

Tax Map/Block/Parcel
No. 51-1-2 & 11

Building Permit/Zoning
Certificate No. 91-3026

Case 3644

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPELLANT: Genstar Stone Products Company
Executive Plaza IV
Hunt Valley, Maryland 21031-1091

ATTORNEYS: Charles O. Fisher, Esquire and
Charles O. Fisher, Jr., Esquire
179 East Main Street
Westminster, Maryland 21157

REQUEST: An Appeal from the ruling of the Zoning Administrator dated
October 22, 1991, pertaining to the prohibition of extraction
of metabasalt, even if for storage and not for sale, from the
Medford Quarry

LOCATION: Old Medford Road in Election District 7

BASES: Article 17, Section 17.4; Article 14, Division IV, Section
14.42; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: November 26, 1991

On November 26, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal from the ruling of the Zoning Administrator dated October 22, 1991, pertaining to the prohibition of extraction of metabasalt, even if for storage and not for sale, from the Medford Quarry located on Old Medford Road.

The Board visited the site November 19, 1991.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will reverse the ruling of the Zoning Administrator and dismiss the Notice of Violation dated February 6, 1991, pertaining to mining of metabasalt on property designated "AE" in an "A" Agricultural District.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

The land involved in this appeal is located south of Old Medford Road and east of Nicodemus Road, as depicted on an annotated photomap of the area identified as Applicant's Exhibit 2. As indicated on the application and the site location map used in this case, the properties are identified as parcels 2 and 11. The site is also known as pit 2 of the Medford Quarry.

Pit 1, which is located north of Old Medford Road, was established prior to the adoption of the zoning ordinance on August 17, 1965, and is classified as a nonconforming use. The primary business of Genstar Stone Products Company (Genstar) has been, and continues to be, the extraction of limestone from pits 1 and 2.

On July 11, 1974, parcels 2 and 11 were designated "AE" with enactment of MA(Map Amendment)-65 as portrayed on zoning maps 45A and 51A. The zoning district is "A" Agricultural District.

The Zoning Administrator testified that at an October 23, 1990, meeting with representatives from Genstar, she determined that the extraction of metabasalt was not permitted on land designated "AE" by the provisions of the zoning ordinance.

A Notice of Violation, issued by the Chief of Zoning Enforcement February 6, 1991, reads in relevant part:

The nature of violation: Mining of Metabasalt in an "Agriculture Extractive" District; contrary to the provisions of Sections 6.3(f), 14.41 and 16.2(a) of the Carroll County Zoning Ordinance 1E.

The following measures must be taken immediately.
Cease operation and apply to the Board of Zoning Appeals for conditional use.

The Zoning Administrator deferred prosecution of the violation to provide time to resolve the matter legislatively or apply to the Board of Zoning Appeals.

In a letter to the Zoning Administrator dated August 1, 1991, received September 20, 1991, Mr. Bernard L. Grove, Executive Vice President of Genstar, wrote in part:

As part of the normal procedure for extracting limestone, Genstar removes the overburden and either sells it or disposes of it on site. Our generation of overburden at Medford typically exceeds the rate at which the market can absorb it. We are fortunate to have, overlying the limestone in the portion of Quarry II nearest Nicodemus Road, an overburden which is marketable. The Sam's Creek metabasalt, as it is known, has properties which make it suitable for use in surface course asphalt mixes. It is, therefore, able to be sold rather than spoiled.

We would, however, find it necessary to remove the metabasalt in order to extract the limestone even if there was no market for the material.

The Zoning Administrator responded by letter October 22, 1991, citing Sections 14.42 and 20.14 of the zoning ordinance, ruling that she could not

authorize the extraction of metabasalt from land designated "AE", and advising that the ruling could be appealed to the Board of Zoning Appeals.

The appeal of the ruling was filed October 29, 1991.

During the public hearing, Mr. John H. Gease, Director of Technical Services for Genstar, substantiated Mr. Grove's statements quoted above. Mr. Gease also presented testimony pertaining to the following facts:

The proposed site plan for the extension of pit 2 has been submitted to the county for review and approval. Other minerals, including metabasalt and phyllite, are found in association with deposits of limestone. In the past, soil and deposits of other minerals have been stripped and excavated to uncover and enable excavation of limestone deposits. Soil and other minerals covering limestone deposits are commonly referred to as overburden. Stripped and excavated materials, including soil, have been customarily used as fill on the premises, processed, and sold. Recently the State Highway Administration has determined that metabasalt is a more appropriate rock for use in construction of road surfaces than limestone. Consequently, the metabasalt is now commercially valuable and marketable. Genstar, in conjunction with excavating, processing and selling limestone and limestone products, wishes to excavate metabasalt found in association with, or as overburden of, limestone deposits, and process, store and sell metabasalt and metabasalt products.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

