

**APPROVAL OF SPECIAL USE PERMIT 21-03
(1800 Alleghany Street, High Point, NC)**

CITY OF HIGH POINT CITY COUNCIL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This application for a Special Use (“SU”), for an Asphalt Plant use type in a Conditional Zoning Heavy Industrial (“CZ-HI”) District, came before the High Point City Council (“Council”) on November 15, 2021 for a quasi-judicial hearing (“Hearing”). Based on the testimony of the witnesses, the documentary evidence, the application and related materials, the exhibits, the Staff Report and other evidence presented at the Hearing, the Council finds that the SU should be approved, and in support thereof, makes the following Findings of Fact and Conclusions of Law as required by N.C. Gen. Stat §160D-102(28) and §160D-406(j).

FINDINGS OF FACT

1. Section 2.4.12(C) of the City of High Point Development Ordinance provides as follows:

Special Use Review Standards A special use shall be approved upon a finding that the applicant demonstrates the proposed special use:

- (a) Will not materially endanger the public health or safety if located where proposed;
- (b) Complies with all required standards, conditions, and specifications of this Ordinance, including Chapter 4: Uses;
- (c) Will not substantially injure the value of the abutting land, or the special use is a public necessity;
- (d) Will be in harmony with the area in which it is to be located; and
- (e) Is in general conformity with the City's adopted policy guidance.

2. The subject property (Guilford County Tax Parcel 180717) addressed as 1800 Alleghany Street, lies at the northern terminus of Alleghany Street and south of Durand Avenue, and consists of approximately 29 acres of land. Blue Skye Holdings, LLC is the property owner and the High Point Land Investment, LLC is the applicant (“Applicant”).

3. The site has a moderate to severely sloping terrain and undeveloped. A perennial stream, running in a general east-west direction, with a corresponding floodway and 100 and 500 year flood zone runs through the northern and middle of the site. This floodway/flood zone area ranges in width from 500 to 600 feet. There is also a 72-foot wide City of High Point electrical transmission line easement that runs in an east-west direction through the middle of the site and an additional 200-foot wide Duke Power transmission line that runs across the southern portion

of the site. Development is subject to the Randleman Lake General Watershed Area (GWA) requirements and primary stormwater control measures are required for non-residential development with an impervious surface area that exceeds 12% or more of the site. The proposed development is able to meet applicable watershed requirements.

4. Pursuant to the Development Ordinance of the City of High Point (“DO”), Table 4.1.9 “Principal Use Table”, the Asphalt Plant use type is within the Industrial Use Classification, under the Manufacturing and Production Use Category. An Asphalt Plant is defined by the DO, under Table 4.2.7.C.(a), as an industrial establishment engaged in the production of asphalt, macadam, or blacktop for use in the construction and repair in roadways and vehicular use areas. The use involves the stockpiling of sand, binder and filler, as well as a heater to mix the ingredients. Accessory uses may include the storage and maintenance of paving equipment as well as the stockpiling of used asphalt for re-use.

5. Pursuant to the DO, an Asphalt Plant use type is permitted in the HI District subject to a SU approval by the Council. The property has a Conditional Zoning Heavy Industrial (CZ-HI) District zoning designation that was approved under Zoning Map Amendment 21-25 (ZA-21-25). The HI district is established to accommodate heavy manufacturing, assembly, fabrication, processing, distribution, storage, research and development, and other industrial uses that may be large-scale or otherwise have extensive exterior movement of vehicles, materials, and goods, and greater potential for adverse environmental and visual impacts.

