

**King & Queen County  
Planning Commission Minutes  
March 6, 2023**

The King & Queen County Planning Commission met on Monday, March 6, 2023, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the General District Courtroom for their regular monthly meeting.

**Planning Commission Members Present:**

Hunter Richardson  
Milton Watkins  
Barry Allen

Mark Berry  
David Campbell  
Michael Fleming

**Also in Attendance:**

Donna E. Sprouse, Director of Community Development  
Vivian Seay, County Attorney/County Administrator

**Call to Order**

Chairman, Mr. Richardson called the meeting to order.

**Roll Call/Determination of Quorum**

Mr. Campbell took roll call and determined that a quorum was present.

**Approval of Minutes  
February 6, 2023**

After review of the minutes, a motion was made by Mr. Berry to accept the minutes as presented, seconded by Mr. Watkins.

Voting For: Watkins, Fleming, Richardson, Allen, Berry, Campbell

Voting Against: None

Abstain: None

**Citizens Comment Period**

Mr. Richardson opened the floor for citizens' comment period.

Hearing no comments, citizens comment period was closed.

**New Business**

**A. RZ23-01, Loudon Farm Corp. (public hearing)**

Mr. Richardson opened the public hearing for RZ23-01. Mr. Richardson noted that this is a request to rezone property currently zoned Residential Single-Family and Agricultural (RS/A) to Agricultural (A). The subject property is a 14.1-acre parcel, identified as County Tax Map Parcel #1625-39R-83, located at 3467 Mantua Road, in the Stevensville Magisterial District. Mr. Richardson asked Mrs. Sprouse to review the request.

Mrs. Sprouse noted that public notice was provided in both the Tidewater Review and Rappahannock Times for two consecutive weeks in their February 15<sup>th</sup> and February 22<sup>nd</sup> editions. She also noted that adjoining property owners were notified of the public hearing via certified return receipt mail.

Mrs. Sprouse noted the following:

The Planning and Zoning Department received an application on January 25, 2023 from David Mann on behalf of Loudon Farm Corp., requesting approval of a rezoning application. The applicant requests to rezone a 14.1-acre parcel, identified as County Tax Map Parcel No. 1625-39R-83 from Residential Single-Family and Agricultural (RS/A) to Agricultural (A).

The owners wish to apply for rezoning in order to allow them the proper zoning to seek approval to establish a wedding venue/events facility. The owner understands that before they are able to move forward with their proposal as wedding venue, a level 3 site plan and Conditional Use Permit is required which includes approval from appropriate state/local agencies.

This request is only for the rezoning of the 14.1-acre parcel and is not an approval of any use or site plan at this time.

The subject property is located off of State Route 633, Mantua Road, in the Stevensville Magisterial District, further identified as County Tax Map Parcel No. 1625-39R-83. The property is addressed as 3467 Mantua Road. Addressable structures on the property includes a single-family residence. There was a second residence on the property, however unfortunately it was destroyed by fire last year. Other surrounding land uses include residential single-family zoning/homes, and farm fields and pastures, zoned Agricultural.

The attached plat depicts the current location of existing structures on the site, as well as the total acreage of the parcel presently. The property in question originally consisted of 6.9 acres. Through a boundary line adjustment transaction, the parcel is now 14.1 acres in size. The property is accessed by a private easement across other lands owned by Loudon Farm Corp.

King & Queen County Zoning Ordinance, Article 3, Section 3-68 A states that the purpose of the agricultural (A) district is, “...*designed to protect existing farms, forests, conservation areas and other types or rural uses; to encourage future development only when it promotes the preservation of the rural qualities of the county; and to provide for supportive commercial uses, along with necessary community facilities. The use restrictions and other regulations within the district are intended to reflect the importance of agriculture and forestry to the character and economy of the county and to discourage development of other uses, except where they promote the preservation of the rural qualities of the county.*

*Residential uses are permitted primarily: to accommodate farm families and workers; to provide opportunities for a limited number of independent home sites, while avoiding pressures for major residential subdivisions and strip development along highways.”*

King & Queen County Zoning Ordinance, Article 3, Section 3-68 C states that the purpose of the residential/single-family (RS) district is to, “... (i) to accommodate residential communities of moderate density where public water and sewage systems are not available or of higher density where such utilities are available; (ii) to provide for the orderly development of the Mattaponi and York Rivers while protecting the waterfront and other environmentally-sensitive areas from the potentially harmful effects of development and, in general, establish a compatible relationship between development and the natural environment; (iii) to promote the clustering of residential development within the County in order to minimize strip development and promote the efficient use of land; (iv) to accommodate affordable housing for county residents; and (v) to permit community facilities such as parks, playgrounds, churches and schools in order to enhance the residential environment.”

Article 4, Table 4.1, Permitted Uses notes the following: Events Facilities are permitted by approved Conditional Use Permit in the Agricultural zoning district or by right in the General Business 2 (GB2) zoning district.

The subject property is currently “split-zoned”, meaning it is made up of two separate zoning districts. Each district allows for various permitted uses based on the Table of Uses in Article 4 of the King & Queen County Zoning Ordinance. In order for the property owners to move forward with their request to establish a wedding venue/facility on the subject property, it must be either zoned Agricultural (A) or General Business 2 (GB2). Clearly the more appropriate zoning, that would fit the rural nature of the area, would be the Agricultural zoning district. Setbacks, permitted uses, and other site plan requirements/conditions will be addressed and shall be approved by the Board of Supervisors prior to the operation/construction of the proposed wedding venue/facility.

It is in staff’s recommendation that the rezoning request be approved.

Mrs. Sprouse noted that Mr. David Mann, applicant for Loudon Farms Corp., was present tonight in the audience should they have any questions regarding the request.

Mr. Richardson thanked Mrs. Sprouse for her report. Mr. Richardson opened the floor for public comment.

