

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, February 12, 2004**

Present: Marie Underwood, Chairperson
George Allan Hayden, Vice Chair
Greg Callaway, Member
Ronald C. Delahay, Sr., Member
Bryan Barthelme, Member
John B. Norris, III, County Attorney
Yvonne Chaillet, Planner III, Department of Land Use & Growth
Management
Janice Blackistone, LUGM Fiscal Specialist

A sign-in sheet is on file in Department of Land Use & Growth Management. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

The Chair excused herself from Chairing the meeting, due to illness and Mr. Hayden Vice-Chaired the meeting.

PUBLIC HEARING

CUAP #99-1439 – AMERICAN TOWER

Requesting a modification of Conditional Use to remove condition #8 requiring that the tower be lighted. The property contains 205 acres, is zoned RPD, and is located on Chaptico Hill Lane in Chaptico; Tax Map 17, Block 8, Parcel 3.

Withdrawn because of notification problems.

CUAP #03-132-028 – PHILLIP MOORE MINING OPERATION

Requesting a Conditional Use approval for an extractive industry involving mining more than five acres. The property contains 98.2 acres, is zoned RPD, and is located approximately $\frac{3}{4}$ mile east of its intersection with MD Route 249 in Great Mills; Tax Map 50, Block 23, Parcel 199.

Owners/Present: James & Deborah Hills, Owner
Robert Trautman, Surveyor

Legal Ad published in The Enterprise on 1/28/04 & 2/4/04
#A-1 Certified Receipts of notification to contiguous property

owners

#A-2 Letter from Father O'Riley, Holy Face Church and Little Flower School

#O-1 Letter from Stephen & Karen Raley

This Conditional Use mining application is to extract natural resources greater than five acres for an additional 11.51 acres. The existing haul road consists of .23 acres. The mine is located on a 98-acre agricultural parcel with frontage on Maryland Route 5. The mine first began operating about 50 years ago to supply the asphalt plant located on the site at that time, and has been operating since that time. The permit issued by the Maryland Department of the Environment (MDE) is renewed every five years until the mining is completed. Supply and demand determine the volume of sand or gravel mined and the pace of the mining operation.

The road used to haul materials to and from the mining operation is an existing 14-foot wide gravel road. A separate paved road with a 25-foot right-of-way provides access to the property owner's home and to the Guzman and Dyson properties shown on the site plan, south of the mining operation.

The Applicant is proposing an average of 25 truckloads per day. Anticipated hours of operation are 7:00 a.m. to 5:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturdays. Sundays and holidays will be observed.

Staff has reviewed the application and finds it to be substantially in compliance with Section 51.3.79. The "B" buffer requirement of 75 feet in width will be met with existing forest cover. The Erosion and Sediment Control Plan was approved by the Soil Conservation District and the Health Department and the Maryland State Highway Administration have granted approvals. The Metropolitan Commission has no comments for this application, as it does not impact their agency. Applicant is working with Department of Public Works and Transportation and the Department of Land Use and Growth Management to fully address comments from the agencies prior to final site plan approval.

Ms. Chaillet stated there were three changes to the staff report: one on page 3, third paragraph "... average of 25 truckloads per day; second on page 5 Condition #7 "...stockpiled on site, including the materials currently stockpiled; and the third on page 5 Condition #9 "...debris shall be permanently stored on the site.

Ms. Underwood moved to accept the Staff Report as amended; seconded by Mr. Delahay and passed by 5-0.

Mr. Trautman states this mine was a gravel mine back in the 1950's and at one time it was an asphalt plant. After that time the mine was abandoned. Mr. Hills and Mr. Moore took over the mine in the early 1980's and operated a

clean operation from that point with no violations. Applicant is asking for expansion of the pit to 18.78 acres, the mine was originally a 2 ½ acres pit and it has been expanded up to a 10 acres pit.

The Chair questioned the amount of truckloads on a daily basis. Mr. Trautman answered anywhere from 25 – 30 truckloads.

The Chair opened the hearing to public comment.

Mr. Trautman interjects a letter from adjoining property owner, Holy Face Church and Little Flower School, located across the street from Phillip Moore Mining Operation. He read the letter from Father O'Riley who could not be at the meeting. The letter states the mine has always been respectful and keeps the gravel pit clean and organized.