6. This SU application, “SU-21-03”, proposes to establish an Asphalt Plant facility, details of this request are as follows:

- (a) Uses: Asphalt Plants use type and its customary accessory uses shall be permitted subject to the development and dimensional requirements of the Heavy Industrial (HI) District and the specific conditions listed in this Special Use Permit and SU Plan.
- (b) The Major Manufacturing use type (Concrete Manufacturing), which is a permitted principal use in the HI District, will operate in conjunction with the Asphalt Plant use type.
- (c) Development of the site shall be generally consistent with the SU plan. The Asphalt Plant use type and its accessory activity shall be restricted to that area noted as “Only area of development” as depicted on the SU plan.
- (d) Containment of Perimeter Gravel Road and Asphalt/Concrete Plant

Materials: The central and northern portion of the site contain a perennial stream with a substantial floodway, and 100- and 500-year flood zones. To maintain the location of the perimeter gravel road and to keep materials out of the adjacent environmentally sensitive areas, the following shall be installed as part of development permit approval:

- i. A permanent concrete curb and gutter, as depicted in exhibit #1 or exhibit #2 of the Special Use Permit, shall be installed along the northern and western edge of the perimeter gravel road; or
- ii. A minimum four (4) foot tall soil berm, meeting standards of Section 5.5.6.H of the Development Ordinance, shall be installed in close proximity to the northern and western edge of the perimeter gravel road; or
- iii. A combination of the above noted concrete curb & gutter and soil berm as approved by the Technical Review Committee.

(e) Transportation Access standard: Only one point of vehicular access shall be permitted to Alleghany Street. No access shall be permitted to Lorraine Avenue. Subject to approval by the Transportation Department, access from Alleghany Street may be revised to be taken from the northern terminus or northwestern western side of this right-of-way.

7. The Zoning and use of land adjacent to the property are outlined below:

Adjacent Property Zoning and Current Land Use		
North:	Light Industrial (LI) District	Durand Avenue and US 29 (formerly Business 85) r
South:	Light Industrial (LI) District	Industrial and warehousing use
East:	Light Industrial (LI) District	Industrial use, undeveloped parcel and single family
West:	Light Industrial (LI) District	Single family dwellings

8. Development of the site is subject to conditions of Conditional Zoning Ordinance ZA-21-25 and conditions of SU Permit 21-03.

9. At the November 15, 2021 hearing, the applicant's' representative Mr. Tom Terrell, attorney, Fox Rothschild LLP, 230 N. Elm Street, Suite 1200, Greensboro, NC presented the following in support of this request:

- (a) That the application was duly filed, complete, and compliant with the technical and dimensional requirements of the DO, as evidenced by the testimony of staff and support of the Technical Review Committee.
- (b) That the asphalt plant is subject to a site plan submitted to the City and reviewed by the City of High Point's Technical Review Committee.

- (c) That notice of the SU application and an accompanying application to rezone the parcel from the LI District to a CZ-HI District by posting of the property, notification in a newspaper of general circulation, and notice to surrounding owners was properly accomplished as required by statute and the DO.
- (d) That all witnesses were under oath and all parties were given opportunities to present evidence and to cross-examine witnesses.
- (e) That the applicant presented competent, material and substantial evidence in its application, other written materials provided in a bound notebook, and through witness testimony, that it meets the standards in the City of High Point Development Ordinance §2.4.12(C) precedent to the issuance of a special use permit.
- (f) The materials in a presentation notebook that the proposed use will not materially endanger the public health and safety, including testimony that asphalt is non-toxic; the National Institute for Occupational Safety & Health has determined that asphalt fumes should not be classified as carcinogens; all asphalt plants must meet rigid standards imposed by the EPA and NCDEQ; 95% of asphalt is crushed stone or gravel and 5% is petroleum (although with lime or cellulose fibers in very small percentages); 99.9% of air particulates are removed by filtration technology; and the EPA has determined that asphalt plants should not be included on its list of pollution sources.
- (g) The testimony of Professional Engineer Jeremy Roberts (Principal at Eagle Engineering, Inc. 2013 Van Buren Avenue, Suite A, Indian Trail, NC 2807) that the proposed plant meets all conditions and specifications in the DO.
- (h) The testimony of Molly Chisholm, certified appraiser (NC State Certified Residential Appraiser – NC-#A4075), whose Market Impact Study was performed in compliance with standards and practices of the Appraisal Institute and conformed to the Uniform Standards of Professional Appraisal Practice, and demonstrated through a paired sales analysis using several site studies that the proposed use will not substantially injure the value of adjacent or adjoining properties. This Impact Study (Market Impact Analysis of a Proposed Asphalt Plant located in High Point NC - Nov. 2, 2021) was submitted into evidence by Mr. Terrell; and
- (i) The testimony of Reynolds Neely of Planning and Zoning Services. Mr. Neely noted that he is the former City of Asheboro, NC Planner Director. His report pertaining to the proposed Asphalt Plant was submitted into evidence by Mr. Terrell. Mr. Neely noted in his professional opinion the request will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the City of High Point, based in part on its location adjacent to other industrial uses and two major highways and several sections in