Ms. Gail Tupponce of 576 Garnetts Mill Lane said that she has questions rather than a comment regarding the request. She noted that she was not sure if the private road to access her subdivision would be utilized for this proposed use and if so, her road could not withstand the traffic. She noted that she appreciates good music but wanted to ensure that the venue wouldn’t be too loud. She noted that she was unsure where the facility will actually be located next to her property. Mr. Mann approached Ms. Tupponce and stated that Garnett’s Mill Road will not be used at all. He noted that he has an easement across other lands of Loudon Farm Corp. and that they plan to use that for access to the property. He showed Ms. Tupponce a map of the area and where the 14.1 acre parcel is located in relationship to her property. Ms. Tupponce noted that now that she sees where this is located, she feels much better about the request and had no further comments. Ms. Tupponce asked if she may leave the meeting now. Mr. Richardson thanked Ms. Tupponce for attending and said she was free to come and go as she wished.

Ms. Kala Beck noted that she lived in Garnett’s Mill Subdivision and felt that a wedding venue in the area would be a great idea.

Mr. John Walker, noted that his mother owns property at 3547 Mantua Road. He noted that he was against the proposal. He had concerns of noise and wanted to know where on the 14

acres the facility would be utilized. Mr. Walker felt that the river front portion of the property was not an ideal place for the venue.

Ms. Pauline Banks of 3472 Mantua Road noted that she was concerned with the potential noise and traffic associated with the use. She stated that she lived in the house across the road from the entrance of the Loudon Farm Corp. property and was not in favor of the rezoning request.

Mr. David Mann, applicant of the rezoning request, noted that Mrs. Sprouse pretty much summed it all up. He added that this proposal is something his wife wanted to do. That she wanted to provide a place for weddings on the property. He noted that weddings usually take place on Saturdays mostly. Mr. Mann noted that King & Queen County does have a noise ordinance and that ordinance is enforced by the Sheriff's Office. He added that VDOT will address matters as it relates to the entrance requirements so that access is safe.

Hearing no further comments, Mr. Richardson closed the public comment period and then closed the public hearing.

Mr. Richardson asked if any of the Commission members had any questions, comments or thoughts.

Mr. Berry noted that the comments he heard tonight from the public were all details that would be addressed as part of the Conditional Use Permit process.

Mr. Watkins stated that he agreed with Mr. Berry.

Mr. Richardson asked if there was a motion.

Mr. Berry stated that he would like to make a motion to recommend approval of RC23-01 as presented. Mr. Berry's motion was seconded by Mr. Watkins.

Hearing no other motion, Mr. Richardson asked for a roll call vote.

Voting For: Watkins, Fleming, Richardson, Allen, Berry, Campbell

Voting Against: None

Abstain: None

## **B. RZ22-02, Mattaponi Sand & Gravel, LLC (*pubic hearing*)**

Mr. Richardson opened the public hearing for RZ22-02, Mattaponi Sand & Gravel, LLC. Mr. Richardson noted that this is a public hearing to rezone a portion of property identified as County Tax Map Parcel 1632-78R-687.

Mr. Richardson asked Mrs. Sprouse to please review the request.

Mrs. Sprouse noted that public notice was provided in both the Tidewater Review and Rappahannock Times for two consecutive weeks in their February 15<sup>th</sup> and February 22<sup>nd</sup> editions. She also noted that adjoining property owners were notified of the public hearing via certified return receipt mail.

Mrs. Sprouse noted the following:

The Planning and Zoning Department received an application on November 22, 2022, from Wilson Engineers, LLC on behalf of Mattaponi Sand & Gravel, LLC, requesting to rezone a portion of County Tax Map Parcel No. 1632-78R-687 from Agricultural to Industrial. This rezoning request is subject to the approval of their Conditional Use Permit Amendment and

Level 3 Site Plan Amendment requests, to allow for the processing of off-site mined material (sand and stone).

The subject property is located on State Route 628, Spring Cottage Road, in the Newtown Magisterial District, County Tax Map Parcel No. 1632-78R-687. The property owner is Mattaponi Sand & Gravel, LLC. The parcel size, according to the Commissioner of Revenue, is 330.5 acres. However, the survey as prepared by Mitchell Land Surveying, LLC has the parcel listed as approximately 310.28 acres.

Mattaponi Sand & Gravel, LLC, is requesting approval of their rezoning request to rezone 68.55 acres of the 310.28-acre parcel from Agricultural to Industrial. Off-site processing of mined material may be permitted by approved CUP and Level 3 Site Plan in the Industrial zoning district. Mattaponi Sand & Gravel, LLC wishes to import mined material from the Kay Mine Site, identified as tax map 1632-78R-673, to this parcel where their office, scales, and portable plant is currently located and operating.

The property currently is zoned Agricultural (A). The owner has submitted, a request to rezone a portion of the property in which off-site mined material will be stored, cleaned, sorted, mixed, and hauled from the property.

According to Article 3, Establishment of Zoning Districts and Official Zoning District Map, Section 3-68(I) states, "The purpose of the [Industrial] "I" district is to provide an area for heavy commercial and industrial uses which may create some nuisance such as smoke, noise, odor, dust or other potential public nuisance, and which are not compatible with residential uses."

Article 4, Permitted Uses, Table 4.1, Permitted Use Table, Mineral Resource Processing, is allowed in the Industrial Zoning District by approved Conditional Use Permit. Further, mineral resource processing is defined as "*action to change the material from the form from which it was extracted from the earth such as crushing, dyeing, or in any way chemically treating the material, altering its structure, character or size, blending material from multiple locations or processing material brough from another site.*"

The property owner has voluntarily proffered the following conditions up on approval of the rezoning, if approved. Those proffers are:

1. The applicant hereby agrees to request and apply for a future change in zoning to allow the 68.55 acres zoned Industrial District to revert to the prior Agricultural District zoning upon completion of mining operations on the Kay Mine Site, Tax Parcel 1632-78R-673.
2. The applicant hereby agrees only material extracted from the Kay Mine Site, Tax Parcel 1632-78R-673 will be imported to the Fisher Plant Site, Tax Parcel 1632-78R-687.
3. The applicant hereby agrees commercial or industrial uses on the portion of the property zoned Industrial District shall be limited to Mineral Resource Procession or Resource Extraction use such as the administrative office and weigh scales operations. All other industrial or commercial uses shall be prohibited.

