

6. Application #: **ZA-831-07-Y**  
Existing Zoning: A-2 ANIZO, RSIOD  
Location: 2437 South 21st Street  
Proposal: **1)** Does A-2 zoning disallow an asphalt company from storing and using asphalt products on site? **2)** If not, is a special use permit required nonetheless for storage and usage of asphalt products in A-2 zoning? **3)** Does A-2 zoning permit the operation of a hot mix asphalt plant? **4)** If so, does A-2 zoning also permit the storage of the mixture from the hot mix asphalt plant into silos located on the property for later use as well as immediate loading of the mixture from the hot mix asphalt plant into trucks for immediate delivery to project sites?
- Ordinance Sections: 628 628 628 628  
Applicant: Swaine Real Estate Investments, LLC  
Representative: David F. Gaona, Esq., Gaona Law Firm  
Owner: Swaine Real Estate Investments, LLC  
Appellant: David F. Ganoa, Esq., Gaona Law Firm

Mr. Tauber read the case number, ZA-831-07-Y.

Mr. Paul swore in all individuals wishing to speak on this case.

Mr. David Gaona, 3101 North Central Avenue, said he represented Swaine Real Estate Investments LLC and Swaine Asphalt Corporation, relative to an interpretation issue. Swain had submitted for an interpretation asking whether A-2 zoning permitted hot mix asphalt plants and whether Section 628 of the Zoning Ordinance or A-2 zoning also permitted an asphalt contractor to store millings on its property to be used as part of that business. Hearing Officer Torres submitted an opinion of two things. Mr. Torres agreed that the storage of millings was permitted in A-2. He also said, however, that a Special Permit was required for the operations of a hot mix asphalt plant.

Mr. Gaona said the property was located at 21st Street and University. It was currently and had been for years zoned A-2. It was A-2 when the applicant purchased the property in 2000. The hot mix asphalt plant that was proposed for this property was not going to be part of a sand and gravel operation, a rock quarry operation, or of any excavation operation. It was going to be unique because it was going to be on a paved surface and a clean operation.

Mr. Gaona submitted his interpretation of Section 628 and said it was governed by the actual intent and purpose set forth in the particular ordinance itself and that was for intensive uses of property, for processing, for storage of materials, and for things that best support all of those sorts of things. He said there were specific permitted uses under Section 628 B, and one of those was manufacturing. A hot mix asphalt plant, he felt, was certainly a manufacturing

endeavor. One of those permitted uses was to have a contractor yard and shops where heavy equipment were repaired or stored or where the storage of equipment and materials took place. Part of the hot mix asphalt plant included the storage of materials for use in the process, but not storage of any asphalt in silos after it had been produced. All production of asphalt on a daily basis would be trucked out.

Mr. Gaona restated that this was a situation where the only storage of materials would be raw materials on-site that were used on a daily basis to make the asphalt. The tailings or millings on site were actually old asphalt that were removed from parking lots or streets that Swaine Asphalt worked on, brought back in to the plant as a place of storage, and then later used as a substitute for ABC before putting down the asphalt. These were materials used in the business or sold to other asphalt companies for use in their business. Mr. Gaona said the materials that were stored on-site were all within Section 628 and Hearing Officer Torres had agreed.

Mr. Gaona said that he had submitted a letter from Ms. DeMichael dated September 18, 2003 relating to an informal interpretation for Vulcan Materials Company. He said the letter from Vulcan that requested that interpretation was inadvertently left off and offered it to the Board.

Mr. Paul accepted the letter.

Mr. Gaona said Mr. Lowery of Vulcan Materials Company asked in his letter whether hot mix asphalt was allowed in an A-1 district. Ms. De Michael had responded that a hot mix asphalt plant was a permitted use in A-2. Mr. Gaona said he brought that up because the Board ought to be guided by previous interpretations. He asked that the Board agree and reverse the Hearing Officer's decision that a hot mix asphalt plant required a use permit. He believed that under Section 628 no such use permit was required.

