

Part II

PZC Application #24-07 ZRA [Revised]

Excavation, Mining, and Quarrying Regulations

Presentation

8 August 2024

Part II of the revised application is a proposed set of replacement excavation regulations.

I prepared Part II because the current regulations are inadequate to protect the health, safety, quality of life, and property values of residents who reside or work near an excavation site, especially if the excavation involves explosives and rock crushing and continues for an extended period.

Mining and Quarrying Are Not Allowed

The current regulations are *ambiguous because they allow excavation as a principal land use but prohibit mining and quarrying*. The proposed regulations remove the ambiguity by allowing excavation only when it is necessary to develop a permitted use and only if the excavation will be completed within a reasonable amount of time. They also do not allow the on-site manufacturing or processing of aggregate or other finished products from the excavated materials.

The proposed regulations require the ZEO or the Commission to decide whether a proposed excavation is permitted based on whether it is primarily for developing one or more of the permitted uses listed in the regulations or is mainly a commercial mining or quarrying use of the property. Excavation is prohibited under the proposed regulations if it is primarily for mining or quarrying.

To make the decision, the proposed regulations allow the ZEO and the Commission to consider if an applicant would proceed with his proposed development if it were not dependent on revenue generated from the sale of the minerals and stones excavated from the site.

If an applicant is likely to proceed without the income generated from the sale of the excavated materials, then, under the proposed regulations, the application is not for a prohibited commercial mining or quarrying use as defined in §2.2 of the regulations. If an applicant is likely to proceed only if he is allowed to sell minerals and stones excavated from the site, then the ZEO and the Commission can deny the application because it would be a prohibited commercial mining or quarrying use as defined in §2.2 of the regulations.

For example, suppose an applicant proposes to develop a 2,000-foot home that is allowed by right or a 10,000-square-foot office building that requires a special permit and must excavate and remove 300 cubic yards of earth over two weeks. Such applications would not be for mining or quarrying as the terms are defined in §2.2, and both applications can be approved.

However, suppose an applicant proposes to develop the same 2,000-foot home or 10,000-square-foot office building and must excavate, remove, and sell 100,000 cubic yards of earth over five years. Such applications would be primarily for a commercial mining or quarrying use as defined in §2.2, and the application can be denied.

New & Deleted Definitions

Please turn to the first page of Part II of the revised application. Item #3 and #4 establish a new definition for “Excavation” in §2.2. The proposed definition is *“the act or process of digging, removing, relocating, or displacing soil, rock, or other materials from a parcel or lot to build foundations, install utilities, or landscaping for the development of one or more principal or accessory uses allowed in the district. Excavation is not a land use.”*

Note that the word "processing" is not in the definition. Also, note that the definition requires the excavation to be for the development of a principal or accessory use that is permitted by the regulations.

The new definition is necessary to clarify that excavation must be for a purpose that is not mining or quarrying.

Because “excavation” is defined as an act or a process and not a land use, there is no longer a need to define minor and major excavation as land uses. As such, Item #2 on page 4 deletes the definitions for minor and major excavation from Section 2.2. Item #5 at the bottom of page 4 deletes minor and major excavations from the list of permitted land uses in Table 5-3, and Item #6 at the top of page 5 deletes minor and major excavations from the list of permitted land uses in Table 6.4.

The proposed regulations add definitions in §2.2 for mining and quarrying. Item #4 on page 4 defines “Mining” as *“the act or process of extracting valuable or marketable minerals from the earth’s surface.”* The keywords are valuable and marketable.

It also defines quarrying as “the act or process of extracting marketable stone or other valuable materials from a quarry.” Again, the keywords are marketable and valuable.

The two definitions, taken together, mean that excavation is not permitted if its primary purpose is to extract valuable or marketable minerals, stones, or other materials from the earth.

Item #7 on page 5 replaces the existing supplemental regulations for excavation, which are in §8.16.

Limits on the Amount of Excavated Material

The proposed excavation regulations limit the maximum excavation removal amount to 5,000 cubic yards by special permit for a permitted principal or accessory use. Five thousand cubic yards is enough for a full-size Olympic swimming pool or 10,000-square-foot basement. Excavating more than 5,000 cubic yards would require one or more additional permits.

The proposed regulations continue to allow excavation amounts of less than 300 cubic yards by right when it is for the development of a listed principal or accessory use. Excavation for basements, foundations, and swimming pools will typically be for less than 300 cubic yards. A large roll-on roll-off dumpster will hold 30 cubic yards, which means up to 10 truckloads of material can be removed from a site under an ordinary by-right zoning permit.

The proposed regulations require that excavation begin within one year of the permit's issuance and finish within 180 days after it starts.

Time Limits, Distance Limits, and Technology Constraints

The most significant change is the requirement that excavation cannot involve the use of explosives or rock-crushing machinery within 2,000' of a residence.

However, the proposed regulations *allow for alternative technologies*, such as expansive controlled demolition agents, whenever explosives or rock-crushing machinery are not allowed or are unsuitable.

Deletion of Linkage to Appendix B Check Sheet

The current regulations require that an excavation application include a plot plan or a site plan consistent with the applicable criteria as listed on the Check Sheet in Appendix B. However, the Check Sheet in Appendix B is confusing because it contains a list of site plan requirements that should not be required for excavation. For example, the check sheet requires the site plan to identify the trees on a site that exceed 30 inches in diameter. This is an example of regulatory overkill, especially for by-right uses that only require the excavation of a few dozen cubic yards.

As previously stated, the proposed regulations define excavation as an act or process, not a land use. As such, zoning permits will no longer be issued for excavation as a land use. Excavation will be limited to the development of listed principal or accessory uses, such as a house or pool allowed by right or a gas station or convenience store allowed by special permit.

The plot plan or site plan required for a permitted use provides most of the information the ZEO or the Commission needs to make an informed decision on the excavation component of a proposed development.

As a result, the proposed regulations remove the reference to the Appendix B Check Sheet and replace it with a list of specific site plan requirements for the excavation component of a proposed development.

Summary

In summary, the proposed regulations help protect residents from the risks of commercial mining or quarrying, and I urge that they be adopted.

This completes my presentation of Part II of the revised application. If it is acceptable to the Chairman, now is a good time for comments and questions before proceeding to Part III.