Staff recommends approval of the rezoning request and acceptance of the voluntary offered proffers, provided that the proffers are enforceable by law and provided that the CUP amendment and Level 3 Site Plan amendment are both approved as presented.

Mrs. Sprouse noted that this request is a 3-part proposal and asked that the Commission not take action on the requests as they move down the agenda. Rather that they hear each of Mattaponi Sand & Gravel's requests, then vote on each separately at the end.

Ms. Vivian Seay, County Attorney and County Administrator approached the Commission and noted that as Mrs. Sprouse has stated, she supports the rezoning request provided that the proffers are enforceable by law. Ms. Seay noted that one of the three voluntarily offered proffers is not enforceable by law. She stated that the proffer that is not enforceable is the one where the applicant agrees to request and apply for a rezoning to revert the property from Industrial to Agricultural upon completion of mining. Ms. Seay noted that she would like to ask the Commission to not take action on any of Mattaponi Sand and Gravel's requests, but still hold the public hearing for each one. Ms. Seay stated that she feels that a text amendment would better serve the applicant and the County in preventing the creation of industrial strips of land to allow for the importation of mined material from off site. She noted that she would recommend in a text amendment that properties where mining is under the same DMME permit and where both entrances are within 100' of one another, be allowed for such in the Agricultural zoning district by approved Conditional Use Permit. Ms. Seay confirmed that she had already had conversations with the applicant's counsel and they were aware of her ask of the Commission in advance.

Mr. Richardson noted that he had wished that Ms. Seay had called him before the meeting because he is a bit confused.

Ms. Seay added basically instead of a rezoning request, she would propose to the Commission a text amendment to accomplish the same thing. She noted that they will still hold all of the public hearings tonight, but hold their votes until the next meeting when she will bring a proposed text amendment. They would hold a public hearing at their next meeting the proposed text amendment and then move it all forward with whatever recommendations they have then. At the end of the day, legally in her opinion, the County would be better served by not having this sliver of land zoned Industrial in the middle of Agricultural zoned property.

Mr. Richardson noted that this sliver of land that Ms. Seay is referring to is 68.55-acres.

Ms. Seay noted that Mr. Richardson was correct.

Mr. Richardson asked if what she was saying is that this property not be rezoned would be better served by the County because the land around this property is all zoned Agricultural.

Ms. Seay noted that down zoning is a problem potentially. Also, the condition where the applicant would come back later and rezone it back to Agricultural. She added that though we trust what the applicant says, ownership may change down the road and we cannot deal with this 10 or 15 years later, in fact we cannot enforce that provision. She noted that the County could initiate a down zoning but that creates a whole host of problems as well.

Mr. Richardson noted that he was curious as to what the applicant and the public has to say about this information.

Mr. Richardson opened the floor for public comment.

Mr. Edward Rice, of 1874 Poplar Hill Road noted that he had a question more than a comment. It was his understanding that the purpose of this rezoning request to Industrial is to allow them to bring material from the Kay property to the Fisher property. Also, when the last bucket of dirt crosses the road from the Kay property, the land will automatically revert back to Agricultural, or the property owner will have to file a request to rezone it back.

Mr. Richardson noted that the County Administrator, who is also the County Attorney, just spoke to the legality of that matter, and she has said no. The County could not force the land owner to change the zoning of the property and if the County were to initiate the down-zoning, that is a major legal process.

Mr. Edward Rice noted that he is not an attorney by any means, but if their agreement was to revert it back and that was the way it was forwarded, to him that would be a legal standing to have to revert back to Agricultural. He added that most of the time when you buy property, you buy the covenants that goes along with it.

Mr. Richardson asked Mr. Rice was he in favor of the rezoning request or not.

Mr. Rice noted that he was kind of neutral right now. He added that he is not against it, he is just trying to understand their request.

Ms. Holly Reid of 2378 Poplar Hill Road stated that she wanted to know if this would mean that material would be imported from other sites into the Fisher site or just the material from Kay would be permitted into the Fisher site for processing. She added that she had listened to the report provided by staff but it did not note an important fact. She noted that the truck traffic is a nuisance and the road conditions are not good. That Spring Cottage Road was not built to have the volume of truck traffic that it has on it today. She stated that she has 2 teenagers on the road and the truck traffic is a huge concern as the road is very narrow and in poor condition.

Mr. Rodney North of 2024 Spring Cottage Road stated that he was concerned with the volume of traffic coming from both mine sites. He also asked if there has been a study conducted on the impacts of mining in the area overall.

Ms. Alice Gray of 5770 Newtown Road stated that she owned property in the area and had concerns about the condition of the roads, both Spring Cottage and Poplar Hill Road. It is near impossible to pass these large trucks safely.

Mr. Richard Stuart noted that he is a lawyer from Montross, he is representing Mattaponi Sand and Gravel. He wanted to summarize that his client would like to process on one side of the road, rather than two sides of the road as they are currently permitted to do. The way that the County code is written, his client cannot drive the material from one side of the road to the other where the wash plant is, without changing the zoning of the property to Industrial. Mrs. Sprouse is right in that your code now requires it to be rezoned. What the

County Administrator/County Attorney is saying is also correct, if you amend the ordinance, the property can stay Agricultural with the ability to bring the material in from across the road. He noted that he and his client are happy to go with either course that the Commission recommends. He added that Ms. Seay if right, that if something happened and the land changed hands, it would be potentially problematic to enforce a down-zone. He included that it would not be a problem so long as his client owned the property because they are agreeing to it and the County could enforce it. However, if they are not the property owners, it could be problematic down the road. In regards to the public comments regarding the truck traffic, he noted that his client is not seeking additional trips than what has already been approved.