Ms. DeMichael said the Planning Department supported the recommendation of the Hearing Officer. She said that the interpretation that was dated September 18, 2003 was correctly done. Generally a hot mix asphalt plant was allowed within A-2 zoning district. A-2 was the heaviest industrial zoning within the city of Phoenix. However, while this property was zoned A-2, it was also located within the Rio Salado Overlay District with additional zoning limitations. She explained that the zoning ordinance standards for the Rio Salado Overlay District which were regulated by Section 655 were very specific and outlined that there were Special Permit requirements for such an operation. And Swaine Asphalt not only did not have that Special Permit, which was a zoning action, it also did not comply with the setback standards, the height limitations, and the screening standards.

Ms. DeMichael said the interpretation by the Hearing Officer was supported by the Planning Department, by the area as wanting to be consistent with the Rio

Salado Overlay District. She said the city was trying to keep the area clean for that habitat and that was the reason they developed specific standards that were different from any other area. The underlying zoning even though it was A-2 was bound by the overlay district and the Special Permit requirements imposed by the Rio Salado Overlay District.

Mr. Paul asked Ms. DeMichael for clarification of the first question which he felt was awkwardly worded. His interpretation was that A-2 allowed the storage of materials to manufacture asphalt and that no Special Permit was required.

Ms. DeMichael replied that the question was asked in such a manner that it only referred to A-2 zoning. The question was not worded, and therefore the answer was not worded as "Does the A-2 Rio Salado Overlay District allow it?" She said A-2 zoning allowed the use but the overlay district would not allow it without a Special Permit.

Mr. Paul was satisfied with that and said then that there was not a Special Permit requirement as to the first question; the Special Permit requirement only applied to questions 2, 3, and 4.

Ms. DeMichael did not agree with those statements. She said the confusion came with the first question: "Does the A-2 zoning disallow asphalt companies?" and the A-2 zoning did not disallow it. The A-2, Rio Salado Overlay District did not allow it.

Mr. Paul stated that was not before the Board. He believed the Board was asked to either uphold or reverse the Zoning Adjustment Hearing Officer's decision.

Ms. DeMichael stated that she wanted to clarify that the use was a permitted use in A-2.

Mr. Paul interjected that Rio Salado was not a part of this question.

Ms. DeMichael agreed and she wanted to make sure that was clear.

Mr. Paul said that as to questions 2, 3, and 4, the Hearing Officer found in all of those instances that a Special Permit was required for each of those specific requests because of the Rio Salado Overlay District.

Ms. DeMichael agreed.

Mr. Gaona said that at the Zoning Adjustment hearing there was no opposition offered by either any person that lived in the district or the city of Phoenix mentioning anything relative to the Rio Salado Overlay. The only thing that was presented to Mr. Torres related to A-2 zoning. He said there was an Informal Interpretation letter authored by Ms. DeMichael at Tab 2 of his submittal and the

scope of it dealt with the materials issue and the storage of millings on the property. He said on pages 1 and 2 of that letter, Ms. DeMichael wrote that A-2 zoning did not permit those millings to be stored on site, and at the bottom of page 2, stated as follows: "The provisions of the Rio Salado Interim Overlay District, found in Section 655 of the Zoning ordinance do not apply to the use being undertaken by your client and as stated above." So in reaching the interpretation as it related to the millings that were on site presently and used by this licensed asphalt contractor as part of its business, Ms. DeMichael's opinion at that time was millings needed a Special Permit but that the Rio Salado Overlay Project did not apply. He said he was confused and felt they were getting different messages from the city. He said they sought an interpretation under A-2 which was how they were zoned. 18 months previous to that, Vulcan, a hot mix asphalt plant was in existence 3 blocks down the street. Swaine's property was bought in 2000 with the understanding that they would be able to, over time, put a hot mix asphalt plant there as business developed. The Rio Salado Overlay Project was put in place in 2002. He said they were asking that the Board interpret the Zoning Ordinances to allow without anything more, the hot mix asphalt plant. He described the operation as a clean operation, with no excavation, no sand and gravel operation, and no rock quarrying. He said it would be the only clean operation, hot mix asphalt plant in this county.

