

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT: Brandywine Aggregates, LLC

ASSESSMENT DISTRICT: 1st

CASE NUMBERS: 2023-0221-S

COUNCIL DISTRICT: 7th

HEARING DATE: February 29, 2024

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicant is requesting a special exception to allow a sand and gravel mining operation at 2882 Patuxent River Road in Davidsonville.

LOCATION AND DESCRIPTION OF SITE

The subject property has approximately 1,250 feet of frontage on the west side of Patuxent River Road and is located approximately 725 feet south of Governors Bridge Road. These lands have an area of 83.4 acres and are shown as Parcel 1 in Grid 1 on Tax Map 54.

The site is for the most part zoned RA-Rural Agricultural District with a few very small slivers of land along the southern boundary zoned OS-Open Space. The current zoning was adopted during the comprehensive rezoning of the Seventh Council District zoning maps effective October 7, 2011.

The subject site is currently developed with a single family detached dwelling.

PROPOSAL

The existing dwelling is to be removed so that the applicant can 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.

SPECIAL EXCEPTION STANDARDS

Section 18-11-113 of the Anne Arundel County Zoning Ordinance 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 Section 18-16-304 of the Zoning Ordinance.

FINDINGS

A. Specific Special Exception Requirements

With regard to the specific special exception requirements for clay and borrow pits or sand and gravel operations this Office submits the following findings regarding the proposed sand and gravel operation.¹

(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 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.*

¹ It is noted certain conditions of the County Code are preempted by State law where County law conflicts with the 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.*

B. General Special Exception Standards

Regarding the General Special Exception Standards the Office of Planning and Zoning 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 the Office of Planning and Zoning 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 2040.²

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.

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.*

AGENCY COMMENTS

The Development Division in the Office of Planning and Zoning. *State law preempts the County's Site Development Plan process.*

² 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.

The **Cultural Resources Division in the Office of Planning and Zoning** 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.

These lands are also adjacent to a portion of one of the County's Recreation and Parks Department's Resource Conservation Properties. This property is a crucial part of the Green Infrastructure corridor that borders the Patuxent River. The majority of this property has been deemed prime habitat for Forest Interior Dwelling Species (FIDS).

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 the Office of Planning and Zoning** 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 **Anne Arundel County 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 **Engineering Division Department in the Department of Inspections and Permits**. *The requirement of a local grading permit and/or stormwater management plan is preempted by State law.*

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.

Summary

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).

RECOMMENDATION

Based upon the general standards set forth in Section 18-16-304 and the use specific standards in Section 18-11-113 of the Anne Arundel County Zoning Code under which a special exception may be granted, the Office of Planning and Zoning recommends ***denial*** of a special exception to allow a sand and gravel mining operation at 2882 Patuxent River Road.

DISCLAIMER: Approval of an application does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.