the High Point Land Use Plan. The Conclusion statement from his November 15, 2015 report, that was part of his evidentiary presentation to the High Point City Council, stated *"As more specifically discussed in this report, based upon the above facts, having knowledge of asphalt plants and areas surrounding them, training and studies of the principles of zoning and land use planning, experts' reports, the site in question and its surrounding properties, the High Point Development Ordinance; the Land Use Plan for the High Point Planning Area (amended); the Land Use Map for the High Point Planning Area (amended); the Business Interstate 85 Corridor Plan; and the High Point Community Growth Vision Statement, it is my professional opinion that the use will be in harmony with the area in which it is to be located and Is in general conformity with the City's adopted policy guidance."*

- (j) The City Council accepted Mr. Roberts, Ms. Chisholm, and Mr. Neely as experts in their respective fields.
- (k) The City Council heard no competent evidence from which to make findings *contra*.
- (l) That no one was present to speak or present evidence against the application.
- (m) Mr. Terrel also stated that High Point Land Investments met its burden of production and became entitled to the SUP based upon:

10. During the hearing, no one testified in opposition to the SU and no competent, material, or substantial evidence was presented to rebut the *prima facie* case presented by the Applicant.

CONCLUSIONS OF LAW

Pursuant to the foregoing FINDINGS OF FACT, Section 2.4.12 of the City of High Point Development Ordinance and other applicable law, the Council, by a 8-0 vote, makes the following Conclusions of Law:

1. Based on the evidence in the record, the Council finds as a matter of law that the requested asphalt plant use, as conditioned under SU-21-03, as submitted by the Applicant, will meet all required standards of the DO.

2. The Applicant bears the burden of proving to the Council, by competent, material and substantial evidence, that the proposed Asphalt Plant will meet the standards in Section 2.4.12(C) of the DO. If the Applicant fails to meet its burden of producing competent, material and substantial evidence as to any one of the standards, the SU must be denied.

3. In this case, the Council finds that the SU should be approved, for the following

reasons, pursuant to Section 2.4.12(C):

- (a) Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report SU-21-03, the request will not materially endanger the public health or safety if located where proposed. An asphalt plant use must obtain an air quality permit and water quality permits from the North Carolina Department of Environmental Quality (DEQ). Under DEQ, its Division of Air Quality handles air permits for asphalt plants, and its Division of Water Quality handles water permits (if required).
- (b). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-21-03; the requested Asphalt Plant facility is able to comply with all required standards, conditions, and specifications of the DO, including Chapter 4: “Uses” of the City of High Point Development Ordinance Section 4.3.5.B.1 (Manufacturing and Production – Asphalt Plant).
- (c). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-21-03; the requested Asphalt Plant facility will not substantially injure the value of the abutting land as:
 - i. The site is surrounded by LI zoned lands and development;
 - ii. The site lies south of the US-29 corridor and east of the I-74 corridor, both of which are existing multilane highways. These highways act as a barrier that separates the zoning site from adjacent lands to the north and west; and
 - iii. A 200-foot wide Duke Power transmission line easement lies along the southern boundary of the site. Other electrical easements, utility easements and a stream with a 500 to 600 foot wide flood zone area lies along the northern portion of the site. Of the 29 acres associated with this parcel, only 30% (approximately 8 acres in the middle of the parcel) is available for any significant development. The applicant has offered a condition that restrict the asphalt plant use to this approximate 8 acre area; thus, isolating the area of development from surrounding lands.