Mr. Paul said that he did not realize that the Rio Salado Overlay District went into effect 2 years after the purchase of the property by this applicant/appellant. He asked Mr. Hamblin if there was a grandfathering ability and whether the Board could limit their decision as to only this particular property.

Mr. Hamblin said that as there were no building permits, he could not think of a way in which vested rights might apply.

Mr. Paul asked Ms. DeMichael for guidance on what he thought might appear to be an inconsistency in her May 2007 letter to Mr. Gaona and her position today.

Ms. DeMichael said that the provisions of the Rio Salado Overlay District were adopted by the City Council and became effective in January 2002. There were no building permits ever issued for this land use so there was no grandfathering. There was no grandfathering despite the fact that they had started a use that was not permitted. They had been cited as an illegal use, it was not in compliance with the Rio Salado Overlay District and there never were any building permits or authorizations by the city for them to commence the use.

Mr. Gaona stated Tab 3 was their request for a Formal Interpretation and he said they were told that they simply needed to go through the zoning application route and they did that.

Ms. DeMichael clarified that the applicant had not gone through the zoning application process, but an interpretation process.

Mr. Gaona said they were told they were not going to get a Formal Interpretation and that they needed to go through the hearing process, which they did. He said they were moving forward, going through the hearing process relative to the information that they had received, including the Informal Interpretation concerning the inapplicability of the overlay as it related to the materials.

Mr. Gaona said as it related to Tab 4 and the information provided to Vulcan Materials in 2003, which was one year after the overlay project was approved by the City Council, there was nothing set forth in that letter that said that if you're in Rio Salado you might have a problem. He said that everything that was before them said that A-2 zoning simply did not permit this use and that was why they were getting denied. They were told they needed a Special Permit and they did not agree. He said there had been no evidence at this point, other than the first mention by Ms. DeMichael in this particular setting. He felt that there was opportunity at the Zoning Adjustment Hearing to bring that up. And in fact, the Hearing Officer asked the Planner if there anything additional he needed to add. It was never addressed.

Mr. Paul said he wanted to disclose that his law firm represented Vulcan Materials. He said he would defer to Mr. Gaona and the other Board members as to whether he needed to bow out.

Mr. Gaona said he did not view it as a conflict and had no problem with Mr. Paul remaining.

Mr. Tauber said he struggled with the knowledge that the city and the Federal government had spent so much money, time and effort cleaning what had been an environmental mess. The Rio Salado area had been cleaned up, parks had been created, and the Audubon Society had plans for a bird watching station, all in efforts to create something special there. He said it sounded like this plant was not within the spirit of what the city was doing with the Rio Salado Overlay. On the other hand, he said he struggled with applicant's efforts to play by the rules, do everything he was asked to do, and then at the end be told he could not because this was the Rio Salado Overlay District which no one had told him about until the end. He did not think it was fair.

Mr. Paul said he shared Mr. Tauber's concerns. He said he saw the potential for disparate treatment of perhaps Swaine Asphalt and Vulcan Materials. He asked if Vulcan Materials was located with Rio Salado.

Mr. Gaona said that Vulcan was located within Rio Salado. He explained that Vulcan had their hot mix asphalt plant in operation for many years prior to Rio Salado. He believed they continued operations at that location until about 2006 when they ceased operations there as a hot mix asphalt plant and sold the property which was currently being developed into an industrial area.

Mr. Paul asked Mr. Gaona what the impact of this decision was on his client.

Mr. Gaona said that, as Mr. Tauber had indicated, they had tried to play by the rules, gone through all the steps that had been identified. He suspected that he might be told to start over and get a Special Permit because the property was within the overlay district. He said Ms. DeMichael and Mr. Hamblin said there was nothing that said it was grandfathered. He felt there was nothing that said it was not grandfathered and therefore the Board had the opportunity, based on these circumstances, for this use to go forward.

Mr. Paul asked Mr. Hamblin whether the Board had the ability to limit the decision to this operator or this property.

Mr. Hamblin stated that he did not believe so. If they were to attempt to do that, perhaps it would be resolved at a later date.

Mr. Davis asked Mr. Hamblin if it would be accurate to say that any future requests for the same use would have to come before the Board again, if they approved this use.

