Hodges stated that the applicant has noted on the site plan in note #2, that the property in question is located substantially more than 300 feet from any of the uses set forth in accordance with Section 7.3.4 A. of the LDO. She has verified that the proposed is more than 300 feet from any residential zoning district and that all property within 300 feet of the subject property is zoned heavy industry, light industry, or highway business. The subject property does not appear to be within 300 feet of any existing residential use, religious or civic institution use, community service use, day care use, school use or public park.

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2. Extractive Industry uses shall be surrounded by a chain link or wire fence that is at least six feet high, located no less than 100 feet from any public right-of-way, and located no less than 50 feet from any adjacent property.

Ms. Hodges stated that the applicant has noted on the site plan in note #1, that as substantial development for the quarry excavation begins, a fence will be installed in accordance with Section 7.3.4 (A.) (2) of the LDO. She noted that the applicant does show a 100-foot buffer around the property and adjacent to the creek (along the property line).

3. Blasting may only be conducted between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Ms. Hodges stated that the applicant has noted on the site plan in note #3 that all blasting will be conducted in accordance with Section 7.3.4(A)(3) of the LDO.

At this time, Chairman Thompson asked those wishing to speak for or against the request to come forward and be sworn in. The following were sworn in:

1. Bryan Pfohl, 1613 Brassfield Rd., Raleigh, NC 27615
2. Tony Sample, 3145 S. Harrison Ave., Cary, NC 27511
3. Stuart Brashear, 6585 Gatehouse Ct., Concord, NC
4. George Banino, Earth Tech, 42 British American Blvd., Albany, NY
5. Mike Garrett, Prudential Select Properties, Henderson, NC
6. Mike Satterwhite, Attorney, 1621 Peace Street, Henderson, NC
7. Linda Wilkins, 1032 King Drive, Butner, NC 27509
8. Jesse Wilkins, 1032 King Drive, Butner, NC 27509

Chairman Thompson explained the "Order of the Meeting" to the applicant and those in opposition of the request. The order of the meeting will be presented as outlined below:

1. The applicant shall present the evidence and arguments in support of his application;
2. The persons opposed to granting the application shall present the evidence and arguments against the application; and
3. Both sides shall be permitted to present rebuttals to opposing evidence and arguments

At this time, Mr. Mike Satterwhite, Attorney with Stainback, Satterwhite, Burnette, Zollicoffer Law Firm, located in Henderson, NC, stated that he is representing the applicant, Carolina Sunrock, LLC. He gave each board member several sections of the LDO dealing with the request, an addendum to the Special Use Permit Application (SUPA) with a Site Plan Map included in the addendum, and a brochure about the history of Sunrock.

Approved by the Board of Adjustment on August 27, 2009

Mr. Satterwhite explained that Carolina Sunrock is a 3rd generation family owned business. He stated that from aggregates to asphalt to concrete, Carolina Sunrock creates and supplies the core components of the built world around us. The company's goal is to be the preferred supplier, employer, and neighbor in the communities in which it operates. Carolina Sunrock believes in treating the earth and resources with respect and is committed to being a diligent steward of the land. He noted that Carolina Sunrock has been operating in Butner since 1984 (25 years).

He presented a large map of the proposed request pointing out the location and the surrounding area of the request. The subject property is 135 +/- acres. He stated that everything that joins Carolina Sunrock is classified Heavy Industry (HI).

Mr. Satterwhite continued to state that extractive industry is allowed in HI Zoning District with a special use permit, which is in the table he presented to the Board. This states that the use is permitted in the HI with a SUP if the applicant meets the requirements of Section 7.3.4 of the LDO. He noted that Carolina Sunrock does comply with these rules which are noted on the Sunrock Site Plan Map on page 1 of the addendum.

Mr. Satterwhite stated that the purpose of the acquisition of the land is for Carolina Sunrock to expand the reserve base of the raw materials at the Butner quarry. The new property will be incorporated into the overall plan of the Butner property. He noted that the Butner quarry will remain unchanged. Sunrock is not acquiring the property to double its production there. Instead, it is acquiring it for the longevity of the Butner quarry.

Carolina Sunrock has a contract to buy the proposed property. The LDO states that if you are a contract purchaser then you need to have the permission of the owner of the property to appear before the BOA to ask for the SUP. The Board has been presented a notarized "affidavit form" signed by the owner of the property.

