

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Israel and Rachel Fisher,
37404 Westham Lane,
Mechanicsville, Maryland

Case No. CUAP #15-131-011

DECISION AND ORDER**Introduction**

Israel and Rachel Fisher (hereinafter "Applicants"), filed an application for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 37404 Westham Lane, Mechanicsville, Maryland (hereinafter the "Property"). The application seeks a conditional use for the mining of approximately 21 acres.

After due notice, a public hearing was conducted at 6:30 p.m. on July 9, 2015, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

The Board shall not approve a conditional use unless it finds, based on the evidence, that:

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 Comprehensive Plan; and

8. 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 a large agricultural parcel located on a private road, Westham Lane, and surrounded by similar agricultural parcels. The Property contains a single-family dwelling, several barns, and a silo. The Property is constrained in part by steep slopes and highly erodible soils - Evesboro-westphalia complex (EwC2 and EwE2) and Croom gravelly sandy loam (CrD2). Both a stream and nontidal wetlands are located on the west side of the Property. The site plan shows three ponds on the Property, but these should not be affected by the mining as they are a minimum of 100 feet from the proposed mining.

The Applicants plan to extract sand and gravel from two different sites on the Property, which will involve the mining of approximately 21 acres. The first site, shown as proposed pit #3 on the site plan, is located south of the existing single-family dwelling and accessory structures. The second site, shown as proposed pit #4 on the site plan, is located north of all the structures.

Ingress and egress is directly off Westham Lane, a private right-of-way, which exits at Woodburn Hill Road, which connects to Md. Route #236. Trucks will proceed on Md. Route #236 both north to Md. Route #5 and south to Md. Route #234.

The Technical Evaluation Committee (TEC) reviewed the Israel Fisher Mining and Reclamation Plan during its April 2015 review cycle. The site plan review process will insure compliance with the applicable standards of the RPD.

Conclusions of Law

The legislative body, by designating a conditional use, has deemed it to be generally compatible with other uses. Therefore, general compatibility is not normally a proper issue to be considered. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a conditional use will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered.

Chapter 3 of the Comprehensive Plan provides a Land Use Plan Concept which includes the rural areas. The Rural Preservation District is recognized as prime farm land, timber land and mineral resource land. 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. Section 5.12.1 stipulates the following goal: Preserve the natural, recreational, historical and cultural heritage

in conjunction with economic and social well-being to maintain and enhance the quality of life. The Comprehensive Plan seeks to accommodate the extraction of natural resources while avoiding and minimizing adverse impacts to surrounding habitat and water resources and adjacent uses.

Factors to be considered are traffic, access plan (capacity and suitability of access roads for accommodating estimated loads), and off-site noise, vibration and dust.

The service levels of the public highways, the existing traffic, and the projected increased traffic to be generated by the proposed use are all within acceptable parameters. The proposed site is sufficiently removed from residential uses so that the effects of off-site noise, vibration and dust are not greater than the adverse effects ordinarily associated with surface mining.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance have been met, a conditional use for the mining of approximately 21 acres on the Property located at 37404 Westham Lane, Mechanicsville, Maryland is ***approved***, subject to the following conditions:

1. Site Plan Approval
2. Removal of all buildings constructed pursuant to the permit within 4 months of termination of MDE Permit.

Date: August 20, 2015

George A. Hayden, Chairman

Those voting to grant the variance: Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:

George R. Sparling, County Attorney