

RE: An Appeal for Special Exceptions and a Variance to the Zoning Regulations : BEFORE THE
: COUNTY BOARD OF APPEALS

HALLE COMPANIES/CHESAPEAKE TERRACE, : OF ANNE ARUNDEL COUNTY
: CASE NOS: BA 120-90S (Halle),
Petitioners : BA 26-91S/BA 27-91V
: (Chesapeake Terrace)

: Hearings: April 28, 1992;
: May 6, 1992; June 22, 1992;
: June 24, 1992; July 15, 1992;
: July 16, 1992; August 25, 1992;
: August 31, 1992; October 22;
: 1992, November 4, 1992;
: November 17, 1992; November 24,
: 1992; May 25, 1993; July 28,
: 1993; August 26, 1993;
: September 8, 1993

MEMORANDUM OF OPINION

SUMMARY OF PLEADINGS

This is an appeal from the denial of two special exceptions and a variance: for the Halle Companies (BA 120-90S), this is an appeal from the denial of a special exception to permit a sand and gravel operation in an RA district on property comprising 107.99 acres, located 695 feet along the south side of Patuxent Road, 1500 feet west of Bragers Road, Odenton; for Chesapeake Terrace (BA 26-91S/BA 27-91V) these are appeals from the denial of a special exception to permit a rubble landfill in an RA district and from the denial of a variance to permit a landfill closer to a residential area and closer to a property line than allowed for property comprising 481.6 acres (including the 107.99 acres for BA 120-90S) located 4300 feet along the southwest side of Patuxent Road, 1500 west of Bragers Road, Odenton.

SUMMARY OF EVIDENCE

J. A. Chisholm, an engineer, testified for the Petitioners. He stated the location and zoning of the property, the amount of acreage and testified as to the previous use of the property, which is currently unused. He stated that plans have been submitted to the state and to the Soil Conservation District for sediment control and discussed the setbacks of the sand and gravel operation from wetlands, the Patuxent Ponds, and dwellings in the area. He stated that two alternative accesses to the site are proposed: one which would route traffic on Conway Road to the site, and the second which would route traffic on Patuxent Road to the site. The Petitioners want the option to use either access, but believe that the Conway Road access would have less impact on homes. He stated the proposed hours of operation and that material mined would be needed for the Petitioners' construction projects in Anne Arundel County. Truck trips per day would average 20; a maximum would be 60 trucks per day. He described the machinery which would be used, the buildings located on the site, and the employees which he anticipated would be needed. Wetlands on the site have been identified and noted by the Department of Natural Resources, the Army Corps of Engineers, and the Planning and Zoning Office. He described the buffers surrounding the site and stated that the sand and gravel operation was no more objectionable than farming or

other permitted uses. After closure of the operation, the area would be much improved from its present condition. He discussed the improvements to the roads in the area, but stated that there had been no improvements to roads past the Patuxent intersection. He indicated that the access to the operations by Conway Road was not described in the special exception applications. Some stockpiling of material would occur at the site, but would be no taller than existing trees (40 feet). Approximately five acres of wetland would be removed. He named the other sources of sand and gravel in the area and what roads were used by the trucks. He described what efforts had been made to acquire necessary properties for the Conway Road access. He stated that the sand and gravel operation is within a resource extraction area of the county and an existing special exception for a sand and gravel operation has been in place since 1989.

With regard to the rubble landfill operation, he described the location and acreage of the site, which is adjacent to the 108 acre site for the sand and gravel operation. He gave the history of the site and stated that the site has been mined off and on for 40 years. The photographs submitted into evidence show debris, deep ravines, and erosion. The variance is need to the required 1000 foot setback to restore the area. Many areas are mined up to the property line and have not been restored. It is necessary to

restore the area before buffering can occur. The areas which the Petitioners propose to restore are within the 100 foot setback area which is required by the Code. He explained the three-phase permit process before a rubble landfill is approved. Rubble landfills are regulated by state law and the information is reviewed by the Department of the Environment, the County Health Department, the Department of Natural Resources, the Soil Conservation District, the Army Corps of Engineers, and the local zoning authority. Prior to issuing the rubble landfill permit, the state holds a public hearing. He stated that environmental concerns have been taken into consideration and he placed into evidence a map showing wetlands and the floodplain of the Patuxent River. He reiterated that the variances were necessary to reclaim the property; it would not be reasonable to reclaim the interior of the property and not the perimeter. He explained the steps which would be taken to minimize the impact on the surrounding properties. The operation would be sequential with only 30 acres of area proposed to be active at any given time. He described the 16 wells drilled on-site to allow the Petitioners to detect if there were anything in the wells due to the operation. He described the sediment control plan and the capping process. The rubble landfill does not take household trash, and the materials which it can take are controlled by state regulations. He stated the proposed hours and explained

