

Code Compliance Information

Brandywine Aggregates, LLC (“Applicant”) seeks special exception approval pursuant to the requirements at Anne Arundel County Code (“Code”), § 18-11-113 pertaining to “Clay and borrow pits and sand and gravel operations” for a proposed use on property located at 2882 Patuxent River Road, Davidsonville (“Property”), which Property contains approximately 83.4 acres and is more particularly described as Tax Map 54, Parcel 1. The Property is split-zoned between the RA-Rural Agricultural District (“RA”) and the OS-Open Space District (“OS”). The Applicant’s proposed sand and gravel operation – much like its existing operation located approximately ¼-mile from the Property at 3026 Patuxent River Road – will be conducted wholly within the RA sections of the site, as authorized at Code, § 18-4-106.

The Applicant’s proposal is in compliance with all applicable requirements at Code, § 18-11-113 and § 18-16-304 (a) as illustrated below. Certain elements of the Code¹ are preempted by State law as explained in prior decisions rendered by the Administrative Hearing Officer (see Tolson & Associates, LLC, Case Number 2016-0196-S; see also Chaney Enterprises, LP, Case Numbers 2015-0245-S, 2015-0246-S, 2015-0247-S, 2015-0248-S, 2015-0249-S, 2015-0250-S, 2015-0251-S and 2015-0252-S and County Exhibit 16: January 7, 2016 memorandum from Anne Arundel County Office of Law). The information provided herein is consistent with these prior decisions.

Code, § 18-11-113

(1) All vehicular access to the site shall be provided from a collector road, an arterial road, a freeway, or a local road that serves only industrially zoned or commercially zoned property between the facility entrance and the first intersecting collector road, arterial road, or freeway in all directions.

Vehicular access to the site is proposed to be provided from Patuxent River Road. As illustrated on the map entitled “Road Functional Classifications Bill No. 12-15 Adopted May 28, 2015” (https://www.aacounty.org/sites/default/files/2023-03/Functional_Class.pdf), Patuxent River Road is a Minor Arterial road.

(2) The extraction and removal operation may not be noxious, offensive, or otherwise objectionable to surrounding land uses.

This provision is preempted by State law.

(3) All significant archaeological sites shall be identified and preserved under the supervision of the Office of Planning and Zoning.

This provision is preempted by State law.

¹ State law preempts Code, § 18-11-113 (2), (3), (6), (8), (13) (ii) – (viii), (15), (16), (17), (19), and § 18-16-304 (a) (11).

(4) The active operation shall be surrounded by fencing at least six feet high with gates to limit access to the area.

Operations at the facility will be conducted in compliance with this provision.

(5) Space on the site shall be adequate so that trucks using the facility are not stopped or parked on a road right-of-way.

Operations at the facility will be designed and conducted in compliance with this provision.

(6) Except in a W3 District, the use of machinery in the excavation area shall be limited to that necessary to extract, screen, wash, and transport materials generated onsite and all material shall be removed from the excavation area to a processing site for any additional processing.

This provision is preempted by State law.

(7) Except in a W3 District, a permanent legible sign approved by the Office of Planning and Zoning measuring at least four feet by eight feet shall be posted and maintained along each public road abutting the property or, if the property does not abut a public road, one or more signs posted in locations that can be seen by the public. The sign or signs shall state that the property has been approved for a clay and borrow pit or sand and gravel operation, the special exception case number, the applicant's name, and the name and telephone number of the operator.

The facility's signage will be maintained in compliance with this provision.

(8) Reclamation activity for a distance of 1,000 feet from undisturbed areas may not increase the site grade above the grade of the adjacent undisturbed areas.

This provision is preempted by State law.

(9) Offsite materials brought to the site of an operation other than for construction of a berm or for reclamation shall be restricted to the processing site.

Operations at the facility will be conducted in compliance with this provision.

(10) Except in a W3 District, the hours of operation in an excavation area shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Saturday.

Operations at the facility will be conducted in compliance with this provision.