Hearing no further comments. Mr. Richardson closed public comment period and the public hearing.

The consensus of the Commission, based on the County Administrator's recommendation, was to table the request for their next meeting. During their next meeting there will be a proposed text amendment drafted by the County Attorney, which the Commission will consider before making a decision on each of Mattaponi Sand and Gravel's requests.

### **C. CUP22-02 & SP22-05, Mattaponi Sand and Gravel, LLC (*public hearing*)**

Mr. Richardson opened the public hearing for CUP22-02 and SP22-05 in the name of Mattaponi Sand and Gravel, LLC, on County Tax Map Parcel No. 1632-78R-687. A request to amend their Conditional Use Permit and Level 3 Site Plan to allow for the processing of material mined offsite.

Mr. Richardson asked Mrs. Sprouse to please review the proposal.

Mrs. Sprouse stated that public notice was provided in both the Tidewater Review and Rappahannock Times for two consecutive weeks in their February 15th and February 22nd editions. She also noted that adjoining property owners were notified of the public hearing via certified return receipt mail.

Mrs. Sprouse noted the following:

The Planning and Zoning Department received an application on November 22, 2022, from Wilson Engineers, LLC on behalf of Mattaponi Sand & Gravel, LLC, requesting approval of a Conditional Use Permit Amendment and Level 3 Site Plan Amendment, subject to rezoning approval, to allow for the processing of off-site mined material (sand and stone).

The subject property is located on State Route 628, Spring Cottage Road, in the Newtown Magisterial District, County Tax Map Parcel No. 1632-78R-687. The property owner is Mattaponi Sand & Gravel, LLC. The parcel size, according to the Commissioner of Revenue is 330.5 acres, however the survey as prepared by Mitchell Land Surveying, LLC has the parcel listed as approximately 310.28 acres.

Mattaponi Sand & Gravel, LLC, is requesting approval of an amendment to an existing Conditional Use Permit and Level 3 Site Plan to allow for processing of off-site mined material. In order to receive CUP and Level 3 Site Plan approval for such use, the rezoning application must be approved. Off-site processing of mined material may be permitted by

approved CUP and Level 3 Site Plan in the Industrial zoning district only. The owner wishes to import mined material from the Kay Mine Site, identified as tax map 1632-78R-673, to this parcel where their office, scales, and portable plant is currently located and operating.

The property currently is zoned Agricultural (A). The owner has submitted with this application, a request to rezone a portion of the property in which off-site mined material will be stored, cleaned, sorted, mixed, and hauled from the property.

Stormwater and Erosion and Sediment Control is regulated by Department of Mines Mineral and Energy (DMME).

Environmental Health Supervisor, Kate Jones, has no comments regarding the proposed request.

The site has an existing paved commercial entrance. VDOT has determined the existing entrance to be adequate.

According to Article 4, Permitted Uses, Table 4.1, Permitted Use Table, *“Surface Mining on at least 5 acres; no processing, is allowed in the Agricultural Zoning District with the approval of a conditional use permit. Special Conditions are as follows: (a) a minimum lot size of five (5) acres shall be required; (b) no such activity shall take place within a required yard; (c) there shall be no processing or manufacturing on the premises other than such activity as may be necessary to facilitate the hauling of materials, specifically, the screening, sifting, separation and washing of the extracted resource on the site of extraction by manual or mechanical means; (d) a plan shall be submitted showing the original and proposed final grades of areas to be disturbed and the means to be taken to facilitate drainage and to avoid erosion and sedimentation; and (e) the area of such use shall have direct access to roads suitably paved and improved to accommodate truck traffic generated by the use.”*

Further, Article 4, Permitted Uses, Table 4.1, Permitted Use Table, states that Mineral Resource Processing is allowed in the Industrial Zoning District by approved Conditional Use Permit. Further, mineral resource processing is defined as action to change the material from the form from which it was extracted from the earth such as crushing, dyeing, or in any way chemically treating the material, altering its structure, character or size, blending material from multiple locations or processing material brought from another site.

Mrs. Sprouse informed the Commission that included within their packet were the previously approved conditions within the property owner’s approval letter, as well as staff’s recommended conditions (provided separately) based on this newly submitted request.

Staff’s recommended Conditions for CUP22-02 is as follows:

Conditions:

1. Truck traffic may enter and exit Tax Parcel 1623-78R-687 (the “Site”) not to exceed 80 trips entering the Site and 80 trips exiting the Site per day. Notwithstanding the foregoing, the 80-trip limitation shall not include or apply to trucks entering the Site directly from Tax Parcel 1623-78R-673 and truck exiting the Site and traveling directly to Tax Parcel 1623-78R-673; shall not apply to any trips entering and exiting the Site within 60

days following the date on which the Governor of Virginia has declared a state of emergency due to a natural disaster; and shall not apply to or include truck traffic entering or exiting the Site for maintenance or repair. All vehicles used for transporting materials shall be licensed and permitted in accordance with applicable federal, state, and local law to operate on Virginia highways. This condition does not apply to 2-axle passenger vehicles.

2. The hours of material importation to the site or exportation from the site shall be limited to 6:00 AM until 6:00 PM Monday through Saturday. There shall be no limitation on the days and hours of operation within 60 days following the date on which the Governor of Virginia declares a State of Emergency due to a natural disaster.

3. Permanent outdoor lighting shall be limited to the security area lighting at the wash plant, parking area illumination, and security lighting as required by the Building Code for the egress door from the scale office. All outdoor lighting shall comply with the Code of King and Queen County, Article 22-Outdoor Lighting.

4. Outdoor speaker or paging system(s) shall be limited to communications between the scale operator and truck drivers utilizing the weigh scale. Any outdoor speaker or paging system shall comply with the provisions of the Code of King and Queen County, Article V pertaining to noise.