Ms. Chaillet read a letter from Stephen and Karen Raley, a contiguous neighbor, opposing the enlargement of the gravel pit. The letter states they have been awoken from noises from the truck tailgates slamming shut or the beeping from the trucks in reverse. Mr. & Mrs. Raley have concerns with Mr. Hills burning in the pit; there have been ashes that have fallen five feet from their home.

Mr. Greg Kolarik, from MDE, states he does the mining inspections for St. Mary's County. He looks at 12 to 13 mines and Mr. Hills operates the cleanest mine in the County. He never has a problem with Mr. Hills. He stated he inspects the mine once a year as required. He has observed on the days Mr. Hills is burning and he has never smelled or noticed any problems.

Mr. Larry Hills stated he lives on the property with his son plus there is another son who will one day build on the property. He stated he is not trying to just mine, destroy the property, and then walk away. He brought the property to stay there and subdivide for his family at a later date.

Ms. Underwood moved that, having adopted the 2/4/04 Staff Report and making a finding that the Conditional Use Standards of Chapter 25 of ZO #02-01 have been met, the Board grant Conditional Use approval to extract natural resources beyond five (5) acres, subject to the following conditions:

- (1) The subject mining operation shall be carried out in accordance with all federal, state, and local regulations in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- (2) This conditional use approval shall expire five years from the date of the Board of Appeals approving Order.**

- (3) The number of truckloads per day will average 25 with the average computed monthly.
- (4) Hours of operation shall be from 7:00 a.m. to 5:00 p.m., Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).
- (5) There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.
- (6) No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.
- (7) Only materials extracted on site shall be stockpiled on site, including the materials currently stockpiled.
- (8) The site shall be stabilized and seeded within six months following cessation of operations in accordance with final approvals from the Soil Conservation District and the Maryland Department of the Environment.
- (9) The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site beyond the expiration of this approval.
- (10) The applicant shall abide by the standards contained in Section 51.3.79 (Extractive Industry) of the St. Mary's County Zoning Ordinance.
- (11) Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works and Transportation. Signs shall be erected at the entrance of the access road to indicate the road is for private access only and to discourage commercial truck traffic.
- (12) All approved conditions shall be listed on the site plan submitted for approval.
- (13) Any additions, changes, or modifications of the approved conditional use on this site shall require Board of Appeals' approval.

The motion was seconded by Mr. Callaway and amended as set forth above, and passed as amended by a vote of 5-0.

VAAP #03-132-028 – PHILLIP MOORE MINING OPERATION

The applicant is requesting a Variance from Section 24.3 and Section 51.3.79 of the St. Mary's County Comprehensive Zoning Ordinance to allow the reduction of the setback from one external property line from 200 feet to 25 feet and to allow the reduction of the setback from a second external property line from 200 feet to 85 feet. The property contains 98.2 acres, is zoned RPD, and is

located at 20533 Point Lookout Road in Great Mills; Tax Map 50, Block 23, Lot 199.

Owners/Present: James & Deborah Hills, Owner
Robert Trautman, Surveyor

Legal Ad published in The Enterprise on 1/28/04 & 2/4/04
#A-1 Certified Receipts of notification to contiguous property owners

The Applicant is requesting a Variance from Section 51.3.79 of the St. Mary's County Comprehensive Zoning Ordinance (#Z-02-01) to reduce the setback requirement from an external property line. The mine is located on a 98-acre agricultural parcel with frontage on Maryland Route 5. The mine first began operating about 50 years ago to supply the asphalt plant located on the site at that time, and has been operating since that time. The permit issued by the Maryland Department of the Environment (MDE) is renewed every five years until the mining has been completed.

The road used to haul materials to and from the mining operation is an existing 14-foot wide gravel road. A separate paved road with a 25-foot right-of-way provides access to the property owners' home and to the Guzman and Dyson properties shown on the site plan.

The Applicant is proposing an average of 25 truckloads per day. Anticipated hours of operation are 7:00 a.m. to 5:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturdays. Sundays and holidays will be observed.

