

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Case Nos. S-209-90; V-210-90

IN RE:

CHESAPEAKE TERRACE, INC.

Fourth Assessment District

Date Heard: February 22, 1991

OPINION BY: ROSS, TEMPORARY ADMINISTRATIVE HEARING OFFICER

Date Filed: March 8, 1991

PLEADINGS

The Applicant, CHESAPEAKE TERRACE, INC., is petitioning for a Special Exception to permit a rubble landfill at a site located south of Odenton, further requesting a Variance with respect to locational requirements governing the landfill.

NOTICE

At the institution of the hearing, the Temporary Administrative Hearing Officer reviewed the file and ascertained that the case had been advertised according to the criteria contained in the Zoning Article of the Anne Arundel County Code, hereinafter "Zoning Article", and contained the Certifications of the Purchasing Agent and the Bureau of Community Affairs, as required pursuant to Sections 11-108 and 11-109 of the Zoning Article. Applicant presented an Affidavit of Posting noting that the property had been properly posted in excess of fourteen (14) days prior to the hearing, thereby in compliance with the requirements of the Zoning Article.

FINDINGS AND CONCLUSIONS

Mr. Kevin P. Dooley, Planner II, testified and submitted into evidence the Findings and Recommendation of his Office, as well as providing additional documentary evidence, including: (1) vicinity map; (2) Applicant's site plan; (3) other agency comments; and (4) landfill regulations (Bill No. 28-90).

The subject property is known as Parcels 241, 215, 117, and 20 on Tax Map 36, comprising 481.6 acres. The property fronts approximately 4,200 feet along the southwest side of Patuxent Road, approximately 1,500 west of Braggers Station Road. The site has zoning classifications of RA, Agricultural Residential, for approximately 322 acres of the site and OS, Open Space, for 160 acres of the site. The classifications were received as part of the comprehensive zoning process for the Fourth Assessment District, effective June 12, 1989. The property consists of a Western portion of the site that is old reclaimed surface mine areas, while the eastern portion of the site has a large cleared area that was formerly farmed and a large area of hydric soils. The area along Patuxent Road lies within the 100 year floodplain of the Little Patuxent River.

Mr. Dooley testified that he had thoroughly reviewed the proposals on behalf of the Office of Planning and Zoning, noting that his Office recommended for denial of the request due to a number of "unresolved issues." In accordance with Sections 12-242(b) and 12-104 of the Zoning Article, Mr. Dooley noted that his Office concluded that the project was capable of complying with the specific special exception criteria, provided the Variance requested was also granted. The Variances that are sought are with respect to Section 12-242(b)(8), which requires that a setback area of at least 1,000 feet be maintained from any area used to deposit refuse to any residence or institutional building. There are more than twenty dwellings and one church

located within the 1,000 foot setback area, with one residential dwelling being located as close as 240 feet from the landfill ^{feet} area, necessitating, in this instance, a Variance of 760/with respect to the required setback. In addition, Section 12-242(b)(9) requires that any area used to deposit refuse be located at least 100 feet from any neighboring property, whereas, in two locations, the landfill would actually adjoin the property line, necessitating, in this instance, a Variance of 100 feet to the 100-foot setback.

With respect to the requested Variances, Mr. Dooley noted that his Office was concerned with the impact on surrounding areas. As to the buffer areas required, Mr. Dooley noted that there would be a wooded buffer of at least 100 feet around the landfill, and that the area of operation, which exceeds 100 acres, will have required support facilities, such as fencing and a wheel washer to minimize impact. The area in which the Variance to the setback is necessitated is a portion of the site which was never reclaimed and is in rough condition, involving erosion and steep slopes. These areas are in need of filling in order to be restored, and Mr. Dooley stated that these areas would first have to be filled and planted with trees prior to the filling of any other areas.

In addition to the environmental impacts on surrounding properties, Mr. Dooley pointed to the additional traffic that will be generated, particularly with respect to the intersection

of Maryland Route 3 and Maryland Route 424. Access to the site is along Patuxent and Conway Roads, each of which require improvements in order to handle additional truck traffic. These would include 8 foot shoulders and the realignment of a curve along Patuxent Road. Further, since the intersection at Route 3 and Route 424 is at a failing level of service, Mr. Dooley noted that the burden would be on the petitioner to establish that the traffic facilities are adequate to accommodate the development proposals of Applicant. The petitioner's proposal would include 250 trucks per day at a maximum using the site. Further, Mr. Dooley testified that his Office had asked the Applicant to limit acceptance of waste to materials generated only in the State of Maryland.

On cross-examination by Harry C. Blumenthal, Esquire, one of the attorneys for Applicant, Mr. Dooley agreed that the site contains unique physical characteristics and there are exceptional circumstances for which the granting of the requested Variances would be reasonable and appropriate, and without any detrimental effect on the neighboring properties. He also agreed that there are a number of ongoing discussions with respect to various conditions that the Office of Planning and Zoning was requesting with respect to mitigation of adverse impacts from the site.

Counsel for Applicant, Suzanne Henley, Esquire, presented substantial documentary evidence as well as testimony from a number of experts related to the Special Exception and the

requested Variances, as well as to the development proposals of Applicant. Without going into great detail concerning the development proposals of Applicant, it was noted by Applicant that the rubble landfill would fill a public need as well as upgrade the site considerably. There is ongoing illegal use of the property at present, including the use of the land as a dumping area, and there is also standing water in various pits, without any type of drainage. The development proposals of Applicant have been extensive, with a great deal of concern being addressed with respect to environmental issues and the related problems with increased truck traffic. Additionally, there are phases of development that are monitored and regulated by various Federal, State, and local entities.

