

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

**SPECIAL EXCEPTION  
4792**

**DECISION  
ON REMAND**

Application:	Concrete Batching Plant
Applicant:	Ernest Maier, Inc.
Opposition:	Port Towns Environmental Action et. al.
Hearing Date:	June 19, 2018
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4792 is a request for permission to use approximately 4.41<sup>1</sup> acres of land in the I-2 (Heavy Industrial) Zone, located on the south side of Upshur Street and abutting the west edge of the right-of-way of Kenilworth Avenue, east of the CSX rail line on the northern end of 47<sup>th</sup> Avenue, also identified as 4100 Kenilworth Avenue, Bladensburg, Maryland, for a Concrete Batching Plant.
- (2) The subject property is located in the Town of Bladensburg. The Town of Bladensburg is in support of the Application subject to conditions which are incorporated herein. (Exhibit 32) The Town of Bladensburg has entered into a Declaration of Covenants with the Applicant pertaining to the proposed development. (Exhibit 58)
- (3) The Planning Board did not have a hearing on the Application and the Technical Staff Report<sup>2</sup> (Exhibit 18) recommended approval with conditions.
- (4) At the conclusion of the evidentiary hearing the record was kept open for assorted documents and for Memorandum of Law from both parties. Upon receipt of the documents, the record was closed on September 25, 2017.
- (5) By Decision issued November 9, 2017 the Office of the Zoning Hearing Examiner recommended approval of the Special Exemption and the variances. On Appeal to the District

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<sup>1</sup> The original request was for 3.95 acres of land; on remand the Applicant amended its request to 4.41 acres of land in order to alleviate the need for variances from setback requirements. (Exhibit R-18) (§27-343.02(a)(i) and §27-474(a)(i))

<sup>2</sup> The Technical Staff Report in this Application contains errors and as such cannot be considered totally reliable.

Council, on May 17, 2018 the District Council issued an Order of Remand to the Office of the Zoning Hearing Examiner to:

1. Take additional evidence from Applicant on legal justification for a 100-foot setback variance as opposed to a 300-foot setback variance;
2. Take additional evidence from Applicant on distances from all plant components, including the proposed truck queuing area and loading spaces, to special exception boundary lines adjoining industrial and commercial properties shown on Applicant's revised site plan;
3. Take additional evidence from Applicant on distances from all plant components, including the proposed truck queuing area and loading spaces, to boundary lines of the I-2 Zone property adjoining industrial and commercial properties shown on Applicant's revised site plan;
4. Take additional evidence from Applicant on affiliate ownership of adjoining or adjacent industrial and commercial properties, and the applicability, if any, of zoning merger, which is a doctrine that allows a property owner to merge adjacent, undersized parcels of land to form a tract that conforms to zoning regulations. Remes v. Montgomery Cnty, 387 Md. 52, 874 A.2d 470 (2005), Friends of the Ridge v. Balt. Gas & Elec. Co., 352 Md. 645, 724 A.2d 34 (1999);
5. Take additional evidence from Applicant regarding how the subject property is unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes PGCC §§27-343.02(a)(1) to impact disproportionately upon the subject property; and
6. Take additional evidence from Applicant regarding practical difficulty that would result from the disproportionate impact of PGCC §§27-343.02(a)(1) and 27-474(a)(1) caused by the subject property's uniqueness.

(6) In order to address the six (6) issues raised in the Order of Remand, the Applicant filed a revised Application which included a Revised Site Plan (Exhibit R-18) which increased the area of the proposed Special Exception to include a portion of Lot 3 and relocated the location of the material storage bins five feet towards the interior of the subject property thereby obviating any need for variances. The June 19, 2018 hearing also included testimony on the revised Application and Revised Site Plan. (Exhibit R-18) As a result of these revisions, evidence pursuant to remand No.'s 5 and 6 is moot. Evidence was presented on No.'s 1-4 in accordance with the Order of Remand.

(7) At the conclusion of the evidentiary hearing on remand, the record was kept open for Memoranda of Law from both parties. Upon receiving these documents, the record was closed on August 6, 2018.

## FINDINGS

### Subject Property

(1) The subject property is a large irregularly shaped property. The proposed Special Exception area is currently occupied by an existing Concrete Block Manufacturing Plant, including outdoor storage areas for both raw materials and finished products, which has been in operation since the 1960's and which is operated by the Applicant. The subject property is also improved with a number of warehouse buildings and vehicle parking areas. Some of the existing structures associated with the Concrete Block Plant will be demolished in order to accommodate the proposed Concrete Batching Plant.

(2) The Concrete Batching Plant is proposed to be located in the center of the subject property west of the existing Concrete Block Plant on .55 acres of land and some of the components associated with the Concrete Block Plant (raw material stockpiles) will also be utilized in conjunction with the operation of the Concrete Batching Plant.

(3) The areas of Lot 4 which are not part of the Special Exception area are in the I-1 (Light Industrial) Zone and are occupied by outdoor storage for finished concrete block and by warehouse buildings. The CSX Railroad serves as the zoning line between the I-2 Zone (the subject property) and the I-1 Zone (to the west of the CSX Railroad). Access to Lot 4 is via two entrances on Upshur Street and by the end of 47<sup>th</sup> Street. Upshur Street in this area is predominately industrial in nature.

### Surrounding Uses

(4) The subject property is surrounded by the following uses.