Attorney Satterwhite stated that Carolina Sunrock has met the requirements of the LDO for the issuance a SUP. He noted that he will present expert witnesses that will attest that the 7 standards of the Special Use Permit Application (SUPA) have been met. He briefly read each standard and noted that Ms. Hodges, Planner, had stated that #2 had been met in standards Section 7.3 Use Specific Standards. He also stated that Ms. Hodges had related that in regards to standard #7 the request appears to be in full compliance with all other relevant Butner Town laws and the LDO. Ms. Hodges did note that she could not attest to whether all State and Federal laws and regulations were met.

Attorney Satterwhite continued to state that Carolina Sunrock has five (5) expert witnesses who will present competent, material and substantial evidence in support of the SUP request. He explained that he will be presenting the qualification/credentials of the expert witnesses in their specific field to which they will be testifying to the Board.

At this time, Mr. Satterwhite introduced the following expert witnesses to the Board:

Mr. Brian Pfohl, who is the chairman of Carolina Sunrock and an expert in all aspects of mining and open pit quarries and related industries. Mr. Pfohl attended Sante Fe University, Sante Fe, New Mexico and the University of Buffalo, New York. Mr. Pfohl began his business career at Landcaster Stone Product Corp. in Buffalo, New York, which was operated by his family. He has 45+ years experience of all aspects of mining including open pit quarries and related industries. He has held numerous positions of responsibility during his business career. In 1984, he founded Carolina Sunrock LLC, in Butner. He has continuously been a supplier and neighbor in the town of Butner and the surrounding area. He's been a member of the Board of Directors and an officer in a numerous industrial trade groups, including the NC Agricultural Association. He is presently board chairman of the Triangle North Marketing Committee. He is an expert witness in the field of all aspects of mining agricultural of open pit quarries and related industries and will testify to the compliance of the applicant Standards 1, 2, 3, 4 and 5.

Stuart Brashear is an expert in blasting technology, blasting effects and blasting regulations. He is a graduate of Western Maryland College. For the past 28 years he has worked in the explosive and blasting effect industries. He specializes in accessing community impact from blasting and development environmental blasting control programs from mines and quarries throughout North America. He currently serves as instructor for the NC Department of Labor, Mine and Quarry Division, NC Department of Health Environment and Natural Resources and the US Mine Safety and Health Administration Program. Mr. Satterwhite stated that based upon his knowledge, training skills, and education, he would be an expert witness in the field of blasting technology, blasting effects, and blasting regulations. He will testify to Standards 1, 3, and 4.

Mr. George Banino is a NC licensed geologist, and is an expert in mining on the hydrology of the Butner quarry and the surrounding area. Mr. Banino has worked for surface mines and quarries for over 35 years. He was instrumental in founding Sunrock's laboratory and specializing in aggregate testing. He is a consultant to the construction material industry. He is the author of many professional publications dealing with various aspects of mining and has served on many boards and committees. He has worked with the applicant since the start of the Butner quarry in 1984, consulting on a wide range of mining issues. Based upon his knowledge, skills, experience, training and education, he will be an expert witness in the field of geologist for the Butner Carolina Sunrock Quarry and the effects of mining on hydrology and geology of the Butner Carolina Sunrock Quarry and the surrounding area. He will be testifying to Standards 1, 3, and 4.

Mr. Michael Garrett is a licensed real estate broker in the states of North Carolina and Virginia. He will be offered as an expert witness in the field of commercial

and residential real estate values. Mr. Garrett has been licensed since 1992, practicing for 16+ years. He is the principal broker in charge of Peace - Garrett Realty, Inc. He has listed and sold commercial, industrial, and residential properties in Vance, Granville, Franklin, Warren and Southern Wake Counties. Based upon his knowledge, skills, experience, training, and education, he will be an expert witness in commercial and residential real estate values and will be testifying concerning Standard #6.