(11) Additional rights-of-way for widening or extension of existing roads shall be dedicated and deeded, as appropriate, if requested by the Department of Public Works or the State Highway Administration.

The facility will comply with this provision.

(12) County inspectors shall be allowed to enter onto the site during normal business hours to ensure compliance with the terms of any special exception and the requirements of this section.

Operations at the facility will be conducted in compliance with this provision.

(13) The operation shall be at least 1,000 feet from any dwelling other than a dwelling located on the site of the operation that is otherwise permitted by law, except that the operation is allowed within 1,000 feet of a dwelling if:

Operations at the facility will be at least 1,000 feet from any dwelling other than a dwelling located on the site of the operation that is otherwise permitted by law.

(i) the sound level at all lot lines does not exceed an average of 55 dBA and a peak of 65 dBA;

Operations at the facility will be conducted in compliance with this provision. The Applicant will present evidence in connection with the special exception application to illustrate that the berms along the Property's boundaries will ensure that sound levels are below the applicable limits at all lot lines.

(ii) the operation is totally obscured from the sight of the affected dwelling at the highest normally accessible location of the dwelling to a maximum height of 30 feet above grade but, during the times set forth in subsection (10), the operation shall be obscured to the extent practical;

This provision is preempted by State law.

(iii) berms are used for sight obstruction and noise abatement to the extent feasible and, if not feasible, an acceptable alternative is provided; the berms are constructed with processed fill, consisting of rock and similar irreducible material that does not permit the formation of voids into which overlying soils may be washed, and topsoil intermittently layered with non-organic soil; at least 12 inches of soil covers all rock or irreducible material that is larger than eight inches; and the berms are stabilized with suitable vegetation;

This provision is preempted by State law.

(iv) the excavation does not exceed a depth of 50 feet below the existing surrounding grade with angle of repose maintained during the excavation and the site is graded or benched to ensure safety at all times;

This provision is preempted by State law.

(v) the excavation and any noise abatement method are located at least 300 feet from the affected dwelling and at least 100 feet from the lot line, but the distance may be reduced if a temporary easement is obtained from the affected property owner and the easement for the permitted time frame is contained in the special exception and approved by the County Office of Law;

This provision is preempted by State law.

(vi) stabilization of the excavation area is accomplished with a cover material capable of supporting long-lived vegetation;

This provision is preempted by State law.

(vii) reclamation is performed simultaneously with the excavation operation and completed within two years after the excavation operation has ceased; and

This provision is preempted by State law.

(viii) work ceases immediately for a violation of this subsection or any conditions imposed by the Administrative Hearing Officer and, if there are three violations in a 12-month period, the portion of the special exception that allows work in the 1,000-foot area shall be rescinded and all reclamation shall be completed within 12 months.

This provision is preempted by State law.

(14) The facility may incorporate a processing site for the stockpiling and processing of material generated onsite and offsite if all of the following requirements are met.

(i) Except in a W3 District, the processing site shall be at least 50 acres; material generated offsite and used for processing with onsite material in any 12-month period may not exceed 45% of the material generated onsite in the same period; material generated offsite may be used only for blending with material generated onsite; the use of machinery shall be limited to that necessary in the production of finished sand and gravel products from materials allowed under this subsection; hours of operation shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Saturday; the time frame for the operation of the processing site

may not exceed 25 years; and a crusher or similar reduction equipment is prohibited.

Operations at the facility will be conducted in compliance with this provision.

(ii) All stationary equipment and stockpiles shall be located at least 1,000 feet from a dwelling other than an onsite dwelling and at least 300 feet from a road other than an internal road used exclusively for onsite operations.

Stationary equipment and stockpiles will be located on a section of the Property comprising approximately 18 acres, which section is more than 1,000 feet from dwellings and more than 300 feet from Patuxent River Road. As such, operations at the facility will be designed and conducted in compliance with this provision.

(iii) Weight scales shall be operational at all processing sites.

