

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**CUAP NUMBER 19-131-007**

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**HARLAN & ANITA ZIMMERMAN**

**SIXTH ELECTION DISTRICT**

**DATE HEARD: JULY 9, 2020**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Ms. Delahay,  
Mr. Miedzinski, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: July 30, 2020**

### **Pleadings**

Harlan & Anita Zimmerman (the “Applicants”) seek conditional use approval, CUAP Number 19-131-007, for a 5.15-acre surface gravel mine 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 June 24, 2020 and July 1, 2020. 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 Department of Land Use and Growth Management. The agenda was also posted on the County’s website on July 1, 2020. 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 July 9, 2020 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 Applicants own a property of approximately 12.422 acres (the “Property”) at 25283 Friendship School Road, Mechanicsville, Maryland. The Property is located in the RPD and is identified on Tax Map 19, Grid 22, Parcel 150, Lot 3 of the Hazard Subdivision.

The proposed conditional use would encompass a 5.15-acre surface gravel mine (the “Site”). Of the 5.15 acres proposed for the Site, 1.15 acres will serve as stockpile, and the remaining four acres will be divided between the gravel mine and a 1.5-acre pond. After completing four test pits, the deepest gravel is at fourteen feet, which is shallower than other, more major mining operations in St. Mary’s County.

The Site is approximately 116 feet from the nearest residence on an adjoining property. Moreover, existing uses on adjoining properties are residential, agricultural, and religious assembly.

As for environmental impacts, the Site is in the Macintosh Run drainage area and is approximately 3,000 feet northeast from Burnt Mill Creek. Given the Site’s proximity to Macintosh Run and Burnt Mill Creek, numerous erosion and sediment control measures will be installed—including gabion outlet structures, earth dikes to the north, and rock outfalls—all of which must be reviewed by the Soil Conservation District prior to issuing a Mining Permit and license. Importantly, on review, Mieke Camp of the MDE Nontidal Wetlands Division, confirmed that there are no regulated wetlands of the state in the area proposed for mining.

### **The Conditional Use Requested**

The Applicants seek a conditional use pursuant to St. Mary’s Comprehensive Zoning Ordinance (“CZO”), Chapter 25, Schedule 50.4 Use # 82, Section 51.3.82 for a 5.15-acre surface gravel mine.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

Pursuant to Schedule 50.4 of the CZO, Use Type 82, as amended by Ordinance 2019-03, “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.

**The Evidence Submitted at the Hearing by LUGM**

Harry Knight, Deputy Director of the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property is a residential property consisting of 12.42 acres according to the Maryland Department of Assessments and Taxation. The Property contains a single-family dwelling and several agricultural outbuildings according to the site plan submitted in support of this conditional use request.
- The Applicants are requesting Conditional Use approval for a 5.15-acre surface gravel mine, use type 82, Extractive Industry.
- The mine has a proposed longevity of five to six years' operational status. The mine will be reclaimed with four inches of topsoil and seeding, as evidenced on the mandatory reclamation plan.
- The Applicants will be required by the State of Maryland's Department of Environment, per 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 10-foot wide gravel road which extends to Friendship School Road. According to the Applicants' Adequate Public Facilities Report, submitted to the Department of Public Works and Transportation ("DPW&T") and located on Sheet 1 of the site plan, there are currently 6 users of the private right-of-way. The Applicants anticipate the following for Friendship School Road,

Jones Road, and Parsons Mill Road:

- 20–30 average daily truck trips;
  - 7 truck trips during peak hours;
  - Each impacted right-of-way originated at a LOS A1 and will remain a LOS A; and
  - Each impacted road has a lane width of 20' with a grass shoulder.
- LUGM reviewed the proposed project during the May 2019 TEC cycle. *See* Ex. 2, Attach. 2. DPW&T, St. Mary's County Metropolitan Commission (“Metcom”), St. Mary's County Health Department, and Mine Safety and Health Administration (“MSHA”) have approved the site plan. Approvals are still pending for LUGM (Conditional Use approval required) and the Soil Conservation District. The Soil Conservation District will approve a Sediment and Erosion Control plan prior to the issuing of the mandatory Mining Permit and license which is issued by MDE for surface mine operations in the State of Maryland.
  - 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: April 2019 TEC comments
    - #3: Land Use Map
    - #4: Location Map;

- #5: Zoning Map;
- #6: Minor Site Plan; and
- #7: Maryland Department of the Environment (MDE) Letter;
- #8: GIS Summer 2018 Site Map showing clearing and tree line Ariel photo;
- #9: Applicants redlined sheet 3 of 4 on Zimmerman Gravel Pit Mining Plan.

