

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2024-0191-V & 2024-0202-V

NATIONAL WASTE MANAGERS, INC.

FOURTH ASSESSMENT DISTRICT

DATE HEARD: MARCH 6, 2025

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: JOAN JENKINS

DATE FILED: MARCH 20, 2025

PLEADINGS

National Waste Managers, Inc., the applicant, seeks a variance (2024-0191-V and 2024-0202-V) to allow an extension in time for the implementation and completion of a previously approved special exception and variance and a variance to allow an extension in time for the implementation and completion of a previously approved special exception on property along Patuxent Road, Odenton, MD 21113.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the subject property was notified by mail, sent to the address furnished with the application. J. Andrew Chisholm testified that the property was posted for more than 14 days prior to the hearing and submitted an affidavit to that effect (Applicant's Exhibit 2). Therefore, I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on March 6, 2025, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicant.

The Property

The applicant owns the subject property which is located on Patuxent Road, approximately 1,500 feet west of Bragers Road, Odenton (Tax ID: 4000-0445-2000). 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 site is designated as Parcel 20 and Parcel 117 in Block 8 on Tax Map 36. The subject property has been zoned RA - Rural Agricultural District and OS - Open Space District since the adoption of comprehensive rezoning for the Fourth Council District, effective July 10, 2011 and is currently unimproved.

The Proposed Work

The applicant National Waste Managers (NWM), 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. BA 20-91S, BA 26-91S, BA 27-91V, BA 62-03V, BA 7-06V, BA 8-06V, BA 12-13V, and BA 13-13V).

The Anne Arundel County Code

§ 18-16-405 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 Variance Requested

The applicant is requesting a variance to allow an additional three (3) years to implement and complete the approved special exceptions and variances.

The Evidence Submitted At The Hearing

Findings and Recommendations of the Office of Planning and Zoning (OPZ)

Jennifer Lechner, for Joan A. Jenkins, zoning analyst, presented the following:

- This project has received several time extensions with the last time extension of two years being granted by the Board of Appeals on December 1, 2022. The previous requests were all for an additional two (2) years to implement and complete the approved special exceptions and variances for a sand and gravel operation and for a rubble landfill. This request is for three (3) years. The most current variances expired on December 1, 2024, and the applicant petitioned for a fifth time extension on November 6, 2024, prior to the expiration of the last approval, in order to maintain the previous approval.
- 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”). On November 6, 2024 the MDE issued a denial letter for a Refuse Disposal Permit on the grounds that operation of the sanitary landfill system would harm public health. The letter further explains that the proposed East Entrance from Conway Road constitutes a risk to public health due to the proximity of the Two River

Elementary School (formerly West County Elementary School) and the intersection of the WB&A Trail. MDE/SWP requested that NWM provide an alternative entrance, approved by the Anne Arundel Board of Appeals (AABOA), which does not intersect or adjoin the Two Rivers Elementary School parcel. In a response submitted by Montrose Environmental on behalf of NWM dated May 7, 2024, an alternative AABOA approved entrance was not provided. National Waste Managers has filed a Petition for Review appealing the denial of the permit and has a pending Circuit Court Case (C-02-CV-24-003026).

- 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 land fill use does not alter the essential character of the neighborhood, or negatively impact the appropriate use or 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, or be detrimental to 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 also in fact expressly prohibited. One such access point is off of Patuxent Road, which was expressly prohibited by the 1993 decision. This, along with the failure to secure the fee simple access over the past 30 years, indicates that the applicant has no intention in pursuing the 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 or development of adjacent properties and be detrimental to the public welfare.
- Given the applicant has not demonstrated they will be able to comply with the conditions of the special exception approval and the MDE denial of the permit 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 OPZ 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 or development of adjacent properties and be detrimental to the public welfare.
- Based upon the standards set forth in § 18-16-305, under which a variance may be granted, OPZ would recommend that the applicant's request be denied.

Other Testimony and Exhibits

The applicant was represented at the hearing by Susanne Henley, Esquire. Evidence was presented through the applicant's engineer, J. Andrew Chisolm, the applicant's engineer of record for the application, Paul Baker, Milton McCarthy, an expert in natural resource conservation such as wetlands, etc., and the applicant's zoning and land use expert, Jon Arason. The applicant has complied with all the regulations from the State. Draft Refuse Permit was issued by the Maryland Department of the Environment (MDE) in 2022. The completion of the process has been held up by various court proceedings. The extension is needed to keep the special exceptions and variances alive while the remaining State and County requirements are applied for. The applicant needs the MDE to approve the permits so that the County will address the access issue which it will not do until the State reaches a decision.

Many residents of the surrounding neighborhood testified in opposition to granting the requested time extension. The residents thought the applicant should

have selected an access point by now. They were also concerned about traffic on Conway and thought the application for the sand and gravel operation and the rubble landfill should be reconsidered under current law because the surrounding area has changed extensively since 1993.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

Requirements for Zoning Variances

§ 18-16-305 sets forth the requirements for granting a zoning variance.

Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or

Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. “Uniqueness” requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People’s Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary’s County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of

the variance will not alter the essential character of the neighborhood or district in which the lot is located, (3) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

Findings - Zoning Variances

I find, based upon the evidence, that because of exceptional circumstances other than financial considerations the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot. The applicant seeks to keep alive special exceptions and variances granted by this Office and, after instruction from the Circuit Court for Anne Arundel County and the Maryland appellate courts, by the Board of Appeals to allow the applicant to build and operate a rubble landfill and a sand and gravel operation on property located along Patuxent Road. The approvals were granted by the Board of Appeals in December, 1993. Litigation and other delays have delayed the permits and approvals the applicant needs to construct and operate the landfill and sand and gravel operation approved in 1993 and in subsequent decisions of this Office and the Board of Appeals.

A request for an extension in time is governed by § 18-16-405(a), which reads as follows:

§ 18-16-405. Time period after which variances and special exceptions are void.

- (a) Expiration by operation of law. A variance or special exception that is not extended or tolled expires by operation of law unless the applicant within 18 months of the granting of the variance or special exception (1) obtains a building permit or (2) files an application for subdivision.

Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicant obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

- (b) Extension for phasing or other good cause. In deciding an application for a special exception use, the Administrative Hearing Officer may extend the time periods set forth in subsection (a) for the use and any variance granted in connection with it when the application includes a phasing plan or sets forth facts that demonstrate other good cause why the time periods set forth in subsection (a) reasonably cannot be met.

- (c) **Extension by variance. An applicant may file an application for a variance to extend the time periods set forth in subsection (a).**

- (d) Tolling. The pendency of litigation may toll the time periods set forth in subsection (a) to the extent provided by law.

All variances are governed by § 18-16-305. Subsection (a)(1) allows for variances to be granted if there is something about the physical nature of the applicant's property that justifies granting the variance. I cannot grant the requested variance pursuant to subsection (1) because the characteristics of the

applicants' property have not contributed to the applicant's failure to obtain the necessary permits in the time allotted.

Subsection (a)(2) allows for variances to be granted if, “[b]ecause of **exceptional circumstances** other than financial considerations, the grant of a variance is **necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.** (Emphasis added.)

I find that the applicant has provided sufficient evidence that it has diligently pursued efforts to obtain the approvals granted in the cases listed above and the application will be granted pursuant to § 18-16-305(a)(2). The history of the attempts by the applicant to obtain the necessary State and County permits to build and operate the proposed facilities need not be repeated here. Whether those approvals should or should not have been granted, or should not be granted now, is beyond the scope of this request for an extension in time which is limited to the applicant's efforts in the period since the last approvals were granted.

A request for a time extension involving the same applicant and the same property which also related to the 1993 decision was granted by the Board of Appeals in 2022. The majority decision stated that the extension in time being requested then “will not put a single vehicle on the road, displace not one drop of water, create no noise, emit no fumes, and will have no impact on the community. Someday, far in the future, the actual landfill may create some impact, but the potential for impact was decided in 1993. Neither the County nor the Protestants will get a bite at that 1993 apple today.” At page 20.

A concurring opinion by Anthony V. Lamartina, Chairman of the Board of Appeals, stated that “the grant of this time extension will simply continue the status quo until the [the applicant] receive[s] further approval or fail. I have no crystal ball to consult to determine whether a rubble landfill will ever operate on the subject parcel.”¹ At page 23.

The conclusions reached by the Board of Appeals in 2022 will be adopted here. The evidence shows that the applicant has continued to seek the necessary approvals. Mr. Arason, an expert in zoning and land use matters, testified that the denial of the requested variances would cause the applicant an unwarranted hardship and prevent it from developing its property.

Therefore, I find, based upon the evidence, that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to complete the permitting process for the special exceptions and variances previously approved.

¹ It should be pointed out that Chairman Lamartina voted *against* granting the requested special exception in 1993 but voted to *approve* the time extension in 2022. “Nearly 30 years after I voted to deny the original special exception request, I find myself faced with a far different query [whether to approve a time extension].” Rather than use the opportunity to end the applicant’s quest to build a rubble landfill by denying the time extension request, something some of the witnesses in 2025 would like to see happen now, Chairman Lamartina declined to do so. He did the right thing. He followed the law. In these fraught times, his example should be pointed out and commended.

I further find that the requested variance is the minimum variance necessary to afford relief, that the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

The approval incorporates the same conditions appended to the prior orders listed above.

ORDER

PURSUANT to the application of National Waste Managers, Inc., petitioning for a variance to allow an extension in time for the implementation and completion of a previously approved special exception and variance and a variance to allow an extension in time for the implementation and completion of a previously approved special exception on property along Patuxent Road, Odenton, MD 21113;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **20th day of March, 2025**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is granted a variance to the time limitation in § 18-16-405 to extend the time until **March 20, 2028** for the implementation and completion of a previously approved special exception and variance and a

variance to allow an extension in time for the implementation and completion of a previously approved special exception on property along Patuxent Road, Odenton, MD 21113 (Case Nos. BA 20-91S, BA 26-91S, BA 27-91V, BA 62-03V, BA 7-06V, BA 8-06V, BA 12-13V, and BA 13-13V).

The foregoing variances are subject to the applicant complying with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.

/s/

Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.