

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING**  
**CHESAPEAKE BUILDING \* LEONARDTOWN, MARYLAND**  
**Thursday, July 9, 2015**

Members present were George Allan Hayden, Chairman; William Greene, John Brown, Wayne Miedzinski and Ronald Payne.; Department of Land Use & Growth Management (LUGM) William Hunt, Deputy Director and LUGM staff present were Yvonne Chaillet, Zoning Administrator; Shelia Smith, Recording Secretary. Attorney George Sparling was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

**PUBLIC HEARINGS**

**ZAAP #14-131-0042 Consideration of a report for the Hearing Examiner in the matter of an Appeal by David C. Quade and Carol C. Stockman-Quade - of the Planning Director's approval of the site plan for Jeff's Tree Service, continued from June 11, 2015 meeting.**

The consideration before the board is whether to approve or disapprove the conclusion and recommendations of the Planning Hearing Director Mr. Buchannan. The Hearing Officer determined the Department's approval of the site plan stands. Mr. Brown recused himself; leaving four (4) members hearing the case.

Attorney Sparling gave background information by way of noting the legal issue. Mr. Sparling stated the Quade's appeal comes from the approval of the site plan, the only thing that is being appealed from. This case dates back to 2002 with the issuance of the original home occupation permit to Mr. Grout. Mr. Sparling noted two points; first, the granting of the permit has not been appealed from, and even if it were the time has long passed when an appeal granting the home occupation permit could be filed. Whether or not he should have been granted a permit is immaterial as a permit was issued.

Second, in December 2014, Mr. Groat applied for a permit under Section 5.47 (Use number 47) of the Zoning Ordinance to construct a building for the storage of construction equipment and materials. During that hearing Mr. Buchannan asked Mr. Quade if he had any objections to the site plan. Mr. Quade replied that he felt the fence might be in the wrong place, but other than that he had no objections. To clarify, Mr. Sparling stated that Mr. Quade's complaint isn't the approval of the site plan but that Mr. Groat is operating in violation of the zoning ordinance. Mr. Sparling further expounded that he has seen the application for a permit and he has seen the site plan but he is unsure what permit, if any, was granted in December 2014 concerning the storage of construction materials.

Mr. Sparling opined that the Department is within its right, authority and discretion to decide how and to what end it wishes to pursue and enforce a violation of an ordinance. If the Department found insufficient evidence of a violation or exercised its discretion not to pursue the violation, the Department's decision would be within its authority and not subject to review by the Board of Appeals. Further, there's no real legal remedy for the Board; the Board can issue a revocation of permits – in a proper case, uphold the decisions of the Department, but the Board cannot take the place of the Department in the enforcement function. Unless the Board concludes that the Department erred as a matter of law in approving the site plan, there is nothing for the Board to act upon on in the instant case, as the matter is outside the Board's jurisdiction to address. Mr. Greene asked if it was appropriate for the Hearing Officer to hear this case. Mr. Sparling said that this is the type of case (disputes between neighbors) that a Hearing Officer would typically review. The Hearing Officer's recommendation is that the Department's approval of the site plan stands. Chairman Hayden believed that the Hearing Officer overstepped his authority when he added three conditions to his recommendation. Mr. Sparling agreed.

Ronald Payne asked how the County defines "Tree Service." Yvonne Chaillet responded that it falls under one of the existing "uses" in the Use Table. But where a specific use isn't defined the Planning Director would determine which existing use best fits the usage. In this case, there was more than just the cutting of trees. It was determined that use type 47 – Construction Materials and Equipment Storage, was the best fit. Mr. Payne asked for clarification on "stockpiling." Yvonne Chaillet responded that typically "stockpiling" is often considered temporary placement of material. Mr. Sparling stated that under use 47a(2) – General Standards, "No debris shall be stockpiled or landfilled. Mr. Payne asked the location of the 500sf limit in the RPD (home occupation activity permit issued in 2002). Ms. Chaillet stated she wasn't sure as she didn't know the condition of the property when the occupation permit was issued. However, Mr. Grout no longer has a home occupation; he has a use type 47, which is a permitted use in the RPD – construction materials and equipment storage use. Mr. Payne drew reference to the Hearing Officer's Findings and Facts and Conclusions of Law document (dated 03/18/2015), regarding a footnote concerning "commercial noise complaint." How can there be a "commercial noise complaint" in the RPD? Ms. Chaillet responded that there are "noise standards" in the RPD, however, they do not apply to any bonafide agricultural activity or use. Thus, the noise standards would apply to Mr. Grout's permit.