- (d). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-21-03; the requested Asphalt Plant will be in harmony with the area. Due to physical and environmental constraints, and restrictions noted on the special use site plan, development is restricted to an approximate 8 acre area in the middle of the site. These constraints and special use conditions will assist to limit the intensity of development and also provide separation from abutting lands to ensure development will be in harmony with surrounding lands.
- (e). Based upon evidence and testimony presented by the Applicant and its representatives and the findings in the Planning & Development Department Staff Report for SU-21-03; the requested Asphalt Plant will be compatible with the surrounding area and in conformance with adopted plans. As approved by Land Use Plan Amendment 21-07, the area of development for the asphalt plant is classified by the Land Use Map as Heavy Industrial. The proposed use is consistent with adjacent industrial related uses and established land use policies in this area.

ACCORDINGLY, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Applicant's request for a special use permit for an Asphalt Plant is unanimously APPROVED by a vote of 8-0, by Council on November 15, 2021, subject to the following conditions which were offered and agreed to by the Applicant:

The City of High Point City Council, pursuant to Section 2.4.12, Special Use, of the Development Ordinance of the City of High Point, approved a Special Use and Site Plan for the following use, subject to the following condition(s):

Part I. **USE:** Asphalt Plants use type and its customary accessory uses shall be permitted subject to the development and dimensional requirements of the Heavy Industrial (HI) District and the specific conditions listed in this Special Use (SU) document.

NOTE: The Major Manufacturing use type (Concrete Manufacturing), which is a permitted principal use in the Heavy Industrial (HI) District, will operate in conjunction with the Asphalt Plant use type.

Part II. **Conditions:**

1. Development of the site shall be generally consistent with the attached site plan submitted with the special use application. The Asphalt Plant use type and its accessory activity shall be restricted to that area noted as “Only area of development” as depicted on the special use site plan. Subject to approval by the Transportation Department, access from Alleghany Street may be revised to be taken from the northern terminus or northwestern western side of this right-of-way.
2. Containment of Perimeter Gravel Road and Asphalt/Concrete Plant Materials.
The central and northern portion of the site contain a perennial stream with a substantial floodway, and 100- and 500-year flood zones. To maintain the location of the perimeter gravel road and to keep materials out of the adjacent environmentally sensitive areas, the following shall be installed as part of development permit approval:
 - a) A permanent concrete curb and gutter, as depicted in exhibit #1 or exhibit #2 2, shall be installed along the northern and western edge of the perimeter gravel road; or
 - b) A minimum four (4) foot tall soil berm, meeting standards of Section 5.5.6.H of the Development Ordinance, shall be installed in close proximity to the northern and western edge of the perimeter gravel road; or
 - c) A combination of the above noted concrete curb & gutter and soil berm as approved by the Technical Review Committee.
3. Transportation Conditions
 - a) Access: Only one point of vehicular access shall be permitted to Alleghany Street. No access shall be permitted to Lorraine Avenue.
 - b) Other Transportation Conditions: The City of High Point Transportation Director shall approve the exact location and design of all access points and improvements.

Part III. The property is approximately 29 acres, and located at the northern terminus of Alleghany Street and south of Durand Avenue. The property is addressed as 1800 Alleghany Street and also known as Guilford County Tax Parcel 180717.

Part IV. A special use and the associated site plan approval are perpetually binding and run with the land, unless amended. A material change to a special use or to an

associated site plan that alters the objectives and purposes of the requirements or conditions of the special use constitute an amendment to the special use.

If development approved as a special use is discontinued for a period exceeding one (1) year, or if a special use is replaced by a use otherwise permitted by right in the zoning district, the special use approval is deemed abandoned and the special use approval is null and void.

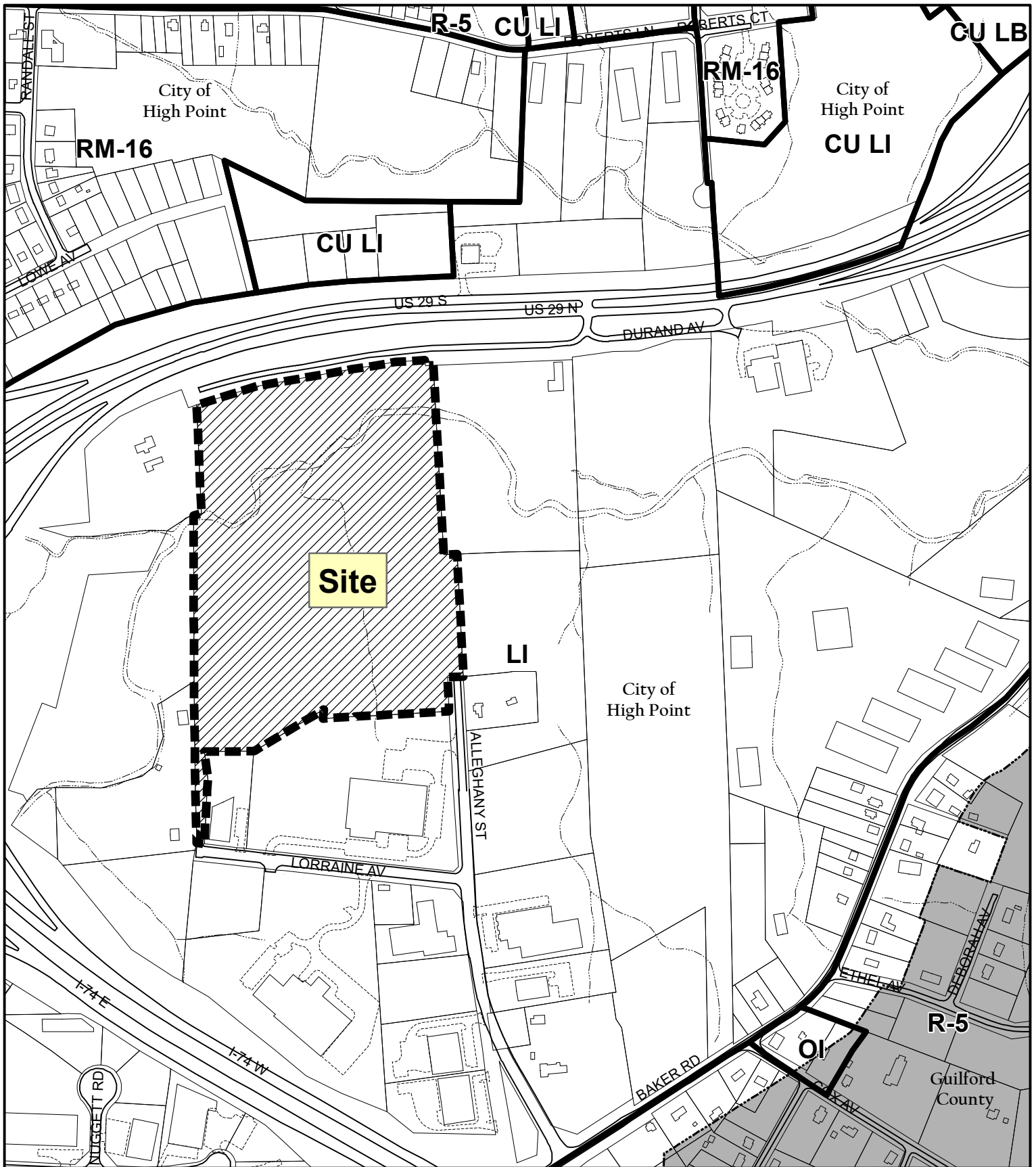
An action invalidating a special use condition of approval for any reason shall render the special use null and void.

Adopted by the City Council
City of High Point, North Carolina
The 6th day of **December, 2021**

By: _____
Jay W. Wagner, Mayor

ATTEST:

Lisa B. Vierling, City Clerk



SPECIAL USE PERMIT: SU-21-03

Request: To allow an Asphalt Plant use type in the Conditional Zoning Heavy Industrial (CZ-HI) District.

Existing Zoning Boundary —————
Subject Property Boundary - - - - -

**Planning & Development
Department**

City of High Point



Scale: 1"=500'
 G:/Planning/Secure/BAC/
 SU/2021/MXD/su21-03-NM

SPECIAL USE: SU-21-03