5. The entrance on parcel 1623-78R-687, as shown on site plan dated July 26, 2016, revised September 16, 2016, prepared by Wilson Engineers, LLC from State Route 628 shall be constructed and maintained in compliance with to Virginia Department of Transportation requirements.

6. Dust containment measures as prescribed by the Virginia Department of Mines, Minerals and Energy (VDMME) shall be utilized at all times during periods of dry weather and at any time at the direction of the zoning administrator.

7. Storm runoff, erosion and sedimentation from the surface mining operation will be controlled in compliance with VDMME standards. Upon completion of mining of the Site, the Site shall be reclaimed and the Site shall be replanted with vegetation approved by VDMME.

8. There shall be no encroachment into the Chesapeake Bay Preservation Area Resource Protection Area or buffer, except as required for access to the property and as approved by King and Queen County. Areas of the Site designated as 100-foot Resource Protection Area (RPA) buffer shall be maintained as forested riparian buffers. Existing RPA buffers which consist of open land or abandoned site access driveways shall be converted to forested riparian buffer according to the requirements of the King and Queen County Code of Ordinances, and any Water Quality Impact Assessment required for the site and approved by King and Queen County.

9. Existing forested buffers surrounding the Site shall be preserved and maintained at all times while mining and reclamation operations are being conducted.

10. 100-Foot vegetated buffers identified on the approved Plan of Development shall consist of existing forested areas to be preserved and maintained or new landscape planting installations in existing open areas or previously timbered areas. New landscape plantings

as shown of the project plans shall be installed prior to commencement of surface mining mineral extraction operations. New landscape plantings shall consist of five (5) rows of six (6) foot height Leyland cypress, White pine, or other evergreen tree species as approved by the County Zoning Administrator. Plantings shall be spaced at 20-feet on center with plantings staggered between rows. New landscape planting may be eliminated where the following conditions are met:

A. Mining operations remain obscured from public view from any improved public right-of-way;

B. Property owners adjacent to the required 100-foot vegetated buffer, or portion thereof, enter into a written agreement with the mine operator and property owner of the lands on which mining operations are being conducted agreeing that a 100-foot vegetated buffer, or portion thereof, established with landscape plantings is not necessary or desirable. Copies of all such agreements shall be provided to the County Zoning Administrator.

If existing forested areas outside of the mining limits or applicable areas of any Conditional Use Permit issued for mining operations are cleared or timbered is harvested to the extent that the active mining operations become visible from any improved public right-of-way, regardless of whether the clearing or timber harvesting occurs on the property subject to this Conditional Use Permit or not, then the mine operator will establish the required 100-foot vegetated buffer with the new landscape plantings as specified herein and as provided on the approved Plan of Development within sixty (60) days of written notification from the County Zoning Administrator directing that the vegetated buffer or portion thereof be provided.

11. All federal, state and county approvals shall be obtained prior to any site construction activity or issuance of any required King and Queen County permits.

12. Permanent signs containing verbiage approved by the County shall be erected at intervals not to exceed 500 feet along the length of the 100-foot Resource Protection Area buffer located adjacent to areas of the property to be mined or disturbed (the "Required Signs"). In addition, witness posts or additional signs shall be erected between the Required Signs at intervals not to exceed 100-feet along the length of the 100-foot Resource Protection Area buffer located adjacent to areas of the property to be mined or disturbed. All signs and/or witness posts shall be installed prior to the commencement of construction or mining activity on the Site and shall be maintained throughout the time the property is mined and/or undergoing reclamation.

13. Notwithstanding anything to the contrary in these conditions or the associated plan, all resource extraction will comply with the Conditions for such activity in Table 4.1 in Article 4 of the zoning ordinance, as it may be amended from time to time.

14. State Route 628 shall be inspected and swept daily by the mine operator to the extent necessary to ensure that the vehicular travel surface of State Route 628 is clear of sand, gravel or mineral soil material tracked or otherwise deposited onto the vehicular travel surface of State Route 628 within 100-feet of the intersection of the Site entrance with State Route 628. All operations within the State right-of-way shall be conducted according to the requirements of the latest edition of the Virginia Work Area Protection Manual and requirements of the Virginia Department of Transportation.

15. Warning signs with flashing beacons will be erected and maintained by the mine operator along State Route 628 alerting the traveling public that trucks are entering the state highway. Such warning signs and flashing beacons will be installed and operational prior to the commencement of and throughout the duration of operations on the Site as directed and approved by the Virginia Department of Transportation and/or the County

16. No later than twelve months following the final export of VDMME reportable material from the Site, the applicant will apply to King & Queen County to rezone to Agricultural the 68.55-acre parcel, currently zoned Industrial.

17. Only material extracted from Tax Parcel 1632-78R-673 will be imported to the Site for processing. Material mined from other locations is prohibited.

18. Commercial or Industrial uses on the portion of the property zoned Industrial are limited to Mineral Resource Processing, Resource Extraction, and supplemental uses directly related to the Mineral Resource Processing or Resource Extraction uses, including, but not limited to, the administrative offices and weigh scales operations. All other industrial or commercial uses are prohibited.

19. This conditional use permit shall terminate when there has been no VDMME reportable material exported from the Site for a period of 12 consecutive months at any time following the date on which VDMME reportable material is first imported to the Site.

Staff recommends approval of the Level 3 Site Plan amendment. Staff also recommends approval of the proposed Conditional Use Permit amendment, provided that the rezoning request and staff's recommended CUP conditions are approved as presented.

Mr. Richardson opened public comment period.

Mr. Rodney North of 2024 Spring Cottage Road asked what the consequences were if the owner or applicant didn't follow an approved Conditional Use Permit or Proffer. He asked what did the enforcement of such entail.