Mr. Sparling addressed the issue of "home occupation," reading from the 2010 Zoning Ordinance, but noting that Mr. Grout's home occupation permit would have been granted under the 2002 Zoning Ordinance...presently, "a home occupation may be conducted entirely *within* a dwelling or *within* an accessory structure." Home occupation is an indoor activity. Based on this, and if this provision was in the 2002 Ordinance, Mr. Sparling's opinion would be that the home occupation permit was improvidently issued, but he thinks it should have sailed. Regarding use 47, Mr. Sparling again states he doesn't see a permit. He continues, noting two concerns, 1) generically, storage of the construction materials and equipment implies something you use and consume in your trade. Mr. Sparling doesn't believe that this would permit under any conditions the bringing on-site of a product of that occupation; and 2) there's some evidence that there has been on-site sale of material, which again, would be a violation of the zoning ordinance. But that's a matter of enforcement by the Department.

Mr. Sparling asked if the Department issues a permit under use 47? Ms. Chaillet responded that because Mr. Grout wasn't building anything, unless he needed it for the "C" containers, his commercial use site plan is his authorization. Mr. Sparling asked what if there was a change of use using an existing structure? Ms. Chaillet responded if you're using an existing structure you would not need a permit. But this was an after-the-fact site plan and she doesn't know if they required an after-the-fact permit. Mr. Sparling stated that Mr. Grout may have been entitled to the site plan, but is he now exceeding what was permitted? Mr. Chaillet noted he has zoning authorization by approval of the site plan, which means he can continue to conduct the activities that were noted on the site plan.

Chairman Hayden asked if Land Use and Growth Management would issue a permit for his occupation? Ms. Chaillet responded that a permit is not needed unless he is building something. Mr. Sparling offered a distinction between a "conditional use" for an activity, which entails a site plan approval and a permit to build a structure. Mr. Sparling wanted to amend his earlier comment by saying that if the Board feels as though the site plan was incorrectly approved the Board could revoke the permit, but not because Mr. Grout is violating the terms of the permit.

Chairman Hayden asked a question to Mr. Hunt, does a site plan have to be certified by an engineer? Mr. Hunt responded it does not unless a new structure was going to be constructed. It would be up to the discretion of the Planning Director for a minor site plan.

Mr. Sparling asked what about the change in use? Mr. Hunt responded that it would be the same, without new construction, the change in use would be reviewed by the Department to see whether or not anything was going to change requiring a new site plan.

Mr. Sparling asked if there is no substantive change does the Department issue anything? Mr. Hunt wasn't sure if there would be a separate permit in that instance, but the site plan would show the usage was properly located and in conformity to the standards, then the Director would check that as a minor site plan change of use. Chairman Hayden asked would there be any follow-up? Mr. Hunt responded that there would only be a follow-up if there was a complaint or if the Director felt some changes needed to be added for a change in use requirement.

Mr. Sparling outlined the Board's options:

1. Approve/disapprove the Hearing Officer's recommendations, or
2. Revoke the approval of the site plan.

Mr. Miedzinski asked if the Board could revoke the site plan because there has been substantial change in the activity? Mr. Sparling deferred to the Department, but offered an analogy: had Mr. Grout submitted a site plan that showed he was going to stockpile material and sell materials on site, and the site plan was then approved, that would be a reviewable action and the Board could revoke the approval of the site plan. However, if Mr. Grout submitted a site plan that did not violate the Ordinance and then afterwards goes out and does something that's in violation of the Ordinance that would not be something for the Board; that would be an enforcement action.

Mr. Sparling recommends the Board draft an Order affirming the Director's decision.

**Mr. Hayden made a motion to affirm Mr. Shire's decision and accept the Hearing Examiner's Findings and Facts, excluding the Hearing Officer's three (3) conditions.**

**Mr. Meidezinski seconded and the motion passed by a 4-0 vote.**

**CUAP #15-135-002 – James M. Bowles Property, Commercial Communication Tower**

Continued from June 11, 2015 Meeting. Previously, the Board asked the applicant to go back and be prepared to present alternate locations for the Monopole.

