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2003-073 BOARD OF APPEALS
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OFFICE PLANNING & ZONING

NOTICE OF AP
Anne Arundel County Board

file

Decision Information

Decision Rendered By: I&P P&Z AHO x A.C.

County Agency Case #: 2003-0043-V; 2003-0044-V D:

03

Appellant Information (Appealing Party)

Name: SEE ATTACHMENT A

Address:

Phone # (Home):

Phone # (Work):

Attorney's Name (if applicable): SEE ATTACHMENT A

Attorney's Address:

Attorney's Phone #:

Attorney's Fax #:

Applicant Information (Party Originally Applying for County Approval)

Name: CHESAPEAKE TERRACE/NATIONAL WASTE MANAGERS, INC.

Address of Property (if applicable): S.W. side of Patuxent Rd., W. of Bragers Rd.

Mailing Address: c/o Susanne K. Henley, 47 West Street, Annapolis, MD 21401-2420

Phone # (Home): N/A

Phone # (Work): N/A

Attorney's Name (if applicable): Susanne K. Henley, Esq.

Attorney's Address: 47 West Street, Annapolis, MD 21401-2420

Attorney's Phone #: (410) 280-0530

Attorney's Fax #: (410) 280-2029

Reason for Appeal

Please provide a brief statement as to reasons for this appeal below: (you may attach more paper if necessary)

SEE ATTACHMENT B

*A copy of the County Agency's Decision must be submitted at the same time as this form.

*** FOR OFFICE USE ONLY ***

Date Received: 7/3/03 Case #: BA 62-03V Check #: 23384 Initials: JJS

Copies Given to: BA 63-03V # 2340 \$500.00 total

Applicant: [Signature] Appellant(s): [Signature] Law Office: [Signature] I&P:

P&Z: [Signature] Personnel: A.C.

Dept. Health: Other: [Signature] - Steve Leland

BA 62-03V \$
BA 63-03V

ATTACHMENT A

List of Appellants:

Robert Buckler, Conway Rd., Odenton, MD 21113
Melvin Contee, 1245 Collins Ave., Odenton, MD 21113
Minion Contee, 1245 Collins Ave., Odenton, MD 21113
Kathy DeHaas, 1385 Meyer Station Rd., Odenton, MD 21113
Mr. Elliott, Collins Avenue, Odenton, MD 21113
Uless R. Fleming, 980 Patuxent Rd., Odenton, MD 21113
Joyce Fleming, 980 Patuxent Rd., Odenton, MD 21113
J.C. Fleming, 980 Patuxent Rd., Odenton, MD 21113
Cathy Fleshman, 1280 Meyer Station Rd., Odenton, MD 21113
John Hitchcock, Conway Rd., Odenton, MD 21113
Diana and Gregory Lane, 976 Patuxent Rd., Odenton, MD 21113
Buzz and Sally Meyer, 1553 Meyer Station Rd., Odenton, MD 21113
Robert and Barbara Meyer, Meyer Station Rd., Odenton, MD 21113
Stacy and Michael Murphy, 977 Patuxent Rd., Woodwardville, MD 21113
Robert Queen, 2975 Conway Rd., Odenton, MD 21113
Bessie Queen, 2975 Conway Rd., Odenton, MD 21113
Albert Rollins, Conway Rd., Odenton, MD 21113
Ann Marie Thomas, 1357 Meyer Station Rd., Odenton, MD 21113
Leon Truesdale, 1221 Collins Rd., Odenton, MD 21113
Bonita and Philip Truesdale, Odenton, MD 21113

Attorney:

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, Maryland 21204

(410) 296-8166 (work)
(410) 825-0670 (fax)

ATTACHMENT B

Reasons for Appeal:

The Temporary Administrative Hearing Officer erred in granting the Applicant's petition for variances to extend the time to implement previously approved Special Exceptions for a rubble landfill and sand and gravel operation, and to extend the time by two years to complete the improvements allowed by the previously approved variances. Section 12-107 of the Anne Arundel County Code requires the rescission of the approvals for the special exceptions. The variance process, as a matter of law, does not allow the extension of these time limits. Even if the temporary hearing officer had the authority to grant a variance, he erred in granting the variances because the Applicant failed to meet its burden of proving that it met the standards set forth in § 11-102 of the Anne Arundel Code. No exceptional circumstances existed to justify the requested variance relief. The extensions fail to provide substantial justice. Furthermore, the Applicant failed to prove that there was no change in circumstances since the original approval. The two-year extensions will alter the essential character of the neighborhood and district in which the properties are located. The two-year extensions will also impair the appropriate use or development of adjacent properties. Neither the facts nor the law warranted the granting of the two-year extensions. Appellants reserve the right to raise additional issues in the appeal.

