

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 18-1684

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m., September 17, 2018 on the Application of **TRAPPE SAND AND GRAVEL, LLC, c/o ANDREW FRASE**, contract purchaser, (collectively, Applicant). The Applicant is seeking (1) a major modification to a legal non-conforming use for an expansion of an existing mineral extraction use previously approved by Appeal No. 1355, on a property known as Parcel 78 of Tax Map 59, currently zoned Town Conservation (TC); (2) a special exception to permit a mineral extraction use onto approximately one hundred nineteen (119) acres of a portion of adjacent property known as Tax Map 59 Parcel 11, currently zoned Countryside Preservation (CP); and (3) variances to reduce the mineral extraction setbacks from two hundred feet (200') to fifty feet (50') on the north side and one hundred feet (100') on the west and south sides of the area of expansion located on a portion of Tax Map 59, Parcel 11 and an expansion of the zero foot (0') setback for the east boundary of Tax Map 59 Parcel 78 to its southern boundary. If approved, the one hundred nineteen (119) acres for which the special exception and variances are sought will be added to Tax Map 59, Parcel 78 by line revision.

The request is made in accordance with Chapter 190, Zoning, Article III, §190-16, §190-70, Article VIII, §190-167 and Article IX, §190-180 and §190-182 of the *Talbot County Code* (the *Code*). The property identified as Tax Map 59, Parcel 11 owned by Coffin Land, LLC is located on the north side of Beaver Dam Road, and the property identified as Tax Map 59 Parcel 78 owned by Trappe Sand and Gravel, LLC is located at 29745 Barber Road, Trappe, MD, 21673

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman; Phillip Jones, Vice Chairman; members Louis Dorsey, Jr. and Frank Cavanaugh and alternate member Jeffrey Adelman. Anne C. Ogletree served as attorney for the Board of Appeals. Brennan Tarleton, Planner I, and Miguel Salinas, Assistant Planning Officer

were in attendance.

The Chairman inquired if all members had visited the site and received affirmative responses.

The following exhibits were offered and admitted into evidence as indicated:

- Exhibit 1. Application for Special Use Exception and attachment A;
- Exhibit 2. Copy of tax map with subject properties outlined and highlighted in yellow;
- Exhibit 3. Notice of Public Hearing published in the Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List;
- Exhibit 6. Standards for Special Exception with attachment B;
- Exhibit 7. Standards for Non-Critical Area Variance with Attachment C;
- Exhibit 8. Standards for Expansion and Major Modification of Legal Non-Conforming Use with Attachment D.
- Exhibit 9. Staff Report by Brennan Tarleton;
- Exhibit 10. Planning Commission Recommendation;
- Exhibit 11. Sign Maintenance Agreement;
- Exhibit 12. Authorization Letter dated August 7, 2018;
- Exhibit 13. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 14. Aerial Photo;
- Exhibit 15. Board of Appeals Decision No. 206;
- Exhibit 16. Board of Appeals Decision No. 1355;
- Exhibit 17. Surface Mining License from the State of Maryland;
- Exhibit 18. Site Plan by Fink, Whitten & Associates, Job No. T-59-7-78.

Mr. Shortall requested that those who might wish to testify rise and be sworn. All witnesses were sworn.

Ryan Showalter, Esq., 100 N. West Street, Easton, MD 21601 introduced himself as the attorney for the Applicant. Mr. Showalter explained that this project is complicated by the property being in several zoning districts with differing regulations. Essentially the Applicant wishes to expand an existing sand and gravel extraction facility that has been in operation since 1970 to adjoining land. The proposed expansion would be into the Countryside Preservation (CP) district and is permitted by special exception.

The existing extraction operation was permitted by special exception in Board Decision No. 206 (1976) and modified in 2006 by Board Decision No. 1355 Exhibits 15 and 16). After the initial special exception, the land was rezoned and is now included in the Town Conservation District (TC). The TC district does not permit mineral extraction, therefore the existing mining use became a legal non-conforming use.

The initial special exception required a fifty foot (50') setback from all property lines. If the expansion is allowed, the Applicant will mine across the former setback area on the south side of the original tract. That action necessitates a major modification of the existing non-conforming use to permit the expansion of the mined area into the former setback.

The Applicant is also requesting four (4) variances of the setback lines for both the existing and expanded operation. If the expansion is granted, the Applicant plans to combine the existing operation with the one hundred nineteen (119) acre parcel creating one new lot, and resulting in no required setback area between the parcels.