- Abutting the site to the north is Upshur Street, a right-of-way of 65' width (with its centerline being 35' from the subject site's boundary), and a paved width of 26', with the paving substantially offset from the center of the right-of-way. The southern side of the right-of-way is improved with a large, open, vegetated drainage channel that includes an irregular line of small trees and brush along the edge of the subject property. Along the north side of Upshur Street are a roofing contractor, a fence contractor, an electric contractor, and a computer systems consulting company, all in the I-1 Zone. Further to the east along the north side of Upshur Street are the Town of University Park's Department of Public Works (DPW) yard, a pipeline contractor, an elevator contractor, and a large commercial tool rental operation.
- Abutting the site to the east is Kenilworth Avenue (MD 201) which is a divided arterial roadway that sits on a high embankment. The road surface of Kenilworth Avenue lies between eight and nineteen feet above the site level, and the edges of the road embankment are covered in brush and small trees which, combined with the

elevation change, screen the subject site from view. The Town of Bladensburg's DPW yard occupies the portion of the State Highway Administration (SHA) right-of-way which lies in between the traveled way of Upshur Street and the Kenilworth Avenue roadway, just to the east of Lot 4's limits. The land on the east side of the Kenilworth Avenue embankment is zoned M-X-T (Mixed Use-Transportation Oriented), and is occupied by a Consolidated Storage Facility on the north side of the 48<sup>th</sup> Street exit ramp, and by a Vehicle Repair Facility on the south side.

- Abutting the site to the south are other properties owned by entities related to the Applicant, which are occupied by a building supply business on the east side of 47<sup>th</sup> Street on land that is split-zoned I-1 and C-S-C (Commercial Shopping Center), and warehouse buildings on the west side of 47<sup>th</sup> Street on land that is zoned I-1 and C-S-C. The St. Paul Baptist Church historic site is also located on the west side of 47<sup>th</sup> Street, on land that is zoned M-X-T. The areas on the west side of 47<sup>th</sup> Street, from the St. Paul Baptist Church south to Annapolis Road, are in the Port Towns Development District Overlay Zone (D-D-OZ) Port Towns Waterfront Character Area.
- Abutting the site to the west are the elevated (20'+) tracks of the CSX Railroad. On the west side of the elevated tracks is a warehouse in the I-1 Zone and the D-D-OZ/Port Towns Waterfront Character Area.

### **Neighborhood**

(5) The neighborhood of the site was defined by the Planning Staff and agreed with by both parties, as having the following boundaries:

- North - Tanglewood Drive and Buchanan Street
- East - Kenilworth Avenue (MD 201)
- South - Annapolis Road (MD 450)
- West - Baltimore Avenue (Alternate US 1)

(6) The surrounding neighborhood is industrial in character, and is almost wholly occupied by various building industry contractors and suppliers, vehicle service businesses, and vehicle storage yards in the I-1 and I-2 Zones. The non-industrial uses in the neighborhood include the Kingdom Missionary Baptist Church (in the St. Paul Baptist Church historic site), M-NCPPC offices in the George Washington House historic site, a pawnshop by the Peace Cross, a go-kart track, a Consolidated Storage Facility, and a warehouse and vehicle parking area for a mobile ice cream sales operation. Non-industrial zoning in the neighborhood is confined to a strip of M-X-T zoning along

Baltimore Avenue and Annapolis Road, and a small amount of C-S-C zoning along Annapolis Road; all of these non-industrial zoned areas are associated with the Port Towns Waterfront Character Area's D-D-OZ, but are still predominantly occupied by building industry contractors and suppliers and vehicle service businesses. The Anacostia Waterfront Park, on the south side of Annapolis Road, is also zoned C-S-C, but is just outside the limits of the defined neighborhood.

(7) No residential uses are in the defined neighborhood. The nearest residential uses are on Edmonston Road, approximately 700 feet distant, on the far side of the Kenilworth Avenue embankment and behind the Consolidated Storage Facility.

### **Master Plan/Sectional Map Amendment**

(8) The subject property is located in Planning Area 69. The applicable Master Plan is the Approved Port Towns Sector Plan and Sectional Map Amendment which was approved on October 6, 2009. This Sector Plan designated the subject property for "Industrial" land use. The Sectional Map Amendment retained the subject property in the I-2 Zone.

(9) The October 2002 General Plan placed the subject property within the Developed Tier. The Growth Policy Map in the May 2014 General Plan placed the property in the Established Communities category, and the Generalized Future Land Use Map designated it for Industrial/Employment land use. The subject property is not within a Priority Preservation Area.

### **Applicants Proposal**

(10) The Applicant is requesting permission to add a Concrete Batching Plant to the existing Concrete Block Manufacturing Plant. The Block Plant and the new Concrete Batching Plant would share the same existing open aggregate storage bins for coarse and fine aggregates, and would share the same heavy equipment for loading the aggregates into the feed hoppers and conveyors that supply each of the two plants. The core of the Batching Plant will consist of two elevated silos for cement storage and an adjacent compartment for mixing the cement with fine aggregate (sand) and coarse aggregate (stone); "barrel" trucks (i.e. the concrete mixing and delivery trucks commonly called "cement trucks") will back under one of the silos to be loaded with the proportioned mix of cement, aggregates and admixtures which, when combined with water, comprise concrete.

(11) One of the existing warehouses on the site would be demolished to provide space for the Batching Plant and the necessary vehicle circulation areas. The demolition will allow for greatly increased areas for vehicle queuing. Currently, vehicles serving the Block Plant occasionally queue down 47<sup>th</sup> Avenue; the improved vehicular circulation onsite due to the warehouse demolition is expected to ameliorate the existing queuing on 47<sup>th</sup> Avenue.

(12) Traffic to and from the Concrete Batching Plant will be limited to the western entrance from Upshur Street, just to the east of the underpass carrying Upshur Street under the CSX tracks. A bend

in Upshur Street affords good visibility down Upshur Street, past the abutments of the railroad bridge. Seventy percent of outgoing trips are expected to travel east on Upshur Street to Kenilworth Avenue and points north, east and south, including the District of Columbia; the remaining thirty percent will head west to 46<sup>th</sup> Avenue, and thence either south to Annapolis Road and Bladensburg Road to the west, or north to Baltimore Avenue/US Route 1. 47<sup>th</sup> Avenue will not be used for traffic associated with the Batching Plant to avoid visual and vibration impacts from truck traffic to the St. Paul Baptist Church and Hilleary-Magruder historic sites; the use of 46<sup>th</sup> Avenue will avoid similar visual and vibration impacts to the George Washington House historic site.

