

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

**SPECIAL EXCEPTION
4684**

DECISION

Application:	Concrete Recycling Facility with Rock Crusher
Applicant:	Dower, LLC.
Opposition:	Lloyd Pitts
Hearing Dates:	December 21, 2011
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4684 is a request to use approximately 26.19 acres of a 42.92 acre site in the I-2 (Heavy Industrial) Zone as a Concrete Recycling Facility with a Rock Crusher. (Exhibits 21 and 22) The subject property is located on the northeast side of Dower House Road, approximately 579 feet west of its intersection with Foxley Road, and is identified as 6250 Dower House Road, Upper Marlboro, Maryland.
- (2) The Technical Staff recommended approval with conditions. (Exhibits 22 and 48) The Planning Board chose not to schedule a hearing on the request and adopted the Technical Staff's recommendation as its own. (Exhibit 26)
- (3) Lloyd Pitts, a nearby resident, appeared in opposition.
- (4) At the close of the hearing the record was left open to allow Applicant to submit a revised Site Plan, and to allow Mr. Pitts to submit a closing argument. The last of these items was received on January 13, 2012, and the record was closed at that time.

FINDINGS OF FACT

Subject Property

- (1) The subject property is a 26.19 acre, irregularly shaped parcel located on the northeast side of Dower House Road, approximately 579 feet west of its intersection with Foxley Road. The property is improved with two (2) trailers – a construction trailer that the Applicant wishes to continue using and an office trailer for which no permit

exists. Applicant also operates a Class III fill on the site pursuant to a permit that will expire on May 18, 2016.¹ A concrete recycling facility (with a rock crusher) had operated on the site from approximately 1970 – 2006 pursuant to various use and occupancy permits granted to prior owners.² (Exhibit 22) Access to the site is provided via a 30-foot-wide driveway from Dower House Road.

(2) The site is subject to the requirements of the Prince George's County Landscape Manual because there is an increase in gross floor area of 224 square feet for the office trailer currently existing on the site without benefit of the proper permits/approvals. Sections 4.2. (Requirements for Landscape Strips along Streets), 4.7 (Buffering Incompatible Uses), and 4.9 (Sustainable Landscape Requirements) apply. The property has an approved Tree Conservation Plan (TCPII/168/92). Staff has found the Application to be in compliance with said plan. (Exhibits 7 and 52) Applicant is of the opinion that the landscape strip required by Section 4.2 of the Landscape Manual can be satisfied on the portion of Applicant's property that does not lie within the boundaries of the Special Exception. (Exhibit 62(a)) There are no regulated environmental features on site.

(3) The neighborhood is bounded on the north by Marlboro Pike, on the south by Dower House Road, on the east by Woodyard Road, and on the West by Dower House Road. The neighborhood is a mix of industrial uses, the Joint Base Andrews facilities, and a lesser amount of residential uses to the south and southwest. (Exhibit 56)

(4) The site is surrounded by the following uses:

- North – a former concrete recycling facility in the I-2 Zone
- Northeast – largely undeveloped vacant land in the I-4 Zone
- South – five residential lots in the R-R Zone
- Southeast – a storage yard in the I-1 Zone
- West – across Dower House Road a small vehicle salvage yard and wooded land in the I-1 Zone

Master Plan/General Plan

(5) The 2009 Subregion 6 Master Plan and Sectional Map Amendment retained the subject property in the I-2 Zone. However the Economic Development Section of the Master Plan recommended an intensification of economic growth in the area of the subject property. (2009 Subregion 6 Master Plan, p. 145) Applicant correctly points out that despite this recommendation the Master Plan did not recommend any alternative land use for the subject property that has been used as a concrete recycling facility and/or a fill since 1970.

¹ Staff noted that this permit may not be renewed without approval of a new special exception. (Exhibit 22, p. 3)

² The Technical Staff Report provides an excellent zoning history of the prior uses on the subject property.

(6) The 2002 General Plan placed the subject property within the Developed Tier. The General Plan's "vision for the Developed Tier is a network of sustainable, transit-supporting, mixed use, pedestrian-oriented, medium-to high-density neighborhoods." (2002 General Plan, p. 31) The General Plan also included the area of the subject property in a planned employment area. Again, although the use of the subject property is not strictly in conformance with the employment goals for such areas, the District Council did not recommend any alternative land use for the site.

Applicant's Proposal

(7) The current owners of Dower, LLC. purchased the entity in 2006. (T. 10) Since that time Applicant has operated the Class III fill that also accepts Class I and II materials (operating pursuant to grading permit No. 35439-2001-G) on the site, and operates Monday to Friday from 7:00 a.m. until 4:30 p.m. and Saturday from 7:00 a.m. to noon. (Exhibit 18; T. 13, 16, 24) It is seeking permission to legally operate a concrete recycling facility in addition to the fills. It is anticipated that the recycling use and crusher will be "accessory" to the fills. (T. 28) Applicant intends to segregate concrete from the trucks going to the fill areas, stockpile the concrete until there is a sufficient amount to crush in the requested rock crusher, and reuse the resulting by-product.³ The stockpiled area will be surrounded by a berm that will shield it from public view.

(8) Applicant will use the following equipment on site (or its equivalent) if the use is approved: an Extec C12 portable crusher powered by a 350-HP diesel engine; an Extec S-5 portable screen powered by a 101-HO diesel engine; an IT 38 rubber tire loader; a 963 track loader; Hitachi 200 or 350 sized backhoe excavators; single axle to five (5) axle dump trucks and demo trailers; D-6 sized tracked dozers; a Schwartz A7000 street sweeper truck; and one (1) large flusher truck to keep down the dust which is on the back of a tandem dump truck and one (1) used to flush the road (Kenworth 7800 machine). (Exhibit 2; T. 15)

(9) The site plan indicates all components of the concrete recycling facility; the daily capacity of the facility; the location of all material stockpiles; the source of water to be used; the truck wash-out facilities; the methods of disposing of waste materials; the internal traffic circulation system, the parking and storage areas for all vehicles and equipment; and the identification of the trucks and heavy equipment to be used in the operation. All components of the recycling facility and the rock crusher will be approximately 300 feet from the boundary lines of the subject property that adjoins property in a residential zone, and 100 feet from the boundary line of the subject property that adjoins property in an industrial zone. The driveways for ingress and egress are identified on the site plan. The driveway is located in the southeast corner of the subject property, furthest from the bend in Dower House Road in order to

³ The manager of the proposed facility testified that recycled concrete can be used as road base, structural fill and for other construction purposes. (T. 15)

maximize safety. The asphalt driveway will extend 200 feet into the subject property from Dower House Road, and dust will be controlled by a street sweeper and an on-site flush truck or truck wash station. (T. 32) There will not be any settling ponds on site.

(10) Applicant submitted the following information, as required by Section 27-343.03 of the Zoning Ordinance: an approved stormwater concept plan; a preliminary noise assessment; a horizontal profile illustrating all structures and stockpiles; a grading plan that illustrates existing and proposed topography (shown on the Special Exception Site Plan); and a traffic analysis that includes the volume of traffic expected to be generated 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 24 feet for its predominant length. (Exhibits 6, 16, 18, 49(b), 50 and 62 (b) and (c))

(11) Concrete that is not recycled will go into the Class III portion of the fill. (T. 15) The only waste expected to be generated is incidental steel that may occasionally be mixed in with the concrete. Applicant's witness explained that they will use a sweeper truck to sweep debris off of the road and a flusher truck to clean the roads as needed. The rock crusher is also equipped with spray bars and a water tank so as material is crushed it is continuously sprayed down. (T. 24)

(12) If the use is approved, it is anticipated that it will only generate approximately 1,500 truckloads of crushable concrete per year. (T.15, 17, and 19) It is anticipated that the majority of the trips would be trucks that were already coming to the Class III fill that would also "back haul" the crushed material out of the site:

Q: Okay. And why do you believe that the majority of truck trips hauling recycled material out will be back hauls as opposed to just coming to the site to pick up material?

A: Well, the majority of the construction that occurs is in D.C. or Virginia. There's any number of places that are much closer to that where it would be cheaper for places to come and people to come and get that material. Dower is kind of off the beaten path as far as for recycled material.

It wouldn't be cost feasible for someone to come out of the District all the way to Dower to buy material to come back in or to Virginia. So the only way it really works and the majority of its going back to our own job is, when we bring a load in to dump in the Class III, if that project needs material, we'll haul a load of recycled material back on that same truck.

(T. 21)

Applicant would accept a condition that the maximum number of annual truckloads for the use would be 1,500. These would be included in the 50,000 truckloads expected for the Class III fill operation, not in addition thereto. (T. 20, 35) Applicant also accepts all conditions of approval recommended by Staff, and amended its Site Plan to address most of them. (Exhibit 62(b); T. 24- 25)

(13) Applicant was granted a permit by the State of Maryland to operate a rock crusher on site, on a temporary basis, from July 31, 2009, to February 28, 2010. (Exhibit 53; T.22) Its witness testified that materials were crushed in compliance with all regulations and requirements of the permit. (T. 23)

(14) Applicant's witness, accepted as an expert in transportation planning, prepared a traffic analysis in which he identified the street to be used that has a paved width of 24 feet or more (Dower House Road), discussed the vehicular trip generation for the proposed uses, and its impact on the roadways in the area. (Exhibit 18). He opined that the use, if approved, will satisfy the provisions of the Zoning Ordinance and have a de minimis impact on Dower House Road, reasoning as follows:

[T]he traffic study had two components. One component was how much traffic is this special exception going to generate and the other component was looking at the route between the driveway and Maryland 4 along Dower House Road that the trucks would take to get to and from the site.

Exhibit 2 of [my] report shows a map that identifies six locations along Dower House Road where we took measurements of the road width, the lane width and the shoulder width and we took photographs at each of those stations....[At] each of the stations the lane width in each direction was 12 feet for a total of 24 feet of paved roadway. Shoulders varied anywhere from two feet to 8 feet in width along that stretch of roadway. So, the section of roadway satisfies ... Zoning Ordinance Section 27-343.03 as it pertains to the road section.

Now the second portion of the study, again looking at the amount of traffic that the site would generate, based on the testimony by Mr. Jason Brown... this site would be – or the special exception for the rock or concrete crusher would be expected to generate about 1,500 loads per year. The existing Class III facility generates as much as 50,000 loads per year....

[B]ecause of where they're located, they can't just put it on the market and have somebody send an empty truck out to pick it up and then take it to its ultimate destination. They have to be able to combine trips and make it more economically feasible in that fashion.

So, when someone sends a load of Class III material out to this site, they combine that trip, purchase the recycled material and ship it back to wherever they need to take it. So, of the 1,500 new trips or 1,500 new truck loads per year, about 90 percent of them would be not new traffic, existing traffic, Class III trucks that come in, would make a delivery, they go over to the recycling center, they load the material and they head out. So, maybe ten percent of those 1,500 loads would be, could be new trips, where somebody sends an empty truck in, picks up the material and brings it back out.

When you break that down into the number of new trips, or let's say, if you take the 1,500 loads per year, if you assume about 260 work days per year backing out weekends, holidays and, you know, poor weather and things, that gives you about six loads per week total. But if 90 percent of those are sold on back haul and only ten percent are new trips, ten percent of those six trips

results to about one per day. And so we assume that that would occur in a peak hour as a worst case, and that's one truck in, one truck out. So you have two trips in a peak hour.

Staff has reviewed our report. They have agreed with our assumptions and our findings. They've made a finding that this site has a de [minimis] impact. A de [minimis] is defined ... as five trips or less.

(T. 99-100)

(15) The witness further explained that once Applicant builds an acceleration lane along westbound Dower House Road to improve its access the proposed driveway location will provide adequate lines of sight for vehicles entering and exiting the site from Dower House Road. (T. 101-102)

(16) Applicant's witness, accepted as an expert in the area of noise control engineering, analyzed the impact that the rock crusher would have on the surrounding properties. He was able to conduct noise measurements when the temporary concrete recycling (and crusher) activities were in operation on the site, and he did computations of possible noise exposures, measuring noise on the site and adjacent to the property. (Exhibits 16, 58 and 59; T. 76-83) The witness testified that the locations used to test were the "worst-case" sites, and included a few of the nearby residential communities. At the conclusion of the tests the expert opined that the use would meet the State's requirement of less than 65 dBA (decibels) during daytime hours in residential areas, even before factoring in the noise mitigation that will be provided by the berm that will surround the site. (Exhibit 16(b); T. 82-83, 88)

Opposition's Concerns

(17) Mr. Lloyd Pitts appeared in opposition to the Application. He noted that the residential community surrounding the subject property already must contend with noise from Andrews Air Force Base, from trucks at the industrial park on Fallard Drive, from traffic that uses Dower House Road to cut through to Woodyard Road, and from the Class III fill on site. (Exhibit 63) His concern is that the requested use would exacerbate these existing "nuisances":

My concerns are that the site is already a blight to the neighborhood that I don't even - I'd like to know what County authority authorized. I'd like to know the history of this.... [A]bout four or five years ago, there was a giant quanza hut constructed with piping and a plastic webbing. And it had to be at least 40 feet tall where trucks could go in. I don't know what they were doing there.... I talked to [the female foreman] about that because this is sort of in the after-glow of our victory to prevent a weigh transfer station there that got the whole neighborhood up in arms.

Now it looks like I'm the only resident here that saw that inconspicuous sign as a notice for this hearing today. But that foreman told me that this was temporary, that that operation was temporary and that, by October of that year, which is at least 2006, that it would be gone. Well

she didn't tell me the truth, and this monstrosity is creeping up and creeping up and this – the County is not really standing up for the residents that are there because there's an unfortunate juxtaposition of heavy industrial and new home construction and existing home construction. And ... the expansion has to be halted and it has to be rolled back....

[W]hat we're talking about and my issue is we are going to have some more noise. I already know about the noise from Andrews Air Force Base. I already know about the noise on Dower House Road. Now, we're going to have a third source of noise. Those other two are not Dower, LLC's responsibility, but it would be something that you would have to concern yourself with as to how much more noise are you going to allow into the community....

(T. 32-33, 92)

Agency Comment

(18) The Transportation Planning Section opined that the request would meet the requirements of the Zoning Ordinance if the number of annual truckloads is limited to 1,500. (Exhibit 43)

(19) The Technical Staff recommended approval of the Application, with conditions, reasoning as follows:

The site had housed a concrete recycling with a rock crusher for many years under a legal permit. Adding concrete recycling facility with the crusher back on the site will essentially provide the same services as before. It would neither entail extended hours of operation beyond those required for the Class III Fill operation, nor will it require any more employees to operate the site. It will be operated in a manner that will not be detrimental to the use or development of the adjacent properties or general neighborhood. All crushing operation is adequately setback from every adjacent industrial and residential neighborhood in accordance with the Zoning Ordinance requirements. The facility is effectively screened by significant earth berm, buffered and fenced to ensure privacy and noise from adjacent properties. With the recommended conditions, the proposed use will not adversely affect the health, safety or welfare of residents or workers in the area, and there is no indication it would be detrimental to the use or development of adjacent properties or the general neighborhood.

(Exhibit 22; p. 10-17)

(20) The Community Planner for the Department of the Air Force submitted comments on behalf of Joint Base Andrews (formerly Andrews Air Force Base). (Sept. 13, 2010, attachment to Exhibit 22 from Humphreys to M-NCPPC) The Planner noted that the site does not lie within any accident potential zone, but does lie within the Inner Horizontal Imaginary Surface Area. Accordingly, it was suggested that no building or structure exceed an elevation of 417 MSL.

(21) The Prince George's County Health Department's Division of Environmental Health reviewed the request and commented that the Applicant would have to obtain a permit to operate from the Maryland Department of the Environment ("MDE"). It further noted that Applicant appeared to adequately address issues pertaining to dust, noise and truck traffic. (Exhibit 33)

(22) MDE reviewed the Statement of Justification submitted by Applicant and noted it could not comment on the amount of dust that might arise on site as a result of the rock crusher until such time as Applicant submitted its request for a permit to install the equipment. (Exhibit 37) MDE did state that "these types of portable crushers and screens are used extensively around the state at many locations and are able to meet the applicable air pollution control regulations" and that the application for its permit would be subject to a public review process. (Exhibit 37)

LAW APPLICABLE

(1) A Concrete Recycling Facility with rock crusher is permitted by Special Exception provided it meets the requirements of Sections 27-317 and 27-343.03 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

(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 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.

(3) Section 27-343.03 states as follows:

(a) A concrete recycling facility may be permitted, subject to the criteria below.

(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 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.

(4) The Application must also satisfy the purposes of the I-2 Zone found in Section 27-470 (a) of the Zoning Ordinance. This Section provides as follows:

(a) **Purposes.**

- (1) The purposes of the I-2 Zone are:
 - (A) To accommodate a mix of intense industrial uses which require larger tracts of land;
 - (B) To accommodate industrial uses that may impact adjoining properties, but are essential to the County's economic well-being; and
 - (C) To apply site development standards which will generate an attractive, conventional heavy industrial environment.

(5) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

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 [administrative body] 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. . . . 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.

The record in this case reveals “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”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

CONCLUSIONS OF LAW

(1) The requested use and Site Plan must be in harmony with the applicable purposes of the Zoning Ordinance. I believe the following purposes are furthered by the request, for the indicated reasons:

To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;

The use will promote the public health, safety and welfare by allowing the recycling of concrete and reducing the amount of materials that are landfilled.

To implement the General Plan, Area Master Plans, and Functional Master Plans;

The use is one recognized in the more recent Master Plan, and is one not incompatible with the heavy industrial zone in which it is located.

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

The use will rely heavily upon existing truck traffic, and is not expected to impact the roadways in the area. It should not impact any other public facility (schools, police, water, etc.) It, therefore, satisfies this purpose.

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

This use furthers this purpose since the site has been used as a Class I, II and III fill, and the recycled concrete both minimizes the amount of materials being landfilled and satisfies the need for recycled materials in the housing and industrial business sectors.

To provide adequate light, air, and privacy;

Adequate setbacks and the use of berming ensures there will be sufficient privacy. The fact that the use takes place entirely in the open, with no need for additional structures, ensures light and air.

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

The provision of adequate setbacks and berming, and a cap on the annual number of truckloads diminish any adverse impact on adjoining development.

To protect the County from fire, flood, panic, and other dangers;

The use will operate in accordance with all applicable laws designed to minimize these dangers.

To encourage economic development activities that provide desirable employment and a broad, protected tax base;

The use will provide a limited amount of employment on site, and will contribute to the trucking industry. These will help the County's tax base.

To prevent the overcrowding of land;

The use is conducted in the open, and is one that occurs on a Class III fill site that has limited possibilities for development. Accordingly, this purpose is satisfied.

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;

Again, any traffic generated by the request is de minimis in nature. Thus, this purpose is met.

To insure the social and economic stability of all parts of the County;

The use promotes the recycling of building materials, and provides employment opportunities, thereby furthering this purpose.

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;

The rock crusher will be operated in accordance with applicable provisions of law. Applicant has demonstrated that the use meets state noise standards, even without considering the effect that the berm will have on lowering noise volumes.

To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space;

No regulated environmental features occur on the site. The use occurs in the open and will not detract from the aesthetic of the site as it currently exists. Applicant will actually improve the area by providing some landscaping. Thus, this purpose is met.

(Section 27-317(a)(1))

(2) The request satisfies the purposes of the I-2 Zone since it is an industrial use located on a fairly large amount of land, the use is one that positively impacts the County's economic well-being, and it is providing attractive landscaping. (Section 27-470)

(3) The Application does not require the grant of a variance or other departure. It, therefore, satisfies all applicable requirements of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) The Class III fill was located on site prior to the adoption of the 2002 General Plan and the 2009 Master Plan. Neither document discusses the need to remove such a use. Thus, the Application does not substantially impair the integrity of the Master Plan or General Plan. (Section 27-317 (a)(3))

(5) The use is designed in a manner to minimally impact the surrounding properties and residents. The use will essentially utilize trucks that are currently accessing the site to use the fills; thus, any impact on transportation facilities would be negligible. (Section 27-317 (a)(4) and (5))

(6) As noted above, the use is to be developed in accordance with an approved Type II Tree Conservation Plan (TCPII/168/92). (Section 27-317(a)(6))

(7) There are no regulated environmental features on the site, and the property is not located within a Chesapeake Bay Critical Area Overlay Zone. (Sections 27-317(a)(7) and 27-317(b))

(8) I disagree with Applicant's conclusion that it is not required to provide any landscaping within the boundaries of the Special Exception. (Exhibit 62(a)) While it would be a boon to the community for Applicant to provide additional landscaping along *all* of its property that fronts Dower House Road, the only portion of its land under review (and, therefore, under the jurisdiction of this Examiner) is the land within the boundaries of the Special Exception. Accordingly, the only property that must satisfy the various provisions of the Zoning Ordinance and the Landscape Manual is the property at issue in this Application. Since the landscaping is also within the boundaries of the Special Exception along Dower House Road, no condition is required to address Applicant's erroneous assertion.

(9) I understand the opposition's concerns with the existing use of the site. However, the Class III fill is permitted by right in the zone. It is set to expire in 2016. Any renewal will require the grant of a special exception. The instant request will reduce the materials sent to the Class III fill, will not result in additional traffic, will not increase noise levels in a manner that violates State regulation, and will introduce much needed landscaping to the area. Applicant has also agreed to an expiration date for the concrete recycling to coincide with the expiration date of the fill permit. Accordingly, I

can find that this use, at this location, and under these circumstances will not have any adverse impact different from those that would result at any other location in the I-2 Zone.

DISPOSITION

Approval of S.E. 4684, subject to the following conditions:

1. Prior to the issuance of any permits, Applicant shall revise the Special Exception Site Plan to outline the Special Exception boundaries in red, as required by Section 27- 296 of the Zoning Ordinance. The Site Plan shall also show an ultimate right-of-way of 130 feet (65 feet from the center line) for Dower House Road near Foxley Road for future road, sidewalk and bike lane construction by the County unless modified by the Department of Public Works and Transportation.
2. The revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.
3. Prior to the installation and operation of any concrete processing equipment crusher, screen, conveyor and any diesel engine(s) that powers such equipment, a permit to construct and a permit to operate shall be obtained from the Maryland Department of the Environment (MDE), Air and Radiation Management Administration (ARMA).
4. The number of truckloads annually shall be limited to 1,500.
5. The May 18, 2016, expiration date for the Class III fill shall also apply to the subject recycling facility. However, these uses may be renewed, upon expiration, in accordance with applicable requirements of the Prince George's County Code.
6. A building permit shall be obtained for the existing office trailer located at the entrance to the site.

[Note: The Special Exception Site and Landscape Plan is Exhibit 62(b)]