Mr. Tony Sample has been the Compliance Manager for Carolina Sunrock since September 5, 2000. He is responsible for obtaining permits and compliance with permits for the mining, ready mix concrete, and hot mix asphalt aspects of the Corporation's businesses. He has 16 years experience with the Division of Land Resources, North Carolina Department of Environment and Natural Resources. He served 8 years in the Raleigh Regional Office as Environmental Technician, responsible for the enforcement of the Dam Safety Law of 1967, The Mining Act of 1971 and the Pollution and Sedimentation Control Act for a 4 county area of the State. He served for 8 years as an Assistant State Mining Specialist. This involved the review of and making appropriate recommendations for applications for new permits and modifications of existing mining permits, coordinating and soliciting other agencies' comments and concerns, training agency personnel, the mining industry and consultants on the requirements of the Mining Act, and investigating and evaluating blasting and other complaints. He also has 4 years work experience with the Army Corps of Engineers as a project Biologist and Ranger. He has 2 years work experience with the Department of the Army, Facility Engineers, and Forestry Section. Based upon his knowledge, skills, and education, he will be an expert witness for safety, permitting and regulatory compliance.

Attorney Satterwhite stated that he will be an expert witness, "having sworn testimony", at the end of the presentation, in regard to whether or not his client is complying with the 7 Standards outlined in the LDO.

At this time, Mr. Satterwhite explained that he would call upon his expert witnesses to speak. He stated that the first speaker would be Mr. Brian Pfohl.

Mr. Brian Pfohl, Chairman of Carolina Sunrock, LLC, noted that Mr. Satterwhite had outlined his knowledge, skills, education, and experience which qualifies him to testify as an expert witness. He continued to relate that Carolina Sunrock is the "contract purchaser" of land as the term is defined in the LDO. After contracting to purchase the property, Carolina Sunrock was given permission by the property owners to apply for a Special Use Permit (SUP) application with the Town of Butner. He related that he oversaw, with the assistance of their compliance officer, Tony Sample, the preparation of the SUP application, the addendum, the site plan map, and he reviewed all of the safety records and the regulatory compliance records of the company. He also reviewed the zoning map of the Town of Butner. He completed a physical inspection of the property. Mr. Pfohl stated that his company's goal is to be the preferred supplier, employer and

neighbor in the communities in which they operate. He stated that the purpose of purchasing the proposed property and applying for the SUP is to expand the reserve base of the raw materials of the Butner Quarry and to incorporate that property in the overall plan for the quarry. Mr. Pfohl stated that “At the present time, we expect the operation aspect of the Butner quarry to remain unchanged. My testimony will center on the compliance of the company with Standards 1, 2, 3, 4, and 5 of Section 3.2.4 (E) of the LDO”.

The Land Development Ordinance (LDO) imposes the following special use permit standards on the use requested by the applicant. Mr. Pfohl testified to the following Standards:

1. The proposed use will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

Mr. Pfohl stated that Carolina Sunrock LLC has a 25 year record of safely extracting stone from property adjacent to the site under review with no effect on employee or community health, safety and welfare.

2. That the proposed use is in compliance with all standards in Section 7.3, Use Specific Standards.

Mr. Pfohl stated that the site, the subject of the Special Use Permit, is in an area zoned Heavy Industrial, more than 300’ from the uses and institutions named in 7.3.4 (A) of the LDO. The extraction site, when developed, will be surrounded by a chain link or wire fence as required by 7.3.4 (A) (2) and blasting will only occur as set forth in 7.3.4 (A)(3). The blasting will occur between the hours of 8:00 a.m. –5:00 p.m., Monday through Friday, as set forth in the LDO.

3. That the proposed use is compatible with the character of surrounding property and uses permitted in the zoning districts(s) of surrounding property.

Mr. Pfohl stated that the proposed use is Heavy Industrial, which is consistent with substantially all of the surrounding properties; the company will be carrying on the same activity that it has engaged in for the past 25 years, and will continue to maintain good relations with neighbors.

4. That the proposed use is configured in a manner to minimize any adverse effects on surrounding lands.

Mr. Pfohl related that the property would be configured so as to contain noise and dust from operations within property boundaries. A 100 foot undisturbed buffer will be provided around the perimeters.

5. That the proposed uses will not adversely impact traffic circulation on or in the vicinity of the site.

Mr. Pfohl acknowledged that as the property is developed over the next 5-10 years, truck traffic on existing traffic corridors designed for truck use may increase 2-3%, which is minimal.

At this point, Mr. Pfohl stated that this would conclude his testimony and asked if anyone had any questions of him. Chairman Thompson asked (in reference to Standard #5), "At this time, do you foresee any changes in the next 5 + years?" Mr. Pfohl stated that they do not expect anything different from what they have had over the past 25 years.

At this time, Attorney Satterwhite introduced Mr. Stuart Brashear, expert in blasting, technology, blasting effects, and blasting regulations.

Mr. Brashear stated that he started out by reviewing some previous records that were generated by Carolina Sunrock in 2004 (during some permitting). He noted the GeoSonics, Inc. report, which indicated that three (3) shots were detonated on March 25, 1992 at the Carolina Sunrock Quarry in Butner. The first shot was a typical production blast for quarry operations, while the latter two shots were test blasts in virgin rock adjacent to the pit. The shots varied in explosive charge. In conclusion of this report, according to the permit issued by the State of North Department of Natural Resources and Community Development, "the maximum peak particle velocity, shall not exceed 1 inch per second at the immediate location of any building regularly occupied". The vibration levels recorded from the blasts of March 25, 1992, at the Carolina Sunrock Quarry, as reported in the study, were all well within the state regulatory limit at all residential and business locations throughout the Butner area. The Iso-Maps show that the vibration levels resulting from the blasts drop fairly uniformly in all directions as the distance from the blast increases.

Mr. Brashear continued to state that Sunrock is governed by various State and Federal regulations and regulatory agencies, the Occupational Safety & Health Administration, the Bureau of Tobacco, Firearms & Explosives, the Department of Transportation, the Environmental Protection Agency and the Mine Safety & Health Administration. With the blasting at Sunrock, there is no storage of explosives or accessories on site. Mr. Brashear stated that all the *materials are transported in on the day of blasting and removed the same day*. He continued to outline the following pertinent information:

- The materials are transported on customized trucks that are designed specifically for that,
- The products are brought in in a fashion so as they are not labeled as explosives on the highway,
- The blasting agent is labeled as an oxidizer on the highway. It does not become a blasting agent until it is actually introduced on the quarry into the blast hole,
- He stated that the trucks are computer controlled which can determine the amount of explosives they use,

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- The Butner quarry has a new electronic initiation system which provides them with a lot of new ways to initiate the sequence of the holes when they fire. This reduces vibrations and impact to the surrounding properties; and
- They use computer simulation models, which tell them before the blast takes place what to expect.

Mr. Brashear continued to state that they reviewed the past 3 year's blast reports, 2006, 2007, and 2008. He noted that they compared these with the State and Federal guidelines. The guidelines that they use go beyond what the State requires. They go by the guidelines set forth by the U.S. Bureau of Mines for the Department of the Interior based on approximately 40 years of research completed on blasting, including residential structures effects. He stated that to this date, there has not been documented damage from blasting. He stated that by reviewing all the data from the past 3 years from the Butner quarry, all blasting has been completed by the blasting standards.

At this time, Mr. Brashear stated that upon his research and preparation as outlined to testify at the BOA meeting in support Carolina Sunrock's SUP application, "[i]t is my expert opinion, based on 28 years of training, education, research and experience that the Butner facility meets the following Special Use Permit Standards":

Standard #1: Mr. Brashear stated that given the location of the property adjoining existing quarry property zoned industrial, the proposed use is compatible with the character of the surrounding properties.

Standard #3: Mr. Brashear stated that the proposed use is compatible with the character of the surrounding properties and the use is permitted in the zoning district of the adjacent properties.

Standard #4: Mr. Brashear stated that because of the blasting, they are looking at the proposed acquisition as an expansion, (not a new site) but a continuation. This configuration is very much preferable from a blasting industry perspective as far as they are to maintain their current limits and stay within any safe blasting standards. Therefore, he opined that the proposed use is configured in a matter to minimize any adverse effects to the surrounding lands".

Chairman Thompson asked why they chose to go back 3 years to study the blasting at the Butner quarry. Mr. Brashear explained that research had already been completed up to 2004, and therefore, going through the records for the past 3 years would give them an idea of what's been going on in Butner and would be a good way of projecting what would happen in the future.

At this point, Attorney Satterwhite announced that George Banino would give testimony. Mr. Banino explained that his office is in Albany, New York, and that he is a professional geologist, having worked in this field for 45 years. He stated that he has worked for Mr. Brian Pfohl for over 30 years and was with him when the Butner quarry

was established. In reference to the proposed request, Mr. Banino stated that he has studied the LDO, the maps, zoning, the surrounding area, toured the area for many years and has reviewed all the changes. So therefore, with his knowledge, training, experience and as an expert witness he will provide testimony relating to Standards #1, 3, and 4.

Mr. Banino explained that the proposed property has a unique rock type which is very valuable. He stated that the hydrogeology layers near the proposed quarry consist of three principal units: 1) the thin unconsolidated soil, composed of sand, clay and silt; 2) fractured and weathered granite, and 3) unweathered and sparsely fractured granite with the size and number of fractures in the rock decreasing with depth. This system is similar to a layer of sand on a slab of concrete. Rainfall infiltrates vertically downward until it reaches the water table. Mr. Banino continued to state that the site that is under consideration for expansion is of similar geologic and hydraulic composition as the current property being quarried where the water table is below the stone and there has been no hydraulic effects on adjoining properties and the Company does not anticipate the expansion property to be any different.

Mr. Banino stated that dust and noise arrive from 3 sources: mining, transportation of the materials, and processing. Processing is not being planned on the proposed site. Transportation is being completed by a combiner that does not require dust control because it is run along by a belt. Trucking is controlled by water spray. Mining is controlled by spraying of water. Noise when drilling is projected upward. The walls and/or burms around the property will be a 100 foot undisturbed vegetative buffer which will help contain the noise and trap the dust.

Mr. Banino explained that there is no road access to the property (it is landlocked). It will only be accessed through Carolina Sunrock property. There will be either a chain link or wire fence installed per the LDO which will be at least 6 feet tall. The Federal Government requires that large boulders be placed at the roadways (access), to prevent equipment from falling over into the quarry.

Mr. Banino explained that permits must be issued from the NC Division of Land Resources and Land Quality Division before mining can take place on the property. Permits are required from the State to mine. The State will review the plan, make sure it complies with all the state regulations, and require a Bond.

Mr. Banino stated that in his expert opinion the Standards 1, 3 and 4 have been met as follows:

Standard #1: Mr. Banino stated that the proposed use will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.

Standard #3: Mr. Banino related that quarries can be compatible with a wide variety of surrounding uses including residential, schools, state parks, etc.

Standard #4: Mr. Banino explained that the surrounding area is HI. He stated that the proposed use is configured in a manner to minimize any adverse effects on surrounding lands. The property will be configured so as to contain noise and dust from operations within property boundaries and a 100' undisturbed buffer will be provided around the perimeters.

Board Member Bill Crosby asked if Cedar Creek, which runs through the quarry, is protected and asked about building another pit. Mr. Banino stated that by permit, Carolina Sunrock cannot disturb Cedar Creek. They have to leave a minimum buffer on either side of the creek. There will not be a separate pit. The pit will extend northward.

Board Member Marty Daniel asked, "Once the land has been mined, what will happen to the land"? Mr. Banino related that the land will collect water. The State has approved a plan and a Bond is in place. There will be grading and vegetation to control erosion, sediment, etc. It will become a large body of water which can serve a lot of purposes. For example, during a drought, this could become water storage. He also stated that during an overflow of water from Cedar Creek, this water could be directed to the quarry, which could be conserved and when water is needed, it will be there (a very valuable resource).

At this time, Attorney Satterwhite, announced that Mike Garrett would give testimony to the Board. Mr. Garrett explained that he is the owner and operator of Prudential Select Properties. He has 16 years experience in the real estate industry. He stated that he sells residential, industrial, and commercial real estate in Granville, Vance, Warren, Franklin, and southern Wake County. Mr. Garrett gave the following pertinent information:

- Mr. Garrett stated that he toured the proposed property of Carolina Sunrock Quarry, and the surrounding property,
- He completed a second tour to review the residential properties and commercial properties,
- He reviewed the property that has been sold and built upon since the quarry was established,
- On the east side of B Street, west of the site, there are houses along the side of the street that join the existing quarry land. Several of these houses have been built since the quarry has been in operation. There are three houses currently for sale. Two of them are currently listed in the MSL being listed at \$159,900 with a tax value of \$130,246 and the second one is listed at \$209,900 with a tax value of \$125,150,
- On B Street, northwest of site, there are existing industrial and commercial businesses which are buffered from the site by an existing railroad track. A new recreational complex on a 20 acre site will be in close proximity to the existing quarry operation,
- Cedar Creek Mobile Home Park is located on Coley Road, which joins the currently active end of the quarry. He stated that riding through the park there were no "For Sale" signs observed,