Mr. Hamblin said no because there would exist an opinion that said it was permitted within the Rio Salado Overlay District. If the opinion said it was permitted at this lot only, it would be debatable if that was enforceable or if you could place that type of restriction.

Mr. Gaynor asked what kind of conditions they could place on this.

Mr. Paul asked if he was correct in thinking it was a straight interpretation issue, up or down.

Mr. Hamblin said he believed so.

Mr. Gaona stated they would be amendable to any conditions if that were appropriate.

Mr. Paul said he understood what Mr. Hamblin was saying as to the enforceability challenge but he thought it might be worth at least making that attempt. He said he saw inconsistent actions on the part of the City negatively affecting the applicant. He said he too liked the Rio Salado Overlay and what was done there. He did not want to give carte blanche by virtue of taking a different interpretation. His preference would be to just deal with this particular applicant.

Mr. Gaona said the information that was presented to the Hearing Officer provided a lot of evidence that the operation was completely different than any other. This was a business that respected the property it was on. They had nice landscaping. It would be placed on paving that would be swept every day so that

there would be no dust problem. It would be shielded so that no one thought it was an eyesore. The paint would comply with the environment. It would be a dual drum plant (none currently existed within the city) and a quiet operation, all on natural gas. He submitted that it would not be contrary to the beautification efforts of the city relative to the overlay.

Mr. Paul asked Mr. Hamblin if the Board upheld the interpretation as articulated by the Hearing Officer, what the next step was and how long it took.

Mr. Hamblin said the applicant would proceed to apply for a Special Permit. He added that given the circumstances of the case, perhaps the fees could be waived, but that would not be his or Ms. DeMichael's decision but the Client Department's decision.

Ms. DeMichael said that regarding the timing, much depended on the applicant. They needed to have a Pre-Application Review Meeting and dependent upon the detail of the information submitted then they would be scheduled for hearings before the Village Planning Committee, the Planning Commission, and then the City Council. She said it was roughly a 6 month review process. The applicant would have to be able to show what they were doing, how they were doing it, the amount of truck traffic and how they were in compliance with environmental and dust standards.

Mr. Paul asked Mr. Gaona if his client needed a permit from the Department of Environmental Quality for the hot plant.

Mr. Gaona said they did and had already discussed it with them.

**Mr. Paul MOTIONED in ZA-831-08-Y:**

**Question # 1 to uphold the Zoning Adjustment Hearing Officer's decision;**

**Question # 2 was withdrawn by the appellant;**

**Question # 3 to overturn the Zoning Adjustment Hearing Officer's decision as it applies only to the property at 2413 South 21<sup>st</sup> Street, Swain Asphalt Corporation.**

**Question # 4 was withdrawn by the appellant.**

**Mr. Gaynor SECONDED the motion.**

**Motion CARRIED by a vote of 5-0 (Saul absent).**

**APPEALED TO THE BOARD OF ADJUSTMENT - APRIL 3, 2008**

**Application #:** ZA-831-07-Y  
**Existing Zoning:** A-2 ANIZO, RSIOD  
**Location:** 2437 South 21st Street  
**Block Location:** 2400 S. – 2100 E.  
**Quarter Section:** 7-32  
**Proposal:** **1)** Does A-2 zoning disallow an asphalt company from storing and using asphalt products on site? **2)** If not, is a special use permit required nonetheless for storage and usage of asphalt products in A-2 zoning? **3)** Does A-2 zoning permit the operation of a hot mix asphalt plant? **4)** If so, does A-2 zoning also permit the storage of the mixture from the hot mix asphalt plant into silos located on the property for later use as well as immediate loading of the mixture from the hot mix asphalt plant into trucks for immediate delivery to project sites?  
**Ordinance Sections:** 628. 628. 628. 628.  
**Applicant:** Swaine Real Estate Investments, LLC  
**Representative:** David F. Gaona, Esq., Gaona Law Firm  
**Owner:** Swaine Real Estate Investments, LLC

**ZONING ADJUSTMENT HEARING OFFICER WAS: ISRAEL TORRES, AICP  
PLANNER WAS: ED KEYSER**

Speaking in favor of the request was Mr. David F. Gaona, 3101 North Central Avenue, #720, Phoenix, AZ 85012.

