

Case No.: S.E. 4605

Applicant: Barnabas Road
Associates, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, including the transcripts and exhibits for the District Council's consideration of the application and the testimony and evidence after the Council's remand to the Zoning Hearing Examiner, that Application No. S.E. 4605, for a special exception for a concrete recycling facility on property described as approximately 13.17 acres of land in the I-1 Zone, in a larger tract of about 54 acres (in the same or connected corporate ownership with the 13.17-acre property), at the terminus of Clifton Road, about 1,150 feet south of its intersection with St. Barnabas Road, identified as 4763 Clifton Road, Temple Hills, is DENIED, pursuant Sections 27-102, 27-131, 27-132, and 27-317 of Subtitle 27 of the Prince George's County Code¹ and Section 25-204 of the Land Use Article.

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2011 ed., as amended) will be referred to hereinafter as "§27- ____". Because this case is before us on remand from the Circuit Court through the Court of Specials Appeals, citations herein to "E. ____" refer to the contents of the Joint Record Extract filed by the parties in Court of Special Appeals, *i.e.*, Joint Record Extract Volumes 1 and 2.

See §27-141 (...The Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision.). *See also* RULES OF PROCEDURE FOR THE PRINCE GEORGE'S COUNTY DISTRICT COUNCIL (Adopted by CR-5-1993 and Amended by CR-2-1994, CR-2-1995 and CR-74-1995)

Rule 6: Oral Argument and Evidentiary Hearings:

(f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

Procedural History

Barnabas Road Associates, LLC (Barnabas) is the owner and operator of the land and landfill uses on a 54-acre tract in Temple Hills. The land is at the terminus of Clifton Road and adjoins Stamp Road. In October 2007, Barnabas applied for a special exception to operate a concrete recycling plant on a 13.17-acre part of the 54-acre tract. E. 547-618. After processing delays, the special exception application, S.E. 4605, was reviewed by the Zoning Hearing Examiner (ZHE) in May and June 2009. E. 249-266. After oral argument of the case before the District Council, a remand by the Council to the ZHE for additional evidence, and a second evidentiary hearing before the ZHE, the case again came before the Council for argument in July 2010.² E. 227-232, E. 105-226, E. 85-104, E. 73-78.

After the second oral argument before the District Council, in July 2010, the Council again remanded the S.E. 4605 application to the ZHE. E. 73-78. In the second remand order, the Council directed the ZHE to review again evidence concerning adverse effects from the proposed concrete recycling operation on Victoria Manor and Gordon's Corner residents and commercial businesses on Clifton Road. *Id.* While the S.E. 4605 application was pending before the ZHE, but before the ZHE could review the matter on remand, the District Council in the spring of 2011 elected to review this matter. On May 12, 2011, the District Council denied S.E. 4605. E. 49-72.

Barnabas filed for judicial review in the Circuit Court for Prince George's County. After the parties filed memoranda in Circuit Court, a hearing was held on December 9, 2011, E. 23-48, and subsequently, on June 26, 2012, an Opinion and Order of Court was issued reversing the

² The administrative record reflects that opposition parties for the S.E. 4605 application included business owners on Clifton Road, residents of the adjacent Gordon's Corner subdivision, and residents of the adjacent Victoria Manor retirement home complex.

District Council and affirming the ZHE. E. 49-72. The District Council timely appealed the Circuit Court's decision to the Court of Special Appeals of Maryland.

On July 26, 2013, the Court of Special Appeals, in an unreported opinion, reasoned that the District Council's decision (a) was tainted by an erroneous statement as to the applicable law, and (b) may have relied upon evidence outside of the administrative record.³ The Court stated that because the District Council is the final arbiter of zoning decisions, it may not substitute its judgment for that of the District Council. As such, the Court vacated the judgment of the Circuit Court and remanded this matter with instructions for that court to vacate the ruling of the District Council and remand the matter to us to apply the correct legal standard and render a decision solely on the administrative record. *See County Council of Prince George's County, Sitting as the District Council vs. Barnabas Road Associates, LLC*, No. 00982, September Term, 2012, at 15, (filed July 26, 2013).

The Court of Special Appeals issued its Mandate on September 12, 2013. Subsequently Barnabas filed a petition for writ of certiorari in the Court of Appeals of Maryland on September 10, 2013. *See Barnabas Road Associates, LLC vs. County Council of Prince George's County, Maryland, Sitting as the District Council*, Petition Docket No. 383, September Term, 2013. On November 25, 2013, the Court of Appeals, in a decision without published opinion, denied Barnabas petition. *See Barnabas Road Associates v. County Council of Prince George's Co.*, cert. denied, 435 Md. 502; 79 A.3d 947; 2013 Md. LEXIS 846 (2013).

On January 17, 2014, the Honorable Herman C. Dawson of the Circuit Court, at the request of the parties, issued an order which directed the District Council to place this matter on

³ See footnote 9 *infra*, and pp. 18-20, we apply the legal standard for special exceptions as directed by the Court of Special Appeals. We also, pursuant to the Court's opinion, and our rules of procedure, exclude criminal convictions of Recycled Aggregates from the administrative record.

an agenda in February 2014, and to render a new decision, consistent with the opinion of the Court of Special Appeals, in March 2014. S.E. 4605 was placed on the District Council's Zoning Agenda for March 17, 2014. Due to inclement weather, the Prince George's County Government was closed.⁴ On March 18, 2014, the District Council addressed certain matters from the March 17, 2014, Zoning Agenda, which included S.E. 4605. The District Council deferred S.E. 4605 to the March 24, 2014, Zoning Agenda.

On March 24, 2014, this matter was deferred because the parties consented to an extension of time, until April 21, 2014, to allow final action. *See Consent Amended Order of the Circuit Court, March 31, 2014, Herman C. Dawson, Judge.*

On April 21, 2014, this matter was again deferred because the parties consented to a second extension of time, until May 5, 2014, to allow final action. *See Consent Second Amended Order of the Circuit Court, April 23, 2014, Herman C. Dawson, Judge.*

On May 5, 2014, the District Council referred S.E. 4605, pursuant to §27-132, to staff for the preparation of an order of denial.