to 30 feet deep are considered to be shallow. The study relates to water supply but not to leachate. The monitoring wells establish baseline conditions before work at the site begins. There are no wells within 100 feet of the line of the disturbance. Monitoring reports are sent to the Department of the Environment. There are a maximum of 1 to 6 shallow wells that could be affected by the operation.

Joseph Berg testified for the Petitioners that he had investigated the wetlands on the site and had prepared a wetlands plan. Five acres of wetlands will be disturbed. The Petitioners met the Army Corps of Engineers' test of minimizing the disturbance of wetlands. It is their plan to replace two acres for every one acre of disturbed area with a result of a net increase of wetlands.

David Santoro, an engineer, next testified for the Petitioners regarding the government regulations for rubble landfills. The Maryland Department of the Environment is involved in the permit stage, the operation and the closure of the landfill. It is also regulated by the Soil Conservation Service, Inspections and Permits, and other federal, state and local agencies. The groundwater discharge permit has been received. Monitoring of the site during the operation is done by a number of agencies. He discussed the design and operation of the facility and stated that the life of the operation was from 10 to 20 years. The base

Halle Companies/Chesapeake
Terrace

the inspection techniques for materials coming into the rubble landfill. He described the on-site machinery and stated that in his opinion, the equipment operated on-site would not cause more noise, vibration nor fumes and would not be more objectionable than permitted uses because of the buffer and berm. He placed into evidence a report which outlined the site conditions and the plans for the proposed rubble landfill. As for need, 18,000 dwelling units are proposed to be built within 10 to 15 miles of the site. This number of units will generate significant rubble material. He named the other existing rubble landfills in the area. He described the methods of controlling waste and stated that the operation would be regularly monitored by a number of agencies. He described the hazard control located at the site: for a fire, there is a tank truck on-site and bulldozers to use dirt to cover. The rubble material should not be able to be scattered by the wind and would be covered every third day. The end result of the site is that it would be used as open space and conveyed to Anne Arundel County or the state. The final cells would be covered by four feet of fill and planted. Sediment basins would be removed and the site would be subject to monitoring by the state for five years. He explained the correlation between the rubble fill use and the sand and gravel use: the sand and gravel operation is for the 108 acre tract east of the rubble landfill site. He believes they are

complementary uses of the site. Rubble from out-of-state will not be solicited, but it will not be turned away. The Petitioners will not have control of the number of trucks coming to the facility to deposit rubble; therefore, they cannot estimate how many truck trips per day will occur. Upon cross-examination, he stated that the rubble landfill would be located 240 feet from the closest residence and the closest house would be 40 feet from the restoration area. There is a natural clay liner under the site, and the Petitioners are not proposing that a manmade liner be installed. The area of acreage proposed for the rubble landfill is 150 acres.

Mark Schultz, a hydrogeologist, testified for the Petitioners. He prepared the report required by the Code of Maryland Regulations (COMAR) for the Department of the Environment. He discussed the well inventory which was prepared and stated there would be no impact on local wells because most of the wells obtain their water from below the clay layer. There is no public water in the area. The existing wells were located by a door-to-door survey. He stated where the monitoring wells would be sited. There would be no rubble filling within three feet of the water table. A groundwater discharge permit would be required and water must be monitored to assure drinking quality. He stated that there would be no adverse impact on the groundwater supply and submitted the well inventory list into evidence. Wells which were shown to be 12

grading plan which was placed into evidence showed the design. He explained the sequencing as to how a "cell" is created and then filled, compacted, then capped. The operation will have a five year renewable permit. He stated that leachate occurs from water and waste degrading. Because this is a rubble landfill, there should be no problem with leachate. He stated that in his opinion, the operation would not be detrimental to the health, safety and welfare of the public. The Petitioners will meet all state and local requirements and the facility is above the 100 year flood plain. He described what materials could be used as fill and described the closure plan.