Also submitting cards were: Mr. Tom Swaine, P O Box 33205, Phoenix, AZ 85067 and Mr. Jon Patti, 1 ADM Parkway, Huntertown, IN 46748

**DECISION:** These requests for determinations were continued from November 1, 2007. On January 17, 2008 the Zoning Adjustment Hearing Officer put them under advisement and took them out from under advisement on February 11, 2008 and made the following determinations:

- 1) Storing raw materials needed to manufacture asphalt is permitted in the A-2 zoning district. A special permit is required if the raw materials are heated, cooked or changed.
- 2) A special permit is required for the operation of a hot mix asphalt plant.
- 3) A special permit is required for the operation of a hot mix asphalt plant.
- 4) The storage of materials manufactured in the hot mix asphalt plant is not permitted in the A-2 zoning district and would require a special permit.

**FINDINGS OF FACT:** The Zoning Administrator's informal opinion on this matter is incorporated into this formal interpretation and is attached. The informal opinion details the background of the proposed use and processes related to it. It concludes that the existing parcel is not zoned appropriately for the proposed storage and use. Similarly, this formal interpretation supports the informal opinion signed by the Zoning Administrator dated May 1, 2007.



First, does A-2 zoning disallow an asphalt company from storing and using asphalt products on site? No, it allows storage of materials needed to *manufacture (emphasis added)* asphalt. Millings as described at the hearing and the information interpretation are by-products of already manufactured asphalt. Put another way, it is permissible in A-2 zoning to store materials needed to manufacture asphalt. A special permit is required if it—or any of its remains—are then to be heated, cooked, or changed into something else.

Second, if not, is a special permit required nonetheless for storage and usage of asphalt products in A-2 zoning? A special permit is required for usage, mixing, cooking, etc., of the already manufactured asphalt or millings. The zoning ordinance expressly states “Paving Materials Storage Yard” as a permitted use in A-2. Thus, the hearing officer must surmise that any use other than Storage Yard was not contemplated in the permitted uses section of A-2 when adopted.

Third, does A-2 zoning permit the operation of a hot mix asphalt plant? A special permit is required for the operation of a hot mix asphalt plant. The special permit procedure is intended to allow the location of certain uses while maintaining adequate protection to the surrounding area. Specifically, the special permit section of the Zoning Ordinance, §674(A)(1)(j) states: “asphaltic and concrete mixing plants . . . shall be subject to the following regulations: . . .” Although the same section includes language related to mineral extraction and storage ancillary to extraction, the hearing officer believes asphaltic and concrete mixing are separate and apart from the mineral extraction language. Thus, the expressed language of the ordinance related to asphaltic concrete mixing plants is clear.

Fourth, if so, does A-2 zoning also permit the storage of the mixture from the hot mix asphalt plant into silos located on the property for later use as well as immediate loading of the mixture from the hot mix asphalt plant into trucks for immediate delivery to project sites? The applicant stated at the hearing that silos were no longer proposed. Nonetheless, any storage of the mixture is not believed to fall under the purview of “Paving Materials Storage Yard” and would therefore require a special permit.

Last, applicant points to an *informal* interpretation dated September 18, 2003 which permitted a hot mix asphalt plant as precedent. That opinion is persuasive, however not binding to the hearing officer’s findings on the case at hand.

**SUMMARY:** Mr. Gaona submitted a notebook for Mr. Israel Torres to review during his presentation. Mr. Torres asked Mr. Gaona about a letter from the Arizona Department of Environmental Quality (ADEQ) and Mr. Gaona stated that the letter did not apply to the parcel in question.

Mr. Gaona explained that the applicant has asphalt equipment on site and that the company does a lot of paving work, primarily on parking lots. He added that the property had been cited by Neighborhood Services Department (NSD) for asphalt tailings on site. He stated that the violation was for lack of screening. Mr. Gaona referred to the notebook to highlight the proposed site plan regarding operation of the proposed asphalt plant focusing on odor, noise, traffic and the burner on site. He stated

that any asphalt prepared on site would be used the same day and not stored on site. He offered to enhance the landscaping on the site and stated his belief that the proposed operation was allowed by right and did not require a special permit.

