

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Monday, August 14, 2003**

Present: Marie Underwood, Vice Chair  
Ronald C. Delahay, Sr., Member  
George Allan Hayden, Sr., Member  
Michael Hewitt, Member  
Sandy Mriscin, Member  
Linda J. Springrose, Assistant County Attorney  
Yvonne Chaillet, Planner III, LUGM  
Theresa Dent, Environmental Planner, LUGM  
Peggy Childs, LUGM Recording Secretary

A list of attendees is on file in LUGM. Vice Chair Marie Underwood called the meeting to order at 7:00 p.m. All participants in all applications were sworn in prior to the beginning of each hearing.

**PUBLIC HEARINGS**

**VAAP #03-1350 – FRANKIE MILLER**

Requesting 1) a Variance from Section 38.2.9.b(3)(h) of ZO #90-11 to allow construction of a porch addition and a pool in excess of the Critical Area 15% impervious surface limitation; and 2) a Variance from Section 51.2.4.c of ZO #Z-02-01 to reduce the setback between structures. The property contains 42,916 square feet, is zoned RNC (LDA Overlay), and is located at 45220 Flintlock Court in Hollywood; Tax Map 27, Block 17, Parcel 794, Lot 7 of Scotch Point Subdivision.

Legal Ad published in The Enterprise on 7/30/02 & 8/6/03  
#A-1 Certified Receipts of notification to contiguous property owners

The Applicant proposes construction of an attached screened porch and an in-ground swimming pool with a concrete patio, totaling 1,276 square feet of new impervious surface on this lot. A portion of the proposed screened porch will be constructed over an existing 181 square foot patio, and 431 square feet remains available under the 15% limitation. The proposed impervious surface of 1,276 square feet, minus the 181 square foot trade-off and the 431 square feet, results in a net increase of 664 square feet of new impervious surface being requested under the first variance application. A second variance, from Section 51.2.4.c of ZO #Z-02-01, is being requested to reduce the setback from the

required 10 feet to less than 3 feet between the existing garage and the proposed pool.

Staff finds that, as set forth in the 7/28/03 Staff Report, the Standards for Variance have not been met, and recommends denial of both variance requests. By letter dated July 1, 2003, the Critical Area Commission states it believes that the standards for variance clearly have not been met, and opposes the impervious surface variance.

**Mr. Hewitt moved to adopt the July 28, 2003 Staff Report as presented. Seconded by Mr. Delahay and passed by 5-0.**

Ms. Miller stated that she and her husband were unable to find a lot with more than one acre, and bought the property 9 years ago with the intention of building a pool and basketball courts for their children. They spent a lot of money increasing the value of the lot and bringing it up to their standards, and one reason they bought the property was that all of the adjoining neighbors had swimming pools. She entered into the record (Applicant's #A-2) letters of support from four adjoining property owners in her neighborhood, stating there were many other neighbors who were willing to write letters for her and even to come to the meeting.

Ms. Miller said her property is what she and her husband called "creek front," and they are some distance even from the creek, not the water you see from Solomons Island. In addition, she said a massive structure is under construction on the nearby lot where the oldest house in the county was recently torn down, and that is not creek front, it is prime waterfront property. She said she understands that a pool is also planned for that lot. Right around the corner from that lot there is a home built less than 2 years ago that is 3-4 times larger than her own, with a screened porch and in-ground pool, also on prime waterfront property. Ms. Miller said she cannot understand why she is being denied a pool on her property, when these people on prime waterfront property with homes 5 times larger than hers and driveways 3 times longer, were clearly granted.

Ms. Miller said they bought the property specifically because everybody in the area had a pool and they have been saving for 8 years to put in the pool and play area for their two little boys. Ms. Miller said you can't see the water from her house even if you stand on her roof, and everyone in her neighborhood was shocked that she had to come here. She said she just doesn't think she is being treated as fairly as everyone else. She said her husband passed away in April, but they had been waiting for the winter to be over so they could start construction on their pool and screened porch and finish their home, and she is continuing with what they planned to do.