Chairman Hayden swore in the following applicant and representative:

Mark Fisher, Telecom Capital Group, LLC, 6150 Sheridan Point Road, Pr. Frederick, MD 20678

Applicant is asking for a 60 day deferral. The purpose of the deferral is to submit to the site plan with alternative locations for concept approval.

**Chairman Hayden requested a motion from the Board to continue the case until September 10, 2015. Mr. Greene made a motion.**

**Mr. Payne seconded. The motion passed by a 5-0 vote.**

**CUAP#15-131-006, Isaac and Lydia Fisher Property**

Ms. Yvonne Chaillet, LUGM, was sworn in for the record. The applicant is requesting a Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance of an extractive industry involving the mining of more than five acres. The property consists of 100.11 acres, is zoned Rural Preservation (RPD), Use Type, extractive Industry, and is located at 27220 Budds Creek Road, Mechanicsville, Maryland; Tax Map 11, Grid 24, Parcel 69, Election District 4.

Owner: Isaac and Lydia Fisher

Present: William L. Mehaffey, PE, Mehaffey & Associates, P.C.

The property and Conditional Use request were advertised in The Enterprise on June 24, 2015 and July 1, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated June 29, 2015 and the

applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (4) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Ms. Chaillet emphasized that the Board will need to determine whether or not the adverse effects at this location are different or unique in some way or degree than typically found for mining operations. Extracted industries, by nature, have adverse effects.

Mr. Miedzinski asked if the St. Mary's soil conservation district had approved yet? Ms. Chaillet stated not yet, typically, before a full engineered plan is done the applicant waits to see if the use is going to be approved.

Mr. Sparling outlined the progression: 1) local zoning consideration, 2) soil conservation and sediment control approval, 3) MDE approval (MDE will not issue a permit before soil conservation issues their approval).

Mr. Payne asked if MDE doesn't consider the hours of operation and number of trucks on roads other than the hauling road, noise, who makes those determinations? Mr. Sparling responded that whether or not MDE does consider something is not the criteria. Local zoning matters are within the MDE. So the Board doesn't consider directly the issues of hours of operations or the number of truck loads. However, to the extent that this relevant to traffic, access plan, noise, vibration, then in that context, it would be relevant to the Board.

Chairman Hayden asked if the applicant has to renew every five (5) years. Ms. Chaillet responded yes, and maybe sooner if determined by MDE based on the site and whether or not there had been any problems with the site. Would the applicant have to come back to this Board for renewal? Mr. Sparling stated they will never come back to this Board.

Chairman Hayden asked if the plant had been opened before. Ms. Chaillet responded yes, illegally. The applicant did not get a permit from MDE or authorization from the Department.

Mr. Miedzinski recalled a 5-5-5 Department policy. Ms. Chaillet responded the Department no longer has the authority following a Court ruling in 2012. Ms. Chaillet clarified the matter before the Board. The Board is approving the use on the property and to determine whether or not the standards granting a conditional use have been met. MDE makes the determination on how many acres can be opened at any given time.

Chairman Hayden swore in the following applicant and representative:

William L. Mehaffey, PE, Mehaffey & Associates, P.C., 41650 Court House Drive, Leonardtown, MD 20650

Isaac H. Fisher, 27220 Budds Creek Road, Mechanicsville, MD 20659

Mr. Mehaffey prepared a letter (dated June 9, 2015, submitted under Ms. Chaillet's Exhibits) outlining how the standards have been met. Mr. Mehaffey had no presentation but made himself available to respond to the Board's concerns/questions.

Chairman Hayden asked if there are any standards that are more unique to this situation than most? Mr. Mehaffey responded he didn't think so.

Mr. Miedzinski asked for clarification on Attachment 4, the green area. Mr. Mehaffey and Ms. Chaillet responded that it is the AE flood zone, approximately 300 to 400 feet from the mining area. A stream that runs on the eastern end of the property, Coffee Hill Run.