Operations at the facility will be conducted in compliance with this provision.

(15) A maximum time period for operation of the facility shall be established as part of the special exception approval and may not be renewed.

This provision is preempted by State law.

(16) The site shall be cleared of litter and scattered refuse daily.

This provision is preempted by State law.

(17) There shall be a 50-foot natural buffer between the operation and nontidal wetlands.

This provision is preempted by State law.

(18) A facility located in an RA District shall be located on a road other than a scenic or historic rural road.

The facility complies with this provision. As explained in the document entitled "Scenic & Historic Roads OPZ Review Policy & Guidelines" ("Guidelines") produced by the Cultural Resources Section of the Office of Planning and Zoning, the portion of Patuxent River Road where the Property is located is not listed on the Guidelines' "Appendix D: Map Showing Rural Scenic & Historic Roads (Bill #04-06)." As such, the Guidelines direct that, for zoning purposes, the location of the requested special exception use is not restricted: the Property is zoned RA and Patuxent River Road is not a "Scenic or Historic Rural Road."

(19) Combustion ash, including bottom ash and fly ash, may not be used as fill in reclamation of a clay and borrow pit or a sand and gravel operation.

This provision is preempted by State law.

Code, § 18-16-304 (a)

(1) The use will not be detrimental to the public health, safety, or welfare;

Operations at the facility will be designed and conducted in compliance with this provision. All applicable noise restrictions and setbacks will be met. The proposed use has also been designed to protect the Property's most sensitive natural resources. While the use is exempt from processing under the County's forest conservation provisions per Code, § 17-6-301 (b) (8) and Md. Environment Code Ann. §§ 15-801 et seq., forest cover that is removed in connection with the sand and gravel operation will be replanted at reclamation. The Property's OS lands are generally located on the southern edges of the parcel along an unnamed Patuxent River tributary. The operations proposed on the site are designed to avoid disturbances to the OS lands, to provide a 50' buffer to nontidal wetlands, and to provide a 100' stream buffer.

(2) The location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which it is located;

Operations at the facility will be designed and conducted in compliance with this provision. The scale house is planned to be minimally impactful on the surrounding neighborhood, and all landscaping will provide appropriate screening.

(3) Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under this article;

Operations at the facility will be designed and conducted in compliance with this provision. The Applicant will present evidence in connection with the special exception application to illustrate that sound levels are below the applicable limits at all lot lines. Light impacts on surrounding properties will also be minimal given the limited hours of operation that will be proposed at the facility, and the topography and intervening distances to nearby uses.

(4) The use at the location proposed will not have any adverse effects above and beyond those inherently associated with the use irrespective of its location within the zoning district;

Operations at the facility will be designed and conducted in compliance with this provision.

(5) The proposed use will not conflict with an existing or programmed public facility, public service, school, or road;

Operations at the facility will be designed and conducted in compliance with this provision. The Applicant will present evidence in connection with the special exception application on the minimal traffic and vehicular impacts on local roads, facilities, services, and schools.

(6) The proposed use has the written recommendations and comments of the Health Department and the Office of Planning and Zoning;

The Applicant will work with the Health Department and the Office of Planning and Zoning during their administrative review phases so that they each recommend approval of the special exception application.

(7) The proposed use is consistent with the County General Development Plan;

The facility will be designed to be consistent with Plan2040 and with applicable provisions associated with the Rural and Agricultural Development Policy Area and Priority Preservation Areas.

(8) The applicant has presented sufficient evidence of public need for the use;

The Applicant will present sufficient evidence of public need for the use in connection with the special exception application, including analyses and other information prepared by Stephen S. Fuller, Ph.D., University Professor Emeritus, George Mason University, on economic and fiscal impact data related to the proposed use.

(9) The applicant has presented sufficient evidence that the use will meet and be able to maintain adherence to the criteria for the specific use;

See above.

(10) The application will conform to the critical area criteria for sites located in the critical area; and

Not applicable.

(11) The administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual.

This provision is preempted by State law.