Findings and Conclusions

Relevant Facts

1. The subject property includes 13.17 acres in the I-1 Zone, adjacent to Stamp Road and

⁴ See §27-291. Postponement of Council actions.

(a) Whenever the District Council is required to take action on or has the option to review a matter within a time limit specified in this Subtitle, the calculation of the time limit shall be postponed during the period that the Council is prohibited from taking action pursuant to the provisions of Article 28, Section 8-104, of the Annotated Code of Maryland, and the months of August and December when the Council is in recess; or in the event the Council fails or is unable to meet due to the cancellation of a scheduled Council session due to a weather emergency, or other declared state of emergency, in which event the time shall be extended to the next regularly scheduled date on which the Council meets.

We note that effective October 1, 2012, Article 28 §§1-101 through 8-127 was repealed and recodified at Md. Code (2012), Land Use Article. *See Ray v. Mayor of Baltimore*, 59A.3d 545, 2013 Md. LEXIS 11 (Md. 2013). §22-206 of the Land Use Article, which repealed and replaced Art. 28, §8-104 is without substantive change.

at the terminus of Clifton Road, in Temple Hills. The property is part of a larger 54-acre tract along Stamp Road and Clifton Road, just south of the Gordon's Corner single-family residential subdivision and just north and east of the Victoria Manor retirement home complex.⁵ The subject 13.17-acre property is shown in outline on the second (unnumbered) page of the technical staff report. E. 547-618.

2. As the technical staff reported, the subject property sits at the end of Clifton Road and touches Stamp Road. The latter roadway lies easterly and westerly above and roughly parallel to Clifton Road; Clifton runs straight northwest 1,150 feet from the subject property to St. Barnabas Road. I-1 ground owned by Barnabas touches the subject property on all boundaries. Retail businesses have commercial frontage on Clifton Road, northwest of the subject property. E. 547-618.

3. At the time of its application, Barnabas and predecessors were using the subject property and the larger 54-acre tract for landfill purposes, for Class 3 (non-biodegradable construction and other) materials. The land had been used as a Class 3 fill since 1998, and before then as a sand and gravel extraction site. E. 547-618. Before 2008, large dump trucks had hauled sand and gravel, Class 3 fill, stone and rock, and other materials to and from the subject property on a daily basis for twelve years or more. *Id.*

4. Landfill uses on the 54-acre tract have left large berms and waste piles on the property. The waste piles on the 54-acre tract are visible from Victoria Manor, Clifton Road, and St. Barnabas Road. E. 547-618. The technical staff noted that the applicant had not maintained the 54-acre tract to conform with Master Plan goals for improved neighborhood appearance. *Id.*

5. In its report the technical staff defined the “neighborhood,” the properties whose uses

⁵ Victoria Manor residents who were opposition parties in S.E. 4605 proceedings appeared in the circuit court, in opposition to the Barnabas petition, but did not file a memorandum or presented argument.

would affect and be affected by the owner's use of the subject property. E. 547-618. This neighborhood, south of the interchange joining Branch Avenue and St. Barnabas Road, is bounded on the northwest by St. Barnabas Road, on the northeast by Branch Avenue, on the south by I-495, the Capital Beltway, and to the east by Temple Hill Road. *Id.* The staff described the S.E. 4605 neighborhood as mixed commercial and light industrial in character, including commercial retail and office and also single-family and multifamily residential. *Id.* The industrial uses were light and not intensive, including warehouses and automotive storage and repair. *Id.*

6. Commercial businesses have frontage along Clifton Road, on the route traversed (for Class 3 fill purposes) and to be traversed (by S.E. 4605 vehicles) by dump trucks to and from the 54-acre tract. To the north of the subject property, just beyond Stamp and Beech roads, lies the single-family Gordon's Corner subdivision, and to the west, beyond berms on the 54-acre tract, sits the Victoria Manor complex, known as the Manor at Victoria Park retirement community. E. 547-618. All opposition parties were from Clifton Road and St. Barnabas Road commercial properties and the Gordon's Corner and Victoria Manor communities.

7. As indicated by Barnabas and found by the technical staff and Planning Board, Barnabas's proposed concrete recycling plant would succeed – for an indefinite time period – the Class 3 fill activities in operation since 1998. E. 547-618. As the staff reported, landfill and recycling operations have several “obvious” differences, including “their overall lifespan”:

While a permit for a landfill has a limited lifespan, there is no such limitation on a concrete recycling facility. It is allowed to continue indefinitely.

E. 559. Moreover, staff reported that concrete recycling is a more intensive industrial use:

Review of the applicant's site plan and statement of justification ...suggest the proposed concrete recycling use is a more intensive use than the Class 3 fill. Instead of only arriving full and leaving empty (as in the case of a fill operation) trucks will also be arriving empty and leaving full. Dust is a concern, especially

with the anticipated truck traffic and stockpiles up to 64 feet high. The applicant indicates that Clifton Road will be cleaned twice a day but does not address how dust will be minimized within the site. Cleaning Clifton Road twice a day, particularly in the summer when it is especially dry, will most likely not be sufficient.

E. 559. The staff, that is, determined that dump truck traffic and the handling and disposal on-site of concrete waste materials would be more adverse – or “more intensive” – than prior landfill operations on the 54-acre site. *Id.*

8. As to dump truck traffic alone, even without consideration of adverse on-site noise and dust effects, the technical staff stated that the increase in truck traffic to be anticipated, if S.E. 4605 were approved, would have a substantial adverse effect on “the safety, health and welfare of workers in the area,” as “more trucks will result in more noise and dust.” E. 559.