Mr. Showalter commented that the proposed expansion is to provide reserves for the business, and that it was hoped that the expansion would permit the business to continue operations for many years to come. There were no plans to intensify the current use. He then asked that the following documents be admitted as Applicant's exhibits:

- Applicant's Exhibit 1. Board Decision No. 206.
- Applicant's Exhibit 2. Board Decision No. 1355.
- Applicant's Exhibit 3. 2018 Mining License No. SL-0752.
- Applicant's Exhibit 4. Mining Permit Renewal Permit No. 05-SP—0994-1.
- Applicant's Exhibit 5. Map showing properties located to the south of the proposed site.
- Applicant's Exhibit 6. Map showing properties north of existing site.
- Applicant's Exhibit 7. Elevation profile between Trappe Sand & Gravel, LLC and Holly Acres Subdivision.
- Applicant's Exhibit 8. Letter from Richard and Patricia Roberts.
- Applicant's Exhibit 9. Letter from Coffin Land, LLC, Keith Coffin.

Mr. Showalter then called Andrew Frase, managing member of Trappe Sand and Gravel, LLC, the Applicant, 3557 Ocean Gateway, Trappe, MD 21673 as a witness.

In response to questions from Mr. Showalter Mr. Frase testified that he believed the operation generated approximately fifty (50) to sixty (60) trips per week to and from the site. Over the previous week approximately fifteen (15) loads of material were removed from the site, which is typical, however, if the business supplies a big job, that number does increase temporarily. The traffic currently goes north over the haul road access to Barber Road. The Applicant helps to maintain the haul road. There are adequate lines of sight at the entrance/exit onto Barber Road. The haul road is the planned access for the expanded mining operation. The proposed addition is currently reached by a farm

lane from Beaver Dam Road. That entrance will not be used for the mining operation, and the gates on that access will be locked to prevent unauthorized access to the site.

The Applicant currently sells topsoil, a clay pack material that compacts well, a sandy material suitable for sewer installations, and white sand used primarily for living shoreline projects. The material in the proposed expansion area is similar in quality.

Mr. Frase commented that he does not believe there will be any effect on the surrounding neighborhood from operations in the expansion areas. He has never had complaints from neighbors. One cannot see the operation from Barber Road, and one will not be able to see the expanded operation from Beaver Dam Road. He has spoken to the neighbors on the east and is proposing to maintain the two hundred foot (200') forested buffer within the setback on the east side of the property adjoining the subdivision. He has agreed that he will impose a covenant on the land to be acquired guaranteeing that the forest will not be cleared or mining commenced for a period of thirty (30) years on the two hundred foot strip (200') adjoining the buffer. He has assured the Planning Commission and lot owners that this strip outside the buffer will be the last area to be mined.

Mr. Showalter introduced Applicant's Exhibit 7, a diagram showing a cross section of the buffer, the limit of disturbance and the area of the covenant. The area to be covered by the covenant is identified by crosshatching below the cross section.

Mr. Frase explained that the active mining is at the south end of the existing property at the current time. The property has been excavated to below grade. The equipment used consists of diesel excavators, wheel loaders, a screen, and bulldozers. All of the equipment and stockpiles for excavated material are within the permitted area. He added that it is possible the company will add a long reach excavator to complete the removal of all material from the pond area. Once mining in the existing site is complete, reclamation of the existing excavation is anticipated, and the Applicant plans to clear cut the forest directly to the south of the existing pit and work in a southerly direction from the pond on the existing site through the existing setback¹ to the new parcel. The Applicant explained that the quality and quantity of material available varies from spot to

¹ Applicant is requesting that the existing fifty foot (50') setback be decreased to zero feet (0') should the proposed special exception and major modification of the existing special exception be granted. This action anticipates the eventual consolidation of the existing parcel 78 with the parcel under contract.

spot on the property and generally appears to be better from north to south, as the deposit gets deeper and the quality better as one proceeds southward. In general, the quality of the material improves the closer one comes to the stream shown on Exhibit 18.

Noting that the Applicant's predecessor had obtained variances from the then existing setback requirements on the north and east in Board Decision No. 1355, Mr. Frase explained that the owners of those adjacent parcels had no objections to the proposed expansion. He has spoken to all neighbors, and believes there is no problem with the neighbors on the west. Coffin LLC owns the lands to the south and supports the project. He added that the project has been approved by the Planning Commission.