Mr. Torres asked some questions about the height of outdoor storage as well as the expected output of usable asphalt per day. Mr. Gaona responded that 160 tons could be produced per hour, but only 400 tons would be needed per day. He added that the outdoor storage would be no higher than 6 feet. Mr. Gaona referred to a previous interpretation that allowed similar activities on a neighboring site which prompted Mr. Torres to ask Mr. Gaona for a clarification of the differences between the two operations. Mr. Gaona stated that the proposed operation would be cleaner and lower in production.

Mr. Swaine stated that he believed there was a misunderstanding about asphalt plants, which are normally attached to quarries. He explained that his proposal would be 160 tons per hour, where most operations are at 600 tons per hour. He said that his proposal would be the first of its kind in the state.

Mr. Patti gave a brief explanation of the proposed asphalt production facility and said that it would be the cleanest possible, and that there are 81 of these type plants in the USA.

Mr. Swaine and Mr. Gaona lauded the current site for its landscaping and aesthetically pleasing appearance compared to other properties in the area, as well as the fact that this production model will recycle asphalt tailings.

Mr. Torres took the case Under Advisement. He took the case out from Under Advisement as noted above.

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**Application #:** ZA-831-07-Y – CONTINUED TO JANUARY 8, 2008  
**Existing Zoning:** A-2 ANIZO, RSIOD  
**Location:** 2437 South 21<sup>st</sup> Street  
**Block Location:** 2400 S. – 2100 E.  
**Quarter Section:** 7-32  
**Proposal:** 1) Does A-2 zoning disallow an asphalt company from storing and using asphalt products on site? 2) If not, is a special use permit required nonetheless for storage and usage of asphalt products in A-2 zoning? 3) Does A-2 zoning permit the operation of a hot mix asphalt plant? 4) If so, does A-2 zoning also permit the storage of the mixture from the hot mix asphalt plant into silos located on the property for later use, as well as immediate loading of the mixture from the hot mix asphalt plant into trucks for immediate delivery to project sites?  
**Ordinance Sections:** 628. 628. 628. 628.  
**Applicant:** Swaine Real Estate Investments, LLC  
**Representative:** David F. Gaona, Esq., Gaona Law Firm  
**Owner:** Swaine Real Estate Investments, LLC

**ZONING ADJUSTMENT HEARING OFFICER WAS: TED BROOKHART, AICP  
PLANNERS WERE: LARRY TOM AND CRAIG MAVIS**

Speaking in support was David Gaona, the representative.

**DECISION:** This request for a determination as to 1) Does A-2 zoning disallow an asphalt company from storing and using asphalt products on site? 2) If not, is a special use permit required nonetheless for storage and usage of asphalt products in A-2 zoning? 3) Does A-2 zoning permit the operation of a hot mix asphalt plant? 4) If so, does A-2 zoning also permit the storage of the mixture from the hot mix asphalt plant into silos located on the property for later use, as well as immediate loading of the mixture from the hot mix asphalt plant was continued to January 8, 2008 at 3:30 p.m. with a fee.

**FINDINGS OF FACT:** Counsel for the applicant states that the property owner cannot be present for this hearing and requests a continuance. Because the property owner is represented by counsel and the reason for absence is not a family emergency, we must charge a continuance fee.

**SUMMARY:** Mr. Gaona requested that the proposed variance be continued to the January 1, 2008 hearing.

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## City of Phoenix

PLANNING DEPARTMENT

May 1, 2007

Mr. David F. Gaona  
Gaona Law Firm  
3101 North Central Avenue, Suite 720  
Phoenix, Arizona 85012

**Re: Informal Interpretation – Asphalt Preparation and Application**

Dear Mr. Gaona:

Thank you for your March 8, 2007 letter requesting an Informal Interpretation on behalf of your client, Swaine Real Estate Investments, LLC ("Swain Asphalt"). You have indicated that Swaine Asphalt is storing the asphalt millings at 2437 South 21<sup>st</sup> Street and would also like to process the material at a future date. Based upon the information you have provided and my research, the property is not appropriately zoned for this use. I have provided the reason for my determination, and addressed your other questions below.