9. The technical staff and Planning Board, though not the ZHE, gave considerable attention to the Master Plan and Sector Plan.⁶ Staff noted that the subject property and its neighborhood were included in recommendations, called “goals” and “objectives,” of both the 2002 General Plan for Prince George’s County and the 2000 Master Plan for The Heights and Vicinity. The General Plan included the neighborhood of the property, south of the St. Barnabas Road – Branch Avenue interchange and north of the Capital Beltway, within the “Developed Tier,” a vicinity of Prince George’s County generally inside the Beltway. E. 547-618. Also, the Sector Plan of 2008 recommended upgrading of neighborhoods along St. Barnabas Road.

10. As to the Master Plan and Sector Plan, the community planning south section of the technical staff had several criticisms of Barnabas’s special exception proposal, notably the intensity of the use. In a memorandum dated March 19, 2008, attached to the technical staff report, E. 547-618, community planning south made several adverse comments about the relation

⁶ As explained below, §27-317 (a) of the Zoning Ordinance expressly requires all special exception applicants to prove that their proposed land uses will not “substantially impair” the integrity of the Master Plan.

of the proposed concrete recycling plant and the subject property's neighborhood to Master Plan recommendations.

11. Community planning south staff noted that the subject property was in the Developed Tier, under the General Plan for Prince George's County approved in 2002. Staff stated:

The property is located in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to high-density neighborhoods.

E.596. Staff said the Barnabas special exception use would be "not inconsistent" with 2002 General Plan policies, *id.*, though a concrete recycling plant would obviously not promote a neighborhood that is "sustainable" or "transit-supporting" or "mixed-use" or "pedestrian-oriented" or "medium-to high-density." *Id.*

12. Community planning south described the property and Barnabas's proposal as follows:

The existing landfill site [in early 2008, since unchanged] is an enormous mound of dirt that towers over the community and can be seen from a great distance on St. Barnabas Road. The owner plans to level the mound to a small degree. However, it will still be highly visible in the community. Consideration should be given to further leveling the landfill to mitigate its impact on the surrounding residential and commercial neighbors. A portion of the site that the landfill does not occupy is proposed to handle solid waste consisting of concrete demolition material. Currently concrete is being stockpiled on the proposed recycling facility site at a height that is visible from the street.

E. 597. Even today, reported community planning south staff, before concrete recycling operations begin, waste material piles on the subject property adversely affect the community.

13. Community planning south continued, as to Master Plan recommendations:

The 2000 Approved Master Plan and Sectional Map Amendment for The Heights and Vicinity (Planning Area 76A) takes into account the close proximity of the industrial area to the residential community. The Heights Master Plan states,

“Future development or reuse of sites in the employment area should be as a light industrial. **Uses that require special exceptions and exhibit a more industrial type use should be carefully considered for the impact on the nearby residential area and roads.** In addition, any development of these properties should be designed to enhance the appearance of the site through attractive building facades and adequate landscaping.”

E. 597. (Emphasis in original.) Thus the staff planners who work with master plans noted that the proposed concrete recycling plant would be an intensive use, not “light industrial”; that intensive uses should be given “careful consideration”; and that development of industrial sites like Barnabas’s should “enhance the appearance of the site.”

14. In response to Barnabas’s claim that the concrete recycling plant would “promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impact,” community planning south staff stated:

The proposed use is *not* in keeping with the existing lighter industrial. Also, adjoining industrial and residential uses that are in close proximity may adversely be affected by dust and noise that is generated from this type of business.

E. 598. (Emphasis added.) Community planning south staff stated clearly that the proposed concrete recycling plant will be more intensive than the existing landfill and will “not” be “in keeping with the existing lighter industrial.”

15. Barnabas claimed that the proposed concrete recycling “will prevent the overcrowding of land,” but staff responded:

The plan does not indicate how safe circulation by vehicles and pedestrians will be accomplished. Nor does it indicate how the trucks will be stacked if several are waiting to be serviced.

E. 598. Staff here suggests that Barnabas had no plan – and could not have one – to control vehicle stacking and circulation, if several trucks arrived at the subject property at the same time.

16. Barnabas claimed that “[t]raffic congestion and danger [are] lessened due to

staggered vehicle entry time of three to ten minutes,” but staff pointed out that this was a mere estimate, not supported by an actual traffic safety plan:

Consideration should be given to a more definitive safety plan other than an estimate of the time it will take for each truck to enter and exit the facility.

E. 598.

17. Barnabas claimed its proposed development “will meet all regulations pertaining to noise, water and air quality,” but staff responded:

The applicant is not considering the impact of noise and air quality on surrounding properties derived from truck traffic [en] route to the recycling facility. Plans to redevelop St. Barnabas Road have been included in the Branch Avenue Sector Plan and Sectional Map Amendment. Truck traffic traveling along that route could discourage reinvestment in the area.

E. 598. The planners thus indicated that the truck traffic to and from Barnabas’s special exception property will adversely affect surrounding land uses, even beyond what occurs on the property itself.

18. Staff also reported on the pending Branch Avenue Corridor Sector Plan for areas adjoining Barnabas’s neighborhood:

A joint public hearing for the Preliminary Branch Avenue Corridor Sector Plan and Proposed Sectional Map Amendment was held by the County Council and Planning Board on January 29, 2008. The vision for St. Barnabas Road is to create a safe, vibrant and attractive community that encourages residents to walk, shop and socialize at the upgraded commercial areas. Attractive landscaping and streetscape will link the residential neighborhoods to the shopping, recreation, and transit. The final County Council action on the plan and its recommendations is anticipated in the summer or fall of 2008.

E. 598. The Branch Avenue Corridor Sector Plan was finally approved by the District Council in Council Resolution 86-2008, which was adopted on September 30, 2008.

We are persuaded, based on our review of S.E. 4605, that a concrete recycling plant just off St. Barnabas Road, with substantially greater noise, dust, and truck traffic than now exist

along that roadway, will *not* “create a safe, vibrant and attractive community that encourages residents to walk, shop and socialize at the upgraded commercial areas” in the corridor.