Applicant's exhibit 10 is a revised site plan showing a minor revision suggested by the Mining Division of the Maryland Department of the Environment (MDE) the government agency with jurisdiction over surface mines. MDE suggested that the slope commence at the top of the existing bank. The Applicant has complied with that request.

Addressing the variance requests, Mr. Frase asked that the Board approve a reduction of the setbacks as shown on Applicant's exhibit 10 and by the red shaded areas on Applicant's exhibit 11. This will result in a setback of one hundred feet (100') on certain areas along the project's south and west borders. The Applicant is proposing a fifty foot (50') setback along the northeasterly line of the new parcel adjoining another mining operation and a zero foot (0') setback in the area where the existing parcel and the new parcel join. He noted that the reductions being requested concern lands either next to existing mining projects or next to Coffin LLC's retained land. He explained that mineral deposits are limited, and believed the variances are necessary to obtain the most material from the project while still protecting the neighbors.

Mr. Showalter inquired about the regulatory scheme. The witness responded that MDE regulates the entire process. The Applicant is required to apply for an extension of its permit and license every five (5) years. It must have zoning approval before an expanded permit can be issued. New erosion and sediment control plans must also be obtained.

MDE has the authority to shut the operation down for violations of the permit conditions. The Applicant has never had a notice of violation. Mr. Frase explained that the permit also mandates that the Applicant have a reclamation plan to restore the site

when mining is completed. That work starts while the project is ongoing. The plan will require sloping the sides of the excavated areas, generally allowing no more than three to one (3:1) slope and also requires stabilizing the slopes. The Applicant must post a bond or letter of credit for the reclamation work to ensure it will be completed. Mr. Frase told the Board that reclamation work has begun on the slope on the west side of the existing pond at the current time and will be inspected by MDE for compliance.

Mr. Adelman asked if the red shading indicated the only areas to be disturbed. In response Mr. Showalter explained that the red shaded areas were the only parts of the two hundred foot (200') setback that would be disturbed, but that the project would eventually cover the entire grey shaded area on parcel 11.

Mr. Showalter asked if Mr. Frase was familiar with the requirements of the *Code* for each of the special use exceptions and variances requested. Mr. Frase responded that he was, and he would ask that the Board consider his written responses to each of the standards, Exhibits 6, 7 and 8.

The Chairman asked if there were members of the public who wished comment on the application.

Mr. Tom Cohee, 27458 Ferry Bridge Road, Easton Md 21601 testified that he had been a customer of Mr. Frase for about fifteen (15) years. The material Mr. Frase produces has been used on a project to rebuild some streets in Oxford and was of excellent quality He added that the material in the Applicant's pit was of unusually fine quality and believed it to be the only source for that type of material in Talbot County. Mr. Cohee opined it would be a benefit to the county to have that material source available. He added that Mr. Frase is a man of his word and will honor his commitments to the neighbors.

Mr. Phillip Foster, 4079 Koogler Road, Trappe, MD 21673 owned property on the east of the existing operation and north of the expansion parcel. He stated he was not opposed to the project. He wished to know where the Applicant's plans would be recorded and wanted to be sure that the excavation would not start at the immediate edge of the proposed fifty foot (50') setback along his property line.

Mr. Shortall informed him that the plans would be a part of the record before the Board and would be mentioned in the Board's decision. Mr. Tarleton added that all

permits would have to go through the Office of Planning and Zoning so the plans would be on file there as well.

Mr. Frase clarified that he would be creating a twenty-five foot (25') haul road on the south side of the setback along Mr. Foster's property, and that the slope would begin on the far side of the haul road about seventy-five (75) to eighty (80) feet from the property line. He planned to leave the existing trees within the set back

Mr. Mark Hill, 9810 Mill Point Road, Easton, MD 21601 was representing his employer, Bailey's Marine. Mr. Hill stated that Mr. Frase supplies sand for living shorelines and that it was a unique product. Without a local source sand would have to be brought in from either Queen Anne's or Caroline Counties and would increase the costs to the landowner.

Mr. Warren Edwards, Jr., 505 S. Washington Street, Easton, MD 21601 is a supervisor with the Talbot County Roads Department. He reported that the Applicant's material has been used for various road and ditching projects within the county. Having to import sand or other material from outside the county will have an effect on the county budget. He was familiar with the site and found it to be neat and organized. Mr. Frase is very particular. He was fully in support of the project.