Ms. Dent advised that alternatives are possible to reduce the amount of impervious surface or to trade some existing impervious surface for the pool, such as the extra driveway next to the garage, and the porch would

have to be moved farther away from the garage. Ms. Miller said she didn't understand that was even an issue, and she received no paperwork saying the application was being denied and why. She said she did not receive the Staff Report, although Ms. Chaillet said it was mailed from the LUGM office on Tuesday, August 5<sup>th</sup>. She said Ms. Dent told her she could take out a portion of the driveway beside the garage, but they made the driveway extra-wide so they could have a basketball hoop there for her kids, and Ms. Dent said taking out that spot would not be enough to satisfy the 15% limit. Ms. Miller said she discussed connecting the porch and the garage with the contractor, but the rooflines would not match up and it would have looked horrible. She said there is no way to move it over farther without cutting a whole new door and she would have to move her kitchen to do that.

The Chair advised Ms. Miller that the impervious surface limitation is a State law and the other properties are not an issue here. Ms. Mriscin asked if Ms. Miller realized that the Board must make a decision tonight and cannot negotiate with her, that staff negotiates. Ms. Miller replied the reason she did not negotiate with staff was that she understood that, if she pulled up some of the driveway, it wouldn't be enough and she would have to remove the basketball court. She said she simply does not understand the problem, when you look at the rest of the neighborhood. Ms. Miller noted that the owners of some of the other properties she mentioned have common names in this county and asked, "Is that what this is about?" She said she hopes not but she wished someone would explain to her why she has to be here.

Mr. Hayden asked Ms. Miller whether staff had explained her options? Ms. Dent recalled from notes in the file her discussions with Ms. Miller and said she had advised her that she could have the pool if she removed enough of the impervious surface.

Mr. Delahay asked whether, if the variances are denied, Ms. Miller can go back and negotiate because, once denied, an Applicant cannot come back before the Board for two years without new information. Ms. Dent reiterated that Ms. Miller could have her pool if she removed enough impervious surface, or traded / reduced some of the concrete around the pool. Ms. Miller responded that the concrete area around the pool has already been reduced to 3 feet.

The Chair opened the hearing to public comment. There were no comments and testimony was closed.

During discussion Mr. Hewitt asked if there were any other instances like this where exceptions were granted and asked how far Ms. Miller is from the water? Ms. Springrose replied that the Applicant is either in the Critical Area or she's not and noted that a finding of hardship caused by the land must be made in order to grant a variance.

**Ms. Mriscin moved that, having made a finding that the Standards of Variance of Section 38.2(7) of Zoning Ordinance #90-11 and**

**Section 51.2.4.c of Zoning Ordinance #Z-02-01 have not been met, the Variances be denied. The motion was seconded by Mr. Hayden and passed by 3-2. Mr. Hewitt and Mr. Delahay voted against the motion.**

**CUAP #03-132-010 – Middleton Farm Extractive Industry**

Requesting Conditional Use approval, pursuant to Chapter 25 of ZO #Z-02-01,

for an extractive industry of more than five (5) acres. The property contains 12.06 acres

for the proposed mining activity, is zoned RPD, and is located on the south side of Yates

Road, approximately  $\frac{3}{4}$  mile from its intersection with MD 242 (Colton Point Road);

Tax Map 24, Block 09, Parcel 119.

Owner: Edward G. Middleton

Present: Surveyor Bob Trautman, representing Mr.