19. Community planning south staff noted that the subject property was not inside the Branch Avenue Corridor Sector Plan area, but stated:

[T]he [Sector Plan] acknowledges that the industrial area [including Barnabas] potentially could have a negative effect on the growth and stability of the adjoining commercial and residential communities. The preliminary plan recommends that a study be conducted of the industrial land uses adjacent to the St. Barnabas commercial corridor for their impact and develop a plan to mitigate the effect of operational uses such as dump trucks ingress and egress, noisy equipment, etc. It is important to note that the property is situated at the end of Clifton Road (1,150 feet south of St. Barnabas Road). St. Barnabas Road is the only access point which would allow travel in any direction from the proposed recycling site.

E. 598. Again, staff identified major conflicts between Master Plan and Sector Plan recommendations for the St. Barnabas Road corridor – where the vision is “to create a safe, vibrant and attractive community” for residents to “walk, shop and socialize” at “upgraded commercial areas” – and the noise, dust, and truck traffic to be generated by Barnabas at the subject property.

20. Community planning south staff summed up as follows:

Truck traffic and other heavy equipment that would support a concrete recycling facility *would negatively impact* the residential office and retail uses that are proposed for St. Barnabas Road. Careful attention should be paid not only to the design of the site but also to the impact of the use to the St. Barnabas Road commercial area and the additional traffic on St. Barnabas Road.

E. 599. (Emphasis added). We concur and adopt staff’s analysis that Barnabas’s proposed truck traffic and heavy equipment use at the concrete recycling plant would negatively affect the “residential, office and retail uses” proposed for St. Barnabas Road.

21. In its review of the S.E. 4605 record, the Planning Board adopted and reemphasized many negative findings made by the technical staff. Planning Board recommendations included

these points:

- a. The Planning Board's analysis, summarizing what the Board saw in the record for S.E. 4605, first noted concerns about dust and air quality, as stated by the Health Department. PGCPB Resolution No. 09-128, E. 995-996. The Health Department stated that the application showed insufficient dust control and monitoring measures. *Id.* The department also noted, significantly, that air quality permits would be required from the Maryland Department of the Environment. *Id.*, at E. 996.
- b. The Planning Board also quoted extensively and adopted recommendations from community planning south staff regarding Master Plan recommendations for the neighborhood of the subject property. E. 1000-1002. In particular, the Planning Board agreed with staff that Barnabas's proposed concrete recycling plant at the subject site would generate substantial dump truck traffic and would be a more intensive industrial use than the then existing Class 3 fill operation on the property. E. 1000-1001.
- c. The Planning Board also adopted verbatim the comments and analysis community planning south staff offered in response to Barnabas's claims of Master Plan conformance. E. 1000-1001. In its comments staff had stated why the proposed concrete recycling plant would *not* meet Master Plan goals and objectives, as to noise and dust generation, adverse effects from dump truck traffic, and unsightly property appearance from dirt mounds and concrete waste materials.

22. At the initial evidentiary hearing before the ZHE, in May and June 2009, only a few opposition parties appeared. A commercial retail business owner, Mr. Dave Sislen, testified in opposition to the special exception application and complained about noise and dust from dump trucks associated with the Class 3 fill operations on the 54-acre property:

ZHE: So, your concern then with regard to this proposed use would not be the height of the mound but it would be the noise, air particulates.

SISLEN: Continued noise, continued dust and what is significant when you have a height of that magnitude is water runoff to the extent that we're going to exacerbate a very bad situation by adding water to the formulation by which they're trying to limit the dust. So, even though I've been represented to be a green mound for very large parts of the last several years – and I understand and

respect Mr. Driggs' commitment to make it all green – that, in fact, the water runoff and dust and silt that we've ended up with has had a very significant impact on our property.

We certainly respect his opportunity to extend the life of this property. We understand that the Class III fill permit is going to expire next year, but we think the crusher that's going to crush 4 million pounds of aggregate and create more dust and more noise is not consistent with the goals that were articulated relative to impact on the neighbors, the health and welfare of the neighborhood, and that, with all due respect, Mr. Ferguson's comparison of the impact to the current use is an inappropriate one because the current use is going to expire next year by definition. So, that for him to say the concrete crusher is no worse than what's there today is, I think, a false alternative.

E. 432-433. Mr. Sislen testified that his company had unsuccessfully pursued a nuisance action against Barnabas's owners and had continued complaints about "[d]ust, water, noise, [and] the mound [of stockpiled dirt] that's up there – all these elements." E.441, E.432-443. As to the dirt mound left on the 54-acre tract by Barnabas's predecessors, Mr. Sislen testified that "it's not a very attractive addition to the neighborhood" and that "if you go out there and stand on our property, it's overwhelming to look up at." E.442-E.443.

23. At the evidentiary hearing in 2010 after the District Council's remand order, many more persons appeared in opposition. These witnesses, including representatives of commercial businesses on Clifton Road, residents of the Gordon's Corner single-family subdivision, and residents of the Victoria Manor retirement community, complained about heavy dump truck noise, dust from trucks and Class 3 fill operations, and unsightly waste mounds and stockpiles on the 54-acre property. E. 105, 106, 107-226.

24. The ZHE deemed all opposition testimony irrelevant. The ZHE concluded that testimony about noise and dust, dump truck traffic, and unsightly property appearance had no relevance to Barnabas's special exception use, the concrete recycling plant. E. 249-266, E. 227-

232, E. 105-226, E. 85-104.

25. The District Council twice remanded the S.E. 4605 application to the ZHE. E. 227-232, E. 73-78. On each occasion, the Council stated in an order that the ZHE had failed to make a record or sufficiently review the evidence on a particular issue, such as noise or dust or truck traffic. E. 227-232, E. 73-78.

26. Other facts in the administrative record for S.E. 4605 will be reviewed below.

Applicable Law

The following sections of the Zoning Ordinance are relevant to our analysis of S.E. 4605.

