

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Aubrey F. Mattingly, Trustee and
Victoria P. Mattingly, Trustee
23135 Cedar Lane Road, Leonardtown MD

Case No. CUAP #15-131-040

DECISION AND ORDER**Introduction**

Aubrey F. Mattingly, Trustee and Victoria P. Mattingly, Trustee (hereinafter "Applicants"), 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 at 23135 Cedar Lane Road, Leonardtown, 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 July 28, 2016, 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 a large, unimproved parcel which has been mined at different times over the past several decades. Large, primarily agricultural parcels surround the Property on its north, east, and south sides. The west side of the Property is bound by the incorporated Town of Leonardtown.

The Property is densely wooded and the overall topography of the Property is steep. Town Run flows through the western boundary of the Property and eventually drains into Breton Bay. Nontidal wetlands and a floodplain can be found along this stream. The mining operation will be located more than 50 feet from the Special Flood Hazard Area.

The area subject to the permit will be 17.8 acres. The area to be actively mined will be 4.7 acres and the area to be immediately reclaimed will be 13.1 acres.

Access to the mining operation will be by way of an existing haul road off Cedar Lane Road.

Conclusions of Law

The Maryland Department of the Environment has jurisdiction over the surface mine site, including the internal haul road, utilities, drainage, other facilities associated with the mining operation, and reclamation of the land once mining has ceased. The erosion and sediment control plan approved by the Soil Conservation District is submitted to the Maryland Department of the Environment as part of the permit application. The Maryland Department of the Environment reviews stormwater management in accordance with the State's requirements.

The Property is located in the Leonardtown Development District. Areas planned for growth are targeted to receive a majority of residential, commercial, and industrial development. The Property is in a Low-Density, Residential (RL) zoning district, and an extractive industry is a permitted use in the RL. 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

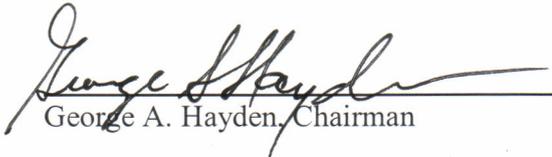
industry has inherent adverse effects and, therefore, this land use is permitted, not by right, but with conditions.

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 been met, a Conditional Use Permit for an extractive industry involving the mining of more than five acres is **granted**, upon the following conditions:

1. No burning on site.
2. Hours of operation from Monday to Friday, 7:00 a.m. to 5:00 p.m., and from 7:00 a.m. to 12:00 p.m. on Saturday for site maintenance only.

Date: September 8, 2016

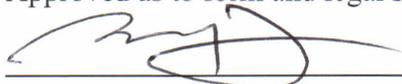

George A. Hayden, Chairman

Those voting to approve the conditional use:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the conditional use:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney