

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4462**

DECISION

Application:	Surfacing Mining
Applicant:	Bardon, Inc.
Opposition:	None
Hearing Date:	April 20, 2005
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4462 is a request for permission to use approximately 277.6 acres of land in the O-S (Open Space) Zone, located approximately 3,000 feet southeast of the intersection of Horsehead Road and Aquasco Road and approximately 150 feet north of the intersection of Aquasco Road and Orme Road, Brandywine, Maryland for Surface Mining.
- (2) The subject property was incorporated into the Maryland-Washington Regional District on April 8, 1965 and placed in the O-S Zone. In 1989, Special Exception 3859 was approved for Surface Mining for the entire deed parcels of approximately 691.42 acres. In 1996, Special Exception 4163 was approved for Surface Mining on the instant approximately 277.6 acres of land for a period of five (5) years. The instant request is to permit the completion of the Surface Mining on the subject property.
- (3) The Planning Board did not consider this Application and the Technical Staff, Exhibit 16, recommended approval with conditions.
- (4) The records of Special Exception 3859 and Special Exception 4163 are incorporated into the instant record.
- (5) The Greater Baden Aquasco Citizens Association and the Black Swamp Creek Land Trust appeared in support of this Application. (Exhibit 38)

FINDINGS

Subject Property

- (1) The subject Application is materially unchanged from that which was approved by Special Exception 4163 on June 10, 1996, but a new Application is required as the five (5) year validity

period authorized by Special Exception 4163 has expired. The original acreage of Special Exception 3859 was approximately 691.42 acres and extended out from the proposed limits of the mining operation to include the entirety of the deed parcels owned by the original Applicants. The original acreage included approximately 400 acres of land that would not be disturbed by the proposed mining operation. Thus the acreage of Special Exception 4163 and the instant Application have been reduced to encompass only the areas actually to be disturbed by the proposed mining operations, including sediment control facilities and a minimum 50 feet wide buffer where the proposed area of operation adjoins property not owned by the instant Applicant.

Neighborhood and Surrounding Uses

(2) The neighborhood is the same as that utilized in Special Exception 4163 and is bounded on the north by Baden-Westwood Road, on the east by Croom Road, on the south by Aquasco and Croom Roads and on the west by Aquasco Road.

(3) The neighborhood remains generally rural in character with agricultural and surface mining uses and scattered single-family detached dwellings on large lots.

Master Plan and Sectional Map Amendment

(4) The 1993 Master Plan for Subregion VI designates the subject property for “rural” land use. Rural area is recommended for agricultural use, national resources conservation, non-intensive recreational use, and large lot residential estates land use in a maximum of 0.20 dwelling units per acre. The 2002 General Plan placed the subject property within the Rural Tier. The vision of the Rural Tier is protection of large amounts of land for woodland, wildlife habitat, recreation and agriculture pursuits, and preservation of the rural character and vistas that currently exist.

(5) The 1993 Adopted and Approved Subregion VI Master Plan proposes low density rural residential land use at a density of one (1) dwelling unit per five (5) acres, and the 1994 Adopted Subregion VI Sectional Map Amendment retained the property in the O-S Zone. The 1993 Plan Map (Comprehensive Plan) also recognizes the extensive Black Swamp Creek stream valley system and includes much of the site in a Natural Reserve Area. Further, much of this stream valley is proposed to be included in a Maryland-National Capital Park Planning Commission stream valley park. The Master Plan text discusses surface mining at length in the Chapter titled Sand and Gravel Resources, and sets forth the following guidelines for surface mining activities:

1. Mining operations should be designed to minimize adverse effects on environmentally sensitive areas.
2. Extraction of the area’s identified commercially viable sand, gravel and clay deposits should occur in accordance with land use proposal of the Master Plan to provide a readily available supply of these basic construction materials and to prevent preemption of extraction activities by development.

3. Extraction and reclamation activities should be designed to minimize the potential adverse effects on adjacent land uses of dust, noise, vibration, traffic and unsightly storage.
4. Mineral storage, processing operations and equipment storage should be screened from direct view along public rights-of-ways and from living area.
5. Noise attenuation techniques such as the use of setbacks and earthen berms, the retention of periphery vegetation and woodlands, and the construction of acoustical fencing should be utilized to minimize noise intrusion on adjacent uses. Furthermore, extraction proposals should factually demonstrate that their attenuation measures will ensure that surrounding development will not be subjected to noise which exceeds the State's current maximum allowable level.
6. Extraction and reclamation activities should be designed to minimize adverse effects on the public transportation network. Access and haul roads should not traverse living areas, and haul routes should primarily utilize arterial roadways which are designed to safely accommodate truck traffic.
7. Extraction and reclamation activities should be designed with clear post mining development plans particularly in low-density zoned areas where the only sewage disposal systems are individual septic tanks.
8. Reclamation plans should be designed to enhance the environmental features such as ridgelines, drainage areas, steep slopes, woodlands, etc., and to prepare the site for character and intensity of development as recommended by the Plan.

(6) Surface mining is an allowed use in the O-S Zone through the Special Exception process. The proposed surface mining operations at this site will not impair the integrity of the Master Plan, as the proposal adheres to the guidelines stated above. First, the mining operations shown on the Special Exception Site Plan represents a design that had been worked out with the Maryland-National Capital Park and Planning Commission Natural Resources staff during the review of Special Exception 3859. Also, several conditions specifically serve to further the Master Plan's intent. Accordingly, this design minimizes adverse effects on environmentally sensitive areas (1) and minimizes the potential adverse effect on adjacent land uses (3). The proposed Special Exception site is one of the area's identified commercially viable deposits (1993 Master Plan, Table 6, Map Reference No 18-Naylor Pit) (2). The mining operations will be conducted no closer than 2,000 feet inland of Aquasco Road and a minimum 50-foot vegetative buffer will surround the boundaries of the property where it adjoins residential uses, thus complying with guideline (4). The updated Environmental Impact Report makes additional recommendations necessary to assure that adequate noise attenuation techniques are employed (5). The haul route is the same as that accepted in the previous Special Exception approval (6). Post mining uses of the land will utilize the suggestions contained in the Sand and Gravel Chapter of the Master Plan text (7), and, again, the

design of the mining plan enhances the Site's noteworthy environmental features, as advised by guideline (8). (Exhibit 16)

(7) The 1993 Sectional Map Amendment for Subregion VI retained the subject property in the O-S Zone.

Applicant's Proposal

(8) The current Application is for a renewal for five (5) years of Special Exception 4163 in order to permit the mining of the areas proposed by Special Exception 4163 but not yet completed. The use and operation of the existing facility is proposed to remain unchanged from that which was approved by Special Exception 4163. Of the current approximately 277.76 acres, only 216 acres are proposed to be disturbed by the mining and associated haul roads.

LAW APPLICABLE

(1) Surface mining of sand and gravel is permitted in the O-S Zone pursuant to §27-441(b) by Special Exception accordance with §27-317, §27-410, and §27-445.02.

(2) Special Exception 27-317 requires:

- (a) A Special Exception may be approved if:
 - (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 Tree Conservation Plan.

(3) Special Exception 27-410 states in pertinent part:

- (a) The surface mining of natural materials or deposits (including sand, gravel, or clay pits; rock or stone quarries; and the removal of earth or topsoil) may be permitted, subject to the following:
 - (1) Heavy machinery may be used for the extraction of natural material or deposits from the site. Except in the I-2 Zone, heavy machinery may not be used for washing, refining, or other processing, unless a Special Exception is granted for sand and gravel wet-processing under the provisions of Section 27-405;
 - (2) The use shall not be noxious, offensive, or otherwise objectionable by reason of dust, smoke, or vibration;
 - (3) The land areas exposed by the extraction and removal of natural materials or deposits

shall be left suitable for development. A grading plan shall be submitted (along with the site plan) showing the existing and proposed ground elevations of the site, adjacent land, and all abutting streets. The exposed land area shall have a slope not greater than three-to-one (3:1), except where any portion of the site is developed for port or harbor facilities;

(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) mile from the operation; or

(B) In an I-2 Zone;

(5) In addition to the requirements of Section 27-296(c), the site plan shall show an estimate of the time required for the removal of the material;

(6) At least sixty (60) calendar days prior to the hearing before the Zoning Hearing Examiner, the applicant shall file a traffic analysis with the Zoning Hearing Examiner for inclusion in the record, and shall send a copy to the Planning Board. The traffic analysis shall include the volume of traffic expected to be generated by the operation, and shall identify the streets to be used between the site and the nearest street (to be used) that has a minimum paved width of twenty-four (24) feet for the predominant length of the street;

(7) Driveways or access points shall be identified on the site plan, and shall be located so as not to endanger pedestrians or create traffic hazards. The surface material to be used on the driveways shall be identified on the site plan. Any access driveway shall be at least twenty-two (22) feet wide, and shall be paved for a distance of at least two hundred (200) feet from the boundary line of the Special Exception.

(8) The Technical Staff Report prepared in response to the application shall include a current, Countywide inventory of the locations, dates of approval, and conditions of approval concerning haul routes and estimated loads per day for all approved and pending Special Exceptions for sand and gravel wet-processing, sanitary landfills and rubble fills, and surface mining, as indicated by the record in the case. The inventory shall also include the locations of all nonconforming sand and gravel wet-processing, sanitary landfills and rubble fills, and surface mining operations throughout the County that were certified after September 6, 1974.

* * * * *

(d) In reviewing the application, the District Council shall consider the use of techniques which provide for noise attenuation.

* * * * *

(f) In reviewing the application for compliance with the required findings set forth in Sections 27-317(a)(4) and 27-317(a)(5), the District Council shall consider the inventory required in Section 27-410(a)(8).

(4) Special Exception 27-445.02 states in pertinent part:

(a) In order for any surface mining or sand and gravel wet-processing operation to continue, the requirements of this Section shall be met.

(b) The purposes of this Section are to prevent or control the detrimental effects of surface mining and sand and gravel wet-processing operations upon neighboring properties, and existing and proposed land uses in the general area.

(c) All surface mining and sand and gravel wet-processing operations shall meet the following requirements:

- (1) The uses shall be operated in full compliance with applicable extraction and surface mining or sand and gravel wet-processing regulations;
- (2) For the safety of residents and property, the operator of the facility shall take effective measures to control the speed of trucks utilizing his facility and neighboring streets;
- (3) The operator shall avoid depositing any debris upon any existing streets; and
- (4) The owner of the subject property shall be required to post and maintain a permanent, durable sign identifying the use as a surface mining or sand and gravel wet-processing operation, in accordance with the requirements of Section 27-629.

* * * * *

Burden of Proof

(5) The burden of proof in any zoning case shall be the Applicants. (§27-142(a)). Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance of Prince George's County. (§27-107.01(a)(266))

Burden of Production and Persuasion

(6) The Applicant has the burden of providing legally sufficient evidence that is accepted into the record from which findings and conclusions can be either made directly or by reasonable inference. However, the Applicant must also persuade the trier of fact that the evidence produced not only permits the approval of the request but also is of sufficient strength or outweighs other evidence to the effect that the request either should or is required to be granted. B.P. Oil Company v. County Board of Appeals of Montgomery County, 42 Md. App. 576, 401 A.2d 1054 (1979).

Standard of Proof

(7) In reviewing the evidence that has been "produced," to determine if the District Council is "persuaded," the District Council must determine whether the answers, findings, or conclusions required or reached are supported by a "preponderance of the evidence" on each issue. While these magic words are not required to be recited, the "preponderance of the evidence" is that evidence, when fairly considered, makes the stronger impression, has the greater weight and is more convincing as to its truth than the evidence in opposition thereto. Williams v. Supt. Clifton T. Perkins Hospital Center, 43 Md. App. 588, 406 A.2d 1302 (1980).

Credibility of Evidence

(8) It is within the sound discretion of the trier of fact, the Office of the Zoning Hearing Examiner or the District Council, to determine certain evidence lacks credibility and to give no weight to that evidence. Md. State Retirement and Pension System v. Martin, 75 Md. App. 240, 540 A.2d 1188, 1192 (1988). In other words, certain evidence may just be ignored. It is given no weight

in the conclusion, hence, found not credible.

Credibility findings of a hearing officer or judge are entitled to considerable deference and should not be reversed, absent an adequate explanation of the grounds for the reviewing body's source of disagreement. Anderson v. Dept. of Pub. Safety and Correctional Services, 330 Md. 187, 623 A.2d 198 (1994).

Adverse Effects

- (9) “T[he] Court . . . (of Appeals of Maryland) . . . has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But 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 operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995). . . .

[T]he 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 and the particular location proposed would have any adverse effects above and beyond those inherently association with such a special exception

use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974).” Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

CONCLUSIONS

(1) The general purposes of the Zoning Ordinance are listed in §27-102. Special Exception 4462 is in compliance with these purposes as follows:

- (1) *To protect and promote the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County;*

The proposed use will protect and promote the comfort and convenience of the present and future inhabitants of the County by allowing for the continuation of a previously approved sand and gravel mining operation, conveniently located within the County, that will serve the construction industry.

- (2) *To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The proposed use will implement the goal and objectives of the Sand and Gravel Resources Section contained within the Approved Master Plan for the Subregion VI Study Area, dated September 1993, as detailed below:

Master Plan Goal:

To provide for the efficient and sequential extraction of significant mineral deposits and the reclamation and development of the extraction areas, while minimizing impacts on the environment.

Master Plan Objectives:

To assure an adequate supply of sand and gravel for future development of the metropolitan area.

To phase future development in a manner providing for the orderly extraction of sand and gravel resources and discouraging the premature commitment of these areas to permanent development.

To plan development so that the rehabilitation of previously extracted areas may be accomplished in an orderly manner.

The proposed Surface Mining will help to ensure that there will be an adequate supply of sand and gravel for the metropolitan area for the next five (5) years. The development of the mine is being phased so that the extraction is taking place in an orderly manner.

(3) *To promote the conservation, creation and expansion of communities that will be developed with adequate public facilities and services;*

The Applicant is proposing the continuation of a sand and gravel mining operation for a time period of five (5) years. Following the cessation of the proposed use, the subject property will become open space, whereby much of the site will be reforested, preserving the open space aspect of the community. This reforestation (72 acres), combined with 280 acres of woodland preservation, plus 62 acres of mostly wooded floodplain, will provide a significant amount of permanent open space. One hundred and forty five acres of this open space are to be dedicated to M-NCPPC as a stream valley park.

(4) *To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry and business;*

The proposed use is for the surface mining of the subject property for which the mined product is a necessary raw material for the building industry. Indirectly this will also contribute to the orderly growth and development of business and housing.

(5) *To provide for adequate light, air, and privacy;*

Adequate light, air and privacy will be maintained. The Special Exception proposes a minimum 50-foot wide buffer, or larger expanses of the Applicant's property left undisturbed, and extensive earthen berms where appropriate, which will protect adjoining property owners and ensure their privacy.

(6) *To promote the most beneficial relationship between the uses of land and buildings and protect landowners from the adverse impacts of adjoining development;*

This proposal will promote the most beneficial relationship between the uses of land and buildings and protect landowners from the adverse impact of adjoining development. A minimum 50-foot wide buffer will be provided around the entire perimeter of the site, with the exception of access points, as required by the Landscape Manual. Newly proposed berming along portions of the subject property's perimeter where residential development has recently occurred further ensures that landowners will be protected from adverse impacts of the mining operation.

(7) *To protect the County from fire, flood, panic and other dangers;*

This proposal will not result in the creation of a dangerous situation as it will meet all applicable safety regulations of the County, State and Federal governments via the permit review process. No mining activities will occur within the 100-year flood plain, the 50-foot wide floodplain

buffer or the wetlands.

- (8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

This proposal is for the continuation of sand and gravel mining, a necessary raw material for the building industry. As such, it will continue to provide the building industry with the raw materials necessary for the construction and maintenance of 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;*

This proposal will provide employment as permitted by the Special Exception and contribute to the tax base through the temporary operation of a sand and gravel mine.

- (10) *To prevent overcrowding of the land;*

This proposal will not overcrowd the land. There are no buildings proposed on the Site Plan and the use is only temporary, estimated to conclude in five (5) years time.

- (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;*

This proposal will lessen the danger of traffic on the streets through the continued utilization of the existing driveway entrance onto MD Route 381. This driveway is constructed to State Highway Administration standards, which are greater than required by the County, and provides acceleration and deceleration lanes. The Applicant's traffic engineer, as well as the Technical Staff, have found that the continuation of the mining operation at the subject property will not reduce the capacity of neighboring roadways to unacceptable levels.

- (12) *To insure the social and economic stability of all parts of the County;*

This proposal will contribute towards the economic stability of the County through the provision of a necessary raw material for the building industry within the County.

- (13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas and other similar features;*

This proposal will protect against undue noise, and air and water pollution. Sediment control basins will be provided to protect against water pollution, and a minimum width 50-foot buffer will be provided to protect adjoining properties against noise pollution.

- (14) *To provide open space to protect scenic beauty and natural features of the County, as well as provide recreational space; and***

At the conclusion of the surface mining, the subject property will be reclaimed and become open space.

- (15) *To protect and conserve the agricultural industry and natural resources.***

The proposed development of the subject property will not encroach upon the wetlands nor the 100-year floodplain on this site. §27-317(a)(1)

- (2) The instant Application is also in conformance with the purposes of the O-S Zone, §27-425(a), as follows:

- (1)(A) *To provide for low density and development intensity as indicated on the General or Area Master Plans; and***

Following the conclusion of the surface mining on the subject property, it will be reclaimed so as to become suitable for such potential low intensity uses as agriculture or recreation.

- (1) (B) *To provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.***

This proposal will encourage the preservation of open spaces, especially following the conclusion of the mining aspect of the site. After reclamation, the site will become mostly wooded open space, including 145 acres which are to be dedicated to M-NCPPC for parkland.

- (2) *The use of the O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, non-intensive recreational uses, and similar uses.***

At the conclusion of the surface mining on the subject property, the use of the reclaimed site will provide over 400 acres of permanent woodlands due to woodland preservation and reforestation. Further, 145 acres of parkland are to be dedicated to M-NCPPC. §27-317(a)(1)

- (3) With the recommended conditions of approval, the instant Application will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

- (4) The proposed Surface Mining operation will not substantially impair the Subregion VI Master Plan, which recommends the subject property for low density rural residential land use. The Community Planning Division found:

The proposed Surface Mining operation is consistent with the Master Plan recommendations for this area of the county. There are no Master Plan issues associated with the extension of a previously approved Special Exception for Surface Mining. The Plan acknowledges the existence of this particular operation.

Master Plan & Sectional Map Amendment, p. 39, Table 6, #18, §27-317(a)(3)

(5) Findings were made in Special Exception 3859 and Special Exception 4163 that Surface Mining at the subject property would neither adversely affect the health, safety or welfare of residents or workers in the area nor be detrimental to the use or development of adjacent properties or the general neighborhood. There is no evidence in the record which would compel a contrary conclusion in the instant Application. Development in the neighborhood continues to be sparse, the subject property is buffered from Brandywine Road and a major portion of the subject property is wooded, all of which mitigate any possible adverse intrusions into the neighborhood of this Surface Mining use. §27-317(a)(4)&(5)

(6) The approved Type II Tree Conservation Plan (TCP II/109/94) was submitted and reviewed for consistency with the approved mining operation and the Woodland Conservation Ordinance. (Exhibit 36)

(7) The Environmental Impact Report for Special Exception 4163 (Exhibit 25) notes:

The Site is subject to the provisions of the Woodland Conservation Ordinance because the entire Site is more than 40,000 square feet in area and contains more than 10,000 square feet of woodland. A Forest Stand Delineation was prepared as part of the Environmental Impact Report for Special Exception 4163 and a discussion is included in Section 4.5 of EIR-4163. A Tree Conservation Plan is required by Section 27-317(a)(6) of the Zoning Ordinance for the approval of any special exception. A Type II Tree Conservation Plan, TCP II/109/94, was reviewed and approved for this property as part of Special Exception 4163. The TCP II includes the entire 691± acre property and not just the area of Special Exception 4462. The proposed woodland conservation areas would include all of the sensitive environmental features on the property and create a contiguous woodland area, fulfilling the goals of the Woodland Conservation Ordinance. The current Application proposes no changes to the previously approved TCP. §27-317(a)(6)

(8) The Applicant will continue to utilize heavy machinery to extract sand and gravel materials consistent with the approval of Special Exception 4163. §27-410(a)(1)

(9) The Applicant presented expert testimony that the continuation of the Surface Mining at the subject property will not be noxious, offensive or otherwise objectionable by reason of dust, smoke or vibration. (Exhibits 11, 20(a) and (b), and 21(a) and (b))

(10) The Environmental Planning Section, Maryland National Capital Park and Planning Commission, found:

A report entitled "Evaluation of Air Quality Impacts for Aggregate Industries Financial International Project Special Exception 4462," dated May 2003, was submitted with the current Application. The report describes the Site, outlines regulatory requirements, describes the existing ambient air quality, models the emissions generated to the Site and the neighborhood. The Environmental Planning Section has reviewed the report and concurs with the conclusion that the proposed mining will not significantly impact the air quality or produce a health hazard to any residents.... This air quality study is considered supplemental information to EIR-4163 that reached the conclusion that, if the recommendations of the report are implemented, there will be no significant impact. (Exhibits 11 and 16) §27-410(a)(2)

(11) The subject property will be restored suitable for future development. The Grading Plan proposes no slope greater than 3:1. The Environmental Planning Section has found that the TCPII (Exhibit 36) shows the existing and proposed ground elevation of the subject property, adjacent acreage, and all abutting streets, and has confirmed that the final grades will not exceed 3:1. §27-410(a)(3)

(12) The subject property is in the O-S Zone and the Special Exception approval will remain valid for five (5) years from the date of its approval. §27-410(a)(4)

(13) The Site Plan, Exhibits 2(a), (b), and (c) indicates that the haul road has been constructed, that Phase I has been completed, that 60 acres are being actually mined as Phase II, that 33 acres remain to be mined in Phase III, that Phase VI will mine 46 acres, that Phase V will mine 16 acres, and that Phase VI will extract sand and gravel from an additional 48 acres. The estimated time to complete the mining of Phases II-VI is five (5) years. §27-410(a)(5)

(14) The Applicant has submitted a Traffic Study, Exhibit 12(b), which updates the Traffic Study previously approved in Special Exception 4163. Additionally, the Applicant has provided expert testimony by Mr. Michael Lenhart, and has amended Exhibit 12(b) by the addition of Appendix E, F and G (Exhibit 23(c), (d) and (e) respectively). The Transportation Planning Section has thoroughly reviewed the traffic situation and has found that

...the proposal, in consideration that it is proposed on a platted lot within an approved subdivision and consistent with an approved development cap, would not pose unanticipated capacity or safety issues on adjacent roadways. This analysis is based, however, upon maintaining the level of activity and the haul route that the Applicant has been using to date, and this would include maintaining the same hours of operation. Assurances to this effect should be obtained by implementation of the conditions listed below:

1. Truck traffic associated with the proposed mining activity shall be concentrated between 8:00 a.m. and 4:15 p.m. Monday through Friday. There shall be no mining activity before 7:00 a.m. or after 4:15 p.m.
2. Trucks shall enter and leave the Site by way of MD Route 381 north.