Mrs. Sprouse noted that if there is a continued violation of an approved Conditional Use Permit, the information is provided to the Board, who may consider revocation of the Conditional Use Permit.

Mrs. Seay, County Attorney, noted that it would go through the notice of violation process. She also encouraged citizens to come to the office and meet with staff to answer those questions, as public comment period is for comment and not a time to ask questions and expect answers.

Hearing no further comments, the public comment and public hearing was closed.

The consensus of the Commission, based on the County Administrator's recommendation, was to table the request for their next meeting.

**D. CUP22-03 & SP22-06, Mattaponi Sand and Gravel, LLC/Kay Properties, LLC**  
*(public hearing)*

Mr. Richardson opened the public hearing for CUP22-03 and SP23-06 for Mattaponi Sand and Gravel, LLC and Kay Properties, LLC, a request to amend an existing Conditional Use Permit and Level 3 Site Plan.

Mr. Richardson asked Mrs. Sprouse to please provide information regarding the request.

Mrs. Sprouse stated that public notice was provided in both the Tidewater Review and Rappahannock Times for two consecutive weeks in their February 15th and February 22nd editions. She also noted that adjoining property owners were notified of the public hearing via certified return receipt mail.

Mrs. Sprouse provided the following:

The Planning and Zoning Department received an application on November 22, 2022 from Wilson Engineers, LLC on behalf of Mattaponi Sand & Gravel, LLC, requesting approval of a Conditional Use Permit Amendment and Level 3 Site Plan Amendment, subject to rezoning approval, to allow for the processing of off-site mined material (sand and stone).

The subject property is located on State Route 628, Spring Cottage Road, in the Newtown Magisterial District, County Tax Map Parcel No. 1632-78R-673. The property owner is Kay Properties, LLC. The parcel size is 528 acres.

Mattaponi Sand & Gravel, LLC, is requesting approval of an amendment to an existing Conditional Use Permit and Level 3 Site Plan to allow for processing of off-site mined material. In order to receive CUP and Level 3 Site Plan approval for such use, the rezoning application on the former Fisher site must be approved. Off-site processing of mined material may be permitted by approved CUP and Level 3 Site Plan in the Industrial zoning district only. The owner wishes to import mined material from this site, identified as County Tax Map Parcel No. 1632-78R-673, to another parcel (1632-78R-687) where their office, scales, and portable plant is currently located and operating.

The property currently is zoned Agricultural (A). The owner has also submitted a request to rezone a portion of County Tax Map Parcel No. 1632-78R-687 in which off-site mined material will be stored, cleaned, sorted, mixed, and hauled from this property, if approved.

Stormwater and Erosion and Sediment Control is regulated by Department of Mines Mineral and Energy (DMME).

Environmental Health Supervisor, Kate Jones, has no comments regarding the proposed request.

The site has an existing approval for a commercial entrance. VDOT has determined the proposed entrance to be adequate.

According to Article 4, Permitted Uses, Table 4.1, Permitted Use Table, *“Surface Mining on at least 5 acres; no processing, is allowed in the Agricultural Zoning District with the approval of a Conditional Use Permit. Special Conditions are as follows: (a) a minimum lot size of five (5) acres shall be required; (b) no such activity shall take place within a required yard; (c) there shall be no processing or manufacturing on the premises other than such activity as may be necessary to facilitate the hauling of materials, specifically, the screening,*

*sifting, separation and washing of the extracted resource on the site of extraction by manual or mechanical means; (d) a plan shall be submitted showing the original and proposed final grades of areas to be disturbed and the means to be taken to facilitate drainage and to avoid erosion and sedimentation; and (e) the area of such use shall have direct access to roads suitably paved and improved to accommodate truck traffic generated by the use.”*

Further, Article 4, Permitted Uses, Table 4.1, Permitted Use Table, Mineral Resource Processing, is allowed in the Industrial Zoning District by approved Conditional Use Permit. Further, mineral resource processing is defined as *“action to change the material from the form from which it was extracted from the earth such as crushing, dyeing, or in any way chemically treating the material, altering its structure, character or size, blending material from multiple locations or processing material brought from another site.”*

Mrs. Sprouse informed the Commission that included within their packet were the previously approved conditions within the property owner’s approval letter, as well as staff’s recommended conditions (provided separately) based on this newly submitted request.

Staff’s recommended Conditions for CUP22-03 is as follows:

Conditions:

1. Truck traffic shall be limited to 80 trips entering Tax Parcel 1632-78R-673 (the “Site”) and 80 trips exiting from the Site per day. Notwithstanding the foregoing, the 80-trip limitation shall not include or apply to any trips entering and exiting the facility within 60 days following the date on which the Governor of Virginia declares a State of Emergency due to a natural disaster; and shall not apply to or include truck traffic entering or exiting the Site for maintenance or repair. This condition does not apply to 2-axle passenger vehicles.
2. All mined materials extracted from Tax Parcel 1632-78R-673 will be transported across State Route 628 onto that portion of Tax Parcel 1632-78R-687 zoned Industrial District for sorting, grading, classification, stockpiling, and final distribution. All vehicles used for transporting materials shall be licensed and permitted in accordance with applicable federal, state, and local law to operate on Virginia highways.
3. The hours of material exportation from the Site shall be limited to 6:00 AM until 6:00 PM Monday through Saturday. There shall be no limitation on the days and hours of operation within 60 days following the date on which the Governor of Virginia declares a State of Emergency due to a natural disaster.
4. No permanent outdoor lighting shall be used on this Site unless required by local, state, or federal laws or regulations or other binding action. Any outdoor lighting shall comply with the Code of King and Queen County, Article 22-Outdoor Lighting.
5. No outdoor speaker or paging systems shall be used on the Site.
6. The entrance to State Route 628 from Tax Parcel 1632-78R-673 as shown on the approved site plan shall be constructed and maintained according to Virginia Department of Transportation requirements.

