

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP 23-0047

SLOAN LOVEVILLE GRAVEL MINE

THIRD ELECTION DISTRICT

CONDITIONAL USE REQUEST HEARD: DECEMBER 14, 2023

ORDERED BY:

Mr. Ichniowski, Mr. Bradley, Mr. Miedzinski,
Mr. Payne, and Mr. Richardson

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 11, 2024

Pleadings

Multiflora, LLC (“Applicant”) seeks modification of conditional use approval 15-131-050 and conditional use approval 21-131-0001 to expand mining operations by 12.2 acres, pursuant to Chapter 25 of the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) for Use Type 82, Extractive Industry within the Rural Preservation District (RPD).

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on November 24, 2023 and December 1, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before November 29, 2023. The agenda was also posted on the County’s website by December 8, 2023. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on December 14, 2023 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

The Property

The subject property is located at 28625 Abell’s Way, Loveville, Maryland (“the Property”). The Property is 156.226 acres, more or less, is zoned Rural Preservation District (RPD), and is found at Tax Map 19, Grid 19, Parcel 133.

The Conditional Use Approval

Applicant seeks conditional use approval to expand an existing gravel mining operation by

12.2 acres.

St. Mary's County Comprehensive Zoning Ordinance

Procedures and standards related to conditional use approvals may be found in Chapter 25 of the CZO. Eight general standards must be found before any conditional use approval can be granted by the Board: (1) that the conditional use complies with the standards of the district in which it is to be located and standards applicable to that use; (2) that 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 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 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. The Board may stipulate its approval upon any conditions and restrictions it deems necessary to satisfy these standards.

Chapter 51 provides a further 10 standards specifically applicable to conditional use approvals for Use Type 82: (1) extraction operations shall be located and conducted in a manner that minimizes their environmental and visual impacts; (2) all structures and extraction operations

areas shall be set back not less than 200 feet from all external property lines and equipment may be stored not less than 100 feet from adjacent property lines and not less than 75 feet from adjacent rights-of-way; (3) a “B” buffer yard shall be provided along adjacent public rights-of-way and at adjacent lot lines; (4) the Board of Appeals may require the applicant submit a traffic impact study; (5) production tanks shall be located within a containment berm designed to impound 100 percent of the fluid capacity of the largest impoundment tank; (6) any building shall be deemed temporary and dismantled and removed within a period of four months following cessation of operations; (7) all equipment shall be constructed, maintained, and operated in a manner that minimizes noise, vibration, or dust; (8) surety for repair and maintenance of public roads affected by the operation may be required by the Department of Public Works and Transportation; (9) the proposed extraction must be in accordance with the plan for the development of the property or as otherwise permitted for the specific zoning district and the reclamation plan; (10) an operation plan that includes the method and schedule for extractive activity and completion, production, abandonment, and reclamation phases of the operation is required.

Departmental Testimony and Exhibits

Amanda Yowell from the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented the following evidence:

- The Property is an existing 52.46-acre gravel mine, approved under Minor Site Plan 13-131-021 (4.96-acre) and Conditional Application 15-131-050 (48.50-acres addition), along with the wash plant approved under CUAP 21-131-0001. The current approved mining operation is 52.46 acres.
- The Applicant requests modification to the previous Conditional Use Approval by adding 12.2 acres to the existing mining operation. The total proposed mining

operation will be 64.66-acres.

- The mining operation is regulated by the State of Maryland's Department of the Environment ("MDE"). COMAR 26.21.01 require the Applicant have an approved mining and reclamation plan, permit, and license to operate a surface mine. COMAR also regulates setback and haul road requirements.
- Currently, the mine is operational Monday through Friday from 7:00 a.m. to 5:00 p.m. and Saturday from 7:00 a.m. to 12:00 p.m. for site maintenance only. A clerical error in the Staff Report related to the previous limitations on the number of trips was corrected before the Board by the County Attorney's Office.
- The proposed project has been reviewed by the approving TEC agencies and their comments are attached to the Staff Report. The Department of Public Works and Transportation, Maryland State Highway Administration, and St. Mary's County Health Department have approved the site plan. Approvals are still pending from LUGM and the Soil Conservation District. The Soil Conservation District will need to approve a Sediment and Erosion Control plan prior to issuance of the mining permit and license by the state.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Conditional Use Order 15-131-050
 - #3: Conditional Use Order 21-131-001
 - #4: Location Map
 - #5: Land Use Map
 - #6: Zoning Map

- #7: Minor Site Plan

Applicant's Testimony and Exhibits

Applicant was represented before the Board by attorney Chris Longmore, Esq. of Dugan, McKissick & Longmore LLC and surveyor Barry Vukmer, of Chesapeake Trails Surveying, LLC. Applicant presented a slideshow which contained pictures of the site and surrounding areas and depictions of site plans. The following evidence and testimony was included in Applicant's presentation:

- Applicant requested the conditions placed upon the prior conditional use approvals be placed on this project, including an aerial photograph showing the three different areas that will comprise the addition and signs of road signs placed to stop engine braking. These signs were added in response to letters the Board received from neighbors related to concerns about traffic.
- Mr. Vukmer explained the buffer yards provided around the mining operation and detailed their compliance with applicable standards.
- Randall Sloan testified that the mine has been operating since approximately 2012 and expects to conclude operations in 8-10 years if the addition is approved. Without the addition operations would likely be concluded in 3-4 years.
- Mr. Sloan also testified to the neighbors he spoke to about this approval and his attempts to speak to them.
- There are approximately 70-80 trips on a normal day.
- Mr. Sloan testified he received no noise complaints from neighbors prior to this application.
- In a previous conditional use approval Mr. Sloan agreed to replace certain wells if they

failed; Mr. Longmore clarified that condition is among those the Applicant proffers to be placed on this approval.

- In a follow-up to some concerns stated by members of the public, Mr. Longmore clarified that reclamation of the project is bonded and that this bond will ensure reclamation is performed even in the event the operator should become insolvent.
- In additional follow-up, Mr. Longmore stated that he believes buffer yards are governed by the state and not subject to county buffers. He is, however, amenable to double the 25' buffer on the frontage at Route 5 to a 50' buffer and raise the berm from 4' to 6' and would be willing to have those placed either as a condition or to make an amendment to the site plan. The berm would be planted with shrubs and Leyland Cypress trees.
- Mr. Longmore also drew attention to the Comprehensive Plan's encouragement of extractive industries such as Applicant's proposal.
- Applicant proffered accepting an additional condition of only allowing a maximum of 80 trips per day on average.

Public Testimony

The following members of the public appeared to present testimony before the Board:

- Cory White
 - Mr. White lives on Point Lookout Road. His concern is over the front addition #1. He appreciates that the gravel mine's operators put up the engine braking signs but are concerned about noise disturbance to their home. He also stated he was worried about declining property values. He also shared concerns about possible contamination to well water and was curious about how reclamation will

be performed. Mr. White did not provide any expert testimony related to his concerns. There is also a written letter from Mr. White in the file.

- Joan Bowles Snodderly
 - Ms. Snodderly lives in close proximity to the gravel mine. She said she shares Mr. White's concerns. She spoke specifically to concerns about traffic and how many dump trucks come on the road. She also testified that she hears trucks braking before 6am on some mornings. She said she has concerns about property values and contamination to well water; she said that she spoke to Patuxent Will, and that they told her dug wells are at more danger than artesian wells. She did not provide any supporting evidence related to possible depreciation of property values.
- J.D. Lacey
 - Mr. Lacey lives directly across from the pond on the mine. He thanked Mr. Sloan for placing the signs about engine braking and says the noises have been drastically reduced since placing those signs. He says rip-rap and big blue boulders are on the mine as well and that there continues to be noise.
- Mark Hancock
 - Mr. Hancock said Mr. White spoke to many of the concerns he has. He questioned whether the mine needed to expand or whether it should be allowed to keep expanding. There is also a letter from Mr. Hancock in the file.
- Delaney White
 - Mrs. White is Cory White's wife. She says she does not believe the 4' berm will adequately abate noise and visual impacts from the expansion. She said her

primary concern about the expansion will be the possible effects on property values. She said that, speaking as someone who recently purchased a home, she could not imagine buying a home so close to a gravel mine. Additionally, a letter from Mr. and Mrs. White is in the file.

Decision

County Requirements for Granting Conditional Use Approvals

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate requirements that must be met for a conditional use approval to be issued:

(1) that the conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;

(2) that 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 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 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

Discussion

Upon review of the Applicant's proposal and the evidence and testimony provided at the December 14, 2023 public hearing, the Board finds and concludes that Applicant's proposal satisfies each of the above criteria.

First, the Applicant's project complies with the standards for location of Use Type 82 – Extractive Industry in the Rural Preservation District. Gravel mines are an allowed use in the Rural Preservation District and only require a conditional use approval if the total mined area exceeds five acres. The specific standards for conditional use approval appear to be met, as will be discussed further in the Board's discussion of the eighth standard.