The Applicant is requesting a Variance to reduce the required 200-foot setback from the A.R. Guzman property, south of the mining operation, and from the J.C. Dyson property, south of the mining operation. Section 51.3.7 of the St. Mary's County Comprehensive Zoning Ordinance requires that all structures and extraction areas be set back a minimum of 200 feet from all external property lines.

The proposed reduction in setback is from 200 feet to 25 feet, at the closest point between the mining operation and the A.R. Guzman property line, and from 200 feet to 85 feet, at the farthest point between the mining operation and the A.R. Guzman property line. The proposed reduction in setback from the J.C. Dyson property line is from 200 feet to 85 feet. The maximum relief requested from the requirement for the 200-foot setback is 175 feet.

A signed mining agreement from Anthony and Linda Guzman and Joseph and Sandra Dyson agreeing to the expansion of the mining operation and

a reduction of the required 200-foot setback from their respective property lines has been received as part of the staff report.

Staff has reviewed the application and finds it to be substantially in compliance with Section 51.3.79. The "B" buffer requirement of 75 feet in width will be met with the existing forest cover. The Erosion and Sediment Control Plan was approved by the Soil Conservation District (SCD). SCD will give final approval once the applicant has received conditional use approval and submitted a final site plan for signature. The Health Department and the Maryland State Highway Administration have granted approvals. The Metropolitan Commission has no comments for this application, as it does not impact their agency. Applicant is working with the Department of Public Works and Transportation and the Department of Land Use and Growth Management to fully address comments from the agencies prior to final site plan approval.

Mr. Callaway moved to adopt the February 4, 2004 Staff Report as presented. Seconded by Mr. Delahay and passed by 5-0.

The Chair opened the hearing to public comment. There were no comments.

Mr. Callaway moved that, having adopted the 2/4/04 Staff Report and making a finding that the Standards for Variance of Section 24.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approved a Variance from Section 51.3.79 of the Ordinance to allow the reduction of the setback from 200 feet to 25 feet at its closest point to the adjoining A.R. Guzman property and to reduce the setback from 200 feet to 85 feet from the adjoining J.C. Dyson property, as requested. The motion was seconded by Ms. Underwood and passed by a vote of 5-0.

VAAP #03-1330 (Lot 10); VAAP #03-1331 (Lot 11); VAAP #02-2542 (Lot 12) – LEVERINGS SUBDIVISION

Requesting a Variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing woodland. The property contains 11,916 square feet on Lot 10, 10,032 square feet on Lot 11, and 10,032 square feet on Lot 12 of the Leverings Subdivision, is zoned RL (LDA Overlay), and is located on Patuxent Lane in California; Tax Map 35, Block 1, Parcel 1.

Owners/Present: Denise Gardner, 3-D
Construction, Owner
William Higgs, Surveyor, LSR,
Inc.

Legal Ad published in The Enterprise on 1/28/04 & 2/4/04

#A-1 Certified Receipts of notification to contiguous property owners

#A-2 Pictures from Denise Gardner of homes in the Leverings Subdivision

The Chair asked Legal if all three lots could be combined for the Public Hearing. John Norris replied yes all lots could be combined but each lot would need to have separate motions.

The Applicant is requesting a Variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance #Z-02-01 to clear in excess of 30 percent of the existing woodland with the recommended condition to adhere to the Critical Area Planting Agreement and to provide planted mitigation totaling 8,196 square feet.

On Lot 10 the Applicant is proposing to construct a 4,635 square-foot single family dwelling with appurtenances. The proposed dwelling, at its closet point, will be located approximately 74 feet from the mean high water of the Patuxent River. The well will be located approximately 45 feet from mean high water. Including the deck, only a portion of the house and the well will be in the Critical Area Buffer. The septic tank and drain fields will be located outside of the Critical Area Buffer between the proposed dwelling and the front lot line.

The Applicant is proposing to construct a 3,370 square-foot (Lot 11) and 2,599 square-foot (Lot 12) single family dwelling with appurtenances. The proposed dwelling, at its closet point, will be located approximately 69 feet from the mean high water of the Patuxent River. The well will be located approximately 42 feet from mean high water. Part of the house, including the deck, and the well will be in the Critical Area Buffer. The septic tank and drain fields will be located outside of the Critical Area Buffer between the proposed dwelling and the front lot line. The existing detached garage will be removed. Lot 11 and 12 will share a driveway.

The Health Department and SCD reviewed and approved the site plan. SCD is requiring a standard erosion and sediment control plan. The Maryland Critical Area Commission does not oppose this variance request for new development in the expanded Critical Area Buffer.

Mr. Delahay moved to adopt the February 4, 2004 Staff Report for Lot 10, 11, and 12 as presented. Seconded by Ms. Underwood and passed by 5-0.

The Chair opened the hearing to public comment.

Mr. Higgs stated one of their issues is with the environment and they have stayed within their limit of 30 percent limit for impervious surface in the Critical Area Buffer. He further said with regards to the general standards, because of the particular physical surroundings such as narrowness, shallow on one side, shape and topographical conditions of the property involved, this strict enforcement of the Ordinance will result in difficulty. He said with the Critical Area Buffer setback and the areas for the perc for the Health Department are in the back of the lot making it difficult to where to place the house, the driveway and the septic system. The footprint of the house is confined to the only area on the lot that has trees on it.

Ms. Gardner, owner and the builder, stated she has built nine homes in Leverings Subdivision and she also lives in Leverings Subdivision. Ms. Gardner gave pictures to the Board showing the landscaping she does for the homes when the homes are completed.

Steve Liebler, 45822 Patuxent Lane and lives on this road, stated his main concern is the road; it has huge pot holes and was a total mess after the recent snow storm. He stated the community paid to have the road paved, everyone who lives on this road paid \$1,000. There was a Board of Appeals meeting in June 2001 stating agreement to all new homeowners who build on this road to pay \$1,000 to help share the cost.

Clark Raley, 45816 Patuxent Lane, stated he applauds Ms. Gardner's efforts in the construction of the six homes she has done. He further stated his main concern is the road issue, with the increase of development and heavy trucks have done considerable damage to the road. He said he remembers the meeting when the Board of Appeals held a meeting at Chopticon High School and the Board proposed an agreement to pay \$1,000 for every house built. The Chair asked was an agreement done with Ms. Gardner at the Board of Appeals meeting and he replied yes.

The Chair asked if Ms. Gardner paid for the three houses. Mr. Raley replied to his knowledge only one was paid and he is not sure if the other two were paid. He said Mr. Jeff Pinkal keeps those records. He stated he believes \$3,000 would put this road back in the correct condition it was before all of the construction.

Jeff Pinkal, 45904 Patuxent Lane, stated he thinks Ms. Gardner does a great job with the construction of the homes. He said he has concerns regarding the road; they are just looking for fairness or a condition for Ms. Gardner to pay \$1,000 for construction of each house. He stated they have not used all the money that has been contributed thus far for road maintenance by other home owners. He said their plan was to initially put down a road surface, wait for Ms. Gardner to complete construction and then go back over the road

and put a final finish on the road. They are only looking for an equal amount from each one of the lots to add to the road and provide additional maintenance.

Tom Pellagotty, 23087 Three Notch Road in California, stated he is the attorney representing Ms. Gardner. He said Ms. Gardner is interested in doing something with the damage on the road plus she would like to see a road maintenance done throughout the year. He further stated Ms. Gardner is very interested in having the road fixed; not only is she the builder of these houses on the lots in question but she also lives on this road. The only concern Ms. Gardner has is there are no accounting, no contracts or bids done for the funds that were previously received.

The Board questioned Ms. Gardner if the road maintenance of \$1,000 per house was a problem. Ms. Gardner replied she had no problem with the \$1,000 cost per house, her main concern was there are no formality with these funds that are collected and just sitting in an account at a bank. She further stated she has been maintaining the road from her house to the entrance.

The Chair closed the public hearing.