7. Dust containment measures as prescribed by the Virginia Department of Mines, Minerals and Energy (VDMME) shall be utilized at all times during periods of dry weather and at any time at the direction of the zoning administrator.

8. Storm runoff, erosion, and sedimentation from the surface mining operation will be controlled in compliance with VDMME standards. Upon completion of mining of the Site, the Site shall be reclaimed and the Site shall be replanted with vegetation approved by VDMME.

9. There shall be no encroachment into the Chesapeake Bay Preservation Area Resource Protection Area or Resource Protection Area buffer, except as approved by King and Queen County. Areas of the Site within the limits of the Conditional Use Permit and designated as 100-foot Resource Protection Area (RPA) buffer shall be maintained as forested riparian buffers. Existing RPA buffers which consist of open agricultural land and are located within the limits of the Conditional Use Permit shall be converted to forested riparian buffer according to the requirements of King and Queen County Code, and any Water Quality Impact Assessment required for the Site and approved by King and Queen County.

10. Existing forested buffers surrounding the Site shall be preserved and maintained at all times while mining and reclamation operations are being conducted.

11. 100-Foot vegetated buffers identified on the approved Plan of Development shall consist of existing forested areas to be preserved and maintained or new landscape planting installations in existing open areas or previously timbered areas. New landscape plantings as shown on the project plans shall be installed prior to commencement of surface mining mineral extraction operations. New landscape plantings shall consist of five (5) rows of six (6) foot height Leyland cypress, White pine, or other evergreen tree species as approved by the County Zoning Administrator. Plantings shall be spaced at 20-feet on center with plantings staggered between rows. New landscape planting installations may be eliminated where the following conditions are met:

A. Mining operations remain obscured from public view from any improved public right-of-way;

B. Property owners adjacent to the required 100-foot vegetated buffer, or portion thereof, enter into a written agreement with the mine operator and property owner of the lands on which mining operations are being conducted agreeing that a 100-foot vegetated buffer, or portion thereof, established with landscape plantings is not necessary or desirable. A copy of any such agreement shall be provided to the County Zoning Administrator.

If existing forested areas outside of the mining limits or applicable areas of any Conditional Use Permit issued for mining operations are cleared or timber is harvested to the extent that the active mining operations become visible from any improved public right-of-way, regardless of whether the clearing or timber harvesting occurs on the property subject to this Conditional Use Permit or not, then the mine operator will establish the required 100-foot vegetated buffer with the new landscape plantings as specified herein and as provided on the approved Plan of Development within sixty (60) days of written notification from the County Zoning Administrator directing that the vegetated buffer or portion thereof be provided.

12. All federal, state and county approvals shall be obtained prior to any Site construction activity or issuance of any required King and Queen County permits.

13. Permanent signs containing verbiage approved by the County shall be erected at intervals not to exceed 500 feet along the length of the 100-foot Resource Protection Area buffer located adjacent to areas of the property to be mined or disturbed (the “Required Signs”). In addition, witness posts or additional signs shall be erected between the Required Signs at intervals not to exceed 100-feet along the length of the 100-foot Resource Protection Area buffer located adjacent to areas of the property to be mined or disturbed. All signs and/or witness posts shall be installed prior to the commencement of construction or mining activity on the Site and shall be maintained throughout the time the property is mined and/or undergoing reclamation.

14. Notwithstanding anything to the contrary in these conditions or the associated plan, all resource extraction will comply with the Conditions for such activity in Table 4.1 in Article 4 of the zoning ordinance, as it may be amended from time to time.

15. State Route 628 shall be inspected and swept daily by the mine operator to the extent necessary to ensure that the vehicular travel surface of State Route 628 is clear of sand, gravel, or mineral soil material tracked or otherwise deposited onto the vehicular travel surface of State Route 628 within 100-feet of the intersection of the Site entrance with State Route 628. All operations within the State right-of-way shall be conducted according to the requirements of the latest edition of the Virginia Work Area Protection Manual and requirements of the Virginia Department of Transportation.

16. Warning signs with flashing beacons will be erected and maintained by the mine operator along State Route 628 alerting the traveling public that trucks are entering the state highway. Such warning signs and flashing beacons will be installed and operational prior to the commencement of, and throughout the duration of, mining operations on the Site, as directed and approved by the Virginia Department of Transportation and/or the County

17. This conditional use permit shall terminate when there has been no VDMME reportable material exported from the Site for a period of 12 consecutive months at any time following the date on which VDMME reportable material is first exported from the Site.

Staff recommends approval of the level 3 site plan amendment. Staff also recommends approval of the proposed conditional use permit amendment, provided that the rezoning request with the submitted voluntary proffers and staff’s recommended CUP conditions are approved as presented.

Mr. Richardson thanked Mrs. Sprouse. Mr. Richardson opened public comment period.

Ms. Holly Reid of 2378 Poplar Hill Road asked if rezoning the site at the Fisher mine site would affect the values of other properties in the area. Mr. Richardson noted that assessments are conducted on a site-by-site basis and you are valued based on your use and improvements of your property, not that of another parcel.

Mr. Rodney North of 2024 Spring Cottage Road wanted the Commission to be aware of a Cultural Heritage Resource on the Kay site. The site of the Donald Robertson School is

located on the Kay property. He added that Donald Robertson was one of the leading educators of the prerevolutionary period. One of his most important students was James Madison, Father of the Constitution, who was educated there from the ages 11 to 16. Therefore, the Father of the Constitution learned his ways there on that land.