(13) The existing site will also be improved with the installation of a misting system over the aggregate storage bins to control dust from loading and unloading of aggregates into the existing Concrete Block Manufacturing Plant as well as into the proposed Concrete Batching Plant, and by the installation of an underground Stormwater Management Facility to provide water quality control of the runoff from the Concrete Plant area, which includes the loading area for the existing Block Plant. Water retained in the Stormwater Management Facility will be recycled to supply the misting system, for use in truck washout, and for use by a wash truck that will periodically spray the ground areas of the site. Solid aggregate materials recovered from truck washout will be transported offsite to be made into RC-6 (a substitute for crushed stone made from recycled concrete).

(14) A sight-tight fence is proposed along Upshur Street to augment the screening provided by the existing vegetation; supplemental tree planting is proposed along Kenilworth Avenue to augment the existing vegetative screening, and to meet the Tree Canopy Coverage requirements. In addition to the vegetative screening and the new fence, the proposed Batching Plant will be amply screened by virtue of its location between three existing buildings on site, by the elevated CSX tracks, and by the vertical separation from Kenilworth Avenue.

(15) The proposed Batching Plant is expected to generate 12 new jobs within its first year of operation, and will ultimately add fifteen to eighteen new jobs.

### **Opposition Concerns**

(16) At the hearing, Mr. Carlson, a Bladensburg resident of several decades who lives less than 1,000 feet from the subject property, testified that Upshur Street is routinely congested during peak hours, and that he has frequently seen heavy trucks serving the Applicant's existing Block Plant queued onto Upshur Street. (August 22, 2017, T.p. 205 et seq). Similarly, Ms. Peck testified that she, and many others in the community, often utilize Upshur Street as a cut-through to avoid the even more significant congestion on Kenilworth Avenue. (September 6, 2017, T.p. 5 et seq). Photographs submitted to the record with the testimony of Ms. Melendez make clear that Upshur Street does not currently have any sidewalks, bike paths or lanes, or even shoulders. (September 6, 2017, T.p. 294 et seq). In addition, the Land Planning Analysis prepared by the Applicant's land use expert indicates that 70% of the new traffic generated by the proposed Batching Plant will turn off of Upshur Street and onto Kenilworth Avenue. (Exhibit 26) Ms. Melendez testified that at least one

pedestrian was already killed this year on Kenilworth Avenue very near the intersection of Upshur Street and Kenilworth Avenue.

(17) A number of opposition witnesses testified that the existing Block Plant operation at the subject property already has substantial negative impacts on the abutting historic St. Paul's Baptist Church. Reverend Dockett, the leader of St. Paul's congregation, testified that his church no longer hosts funeral ceremonies during the five business days each week due to the dust generated at the subject property, and the heavy trucks and equipment that routinely block and occupy 47<sup>th</sup> Street. (August 22, 2017, T.p. 161 et seq) Mr. Ferguson, the Applicant's expert land planner, testified that St. Paul's is located thirty (30) feet from the proposed Special Exception use area.

(18) Citizens generally objected to the current Heavy Industrial zoning of the subject property and would like it to be in a different zone. Mr. Carlson, having purchased his home in 1977 within 1,000 feet of the then existing Block Plant, summarized these objections as follows: "I would like to put urban dwellings, I'd like to put fine dining restaurants, I'd like to clean this area up. I'd like to put skyways, like in St. Paul Minnesota..." (August 22, 2017, T.p. 214) Ms. Jolene Ivy also articulated her hope that if the instant Application is denied then the existing Block Plant might chose to relocate, giving the community the opportunity for upscale development on site. (August 22, 2017, T.p. 45)

(19) Dr. Sacoby Wilson, qualified as an expert witness in environmental health science, expressed concerns with the Air Quality Impact Study (Exhibit 42). Dr. Wilson agreed that the Air Quality Impact Study was prepared in accordance with Maryland law and that the proposed use would meet the legal air quality standards however, he argued that more stringent air quality measures should be adopted by the applicable legislative bodies. Dr. Wilson also would have liked the Applicant to have prepared a Health Impact Analysis but conceded that it is not required by any law. (August 22, 2017, T.p. 207-255)

(20) Ms. Kimberly Fisher was not qualified as an expert witness but expressed her concerns as a lay witness with the Traffic Impact Analysis (Exhibit 39) prepared by the Applicants transportation expert. (September 6, 2017, T.p. 3 et seq)

### **LAW APPLICABLE**

(1) A Concrete Batching or Mixing Plant is permitted in the I-2 Zone by grant of a Special Exception in accordance with §27-317 and §27-343.02 of the Zoning Ordinance.

(2) §27-317(a) states:

(a) A Special Exception may be approved if:

(1) The proposed use and revised 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;
- (6) The proposed revised site plan is in conformance with an approved Tree Conservation Plan; and
- (7) The proposed revised 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).

(3) §27-343.02 provides, in pertinent part, as follows:

(a) A concrete batching or mixing plant (including the batching and mixing of cement with sand, aggregates, and water; the storage of natural materials; and the mixing of materials in trucks) may be permitted, subject to the criteria, below.

(1) Mixing plant components and other parts of the operation having the potential for generating adverse impacts (including conveying systems, concrete mixers, weighing hoppers, batching equipment, aggregate bins, truck mixing areas, truck wash-out facilities, and truck parking areas) 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 revised 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 revised site plan and accompanying information shall show:

- (A) The components of the mixing plant;
- (B) The daily capacity of the plant;
- (C) The location of all natural 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 truck mixing areas;
- (J) The parking and storage areas for all vehicles and equipment; and
- (K) The identification of the trucks and heavy equipment to be used in the plant operation.

(3) At least thirty (30) 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 with the original application, and 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 other street (to be used) that has a minimum paved width of twenty-four (24) feet for its predominant length.

(4) Driveways for ingress and egress shall be identified on the revised 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.

(5) 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.

(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 Permitting, Inspections, and Enforcement, 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.

(4) With regard to the evidentiary burden to be utilized by an administrative agency when considering a request for Special Exception, an Applicant bears the “burden of persuasion,” to demonstrate “by a preponderance of evidence that the special exception will conform to all applicable requirements.” Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Properties, 453 Md. 516, 542, 162 A.3d 929, 944 (2017)(quoting Attar v. DMS Tollgate, LLC, 451 Md. 272, 286, 152 A.3d 765, 774 (2017)). However, the Applicant is not required to produce evidence showing that the Special Exception use will “provide a benefit to the community.” Donaldson Properties, 453 Md. At 542. In establishing this relatively low evidentiary burden for the approval of Special Exceptions, the Court of Appeals in Donaldson Properties provided a concise explanation of its reasoning:

**Because special exceptions and conditional uses are legislatively-created, we have repeatedly held that ‘they enjoy the presumption of correctness and are an appropriate tool for the exercise of a local government’s police powers.’ See also Anderson v. Sawyer, 23 Md.App. 612, 617, 329 A.2d 716, 720 (1974)(‘The conditional use or special exception 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.’); Mills v. Godlove, 200 Md.App. 213, 230, 26 A.3d 1034, 1044 (2011)(‘Because the allowance of a special exception use is**

part of a comprehensive zoning regulatory scheme that **it itself accompanied by the presumption that it promotes public safety, health, and morals**, it stands to reason that this broader presumption accompanying the zoning ordinance itself generates the specific presumption of compatibility associated with the inclusion in the ordinance of those uses that may be allowed through the grant of special exceptions.’)

Donaldson Properties, 453 Md. at 541-42 (quoting Rylyns Enterprises, Inc., 372 Md. 514, 542-543, 814 A.2d 466, 486 (2002)). The Court in Donaldson Properties further held that such uses are assumed to be accompanied by some level of adverse impact, but they are still entitled to a presumption of validity and the “disqualifying” adverse impacts “must be more than mere annoyance.” Id. at 542

(5) Certain types of testimony should not be considered by an administrative agency when ruling upon a request for Special Exception or variance. Specifically with regard to the testimony of lay witnesses, the Court of Special Appeals in Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974) held that:

[U]nsupported conclusions of witnesses to the effect that a proposed use will or will not result in harm of amount to nothing more than **vague and generalized expressions of opinion which are lacking in probative value.**

Id. at 618 (emphasis added) The Court in Anderson v. Sawyer further held that lay witnesses testimony indicating that a particular use would result in increased traffic congestion constituted “no evidence at all,” and does not contradict the expert testimony of a traffic engineer opining that a roadway could comfortably and safely accommodate the increased traffic. Id. at 619. Furthermore, the denial of a use request “based solely upon generalized fears or unsupported allegations of adverse effect is arbitrary and legally unwarranted.” Moseman v. County Council of Prince George’s County, 99 Md. App. 258, 265, 636, A.2d 499, 503 (1994)(citing Rockville Fuel v. Board of Appeals, 257 Md. 183, 191-93, 262 A.2d 499 (1970)). Therefore, where the resolution of issues involves scientific expertise, lay witness testimony is of little evidentiary value.

(6) The Court of Appeals explained, in People’s Council for Baltimore Cnty v. Loyola Coll. in Md., 406 Md. 54, 956 A2d 166 (2008), that the Applicant satisfies its burden if it provides evidence that the proposed use would be conducted without real detriment to the neighborhood. The proposed Concrete Batching Plant co-located with an existing Concrete Block Plant has not been shown to create a detriment to the neighborhood or adjoining properties above that already occurring with the existing Concrete Block Plant. Indeed opposition testimony was primarily addressing the impact of the existing use and not the proposed use. Evidence was not adduced that the proposed Concrete Batching Plant co-located on property with an existing Concrete Block Plant at this location would have any adverse effects above those inherently associated with a Concrete Batching Plant irrespective of its location within the I-2 Zone. Indeed the evidence supports the conclusion that since the two uses would share certain facilities and infrastructure, the proposed Concrete Batching

Plant will actually have fewer adverse effects at the subject location than at another I-2 Zoned location. Attar v. DMS Tollgate, LLC, 451 Md. 272, 285-87, 152 A. 3d 765, 772-74 (2017) (internal citations and quotations omitted)

### CONCLUSIONS OF LAW

(1) The instant Application is in accordance with the general purposes of the Zoning Ordinance, §27-102, 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 approval of the subject Concrete Batching Plant will be in harmony with this Purpose of the Zoning Ordinance of promoting the health, safety and welfare of the present and future inhabitants of the County by its compliance with the provisions of the Ordinance regulating land use, off-street parking, building setbacks, and by providing for additional protections to the surrounding neighborhood and the surrounding environment, including: the installation of stormwater management systems which will provide water quality control systems to a site which currently has none; the installation of systems for dust control to the aggregate storage bins which are also used by existing Concrete Block Manufacturing operations at the site; by limiting the truck traffic to routes which avoid impacts to nearby historic sites; by improving internal vehicular circulation which should ameliorate existing queueing on 47<sup>th</sup> Avenue; by providing improved screening that will benefit the aspect of the existing block plant as well as the proposed Concrete Batching facility from the surrounding streets; and by providing for a new facility to supply the need for a critical building material for the County and the surrounding metropolitan area.

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

The relevant Plans which apply to the subject property are the 2014 General Plan, the 2009 Approved Port Towns Sector Plan and Sectional Map Amendment, and a number of Functional Master Plans, including the Green Infrastructure Plan, the County Master Plan of Transportation, the Public Safety Facilities Master Plan, The Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

#### **General Plan**

The General Plan classified the subject property in its Growth Policy Map<sup>3</sup> in the Established Communities category, and the Generalized Future Land Use Map<sup>4</sup> designated it for Industrial/Employment land use.

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<sup>3</sup> M-NCP&PC, Plan Prince George's 2035 – Approved General Plan (May, 2014), p. 107.

<sup>4</sup> General Plan, p. 101.