Wes Guckert, a traffic and transportation planner, testified next for the Petitioners. He prepared a traffic analysis according to the Anne Arundel County guidelines and the Adequate Public Facilities ordinance. He made projections for the generation of traffic, checked intersections and reviewed the County's staff report. He prepared an intersection study of Route 424 and Route 3 showing morning and evening peak hour traffic. Although the current service level is C and D, with traffic added from approved subdivisions, which have not been built, the service level would be F. However, improvements would mitigate that problem. For the study, he assumed 300 trucks a day to the site, which is probably a high assumption. He prepared a chart of the roadway conditions

along Patuxent and Conway Roads showing the width of the lanes and the shoulders. He stated that with the improvements made by the Petitioners, the roadways, both Patuxent and Conway, could meet the criteria established by the county. From a traffic engineering viewpoint, the Conway Road access is the best alternative. At the intersection of Maryland Route 3 and Route 424, the critical lane volumes increase as the result of the building of other subdivisions as much as 66 to 70%. The impact of traffic from the proposed operations is only 2 to 4%. The mitigating improvement will decrease the lane volumes by 7 1/2 to 13%, which creates a surplus improvement. He described the proposed improvements and improvements which were made to the road network in 1992. The Petitioners propose the construction of an additional eastbound lane along Conway Road which he believes will more than offset the impact of the truck traffic on Conway Road. He stated that the proposed use would not be detrimental to the health, safety and welfare of the public with the improvements planned. Upon cross-examination, he stated that the additional lane for Conway Road would begin about 500 feet west of Route 3 and is subject to approval by the County and State Highway Administration. The additional lane would be a right turn lane only and the addition of this lane would be a substantial improvement over the impact which would be caused at the intersection by the additional truck traffic.

Halle Companies/Chesapeake
Terrace

Gary Westholm, an expert in the areas of land use, zoning and real estate appraisal, testified for the Petitioners regarding the criteria of Article 28, §12-104. In his opinion, granting the special exceptions would not be detrimental to the public health, safety or welfare. For water, one must consider both the quantity and quality. The method used to check the water quality on-site and the monitoring system proposed would assure no negative impact. As to water quantity, there are six shallow wells which potentially could be affected. As to the location, nature, and height of buildings for the proposed use and their effect on the orderly development of the neighborhood, he identified the neighborhood and stated that the area is not fully developed and contains a number of sand and gravel operations. The sanitary landfills in Annapolis and Millersville have not stopped development in their neighborhoods. He stated that the operations are no more objectionable with regard to noise, fumes, vibration, and light than permitted uses. The area is zoned RA and the hours of operation are to be 7:00 a.m. to 5:00 p.m., Monday through Friday. The noise would be low, infrequent, and would be buffered. He considers the noise insignificant because the noise is to occur during the day as opposed to during the evening or night. As for fumes, he compared the operations to permitted uses such as farming operations, where unenclosed storage of manure is permitted. No vibrations are

expected, so that should not pose a problem. There should not be light emitted in the daytime, but if so, it would be shielded by the trees which will buffer the area. As to rehabilitation of the pitted area, he has not appraised the property nor appraised any property in the immediate area. However, the present condition would cause a downward adjustment which goes beyond the physical appearance. The proposed use on the subject site is positive as opposed to non-use, where people come on to the site illegally. Upon cross-examination, he stated that he keyed the neighborhood to the Conway/Patuxent intersection. Once the project is completed, the value of the property will go up. He based his statements regarding the health, safety and welfare on the previous testimony. He has had experience with other landfills in the area.

A.J. Chisholm was recalled as a witness and entered exhibits which were illegible in a previous report. He stated that the service road from Patuxent Road to the landfill is in most places at least 10 feet above the flood plain. There has been no flooding from the 100-year flood plain in the area. He stated he is involved with the state permit process and has reviewed the COMAR regulations found in Title 26 for a rubble landfill. A three-phase submittal is required which normally takes 2 1/2 to 3 years to go through the entire process. Phase 1 of the process has been completed and in February, 1989 a letter was issued allowing the

Petitioners to move to a Phase 2 report. A meeting was held in May, 1990 at the Department of the Environment to see if the Petitioners could go to Phase 3. They have finished Phase 3, but the Department of Environment will not review until the Petitioners get the proper special exceptions. Even if the Board grants the special exceptions, the Petitioners must still have the plans reviewed and approved by the State, and a public hearing is held by the Department of the Environment. There are currently two rubble landfills in Anne Arundel County and both are under closure plans. A third is under the permit process and may not be permitted to be opened. The final step is the Phase 3 approval and obtaining the grading permit.

