

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, March 29, 2007**

Members present were George Allan Hayden, Chair; George Edmonds, Board of Appeals First Alternate; Ronald Delahay; Wayne Miedzinski; and Gertrude Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Specialist; and Amanda Sivak, Recording Secretary. Christy Holt Chesser, County Attorney was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

VAAP #06-2966 - Jones

The Applicant is requesting a variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback. The property contains .46 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay District; and is located at 42170 White Point Beach Road, Leonardtown, Maryland; Tax Map 56, Block 01 Parcel 58.

Owner: William and Martha Jones

This case was advertised in the *St. Mary's Today* on 03/11/07 and 03/18/07 and *The Enterprise* on 03/14/07 and 03/21/07. The property was posted and certified mail receipts were submitted to staff for the files.

Mr. Jones explained he is requesting to put an 8 foot wide porch across the front of the house. The house was built back in the 1940's. Mr. Jones planned to originally construct the porch the full length of the house, but now would like to shorten the porch by 3 or 4 feet to add stairs that. Mr. Miedzinski questioned if he wants is to make the porch 40 feet. Mr. Jones explained he is planning to make the porch with the stairs no longer than the width of the house.

Ms. Chaillet explained the property is in the RCA, but does not have any critical area issues and the environmental planner has signed off on the environmental aspect of the permit. The variance is for a reduction of the front yard set back. The house at one time had a porch that has since been enclosed.

Mr. Delahay questioned what the use of the enclosed porch is. Ms. Chaillet explained it is now living space. Mr. Jones explained the front part of the house was a porch with windows and they had enclosed the porch by taking out those windows, making the space a living room area.

Mr. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public testimony.

The Chair closed the hearing to public testimony.

Mr. Hayden explained the Jones' want to add a modest addition to their house and they don't have much room and need a variance to construct this porch. Mr. Delahay questioned how this would affect the road. Mr. Miedzinski explained Mr. Jones lives near the end of the road and there is no chance of building further on that road.

Ms. Scriber moved that having accepted the staff report, dated March 19, 2007, and having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board granted approval of the variance to reduce the required yard set back from 25 feet to 11 feet. Mr. Miedzinski seconded the motion and passed by a 5-0 vote.

**CUAP #06-132-007 – Winstead Property Surface Mine
(Continued from January 25, 2007)**

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance for an extractive industry over five acres. The property contains 60.58 acres; is zoned Rural Preservation District (RPD); and is located on the west side of Thompson Corner Road approximately 1.7 miles North of MD Route 234 in Mechanicsville, Maryland ; Tax Map 11, Block 05, Parcel 26 and 63.

Owner: William Winstead
Present: Dan Ichniowski, NG&O engineering; William Winstead, Property Owner; Joe Penn, President of Howlin Concrete, Derek Taylor, Operations Manager Howlin Concrete.

These cases were advertised in the *St. Mary's Today* on 1/7/07 and 1/14/07 and in the *Enterprise* on 1/10/07 and 1/17/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Hayden explained he wanted to review the conditional use and variance at the same time and have two motions at the end. The Board was in agreement with this request.

Ms Chaillet explained the Applicant is requesting a conditional use approval to mine more than five acres. Mr. Ichniowski explained the Applicant is requesting to mine approximately 38 acres of the 60 acre site. It is proposed to be mined in nine phases, ranging in size from 3.5 acres to 4 acres in size. The total amount of gravel and material expected to be extracted from the site is approximately 700,000 cubic yards. The daily operations proposed are from 6:30 a.m. to 5 p.m. Monday thru Friday and from 6 a.m. to 12 noon on Saturdays. They are asking to haul 100 loads of gravel a day to the Howlin Concrete wash plant via Route 236. There will be no processing buildings or equipment placed on the property itself. The entrance to Route 236 will be designed to meet State Highway specifications.

A traffic study was completed. The study indicates the current road is adequate for the property's intended use. The study takes into consideration the three mining operations Howlin operates on Route 236. The study indicates there is sufficient traffic capacity on Route 236 for the amount of traffic volume that will produced by these sites. The study takes into consideration the percentage of trucks, curvature of the road, and speed limit on the road. The volume of traffic on Route 236 has stayed the same or slightly decreased since 2005. Mr. Ichniowski explained if the property was developed into twenty lots, the traffic volume coming from those properties would be 191 car trips per day.

As the mining phase is completed, the restoration phase of the project will be begin. There will be no more than 15 acres of land opened, mined or restored at any one time. The restorations will be in accordance with the conditions of the Ordinance and the Maryland Department of the Environment. After the work is completed, the future use of the land will be agricultural.

Ms. Chaillet explained the Ordinance only requires a 75 foot "B" buffer yard. The 100 foot "B" buffer yard includes the 10 foot berm. There was a meeting with Howlin and Mr. Ichniowski, staff learned the material taken from this site will be taken to a wash plant in Charlotte

Hall. The wash plant can only handle 150 loads per day. This includes Howlin's St. Mary's and Charles County operations, along with smaller contractors that use the plant. The entrance to the mining operation will meet State Highway Standards, a fence and gate will be installed to control access. There will be an acceleration and deceleration lanes constructed.

The Applicant has met the standards for conditional use and has demonstrated the mining operation will be located so it minimizes the environmental and visual impacts. The site plan has gone through TEC review and any remaining TEC comments will be addressed through the final site plan once conditional use has been granted. The establishment will not be detrimental to the surrounding community and though the property is heavily wooded the front of the property is open pasture. The 100 foot buffer and 10 foot berm will lessen the visual impact, dust and noise from the mining operation. The operation will be conducted on an agricultural parcel that is surrounded by other agricultural properties. Staff recognizes the truck traffic is a concern, a traffic study was completed and the SHA does not require a traffic study that includes a comprehensive study of all the impacts on the road. Condition number 5 states no raw or mining materials shall be brought into the mining site from elsewhere. The staff recommends removing this condition or modifying it so the excess material from the washing process can be returned to the mining site for reclamation.

Ms. Chaillet presented a map of all the mining operations on or around Route 236.

**VAAP #06-132-007 – Winstead Property Surface Mine
(Continued from January 25, 2007)**

The Applicant is requesting a variance from Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required setback from an external property line. The property contains 60.58 acres; is zoned Rural Preservation District (RPD); and is located on the west side of Thompson Corner Road approximately 1.7 miles North of MD Route 234 in Mechanicsville, Maryland ; Tax Map 11, Block 05, Parcel 26 and 63.

Owner: William Winstead
Present: Dan Ichniowski, NG&O engineering; William Winstead, Property Owner; Joe Penn, President of Howlin Concrete; Derek Taylor, Vice President of Howlin Concrete; Tommy Demar, Operation Manager Howlin Concrete.

Mr. Ichniowski explained there are two (2) property lines where that are surrounded by streams and a wetlands buffer. Parts of these buffers exceed 200 feet; over half of the property line, there is a small area where the buffer does not exceed 200 feet. There is a small pond from a previous mining operation on a neighboring parcel. In accordance to the St. Mary's County Zoning Ordinance the front of the property would require a "B" type buffer yard. Along with the "B" type buffer yard, the Applicant proposes a 10 foot high berm that will be seeded.

Ms. Chaillet explained the extraction of the gravel involves mining below the surface of the land and is contingent on locating and following the mineral seam. Budds Creek and other streams flow along the rear of the property and non-tidal wetlands are located south and southwest on the property. Budds Creek requires a 100 foot set back and the intermittent stream requires a 50 foot setback. The non-tidal wetlands require a 25 foot setback. The pond on the south west corner of the property is also a non-tidal wetland and requires a 25 foot setback. There is an existing dwelling shown on the property and there is a 50 foot setback from that dwelling. The dwelling is unoccupied and there are no immediate plans for occupation. For these reasons a variance is needed. There is an existing mature tree line and the applicant has proposed a buffer mitigation to reduce the visual impacts. Ms. Chaillet asked for an additional condition to the variance for a 100 foot buffer with a 10 foot high berm along the frontage of the property. Mr. Edmonds asked if the state takes into consideration of the amount of traffic that will be placed onto the road. Ms. Chaillet explained there is almost never an instance where the

maximum number of trucks is on the road on any given day. The nature of the industry has the Applicants using different types of material for their product.

Mr. Miedzinski moved that having accepted the staff report(s), the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The Chair opened the hearing to public testimony.

Ms. Dawn Tierney explained her family purchased their farm in 1980. She has since built a home on the family farm along with her brother. There will be a daycare center in the home of the brother. Ms. Tierney expressed concern about the total number of trucks that had the potential to be using Route 236. Route 236 is used to access Wicomico Shores, the race tracks, and tractor trailers hauling trash to Virginia. There is only a blinking light on the intersection of Route 236 and Route 5. Ms. Tierney expressed concern about the proposed daycare and the truck's stopping time due to the hills on the road. Route 236 has pot holes and trucks coming from the Pit on Millwood Lane are dropping dirt and gravel on the road that become mud and the rocks are able to break windshields. Ms. Tierney contacted the Sheriff's Department and asked them to conduct traffic stops there. Recently there were trucks stopped, between 8 and 10 trucks were taken off the road because of violations.

Ms. Dawn Tierney's main concerns are for the children that will be getting on and off the school buses and the condition of the road. Ms. Tierney questioned where the acceleration and deceleration lanes will be located. Mr. Ichniowski explained they will be on the entrance to the property. Mr. Hayden questioned if only a deceleration lane will be installed. Mr. Ichniowski explained there will be some widening of the road to accommodate the lanes. Mr. Hayden questioned when the state requires the deceleration lane and will they require an acceleration lane. Mr. Ichniowski explained it's not always a requirement, but the design still needs to be approved by the state. Ms. Tierney questioned if the lanes will be paved and how the number of car trips was calculated if the land were converted into lots. Mr. Ichniowski explained an average house generates about 9 car trips a day. These trips include those going to and from work, deliveries, school busses, and other types of uses. Ms. Tierney explained even though there will be a buffer, her house sits on a hill and she would like it pressure washed by Howlin while they are mining. She also questioned if the trucks need to start at 6:30 in the morning and if the Saturday hours could be decreased.

Ms. Margaret B. Roberts expressed concerns about the safety issue. She explained her property is in a dip of a hill that has a blind corner on top of the hill. Because there will be a daycare on the property, she is concerned about the school buses that will be stopping at her property. She explained that even though the speed limit is 40, the trucks tailgate on the road and do not follow the speed limit. The other concern is the trucks at the intersection of Route 5 going north. This is a dangerous intersection. She wants the county to look at installing a light at the intersection because there are up to three dump trucks in the intersection median waiting to turn while there are cars waiting to go north also. She expressed concern about the dirt and rocks coming from the trucks. Ms. Roberts explained she has a broken windshield already from the Millwood Lane pit.

The Chair closed the Hearing to public testimony.

Mr. Ichniowski explained the wash plant can only handle 150 truckloads a day. The total allowable trips are 275. Mr. Hayden asked if the material was all the same through out. Mr. Ichniowski explained the material varies in size and composition.

Mr. Ichniowski explained the dust issue is a concern to the Applicant as well. The dust can ruin engines and equipment. Mr. Ichniowski explained the traffic signal issue is handled by Howlin since the wash plant is south of the Route 236 and Route 5 intersection. There is a light

at Route 6 that provides breaks in the traffic and adding a light at Route 236 may or may not help the traveling public. The Stolfuz Pit #2 entrance will be paved as soon as the asphalt plants are available for the project. Mr. Hayden questioned if having that entrance area completed was part of the permit process and need to be complete before the permit was issued. Mr. Ichniowski explained the Applicant had the entrance bonded to have it constructed. The base of the entrance had to be taken out and reinforced to ensure it will hold the weight. The Applicant was given a release from SHA. Mr. Miedzinski questioned if all the material that is removed will go to the wash plant or will it be used for bank run material. Mr. Penn explained they sell very little of their gravel to bank run projects. He estimated about 99% of their material goes to the wash plant.

Mr. Hayden questioned if it was important to have all of the pits open at one time. Mr. Penn explained it was important because two of their pits do not have the gravel type needed to create their product. Mr. Hayden questioned if the gravel they need is in the Winstead Pit. Mr. Penn explained they tested the land and it does have the gravel needed. The other pits cannot be mined at this moment because they are not in the sequence or Howlin needs to work with MDE to determine what needs to be done about the wetlands on the property. Mr. Hayden explained the board has safety concerns, but realize the demand for the product.