From: Pat Logan
To: Diffenderfer, Suzy
Date: 10/27/03 12:06PM
Subject: Re: Chesapeake Terrace Board of Appeals

Suzy, thanks for letting me know. I think we're in the same position as last time. Keeping a low profile.

>>> Suzy Diffenderfer 10/27/03 12:04PM >>>

I have a Board hearing on this Thursday, 10-30--actually Lois is going in my place--I'm on leave that day. Are you aware of the hearing? I forgot the name of the other attorney working on this file. Do we need to converse with him or you?

FINDINGS AND RECOMMENDATION
Office of Planning and Zoning
Anne Arundel County, Maryland

APPLICANT: Chesapeake Terrace ASSESSMENT DISTRICT: Fourth
National Waste Managers, Inc.

CASE NUMBER: 2003-43-V & 2003-44-V COUNCILMANIC DISTRICT: Fourth

HEARING DATE: April 29, 2003 PREPARED BY: Suzanne Diffenderfer
Planner III

REQUEST

The applicant is requesting variances to permit an extension in time for the implementation and completion of previously approved special exceptions and variances for a rubble landfill and a sand and gravel operation for property located in the Odenton area.

LOCATION AND DESCRIPTION

The rubble landfill site is located on the southwest side of Patuxent Road, west of Bragers Road and consists of 481.6 acres. The sand and gravel site is located on the south side of Patuxent Road, west of Bragers Road and consists of 107.99 acres. The sites are designated as Parcels 20 & 117 in Block 08 on Tax Map 36.

The current RA-Agricultural Residential classification of the site was received as a result of the comprehensive zoning for the Fourth Assessment District, effective June 12, 1989.

APPLICANT'S PROPOSAL

The applicant has requested variances for both sites to extend the time for implementation and completion of the previously approved special exceptions and variances, Case Numbers-BA120-90S, BA26-91S and BA27-91V.

REQUESTED VARIANCE

Section 12-107 of the Anne Arundel County Zoning Ordinance provides that a special exception is rescinded by operation of law if action to implement the use is not begun within one year after the decision of the approving authority and the use is not completed and in operation within two years after the decision.

Section 11-102.2 (a) provides that a variance becomes void unless a building permit is obtained within one year of the grant and construction completed within two years.

The Court of Special Appeals ruled on this matter on December 6, 2000, and the Court of Appeals denied appellate review on April 13, 2001. The applicants, Chesapeake Terrace/National Waste Managers, Inc. has been pursuing this project approval through the Maryland Department of the Environment since the original approval in 1993. However, the State permitting process takes a minimum of three (3) years and at times longer to complete. No permit has been issued at this time.

As such, a variance of two (2) additional years in time is requested to implement the approved special exception.

RECOMMENDATION

With regard to the standards by which a variance may be granted as set forth under Section 11-102, the Office would offer the following:

The Maryland Department of the Environment indicated in a letter to the Office of Planning and Zoning dated December 19, 2002 that the applicant is currently in Phase II of the application review process and that the process for rubble landfills generally consumes up to 36 months, which can be extended by external factors such as local approval processes and appeals, which has occurred in this instance.

The applicant has submitted an updated Phase II report which is still under review and Phase III is the next step requiring engineering design and operation plans. MDE indicated they cannot predict the amount of time that the permit process will take. It was noted it is likely to take at least a year, or longer before final determination is rendered in this case.

The Health Dept. stated additional information on the location and type of sewage disposal and water supply will be needed.

Soil Conservation requires an approved sediment and erosion control plan prior to construction. The Dept. of Recreation and Parks commented on access and screening which are not subject of this variance request. These comments would be considered during permit review.

Based on the explanation of the Maryland Department of the Environment, exceptional circumstances exist to warrant variance relief. The variance is necessary to avoid a practical difficulty to enable the applicant to continue with the permitting process. The variance requested in this instance is the minimum necessary to afford relief.