“Established Communities” are described by the General Plan as “the County’s heart – its established neighborhoods, municipalities and unincorporated areas outside designated centers,”<sup>5</sup> and recommends that, “Established communities are most appropriate for context-sensitive infill and low- to medium-density development....”<sup>6</sup>

“Industrial/Employment” land use is described by the General Plan as, “manufacturing and industrial parks, warehouses and distribution. May include other employment, such as office and service uses.”<sup>7</sup> It is noted that the Generalized Future Land Use Map generally replicates the recommendations of the Master Plan or Sector Plan in force at the time of the approval of the General Plan; the note under the Generalized Future Land Use Map directs the reader that, “by definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns. To identify the future land use designation for a specific property, please refer to the property’s relevant approved sector or master plan.”<sup>8</sup> Given its location at a site long used for heavy manufacturing, in the midst of an almost-wholly industrial neighborhood, approval of the subject Application would constitute context-sensitive infill.

### **Master Plan**

The applicable Master Plan is the 2009 Approved Port Towns Sector Plan and Sectional Map Amendment. The Sector Plan contains a number of consistent recommendations which emphasize the need to protect and promote industrial activity in the area. On the very first page of the Plan, the “Plan Highlights” includes the recommendation to, “retain vital industrial zoning and industrial uses.”<sup>9</sup> The Market Analysis section of the Plan’s Introduction contains a Table which identifies strengths, weaknesses and opportunities for the Sector’s industrial supply; that Table includes the opportunity, “facilitate expansion of existing large-scale industrial business/property owners.”<sup>10</sup>

The Vision Statement for the “Development Pattern” element of the Sector Plan states that, the vision for the Port Towns area is to achieve green, healthy, and pedestrian-friendly communities and destinations that celebrate and build on the area’s cultural diversity, strategic location, industrial base, and historical, recreational and environmental assets...<sup>11</sup> The Sector Plan lays out a number of Goals, including, “preserve and enhance the industrial tax base while encouraging sustainable development and design.”

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<sup>5</sup> Ibid., p. 106.

<sup>6</sup> Ibid., p. 20.

<sup>7</sup> Ibid., p. 100.

<sup>8</sup> Ibid., p. 101.

<sup>9</sup> M-NCPPC, Approved Port Towns Sector Plan and Sectional Map Amendment (October, 2009), p. 1.

<sup>10</sup> Sector Plan, p. 13.

<sup>11</sup> Ibid., p. 17.

The “Economic Development” element of the Sector Plan states that one of its objectives is to, “retain, develop, and support the industrial employment areas,”<sup>12</sup> and establishes a Policy to, “maintain the Port Towns’ industrial and manufacturing base to provide a stable employment foundation and to contribute to the area’s economic vitality.”<sup>13</sup> Among the Strategies proposed to implement that Policy are to ensure that zoning is in place to maintain a strong industrial and commercial base and further promote a stable employment zone.”<sup>14</sup>

The “Community Health and Wellness” element of the Sector Plan includes under its Policy of initiating a health and wellness program strategies that include, “encourage development that supports a healthy economy that provides a variety of living wage jobs,”<sup>15</sup> and, “maintain land zoned for light industrial, production and distribution uses in and around the town center to provide employment opportunities.”<sup>16</sup>

The Plan does recognize that surrounding non-industrial uses need protection from the visual disruptions of the older industrial area. It recommends a strategy to, “strengthen existing buffers and create new buffers between manufacturing, light industry and their adjacent uses in order to better integrate industrial activity.”<sup>17</sup> The subject Application proposes a new use at an existing, developed site in the midst of an industrial area which is substantively buffered from surrounding uses by virtue of its location between the raised embankments of the CSX railroad tracks and the raised roadway of Kenilworth Avenue, and by the intervening lighter industrial uses between it and Annapolis Road. The proposed Batching Plant is further buffered by its location behind three existing buildings on the subject site and the adjacent property owned by a related entity.

Because the proposed Application is in accordance with the Sector Plan’s recurrent, consistent intent to protect and promote industrial uses in the area, to implement environmental protections, including adding Tree Canopy Coverage and Stormwater Management measures, the approval of the subject Concrete Batching Plant would be in harmony with the recommendations of the Sector Plan.

### **Other Applicable Functional Master Plans**

The Special Exception area is not mapped as containing any Regulated Areas or Evaluation Areas of the County’s Green Infrastructure Network; as such, the subject Application conforms to the Green Infrastructure Plan. It is noted that the site is impacted by 100-year floodplain area; unusually, this floodplain area is associated with backwater ponding from regional urban stormwater drainage from areas on the outside of the Anacostia River levee system. Because this floodplain area

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<sup>12</sup> Ibid., p. 87.

<sup>13</sup> Ibid., p. 88.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p. 105.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., p. 88.

is not associated with a regulated stream, it is therefore not considered to be a part of the Green Infrastructure Network.

With regard to The Historic Sites and Districts Plan, a number of historic sites are within the vicinity of the subject site. The St. Paul's Baptist Church (County Historic Site 69-005-06), the George Washington House (County Historic Site 69-005-02), the Peace Cross (County Historic Site 69-005-16), and the Hilleary Magruder House (County Historic Site 69-005-07) are in or immediately adjacent to the defined neighborhood. The Market Master's House (County Historic Site 69-005-08) and Bostwick's (County Historic Site 69-005-09) environmental settings are also within 1,000 of the Special Exception boundary, but are separated by the embankment of Kenilworth Avenue and off of projected vehicle travel routes.

In addition to the visual screening which isolates the proposed Concrete Batching Plant from all of the listed sites (except for St. Paul's Baptist Church), the Applicant has proposed vehicle travel routes that will protect the George Washington House, the Hilleary-Magruder House and the St. Paul's Baptist Church from the visual and vibration impacts from truck traffic associated with the instant Application. By virtue of these visual and vehicular separations, the approval of the instant Application will have no adverse impact on this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the instant Application.

No proposed sites for Public Safety facilities are in the area affected by the instant Application.

The Countywide Master Plan of Transportation classifies Kenilworth Avenue as an arterial roadway, and does not recommend any widening to the existing right-of-way. No structures are proposed in this ultimate right-of-way area, and as such, the subject Application is in conformance with this Functional Master Plan.