Mr. Edmonds questioned how to get a traffic light installed at a specific area. Mr. Canavan explained the SHA would have to conduct a warrant analysis. This could be brought up by one of two things; the volume of turns or accidents that occur at the intersection.

Mr. Miedzinski asked if Mr. Ichnowski is familiar with the letter from SHA in 2005. Mr. Ichnowski explained they were not aware of the letter until the previous week. Their traffic consultant reviewed the letter. SHA will only request a traffic study if there are 50 peak trips an hour from a site. The Applicant had their traffic study include all pits and Mr. Ichnowski believes this generated the letter. Mr. Miedzinski explained the study was conducted in the rain and that may have affected the numbers.

Mr. Miedzinski questioned how many truck loads they are able to pull from the pits each day. Mr. Penn explained they can pull from 100 trucks from Stolfuz pit and 75 from the Swan pit. Mr. Penn explained they are not allowed to haul out of those pits on Saturdays. Mr. Penn explained that he is willing to shorten his day on Saturday and not haul if they could work in it. Mr. Hayden explained the safety of the pedestrians, Amish community is very high on the priorities list, but is concerned about Mr. Penn's business. Mr. Hayden asked what can be done with the property after they have completed mining it. Mr. Penn explained once it has been mined, it will not perc. The land will revert to agricultural use after they are finished. The front of property is agricultural the back had been timbered at one time. Mr. Penn believes its Mr. Winstead's intentions to keep the property in the family.

Mr. Miedzinski questioned if Mr. Penn would be able to work with 200 total loads from all three of the pits. Mr. Penn explained he will be as adaptable as possible. Mr. Hayden questioned if Mr. Miedzinski was suggesting only allowing 25 loads out of the Winstead property since previous cases cannot be reviewed. Mr. Canavan asked the BOA to consider limiting the accumulative of the three areas and then limit this one to a particular and open up the other cases to add the addendum to the other cases. Mr. Hayden asked if they can do that with Howlin Concrete's permission. Mr. Canavan explained with Howlin Concrete's permission since they already have the other two orders.

Mr. Canavan asked if Howlin had any other pits coming to the Board. Mr. Penn explained none of the proposed pits are owned by Howlin. Mr. Penn explained they have one more pit that is not on the map Ms. Chaillet handed out because it is less than five acres. The pit is an emergency pit only because of its small size. Mr. Penn explained that 250 loads would be a better number for the company based on the wash plant capacity, weather, and days available for hauling. Mr. Penn explained they would consider amending the other two cases. Mr. Delahay explained he believes the total number coming from all the pits should be no more than 225 loads. Mr. Scriber expressed concern about the safety, but would like to find a happy medium

because people need to work. Mr. Edmunds explained he supports limiting the number of hauls and if Mr. Penn is willing to just work the pit on Saturday that would reduce the traffic and noise on Route 234 and Route 236. Mr. Canavan explained part of his concerns is the daycare center. He questioned how many children would be at the daycare, the owners explained there would be about 8 children and the other concern is the character of the road. Mr. Canavan inquired if there is an opportunity for improvement to Route 236 to allow a pull off for school buses. Mr. Ichniowski explained he would have to perform an assessment of the road first to determine if it is possible.

Mr. Miedzinski expressed concern with adding another 100 truckloads without a better traffic study. He would be willing to propose a cumulative total. Mr. Ichniowski questioned if a traffic study was conducted and found the intersections could handle more truckloads that Howlin Concrete come back and amend the number of truck loads. Mr. Hayden explained they would have to go through this process again, but it was possible. Mr. Hayden questioned when they could open those two cases. Ms Chaillet explained that the legal ad has gone out for the April meeting but it could be done in May if there isn't a second April meeting.

CUAP #06-132-007 – Winstead Property Surface Mine

Having accepted the staff report, dated March 19, 2007, and having made a finding that the Standards for a Conditional Use pursuant to Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board granted approval for an extractive industry involving the mining of more than five acres on the Winstead Property, subject to the following conditions:

1. **All applicable Federal, State and local ordinances, regulations and laws shall be adhered to. A copy of the State Mining Permit shall be on file in the Department of Land Use and Growth Management.**
2. **All mining operations shall cease as of December 31, 2016 unless the Applicant Requests an extension of the conditional use prior to its expiration shall cease as of December 31, 2016 unless the Applicant Requests an extension of the conditional use prior to its expiration.**
3. **The maximum number of trucks hauling from the Property shall not exceed 100 truckloads, or 200 roundtrips, per day. The use of "jake brakes" shall be prohibited.**
4. **Hours of operation for the mining operation shall be from 6:30 a.m. to 5:00 p.m., Monday through Friday and from 8:00 a.m. to 12:00 p.m. Saturday. No hauling shall be done on Saturday and no operations shall be permitted on Sundays or Holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
5. **No other raw/mining materials shall be brought from off-site and placed in the subject property except for reclamation purposes only.**
6. **No topsoil shall be removed from the site. All topsoil shall be stockpiled for reclamation purposes.**
7. **There shall be no burning on-site except for trees and other wood products derived from site clearing and grubbing operations.**
8. **The haul road and the portion of MD Route 236 along the Property's frontage shall be treated with water during hauling operations to effectively minimize dust.**
9. **The natural flow of water through the surrounding properties shall not be altered or restricted by the Applicant as a result of this conditional use.**

10. The property shall not be used as a fill or landfill operation cited in the St. Mary's County Solid Waste Ordinance.
11. There shall be no buildings constructed on site for the purposes of the mining operation, and no on-site sales shall be authorized.
12. A 200-foot undisturbed setback shall be required around the perimeter of the subject mining operation, subject to approval of a variance to reduce the set back.
13. Prior to the extraction of any natural resources, the Applicant shall obtain all applicable approval with copies submitted to the Department of Land Use and Growth Management. The conditions imposed but h approval and all other applicable federal, stat, and local ordinances, regulations, and laws shall be binding on the owners of this property, their partners, lessees, heirs and assigns. All requirements of codes and laws relative to mining operation St. Mary's County and the State of Maryland as the apply to St. Mary's County shall be adhered to.
14. The Department of Land Use and Growth Management, its employees and agents, are authorized to make official on-site inspections with the St. Mary's County Zoning Ordinance, and may not be refused entry to monitor and enforce the Board of Appeals conditions of approval.
15. All of the conditional approved in this application shall be listed on the final site plan.
16. Any Changes or Modifications of the Conditional use approved for this site shall be approved by the Board of Appeals.
17. The Applicant shall provide a 100-foot planted buffer and a 10-foot high berm along the Property's frontage with MD Route 236.
18. Any violations of the conditions of the approval or violation of any Federal, or State laws, rule, regulations, codes, or ordinances may result in the suspension or revocation of the decision by the Board of Appeals.
19. The total acreage excavated at any one time will be no m ore than 15 acres (exclusive of the ponds, silt residue site, and support area). These 15 acres include five (5) acres of mining, five (5) acres for closeout and restoration, and five (5) acres allocated to preparing the next mining area.
20. The cumulative of all three (3) mines, Stoltfuz Pit, the Swan Property, and the Winstead Property, shall be no more than 400 roundtrips or 200 truckloads per day and with the permission of the applicant the two previous cases shall be opened to include this condition.

VAAP #06-132-0076 – Winstead Property Surface Mine

Having accepted the staff report, dated March 19, 2007, and having made a finding that the standards for variance to Section 24.3 in the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board granted approval of the variance to reduce the required setback from all external property lines from 200 feet to 100 feet, subject to the condition to reduce the required setbacks from all external property lines from 200 feet to 100 feet, subject to the following conditions:

1. The applicant shall plant a 100 foot "B" buffer yard along the Property's frontage with MD route 236. A 10 –foot high berm shall be planted within this buffer yard.

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance for an extractive industry over five acres. The property contains 199.70 acres; is zoned Rural Preservation District (RPD); and is located at 36652 Bethel Church Road, Maryland; Tax Map 12, Block 13, Parcel 02.

Owner: Sam and Hannah Hertzler.
Present: Jerry Soderberg, DH Steffens Company; Jimmy Richards, Jimmy Richards and Sons.

This case was advertised in the *St. Mary's Today* on 3/11/07 and 3/18/07 and in the *Enterprise* on 3/14/07 and 3/21/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Ms. Chaillet explained the condition is for an extractive industry. Mr. Soderberg explained the mining operation would be off of Bethel Church Road about 1300 feet back from the road. The mining will occur in possibly five phases. Phase 4 and 5 of the mining are under consideration, but may not be mined. Mr. Hayden questioned why phases 4 & 5 may not be mined. Mr. Soderberg explained the preliminary digs show that the material may not be suitable for the Applicant's business.

Mr. Soderberg asked the board consider the following changes to the conditions the staff recommended. Condition 7 is a 75 foot "B" buffer yard. The owners of the property do not want to plant trees on the front of the property because they plow as close to the edge of the road as possible and the actual mining operation is far from the actual road and is not visible. Mr. Hayden questioned if there is tree buffer on part of the property line. Mr. Soderberg explained the top edge of phase five has a partial tree buffer. Mr. Canavan explained the actual extraction operation is so distant from the road and the land owners desire to continue the agricultural use. Mr. Hayden explained phase one is actually down a hill and you can't even see the road. Mr. Canavan explained that because the agricultural pursuit is what LUGM wants he would forego the buffer on Bethel Church Road. Condition 8 they would like to have the same wording that was used in Mr. Penn's case for reclamation. Condition 5 they requested having the trucks come down Route 236 for the first trip in the morning to the site. Mr. Delahay asked Mr. Soderberg how many trucks were in use. Mr. Richards explained they use between 10 and 20. Mr. Hayden explained that Mr. Richards' office is behind the Nursery on Billingsly Road. Mr. Soderberg explained other than those three conditions they agree with the staff report.

Mr. Richards explained the company would stop operations on Friday's at 3 p.m. and on Saturday's they would limit their work because of the issues with the race track and the Amish sales on Saturdays. Mr. Hayden asked if Mr. Richards would be stopping work on Friday's at 3 p.m. and no hauling on Saturdays. Mr. Richards explained because they are an industry that operates around the weather, they would limit hauling. Mr. Delahay questioned how many trucks would be going out from the Pit. Mr. Richards explained about 50 truckloads depending on the weather during the week. Mr. Hayden questioned if they hauled directly to the job site. Mr. Richards replied yes. Mr. Hayden asked if Mr. Richards was planning on using Route 234 to deliver his loads. Mr. Richards replied yes. Mr. Delahay asked Mr. Hayden how they can justify having one person not haul on Saturdays, and allow others. Ms. Chaillet explained each piece of property needs to be judged on its own merits. Mr. Edwards asked if Mr. Richards could just work in the pits on Saturday's. Mr. Richards explained he could.

Ms. Chaillet explained the distance from Bethel Church Road to Route 234 is half mile or less. There is stream on the property that requires a 100 foot buffer and there are non-tidal wetlands that require a 25 foot buffer. The entrance to the mining operation will be constructed to the regulations of DPWT and they have requested an entrance and site distance plan. They are requiring the Applicant to post a \$25,000 maintenance bond. The removal of the buffer would have to be obtained by a variance. The engineered soil and sediment control plan will be submitted to SCD and MDE. The Applicant has met the standards for the conditional use.

Ms. Scriber moved that having accepted the staff report(s), the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to Public Testimony.

Mr. Frank Salcran explained he has no objections to the proposed mining operation. Mr. Salcran explained he has lived in that area since he was in Margaret Brent High School. He has seen the traffic get more congested over the years. The traffic is a concern because of the mix of traffic on the roads. He wonders if Bethel Church Road will be able to withstand all the traffic that will be placed on it and if there is anything going to be done about the pot holes they may occur. He has some concerns about that noise but does not think it will be an issue. Mr. Salcran is also worried about the sharp corner at the intersection of Bethel Church Road and Thompson's Corner Road. There are many accidents due to speeding and missing the corner.

The Chair closed the hearing to Public Testimony.

Mr. Soderberg explained Mr. Salcran is correct about that corner, but he believes there is sufficient distance and visibility for the truck drivers. There is a \$25,000 bond for repairs. Mr. Hayden asked if Mr. Soderberg knew if there were any weight limits on that road. Mr. Soderberg explained there are none and if the road isn't capable to withhold the weight of the trucks, it will show very quickly and will have to be fixed. Mr. Miedzinski questioned if there is a way to maintain that 75 foot buffer along the upper edge of phase 4. Mr. Soderberg explained Mr. Hertzler would not be opposed to that condition and Mr. Richards was in agreement.