**Required Zoning**

Asphalt millings are the fine particles (generally sized from dust to approximately 25 mm) of bitumen and inorganic material that are produced by the mechanical grinding of asphalt and/or concrete road materials. Millings are usually obtained from road surface layers that are being removed to allow resurfacing to be carried out, especially when the road surface is too high to accommodate an overlay or unable to support the new surface layer.

Contractors typically separate their stockpiles of millings from different sources to ensure that the variability of the material is minimized and store them in the separated batches. Most raw millings are subjected to a process of crushing and screening to achieve a particle size distribution that is conducive to use as recycled hot mix. When the millings originate from asphalt materials only, the material is referred to as recycled (or reclaimed) asphalt pavement (RAP).

The Special Permit overlay zoning classification (found in Section 647 of the Phoenix Zoning Ordinance) was created to allow some of the more intensive land uses that are needed in our community, while still providing a process for public review and input. The Phoenix Zoning Ordinance lists several uses that require Special Permit zoning, including rock quarrying, sand and gravel operations and asphalt and concrete mixing plants and the storage of the

associated materials, such as millings (Section 647.A.j.). The Special Permit zoning is needed for the storage and the proposed processing of the asphalt millings.

There are several minimum standards contained in Section 647 of the Zoning Ordinance that apply to the storage of asphalt millings, including a minimum site size of five acres and setback standards. You have asked if screening the use with a wall or fence that is six feet in height and constructed so that there is no visibility of the operation from the street would be sufficient. Again, the use is not permitted in the current zoning district. However, if a request to rezone the property to provide a Special Permit overlay were approved by the City Council, a six foot wall would not be sufficient. An eight foot wall would be required because of the underlying A-2 zoning, to screen the loading/unloading activity occurring on the site (Section 628.E.).

In addition to the fence height, the underlying A-2 zoning would require that the following site standards be met by your client, even if a Special Permit rezoning is approved. These include (but are not limited to):

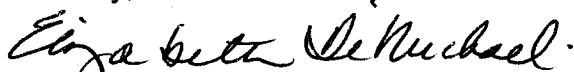
- No outdoor uses, outdoor storage, or open buildings shall be within seventy-five feet of a public street.
- Screening.
  - (1) Parking or loading and unloading areas where within one hundred fifty feet of a residence district.
    - (a) For employee and customer parking a four- to six-foot wall or landscaped berm is required. The wall may be three feet high if the parking area is located in a yard as specified in Section 628.E.2.b(1).
  - (2) Open storage or use.
    - (a) Any outside storage or use within one hundred feet of a residential district **or any public street** shall be screened by a six-foot-high **solid** fence or wall [emphasis added].
    - (b) Height of open storage.
      - i. Open storage shall be no higher than six feet plus one foot in height for every additional three feet of setback from a property line.
      - ii. If the storage area is within one hundred fifty feet of a public street, screening ...shall include fifteen-gallon trees spaced no more than twenty-five feet apart and with an adequate watering system.

The provisions of the Rio Salado Interim Overlay District (RSIOD), found in Section 655 of the Zoning Ordinance, do not apply to the use being undertaken by your client, and as stated above. As a note, the RSIOD zoning became effective on January 18, 2002. My review of the city's records indicated that a site plan was approved for the Swaine Asphalt site in

November, 2000 and amended shortly thereafter. No building permit was ever issued for the building or an authorization issued by the city to commence the existing use. You may want to research my discovery further and correct it, if needed.

If you have any questions regarding the above, please contact me at (602)262-7132. You have the right to appeal this decision by filing for a Formal Interpretation. Information on how to file this request can be obtained at [www.cityofphoenix.gov/planning/services](http://www.cityofphoenix.gov/planning/services).

Sincerely,



Elizabeth DeMichael  
Zoning Administrator

c: Debra Wilkins Stark, AICP  
John Parks, DSD  
Erynn Crowley, NSD  
Zoning Team  
Files