In conclusion, because the proposed Concrete Batching Plant is not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the subject Application will be in harmony with the Ordinance's purpose of implementing those Plans.

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

This Application proposes an additional use at an existing, developed site on a recorded lot. The traffic study which was submitted by the Applicant indicates a maximum of forty new peak-hour trips, which is just beyond the statutory de minimis impact, and further found that, while the subject Special Exception Application is not required to meet the adequacy test of a new subdivision

application, the surrounding critical intersections are currently operating at adequate levels of service. As such, approval of the instant Application will not adversely affect the adequacy of existing transportation facilities, and thus would be in harmony with this Purpose of promoting the conservation of a community which will be developed with adequate public facilities.

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

Approval of the subject Application would recognize the needs of the County's agriculture, industry and businesses by allowing for the establishment of a Concrete Batching Plant which is compatible with its surrounding land uses, and will employ new workers and supply necessary building materials for the development of the County. As such, approval of the subject Application would be in harmony with this Purpose of the Ordinance.

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

The approval of the subject Concrete Batching Plant will be in harmony with this Purpose as the site is ample in size, is substantively buffered, and is being developed in accordance with all setback requirements, would be developed in conformance with the various regulations in the Zoning Ordinance to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These regulations include the provision of sufficient distance between the proposed use and neighboring uses, and conformance with height limitations in order to allow for access to light and air.

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

The subject Concrete Batching Plant would be in harmony with this Purpose as it would be constructed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the Tables of Permitted Uses for the various zones as laid out in the Ordinance, and with the special provisions for approval of this Special Exception including all setback requirements of §27-343.02(a)(1) and §27-474(b). No variances are needed.

The subject property's location in an almost-wholly industrial neighborhood, visually buffered by the raised embankments of the CSX railroad tracks and Kenilworth Avenue, and by the common land ownership of the abutting land to the south means that substantive buffers exist between it and any adjoining landowners, which protect them from adverse impacts of noise and visual impact. Distance and the new dust-suppressing equipment will protect adjoining landowners from the adverse impacts of dust, not only from the proposed Batching Plant, but also will mitigate existing dust impacts from the Concrete Block Manufacturing Plant. The traffic plan will protect

nearby historic sites from adverse impacts of vibration from heavy truck traffic. For all of these reasons, the approval of the subject Batching Plant would be in harmony with this Purpose of the Zoning Ordinance.

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

The subject Batching Plant would be in harmony with this Purpose as it would be developed in conformance with regulations established in the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the Floodplain Regulations, Stormwater Management Regulations, the Fire Prevention Code, the Building Code, and the Tables of Permitted Uses for the various zones.

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

Because the subject use is industrial in nature, this Purpose is not directly applicable to this Application, however, the location of the subject site in the midst of an industrial neighborhood with substantive visual buffers, and the further intervening presence of commercial areas beyond the defined neighborhood limits will preserve the ability of the surrounding area to provide sound, sanitary housing in a healthy living environment.

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

The approval of the subject Batching Plant would be in harmony with this Purpose because it would add to the tax base of the County directly, through the employment provided to its new workers, and by enabling it to supply necessary building materials for the physical creation of economic development activities throughout the County.

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

The subject Batching Plant would be in harmony with this Purpose as it would be constructed in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, height limits, and setbacks. The reduction in existing building area and the improvements to interior vehicular circulation which will result from the demolition of an existing structure will be in harmony with this Purpose of preventing 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;***

The approval of the subject Batching Plant would be in harmony with this Purpose. First, the ingress-egress driveway is located in an area with ample sight distance along Upshur Street. Second, the improvements to the internal vehicular circulation attending the demolition of the existing warehouse structure will ameliorate existing vehicle queueing on 47<sup>th</sup> Avenue. And finally, it will be developed in accordance with the regulations established in the Zoning Ordinance (and other County ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking.

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose. Approval of subject Batching Plant would promote the economic and social stability of the County by contributing to the tax base, by providing new jobs, and by providing essential building materials to the surrounding community.

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

Because of the subject Batching Plant's location on a developed site in the midst of an older industrial area, it will have no impact on stream valleys, steep slopes, lands of natural beauty, dense forests or scenic vistas. Because of the site's size, location and the nature of the equipment, it will have no undue noise impact. Because of the installation of the various dust control systems: the misting system, the sweeping and water truck use, and the use of modern batching equipment, the proposed Batching Plant will not create an undue amount of air pollution. And, because of the provision of a Stormwater Management system, there will be no undue water pollution. By conformance to these principles and with the proposed improvements, the approval of this Application would be in harmony with this Purpose.

The final two Purposes,

***(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.***

are mostly not directly applicable to the approval of this facility, except that approval of this use in an existing, developed location in the Developed Tier of the County is in harmony with these Purposes. §27-317(a)(1)

(2) The instant Application is also in accordance with the specific purposes of the I-2 Zone, §27-470(a)(1), as follows:

(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. §27-317(a)(1)

(3) The instant Application is in accordance with all of the applicable requirements and regulations of the Zoning Ordinance including all setback requirements. (Exhibit R-18) §27-317(a)(2)

(4) The proposed Special Exception is in conformance with the provisions of the 2014 General Plan, the 2009 Approved Port Towns Sector Plan and Sectional Map Amendment, and the 2005 Approved Countywide Green Infrastructure Plan. The Sector Plan maintains an industrial land use for the subject property. Therefore, it can be concluded that 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. §27-317(a)(3)