Stephen Fleischman, a vice-president of the Halle Company, has been involved in the project working on operational procedures with regard to assurance that no improper material will come in to the rubble landfill. He explained the methods which would be used, including a "gantree" and a gas analyzer, which is used by the EPA. He explained that both visual inspection and filming would occur and that a full-time county employee would be paid by the Petitioners to be on the site. The inspectors and bulldozer operators would be trained as to the COMAR regulations and would know what is authorized and unauthorized. There is a plan to have someone on-site 24 hours a day for security. As to need, there are 4500

residential units being developed within a few miles of the site. The sand and gravel operation would bring materials into the site. They anticipate that the Petitioners will be a major user. As for need for the rubble landfill, in the west county area, Al-Ray will be closed within a year. There is a real need in the area. The Conway Road access is preferred because it is a shorter run and affects fewer people. There are two owners of property on Conway Road, and both have been in contact with the Petitioners. If the special exception is granted, the owners will grant the Petitioners the necessary property to get access to the site. As for the quantity and quality of the wells, the Petitioners will replace any wells which are affected by their operation. The monitor well reports are a public record and they will furnish those reports to adjacent property owners at their request. If there is any contamination, the Petitioners would be required to do the cleanup, so they want to make sure that it doesn't occur. As to questions about the financial security of the company, the state requires a bond before the opening of the landfill. The bond stays in place until five years after the landfill closes. For the rubble landfill, the Petitioners intend to fill 150 acres; for the sand and gravel operation, they intend to mine 35 acres.

Russell Meyer, president of the Forks of Patuxent Community Association, testified as a Protestant. He believes the special

exceptions should be denied because the area is environmentally sensitive. He described the area and the location of rivers and streams in location to the site. He believes that a pond referred to as a sediment control pond is actually an area where an old stream had run. He discussed the various environmental features of the site. In 1980, Patuxent Road was redesigned and raised because of the many flooding problems. He showed a video of the subject property which included commentary. He has not complained about the 4-wheel drive vehicles which go on the site, but is worried about the rifle shooters and the safety aspects.

Sally Meyer, secretary of the Forks of Patuxent Community Association, put into evidence a resolution which opposes the rubble landfill and which states their concerns.

Marsha Perry testified as a Protestant. She stated her concerns for the Patuxent River and that this is a terrible location for a landfill. A study of rubble landfills in Maryland in 1991 shows the types of substances in the leachate. Carcinogens were found in rubble landfills in Maryland; therefore, hazardous leachate could end up in the Patuxent River. The landfill should be double-lined and a plan developed to handle any leachate. Her concern is that environmental damage from leachate will cause damage to the Patuxent River and the Bay. This rubble landfill will adversely affect a scenic river, which is in contradiction to

Maryland law. The site often floods; Hurricane Agnes flooded 80% of the site. The wetlands should not be threatened because they are habitat in the area for heron and bald eagles. If the landfill would catch on fire, the taxpayers would have to pay.

Betty Judd testified as a Protestant. She has lived in the area for 45 years and owns 480 acres adjacent to the site. She is opposed to the landfill and wants residential developments in the area. The proposed operations will devalue her land. She fears the impact of leachate and contamination of wells as well as the impact of truck traffic on safety.

Eugene Turner, Bonita Truesdale, Joe Bryant and Ray Murdoch, all Protestants and all owners of adjacent or nearby properties, object to the granting of the special exceptions. They voiced concern regarding traffic, contamination of the water in the wells and river, flooding, and dust and noise from the operations.

Jack Meyer testified as a Protestant. He stated that there is too much truck traffic on the road already, and that the county could not keep out-of-state haulers from using the landfill. He placed into evidence a number of photographs showing flooding and the bad turns on Conway Road. He discussed the problems at the Route 3/424 intersection, and the amount of time that it took to get through the intersection, as well as the problems caused by not being able to see over or around the large trucks.