Second, the conditional use shall not be injurious to the public health, safety, convenience, morals, order, or general welfare with the conditions imposed by this Board. Testimony was received by the Board that noise impacts from the existing operation have greatly lessened since the site mine's operators took corrective actions upon receiving public complaints during the application process, which was the first time the operator had received complaints of noise. Engine braking has been greatly reduced and signs placed indicating that is prohibited. The board's limitation of the number of round trips per day to no more than 80, on average, will reasonably safeguard the roads and neighboring property from an undue proliferation of gravel trucks on their roads while simultaneously heeding the Comprehensive Plan's recognition of extractive industries as a necessary and valuable industry to encourage in St. Mary's County. No

expert testimony was received with respect to the effect this expansion would have on property values. The Board notes, additionally, that this is a 12.2 acre expansion to an existing 52.46 acre gravel mine. Testimony was received by the Board that the practical effect of this approval will be to extend the longevity, but not the intensity, of the existing gravel mining operation.

Third, the extension will not be injurious to the use and enjoyment of other property in the immediate environs of the gravel mine and will not substantially diminish or impair property values in the neighborhood. The proposed berm and buffers will, the Board finds, do much to reduce any possible noise and sight impacts neighbors may experience. The Board received no expert testimony on any specific effects expansion may have on property values. The Board does find the expansion is of similar character and nature as the existing gravel mine operation, however, and does not believe it will have a substantially different impact upon neighboring properties than the current operation.

Fourth, the expansion will not have adverse effects above and beyond those inherently associated with a gravel mine. As noted above, the expansion is of similar nature and character as the existing gravel mine operation. The effect of this approval will be to allow the gravel mine to operate for several years longer, but not any more intensely.

Fifth, it appears that adequate utilities, access roads, drainage, and other necessary facilities have been provided. Applicant detailed his efforts to improve signage on the roads leading to the mine to improve safety. The aforementioned limitation on round trips will also provide a safeguard and ensure traffic does not become unduly burdensome or dangerous to the community.

Sixth, adequate measures have been taken to provide ingress and egress and traffic congestion in public streets will be reasonably minimized, as noted above.

Seventh, the proposed use is not contrary to the Comprehensive Plan. On the contrary, as attorney Longmore pointed out, the Comprehensive Plan specifically encourages the development of extractive industries.

Eighth, the proposal conforms to all applicable regulations and standards assigned to this particular use type in Chapter 51. CZO 51.3.82.c contains a plenitude of conditional standards for approval, most of which are non-discretionary items that shall be checked for completion by staff. Of the standards that require some discretion on the part of the Board – those being standards (1), (4), (7), and (9) – the Board notes the aforementioned berm, landscaping plantings, and buffer yards shall minimize environmental, visual, and noise impacts to a reasonable minimum, that the restrictions on hours of operation shall further reduce noise impacts from trucks and equipment, that the plan is in accordance with the Comprehensive Plan as discussed in the Board’s consideration of conditional use approval standard (7), and that a formal traffic impact study is not necessary as the limitation on the number of round trips shall keep the facility to general volume of traffic currently present

For these reasons the Board concludes the Applicant has met all criteria for conditional use and that Applicant’s proposal should be approved.

ORDER

PURSUANT to the application of Multiflora, LLC for modification of conditional use approval 15-131-050 and conditional use approval 21-131-0001 to expand mining operations by 12.2 acres, pursuant to Chapter 25 of the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) for Use Type 82, Extractive Industry within the Rural Preservation District (RPD); and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO Chapter 25, that Applicant is granted conditional use approval for modification of conditional use approval 15-131-050 and conditional use approval 21-131-0001 to expand mining operations by 12.2 acres, pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance ("CZO") for Use Type 82, Extractive Industry within the Rural Preservation District (RPD);

UPON CONDITION THAT, all conditions included in the Board's approval of CUAP 20-131-0001 are carried over to this approval; and,

UPON FURTHER CONDITION THAT, a 6' berm shall be provided as described by Applicant in its testimony; and,

UPON FURTHER CONDITION THAT, round trips per day shall not exceed an average of 80 and,

UPON FURTHER CONDITION THAT, Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: 01-11-24, 2024



Chairperson

Those voting to grant the amendment:

Mr. Ichniowski¹, Mr. Bradley, Mr. Payne,
Mr. Miedzinski², and Mr. Richardson

Those voting to deny the amendment:

~~Approved as to form and legal sufficiency~~

~~Steve Scott, Board of Appeals Attorney~~

¹ All members voted to approve the conditional use application on December 14, 2023. Mr. Ichniowski and Mr. Miedzinski's terms subsequently expired at the end of December, prior to the adoption of this written opinion and order. A quorum of the members present at the December 14, 2023 were present for the adoption of this written opinion and order on January 11, 2024.

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the Circuit Court for St. Mary's County. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides that a conditional use approval shall lapse one year from the date the Board of Appeals granted the approval unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the approval has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the approval is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.