The Chairman inquired if there were other members of the public who wished to comment. As there were none, he closed the evidentiary portion of the hearing and asked for Board members' comments.

Mr. Jones indicated he would vote to approve the major expansion of the non-conforming use. There were no objections. With regard to the special exception for what is now a part of Parcel 11, he was inclined to grant the Applicant's request, as he believed the decision to allow mining was really a question of whether the activity was permitted or encouraged by the *2016 Talbot County Comprehensive Plan* (the *Plan*). The *Plan* identified this area east of Rt. 50 and adjoining stream beds as the proper location for mineral extraction. The Planning Commission has approved the request. The proposal will place the operation where it should be geographically, and the Applicant has done all it can to protect neighbors. He added that he would also vote for the variances for the reasons stated in the 2006 decision as that application had presented the same issues.

Mr. Cavanaugh had initial concerns regarding the streams within the project area,

but was satisfied by the Applicant's presentation and the responses to the standards. He personally hates to reduce setbacks but, in this unique case, it will not have an adverse effect on the neighbors. The Applicant has maintained a two hundred foot (200') setback along the residential neighborhood on the east. He believed the Applicant has tried to accommodate all of its neighbors

Mr. Adelman confirmed that he now understood that the twenty five foot (25') haul road was going to be placed on the south side of the setback along the northern border of Parcel 11, and that the slope to the pond would begin seventy five feet (75') to eighty feet (80') south of the property line.

Mr. Dorsey commented that he, too, had had some concerns about the streams, but that the Applicant has addressed those concerns. He agreed that the Applicant had met its burden of proof.

Mr. Shortall stated that this project presented a unique situation. The use is one the county needs. The Applicant's sand and gravel product is used throughout the county, and, according to the testimony, is a high quality material not otherwise available within the county. He agreed with the other Board members that the special exceptions and variances should be granted.

Mr. Showalter added that the mining permit was originally issued in 2006 and is valid for a period of fifteen (15) years. He requested that the special exceptions be co-extensive with the permit or renewals. He noted that if the requested zoning activities were permitted his client would commence by clearing the setback on Parcel 78, as indicated, then remove stumps and topsoil. Activity would commence within twelve (12) months.

There being no other public comment, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the documentary evidence presented:

1. The Applicant has submitted a written application for a special exception for the modification of an existing non-conforming use on Parcel 78; for a special exception to permit mineral extraction on Parcel 11, zoned CP; and for variances to reduce setbacks on the south west and north of the new parcel.
2. The public hearing was properly advertised and posted, and the adjacent land

owners were properly notified, Exhibits 2, 3, 4, 5 and 11.

3. The Applicant has received favorable recommendation from Staff for the reasons documented in exhibit 9, the Planning Staff Report authored by Mr. Tarleton.

4. The Planning Commission has approved the proposed project, as the use is a permitted 2.1% major modification of the existing legal non-conforming use previously approved, Exhibit 8.

5. Although the TC district does not permit mineral extraction, the mining use was originally permitted by special exception in the Rural Agricultural Conservation (RAC) zone. The RAC zoning was changed to TC after the mining use had been approved, therefore the mineral extraction became a legal non-conforming use on Parcel 78. Parcel 11 is within the CP district. That district does permit mineral extraction by special exception.

6. The major modification consists of allowing the Applicant to mine through the current fifty foot (50') setback located on the south side of parcel 78. A variance to decrease the setback to zero feet (0') has also been requested. Since it is the Applicant's intention to combine the one hundred nineteen (119) acres of Parcel 11 currently under contract with existing Parcel 78, the modification will allow the Applicant to begin mining the quality material at the southern end of Parcel 78 while the lot line revision is making its way through the Zoning process.

7. The proposed major modification is less than 10 percent (10%) of the area of the permitted for mining. No other property owners will be affected by the proposal, as the Applicant will own the lands on both sides of the now existing boundary between Parcels 78 and Parcel 11.

8. The proposed expansion includes the establishment of a two hundred foot (200') setback on the east adjoining a residential subdivision. The Applicant will also impose a covenant that the forest area west of the two hundred foot (200') setback will not be removed or the property mined for a period of thirty (30) years from the date the special exception is approved by the Board.