Erica Ihrig testified as a Protestant, stating she opposed the rubble landfill because of fear of contamination of wells and that land values would be decreased.

Burt Rice, representing the Greater Odenton Improvement Association, voiced five concerns which caused them to oppose the special exceptions: the Corps hasn't approved the grading of wetlands; there is a deep clay base but this is an environmentally sensitive area with periodic flooding; the effect of noise, traffic, and lack of buffering on residences; the truck traffic demands on the intersection at Route 3; and, there is no guarantee that out-of-state debris won't be accepted into the landfill.

Larry Nowottnick lives adjacent to the site and opposes the special exceptions because of the noise and the truck traffic.

Bob Scott testified as a representative of the Greater Crofton Council. They have concerns because of traffic and the health, safety and welfare issues. They see no urgent need because there are many sand and gravel operations already. They are concerned because of the environmental impact on the property.

Edwin F. Dosek testified in opposition to the special exceptions in his personal capacity and as president of Crofton Civic Association. He stated that he did not believe it was likely that well water would be contaminated but was concerned about the Patuxent and Little Patuxent Rivers and their contamination. He is

chairman of the Patuxent Wastewater Facility Advisory Committee and is concerned about the harsh impact of the addition of contaminants into the Patuxent River and the surrounding marsh. His main concern is regarding traffic. Conway Road is a country road which is narrow with very small shoulders and is rutted by excessive truck traffic. It is travelled daily by many Crofton residents going to work or to various facilities. He has personally had difficulty making the left turn onto Conway Road at the Route 3/424 intersection. He does not agree with the testimony of Mr. Guckert, the Petitioners' traffic expert, and using Exhibit No. 20, he determined that there would be 6.95 vehicles per minute at the intersection. He believes it is a genuine issue as to the health, safety and welfare of the public.

Juanita Truesdale submitted into evidence a letter from Jean Creek, NAACP representative.

Jerome Poore testified in opposition to the landfill. He lives at the corner of Conway and Meyers Station Road and the fumes from the trucks cause a steady haze. He confirmed the flooding on Patuxent Road.

Kevin Dooley, a zoning analyst with the Office of Planning and Zoning, testified for the County. He reviewed the site plans for the original applications and reviewed comments from public agencies, particularly for the landfill. The sand and gravel and

rubble landfill applications have separate standards. Also, for the rubble landfill, the Petitioners requested variances to two locational standards: one, a variance of 760 feet to the 1,000 foot setback from a residence or institutional building, and two, a variance of 100 feet from the required 100 foot setback to deposit fill. When he reviewed the site plan, he determined that if the area for extraction was outside 1,000 feet, it would comply with the special exception. He cannot make a positive recommendation and does not have information regarding the final grading. For the rubble landfill, the special exception can comply with all the standards except for filling within 100 feet of the property line. There are a lot of houses close to heavy activity. Although there are eroding slopes, they can be stabilized with material other than rubble fill. Because of the close proximity of the work area to the residences, he cannot support the request. From conversation with the Department of Public Works, he was aware that the proposal for alternative access to the site was to be made, although it was not part of the original application. Aside from the site plan, he had concerns regarding the special exception because of the impact on the local roadways. With the amount of additional truck traffic proposed, the roads would need to be improved with shoulders. However, because the roads are so narrow, it is impossible to make those improvements. Also, the intersec-

tion of Conway Road and 424 is projected to be a failing intersection; unless it were upgraded to an acceptable level of service, he could not approve the request. Because of the road situation in the area, both of the special exceptions should be denied. He discussed the agency comments and stated that the Department of Public Works had determined that from a technical standpoint, the proposal was acceptable. Upon cross-examination, he testified that assuming the variances for the rubble landfill were granted, the proposal meets the other special exception criteria. If the site plan were redrafted to show no work within the 1,000 foot setback, the proposal could comply with the special exception criteria. For the sand and gravel operation, the plan was adjusted to meet the 1,000 foot setback, and thus meets the special exception criteria. The Chesapeake Terrace site was used for years as a sand and gravel operation and was also mined by the State Highway Administration. If clean fill dirt were used in the area within the 100 foot setback, no variance would be needed. He stated that in his opinion, this proposal does not comply with the Adequate Facilities ordinance for the roads. The roads will work better with the improvements the Petitioners are willing to make, but will still have a failing level of service.

