

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER 21-0026

LOVEVILLE GRAVEL MINE

THIRD ELECTION DISTRICT

DATE HEARD: APRIL 21, 2022

ORDERED BY:

**Mr. Bradley, Ms. Delahay, Mr. Ichniowski,
Mr. Payne, Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: May 12, 2022

Pleadings

Southstar Limited Partnership (the “Applicant”) seeks conditional use approval, CUAP Number 21-0026, to allow a gravel mine in excess of 5 acres as an Extractive Industry, Use Type # 82, within the Rural Preservation District (“RPD”).

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County (“County”), on August 20, 2021 and August 27, 2021 and reprinted on February 18, 2022 and February 25, 2022. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the St. Mary’s County Department of Land Use and Growth Management (“LUGM”). The agenda was also posted on the County’s website on December 8, 2021 and March 2, 2022. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that the Applicants have complied with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on April 21, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicants.

The Property and the Site

The Applicant owns a property of approximately 241.016 acres, more or less, (the “Subject Property”) on Friendship School Road in Leonardtown. The Subject Property is located in the

RPD and is identified on Tax Map 25, Grid 10, Parcels 102 & 105. On the Subject Property, the Applicants propose constructing a gravel mine (the “Site”) 168.4 acres, to be completed in six phases.

The Conditional Use Requested

The Applicant seeks a conditional use pursuant to St. Mary’s Comprehensive Zoning Ordinance (“CZO”), Chapter 25, Schedule 50.4 Use # 82, Section 51.3.82 to allow a gravel mine in excess of 5 acres within the RPD.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to Schedule 50.4 of the CZO, Use Type 82, “Extractive Industry” is defined as:

Removal of natural materials from the surface or subsurface of the earth for sale or further processing. This classification includes sand and gravel mining and mineral extraction.

Per the Limited Standards found in CZO 51.3.82.b.1.a, Use Type 82 requires approval from the Board of Appeals if the total affected area will exceed 5 acres.

The Evidence Submitted at the Hearing by LUGM

Stacy Clements, Environmental Planner of the St. Mary’s County Department of Land Use and Growth Management (“LUGM”), presented the following evidence:

- The Subject Property consists of 241.016 acres, and the Site will entail a mining area of 168.4 acres to be completed in six phases. The Subject Property is currently undeveloped, per Exhibit 2, Attachment 2, the site plan.
- The Applicants are requesting Conditional Use approval for a 168.4 acre surface gravel mine, Use Type # 82, Extractive Industry. The mine has a proposed longevity of fifteen years of operational status, and Applicant has the option of

renewing the Maryland Department of the Environment (“MDE”) mining permit.

- The Applicant will be required by MDE, pursuant to Title 26, Subtitle 21, Chapter 01 of the Code of Maryland Regulations (“COMAR”), to have an approved Mining and Reclamation Plan, permit, and license to operate a surface mine.
- COMAR Title 26, Subtitle 21, Chapter 01 also regulates setback and haul road requirements.
- The surface mine site will be accessed by an existing entrance with a proposed 20-foot-wide gravel haul road extending to Friendship School Road. The Applicant proposes daily traffic of 100 trucks per day, Monday through Friday, from 7:00 AM to 5:00 PM.
- The Department of Land Use & Growth Management (“LUGM”) reviewed the proposed project during the May 2021 Technical Evaluation Committee cycle. Ex. 2, Att. 3. The Maryland State Highway Administration (“SHA”), St. Mary’s Metropolitan Commission (“Metcom”), and St. Mary’s County Health Department have approved the site plan. Approvals are pending for LUGM (conditional use approval required), Department of Public Works & Transportation (“DPW&T”), SMECO, and the St. Mary’s County Soil Conservation District (“SCD”). SCD must have an approved Sediment and Erosion Control plan prior to issuance of the mining permit and license.
- Pursuant to Section 25.9 of the CZO, “Limitations on Conditional Use Approval,” “Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within

that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period.”

- The following Attachments to the Staff Report were introduced:

#1: Standards Letter;

#2: Minor Site Plan;

#3: TEC Comments

#4: Land Use Map;

#5: Location Map; and

#6: Zoning Plan.

Applicants' Testimony and Exhibits

The Applicant appeared in-person before the Board, alongside R. Page Wyrrough, counsel for the Applicant, Michael Przybocki, P.E., George Junkin, environmental scientist, and Nancy Randall, transportation planner. The following evidence was presented:

- Applicant operates a site approximately 2.2 miles away; some of the public comments offered on this project indicated Chaney had “done a good job” with that site.
- Applicant has engaged with members of the community. Counsel for applicant indicated, on the site plan, that there was an area of particular concern to the neighbors who had sent in letters; that area is no longer part of the proposed mining site.
- The purpose of this project is to replace the existing mine 2.2 miles away, which Applicant estimates has “two-to-three” years of longevity left. It is not Applicant’s intention to operate both sites simultaneously.