The Zoning Ordinance

The purposes of the Zoning Ordinance, pursuant to §27-102(a), are:

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

A special exception *may* be approved, pursuant to §27-317(a), if:⁷

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.⁸ (Emphasis added.)

A concrete recycling facility *may* be permitted, pursuant to §27-343.03, subject to the criteria below.

- (a) (1) Concrete recycling facility components and other parts of the operation having the potential for generating adverse noise, dust, or vibration impacts shall be located at least three hundred (300) feet from the boundary lines

⁷ See §27-108.01. Interpretations and rules of construction.

(19) The words “shall,” “must,” “may only” or “may not” are always mandatory and not discretionary. The word “*may*” is permissive. (Emphasis added.)

⁸ Except for the last two requirements, (6) & (7), as to “tree conservation” plans and “environmental features,” these requirements have been applied Maryland cases. *E.g.*, *Cox v. Prince George’s County*, 86 Md. App 179, 586 A.2d 43 91991); *Entzian v. Prince George’s County*, 32 Md. App. 256, 360 A.2d 6 (1976).

of the subject property adjoining any land in any Residential or Commercial Zone (or land proposed to be used for residential or commercial purposes in a Comprehensive Design, Mixed Use, or Planned Community Zone), and one hundred (100) feet from the boundaries of the subject property adjoining any land in any Industrial Zone (or land proposed to be used for industrial purposes in a Comprehensive Design, Mixed Use, or Planned Community Zone). Other fixed installations (including automobile parking, settling ponds, and office uses) shall be located at least one hundred (100) feet from the boundaries of the subject property adjoining any land in any Residential Zone (or land proposed to be used for residential purposes in a Comprehensive Design, Mixed Use, or Planned Community Zone).

(2) The site plan and information accompanying the application for Special Exception shall be reproducible, or twelve (12) copies shall be submitted. In addition to the requirements of Section 27-296 (c), the site plan and accompanying information shall show:

- (A) The components of the concrete recycling facility;
- (B) The daily capacity of the facility;
- (C) The location of all material stockpiles;
- (D) The settling ponds, if any;
- (E) The source of water to be used in the operation;
- (F) Truck wash-out facilities, if any;
- (G) The methods of disposing of waste materials;
- (H) The internal traffic circulation system;
- (I) The parking and storage areas for all vehicles and equipment; and
- (J) The identification of the trucks and heavy equipment to be used in the facility operation.

(3) Driveways for ingress and egress shall be identified on the site plan, and shall be located so as to not endanger pedestrians or create traffic hazards. The applicant shall identify the dust-control measures to be used on the driveways and the interior traffic circulation system. Any ingress or egress driveway shall have a minimum width of twenty-two (22) feet, and shall be paved for a distance of at least two hundred (200) feet from the boundary line of the Special Exception.

(4) In addition to the requirements of Section 27-296 (c), all applications shall be accompanied by the following:

- (A) A stormwater concept plan approved pursuant to Section 4-322 of this Code;
- (B) A preliminary noise assessment;
- (C) A horizontal profile illustrating all structures and stockpiles; and
- (D) A grading plan that illustrates existing and proposed topography.
- (E) A traffic analysis which includes the volume of traffic expected to be generated by the operation and identifies the streets to be

used between the site and the nearest other street (to be used) that has a minimum paved width of twenty-four (24) feet for its predominant length.

(b) All information required as part of the Special Exception application shall be referred to the Prince George's County Department of Public Works and Transportation, Prince George's County Soil Conservation District, Washington Suburban Sanitary Commission, Prince George's County Department of Environmental Resources, Maryland State Highway Administration, Maryland State Department of Health and Mental Hygiene, and Maryland State Water Resources Administration for comment. These agencies shall be given forty-five (45) calendar days to reply. A copy of the same information shall also be submitted to the Prince George's County Sand and Gravel Advisory Committee.

(c) On land which is located within a Chesapeake Bay Critical Area Overlay Zone, wash plants, including ponds, spoil sites, and equipment are prohibited within the Buffer, as defined in Subtitle 5B. No new concrete recycling facility shall be approved, and no such operation presently in existence or previously approved shall be permitted to continue or commence where any of the following circumstances are present:

(1) Habitat protection areas have been or may be designated on the subject property, in accordance with criteria set forth in Subtitle 5B;

(2) The use is located within the Buffer, as defined in Subtitle 5B;

(3) The use would result in the substantial loss of long-range (twenty-five (25) years or more) productivity of forest and agriculture, or would result in a degrading of water quality; or

(4) The subject property contains highly erodible soils. (Emphasis added.)

Maryland Case Law

In *Schultz v. Pritts*, 291 Md. 1, 15 (1981), the Court of Appeals described the required analysis for special exceptions as follows:⁹

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use

⁹ Because the Court of Special Appeals found that the District Council based its May 9, 2011, final decision on an error of law applicable to special exceptions, we restate here, the legal standard applicable to special exceptions from the Court of Special Appeals unpublished opinion. See *County Council of Prince George's County, Sitting as the District Council vs. Barnabas Road Associates, LLC*, No. 00982, September Term, 2012, at 3, 11-13, 15, (filed July 26, 2013).

located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In subsequent cases, the Court of Appeals has explained that the *Schultz* comparison for special exception does not entail a comparative geographical analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 100-01 (2008). Rather, this comparison “is focused entirely on the neighborhood involved in each case.” *Id.* at 102. Accordingly, even though a special exception use may have some adverse effects on the surrounding area, “the legislative determination necessarily is that the use conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the [zoning agency] that actual incompatibility would occur.” *Id.* at 106.

In *Loyola*, the Court of Appeals concluded its analysis of the *Schultz* test as follows:

With this understanding of the legislative process (the “presumptive finding”) in mind, the otherwise problematic language in *Schultz* makes perfect sense. The language is a backwards-looking reference to the legislative “presumptive finding” in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only.

Id. at 106-07.