9. Traffic enters and leaves the existing site via a haul road to Barber Road and Rt. 50. That access has been in use for nearly forty (40) years. No adverse impact on Barber Road appears to have been generated during that period. The haul road leading to Barber

Road is currently graveled. Dust is controlled by the application of water to the surface as needed. No increase in the traffic entering or leaving the site is anticipated. There is little pedestrian traffic on Barber Road. The farm access on the southerly end of the new parcel leading to Beaver Dam Road will be closed and gated.

10. The proposed use will not require additional public services.

11. The proposed expansion is buffered from farm property on the south by the existing forest and a stream. No adverse effect on agricultural operations is expected.

12. The Board finds that the existing site is unique. It contains an ongoing mining operation that has plans to expand southward on to Parcel 11. The type and quality of the mineral deposits gets better as one goes south. The Applicant has requested a reduction of the required setback to zero feet (0') from the fifty foot (50') setback permitted by the decision in Case No. 1355 to make use of the quality material available within the setback. It is logical and expedient to allow the operator to extract the totality of the deposit and to prevent multiple extraction sites by allowing the ongoing operation to continue across the setback and current property line.

13. The need for the reduction in the setback from two hundred feet (200') to one hundred feet (100') along the southern and western portion of the new parcel is partly based on the location of the mineral deposits, and partially based on the stream buffer requirements of the *Code*. Neither basis has been created by the Applicant.

14. The Applicant is requesting the variances to permit greater access to the mineral deposits on the site. Those deposits are a non-renewable resource, and must be mined carefully so as to obtain the greatest benefit for the public

15. The requested variances, from two hundred feet (200') to fifty feet (50') on the north, from two hundred feet (200') to one hundred feet (100') on the southerly and westerly sides of the new parcel and from fifty feet (50') to zero feet (0') on the common boundary between the existing operation and the portion of Parcel 11 to be purchased will not impair the value of adjoining properties. No variance is sought along the easterly boundary with the subdivision. The parcels on the north have now existing or formerly active mining operations; the property owner on the south has consented, and the westerly line runs through woodland.

16. The requested variances are the minimum that will protect the adjoining lands

while still allowing the Applicant to make the most use of the mineral deposits on the site.

For the reasons set out in the Board's findings, Mr. Jones made a motion that the Applicant be granted the special exceptions and variances requested subject to the conditions previously established suggested by staff, as follows:

A. The Applicant shall take all of the required steps and acquire all necessary approvals (including any additional waivers that may be necessary) to comply with the Major Site Plan sections of the *Code*;

B. The Applicant shall take all necessary steps and acquire all necessary approvals to enable it to present a Minor Revision Plat combining Parcels 78 and the portion of Parcel 11 under contract to the Department of Planning and zoning for approval;

C. The Applicant shall submit a detailed reclamation plan acceptable to the Department of Planning and Zoning;

D. The Applicant shall provide the Department of Planning and Zoning with copies of all applicable federal, state and local permits required for the operation of the business;

E. The Applicant must address the TAC comments from the meeting dated August 8, 2018. Those comments were from the Department of Planning and Zoning, The Department of Public Works, Environmental Health and the Talbot Soil Conservation District.

Mr. Cavanaugh seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0 with all members voting to grant the special exception requested.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **TRAPPE SAND AND GRAVEL, LLC - C/O ANDREW FRASE** be **GRANTED** the requested major modification of the existing non-conforming use, a special exception to allow the Applicant to conduct a surface mining operation on the portion of Parcel 11 being purchased, and the four requested variances consistent with the evidence presented to the Board of Appeals, and subject to

the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 2nd day of November, 2018.

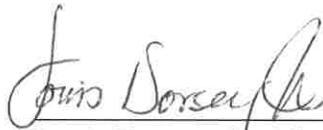
TALBOT COUNTY BOARD OF APPEALS



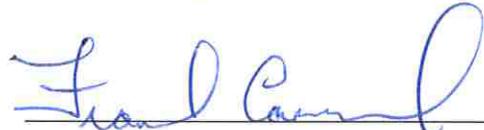
Paul Shortall, Jr., Chairman



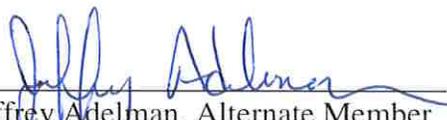
Phillip Jones, Vice Chairman



Louis Dorsey, Jr., Member



Frank Cavanaugh, Member



Jeffrey Adelman, Alternate Member