Parcels 2 and 11 are zoned "A" Agricultural District and are designated "AE" as depicted on zoning maps 45A and 51A. The land use provisions for the "A" Agricultural District are expressed in Article 6. Section 6.2, Principal Permitted Uses, paragraph (n) states:

Interim limestone extractive operations in any area shown and designated "AE" on the Zoning Maps of Carroll County as from time to time adopted or amended, subject to the requirements of Article 14, Division 4 of this ordinance and as defined by and subject to the limitations and requirements of Section 20.14A of this ordinance. (Amended 3/31/88)

Article 20, Definitions; Section 20.14A, Interim Limestone Extractive Operations (Added 9/28/76), states:

The extraction, mining, quarrying, processing, storage, and on-site transportation of limestone or its products on an interim basis where authorized and permitted under the terms of this ordinance until such time as a comprehensive change in the Master Plan and a comprehensive amendment to this ordinance altering, modifying, amending or otherwise affecting the use shall be duly adopted and/or enacted in accordance with law. At such time as comprehensive change in the Master Plan

and comprehensive amendment to this ordinance shall have been adopted and/or enacted in accordance with the provisions of this ordinance, the aforesaid definition shall become void and any use or uses approved in accordance with Section 6.2(n) and 6A.1(p) shall comply with the then existing terms of this ordinance and all other lawful requirements and Section 4.3 shall not apply to those uses which had been approved under this definition. (Amended 3/1/88)

Article 20, Definitions; Section 20.14, Extractive Operations, as cited by the Zoning Administrator in her letter of October 22, 1991, reads:

The extracting, mining, quarrying, processing, storage, and on-site transportation of sand, gravel, limestone, soapstone, building stone, or other commercially valuable mineral deposits or their products. (Amended 3/31/88)

Article 14, Special Provisions; Division IV, Extractive Operations and Processing, reads in relevant part:

Section 14.41 General Regulations.

Excavations and processing of products thereof, other than in conjunction with building or highway construction or the stripping of sod, shall be subject to the following:

Section 14.42 Limestone Operations.

Within areas shown and designated "AE" in an "A" Agricultural District or "T" Transitional District shown on a zoning map as adopted or amended and which lands may be developed in accordance with the regulations and provisions of this section, limestone operations, including mining, quarrying, processing, storage and transportation of limestone or its products may be established. Except for agriculture, no uses other than those described in this section shall be permitted in these designated areas, either before, during, or subsequent thereto, without securing the removal or change of the "AE" designation from the zoning maps in accordance with Article 19.

REASONING

Limestone deposits located on parcels 2 and 11 are found at various depths below the surface of the earth and in association with other minerals. The soil and minerals, known as overburden, covering the limestone must be removed prior to excavating the limestone. Thereafter, the limestone can be

excavated by surface mining techniques. Extraction of the limestone, other than by quarrying, would be impractical.

In this instance, the extraction of limestone is a principal permitted use. None of the provisions of Sections 14.41, 14.42, 20.14 or 20.14A exclude accessory uses customarily incidental to the principal permitted use of extracting limestone--whether or not the overburden, including metabasalt, is marketable or commercially valuable. Furthermore, the provisions do not prohibit processing, storage, or sale of soil or minerals composing overburden.

The exclusion in Section 14.42 of uses other than agriculture governs principal permitted uses only, not accessory uses.

However, assuming that accessory uses are intended to be precluded from excavation of limestone, the Board is convinced that the removal of overburden is necessary in the practice of quarrying limestone, and is an integral part of the principal permitted use.

In addition, the Board agrees with the Appellant's argument that the provisions of the zoning ordinance are sufficiently broad to allow the removal, processing, storage and sale of overburden, including metabasalt, in conjunction with conducting the principal permitted use of extracting limestone.

CONCLUSION

In accordance with the findings of fact, applicable law, and reasoning, the Board hereby reverses the ruling of the Zoning Administrator dated October 22, 1991, and dismisses the Notice of Violation dated February 6, 1991, pertaining to mining of metabasalt on parcels 2 and 11 of the Appellant's property, and designated "AE" in an "A" Agricultural District.

Dec. 10, 1991
Date

JDN/bdc/C3644DEC
December 10, 1991


John Totura, Chairman