As the Court of Appeals explained in *Montgomery County v. Butler*, 417 Md. 271, 305 (2010), (quoting *Schultz*, supra, 291 Md. at 11), “[i]f [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood...[the applicant] has met his

burden.” Once the applicant meets this threshold, the local zoning board will “ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area.” *Id.* (citing *Schultz*, *supra*, 291 Md. at 11). The Court of Appeals has noted that, “if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Loyola*, *supra*, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55 (1973)).

Impairment of the 2000 Heights And Vicinity Master Plan

Even before Prince George’s County voters adopted the charter form of government in 1970, the County’s Zoning Ordinance has imposed the same basic requirements on all applications for a special exception. Those basic requirements are codified in § 27-317 (a) of the Ordinance. Perhaps the main requirements, certainly the most significant ones in this case, are the third, fourth, and fifth. These three requirements are at the heart of all special exception cases, and are the main reasons special exception review is imposed on any uses of land in the County. In each zone, including the I-1 in the present case, some land uses are designated as *permitted*, and almost all others are *proscribed*, or not permitted. But a few uses, by legislative determination, are permitted only by *special exception*, meaning that they will be allowed after individual administrative review, if certain conditions are met. In Prince George’s County, the main conditions are in subsections (3), (4), and (5) of § 27-317 (a): To be permitted, the special exception applicant must demonstrate that its use will not “substantially impair the integrity” of the Master Plan, or “adversely affect the health, safety, or welfare of residents or workers in the area,” or “be detrimental to the use or development of adjacent properties or the general neighborhood.” Unless the record contains applicant evidence sufficient to prove all these

elements, a special exception cannot be approved.

As a threshold matter, we are not persuaded by the record, including but not limited to the probative evidence below, that the applicant has shown that the proposed use – concrete recycling at Clifton Road – would be conducted without real detriment to the neighborhood. The analysis by the community planning south technical staff, in its March 19, 2008 memorandum to the record, E. 596-599, is one of a number of specialized staff reviews of the S.E. 4605 application. Environmental planning and transportation planning staff, for example, also made comments, though none were more thorough than those of community planning south. Community planning south staff conducted a detailed analysis of the subject property and the 54-acre tract in 2008 (unchanged today), the tract’s prior uses, and its proposed use for concrete recycling, especially in light of Master Plan and Sector Plan recommendations for the property, the neighborhood, and the St. Barnabas Road corridor. Community planning south made these significant points, which we adopt:

- The General Plan “vision” for Developed Tier properties like the 54-acre tract is for creation of neighborhoods that are “sustainable” and “transit-supporting” and “mixed-use” and “pedestrian-oriented” and “medium- to high-density.” The proposed concrete recycling plant will not help to create a neighborhood with any of these features.
- The existing landfill on the tract “is an enormous mound of dirt that towers over the community and can be seen from a great distance on St. Barnabas Road.” That is, prior landfill uses by Barnabas and its predecessors have left a large, unsightly dirt mound on the 54-acre tract, one that is “highly visible in the community.” Also, concrete is being stockpiled on the proposed recycling facility site at a height that is visible from the street.

The staff’s point here is that prior Class 3 fill operations have made the property unsightly and current concrete stockpiling is adding to the problem.

- As The Heights and Vicinity Master Plan indicates, the industrial area –

primarily the 54-acre tract – and the residential community, Gordon’s Corner and Victoria Manor, are in “close proximity.” The Master Plan recommends “light industrial” uses on and around the 54-acre tract, because of the nearby residences.

- The Master Plan states that special exception uses in the industrial areas, including the 54-acre tract, “should be carefully considered,” because of the proximity of the residential community, and special consideration should be given to “the impact on the nearby residential area and roads.” The Master Plan emphasizes the importance of “the appearance of the site,” a feature the staff had noted was deficient.
- Staff stated that the proposed concrete recycling “is not in keeping with the existing lighter industrial.” That is, the concrete recycling will be more intensive – and more intrusive to the residential community – than the landfill operations then (in 2008) existing on the site.
- Staff stated that “industrial and residential uses” adjacent to the 54-acre tract, or “in close proximity” to the tract, “may adversely be affected by dust and noise” generated by the concrete recycling plant. Thus staff noted direct compatibility problems, as between the site of the concrete recycling and the nearby residential and light industrial properties.
- Staff questioned how “safe circulation” would be ensured, as between vehicles and pedestrians on and near the subject property. Here again, Barnabas’s application suffered from inadequate and incomplete planning. In particular, Barnabas’s traffic circulation plan did not show “how the trucks will be stacked if several are waiting to be serviced.” Barnabas did not meet *staff’s* “burden of proof,” to show that truck traffic would not create unforeseen problems.
- Also as to truck traffic and Barnabas’s traffic circulation plan, staff noted that Barnabas offered a mere “estimate” as to the time trucks would be on site, not a plan to ensure that several trucks were not on the property at the same time. Again, Barnabas did not satisfy staff that truck traffic would not create on-site stacking or parking problems, problems that would then adversely affect neighboring residents.
- Staff also noted that Barnabas in its plan had not considered “the impact of noise and air quality on surrounding properties” from the trucks going to and from the subject site. Staff distinguished between on-site and off-site impacts, pointing out that the truck traffic entering and leaving the property and the neighborhood would likely cause significant adverse noise and dust impacts that Barnabas had not addressed.