### **Applicants' Testimony and Exhibits**

The Applicants appeared over WebEx before the Board. The following evidence was presented:

- The intended purpose of the Site is to offset the building and regulation costs of the pond, which will provide irrigation to the Applicants' organic produce farm. The limited disturbance of the 1.5-acre pond is 3.5 acres, which will include the supporting structures.
- The 5.15-acre Site is smaller in comparison to other parcels on which mining operations occur in St. Mary's County in part because the Property was mined previously.
- There is no proposal to wash the gravel on site; rather, the raw gravel will be extracted and delivered approximately 1 mile on Friendship School Road to the Sloan Mining operation for washing. The roads that will serve the Site are graded A.
- The Site will operate from 7:00 a.m. to 5:00 p.m. Monday through Friday and will operate on Saturday mornings for maintenance of equipment only. Originally, the Applicants proposed fifty trips per day and seven peak trips, but, upon review, the Applicants determined that fifty trips per day was too "aggressive," as there will only be one machine, one truck, and two to three people working. Consequently, the Applicants now believe that they twenty to thirty trips per day is more realistic. Moreover, there are no longer plans to use Maypole Road, Jones Road, or Parsons Mill Road.

- As most of the area around the pond has been cleared, and all but brush has been cleared along adjacent properties, the Applicants intend to build a 12-foot privacy fence for 300 feet along the 500-foot property line along the east. The Maryland Department Environment (“MDE”) requires a minimum 25-foot buffer, and the Applicants intend to begin grading for the pond at that 25 feet. While the Applicants originally intended not to disturb the buffer, they agreed during the hearing to plant some species of Cypress that will provide a buffer and dust protection. For additional dust protection from mining and truck transport, the Applicants plan to use a water truck to spray the ground.
- Very little, if any, water leaves the mining site once it becomes active.
- Moreover, while three acres have already been cleared, approximately two more acres will need to be cleared. However, the northeast of the Site along the Herbert property line will remain wooded and will not be mined. The Applicants intend to use the burnable wood in their greenhouses in the spring to start crops, and all the unusable brush will be burned on site all at one time with the requisite permits.

### **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, and the proposed conditional use, "Extractive Industry," complies with the standards of the RPD because the proposed conditional use is permitted in this zoning district pursuant to CZO Schedule 50.4 Use # 82. Moreover, the regulations of the RPD, pursuant to CZO § 31.1, contemplate projects like the Site, as the RPD regulations 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 proposed gravel mine will be subject to numerous County, State, and Federal regulations intended to assure the public’s health, safety, and welfare. Specifically, LUGM reviewed the proposed project during the May 2019 TEC cycle. *See* Ex. 2, Attach. 2. DPW&T, Metcom, the St. Mary's County Health Department, and MSHA have approved the site plan. Further, pursuant to COMAR Title 26, Subtitle 21, Chapter 01, the Applicants will be required by the State of Maryland’s Department of Environment to have an approved Mining and Reclamation Plan, permit, and license to operate a surface mine. That Chapter also regulates setback and haul road requirements. Moreover, the number of the erosion and sediment control measures that will be installed—including gabion outlet structures, earth dikes to the north, and rock outfalls—all of which must be reviewed by the Soil Conservation District prior to issuing a Mining Permit and license, help maintain environmental protection. Additionally, the absence of washing the gravel on the site will reduce any runoff from the site, and the Board is convinced by the averments of the Applicants that little water leaves the mining operation once the Site becomes active in any case. Finally, the condition imposed by the Board to require the Applicants to use a water truck to spray the ground to reduce dust from trucks and mining should also mitigate impacts on air quality.

Third, existing uses on adjoining properties are residential, agricultural, and religious assembly. The Site will be buffered by existing forest and land in agricultural use from most of the neighboring properties. Moreover, the Site is approximately 116 feet from the nearest residence on an adjoining property, and the Board finds that the conditions imposed, namely the length and location of the twelve foot vinyl Stockade Fence and Type C Buffer will mitigate the

noise and visual impact of a mining operation near the adjoining residences. Furthermore, the Applicants have reduced the number of trips by almost half and will no longer be using any roads for the mining operation except Friendship School Road. There was no evidence presented that property values would be substantially diminished or impaired.