(5) A Concrete Block Plant has operated continuously on this property for more than 50 years and it has not adversely affected the health, safety, or welfare of residents or workers in area. The instant proposal is designed to provide for the safe internal flow of vehicles on-site and for the safe ingress and egress of vehicles. While vehicular access, adequate sight distance, truck traffic, dust, noise, air and water pollution are primary concerns that are associated with the proposed use, there are regulatory measures that the Applicant is required to implement to ensure compliance. The Applicant will be required to address dust control measures as part of the air quality permit process from Maryland Department of the Environment (MDE). The Applicant has indicated that a water method would be used to mitigate and reduce dust. Furthermore, a noise study prepared by Staiano Engineering, Inc., dated October 2016, indicates that the State of Maryland daytime and nighttime noise limit requirements are met without mitigation. The noise and truck traffic are typical impacts for this type of use. None of the responses from any referring agencies indicate the proposed use will adversely affect the health, safety, or welfare of residents or workers in the area. The Special Exception use is considered compatible with uses permitted by right within the I-2 Zone, if specific criterion is met. There are no significant adverse impacts for the proposed use. Furthermore, the characteristics of the site which preserve and protect the use and development of the adjacent properties and the general neighborhood, provide substantive protection to the health, safety and welfare of neighboring residents and workers. §27-317(a)(4)

(6) The long existence of the Concrete Block Manufacturing Plant which occupies the subject site (and which will continue to operate) in the midst of a long-developed, almost-wholly industrial neighborhood indicates that its character has been and will continue to be compatible with the surrounding uses. The low vacancy rate of the surrounding occupancies – revealed both by visual inspection and by statistics in the County’s 2010 Industrial Land Needs and Employment Study – are evidence that heavy industrial use at the subject site has not been detrimental to the use and development of the general neighborhood. The modernization of the site will be complementary to the vision noted in the Port Towns Sector Plan and Sectional Map Amendment regarding local employment. Furthermore, the improvements proposed by the Special Exception will mitigate some of the effects of both the existing Concrete Block Plant, as well as the new Batching Plant. The provision of new fencing and planting, the demolition of the existing warehouse and the resulting vehicular circulation improvements, and the installation of dust-suppressing equipment are all benefits to mitigate impacts from the existing Plant as well as the new one. §27-317(a)(5)

(7) This site is exempt from the provisions of the Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance because the site has no previous Tree Conservation (TCP) approvals, and contains less than 10,000 square feet of woodlands. The site was issued a Standard Letter of Exemption from Woodland Conservation (S-144-16). §27-317(a)(6)

(8) The subject property is impacted by the presence of 100-year floodplain associated with backwater ponding behind the levees from regional urban stormwater drainage from upstream areas in the neighborhood, and from the residential and commercial areas east of Kenilworth Avenue. The floodplain area at the subject site is a man-made creation and is not, nor ever has been in a “natural state.” The Special Exception Revised Site Plan (Exhibit R-18) proposes the installation of stormwater management measures which will help to restore the water quality of the runoff from the site, including existing areas which currently receive no treatment. Furthermore, the subject proposal will involve the demolition of an existing building, also providing partial restoration of floodwater storage. §27-317(a)(7)

(9) The Special Exception Revised Site Plan (Exhibit R-18) indicates 100-foot buffers from the boundaries of the subject Special Exception which adjoin industrially-zoned land, including the CSX railroad tracks, which separate the subject site from other industrially-zoned land (the zoning line is, pursuant to §27-111(a)(2), the center line of the railroad right-of-way). No residential zones or uses adjoin the subject site. The St. Paul Baptist Church site, zoned M-X-T, is nearby but not adjoining (defined as “abutting,” which is in turn defined as, “touching and sharing a common point or line”). The land on the other side of Kenilworth Avenue is zoned M-X-T, but is not adjoining.

The Special Exception Revised Site Plan (Exhibit R-18) indicates that the conveying systems, concrete mixers, weighing hoppers, batching equipment, truck mixing areas, truck wash-out facilities, and truck parking areas are all located outside of the setbacks as required. The existing aggregate storage bins which serve the existing Concrete Block Plant and which are proposed to be used in tandem with the proposed Concrete Batching Plant will be relocated to a location providing a

110 foot setback from adjoining property and 25.5 feet from the Special Exception line along Kenilworth Avenue. All components of the Concrete Batching Plant as identified in §27-343.02(a)(1) are located in compliance with the 100 foot setback and the setback requirements of §27-474(b). No variances are needed. (June 19, 2018 T.p. 46 et. seq.)(Exhibit R-18) §27-343.02(a)(1)

(10) The components of the Batching Plant, its capacity, the location of natural material stockpiles (i.e. the aggregate bins), the source of water, the washout facilities, the methods of disposing waste facilities, the internal traffic circulation system, the truck mixing area, the parking and storage areas for all equipment, and the list of trucks and heavy equipment to be used are all depicted or listed on the Special Exception Revised Site Plan. (Exhibit R-18) No settling ponds are proposed. §27.343.02(a)(2)

(11) The Traffic Impact Analysis indicates that an additional 40 trips per day will be generated by the proposed use, via the existing 22 foot paved access drive on Upshur Street, which has a minimum paved width of 26 feet for its predominant length. (Exhibit 39) §27-343.02(a)(3)

(12) The Special Exception Revised Site Plan indicates the onsite driveways and interior traffic circulation system, and their width of at least twenty-two feet. The Revised Site Plan also indicates that a water truck will be used periodically for dust suppression on the driveways. The driveway location on Upshur Street, opposite from the intersecting Webster Street has adequate sight distance, and thus will not endanger pedestrians or create traffic hazards. (Exhibit R-18) §27-343.02(a)(4)

(13) The approved Stormwater Management Concept Plan No. (54476-2016-00), the Noise Assessment (Exhibit 11), the horizontal profile (Exhibit R-18(f)) and the grading plan (Exhibit R-18(e)) are part of the record as required. §27-343.02(a)(5)

(14) Referrals were sent as required by the Technical Staff to the appropriate agencies for comments. Referral responses are Exhibit 18(d). §27-343.02(b)

(15) The subject property is not located in the Chesapeake Bay Critical Area. §27-343.02(c)

### **Zone Standards**

(16) The Applicant's proposal for a Concrete Batching Plant generally complies with the requirements of §27-470 (I-2 Zone (Heavy Industrial)), by providing a mix of industrial uses that are essential to the County's economic well-being and the provision of additional landscaping along Kenilworth Avenue. The approval of the recommended conditions will bring the proposal further into compliance with the requirements of §27-470 of the Zoning Ordinance.

