

2009-04

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT: Chesapeake Terrace/NWM, Inc. **ASSESSMENT DISTRICT:** Fourth

CASE NUMBERS: 2008-0294-V & 0295-V **COUNCIL DISTRICT:** Fourth
BOARD OF APPEALS: BA 10-09V & BA 11-09V

HEARING DATE: December 16, 2008
BOARD OF APPEALS: July 23, 2009

PREPARED BY: John R. Fury
Planner

REQUEST

The applicant is requesting variances to allow 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 OF SITE

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 and 117 in Block 8 on Tax Map 36.

The subject property has been zoned RA-Rural Agricultural district since the adoption of the zoning maps for the Odenton Small Area Plan effective June 21, 2004.

APPLICANT'S PROPOSAL

The applicant has requested variances for both sites in order to extend the time for implementation and completion of previously approved special exceptions and variances (case nos. BA120-90S, BA26-91S, BA27-91V, BA62-03V, BA63-03V, BA7-06V, and BA8-06V).

REQUESTED VARIANCE

Article 18-16-405 of the Anne Arundel County Zoning Ordinance provides that a special exception or variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

The applicant is requesting a variance to allow an additional two (2) years to implement and complete the approved special exceptions and variances.

BA 10-09V & BA 11-09V

FINDINGS

This project has been subject to previous two-year time extensions that were granted in 2004 and 2006 by the Board of Appeals with the latest time extension being granted on September 20, 2006. The Board's decision was appealed to Circuit Court in case no. C-06-117596, whereupon the Court vacated a limitation imposed by the Board on the most recent two-year extension¹. Otherwise, the Court affirmed the Board's decision in which the applicant would be required to implement and complete the project by September 20, 2008 or seek a variance to further extend the time. Accordingly, the applicant has requested a variance for an additional two (2) year time extension to implement and complete the approved special exceptions and variances for a sand and gravel operation and for a rubble landfill.

The applicant has been pursuing project approval through the Maryland Department of the Environment since the original special exception and variance approvals in 1993. However, the State permitting process requires a minimum of three (3) years to complete. The applicant cannot implement the approved uses until a State permit is issued. To date, the applicant has not been issued a State permit.

Upon further review of the application, it is the opinion of this Office that exceptional circumstances are present that would warrant relief; and the variance is necessary to avoid a practical difficulty and to enable the applicant to continue with the State permitting process. Therefore, this Office would recommend approval of the variance request provided that the applicant demonstrates diligent pursuit of a State permit.

The Soil Conservation District deferred their review to the Office of Planning and Zoning.

The County Health Department offered no objection to the variance request.

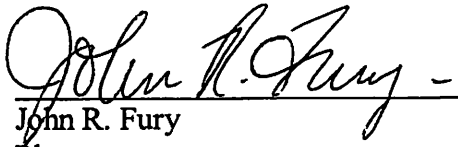
RECOMMENDATION

Based upon the standards set forth in Article 3-1-207, under which a variance may be granted, the Office of Planning and Zoning would recommend that the applicant's variance request for a two (2) year time extension be **granted**.

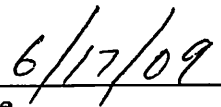
This recommendation does not confirm the legal status of a lot. The legality of a lot is determined through the building permit process.

¹ In BA7-06V and BA8-06V, the Board imposed the condition that if the applicant fails to implement and complete the previously approved special exceptions and variances within two years, then the applicant will not be permitted any further extensions.

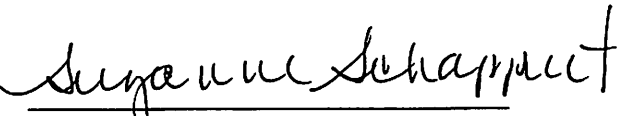
BA 10-09V & BA 11-09V



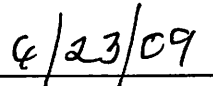
John R. Fury
Planner



Date



Suzanne Schappert
Planning Administrator



Date