Fourth, given the rural character of the surrounding agricultural and residential properties, the proposed Site is less likely to have an adverse effect at its location than would other mining operations in St. Mary's County, which tend to operate on a much larger scale. Given the smaller size of the parcel on which the Site sits when compared to other mining operations in the County, neighboring homes may be closer than they would if this were proposed on a larger parcel. Moreover, the tenure of the Site will be five to six years, after which the Site will be reclaimed for topsoil and seeding. Additionally, no evidence was presented that the proposed Site would be uniquely adverse.

Fifth, the site plan addresses and ensures that adequate facilities, access roads, erosion and sediment control measures will be provided. As for access roads, the Site will be accessed by an existing 10-foot wide gravel road which extends to Friendship School Road, which is more than adequate to host the seven trips during peak hours and maximum thirty trips imposed by the Board. Furthermore, the commercial 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, which makes it subject to MDE inspections.

Sixth, the existing point of ingress and egress is the existing gravel road onto Friendship School Road, a secondary class road that is owned and maintained by St. Mary's County. DPW&T has approved the continued use of the existing gravel road for the proposed and existing uses

without improvement.

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 Applicants seek to obtain supplemental income to offset the regulatory cost for their proposed 1.5-acre pond, a pond which will permit them to continue to grow and support their organic farm. Less than half of the Applicants’ property will be devoted to the small mining operation and will last only five to six years, after which the property on which the Site sits will return to topsoil and seeding. The fencing and buffer will assist in reducing the negative impacts on surrounding properties, and the numerous erosion and sediment control measures, along with State and federal oversight and inspection will ensure that best management practices are maintained to prevent environmental impacts.

Finally, the Site is consistent with RPD development standards, which contemplate this proposed use on RPD property. As the size of the Site is greater than five acres, the Site also conforms to the CZO by obtaining conditional use approval. Moreover, MDE mining regulations allow limits of disturbance within 25 feet of property boundaries.

### **ORDER**

**PURSUANT** to the application of Harlan & Anita Zimmerman, requesting conditional use approval pursuant to Chapter 25 of the St. Mary’s County Comprehensive Zoning Ordinance for use type 82, Extractive Industry (CUAP # 19-131-007); 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 5.15-acre surface gravel mine—a gravel mine in excess of 5 acres—Use # 82, Extractive Industry, within the Rural Preservation District, with the following five conditions:

1. Construct a twelve (12)-foot high Stockade Fence as identified on Exhibit 4, Attachment 3: Applicants redlined Sheet 3 of 4 on the Applicants' Gravel Pit Mining Plan, as notated by Harry Knight during the July 9, 2020 Board of Appeals hearing;
2. Previously timber-harvested area clearing shall be reestablished to a Type C Buffer excluding shrubs and shall include the option to replace the evergreens with Leland Cypress.
3. Maximum of thirty (30) dump truck round trips per day, only to Sloan's Aggregate operation.
4. On-site water truck to control dust on site and on the road.
5. Hours of operation shall be on Mondays through Fridays 7:00 a.m. to 5:00 p.m. for mining and on Saturdays 8:00 a.m. to 12:00 p.m. for equipment maintenance only.

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 the Applicants 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: July 30, 2020

  
George A. Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. Miedzinski,  
and Mr. Richardson

Those voting to deny the conditional use:

Ms. Delahay

Approved as to form and legal sufficiency

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Neil A. Murphy, Deputy County Attorney

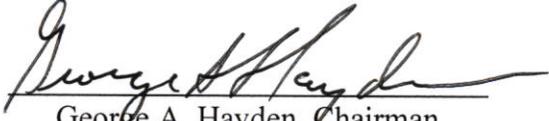
**NOTICE TO APPLICANTS**

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.

Date: July 30, 2020

  
George A. Hayden, Chairman

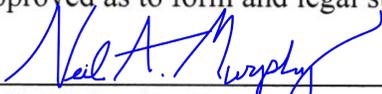
Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. Miedzinski,  
and Mr. Richardson

Those voting to deny the conditional use:

Ms. Delahay

Approved as to form and legal sufficiency

  
Neil A. Murphy, Deputy County Attorney