- Staff also noted that the increase in dump truck traffic to be anticipated from the concrete recycling would (or “could”) “discourage reinvestment in the area” of St. Barnabas Road. That corridor is proposed for upgraded development, in the 2000 Master Plan and 2008 Sector Plan. Again, because concrete recycling is not a “light industrial” type of land use, and because the intensity of the use and particularly the increase in truck traffic will not have favorable effects on surrounding land development, the proposed special exception use will be inconsistent with the Master Plan and Sector Plan recommendations.
- Staff stated that the “vision” of the proposed Branch Avenue Corridor Sector Plan in 2008 was “to create a safe, vibrant, and attractive community that encourages residents to walk, shop and socialize at the upgraded commercial areas.” (The Sector Plan was adopted by the District Council in September 2008.) Concrete recycling certainly does not promote this vision, at this location; the use does not at all encourage walking or shopping or socializing by residents, anywhere near it.
- Staff stated also that the new Sector Plan “acknowledges that the industrial area potentially could have a negative effect on the growth and stability of the adjoining commercial and residential communities.” The preliminary plan proposed a study, to “develop a plan to mitigate the effect of operational uses such as dump trucks ingress and egress, noisy equipment, etc.” No such study has been done, and no mitigation plan has been proposed. Indeed Barnabas's application does not even acknowledge the Master Plan or Sector Plan recommendations or the inconsistency of concrete recycling with upgraded commercial and residential uses in the St. Barnabas Road corridor.
- As to the potential adverse effects of dump truck traffic, staff pointed out that the subject property is at the end of Clifton Road and that “St. Barnabas Road is the only access point which would allow travel in any direction from the proposed recycling site.” Thus Barnabas’s claims that Stamp Road offers alternative access are answered here by staff, who explained that most trucks will use St. Barnabas Road, which allows travel “in any direction” from the subject property.
- Community planning south staff concluded that “[t]ruck traffic and other heavy equipment that would support a concrete recycling facility *would negatively impact* the residential, office and retail uses that are proposed for St. Barnabas Road.” (Emphasis added.) Staff stated the concrete recycling use would “impact . . . the St. Barnabas Road commercial area” and would place “additional traffic on St. Barnabas Road.”

Additionally, the Maryland Court of Appeals recently held that when statutes link

planning and zoning, Master Plans are elevated to the level of true regulatory devices. *HNS Dev., LLC v. People's Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012), affirming *HNS Development, LLC v. People's Counsel for Baltimore County, et al.*, 200 Md. App. 1, 24 A.3d 167 (2011), citing *Mayor & City Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 814 A.2d 469, (2002). The Court also held that plans that did not conform to the Master Plan must be rejected, and nonconformance may serve as an independent basis of denial. *Id.*, citing *Maryland-National Capital Park & Planning Commission v. Greater Baden-Aquasco Citizens Association*, 412 Md. 73, 985 A.2d 1160 (2009), *Coffey v. Maryland-National Capital Park & Planning Commission*, 293 Md. 24, 441 A.2d 1041 (1982). We find that §§27-102, 27-317, and 27-317, are statutes that link planning and zoning, thus elevating the Heights and Vicinity Master Plan of 2000 and the Branch Avenue Corridor Sector Plan of 2008 to the level of true regulatory devices. As reviewed above and adopted by us, we are persuaded by the numerous findings of technical staff findings that there is probative evidence of substantial impairment of the Master Plan. Perhaps better stated, the staff reports demonstrate that S.E. 4605 will “substantially impair the integrity” of The Heights and Vicinity Master Plan of 2000 and the Branch Avenue Corridor Sector Plan of 2008. We are further persuaded that based on our review of the administrative record, S.E. 4605, proposed concrete recycling at Clifton Road, will – in terms of the 2000 Master Plan and the 2008 Sector Plan – create unique adverse effects, effects not to be anticipated elsewhere in the I-1 Zone. An agency’s interpretation of the statute that it administers will be given considerable weight. *See Lussier v. Md. Racing Comm’n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996); *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989). *See also Fogle v. H & G Restaurant*, 337 Md. 441, 455, 654 A.2d 449 (1995) (The agency’s expertise in its own field must be respected).

Finally, we are persuaded by Community planning staff findings above. We adopt these findings as probative evidence in the record that concrete recycling at the Clifton Road site would cause substantial and unique adverse effects on adjoining properties and the neighborhood, in contravention of Master Plan and Sector Plan goals and objectives. As such, we find that S.E. 4605 does not conform to the Master Plan must be rejected. *See HNS Dev., LLC*, 425 Md. 436, 42 A.3d 12 (2012), *Rylyns Enters., Inc.*, 372 Md. 514, 814 A.2d 469, (2002), *Greater Baden-Aquasco Citizens Association*, 412 Md. 73, 985 A.2d 1160 (2009) and *Coffey*, 293 Md. 24, 441 A.2d 1041 (1982).

Detriment to Area Residents or Workers and to Use or Development of Adjacent Properties and the General Neighborhood

The technical staff, commercial property owners on Clifton Road, and residents of the Gordon's Corner single-family subdivision and the Victoria Manor retirement community also presented substantial evidence in opposition to Barnabas's special exception application. These parties, lay and professional, fully answered Barnabas's claims that the dump trucks and heavy equipment uses on the subject property, Clifton Road, and St. Barnabas Road would not create adverse effects for area residents and workers and for the use and development of adjacent properties and the general neighborhood. Cases concerning special exceptions have described the pertinent "neighborhood" in various ways. In *Clayman v. Prince George's County*, 266 Md. 409, 292 A.2d 689 (1972), the Court of Appeals described the "neighborhood" as "an area which *reasonably* constitutes the immediate environs of the subject property." (Emphasis in original.) In *Schultz*, *supra*, 291 Md. at 15, the Court outlined the agency's duties when reviewing an application for special exception as including a judgment about "whether the *neighboring properties in the general neighborhood would be adversely affected.*" (Emphasis in original.)

More recently, the Court also commented further on the language from *Schultz* in its opinion in *Butler*, 417 Md. 271, 283, 9 A.3d 824 (2010). The phrase detriment to the neighborhood implies necessarily that the Board's task is to determine if there is or likely will be a detriment to the surrounding properties. These requirements also are imposed by the Zoning Ordinance, in §§ 27-317 (a) (4) and (5). And Zoning Ordinance § 27-108.08.01(a)(9) defines "area" in this context as: "Unless otherwise specified, an 'area' of land means 'contiguous area'"

At the initial evidentiary hearing for S.E. 4605, Mr. Dave Sislen testified. E. 432-443. Mr. Sislen testified that the huge dirt mound on the 54-acre tract was unsightly and harmful to his storage business. E. 432-433. He also complained of "[d]ust, water, noise, the mound that's up there – all those elements" and stated the proposed "crushing" operation would cause more noise and dust. E. 441-442.

