

1996-11

Forks of the Patuxent Improvement Association

Post Office Box 477, Odenton, Maryland 21113-0477

June 3, 1996

C. Edmon Larrimore
Maryland Department of the Environment
Water Management Administration
Minerals, Oil and Gas Division
Tawes State Office Building
Annapolis, MD 21401

Re: Permit 96-SP-0500, Chesapeake Terrace, Inc.

Dear Mr. Larrimore,

The purpose of this letter is to submit additional written comments on the application for a surface mining permit by Chesapeake Terrace, Inc. ("Applicant"). We respectfully submit that the application does not conform with a specific condition of the zoning approval and that the Applicant has failed to provide the Department with complete and detailed information concerning the zoning approval for this site. We further submit that the Department is required by Section 15-810(b)3 of the Environment Article of the Code and COMAR .08.05.10.04.E.(4) to withhold approval of the permit application until the application complies fully with the requirements of the zoning approval.

The Anne Arundel County Board of Appeals issued a special exception allowing mining at this site. The Board conditioned that approval on the use of a specific haul road. (See, pages 34-35 of the Decision of the Board of Appeals in Case Nos. BA 120-90S, BA 26-91S/BA 27-91V, dated December 23, 1993, a copy of which is in the Department's file).¹

1. There may be some misunderstanding as to the respective roles of the decision of the Anne Arundel County Board of Appeals in December, 1993 and the decision of the Court of Appeals of Maryland in July, 1995. The Board's decision granted a special exception of the Court of Appeals rejected all legal challenges to the validity of the Board's decision. Thus, the Court's decision left the Board's decision in tact as the valid decision controlling land use and zoning matters on this site.

At the hearing before the Board, the Applicant had presented two (2) alternative and specific haul roads for the Board's consideration. Both are depicted on Attachment 1 to this letter. (Attachment 1 is a copy of pages 500 and 501 of the Record Extract submitted to the Court of Appeals by attorneys for Applicant. It shows a copy of the exhibit prepared and presented to the Board of Appeals by the Applicant).

The first proposed access, labeled "Access Alternative A", shows a proposed haul road exiting the site at the southeastern corner and intersecting Conway Road approximately half way between Patuxent Road and Braggers Road. The second proposed access, labeled "Access Alternative B", shows a proposed haul road intersecting Patuxent Road at the northeastern corner of the site. (Please compare these documents to the vicinity map on sheet 2 and to the haul road location depicted in the Applicant's mining permit application.)

Alternative Access A & B were more fully depicted for the Board of Appeals in another exhibit prepared and presented by the Applicant. (See, Attachment 2, which is a copy of Applicant's Exhibit No. 56 submitted to the Board of Appeals and included in the Record Extract submitted by Applicant to the Court of Appeals at pages E.526.1 and E.526.2.) In this document, Applicant sets forth in great detail the exact location of the two (2) alternative haul roads it was proposing as part of its request for a special exception for mining.¹

The Board approved the special exception subject to certain specific conditions regarding the haul road:

1. Patuxent Road shall not be used as an entrance to the operation.
2. Conway Road is to be used as the entrance to the operations, subject to the following conditions. . . " (page 34 of the Decision of the Board).

1. One of the major issues considered on appeal to the Court of Appeals was whether the Applicant had the legal right to propose "Alternative Access A" to Conway Road, when it had originally only proposed an access to Patuxent Road. The Court found that it was legally permissible to do so.

The Board's decision was issued with reference to the two (2) specific haul roads proposed to the Board by the Applicant. The Patuxent Road alternative was rejected. The Conway Road alternative was accepted.¹

The mining permit application does not conform to the requirements of the local zoning approval in that it fails to propose the Conway Road access as presented to the Board. Thus, the Applicant "has failed to provide applicable permits or approvals covering the operation from . . . local regulatory agencies responsible for . . . zoning", as is required by Section 15-810(b)3. The application for a mining permit, as presently submitted, is not approved by the local zoning authorities as mandated by Section 15-810(b)3. As such, the application must be denied, unless the Applicant modifies it.

The Department is required by Section 15-810(b)3 and COMAR .08.05.10.04.E(4) to withhold approval of the mining permit application until it conforms fully with the requirements of the zoning approval. First, Section 15-810(b)3 lists as reason for denial of a mining permit:

"(3) The applicant has failed to provide applicable. . . approvals covering the operation from . . . local regulatory agencies responsible for . . . zoning."

Furthermore, COMAR .08.05.10.04.E(4) requires the Department to determine and consider "any requirements set forth in. . . approvals that have been issued by State, County and local agencies" in reviewing the application.

In summary, the decisions of the Board of Appeals and Court of Appeals (both of which are in the Department's file) clearly document that the central issue in the zoning approval was the specific location of the haul road. There is ample documentation that the operation, as submitted in the mining permit application, has not been approved by the local zoning authorities. It would be a dereliction of its statutory and regulatory duties for the Department to disregard or

1. It is important to note that the legal authority of the Board to impose such a specific condition was challenged in the Court of Appeals. Applicant argued that the Board had the authority to do so. The Court found that the Board had the authority to condition a special exception upon the use of a specific access road. (See pages 15-19 of the decision of the Court of Appeals, a copy of which is in the Department's file.)

ignore the flagrant lack of zoning approval for the mining operation as proposed by the application.

Accordingly, unless the Applicant elects to modify its application, the permit must be denied.

Sincerely,

Katharina DeHaas

Katharina E. DeHaas
President

cc:

Stephen Legendre, AA County Law Office

Kevin Dooley, Planning and Code Enforcement

Bert Rice, County Councilman

Steve Cover, Director Planning and Code Enforcement

Thomas Andrews, Land and Use Environment Office

Richard Klein, Community and Environmental Defense Services

FOTPIA file