Middleton

Area Residents

Legal Ad published in The Enterprise on 7/30/03 & 8/6/03

#A-1 Certified Receipts of notification to contiguous property owners

Property posted by staff

This Conditional Use mining application is for an additional 11.54 acres. The remaining .52 acres of the total of 12.6 acres consists of the haul road. Applicant proposes to begin operations in August 2003, with completion anticipated to be December 2015. The Maryland Department of the Environment (MDE) has issued Permit #03-SL-0488 for the mining operation. The mine is located on a 175-acre agricultural parcel with frontage on Yates Road, a 30-foot public right-of-way paved to its point of intersection with the existing 12-foot wide haul road. The reclamation of the first 4.95 acre mining operation has been completed. Applicant proposes an average of 15 truckloads per day with a maximum of 25 truckloads per day. Proposed hours of operation are 7:00 a.m. to 5:00 p.m. Monday through Friday and 7:00 – 12:00 p.m. on Saturdays.

Staff has reviewed the application and finds it to be substantially in compliance with Section 51.3.79. The “B” buffer requirement of 75 feet in width will be met with the existing forest cover. The Erosion and Sediment Control Plan was approved by the Soil Conservation District in May 2003 and the Health Department and Department of Public Works & Transportation have also granted approvals. Staff recommends approval subject to the conditions delineated in the 7/24/03 Staff Report and two additional conditions: 1) A \$25,000 bond shall be posted to ensure the maintenance and repair of Yates Road, and 2) The trucks shall be restricted to the haul road as shown on the site plan and no trucks shall use Yates Road beyond the designated haul road.

**Ms. Mriscin moved to adopt the Staff Report as amended to include the two additional conditions. Seconded by Mr. Delahay and passed by 5-0.**

Mr. Trautman said he had nothing to add to the Staff Report except to say that Mr. Middleton has operated a less-than-5-acre pit on this property for almost 12 years with no complaints or violations. He said Mr. Middleton has run a pretty clean operation and the reclaimed portion is very nice looking, and he sees no reason why he wouldn't do the same with this operation. Ms. Mriscin asked if St. Clements Creek will be impacted by the mining activity? Mr. Trautman replied that the creek is more than 1,000 feet away and will not be impacted. He said he has no problems with the two additional conditions recommended by staff.

The Chair opened the hearing to public comment.

Sandy Bean, of 39218 Yates Road, an employee with the County's Department of Public Works & Transportation, said some of her concerns have been answered by the bond that will be required, as the previous mining operation caused damage to Yates Road and the County had to repair the road. However, Ms. Bean said she would like to see a water truck or chemicals to treat the dust, as there will be a lot more traffic than before and there will be more dust. In addition, Ms. Bean said there is a mentally-challenged person lives on and walks this road who doesn't see or hear well, and he needs some consideration.

Ms. Bean said there are two cross-pipes on Yates Road and it is very narrow on those pipes – a car and a truck cannot pass and there are no shoulders; there is a field on one side and a bank on the other and the width is only 14 feet, and there needs to be more consideration than what was done in the previous mining operation.

Rita Nelson, of 39224 Yates Road, whose driveway is directly across from the operation, said there are big sink places at the top of her driveway and all the gravel washes down her hill, and when they bring the big equipment in they back into her driveway to turn into the road. She also had concerns about the dust and the width of the road, stating that she measured the road and agrees with Ms. Bean that it is only 14 feet wide there.

Mr. Trautman replied that there will not be any traffic on Yates Road from the haul road on, and said they have also designed a somewhat larger apron, with some surface treatment, and they can do a little bit more to beef up the intersection. Ms. Mriscin said she drove that road and would not want to meet a semi there, because there is no place to go.

Deputy Public Works Director John Groeger said he didn't measure it but he thinks Yates Road is 14-16 feet wide out to MD 242. He said DPWT had originally recommended the road be widened to 18 feet, but the Director met with the applicant and determined, because of the low traffic load, the widening would not be required. He said a truck is about 8 feet wide and a car is 6-7 feet

wide, so they will have to slow down almost to a stop to be able to pass. Ms. Bean said the road is 14 feet wide where the pipes are and where trucks will make the turn across from Ms. Nelson's house, and there is a bank on one side and field up that high on the other side, with maybe 2 feet of shoulder. Ms. Underwood asked if there are mining trucks using the road now and whether Mr. Groeger is saying the road is adequate? Mr. Groeger replied that it is adequate for the proposed use.