With respect to the additional generation of traffic, while Applicant noted a maximum of 250 trips per day, it was agreed that there are right-of-way constraints with respect to adding 8 foot shoulders, and the addition of a lengthened right hand turn lane onto southbound Maryland Route 3 from eastbound Conway Road will, of course, not be an overall solution to the problems at that intersection.

Mr. Mark G. Schultz, a hydrogeologic consultant, testified that the Applicant would have an ongoing monitoring program to insure that drinking water standards continued to be met, particularly with respect to shallow wells on adjacent properties. The primary ground water flow is to the north of the site and towards Little Patuxent River.

Mr. Wes Guckert, a traffic engineer, testified and submitted a Traffic Impact Study in support of Applicant's proposals, addressing what he saw to be the two main issues, that being the traffic along Patuxent Road and the intersection of Maryland Route 3 and Maryland Route 424. As to the former, he noted the Piney Orchard development and improvements to roadways with respect thereto, which he testified should be in place in six to twelve months, prior to operations for the subject site. With respect to the intersection at Maryland Route 3 and Maryland Route 424, he noted that the improvement to the right-turn lane onto Maryland Route 3 would reduce traffic that would be generated from this site. He agreed, on cross-examination, that the existing intersection has a D rating, "going to F." A number of conditions were proposed by Applicant further to assist in the minimizing of traffic concerns.

Resolutions and testimony were presented by and on behalf of the Crofton Civic Association, the Forks of the Patuxent Improvement Association and the Greater Odenton Improvement Association, as well as number of individuals residing in the surrounding area. With respect to the traffic issue, the Crofton Civic Association opposed the Special Exception and Variances due to the impact on public safety caused by additional truck traffic at the intersection of Maryland Route 3 and Maryland Route 424. The other two associations, at first opposing the application, noted a number of conditions proposed for any approval, including the upgrading of the subject intersection "... to assure a safe intersection." The concerns of neighboring residents were also

primarily with respect to increased traffic and environmental concerns.

After having considered the totality of the evidence, and in accordance with the appropriate provisions of the Zoning Article, including Sections 12-242(b) and 12-104, as well as the site plan review requirements of Title 15, I find and conclude that the Applicant has not met its burdens of proof and persuasion with respect to the traffic issue, particularly with regard to the intersection at Routes 3 and 424. While I agree that all other specific and general conditions were appropriately, comprehensively, and convincingly addressed by counsel for Applicant and its witnesses, it is my conclusion that the impact on neighboring properties will be substantial with respect to the additional truck traffic that will be generated, and, for that reason, the nature and extent of the operations are not compatible with the District's present development. The conditions Applicant proposes to impose upon its operations, and the suggested improvements, are simply not sufficient to reduce in any significant way the failing nature of the subject intersection, which, from the evidence presented, requires major remedies and improvements in order to function at an adequate level. By virtue of the foregoing, Applicant has failed to establish that the development proposals will not have adverse impact on public health, safety, and welfare. In order for Applicant to be granted the Special Exception it seeks, it must first meet its burden of establishing that there are adequate

facilities, including roadways, to serve the use, and, having failed to meet that burden, the application must be denied.

O R D E R

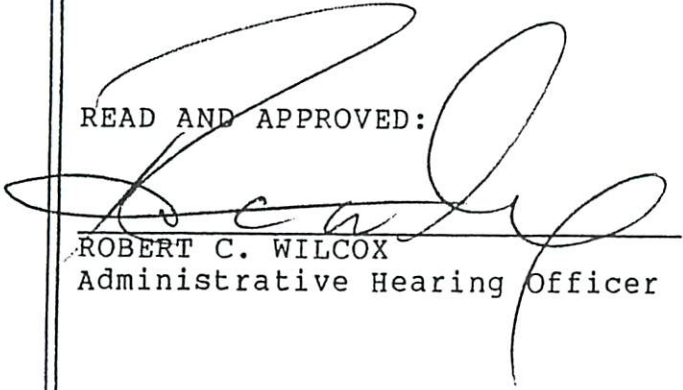
Pursuant to the application of CHESAPEAKE TERRACE, INC., for a Special Exception to permit a rubble landfill, and for Variances with respect to the development thereof, on property as described in the application and herein, and, pursuant to the advertising, posting of the property, notice of a hearing, and a public hearing, all in accordance with the provisions of law, it is this 18 day of March, 1991,

ORDERED, by the Temporary Administrative Hearing Officer of Anne Arundel County, that the Special Exception be, and it is hereby DENIED; consequently, the Variances requested with respect thereto be, and they are hereby, DENIED.



THOMAS G. ROSS
Temporary Administrative
Hearing Officer

READ AND APPROVED:



ROBERT C. WILCOX
Administrative Hearing Officer

NOTICE OF APPLICANTS

Within thirty (30) days from the date of this Decision, and Order, any person, firm, corporation, or government agency having an interest herein and aggrieved hereby may file a Notice of Appeal with the County Board of Appeals. Section 12-107 of the Zoning Article states: Approval of a Special Exception is rescinded by operation of law if: (1) action to implement the use is not begun within one year after the Decision of the approving authorities; and (2) the use is not completed and in operation within two (2) years after the Decision. Further, Section 11-102.2 of the Anne Arundel County Code states: A Variance granted under the provisions of this Article shall become void unless a building permit conforming to plans for which the Variance was granted is obtained within one year of the grant and construction is completed within two years of the grant. If this case is not appealed, exhibits must be claimed within sixty days of the date of this Order; otherwise, they will be discarded.