Mr. Richardson asked if Mr. North was a member of the King & Queen Historical Society. Mr. Rodney noted that he is not, but is a fan. Mr. Richardson said that he needed to call them tomorrow. He noted that his mother is a member and to please call them tomorrow. He asked that he consider volunteering his time and knowledge. Mr. North noted that as you drive pass the Kay property, there is a sign that recognizes the Donald Robertson School. He noted that over on Newtown Road, there is a larger plaque that talks about it as well. More interesting, in 2011, the James River Archaeologist did a little test excavation where they found hints of or suggestions where the actual school was located. They were not able to specifically find the location of the school, though it would be very interesting if they could. He noted that he has personal experience with what's called salvage archaeology, which is called a last chance before you bring in a road or shopping mall or something. It is an interesting opportunity because, with a mining operation, you could do a first step of what has to be done anyway. He said that when he was doing it, he was right in front of the bull dozers for road expansions and they would slice off an inch at a time while archeologist walk behind and may be able to find something. Depending on time schedules, he thought this could be a great opportunity to finally find this school location with the help of the mining company before they begin doing what they do. Mr. North noted that he would be happy to call Mr. Richardson's mother and will be sure to say nice things.

Mr. Kyle Murray with Mattaponi Sand and Gravel, noted that he would like to make a comment regarding their reclamation process. He explained that his company acquired the facility from a company called Virginia Sand and Stone in 2021. No reclamation had been done on the Fisher property, while there had been some reclamation on the Trice property. In the last year, his company has done the majority of the reclamation on the Trice property to get it back to tillable fields. They are looking to satisfy DMME and get them happy with the completed reclamation and move to get some of the areas of the Fisher site under reclamation.

Mr. Murray stated that on a site that they start mining, from a green field, that has no prior mining on it, they mine in departmentalized increments, 10-10-10. He noted that they prep 10 acres for mining, mine 10 acres, and reclaim 10 acres all at the same time. At any given time, they only have 30 acres opened up. It makes no sense to open up 175 acres of ground because one, it looks terrible and two, it's difficult for them from a reclamation standpoint to move material in some cases 2 to 3 miles across the site. Their goal is to continue to allow tillable fields to be able to be tillable fields up until the last minute we need to get to them. Hopefully they are returning land that can be tilled once again as they open up new area. He would love the Commission to see some of the sites that they have reclaimed along Rt. 17 in Caroline County. He closed by saying they inherited a little bit of a mess with the Fisher site but are working on it. The Trice site should be 100% reclaimed now. Then when they move over to the Kay site, they plan to do very compartmentalized increments of mining over there.

Mr. Lee Lamb, also with Mattaponi Sand and Gravel, noted that if the citizens were to go a little further up Rt 628 to Mundy's Bridge, the pond behind the chain linked fence, that was

a sand and gravel site that they reclaimed back in the day. That is what their goal is for these sites to look like.

Hearing no further comments, public comment and the public hearing was closed.

Mr. Berry asked Mrs. Sprouse what were some of the major differences between the previously approved conditions and the proposed conditions.

Mrs. Sprouse noted that they are different in regards to the trips across the road, rather than just those that are making left and right hand turns in and out of the site. The flashing signs at the entrances is another difference. She noted that with traffic going back and forth across the road way, as well as making those left and right turns, she felt it was warranted. Mrs. Sprouse also noted that there is also a timeframe in which the CUP would expire, in 12 months, after minable material is last reported to DMME.

Mr. Berry asked if the Commission were to deny each request before them today, whether both the Fisher and Kay property have an existing approved CUP, conditions and site plan. Further he noted that the company is asking for this request so that they will not have to invest more money into providing additional infrastructure across the street from where they are now. He feels that this is just good business sense. He added that most of the comments from tonight's meeting seemed to him to be more about the trucks and the traffic from the business. He added that maybe the company would work with the citizens and that maybe some of that business capital saved, should their request be approved, could be used to address the citizens concerns with traffic. He added regardless if the applications are approved or not, we cannot change the current condition of the roadways.

The consensus of the Commission, based on the County Administrator's recommendation, was to table the request for their next meeting.

**E. CBPA23-01, George A. & Candice A. Belfield** *(set public hearing)*

Mr. Richardson asked Mrs. Sprouse to please view the next item on the agenda for George A. & Candice A. Belfield. Mr. Richardson noted that this item on the agenda is to set a public hearing.

Mrs. Sprouse noted that George A. & Candice A. Belfield have applied for a Chesapeake Bay Exception for the proposed construction of an accessory structure with a 328 sq. ft. encroachment within the landward Resource Protection Area. The property is identified as County Tax Map Parcel No. 1623-165X-803A, 374 Shepards Warehouse Road, Buena Vista Magisterial District. Mrs. Sprouse noted that this request may be a little different from those that they have considered prior as its actually an RPA from an adjoining property in which the buffer applies and the proposed structure encroaches within it, rather than the river front side of his property.

A motion was made by Mr. Watkins to set the public hearing for CBPA23-01, for their next monthly meeting, seconded by Mr. Fleming.

Voting For: Watkins, Fleming, Richardson, Allen, Berry, Campbell

Voting Against: None

Abstain: None

**Old Business**

None

### **Staff's Comments**

Mrs. Sprouse noted that she will be out of town during their April monthly meeting. She noted that they will still obtain their packets in the same fashion prior to their meeting. She included that Ms. Seay, County Administrator/County Attorney will be in attendance.

### **Commissioner's Comments**

Mr. Fleming – no comments.

Mr. Berry – no comments.

Mr. Allen – no comments.

Mr. Watkins – thanked Mr. Richardson for leading the meeting tonight. He noted that Mr. Richardson did a fine job keeping the meeting moving. He thanked Mrs. Sprouse for her hard work as well.

Mr. Campbell – noted it was good to see everyone tonight. He asked if we were aware of the speed limit on Spring Cottage Road and noted maybe the County could request that the speed limit be reduced. He inquired about the maintenance of the 911 address markers and noted that there a lot that are faded and, in some cases, missing all together.

Mr. Richardson – no comments.

### **Adjournment**

Mr. Richardson noted that the next meeting is set for Monday, April 3, 2023 at 6 p.m.

There being no further business, a motion was made by Mr. Watkins to adjourn the meeting. The meeting was adjourned by all present members stating “Aye”.

---

Hunter Richardson, Chairman