Mr. Hewitt said we have been in this situation before with Brown Road, where there was a situation where the road was not safe, and asked Mr. Groeger if he is saying the road is safe, given the level of traffic on the road? Mr. Groeger replied, given the level of traffic, yes. He said Brown Road has a lot more traffic and horizontal and vertical curves, so sight distance is not good in some locations and there is a lot more traffic. He said Yates is a fairly straight road with good sight distance and visibility, and people have time to recognize the hazards, and slow down and react to them. He said the County has no plans to improve Yates Road beyond routine maintenance and surface treatment, which has been done four times in the last 12-13 years, and they plan on keeping to that schedule. Mr. Hewitt asked if increasing the width to 18 feet would be a requirement of Mr. Middleton or the County? Mr. Groeger replied, when DPWT looked at the application originally they felt that widening the road to 18 feet would provide the greatest safety, but upon evaluating it further and seeing how straight the road is and how little traffic there is, it was felt that that would not need to be a requirement of this applicant.

Mr. Hayden asked whether the maintenance to the road over the past 10-12 years has been more than maintenance to other similar roads without the truck traffic? Mr. Groeger replied DPWT tries to keep a schedule of 4-6 years for surface treatment, and they had surface-treated Yates Road twice in a short time frame, in 1995 and 1997, because of increased truck traffic. Mr. Hayden asked the cost of increasing the road to 18 feet? Mr. Groeger replied he would estimate widening and overlaying the road to be from \$60,000 - \$100,000.

Ms. Nelson added one more concern, stating there are two school buses that come in two times a day that will have to pass the trucks.

Howard Thompson, of 24740 Sotterley Road in Hollywood, provided a list of neighbors and said he was speaking on their behalf. Mr. Thompson asked that "Narrow Road" and speed limit signs be posted on the road. He said there are seven (7) children who live on this road and asked if "Children at Play" signs could be posted or anything to the fact that a visually-impaired and hearing-impaired person lives on the road? Mr. Thompson asked if blue chip or something similar could be placed on the road or if a small planting of trees could be done to catch the dust before it goes across the road.

Mr. Hayden asked if the truck drivers hired by Mr. Middleton are the same every day? Mr. Trautman replied yes, that there is one company that has contracted for the existing pit and as far as he knows that will continue for the proposed mining operation.

Ms. Mriscin asked, if the road were to be widened, would it be onto the County's right-of-way? She asked, if the County is not planning to widen the road, would they allow someone using it to widen it? Mr. Groeger replied yes, they would, and they typically issue a permit to do that. He said the cost of widening the road could be reduced by using surface treatment and putting in a good base, and estimated it could be reduced to, perhaps, \$20,000 to \$30,000. Ms. Mriscin asked Mr. Trautman if it would be economically feasible for the Applicant to widen the road? Mr. Trautman replied that it would not.

The Chair closed testimony, noting for discussion purposes that the Board may require the Applicant to submit a traffic study analyzing the impact of the mining operation and may require specific access and road improvements on a case-by-case basis. Mr. Delahay agreed with Mr. Thompson's request for signs regarding the hearing-impaired person who lives on the road. Mr. Hewitt stated he believes it is a bad policy to ask the Applicant to make the County road safe. The Chair stated she, personally, has a concern as to how a truck and a school bus will pass each other on the road, and Ms. Mriscin said she doesn't think she could have passed a truck on that road, if she had met one. Mr. Hewitt responded that the road is too narrow, but we have an expert who works for the County saying it is safe. He said he thinks this case is different from the Brown Road application, and he lives on a 14-foot road himself and, when they meet a school bus, they have to move over. Mr. Hewitt said there are 21 houses on that road and another one has just been approved, so he thinks there is an inconsistency in how the County grants permits and allows people to keep building. Mr. Delahay said Brown Road has many blind turns and dips and hills, but Yates Road has clear vision, and he can't see putting a burden like widening the road on someone for that kind of money.