Chairman Hayden wanted to know the location of the first mining area? Whether the buffer area would separate the mining operation? The location of the nearest development. And the identity of the neighbors. Mr. Mehaffey responded the limits of the mining area are shown by the dark

long dot. The buffer area would separate the flood plain from the mining operation. Meadows Woods is on the other side of the flood plains. From the northwest would be Benjamin Hertzler, Stephen D. Swarey, Sam Hertzler, Harvest Homes, Inc., and Samuel Hertzler to the south.

Mr. Payne asked for clarification on Standard 6 regarding peak hours. Definition of the 100 trips per day. And clarification of "acceptable level of service" for Rt. 234. Mr. Mehaffey responded that peak hours is the most intense period of the day when the trucks are being loaded and leaving the site, which might occur any time during a daily operation. Trips would be 50 round-trips. Mr. Mehaffey had not performed a traffic study, but "acceptable level of service," is adding a minimal of 100 trips to the existing traffic on Rt. 234, which will not degrade the current level of service. Mr. Mehaffey emphasized that the operation is temporary. Once the mining is complete the traffic impact will stop. In the zoning ordinance there is a standard for acceptable level of service. In the RPD that would be a level of service C – a road where there would be frequent adjustments of speed to account for traffic you're sharing with other people; a road where you are noticeably on the road with other drivers. Mr. Mehaffey pointed out that the information he used regarding the level of service and intensity of the traffic on the highway comes from the State Highway Administration Records.

Chairman Hayden asked Ms. Chaillet if she received comments from the SHA. Ms. Chaillet responded that an email from SHA stating they have no objections to the project is attached on the back of the packet.

Mr. Mieddzinski asked where the material is going? Mr. Mehaffey responded it varies on the need for gravel, but not to a specific place.

Chairman Hayden stated it didn't look like there were any environmental impacts. Traffic has been taking care of. What about access? Mr. Mehaffey stated the existing road and farm will take care of access, as the haul road is on the farm. With regard to soil conservation, Mr. Mehaffey said the plan has been submitted and they are currently making revisions based on MDE's comments. He expects approval shortly.

Mr. Greene sought clarification on the traffic count cited for Rt. 234, Rt. 238, and Rt. 236. Mr. Mehaffey responded that those figures come from SHA and refer only to traffic on Rt. 234. The trucks will leave the farm onto Rt. 234 and either turn north or south depending where they need to go.

Chairman Hayden opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Sparling requested the Board consider adding three conditions, dropped down to two (2) conditions after further discussion.

Ms. Chaillet asked the Board to clarify the Board's requirement to add a buffer (condition # 2) as MDE determines the buffers. Mr. Sparling said he will delete the condition and acknowledged that MDE controls buffers but the traditional zoning concept is still visual impact which once you're on Rt. 234 it is appropriate and within the Board's authority to deal with visual impact. The Board can do whatever it feels appropriate or it can inquire to Mr. Mehaffey as to how he intends to deal with visual impact along Rt. 234. Mr. Mehaffey responding saying that Mr. Fisher is not concerned with buffering along Rt. 234. There's an existing foresting buffer along the frontage with very dense woods. There might be a concern to the south along the adjacent property of the Hertzlers (the haul road).

Mr. Sparling asked if the wooded area along Rt. 234 was going to remain. Mr. Mehaffey stated absolutely.

Regarding the third condition, Mr. Greene asked if there were any buildings proposed (condition #3). Mr. Mehaffey stated there are no buildings proposed for the mining use.

Chairman Hayden recommends the Board keep Mr. Sparling's conditions #1 and #3 and accept Mr. Sparling's removal of condition #2.

**Mr. Payne made a motion "In the matter of the, CUAP#15-131-006, Isaac and Lydia Fisher Property, having made a finding that the standards for granting a Conditional Use and the objectives of Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to operate an extractive industry involving more than five acres with the following two (2) standard conditions mandatory: 1) site plan approval, 2) removal of all buildings associated with mining use within four (4) months of termination of MDE permit."**

**Mr. Miedzinski seconded and the motion passed by a 5-0 vote.**

**CUAP#15-131-011, Israel and Rachel Fisher Property**

Ms. Yvonne Chaillet, LUGM, was sworn for the record. The applicant is requesting Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance for an extractive industry involving the mining of more than five acres. The property consists of 82.65 acres, is zoned Rural Preservation (RPD), and is located at 37404 Westham Lane, Mechanicsville, Maryland, Tax Map 08, Grid 22, Parcel 90, Election District 5.

