

ST. MARY'S COUNTY BOARD OF APPEALS

Howlin Concrete, Inc.
Coffee Hill Road, Mechanicsville, Maryland

Case No. CUAP #15-131-012

DECISION AND ORDER**Introduction**

Howlin Concrete, Inc. (hereinafter "Applicant"), filed an application for a Conditional Use Permit pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located on Coffee Hill Road, Mechanicsville Maryland (hereinafter the "Property"). The application seeks a permit for an extractive industry involving the mining of more than five acres.

After due notice, a public hearing was conducted at 6:30 p.m. on December 15, 2016, and April 8, 2017, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

- a. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use.
- b. 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.
- c. 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.
- d. 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.
- e. Adequate utilities, access roads, drainage, and necessary facilities have been or are being provided.
- f. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets.

- g. The proposed conditional use is not contrary to the goals, objectives, and policies of the Comprehensive Plan.
- h. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51.

Findings of Fact

The Property is located on the Wicomico River and is used primarily for farming. The Applicant plans to mine approximately 11 acres of the 237-acre Property.

The Property contains tidal wetlands along its shoreline. Mining will occur within the 1,000-Foot Critical Area Boundary as shown on Sheet 2 of the site plan, but no mining is proposed in the 100-Foot Critical Area Buffer. The Critical Area Commission stated in its letter of April 8, 2015 that mitigation will be required at a ratio of 1:1 for any clearing. However, the Department of Land Use and Growth Management informed the Applicant that the Maryland Department of the Environment has exclusive jurisdiction over mining in Maryland and would determine the matter of mitigation.

The perimeter of the Property is densely wooded, which will serve as a natural buffer from the mining operation. Mining will occur primarily in the open fields on the Property, but approximately 47,000 square feet, or 1.08 acres, of existing vegetation will be cleared at some point during the mining cycle.

Access to the mining site will be by way of an existing 12-foot wide gravel road which extends from Coffee Hill Road to the interior of the Property. Coffee Hill Road intersects with Aviation Yacht Club Road in Wicomico Shores. Aviation Yacht Club Road, which connects with Maryland Route 234, is the single road providing ingress and egress for the residents of Wicomico Shores, a large residential subdivision.

The Applicant anticipates approximately 500 weekly truck trips, but less than 50 truck trips during peak hours.

Conclusions of Law

The Property is located in the Rural Preservation District. In accordance with Section 5.12 of the Comprehensive Plan, mineral resource extraction, principally the mining of sand and gravel, is recognized as an important economic activity and regulations shall encourage utilization of these resources. An extractive industry has inherent adverse effects and, therefore, this land use is permitted, not by right, but with conditions.

The Maryland Department of the Environment has exclusive jurisdiction over the conduct of mining operations in Maryland. The jurisdiction of the Board of Appeals is limited to regulation of effects of the activity that are external with respect to the Property.

The Wicomico Shores residential subdivision is served by a single two-lane entrance road that extends from Maryland Rte 234 to the interior of the subdivision. This road is utilized by commuter and other residential traffic, school buses, patrons of the Wicomico Shores Municipal Golf Course and pedestrians including children. This limited access, designed for residential and recreational use, is uniquely ill-suited for high-volume industrial traffic.

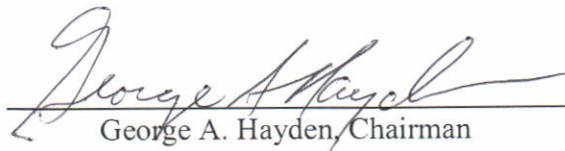
In response to questioning, the Applicant was unable to identify any surface mine in St. Mary's County which required passage through a major residential subdivision in order to access a principal highway.

The proposed use at the proposed location will have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, a Conditional Use Permit for an extractive industry involving the mining of more than five acres is *denied*.

Date: May 11, 2017


George A. Hayden, Chairman

Those voting to approve the conditional use:

Mr. Greene and Mr. Miedzinski

Those voting to deny the conditional use:

Mr. Hayden, Mr. Brown and Mr. Payne

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney