

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2023-0221-S

BRANDYWINE AGGREGATES, LLC

FIRST ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 29, 2024

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: **ROBERT KONOWAL**

DATE FILED: **MARCH 14, 2024**

PLEADINGS

Brandywine Aggregates, LLC (hereinafter the applicant), seeks a special exception (2023-0221-S) to allow a clay and borrow pit and sand and gravel operation in a RA – Rural Agricultural District on property with a street address of 2882 Patuxent River Road, Davidsonville, MD 21035.

PUBLIC NOTIFICATION

The hearing notice was posted on the County’s website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the property was notified by mail, sent to the address furnished with the application. The applicant submitted the affidavit of Daniel Jones that the property was posted for more than 14 days prior to the hearing. Therefore, I find and conclude that the requirements of public notice have been satisfied.

THE HEARING

A hearing was held on February 29, 2024, in which the witnesses were sworn and the following was presented with regard to the proposed relief requested by the applicant.

THE PROPERTY

The applicant owns the subject property which has 1,250 feet of frontage on the west side of Patuxent River Road and approximately 725 feet south of Governors Bridge Road, Davidsonville (Tax ID: 1000-0474-1800). It is identified

as Parcel 1 in Grid 1 on Tax Map 54 and is split zoned RA-Rural Agricultural District and OS-Open Space. The property comprises of 83.4 acres.

The property is currently developed with a single-family dwelling.

THE PROPOSAL

The applicant proposes to remove the existing dwelling to mine a 57-acre middle portion of the site. An additional 18 acres of the site will be used for material stockpiles and stationary equipment storage. A 24-foot wide haul road with an entrance off Patuxent River Road will access the mining area of the site. A truck scale and scale house will be located near the entrance to the site as well as a parking area for 9 vehicles as shown on the site plan admitted into evidence at the hearing as County Exhibit 2.

THE ANNE ARUNDEL COUNTY CODE

§ 18-11-113 sets forth the specific requirements for clay and borrow pits or sand and gravel operations. Additionally, all special exceptions are subject to the general standards contained in § 18-16-304 of the Zoning Ordinance.¹

The Evidence Submitted At The Hearing

Robert Konowal, a zoning analyst with the Office of Planning and Zoning (OPZ), presented the following findings:

¹ A special exception is a use that must meet special requirements to be allowed. There are 167 such uses, ranging from airports to truck and trailer rental facilities.

- With regard to the specific special exception requirements for clay and borrow pits or sand and gravel operations OPZ submits the following findings regarding the proposed sand and gravel operation.²

(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. The proposed operation meets this condition as Patuxent River Road is functionally classified as an 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 implication in 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 conflict with State law.*

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

² It is noted certain conditions of the County Code are preempted by State law where County law conflicts with the State law.

operations at the facility will be designed and conducted in compliance with this provision. The site plan appears to support this.

(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 implication in 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 applicant has indicated they will comply 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 conflict with 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. The applicant has indicated they will comply 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. The applicant has indicated they will comply 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 applicant indicated they will comply with this provision and have at this time indicated the possible need for a 12-foot wide southbound deceleration lane on Patuxent River Road.

(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. The applicant has indicated 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:

(i) the sound level at all lot lines does not exceed an average of 55 dBA and a peak of 65 dBA; The applicant has indicated they will satisfy this requirement.

(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 conflict with 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 overlaying 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 conflict with 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 conflict with 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 conflict with 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 conflict with State law.*

(vii) reclamation is performed simultaneously with the excavation operation and completed within two years after the excavation operation has ceased; *This provision is preempted by conflict with 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 conflict with 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. The applicant has indicated they do not anticipate importing offsite material to the site.

(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. The applicant has indicated stationary equipment and stockpiles will be located 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. The applicant advised 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 conflict with State law.*

(16) The site shall be cleared of litter and scattered refuse daily. *This provision is preempted by implication in 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. Although Patuxent River Road is a scenic and historic road it is not a scenic or historic “rural” road as per County Bill 4-06. The application meets this provision.

(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 conflict with State law.*

- Regarding the General Special Exception Standards OPZ finds the following:
 - (1) There is no evidence the use will be detrimental to the public health, safety, or welfare.
 - (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. The site plan and proposed operation of the sand and gravel mine complies with the specific special exception standards for the use.
 - (3) The 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. The site plan and proposed operation of the sand and gravel mine complies with the specific special exception standards for the use.

(4) The use of the subject property for a sand and gravel operation at this particular location will have adverse effects above and beyond those inherently associated with the use. The surrounding area is rural in character and consists of agricultural operations and woodlands. The subject property has been designated as part of a larger “Priority Preservation Area” by Plan 2040 (Ref. p.27 - Agricultural & Woodland Preservation Map), the General Development Plan. The goal of the designated Priority Preservation Area is the preservation of agricultural lands and woodlands in South County. The use of lands for an industrial type use such as a sand and gravel operation would not be compatible with the land use goals of this designation. Consequently, the adverse effects of the use would be greater at this particular location than they would be elsewhere on other lands zoned RA-Rural Agricultural.

(5) There is no evidence that the proposed use will conflict with an existing or programmed public facility, public service, school, or road.

(6) This report provides the written recommendations and comments of the Health Department and OPZ regarding the requested use of lands.

(7) The requested special exception use is not consistent with the goals of Plan 2040, the County General Development Plan.

In particular, Plan 2040 goals relating to the Natural Environment include the expansion, enhancement and the protection of the County’s greenways, open space, rural areas and “Priority Preservation Areas”. The subject property has been designated as part of a larger “Priority Preservation Area” by Plan

2040. These lands at 83.4 acres in area are an ideal candidate for preservation as they exceed the minimum 50 acre parcel size and have productive soils deemed to be supportive of the agricultural operations the County seeks to preserve. The loss of the property to a sand and gravel operation would conflict with and undermine the land use preservation goals of this specially designated area. Indicative of this, existing sand and gravel mining operations located in South County have been for the most part, specifically excluded from being designated as part of the County's two Priority Preservation Areas contained in Plan 2040.³

Plan 2040 also seeks to preserve, enhance, and restore sensitive areas, including habitats of rare, threatened, and endangered species, streams, floodplains, tidal and non-tidal wetlands, bogs, shorelines, steep slopes, and all applicable buffers. The subject property is a designated Forest Interior Dwelling Species (FIDS) Habitat which plays a crucial role in maintaining the health of forests and requires large forest areas for successful breeding and to maintain viable populations. Their presence indicates a thriving ecosystem, and efforts to protect their habitat are essential. The use of these lands for a sand and gravel operation will essentially destroy the existing habitat on this site and disturb the larger, continuous FIDS corridor in this area.

³ There are two existing (c. 1967 and c.1988) sand and gravel operations or portions thereof off Sands Road that are located in but long predate the current Priority Preservation Area designation by Plan 2040.

Finally, Plan 2040 supports the retention of existing forest cover and increasing forest replanting efforts. The use of these lands for a sand and gravel operation will require the removal of most of the forest cover on this site.

(8) The applicant is expected to provide sufficient evidence of public need for the 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.

(10) The subject property is not located in the Chesapeake Bay Critical Area and as such is not required to conform to the critical area criteria for sites located in the critical area.

(11) The administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual. *This provision is preempted by conflict with State law.*

- The Development Division in OPZ. *State law preempts the County's Site Development Plan process.*
- The Cultural Resources Division in OPZ advised that this property has over 50 acres of qualifying soils, making it eligible for preservation under all three of the Ag Preservation funding mechanisms. (The County's local Ag and Woodland Preservation Program, the State's Maryland Ag Land Preservation Foundation's program, or the DNR Rural Legacy Program.) Securing an easement under any of these programs would protect the property in perpetuity. This property as well as the two Agricultural District properties have been

priority properties for years, in hopes of preserving them through one of the Ag and Woodland preservation programs.

- There is a potential for significant archaeological resources on the property, including Archaic period Native American campsites (~9,500BC-1,250BC), and a ca. 1870s sawmill and associated mill house ruin. *State law preempts local requirements for archeological investigations.*
- The Long Range Planning Division in OPZ advised that the parcel is designated as Rural and Agricultural Development Policy Area and Rural Planned Land Use in Plan2040. Surrounding properties are in the Rural, Parks and Open Space, and Conservation Planned Land Use categories. The site is located in the County's Priority Preservation Area. Most of the property is unprotected within the Green Infrastructure Network.
- The Division indicated Plan2040 does not have recommendations that are specific to this site. The proposal is generally consistent with Healthy Economy goals listed in Plan2040 including Goal HE2 to attract, retain, and diversify businesses and Goal HE6 to prudently use mineral resources.
- However, the proposal is not consistent with some goals and policies relating to the Natural Environment. Development of this site for a sand and gravel operation would be inconsistent with Plan2040:
 - Goal NE1: Preserve, enhance, and restore sensitive areas, including habitats of rare, threatened, and endangered species, streams,

floodplains, tidal and non-tidal wetlands, bogs, shorelines, steep slopes, and all applicable buffers.

- Goal NE2: Retain existing forest cover, increase forest replanting efforts, and increase urban tree canopy.
- Goal NE3: Expand, enhance and continue to protect the County's greenways, open space, rural areas and Priority Preservation Area.
- The proposal would be consistent with the 2022 Water and Sewer Master Plan.
- The Department of Health indicated the Department does not have an approved plan for this project but would have no objection to the request as long as a plan is submitted and approved by the Department.
- The Department of Recreation and Parks advised that the site is contiguous to Patuxent River Greenway Park. No additional stormwater should flow onto park property. Future development should have no effect on park property. The site also lies within the Anne Arundel County Green Infrastructure Network, a proposed preservation area considered in the Anne Arundel County Green Infrastructure Master Plan. It would be desirable to place a 200-foot-wide strip of land under a Forest Conservation Easement in order to protect this valuable resource from development activity and create a wildlife corridor across the site.
- While the special exception application to allow the use of these lands for a sand and gravel operation does comply with the use specific criteria it does not comply with two of the general standards for a special exception use. More

specifically, the use at the particular location proposed will have adverse effects above and beyond those inherently associated with the use irrespective of its location within the zoning district and the use is not consistent with the land use policy of the County General Development Plan (Plan 2040).

- Based upon the general standards set forth in § 18-16-304 and the use specific standards in § 18-11-113 of the Zoning Code under which a special exception may be granted, OPZ recommends denial of the special exception.

Testimony and Exhibits

The applicant was represented at the hearing by Alan J. Hyatt, Esquire, of the law firm of Hyatt & Weber, P.A. Evidence was presented through Daniel Jones for the applicant, Stephen Wood of Terrain, Inc., the applicant's engineer, Michael Klebasko as to environmental considerations, Jackie Chandler as to traffic, Jon Ferdinand as to noise, and Shep Tullier as to land use and zoning. The applicant contended that they met all the specific requirements for a special exception for mining sand and gravel in § 18-11-113 as well as the general requirements for all special exceptions found in § 18-16-304.

Many people, property owners, neighbors, and organizations took time to register their opposition to granting the requested special exception. These included Bruce Stein for the Davidsonville Civic Association and Fred Tutman, the Patuxent Riverkeeper, as well as property owners up and down Patuxent River Road and the surrounding area. Their testimony and exhibits are discussed below. See footnote 4 below.

The Hearing Officer visited the property but spoke to no one.

DECISION

The Applicant's Property

The applicant wants to mine sand and gravel from a currently developed (with single family dwelling) parcel of land containing 83.4 acres of land that lies between the west side of Patuxent River Road and the Patuxent River to the west. The location of the property is shown by the following aerial photograph (the property is identified by the word "SITE."):

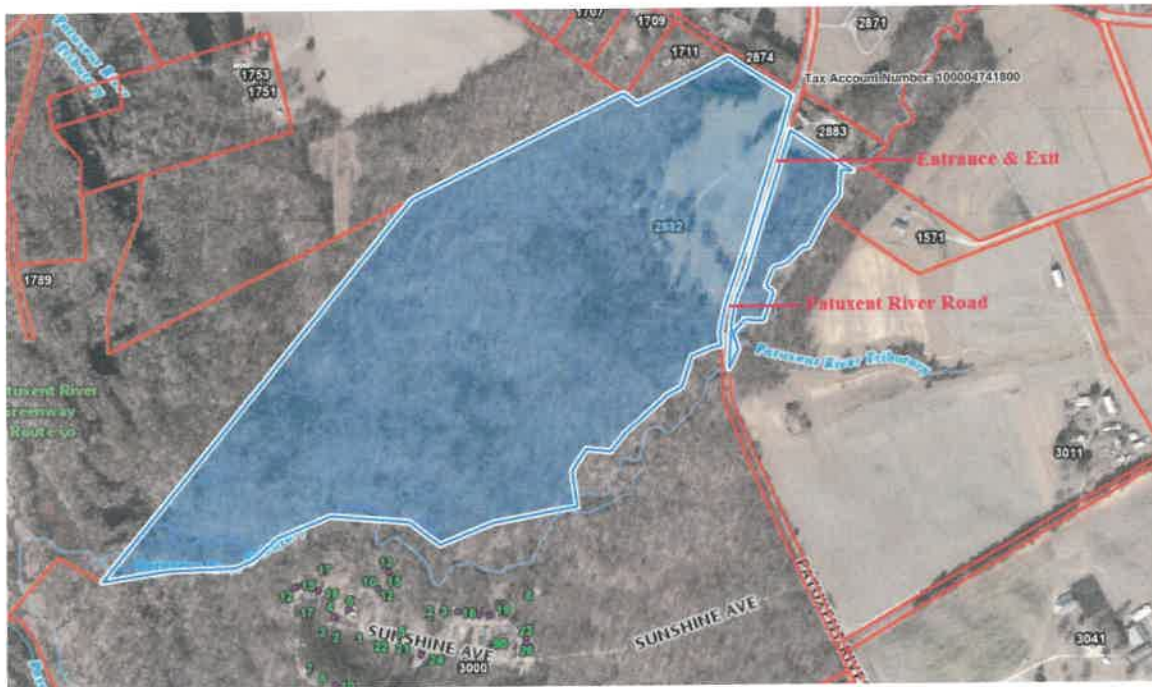


The applicant has been mining the open ground to the south of the property as shown in the above aerial photograph. Thus, unlike other cases in which hypotheticals have to be imagined as to how a proposed use might affect neighboring properties, in this case, the surrounding community already knows

how the proposed sand and gravel mine will affect them if all permits and licenses are granted.

The above aerial photograph also shows the nature of the uses in this corner of Davidsonville. The site is bordered by the Patuxent River Greenway to the north, the Patuxent River to the west, the Davidsonville Park to the south, and various agricultural uses to the east.

The shape of the property on which the mine would be operated is shown by the following aerial photograph:



Patuxent River Road crosses the subject property on the east. The mining operation will be confined to the portion of the property to the west of Patuxent River Road.

The proposed operation would have berms to reduce the noise created by mining operations at the site, a gate, a wash rack to clean the wheels of trucks

entering and leaving the site, a wash plant to wash and process the mined material, and heavy equipment needed to extract the mined material from the ground, clean it, and load it into trucks that would transport the mined material via Patuxent River Road to markets elsewhere.

The County Code authorizes this type of operation in a Rural-Agricultural District, provided the application meets all the requirements in § 18-11-113, which reads as follows:

§ 18-11-113. Clay and borrow pits and sand and gravel operations.

A clay and borrow pit or a sand and gravel operation shall comply with all of the following requirements.

(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.

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

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

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

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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:

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

(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;

(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 overlaying 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;

(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;

(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;

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

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

(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.

(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.

(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.

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

(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.

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

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

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

The applicant contended at the hearing that it met all the specific requirements for a special exception pursuant to § 18-11-113. Assuming that the applicant has done so, the applicant must also satisfy the general requirements found in § 18-16-304. This process has been likened to a steeplechase in which the applicant's mount must clear every barrier, which are the individual requirements in this case. I find that there is no reason to examine each specific element of § 18-11-113 because, even if the applicant has met all the requirements of § 18-11-113, it falls at the last barrier – § 18-16-304 - the general requirements that all special exceptions must meet. As in a horse race, DNF means the application must be denied.

The reasons the application does not meet the general requirements of § 18-16-304 is explained below.

Subsection (1)

The first requirement is in subsection (1) - *The use will not be detrimental to the public health, safety, and welfare*. The applicant cannot meet this requirement because its operation within the property as well as the ancillary truck traffic that will feed the facility are each detrimental to the public, health, safety, and welfare of the surrounding community.

The Sand and Gravel Operation

There was testimony from neighbors⁴ that they could hear the operation inside the applicant's existing mining operation down the road from the site of the proposed new mine. No one thought any berm or other device would keep the noise on the site. Beth Goldring testified that she has a horse farm nearby and that horses are 'prey' animals that spook at the slightest sound. The proximity of the proposed mine to her property would undoubtedly have an adverse impact on her property and business. Other witnesses confirmed their belief that the operation would bring more noise to their properties as well as be out of place in this neighborhood. A witness for the applicant opined that the operation would duplicate sounds of similar heavy equipment on farming operations in the area, but the neighbors did not agree with this statement.

The Truck Traffic

In addition to the noise and dust that would emanate from the mining operation, witnesses testified to the dangers and noise from the existing truck traffic on Patuxent River Road. One witness estimated that there were 1,200 trucks a week using Patuxent River Road. There was testimony that as many as 200 trucks might be added to the traffic on Patuxent River Road if the proposed mining operation were approved. Witnesses talked about accidents

⁴ 27 separate witnesses and organizations, including the Patuxent Riverkeeper and the Davidsonville Civic Association representing 300 property owners in the area, in addition to many people who could not attend the hearing but submitted their objection, filed 82 separate written objections to granting the special exception. Not one person, other than the applicant's witnesses, testified in favor of allowing the requested special exception to mine the applicant's property. Neighbors don't necessarily determine whether special exceptions are granted or denied but it is clear that the land owners and residents from north of Route 50 to far down Patuxent River Road are steadfast against having another sand and gravel mine on Patuxent River Road.

involving trucks and the fear of driving on Patuxent River Road at certain times.