### **Parking Regulations**

(17) Section 27-568 of the Zoning Ordinance requires two parking spaces for every 1,000 square feet of gross floor area (GFA) of office space. The Applicant is not proposing any new GFA within the Special Exception area, therefore, no additional parking is required.

### **Sign Regulations**

(18) The Revised Site Plan (Exhibit R-18) does not show any signs as part of an entrance feature. Section 27-617 of the Zoning Ordinance allows one sign per street with a maximum area of 48 square feet and the maximum height eight feet above finished grade at the base of the sign. The signs would be noted for conceptual purposes only; however, all proposed signs must be shown on the Revised Site Plan. The details must be reviewed for conformance with the location, height, and area requirements of the sign regulations, prior to issuance of permits.

### **Landscape Manual Requirements**

(19) The proposed project is generally exempt from the requirements of the 2010 Prince George's County Landscape Manual (Landscape Manual) pursuant to Section 1.1(f) and 1.1(g), as there is no increase in gross floor area or the impervious surface to be utilized for parking and loading. The Application is subject to the requirements of Section 4.4, Screening Requirements. One loading space is provided and is appropriately screened. (Exhibit R-18) The Revised Site Plan, Exhibit R-18, is in compliance with the Landscape Manual.

## **DISPOSITION**

SE 4792 for a Concrete Batching Plant is Approved, subject to the following Conditions:

1. The Applicant shall provide the current number of daily truckloads and shall be limited to 40 additional truckloads in accordance with the Traffic Impact Study.
2. Prior to the installation and operation of any concrete equipment, the Applicant shall obtain a permit to construct and a permit to operate from the Maryland Department of the Environment (MDE), Air and Radiation Management Administration (ARMA).
3. The hours of operation shall be limited to 6:00 a.m. to 4:00 p.m. with the ingress/egress of truck traffic occurring no later than 5:00 p.m.
4. In conformance with the 2009 Approved Countywide Master Plan of Transportation (MPOT), the Applicant shall provide a shared used side path (or eight-foot-wide sidewalk) along the subject site's entire frontage of Upshur Road, unless modified by the Town of Bladensburg.

5. Ernest Maier, Inc. and Maier Retail, LLC have installed and will maintain one light along the northern property line for the purpose of illuminating Upshur Street along the frontage of Lot 1 on Upshur Street.
6. Prior to Revised Site Plan certification, ingress and egress to the site for barrel mixing truck traffic associated with the Concrete Batching Plant shall be limited to Upshur Street on the north side of the Property.
7. Access to the property via 47<sup>th</sup> Street shall be limited to right-in/right-out traffic, Monday through Friday.
8. Prior to issuance of building permits, Ernest Maier, Inc. and Maier Retail, LLC shall assume full maintenance responsibility for 47<sup>th</sup> Street (from MD 450 to Lot 4), which shall be maintained for use by the general public. The right-of-way shall be maintained in accordance with Prince George's County road standards and specifications. The Town will retain ownership and control of the right-of-way.
9. Ernest Maier, Inc. and Maier Retail, LLC shall install a "Welcome to Bladensburg" sign that is acceptable to the Town along MD 450 within the municipal boundaries of the Town of Bladensburg. The installation of the sign shall be contingent on the authorization of the State Highway Administration, which shall be obtained by the Town.
10. Ernest Maier, Inc. and Maier Retail, LLC shall replace the existing silo associated with the Concrete Block Plant. Ernest Maier, Inc. and Maier Retail, LLC shall make their best efforts to recycle all material contained in the existing silo.
11. Prior to the Revised Site Plan certification, Ernest Maier, Inc. and Maier Retail, LLC shall show a new silo to be installed on the subject property. The new silo will be constructed by Ernest Maier, Inc. and Maier Retail, LLC based on a design that is visually appealing and acceptable to the Town. The Town's approval shall not be unreasonable withheld.
12. Beginning on July 1, 2018, Ernest Maier, Inc. and Maier Retail, LLC shall contribute ("Contribution") on an annual basis to the Town for the purpose of maintaining Upshur Street. The Contribution shall be in the amount equal to ¼ of one percent of the Ernest Maier, Inc. and Maier Retail, LLC personal property subject to taxation within the Town, with a minimum of \$12,500 per annum.
13. Prior to issuance of any building permit, Ernest Maier, Inc. and Maier Retail, LLC will provide to the Town for review and approval an off-site traffic access plan utilizing Upshur Street to the Concrete Batching Plant. All barrel mixing trucks operated by the Ernest Maier, Inc. and Maier Retail, LLC shall follow the site access plan submitted to the Town. Ernest

Maier, Inc. and Maier Retail, LLC shall require its employees to follow the off-site traffic access plan.

14. Prior to the Revised Site Plan certification, Ernest Maier, Inc. and Maier Retail, LLC shall show and provide sufficient queueing capacity on-site so that no off-site queueing of traffic will occur. This provision does not prevent the use of 47<sup>th</sup> Street for unloading of inventory from a truck, so long as the trucks do not queue on 47<sup>th</sup> Street.
15. Prior to issuance of any Use and Occupancy permit, Ernest Maier, Inc. and Maier Retail, LLC shall upgrade the commercial façade on Route 450 to the satisfaction of the Town.
16. Prior to issuance of any Use and Occupancy permit, Ernest Maier, Inc. and Maier Retail, LLC shall provide a watering system for the property as necessary to minimize dust from operations, to include constant misting of the storage bins except during rain and a sweeping service at least once per week.
17. Prior to issuance of any building permit, Ernest Maier, Inc. and Maier Retail, LLC shall provide to the Town the funds necessary to install and maintain pedestrian markings or signage on the road along the frontage on Upshur Street.
18. The number of daily truck trips shall be limited to 40 additional truckloads per day. The current average commercial vehicles truck traffic (GVW in excess of 20,000 lbs.) is 125 trips per day.

The Approved Revised Site and Landscape Plans are Exhibit R-18.