- He stated that on the I-85 Service Road, east of the site, there is a 91 acre industrial site listed by Caldwell Banker Trademark Properties for \$1,819,200. There is also a new industrial complex being developed along the corner of the I-85 Service Road and Gate 2 Road/Central Avenue,
- On King Drive, there are mixed neighborhoods with different price values of homes. This area of housing is buffered from the subject site by Riverside Trail. Properties at the end of this road appear to join lands currently owned by Carolina Sunrock,
- On Riverside Trail there is a mixed neighborhood of site built homes and mobile homes. The properties join lands currently owned by Carolina Sunrock,
- Mr. Garrett continued to review other quarries and the property adjacent to them. He toured Martin Marietta at Franklin Quarry near Olde Liberty Golf & Country Club. He stated that houses are priced from the \$300,000's, lots are within .5 mile of the quarry and Long Mill Elementary School is within .5 mile of the quarry,
- Mr. Garrett also visited Hanson Quarry at the Bedford at Wakefield. Houses are priced from the \$690,000's, lots are in sight of the quarry, and lot #537's rear view is of the stone crushing machines. Also nearby is Wakefield Plantation, an upscale community with schools and shopping centers, being approximately .5 mile from the quarry. Houses currently are listed from \$400,000 to \$5,000,000; and,
- Mr. Garrett continued to give examples of The Hamptons at Umstead and Olde Raleigh which are situated in Raleigh near Umstead Park between Duraleigh Road and Ebenezer Church Road along Crabtree Creek and are exclusive gated communities with lots in plain view of the quarry, etc. Houses are currently listed from \$365,000 to \$975,000.

At this point, Mr. Garrett stated that based on the above-noted research, it is his testimony that Carolina Sunrock's Special Use Permit meets all the requirements laid out in Standard #6 as noted below:

Standard #6: Mr. Garrett related that the proposed use will not be detrimental to the value of adjacent or nearby property. He stated that looking at the properties in the Butner area, a lot of the property has been developed since the quarry has been in existence. This shows that the values have not suffered because of the quarry. Mr. Garrett related that, "Looking at neighboring quarries and the development going on, and the values of homes, it would be hard to say that the quarry is causing a reduction in the value of the properties".

Attorney Satterwhite called upon Tony Sample to give testimony. Mr. Sample has been employed by Carolina Sunrock as Compliance Manager since September 5, 2000. He stated that he prepared the Special Use Permit Application, the addendum, and the maps. Mr. Sample continued to state that he met with Butner's Town Administrator and submitted the SUP application. He also stated that he gave Ms. Hodges, Town Planner, a tour of the current operations and the proposed expansion area.

Mr. Sample gave testimony to the following Standards:

Standard #1: Mr. Sample stated that the proposed expansion of the existing operation will maintain a minimum 100 foot undisturbed buffer around the perimeter of the property,

He noted that the agencies which regulate Carolina Sunrock are the Mine Safety & Health Administration, Division of Air Quality, Division of Water Quality, and Division of Land Resources Land Quality Section,

He related that they are in compliance with the requirements of these agencies, but will have to modify the permits if the SUP is granted,

The site will be reclaimed as a water source (pit),

The Mine Safety & Health Administration and the US Dept. of Labor have ultimate jurisdiction over the safety of the mine site within the permit boundaries; and,

Sunrock does not intend for the expansion in land area to result in an increase in production increase at the quarry. Rather, the expansion will be used to increase the longevity of the site.

Standard #2: He stated that the extraction site, when developed, will be surrounded by a chain link or wire fence as required by Section 7.3.4(A) of the LDO. The proposed site is in an area zoned Heavy Industrial (HI) and is more than 300' from the uses and institutions named in Section 7.3.4(A) of the LDO. All blasting will only occur as set forth in Section 7.3.4(A) (3) of the LDO, i.e. within normal weekday work hours..

Standard #3: He stated that the existing zoning of the site is not being changed and that adjacent properties are zones HI. They are expanding the existing mine site and the life expectancy of the operation.

Standard #4: He stated that a 100' undisturbed buffer is proposed for the site. The State of NC will require an additional unexcavated buffer. A bond is part of the requirement for a mining permit. All access on the proposed site will be temporary.

Standard #5: He stated that there will not be an increase in production or traffic at the facility. They are looking to expand the longevity of the operation.

Standard #6: He stated that the proposed use would not be detrimental to the value of the adjacent or nearby properties. He noted that his experience with the

quarries in N.C. is that they do not have a detrimental effect on property values. This is an expansion of an existing operation with a good operating record.

