

2003-22

FINDINGS AND RECOMMENDATION

**Office of Planning and Zoning
Anne Arundel County, Maryland**

**APPLICANT: Chesapeake Terrace
National Waste Managers, Inc.**

ASSESSMENT DISTRICT: Fourth

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 BBA120-90S, 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Section 12-107 of the Anne Arundel County Zoning Ordinance provides that a special exception is rescinded by operation of law if action to implement the use is not begun within one year after the decision of the approving authority and the use is not completed and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.