3. Mining activity shall be restricted to 300 truckloads of material daily. (Exhibit 16) §27-410(a)(6)

(15) The Site Plan, Exhibits 2(a), (b) and (c), identifies the previously approved driveways and access point, which is located to the southwest of the mining area at Aquasco, approximately 3,000 feet from its intersection with Horsehead Road to the north and 150 feet from its intersection with Orme Road to the south. The existing access driveway is 22 feet wide, 500 feet long and is composed of bituminous concrete paving. No changes are proposed in this request from the original approval by Special Exception 3859. §27-410(a)(7)

(16) The Environmental Impact Report prepared by the Environmental Planning Section is in conformance with §27-410(a)(8) and §27-410(f). (Exhibit 25)

(17) The Environmental Planning Staff made the following recommendations regarding techniques to provide for noise alternative:

EIR-4163 addresses noise on pages 16 and 17. Recommendations 12, 15, 16 and 17 address issues related to noise. Since the preparation of EIR-4163, new development has occurred on properties abutting the northern property line near the proposed Phase III mining area.

A report entitled "Environmental Noise Assessment, Surface Mining Operations Financial International Site" dated May 2, 2003, was submitted with the current Application. The report, which includes measurements of noise generated by individual bulldozers, loaders, tracked hoes and hauling trucks used on the site, models the noise that would be generated at locations in planned mining areas, analyzes potential impacts to nearby properties, and proposes mitigation measures to avoid impacts. The Environmental Planning Section has reviewed the report and concurs that the berm along the property line shared with the new residential structures and shown on the Surface Mining and Sediment Control Plan will provide adequate noise attenuation so that the noise generated by the proposed mining will not significantly impact adjacent properties if appropriate measures are performed.

Recommended Condition: Truck speed on interior haul roads shall be controlled to 15 MPH or less.

Recommended Condition: Only the equipment listed on the approved plan and/or in this report shall be used on the Site and it shall be equipped with a Donaldson TCU05 muffler or one that provides at least 30 dBA in sound reduction. Similar heavy equipment may be substituted, as replacements are required.

Recommended Condition: All equipment used on the Site, including trucks, shall be fitted with working mufflers at all times. (Exhibit 10) §27-410(d)

(18) The subject property has been, and will continue to be, mined in accordance with Maryland Department of the Environment permits. (Exhibit 26) §27-445.02(c)(1)

(19) Condition 11 of Special Exception 4163 requires that truck speeds on interior haul roads must be limited to 15 MPH or less. This condition will continue with the approval of the instant Application. §27-445.02(c)(2)

(20) The previous conditions of approval of Special Exception 4163 and 3859 requiring that interior roads be watered or otherwise treated to minimize dust will continue with the approval of the instant Application. Chemical treatment of the roads may be necessary and a water truck shall be available during all hours of mining operation. §27-445.02(c)(3)

(21) The owner of the subject property shall post and maintain a permanent, durable sign identifying the operation as a Surface Mining operation. The sign shall be a maximum of six (6) feet in area and shall be not less than four (4) and not more than eight (8) feet in height. §27-445.02(c)(4)

DISPOSITION

Special Exception 4462 is Approved, subject to the following conditions:

1. This Special Exception shall be valid for a period not to exceed five (5) years from the date of the approval.
2. Truck speed on interior haul roads shall be controlled to 15 MPH or less.
3. Only the equipment listed on the approved plan and/or in this report shall be used on the site and shall be equipped with a Donaldson TCU05 muffler or one that provides at least 30 dBA in sound reduction. Similar heavy equipment may be substituted as replacements are required.
4. All equipment used on the subject property including trucks, shall be fitted with working mufflers at all times.
5. Stockpiled overburden material shall be seeded with quick-growing grasses to minimize the wash-off of silt into streams within the subject property.
6. Reclamation and stabilization efforts shall be staged as diligently as possible and the direction of mining shall be closely followed. The disturbed area shall not exceed 25 acres at any one time.
7. Application of sludge during reclamation, when used under this Special Exception, shall be performed in accordance with criteria and standards of the Maryland Department of Environment (MDE) and other best-management practices and in compliance with the Prince George's County Code, Subtitle 21, Section 21-108. Use of sludge shall be limited and controlled to prevent any surface or subsurface contamination of water entering Black Swamp Creek and its tributaries.

8. All sediment/erosion control traps and basins shall be enclosed with a minimum 42-inch-high safety fence. Safety signs, described in the official *Surface Mining Workbook* (April 1990) of the State Safety Committee, and safety benches and protective berming shall be used in order to increase the level of safety at the site.
9. Mining, general earth disturbance restriction lines, and vegetative buffers shown on the Site Plan, Reclamation Plan, and Sediment and Erosion Control Plan shall be maintained.
10. Close monitoring of these measures shall be done by the Department of Natural Resources to assure that they continue to perform satisfactorily. The sediment control measures shall be approved by the Soil Conservation District.
11. The following note shall be added to the Special Exception Site Plan and the Type II Tree Conservation Plan:

“The expanded stream buffer shown on this plan describes an area where the installation of structures and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.”
12. Interior roads are to be watered or otherwise treated as necessary to minimize dust. Chemical treatment may be necessary. A water truck shall be available during all hours of mining operation.
13. Street sweepers or water trucks shall be available during all hours of mining operation. These should be used as needed to keep Aquasco Road in the vicinity of entrances clear of loose extracted materials from the proposed mining operation.
14. Truck traffic associated with the proposed mining activity shall be concentrated between 8:00 a.m. and 4:15 p.m., Monday through Friday. There shall be no mining activity before 7:00 a.m. or after 5:30 p.m. There shall be no operations on Saturday, Sunday or Federal holidays.
15. Trucks shall enter and leave the site by way of MD Route 381 north.
16. Mining activity shall be restricted to 300 truckloads of material daily.
17. The tree preservation lines shall be staked on the ground and reviewed by the M-NCPPC Environmental Planning Section, prior to the installation of sediment/erosion control measures and tree protective devices.
18. A reforestation bond shall be posted with the Prince George's County Department of Environmental Resources prior to the issuance of any permits for this mining operation. All reforestation shown on TCPII/109/94 shall be completed during the first spring planting season following completion of the mining operation or upon final stabilization of the mining site. Prior to

the approval of Special Exception 4462, the Applicant shall provide evidence that the reforestation bond has been posted with the Prince George's County Department of Environmental Resources.

19. Topsoil shall be stockpiled within the area for use during the reclamation period.
20. The gate at the Aquasco Road entrance shall be locked when the subject property is not in operation.
21. The mining at this Site (SE-4462) will not commence until the mining approved by Special Exception SE-4163 is completed.
22. All of the above conditions shall be listed on the Site Plan prior to the approval of this Special Exception (SE-4462).
23. All trucks shall have a sticker or tag indicating ownership or control by Aggregate Industries, to enable the public to identify the Applicant's trucks.
24. The owner of the subject property shall record a binding covenant with the Office of Land Records in Prince George's County, Maryland which states that the property which was the subject of Special Exception 3859, 4163 and 4462 shall never be utilized as a sanitary landfill, as a rubble fill or as a Class III fill. This covenant shall be recorded prior to any operations pursuant to Special Exception 4462 on the subject property.
25. 145.1 acres of the subject property shall be dedicated as parkland to the Maryland National Capital Park and Planning Commission for permanent conservation in accordance with Exhibit 29.
26. Aggregate Industries will donate upland acreage to the William S. Schmidt Environmental Education Center to promote educational opportunities. This acreage need not exceed eight (8) acres and access is not guaranteed by Aggregate Industries.