Standard #7: He stated that this is an expansion of an existing operation with a good operating record. Permits are required for the existing operation and Sunrock is in compliance with those permits. The permits will be modified to include any new expansion areas. He noted that various agencies have responsibility to inspect the site.

Mr. Sample acknowledged that based upon his research and preparation to testify at the BOA meeting for the Special Use Permit Application, and based upon his knowledge, skills, education, and field of specialty, it is his expert opinion that all 7 Standards have been met.

Upon being asked, Mr. Sample stated that State inspections of the quarry are completed on an annual basis unless there is a complaint. "Inspections are not scheduled, they are surprise inspections".

Attorney Satterwhite gave a summary of what was presented to the BOA. He noted that his applicant has presented competent, material and substantial evidence showing that each of the seven standards have been meet. He related that he would also like to provide his testimony to the site visit of the quarry and the surrounding properties. He also acknowledged that he completed a site visit of the other quarries with Mr. Garrett. He again noted that there were homes, schools, etc. near the quarries.

Mr. Satterwhite asked that the following items that were submitted to the Board be a part of the record of the Special Use Permit Application:

1. Special Use Permit Application
2. Addendum to the Special Use Permit Application
3. Owner's affidavit consenting to the submission of the SUP Application
4. Carolina Sunrock's corporate brochure, which includes their mission statement
5. Arial photograph
6. Zoning Map
7. Tax Map
8. Land Development Ordinance pages 30, 31, 96 and 122
9. Information/Brochure prepared by Mr. Garrett concerning his site visits to the Sunrock quarry in Butner and to other area quarries

Attorney Satterwhite asked that the Board of Adjustment grant the Special Use Permit. He also stated that Sunrock has provided substantial, material, and competent evidence that Carolina Sunrock's application for a special use permit complies with the seven standards set out in section 3.2.4(E) of the LDO.

At this time, Chairman Thompson asked those speaking in opposition of the request to come forward.

Linda Wilkins, 1032 King Drive, Butner, NC, related that Carolina Sunrock received a free advertisement in the local newspaper, The Butner-Creedmoor News, which was published in December, 2008, before the first public hearing was held on December 4, 2008. The December public hearing board meeting was continued to tonight's meeting. She noted that the newspaper stated that, "The Butner mayor stated that Sunrock has acted as a good neighbor". She further noted comments in the newspaper, which stated:

Sunrock projects are:

- Donated gravel for a greenway at Butner Middle School,
- B Street ballfield,
- Donated over a 1000 tons of stone for walking trails at Granville Athletic Park,
- Donated computer equipment to Granville County Schools,
- Plowed snow off of Butner roads during snow storms when other vehicles were not moving, and
- Helped with the Lord Granville Agricultural Association Harvest Show for 2 years,

Mrs. Wilkins continued to state that the headlines in the local newspaper noted that, "Carolina Sunrock hopes to expand Butner's Quarry Site". She stated that as a local citizen, this was very disturbing to her. She continued to ask the following questions:

1. How many of the experts from Sunrock are affiliated with or have had been affiliated with N. C. DENR? Attorney Satterwhite stated "2".
2. How many expansions will it take for Sunrock to have 100 years of work for Butner's quarry? She noted that in 2004 she heard it was 100 years of work. Mr. Pfohl explained that he was approached by the landowner, indicating that they wanted to sell. Mrs. Wilkins stated that she did not think Sunrock was in need to expand 135.5 acres, "They already have 600 acres". She pointed out to Mr. Garrett, Real Estate Agent, and Attorney Satterwhite, that King Drive is a private drive (which was posted). She asked if they saw the sign when they toured the area? She further asked where would the fence be placed on the proposed property, further stating that she has not seen the fence around the current quarry? Mr. Sample replied that there is not an existing fence because at that time, there were no regulations for a fence from the County or the Town of Butner. Mrs. Wilkins stated that in 2004, DENR in Raleigh had related to her that the quarry should have a fence.

Mrs. Wilkins stated that she has felt the ground shake in her yard from the blasting. She expressed that she is opposed to the expansion of Carolina Sunrock.