A site visit confirmed the evidence given by the Protestants. A visit to Google Maps produced the following street view opposite the site:



Further on, another truck was coming the other way:



The point to take away from the above two photographs is not that there are trucks on Patuxent River Road but that the road lacks shoulders on which a car could escape a truck coming over the line at it (which is what the car in the

lower photograph is obviously doing to get as far away as it can from the truck coming at it).

Compare a portion of Generals Highway in Crownsville which is also two lanes but has shoulders:



Perhaps Patuxent River Road should be widened or shoulders added, but the decision in this case must be based on what's going on in the real world, not what Patuxent River Road might look like if improvements were made. Adding more dump trucks to Patuxent River Road will only make a dangerous situation worse.

Patuxent River Road is classified as a scenic and historic road, as shown by the following map:



More trucks is not a good thing for Patuxent River Road. But this is not the only reason to deny the applicant's request.

Subsection (2)

(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;

The neighborhood is rural and surrounded by parks, rivers, and woodland. Allowing a sand and gravel mine on the applicant's property would be incompatible with the development of the surrounding district.

Subsection (3)

*(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;*

It is difficult to imagine another use in an RA district that would be more objectionable to nearby properties than the proposed sand and gravel mine.⁵

Subsection (4)

*(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;***

As stated above, it does not seem possible that the proposed sand and gravel mine, in this part of Davidsonville on Patuxent River Road, is not more averse to the surrounding neighborhood than it would be in any other RA zoned district.

⁵ There have been many sand and gravel mines along the Patuxent River. This is because the river has for eons been quietly laying down sand and gravel that can be used in making concrete and other products. One cannot drive to Ocean City and start loading beach sand into trucks because beach sand has been rounded off and pounded by ocean waves into smoot particles that make concrete that fails. The fact that as many as 30 sand and gravel mines may have been operating along this section of the Patuxent River is not evidence that one more should be added here. If anything, maybe the demise of sand and gravel mines (there was testimony there might be only two left) is because mines may have been tolerated when very few people lived in this part of Davidsonville but there has been a growing awareness, partly as a result of testimony and lobbying by the Patuxent Riverkeeper, that rural areas along the Patuxent River should stay rural.

Subsection (5)

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

Evidence was presented that the sand and gravel operation will not conflict with an existing or programmed public facility, public service, school, or road.

Subsection (6)

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

The Health Department and OPZ have provided written recommendations regarding the requested special exception.

Subsection (7)

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

The application does not meet the requirements of this subsection. The sand and gravel mine would not contribute to “the preservation of agricultural lands and woodlands” in South County. The subject property and surrounding area has been designated a “Priority Preservation Area” by Plan 2040.

Subsection (8)

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

The witnesses presented evidence that there is public need for sand and gravel.

Subsection (9)

(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;

The evidence shows that the applicant will be able to meet and maintain adherence to the criteria for the intended use.

Subsection (10)

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

The subject property is not located in the critical area.

Subsection (11)

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

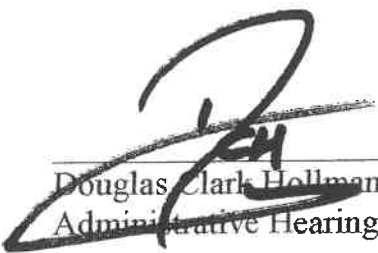
The applicant has demonstrated its ability to comply with the requirements of the Landscape Manual.

In conclusion, the applicant has not satisfied the requirements of § 18-16-304. Mr. Konowal's report is adopted herein in full. It would be idle repetition to recite Mr. Konowal's report in detail which more than enough supports denial of the requested special exception.

ORDER

PURSUANT to the application Brandywine Aggregates, Inc., petitioning for a special exception to allow a clay and borrow pit and sand and gravel operation in a RA – Rural Agricultural District on property with a street address of 2882 Patuxent River Road, Davidsonville, MD 21035; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **14th day of March, 2024**; and ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **denied** a special exception to allow a clay and borrow pit and sand and gravel operation in a RA – Rural Agricultural District on property located at 2882 Patuxent River Road, Davidsonville, MD 21035



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

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