- The current site is approved for 100 truckloads per day. Applicant proposes the same number of daily trips for this site. There will be no increase, on this road, of the 100 truckloads per day it currently sustains.
- Applicant mines a “chunk” of the parcel of approximately 30-acres in size at one given time. Once one of these “compartmentalized” sections is exhausted, Applicant will move on to another “chunk.”
- There will be temporary equipment on site. This equipment will be a mobile plant for processing the extracted material, and serves as a replacement of the large, permanent structures that typified earlier generations of open surface gravel mines. There will additionally be a mobile office located in a trailer. No permanent structures will be built on the Subject Property as a result of this operation.
- Operations will, to the greatest extent possible, be located in the center of the property, reducing the noise and visual impacts of the use.
- Applicant states that material, as it moves through the plant, will be continuously doused with water, reducing the amount of dust generated by the project.
- Sound impacts from the backup alarms of trucks will be mitigated by installing white noise generation alarms that are designed to project sound only to the back of the vehicle, and not its sounds. Applicant claimed these systems were designed for urban settings, are becoming common place, and are commercially viable to install on the trucks servicing this site.
- Trucks will use an existing entrance for ingress and egress, which will likely be paved for the first 150 feet to 200 feet, as measured from its exit unto the road. Trucks will turn left onto Friendship School Road, then a right on Parsons Mill

Road, left on Route 247, and then right on to Route 5 headed north, unless headed for a local order.

- Trucks will avoid Maypole Road out of deference to the residents on that road.
- Trucks are monitored to ensure speed limits are followed, and drivers have been reprimanded and, in some cases, terminated from employment for failing to abide the posted speed limits.
- Applicant will reclaim all mined portions upon exhaustion of the Subject Property, and will engage in smaller, “piecemeal” reclamations while extraction at the Site is ongoing.
- Mr. Przybocki testified that he and his firm, Soltesz, Inc., prepared the engineered site plans associated with this project, including stormwater management provisions. Mr. Przybocki’s report is among the materials submitted as part of the Applicant’s submittals to the Board.
- Mr. Przybocki acknowledged that the site plan would be revised as Applicant progresses through the minor site plan approval process.
- Mr. Junkin identified himself as an environmental scientist and wetlands specialist. Mr. Junkin delineated all wetlands on the Subject Property, flagged the perimeters of wetlands on the map, and stated the wetlands are accurately depicted on Applicant’s submittals.
- Moreover, Mr. Junkin testified that the buffer around the mining operation would shelter the wetlands, and that, typically, a mining operation of this nature does not see a great amount of impact to adjacent wetlands because the vast majority of any runoff will pool in excavated areas.

- A setback of 25-feet from all identified wetlands will be required.
- Ms. Randall testified that in 2014 all intersections involved in this project were operating at an “A” level of service and all road links were operating at a “B” level of service. Ms. Randall testified that these levels of service meet the County’s criteria for level of service standard.
- Traffic studies were undertaken in 2021. Growth rates were added to account for COVID’s impact on actual conditions at that time, versus what conditions may be expected under post-pandemic conditions. Ms. Randall testified that all levels of service would be maintained at their current levels if this project is approved with the anticipated number of truckloads per day.
- Counsel proffered that ensuring adequate sight-line distances for vehicles ingressing and egressing would be determined during the minor site approval process.
- Applicant stated that the mine would be operation Monday through Friday, 7:00 AM to 5:00 PM and on Saturday from 7:00 AM – 12:00 PM. Saturday hours would be used only for maintenance. The site would not be open in any capacity on Sundays.
- Applicant stated MDE now prohibits burning on site.

Applicants’ Testimony and Exhibits

No members of the public appeared to offer testimony for or against Applicant’s request.

Five letters were received, which were attached as Exhibit 5, Attachments 1 – 5.

Decision

County Requirements for Granting Conditional Uses

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate standards that must be met for a conditional use to be granted:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
6. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets;
7. The proposed conditional use is not contrary to the goals, objectives, and policies of the St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Conclusions

Upon review of the facts and circumstances, the Board concludes that the Applicants have met the general standards for granting a conditional use under CZO § 25.6. Several factors support this decision.

First, the Site is in the RPD, the proposed conditional use, Use Type # 82, “Extractive Industry,” complies with the standards of the RPD because the proposed conditional use is permitted as a limited use in this zoning district pursuant to CZO Schedule 50.4 Use # 1. Moreover, pursuant to CZO §31.1, “The regulations of Rural Preservation Districts are intended to foster agricultural, forestry, *mineral resource extraction*, and aquacultural uses and protect the land base necessary to support these activities.” (Emphasis added).