Accordingly, the Office of Planning and Zoning would offer no objection to an additional two (2) year extension in time.



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard, Suite 605 • Baltimore MD 21230-1719

410-537-3000 • 1-800-633-6101

Parris N. Glendening
Governor

Richard F. Pecora
Secretary

Kathleen Kennedy Townsend
Lt. Governor

Merrilyn Zaw-Mon
Deputy Secretary

December 19, 2002

Ms. Susan Diffenderfer
Office of Planning and Zoning
Heritage Office Complex
2664 Riva Road
Annapolis MD 21401

Dear Ms. Diffenderfer:

This letter is directed to you at the request of representatives of National Waste Managers, Inc., which has applied to the Maryland Department of the Environment (the "Department") for a Refuse Disposal Permit for the proposed Chesapeake Terrace Rubble Landfill. Mr. Steven Fleischman, Vice President of the Halle Companies that represents the applicant, informed this office that you wanted to be apprised of the current status of this application.

At present, this is an active application that is currently in Phase II of our application review process. The permit process for rubble landfills generally consumes up to 36 months, which may be extended by external factors such as local approval processes and appeals, as has already occurred in this instance. Phase II includes the submission of detailed geologic, hydrologic, and other environmental descriptions of the proposed landfill property.

The applicant has submitted an update Phase II report, and we recently provided them with a list of comments for additional work before Phase II can be considered to be complete. The actual engineering design and operation plans that are the subject of Phase III, is the next step. Following that, we will hold a public hearing and reach a final determination concerning the issuance of the permit, which is subject to an appeals process.

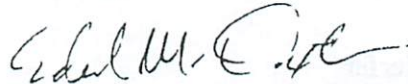
At this time we cannot predict the amount of time that the permit process will take. We anticipate that it will take several months for the applicant to provide the additional Phase II data that we have requested. It is likely to take at least a year, or longer before a final determination is rendered in this case.

"Together We Can Clean Up"

Ms. Susan Diffenderfer
Page two

I hope this meets your needs. Any questions concerning this matter may be directed to me at (410) 537-3318, or via "e-mail" at edexter@mdc.state.md.us.

Sincerely,



Edward M. Dexter, Administrator
Solid Waste Program

EMD:emd;jd

cc: Mr. Steven Fleischman
Mr. Richard W. Collins



DEPARTMENT OF HEALTH
J. HOWARD BEARD HEALTH SERVICES BUILDING
3 HARRY S. TRUMAN PARKWAY
ANNAPOLIS, MARYLAND 21401
(410) 222-7193
FAX 410-222-7678
TDD for the hearing impaired: (410) 222-7153
www.aahealth.org

FRANCES B. PHILLIPS, R.N., M.H.A.
Health Officer

MEMORANDUM

TO: Ramona Plociennik, Zoning Applications
Planning and Code Enforcement
MS-6301

FROM: Kerry Topovski, Program Manager *K.T.*
Sanitary Engineering Section
Division of Community & Environmental Health

DATE: March 18, 2003

RE: Chesapeake Terrace
Patuxent Road
Odenton, MD

CASE
NUMBER: 2003-0043-V

SUBJECT: Variance

The Health Department has reviewed the above referenced variance request to permit an extension in time for the implementation and completion of a previously approved variance and special exception from a rubble landfill. The Health Department offers the following comments:

Based on a review of the above referenced request, additional information is needed by the Health Department on the type and location of the water supply well and the type and location of the on-site sewage disposal system.

If you have further questions or comments, please contact Mike Davis 410-222-7194.

cc: File



DEPARTMENT OF HEALTH
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FRANCES B. PHILLIPS, R.N., M.H.A.
Health Officer

MEMORANDUM

TO: Ramona Plociennik, Zoning Applications
Planning and Code Enforcement
MS-6301

FROM: Kerry Topovski, Program Manager *K.T.*
Sanitary Engineering Section
Division of Community & Environmental Health

DATE: March 18, 2003

RE: Chesapeake Terrace
Patuxent Road
Odenton, MD

CASE
NUMBER: 2003-0044-V

SUBJECT: Variance

The Health Department has reviewed the above referenced variance request to permit an extension in time for the implementation and completion of a previously approved special exception for a sand and gravel operation. The Health Department offers the following comments:

Based on a review of the above referenced request, additional information is needed by the Health Department on the type and location of the water supply well and the type and location of the on-site sewage disposal system.