Ms. Underwood moved that, having adopted the 2/4/04 Staff Report and making a finding that the Standards for Variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, for Lot 10, the Board approved Variance to clear in excess of 30 percent of the existing woodland, subject to the condition that the applicant adhere to the requirements of the Planting Agreement (CAPA #03-1330), to provide planted mitigation totaling 8,196 square feet as follows:

- (1) 1,483 square feet of planted two to one mitigation to offset 741.5 square feet of new impervious surface in the Critical Area Buffer in the BMO as required in accordance with §41.7.5.a(1) of the St. Mary's County Zoning Ordinance; AND
- (2) 1,620 square feet of planted three to one mitigation to offset 540 square feet of clearing in the Critical Area Buffer as required in accordance with §72.3.3.a(2)(c) of the St. Mary's County Comprehensive Zoning Ordinance; AND
- (3) 17,610 square feet of planted three to one mitigation to offset the balance of the clearing 5,870 square feet, which exceeds the 30 percent clearing limit in the Critical Area as required in accordance with §72.3.3.a(2)(c) of the St. Mary's County Comprehensive Zoning Ordinance; AND
- (4) The applicant will pay to the owner of the right-away or Mr. Jeff Pinkal an estimated amount of \$1,000 per lot fee to restore the road upon completion of construction.

The motion was seconded by Mr. Callaway and passed by a vote of 5-0.

Ms. Underwood moved that, having adopted the 2/4/04 Staff Report and making a finding that the Standards for Variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, for *Lot 11*, the Board approved a Variance to clear in excess of 30 percent of the existing woodland, subject to the condition that the applicant adhere to the requirements of the Planting Agreement (CAPA #03-1331), to provide planted mitigation totaling 9,917 square feet as follows:

- (1) 1,967 square feet of planted two to one mitigation to offset 983.5 square feet of new impervious surface in the Critical Area Buffer in the BMO as required in accordance with §41.7.5.a(1) of the St. Mary's County Zoning Comprehensive Ordinance; AND
- (2) 7,950 square feet of planted three to one mitigation to offset clearing of 2,650 square feet which exceeds the 30 percent clearing limit in the Critical Area as required in accordance with §72.3.3.a(2)(c) of the St. Mary's County Comprehensive Zoning Ordinance; AND
- (3) The applicant will pay to the owner of the right-away or Mr. Jeff Pinkal an estimated amount of \$1,000 per lot fee to restore the road upon completion of construction; AND

The motion was seconded by Mr. Callaway and passed by a vote of 5-0.

Ms. Underwood moved that, having adopted the 2/4/04 Staff Report and making a finding that the Standards for Variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, for *Lot 12*, the Board approved a Variance to clear in excess of 30 percent of the existing woodland, subject to the condition that the applicant adhere to the requirements of the Planting Agreement (CAPA #02-2542), to provide planted mitigation totaling 8,196 square feet as follows:

- (1) 996 square feet of planted two to one mitigation to offset 498 square feet of new impervious surface in the Critical Area Buffer in the BMO as required in accordance with §41.7.5.a(1) of the St. Mary's County Zoning Ordinance; AND
- (2) 3,600 square feet of planted three to one mitigation to offset clearing of 1,200 square feet of clearing in the Critical Area Buffer as required in accordance with §72.3.3.a(2)(c) of the St. Mary's County Zoning Ordinance; AND

- (3) 3,600 square feet of planted three to one mitigation to offset 1,200 square which exceeds the 30 percent clearing limit in the Critical Area as required in accordance with §72.3.3.a(2)(c) of the St. Mary's County Comprehensive Zoning Ordinance;
AND
- (4) The applicant will pay to the owner of the right-away or Mr. Jeff Pinkal an estimated amount of \$1,000 per lot fee to restore the road upon completion of construction.

The motion was seconded by Mr. Callaway and passed by a vote of 5-0.

MINUTES, ORDERS AND RULES OF PROCEDURE OF THE BOARD OF APPEALS APPROVED

The minutes of January 8, 2004 were approved as recorded. Order VAAP #01-1902, for George & Maureen Diaz, was approved as submitted. The Board of Appeals February 4, 2004 updated Rules of Procedure were approved and signed.

ADJOURNMENT

The meeting was adjourned at 8:35 p.m.

Janice C. Blackistone
Fiscal Specialist

Approved in open
session: March 11, 2004

Marie E. Underwood
Chairperson