Second, the gravel mine will be subject to numerous county, state, and federal regulations intended to assure the public’s health, safety, and welfare. The Applicants will be required by the MDE, pursuant to COMAR Title 26, Subtitle 21, Chapter 01 to have an approved Mining and Reclamation Plan, permit, and license to operate a surface mine. Chapter 01 also regulates setback and haul road requirements, and the conditions of the Board—including those proposed by the Applicants—intend to further abate issues relating to the public’s health, safety, and welfare. Next, the Site will be accessed by an MSHA approved entrance. Applicant demonstrated copious evidence that traffic conditions would not be materially altered from what they are now. Regarding dust, noise, and other nuisances, the Applicant stated that material will be continuously washed, the entrance for the first 150 to 200 feet from the road will be paved, that the site will be located as centrally as possible, and that backup alarms will be installed on trucks that will substantially diminish the noise emanating from those trucks, all of which the Board accepts will abate any nuisances which may emanate from this project. Additionally, Applicant took note of the letters received from members of the public, and claims to have addressed their concerns; the Board notes

that no additional letters on opposition have been received, and that no member of the public renewed his or her opposition before the time of the hearing.

Third, the current uses on adjoining properties are residential and agricultural. The proposed gravel mine will be buffered by existing forest. Based on the steps Applicant is taking to diminish nuisances, some, but not all, of which are detailed in the paragraph above, Board is confident that its conditions will limit noise pollution to this adjoining property owner. Additionally, the Board notes that this operation will be very similar to an ongoing operation within relatively close proximity, and that this project's impacts will not occur contemporaneously as that project's impacts.

Fourth, given the rural character of the surrounding agricultural and residential properties, the proposed gravel mine is less likely to have an adverse effect at this location as it would in other locations. Specifically, the Site is surrounded by primarily agricultural buildings and fields and woodlands, and it is expected to operate and become an integral part of the rural landscape, as so many others have that are located within the RPD. As stated above, the Applicants intend to—and this Board will mandate the Applicant—implement measures to ensure safety and quiet for neighbors, including additional setbacks and limitations on the hours and conduct of operations. Moreover, the traffic study highlighted that the level of service will not change for the intersections or road links affected by the Site. Additionally, the Board notes that once operations at the Subject Property cease the Applicant will be required to fully reclaim the site, and it will be returned to, in Applicant's words, woodlands or put under agricultural production.

Fifth, the site plan review process, administered by LUGM, will ensure that adequate utilities, road access and erosion controls will be provided. In addition, MDE administers the surface mining program within the state, through its licensing and permitting process, subjecting

the Site to MDE inspections.

Sixth, the existing point of ingress and egress is an existing road entrance from Friendship School Road. Furthermore, although ingress and egress from the site will likely generate some dust, MDE will require the Applicants to control the dust, and, as noted, Applicant's plan to pave the portions of the drive closest to the entrance off Friendship School Road.

Seventh, the proposed Site comports with the Comprehensive Plan, Section 4.4 of which seeks to "[a]llow supplemental income productive activities at a scale or intensity that will not unduly change the character of the area[,] establish performance standards that will prevent negative impacts on surrounding properties," and "[p]romote use of best management practices in resource-based activities to minimize contamination of surface and groundwater and adverse effects on plants, fish and wildlife resources, and other environmentally sensitive areas." Here, the conditions imposed by this Board will ensure that negative impacts on surrounding properties are eliminated. As for best management practices, the Applicants were required to complete an environmental features site assessment, which included a wetlands delineation, any mining operations will require a 25-foot setback from the wetlands all clearing will be used to create new habitats, topsoil is first stripped to make the berms then replaced for reclamation, and no environmental features will be disturbed.

Finally, Chapter 51 standards for an Extractive Industry have been streamlined, by policy, to require a site plan and, for mines with more than 5 acres of affected area proposed, require conditional use approval by the Board of Appeals. MDE mining regulations allow limits of disturbance within 25 feet of property boundaries.

ORDER

PURSUANT to the application of Southstar Limited Partnership, requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for Use Type 82, Extractive Industry, (CUAP 21-0026) to allow a gravel mine in excess of 5 acres, within the Rural Preservation District; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a conditional use to allow a gravel mine in excess of 5 acres, within the Rural Preservation District, with the following three conditions:

- Applicant shall operate within a limit of 100 trucks per day;
- The daily hours of operation shall be as follows:
 - Mondays through Fridays 7:00 a.m. - 5:00 p.m.;
 - Saturdays 7:00 a.m. - 12:00 p.m. for site maintenance only;
 - And no Sunday operations; and
- Applicant shall be permitted to maintain small-scale plants, a mobile office trailer, and scales as described in Applicant's presentation and materials

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for Applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: MAY 17, ²⁰²²
2020

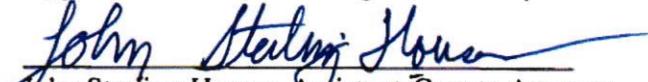

Dan Ichniowski, Chairman

Those voting to grant the conditional use:

Mr. Bradley, Ms. Delahay, Mr. Ichniowski,
Mr. Payne, and Mr. Richardson

Those voting to deny the conditional use:

Approved as to form and legal sufficiency


John Sterling Houser, Assistant County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.