Having accepted the staff report, dated March 21, 2007, and having made a finding that the standards for a Conditional use pursuant to Section 25.6 of the Comprehensive Zoning Ordinance have been met, the Board granted approval of the request for an extractive industry involving the mining of more than five acres on the Hertzler Property subject to the following conditions:

- 1. All applicable Federal, State and local ordinances, regulations and laws shall be adhered to. A copy of the State Mining Permit shall be on file in the Department of Land Use and Growth Management.**
- 2. The total acreage approved shall not exceed 41.58 acres and the reclamation plan shall include all bench marks, and no more than five acres are to be mined at any one time. The mining schedule shall be as follows: five (5) acres being prepared for mining, five (5) acres of mining, and five (5) acres being reclaimed. Reclamation grass and seeding shall be completed within six (6) months after the mining activities have ceased.**
- 3. All mining operations shall cease as of December 31, 2017.**
- 4. A bond in the amount of \$25,000 shall remain in effect with the Department of Public Works and Transpiration to ensure future repairs to Bethel Church Road. In addition, the maximum speed for the gravel trucks shall be 35 miles per hour on Bethel Church Road.**
- 5. The maximum number of 100 truckloads per day (which equals 200 roundtrips) shall be used to haul materials from the site. The travel route shall be west on Bethel Church Road and south on Thompson Corner Road. No trucks traveling to or from the subject**

- site shall utilize Thompson Corner Road north of Bethel Church Road at any time except for the first trip of the day to the pit.
6. Hours of operation for the mining operation shall be from 7:00 a.m. to 6:00p.m., Monday through Friday and from 8:00a.m. to 2:00 p.m. Saturday. No hauling shall be done on Saturday and no operations shall be permitted on Sundays or Holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).
 7. A 75-foot buffer yard shall be planted along the north point of section 4 that runs from the haul road to the existing wetland buffer.
 8. No other raw/mining materials shall be brought from off-site and placed in the subject Property except for reclamation purposes only.
 9. No topsoil shall be removed from the site. All topsoil shall be stockpiled for reclamation purposes.
 10. There shall be no burning on-site except for trees and other wood products derived from site clearing and grubbing operations.
 11. The all access roads used for the conditional use shall be treated with water during hauling operations to effectively minimize dirt dust.
 12. The natural flow of water through the surrounding properties shall not be altered or restricted by the Applicant as a result of this conditional use.
 13. The property shall not be used as a fill or landfill operation cited in the St. Mary's County Solid Waste Ordinance.
 14. There shall be no buildings constructed on site for the purposes of the mining operation, and no on-site sales shall be authorized.
 15. A 200-foot undisturbed setback shall be required around the perimeter of the subject mining operation.
 16. Prior to the extraction of any natural resources, the Applicant shall obtain all applicable approval with copies submitted to the Department of Land Use and Growth Management. The conditions imposed but h approval and all other applicable federal, stat, and local ordinances, regulations, and laws shall be binding on the owners of this property, their partners, lessees, heirs and assigns. All requirements of codes and laws relative to mining operation St. Mary's County and the State of Maryland as the apply to St. Mary's County shall be adhered to.
 17. The Department of Land Use and Growth Management, its employees and agents, are authorized to make official on-site inspections with the St. Mary's County Zoning Ordinance, and may not be refused entry to monitor and enforce the Board of Appeals conditions of approval.
 18. All of the conditional approved in this application shall be listed on the final site plan.
 19. Any Changes or Modifications of the Conditional use approved for this site shall be approved by the Board of Appeals.
 20. Any violations of the conditions of the approval or violation of any Federal, or State laws, rule, regulations, codes, or ordinances may result in the suspension or revocation of the decision by the Board of Appeals

MINUTES AND ORDERS APPROVED

The minutes of March 8, 2007 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:

VAAP #06-1618 - Walker
CUAP #07-0127 - Chopticon High School
VAAP #06-3086 - Kaper
VAAP #05-2671 - Lewis

ADJOURNMENT

The meeting was adjourned at 9:35 p.m.

Amanda Sivak, Recording Secretary

Approved in open session: April 12, 2007

George Allan Hayden
Chairman