If you have further questions or comments, please contact Mike Davis 410-222-7194.

cc: File



Anne Arundel Soil Conservation District

Heritage Office Center
Suite 150, MS #7001, 2662 Riva Road, Annapolis, MD 21401 Telephone (410) 222-7822

12

February 24, 2003

Ms. Ramona Plociennik
Zoning Division, Office of Planning and Zoning
Anne Arundel County Heritage Office Center
2664 Riva Road, MS #6301
Annapolis, MD 21401

Dear Ms. Plociennik:

Subject: CHESAPEAKE TERRACE; 2003-0043-V

The variance received February 13, 2003 has been reviewed and the District defers to the Office of Planning and Zoning. However, an approved sediment and erosion control plan (i.e., standard lot sheet or grading permit) may be required prior to construction.

Sincerely,

Jeffrey F. Opel
District Manager

JFO:Maex:abc

ANNE ARUNDEL COUNTY
FEB 27 2003



Anne Arundel Soil Conservation District

Heritage Office Center

Suite 150, MS #7001, 2662 Riva Road, Annapolis, MD 21401 Telephone (410) 222-7822

February 24, 2003

Ms. Ramona Plociennik
Zoning Division, Office of Planning and Zoning
Anne Arundel County Heritage Office Center
2664 Riva Road, MS #6301
Annapolis, MD 21401

Dear Ms. Plociennik:

Subject: CHESAPEAKE TERRACE; 2003-0044-V

The variance received February 13, 2003 has been reviewed and the District defers to the Office of Planning and Zoning. However, an approved sediment and erosion control plan (i.e., standard lot sheet or grading permit) may be required prior to construction.

Sincerely,



Jeffrey F. Opel
District Manager

JFO:Maex:abc

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FEB 25 2003

OFFICE OF PLANNING & ZONING



Annapolis, Maryland

INTER-OFFICE MEMO

TO: Ramona Plociennik, Zoning Applications
Department of Planning and Zoning
MS 6301

FROM: John T. Keene, Chief, Planning and Construction,
Department of Recreation and Parks

SUBJECT: Variances, Special Exceptions and Rezoning
Distribution of 02/05/03

DATE: March 4, 2003

The Department of Recreation and Parks has comments on two (2) of the documents transmitted for plan review, as follows:

CSX Realty Development, LLC
Case 2003-0033-V

The Department of Recreation and Parks is the owner of Solleys Cove Park, which directly adjoins the property upon which CSX is proposing to remove chemically contaminated soils. The Department supports the cleanup of the CSX property, but is concerned that soluble contaminants could be discharged into the park. We are particularly concerned that the outlet structure for Sediment Trap SD-2 discharges eastward towards the park. We recommend that the trap be redesigned to discharge northward, where it is more likely to quickly flush out of Solleys Cove and not contaminate upstream aquatic vegetation.

Chesapeake Terrace
Case 2003- 0043-V
Case 2003- 0044-V

The Department of Recreation and Parks has two concerns with the plans proposed by National Waste Manager, Inc. First, the property directly adjoins Patuxent Ponds Park, a passive park used principally for fishing and picnicking. The proposed rubble landfill will tower up to one hundred thirty feet (130') above the elevation of the park. We would like the proposed two hundred foot (200') buffer to the county park to be heavily wooded to screen the facility, and for the boundary of the landfill to be prominently marked at regular intervals, and preferably fenced, for the safety of park users.

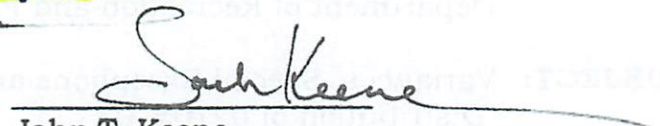
Variance Comments

Page two

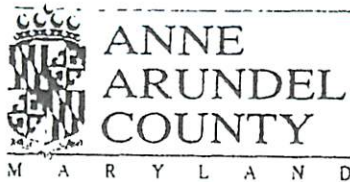
March 4, 2003

Our second issue concerns the proposed entrance (access) road extending from Conway Road to the landfill. The roadway is shown crossing this Department's WB&A Trail, a paved, multiuse hiker/biker trail, at grade. This Department has not been contacted by National Waste Managers, Inc. regarding this crossing, and has taken a consistent position of not granting additional at-grade crossings on County-owned multiuse trails because of safety concerns.