At the evidentiary hearing on remand, many residents appeared. E. 105, 106. These persons testified about noise, dust, truck traffic, and past and future adverse effects on their businesses, residences, and properties: Ms. Barbara Ann Kelly, a resident of Victoria Manor, or the Manor at Victoria Park; Mr. Ed Lewis, a Gordon's Corner resident living on Holly Tree Road; Ms. Martha Hall, a Victoria Manor resident; Ms. Annie Ruth Slade, a Gordon's Corner resident on Holly Tree Road; Ms. Willie Belle Hanlon of Victoria Manor; Mr. and Mrs. Ernest Edwards, residents of Victoria Manor; Ms. Bertha Freeman Gilbert of Victoria Manor; Mr. Andy New, co-owner with Mr. Sislen of a storage company between Clifton and Beech roads; Charlie Sargeant of Victoria Manor; Ms. Victoria Nwaobasi, a commercial car wash owner on St. Barnabas Road; Jennifer Boniface, a homemade food retailer on Clifton Road; Mr. Louis Choporis, a commercial business owner on Clifton Road; Charles McDougale, a Gordon's Corner resident on Leisure Drive; Leon White of Gordon's Corner, on Ranger Avenue; Henry Hinnant,

a resident on Danville Drive; Mr. Ronnie Andrews of Victoria Manor; Mr. Calvin Starcher, owner of Capital Air Filter on Clifton Road; Ms. Wilhelmina Marshall, a long-time resident of Gordon's Corner, on Delmar Avenue; Ms. Carolyn Tyson, a resident of Victoria Manor; Dr. Juanita Archer, a retired endocrinologist living on Ranger Avenue in Gordon's Corner; and Mr. William Hutt, on Danville Drive in Gordon's Corner. Several of these witnesses made extended presentations refuting Barnabas's case.

All business owners, on Clifton Road and one on St. Barnabas Road, complained about daily dust loads from the 54-acre Barnabas tract and the latter property's unsightly appearance. Mr. Sislen and Mr. New, co-owners of the storage company off Beech Road and Clifton Road, had complained for years about dust and noise and unsightliness caused by Barnabas and its predecessors and related companies. E. 149-164. Mr. New said that allowing the special exception use would be "an environmental injustice to this neighborhood and the numerous businesses and residences that abut or are nearby," and that "the actions of this landowner have already had a devastating impact on our business and several other surrounding businesses." E. 150. He added that Barnabas's actions "are impacting hundreds of residences in the surrounding community." *Id.* He added that the proposed concrete recycling "would pollute the environment even more than it already has with dust and debris" and "would pollute the surround[ing] community with noise as it already has for years, would pollute the surrounding community with truck traffic and dust and debris from these trucks and would continue to have an adverse impact on the property values of all the surrounding communities." E. 151.

Ms. Nwaobasi, owner of a car wash on St. Barnabas Road – thousands of feet from the 54-acre tract – complained of dust and said the concrete recycling would add to the negative effects on her business. E. 168-169.

Ms. Jennifer Boniface, owner and operator of a retail food business, Jenny's Homemade, on Clifton Road, gave extended testimony. She noted that her business fronted on both Clifton and Stamp roads, where all Barnabas trucks will travel, and did before, for the Class 3 fill operations. E. 172. She said the concrete recycling "would make things even worse," that the property at present is "a filthy eyesore looming over the entire community," and that uses like concrete recycling "do not belong anywhere near residential neighborhoods, nor do they have any place in the commercial business community where small companies are conducting business with the public." E. 172-173. She complained extensively about dust and poor air quality, and also about "noise pollution." E. 174-177. Her comments were seconded by Mr. Choporis, with a car painting business on Clifton Road, who also had photographs for the record. E. 181-190.

In our view, this testimony supports two conclusions. First, and perhaps most obvious, it directly refuted Barnabas's claims that a concrete recycling plant will not create actual detriment to the neighborhood and adjacent properties, as *Schultz v. Pritts* and other cases say. That is, we are persuaded that this testimony demonstrates that the *Schultz v. Pritts* test has *not* been met, in Barnabas's case to the District Council. Second, this testimony demonstrates that the neighborhood around Barnabas's property already suffers – and has suffered, for years – adverse effects, noise and dust and unsightliness and truck traffic, from landfill and other uses. It was held in *Brandywine Enterprises, Inc. v. County Council*, 117 Md. App. 525, 534-36, 700 A.2d 1216 (1997), citing and relying on *Moseman v. County Council*, 99 Md. App. 258, 636 A.2d 499, *cert. denied*, 335 Md. 229 (1994), that the existence of one noxious special exception use at a location could preclude another such use. The theory is one of "cumulative adverse impact," that the existence of one use generating, say, substantial truck traffic was a circumstance that would

justify denial of a second generator of truck traffic. 117 Md. App. at 534-35, 700 A.2d 1216.

Accordingly, after review of the administrative record, including the transcripts and exhibits for the District Council's consideration of the application and the testimony and evidence after the Council's remand to the Zoning Hearing Examiner, Application No. S.E. 4605, for a special exception for a concrete recycling facility on property described as approximately 13.17 acres of land in the I-1 Zone, in a larger tract of about 54 acres (in the same or connected corporate ownership with the 13.17-acre property), at the terminus of Clifton Road, about 1,150 feet south of its intersection with St. Barnabas Road, identified as 4763 Clifton Road, Temple Hills, is DENIED.

Ordered this 5th day of May, 2014, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Olson, Patterson and Turner.

Opposed:

Abstained:

Absent: Council Member Toles.

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council