The Board discussed dust, signs, and bonding, and the Chair reopened the hearing to testimony. Ms. Springrose said the County will go out and investigate the need for a sign; if there is no need it will not put one up. Mr. Groeger said the signs must be to be in conformance with the Manual on Uniform Traffic Control Devices as required by State law, and asked that any condition regarding a sign be made subject to whether DPWT determines the sign is necessary. Ms. Springrose noted that people driving on the road have the responsibility to watch out for children, and Ms. Mriscin suggested the Applicant's drivers be instructed that someone who lives on the road cannot hear or see well. Mr. Trautman asked whether a safety class for the drivers would be in order? He said OSHA requires them and they do them where he works. The Chair responded yes, but the Board wants to alert the drivers to a special situation. Mr. Trautman replied there are all kinds of specific situations and they hold weekly classes where he works, and that would be one of the subjects that would be covered.

Regarding bonding, Mr. Groeger said the bond is to ensure the maintenance of the road. If any damage is caused by the truck traffic, DPWT would notify the Applicant that he must fix it. If the Applicant does not fix the road, DPWT will claim the bond and fix it themselves.

Since the hearing was reopened to testimony, Sandy Bean stated further concerns regarding the maintenance of Yates Road. She said the road is a chipped-stoned road, and it is not going to hold up under a 10-wheeler full of gravel; it didn't hold up the last time. She asked why it is the County's responsibility to fix the road and why Mr. Middleton and the contractor he has can't keep the road repaired? The Chair noted the proposed condition that a bond be required for the road maintenance, but said it is the County's responsibility to maintain it, if she understands it correctly.

Kevin Thompson, of 24730 Colton Point Road, who said his family owns land on both sides of Yates Road, asked the Board to require that the road be widened only in the areas where it is most narrow; i.e., 14 feet, because there are fence lines which could be impacted. Following this request, the Chair closed the hearing to testimony.

**Ms. Mriscin moved that, having adopted the 7/24/03 Staff Report and making a finding that the Conditional Use Standards of Chapter 25 of ZO #02-01 have been met, the Board grant Conditional Use approval to allow an extractive industry of more than five acres as requested, subject to the following conditions:**

- 1. The subject mining operation shall be carried out in accordance with all federal, state, and local regulations in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- 2. This conditional use approval shall expire five years from the date of the Board of Appeals approving Order.**
- 3. The applicant shall limit the number of truckloads to a maximum of 25 truckloads per day.**
- 4. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday and from 7:00 a.m. to 12:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
- 5. There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.**
- 6. No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.**
- 7. Only materials extracted on site shall be stockpiled on site.**
- 8. The site shall be stabilized and seeded within six months following cessation of operations in accordance with final Soil Conservation District and Maryland Department of the Environment approvals.**

9. The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site.
10. The applicant shall abide by the standards contained in Section 51.3.79 (Extractive Industry) of the St. Mary's County Zoning Ordinance.
11. Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works and Transportation. Signs shall be erected at the entrance of the access road to indicate the road is for private access only and to discourage commercial truck traffic.
12. All approved conditions shall be listed on the site plan submitted for approval.
13. Any additions, changes, or modifications of the approved conditional use on this site shall require Board of Appeals' approval
14. The Applicant shall provide a maintenance bond in the amount of \$25,000 to insure the repair of Yates Road, should the roadway be damaged by truck traffic.
15. Trucks shall be restricted to the 12-foot wide haul road as shown on the site plan and no trucks shall use Yates Road beyond the designated haul road.
16. Bi-monthly safety meetings shall be held with the drivers of the trucks regarding general safety procedures, the fact that there are children in the area, and that there is a handicapped person living on Yates Road.
17. Dust control shall be provided for the haul road.
18. The Department of Public Works & Transportation shall erect signage it deems necessary to protect the safety of the children on Yates Road and the cost shall be charged to the Applicant.