The Department of Recreation and Parks does not support the proposed alignment of this entrance road, and therefore opposes the granting of the variances which include this roadway feature.


John T. Keene

cc: D. Callahan
T. Donlin
B. Woodward



2664 RIVA ROAD, P.O. BOX 6675
ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

June 20, 2001

Mr. Barry J. Schmidt
Administrator
Solid Waste Program
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

Re: Chesapeake Terrace
Rubble landfill permit application

Dear Mr. Schmidt:

The purpose of this letter is to inform you that the above-referenced facility is deemed to be in conformance with the County Solid Waste Plan. The Court of Special Appeals of Maryland recently ruled that the special exception approval obtained by Chesapeake Terrace was not rescinded by operation of law.

The above-referenced proposed facility meets all applicable county zoning and land use requirements subject to the performance of the conditions required by the special exception approval, including, but not limited to, fee simple ownership of access to the site from Conway Road. As of this writing, the County has not been provided with evidence that the required access has been obtained by Chesapeake Terrace.

Enclosed please find the Anne Arundel County Board of Appeals opinion dated December 23, 1993 that granted the special exception. Anne Arundel County makes no representations concerning whether the applicant has complied with the conditions that would permit it to utilize the special exception.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Denis D. Canavan".
Denis D. Canavan
Planning and Zoning Officer

Enclosure:

cc: Steven P. Resnick, Esquire (w/enclosures)
Lance W. Billingsley, Esquire (w/enclosures)

bcc: Mr. John Brusnighan (w/enclosures)
Ms. Betty Dixon (w/enclosures)

SUSANNE KOSTER HENLEY
ATTORNEY AT LAW
P.O. BOX 2356
47 WEST STREET
ANNAPOLIS, MARYLAND 21404-2356

ANNAPOLIS (410) 280-0530

BALTIMORE (410) 269-1516

FAX (410) 280-2029

1/4 received

January 13, 2003

Ms. Suzanne Diffenderfer
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Chesapeake Terrace/National Waster Managers, Inc.

Dear Ms. Diffenderfer:

On behalf of the applicant, Chesapeake Terrace/National Waste Managers, Inc., I am writing to explain the request for variance to Anne Arundel County Code Section 12-107, which requires that a special exception use be completed and in operation within two years after the decision.

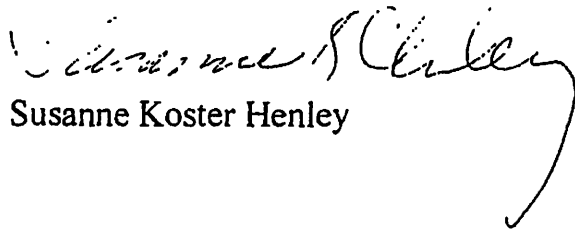
Chesapeake Terrace/National Waste Managers, Inc. has obtained a special exception for a sand and gravel and rubble landfill use on property located on Patuxent Road in Odenton, Maryland – Case Numbers: BA120-90S, BA26-91S and BA27-91V. This use, as you are aware, is subject not only to County regulation, but also to Maryland State regulations by the Department of the Environment. The applicant has been diligently pursuing this project approval through the Maryland Department of the Environment since the original approval and the Court action on this matter, which was finally ruled upon on April 13, 2001. However, a permit has not yet been issued. The State permitting process takes a minimum of three years and at times longer to complete. The applicant cannot implement the use until a State permit is approved.

Accordingly, this applicant is requesting a variance of two years additional time in which to implement the approved special exception. Attached is a copy of a letter from Edward Dexter, Administrator of the Department of the Environment,

Page 2
Diffenderfer

in which he explains the permitting procedures and the time constraints. Please advise if you require any additional information on this request.

Sincerely, ,

A handwritten signature in cursive script, appearing to read "Susanne Koster Henley", written in black ink. The signature is fluid and somewhat stylized, with a long, sweeping tail on the final letter.

Susanne Koster Henley

Enclosure
SKH/dd