Owner: Rachel and Israel Fisher

Present: William L. Mehaffey, PE, Mehaffey & Associates, P.C.

The property and variance request were advertised in The Enterprise on June 24, 2015 and July 1, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated June 26, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (2) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Chairman Hayden swore in the following applicant and representative:

William L. Mehaffey, PE, Mehaffey & Associates, P.C., 41650 Court House Drive, Leonardtown, MD 20650

Israel Fisher, 37404 Westham Lane, Mechanicsville, Maryland 20659

Mr. Mehaffey submitted two (2) letters dated April 30, 2015 and June 9, 2015 that were submitted as part of the Board's package. Mr. Mehaffey had no specific presentation but made himself available to respond to the Board's concerns/questions.

Chairman Hayden inquired as to the level activity. Mr. Mehaffey stated it would be very similar in the amount of area to be mined as the prior case just heard. There was previous mining activity on this property which is closing down by design. It was less than five acres. A small area on the south side will be mined and bulk will be north.

Chairman Hayden asked about Pit 1 (99 acres) and Pit 2 (3 acres). Mr. Mehaffey responded that Pit 1 has been reclaimed. Pit 2 is the second part.

Mr. Greene asked how many miles to Rt. 234. Mr. Fisher responded about 3-4 miles. Mr. Mehaffey responded about .5 mile to Thompson Corner. Mr. Fisher added the trucks will use both Rt. 5 and Rt. 234, but mostly Rt. 5 because it's a bigger road.

Chairman Hayden asked if the State Highway had any comments. Ms. Chaillet responded no because direct access is onto a private road.

Chairman Hayden asked what level of service would Mr. Mahaffey consider Rt. 236? Mr. Mehaffey responded that it's a level A.

Mr. Fisher responded that the traffic impact will be considerably less than when the first mining operation was in operation.

Mr. Miedzinski asked if there will be any buffer problems. Mr. Mehaffey responded no. This is an actual farm and the area that will be mined is currently under tobacco production. The mining production will cause no more disruption than farming activities. Chairman Hayden disagreed.

Mr. Starling reminded the Board that the issue would be visual impact in general.

Chairman Hayden asked to identify the neighbors adjacent to the property. Mr. Fisher replied, on the north side is John Wise [inaudible], west side is Amos Jay, south side John and Rebecca, east side Ely Haustaffer [sic].

Chairman Hayden commented that all four sides are bordered by farmlands.

Mr. Fisher replied that there is a five acre lot on the southwest that is a residence that is adjacent to the Fisher farm.

Chairman Hayden wanted to know where the mining operation is relative to the residential lot and any impact to adjacent properties. Mr. Fisher replied the mining operation is on the other end of his farm. There will be no impact on this mining operation at this residential lot.

Mr. Greene asked about access to Rt. 5. Will the trucks be using Locks Crossing Road or Thompsons Corner Road? Mr. Fisher replied that Thompsons Corner Road is the preferable route.

Chairman Hayden opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Sparling requested the Board make the motion with site plan approval and removal of all buildings associated with mining use within 4 months of the termination of MDE permit, same conditional language as CUAP#15-131-006, Isaac and Lydia Fisher Property..

**Mr. Greene made a motion "In the matter of CUAP#15-131-011, Israel and Rachel Fisher Property, having made a finding that the standards for granting a conditional use and the objectives of Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to operate an extractive industry involving more than five acres with the following two (2) standard conditions mandatory: 1) site plan approval, 2) removal of all buildings associated with mining use within four (4) months of termination of MDE permit."**

**Mr. Miedzinski seconded and the motion passed by a 5-0 vote.**

## **MINUTES AND ORDERS APPROVED**

The minutes of June 11, 2015 were approved as amended.

**The Board authorized the Chair to review and sign the following Orders:**

VAAP #14-1817, Thomas and Margaret Tippet  
VAAP # 13 -132-010, Kody Holdings, LLC  
CUAP #15-135-001, Telecom Capital Group, Mechanicsville, Maryland

**ADJOURNMENT**

The meeting was adjourned at 8:15 p.m.

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Shelia Smith, Recording Secretary

Approved in open session: July 09, 2015

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George Allan Hayden  
Chairman