



*Note: Staff reports can be accessed at <http://mncppc.igmp2.com/Citizens/Default.aspx>.*

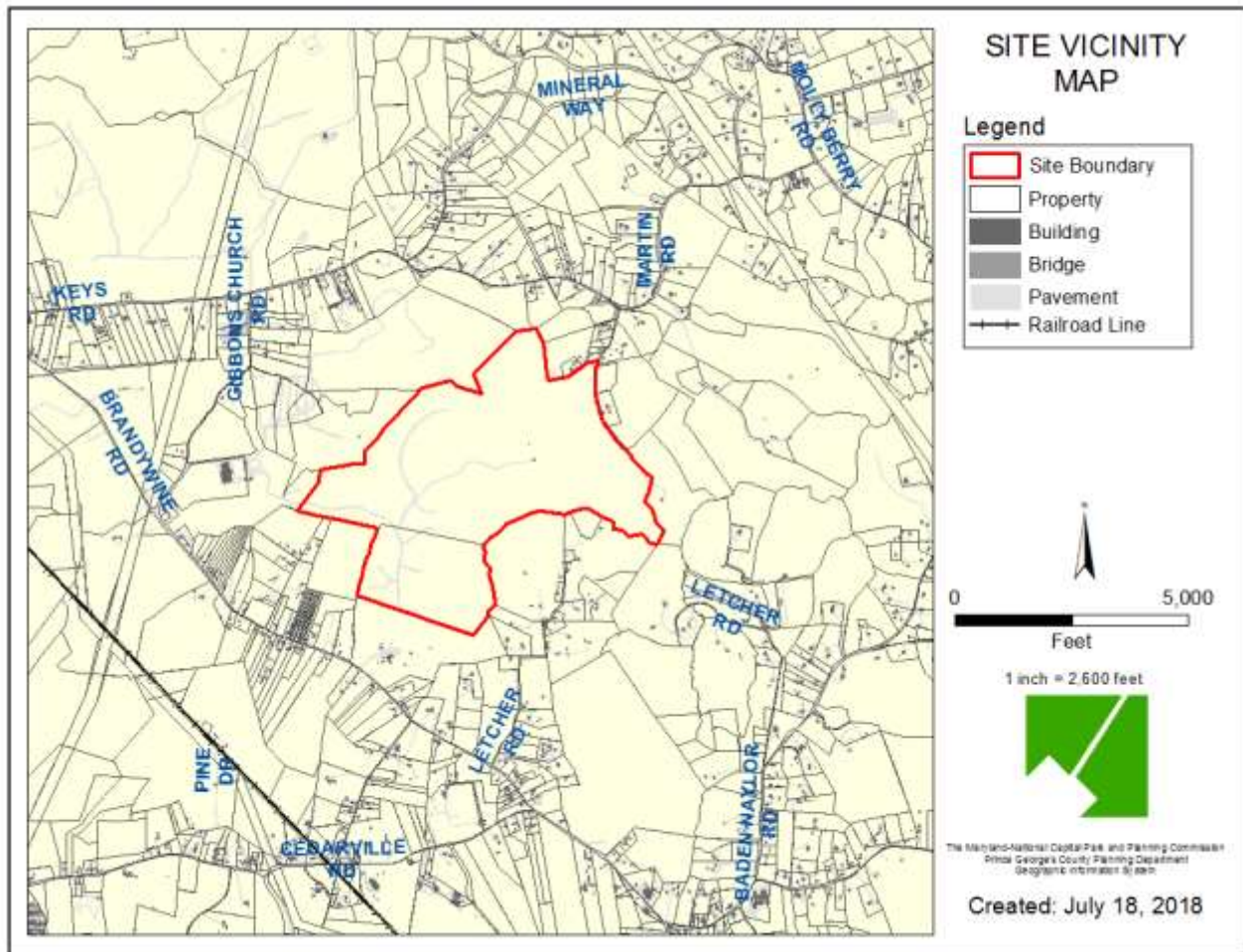
## Special Exception

## SE-4517

| Application   | General Data                 |                         |
|---|------------------------------|-------------------------|
| <b>Project Name:</b><br>Rockhill Sand & Gravel Corporation<br><br><b>Location:</b><br>On the east side of Gibbons Church Road, northeast of its intersection with MD 381 (Brandywine Road).<br><br><b>Applicant/Address:</b><br>Rockhill Sand & Gravel Corporation<br>c/o Steven Herzberg<br>14750 Gibbons Church Road<br>Brandywine, MD 20613<br><br><b>Property Owner:</b><br>Same as applicant | Planning Board Hearing Date: | 07/26/18                |
|   | Staff Report Date:           | 07/18/18                |
|   | Date Accepted:               | 05/18/05                |
|   | Planning Board Action Limit: | N/A                     |
|   | Plan Acreage:                | 570.40                  |
|   | Zone:                        | O-S/I-2                 |
|   | Lots:                        | N/A                     |
|   | Parcels:                     | 1                       |
|   | Planning Area:               | 75A                     |
|   | Council District:            | 09                      |
|   | Election District            | 11                      |
|   | Municipality:                | N/A                     |
|   | 200-Scale Base Map:          | 218,19, 20SE<br>10L-12L |

| Purpose of Application  | Notice Dates           |     |
|---|------------------------|-----|
| Extend the validity period for surface mining in the O-S and I-2 Zones. | Informational Mailing  | N/A |
|   | Acceptance Mailing:    | N/A |
|   | Sign Posting Deadline: | N/A |

|                             |                          |  |            |
|-----------------------------|--------------------------|--|------------|
| <b>Staff Recommendation</b> |                          | <b>Staff Reviewer:</b> Ras Tafari Cannady II<br><b>Phone Number:</b> 301-952-3411<br><b>E-mail:</b> Ras.Cannady@ppd.mncppc.org |            |
| APPROVAL                    | APPROVAL WITH CONDITIONS | DISAPPROVAL  | DISCUSSION |
|                             | X                        |  |            |



THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board  
The Prince George's County District Council

VIA: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section  
Development Review Division

FROM: Ras Tafari Cannady II, Senior Planner, Subdivision and Zoning Section  
Development Review Division

SUBJECT: Special Exception SE-4517  
Rockhill Sand & Gravel Corporation

REQUEST: **Approval to extend the validity period for surface mining in the O-S and I-2 Zones.**

RECOMMENDATION: **APPROVAL with conditions**

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**NOTE:**

The Planning Board has scheduled this application to be reviewed on the agenda date of July 26, 2018. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and addressed to the Prince George's County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

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## FINDINGS

1. **Request:** The subject application was originally filed in 2005 to request permission to extend the validity period of a previously approved Special Exception, SE-4352, to mine the remaining sand and gravel from a 570.40-acre site. Section 27-410 of the Prince George's County Zoning Ordinance limits the validity of a surface mining operation to five years. However, that provision has been preempted by state law, as discussed further.
2. **Location:** The subject property is located along the west side of Kenneth Hyde Road, situated south of North Keys Road and east of MD 381 (Brandywine Road). The special exception area consists of Parcel 1 (448.14 acres of O-S-zoned property), Parcel 4 (112.73 acres of O-S-zoned property), and portions of adjoining Parcels 11, 12, 25, 44, 45, 47, 59, 60, 61, and 129 (9.53 acres), which are used as haul roads to provide access to the site and associated wash plant, and is within the Heavy Industrial (I-2) and Open Space (O-S) Zones.
3. **History and Previous Approvals:** The subject property was placed in the O-S and I-2 Zones by the 1993 *Approved Master Plan and Sectional Map Amendment for Subregion VI Study Area (Planning Areas 79, 82A, 82B, 86A, 86B, 87A, 87B)*. The 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment* retained the subject property within the O-S and I-2 Zones.

On August 21, 2000, Special Exception SE-4352 was approved by the Prince George's County District Council for permission to use 231.7 acres of a 570.40-acre site for surface mining of natural materials or deposits. An additional 9.53 acres were to be used as haul routes to an associated wash plant adjacent to the site. Special Exception SE-4352 also approved Type II Tree Conservation Plans TCPII/82/99 and TCPII/119/99.

At the time of approval of SE-4352, surface mining special exceptions were subject to the specific provisions of Section 27-410 of the Zoning Ordinance, which remain applicable today. Section 27-410(a)(4) provides the following:

- (4) **The Special Exception shall be valid for not longer than five (5) years, except where the use is located:**
- (A) **In an R-R Zone which is predominantly undeveloped for a radius of one (1) miles from the operation; or**
- (B) **In an I-2 Zone;**

Section 27-410(a)(4), which imposed a five-year time limit on a special exception approval for surface mining, has been invalidated by the holding in *East Star, LLC v. County Commissioners of Queen Anne's County*, as described further within this technical staff report.

Surface mining operations are also subject to the specific provisions contained in the Annotated Code of Maryland. Title 15 of the Environment Article, Section 15-808, requires that an applicant for a surface mining operation obtain mining permits from the Maryland Department of the Environment (MDE). Pursuant to this requirement, Rockhill Sand & Gravel Corporation obtained a 25-year mining permit from MDE that remains in effect today.

4. **Current Status:** In 2005, Rockhill Sand & Gravel Corporation filed a request to extend the validity period of SE-4352, pursuant to the provisions of Section 27-410(a)(4). The extension request was assigned a new special exception number, SE-4517. As set forth in the statement of justification for the extension, the applicant stated that the mining operations remained in conformance with all conditions attached to the approval of the original special exception. The application was accepted and logged into the County database on May 18, 2005; however, shortly after acceptance, the applicant's company vice president retired, the application sat dormant until an inquiry was made by the Office of the Zoning Hearing Examiner as to whether or not the applicant intended to move forward with the request on April 29, 2013 (Webb to Diffendal), and again on August 11, 2016 (Poteat to Lambert) after the applicant's attorney requested more time to deliberate on May 29, 2013 (Gibbs to Webb). The applicant decided to move forward per a letter of correspondence dated November 3, 2016 (Gibbs to Webb). The applicant is requesting approval to mine the remaining 11 acres of the site, completing the intent of the original Special Exception, SE-4352.

The applicant provides that the decision of the Court of Special Appeals in *East Star, LLC v. County Commissioners of Queen Anne's County*, 203 Md. App. 477, 38 A, 3d. 524 (2012) provides a controlling precedence in which local jurisdictions are not allowed to put a validity period upon a surface mining application that is shorter than MDE's permit validity. Pursuant to Environment Article, Section 15-810, MDE is required to issue a permit to an applicant who meets the requirements of the subtitle. Environment Article, Section 15-814 provides that a surface mining permit "shall be granted for such period as requested and deemed reasonable, but not exceeding 25 years." The site has been issued a permit by MDE, as required, which is valid until July 31, 2020.

5. **Office of General Counsel:** The Office of General Counsel for the Maryland-National Capital Park and Planning Commission has reviewed the legal analysis of *East Star, LLC v. County Commissioners of Queen Anne's County*, and concurs with the applicant's assertion that a time limit on a special exception approval, which is less than that which is granted under the state's permit, is preempted by implication and/or conflict. As a result, the five-year provision limiting approved special exceptions for surface mining in the Zoning Ordinance has been invalidated by the holding in *East Star*. Other zoning-related regulations, however, remain in full force and effect, including limitations on the zone districts where this use is allowed.
6. **Recommendation:** The subject application is for an extension of the validity period of Special Exception SE-4352, to mine the remaining sand and gravel from a 570.40-acre site. Staff finds that the limitation of the validity of the special exception, in accordance with Section 27-410, is invalid as discussed in the preceding findings.

Therefore, staff recommends approval of Special Exception SE-4517, Rockhill Sand & Gravel Corporation, subject to the 32 conditions of approval, as set forth in Special Exception SE-4352.