The motion was seconded by Mr. Delahay and amended as set forth above, and passed as amended by a vote of 5-0.

**VAAP #03-132-010 –Middleton Farm Extractive Industry**

Requesting a Variance from Section 51.3.79 (specific regulations and standards for an extractive industry) to reduce the setback requirement from an external property line.

Legal Ad published in The Enterprise on 7/30/03 & 8/6/03

#A-1 Certified Receipts of notification to contiguous property owners

### Property posted by staff

This application is to reduce the setback from 200 feet to 75 feet along the 40-foot private right-of-way located at the northwest boundary of the proposed mining operation, which separates farmsteads 2, 3 and 4 from the mining site. Most of the mining operation is surrounded by mature trees, providing a natural buffer between the mining and the surrounding properties, which are owned by family members. Staff recommends approval and has amended the Staff Report to clarify that the setback be reduced from 200 feet to 75 feet from the property lines of the adjoining farmsteads.

**Mr. Hayden moved to adopt the 7/24/03 Staff Report, as amended. Seconded by Mr. Delahay and passed by 5-0.**

Discussion ensued regarding whether the 75-foot setback should be from the property line or the 40-foot right-of-way along the property line. Mr. Trautman said they would actually be 115 feet from the property line, because he had made the 75-foot setback from the 40-foot right-of-way. Ms. Chaillet asked if the property line that the mining operation is on includes the 40-foot right-of-way? Mr. Trautman replied no, that, actually, from the property line to the mining limits, is 115 feet. He said if the Board wouldn't mind leaving it as it is, he would like to round that off at some point in time, but it will simply fill in the mine.

The Chair opened the hearing to public comment.

Ed Middleton, Sr., the owner of the property, said the variance they are requesting would make a better view for his kids' home and a better view of the whole farm.

Ms. Mriscin said the only question she has is whether we are talking about 75 feet or 115 feet? The Chair and Mr. Delahay said we are talking about 75 feet. Ms. Chaillet said the Ordinance talks about setbacks from external property lines, which is on the other side of the 40-foot right-of-way. Ms. Springrose asked if Mr. Trautman wants the variance to be 75 feet from the property line? He replied that he does; that it will allow him to round that off and fill in the mine.

**Ms. Mriscin moved that, having adopted the 7/24/03 Staff Report, as amended, and making a finding that the Standards for Variance of Section 24.3 of ZO #Z-02-01 have been met, a Variance from Section 51.3.79 of the Zoning Ordinance to reduce the setback from 200 feet to 75 feet from the property lines of the adjoining farmsteads be approved. Seconded by Mr. Delahay and passed by 5-0.**

### **GOODBYE TO LINDA SPRINGROSE**

Assistant County Attorney Linda Springrose is leaving County employment to work for attorneys in Baltimore. The Chair thanked Ms. Springrose for her counsel to the Board and wished her well in her new job.

### **MINUTES AND ORDERS APPROVED**

**Minutes of July 10, 2003**

request           VAAP #02-1236 – Melvin Brown Order denying variance

CUAP #03-135-002 – Omnipoint (T-Mobile) Holly II

CUAP #03-132-004 – Medleys Neck Modification “A”  
Conditional Use

VAAP #03-132-004 – Medleys Neck Modification “A” Variance

**ELECTION OF OFFICERS**

On motions made, seconded, and passed by unanimous vote, Ms. Underwood was elected Chairperson of the Board and George Allan Hayden was elected Vice Chair.

**ADJOURNMENT**

The meeting was adjourned at 8:45 p.m.

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Peggy Childs  
Recording Secretary

Approved in open  
session: September 11, 2003

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Marie E. Underwood  
Vice Chair