Jesse Wilkins, (husband of Linda Wilkins) 1032 King Drive, Butner, NC, stated that homes for sale are not worth anything. "They have got to sell before they are worth anything". He related that a house on Riverside Trail had been up for sale for 5 years and finally the owner took the sign down because no one would buy it. He related that you could sit on his porch and see equipment run through the 100-foot buffer that is about 30 foot of trees. He explained that the last expansion Carolina Sunrock completed should have had a fence placed around the property and a burm which would go in a 100-foot buffer. He asked, "How could you put a burm, a fence, and 100 foot of trees in 100-foot of space? You can't". He stated "You need to go to B Street and talk to the people who live there and ask about the damage from the quarry". He explained that his property is located beside the quarry, and when Carolina Sunrock asked for the previous expansion, he was opposed to it. He stated that he went to Raleigh and DENR to complain about the previous expansion. He further noted that his home would be 150 feet from the proposed hole that they will blast. Mr. Wilkins stated that he built his house before the previous expansion and when the quarry expanded, it was located in his back yard. He stated that he can not sell his house/property for what it is worth.

Mr. Wilkins stated that when the Town of Butner was established, "They took in my property and now I am asking the Town of Butner to take care of me, help me". He continued to state that the Town cannot provide water and sewer to him, provide streetlights, and they cannot keep up his street, but they can provide police protection. He asked the Board to help him out to slow down the expansion.

In rebuttal, Attorney Satterwhite stated that the evidence in opposition to granting the SUP has to be competent, material, and substantial. He noted that the testimony of the two witnesses who spoke against the granting of the permit request was not material to the decision the Board. He stated that they spoke about the SUP that was granted some time ago by Granville County for said piece of property. He noted that Mrs. Wilkins stated that she was against the proposed SUP because Sunrock did not need to expand any further and also noted that Mr. Wilkins stated, "How much rock is enough?" Mr. Satterwhite stated that "Their evidence was not material. It was not competent because it is *opinion evidence* and it is *not expert opinion evidence* and it was *not substantial*". He explained that out of the 416 hearing notices that were mailed out for the two meetings, the owners of only one property came to the meeting in opposition to the proposed quarry.

Mr. Satterwhite stated that the denial of a SUP has to be based upon findings contrary to what the applicant presents and those contrary findings have to be supported by competent, material, and substantial evidence appearing in the record. Mr. Satterwhite argued that the opposition evidence was not competent, material and substantial.. Opinion evidence does not constitute competent evidence. The expression of generalized fears does not constitute a competent basis for denial of a SUP".

Mr. Satterwhite related that, "They presented five expert witnesses. The opposing party may not rebut that evidence with conclusions based solely upon their own

Approved by the Board of Adjustment on August 27, 2009

observations and opinions without providing any expert opinions to link their observations to information upon which the Board may make their decision”.

At this time, Mr. Satterwhite related that, I he respectfully submits that Sunrock’s application is proper, adheres to all the rules and regulations contained in the LDO and specifically complies with the seven standards set out in section 3.2.4(E).Further, the Special Use Permit should be granted because Sunrock has provided competent, material, and substantial evidence in support of its application.

Mrs. Wilkins explained that she did not receive the second hearing notice that was mailed out from the Planning Department for the 1/29/2009 BOA meeting. Ms. Hodges, Town Planner, explained that the hearing notices for the December 4, 2008 meeting were mailed out to residents within 2500 feet (per the Granville County UDO). She explained that for the January 29, 2009 meeting, the second hearing notices were mailed out to residents within 500 feet (per the Butner LDO).

At this time, Chairman Thompson reviewed the 7 Standards that the Land Development Ordinance (LDO) imposes for a special use permit request by the applicant.

Upon no one else wishing to speak, Chairman Thompson closed the public hearing.

Mr. James C. Wrenn, Jr., Butner’s Town Attorney, summarized the testimony of Ms. Hodges, Butner’s Town Planner, Carolina Sunrock, the applicant, those in opposition, and all expert witnesses.

At this point, Chairman Thompson read the “Disclosure Statement”.

Upon the Board noting that the 7 Standards of the Land Development Ordinance (LDO) had been met, Board Member, William Crosby, made a motion to grant the Special Use Permit Request for the Carolina Sunrock, LLC Quarry expansion. It was seconded by Board Member, Jane Frost, and was unanimously carried.

ADJOURNMENT

Upon a motion of Board Member, Constance Wortham, seconded by Board Member, William Crosby, and unanimously carried, the Board adjourned at 9:55 p.m.

Brenda K. Daniel
Secretary to the Board

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Ernest Thompson, Chairman
Town of Butner Board of Adjustment