

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

**APPLICANT:** National Waste Managers

**ASSESSMENT DISTRICT:** 4<sup>th</sup>

**CASE NUMBER:** BA 12-13V & BA 13-13V  
(2012-0300-V & 2012-0301-V)

**COUNCILMANIC DISTRICT:** 4<sup>th</sup>

**HEARING DATES:** October 27, 2021  
January 25, 26 & 27, 2022  
March 1, 2, & 3, 2022

**PREPARED BY:** Robert Konowal  
Planner

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**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 at 515 Patuxent Road, approximately 1,500 feet west of Bragers Road, Odenton.

**LOCATION AND DESCRIPTION OF SITE**

The subject property is located on the southwest side of Patuxent Road, west of Bragers Road and totals 481.6 acres. The site consists of Parcels 241, 215, 117 and Parcel 20 in Block 8 on Tax Map 36. The sand and gravel operation is to be approximately 35 acres in size while the rubble landfill is to occupy approximately 150 acres of previously cleared property. The subject property has been zoned RA-Rural Agricultural District (322 acres) and OS-Open Space District (160 acres) since the adoption of comprehensive rezoning for the Fourth Council District, effective July 10, 2011.

**APPLICANT'S PROPOSAL**

The applicant has requested variances for both sites in order to extend the time for the 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 VARIANCES**

Section 18-16-405 of the Anne Arundel County Zoning Ordinance prescribes 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.

## **FINDINGS**

### *Background*

This project has received several time extensions with the last time extension being granted by the Board of Appeals on January 3, 2011.

The findings and recommendations in this report have been prepared for the remand hearing as directed in a Court of Special Appeals of Maryland opinion filed October 2, 2020 that required the Board of Appeals take into account the impact of tolling beyond 2017, that is the effect that such an extension will have on the character of the neighborhood, the appropriate use or development of adjacent property or the public welfare.

### *Current Application*

As in the previous requests, 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. Whereas the most current variances expired on January 3, 2013, that time extension has been tolled due to the ongoing litigation, and the applicant did petition for a fifth time extension prior to the expiry of the last approval in order to maintain the previous tolling.

The original Board of Appeals decision was issued in 1993. Since that time, the applicant has been pursuing the required rubble landfill permit from the Maryland Department of the Environment (“MDE”) which is still under review.

The 1993 decision requires that “Conway Road is to be used as the entrance to the operations”, with various conditions. 1993 Op., pp. 34-35. Those conditions included that “the access obtained to the site from Conway Road shall be through a fee-simple right-of-way, not through an easement” (condition 2.d). Another condition is that from the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12-foot travel lanes and 8-foot shoulders. (condition 2.a)

The location of the access is apparent when reviewing the 1993 decision, the transcripts of the hearings, and the exhibits from the hearings. The 1993 decision required the site to be served by a fee simple right-of-way running in a northwest direction to the subject property starting from a point on Conway Road approximately 755 feet west of Patuxent Road. The approved location is shown in the attached exhibit from the 1992-1993 hearings. The fee simple access is the sole approved access for this site. This fee simple access was designed in mind to protect environmental features to the north and the then existing small residential community to the south centered along Conway Road west of the proposed access entrance. The fee simple access was chosen to ensure heavy commercial vehicles such as dump trucks carrying rubble debris serving the rubble landfill site would not traverse the center of the low density residential neighborhood, and so that a shorter section of public road (i.e., Conway Road) would be utilized in gaining access to the site. That residential community has grown since 2017 making the realization of the fee simple access all the more critical so as to ensure the proposed rubble landfill use does not alter the essential character of the neighborhood, negatively impact the appropriate use and development of adjacent properties and the public welfare.

Since the original 2013 application date of this time extension, and particularly since 2017, it has become all the more apparent that the applicant cannot secure the land needed for the fee simple access. As a consequence, the applicant cannot ensure the use will not alter the essential character of the neighborhood, negatively impact the appropriate use or development of adjacent properties and the public

welfare. Those lands necessary for the establishment of a fee simple road have since passed from a private party to the County for a park (in 2004) and to the County and then to the Board of Education for a school (in 2021) and are now being used or will be used for public purposes.

Over the past 25 plus years, the applicant has repeatedly presented to the MDE plans showing access points that were not approved by the Board of Appeals decision but in fact were expressly prohibited. The current submission to MDE again shows a total of three access points, two of which were not included in the original Board of Appeals decision. One such access point is off of Patuxent Road, which use of was specifically denied by the 1993 decision. This, along with the failure to secure lands over the past 30 years for the fee simple access, indicates that the applicant has no intention in pursuing the approved fee simple access but rather one or both of these alternate access points that have not been approved and which if implemented will alter the essential character of the neighborhood, negatively impact the appropriate use and development of adjacent properties and the public welfare.

Given the applicant has not demonstrated they will be able to comply with the conditions of the special exception approval, there is no practical purpose in proceeding further with these applications. Furthermore, there is no opportunity to modify the previous special exception use because it is no longer an allowed use in the Code. Accordingly, it is the opinion of this Office that there are no exceptional circumstances that would warrant the requested relief but rather the applicant has essentially by their own actions, or lack thereof, lost the opportunity to develop the site for a rubble landfill, making any time extension pointless. Any hardship that might be suffered by the applicant has been self-created.

Approval of a time extension that provides for a rubble landfill that can no longer be served by a fee simple access road as prescribed by the Board of Appeals in their original decision will alter the essential character of the neighborhood, negatively impact the appropriate use and development of adjacent properties and the public welfare.

### **RECOMMENDATION**

Based upon the standards set forth in Section 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 for the implementation and completion of previously approved special exceptions and a variance for a rubble landfill and a sand and gravel operation be **denied**.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits, and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