Testifying on rebuttal was Wes Guckert, the Petitioners' traffic engineer. The current law requires the state to go to the

first intersection of the arterial, then to the next arterial intersection. Conway Road is the arterial, not roads to the west of Patuxent Road. There are very few regional roadways. Thousands of units have been approved in Crofton; 70% of the trips will go north along Route 3 and will not adversely affect the rest of the road network.

After the passage of Bill 12-93, the Petitioners were permitted to give additional testimony to attempt to meet the new criteria for a rubble landfill.

J. A. Chisholm again testified for the Petitioners. He drew new site plans which comply with the provisions of Bill 12-93 as to the depth of excavation and the height of rubble. He submitted a map of the tract boundary showing the 100 year flood plain and the wetlands. The actual area of operation does not go into the flood plain. He submitted a declaration of covenants as a draft document which is not yet executed. The covenants will be entered into between National Waste Management and Anne Arundel County. He discussed the various criteria and stated that the Petitioners would do what was required to meet the regulations. He indicated that the Petitioners had already complied with many of the requirements. Upon cross-examination, he stated that as the fill operation moves upward, the berm will move upward. As the fill increases in height, the berm will continue to be 25 feet above it.

The berm also moves as the operation increases. In compliance with Bill 12-93, the highest elevation in the disturbed area had to be reduced.

Mark Schultz, the hydrogeologic expert for the Petitioners, prepared well completion reports to 3/4 of a mile as required and tabulated the data. A map was entered into evidence showing the location of wells within 3/4 mile of the site. The wells were sampled as required and the groundwater under the site is in compliance with drinking water. Quarterly reports will be obtained. The Petitioners will install at least 10 perimeter wells around the site. They will routinely test the water. The reports will be filed either with the Health Department or with the Department of Natural Resources. Upon cross-examination, he stated that for older wells, he could not find the well tag numbers. Although he did not believe they missed any wells, he might not know the depth of the well. If a well was drilled before 1960, it was not required to be tagged. He stated that he has not put together a comprehensive plan for monitoring groundwater; however, he will put one together for the Health Department and the Maryland Department of the Environment.

James E. Irre testified for the Petitioners regarding forest conservation plans. He is a certified forest land delineation expert. He visited the site and found much undisturbed forest that

had been subjected to mining. Based on information from aerial photographs, there is approximately 300 acres of undisturbed forest; approximately 32 acres of this will be disturbed by the operation. He prepared a report regarding the computation of the significant forested areas to comply with Bill 12-93.

Milton McCarthy testified for the Petitioners as a certified wetland delineation expert. He was originally retained in 1988 to do a wetland delineation and later returned to work on the wetland permit process for the federal and state permits. He computed the acreage of wetlands and showed which are affected by the proposal on a map entered as Exhibit No. 66. Other wetlands are mature forested wetlands. The quality of the wetlands to be displaced is minimal because they are fairly new, only 20 to 30 years old. A total of five acres of wetlands is to be impacted. The wetlands will be placed on another section of the property on a 1:1 ratio and an additional two acres of wetlands will be created for a total of seven acres. He prepared a wetlands mitigation report which he submitted into evidence. He stated that the site is not located within the critical area nor the 100 year flood plain. The wetlands on the site have been artificially created from past mining. Water bodies exist on the property but are well outside the project site. He stated that the new wetlands contiguous to

the Patuxent River are a more than adequate trade-off. There will be no impact on streams in the area.

Kenneth Frampton testified for the Petitioners as an expert in acoustical engineering. He prepared a study with respect to the criteria in Bill 12-93 and researched the typical noise level of equipment at the landfill. From his study, he recommended the increase in the height of the berm to 25 feet from 15 feet which would cause the Petitioners to be able to meet the noise code. This is necessary where dwellings are within 1,000 feet; otherwise, it is not necessary. He stated that the Petitioners would be able to comply with all of the noise requirements found in the bill. Upon cross-examination, he stated that he used previous research available to him to calculate the anticipated noise quantity. He used measures of specific pieces of excavation equipment in the act of excavating and assumed certain kinds of vehicles which are used at this type of facility. He testified that the berm is not unbroken for the entire circumference and there are regions of the landfill where there are no berms if there are no dwellings within 1,000 feet.

Bonita Truesdale and Emily Ihrig testified as Protestants stating that they were not contacted by the Petitioners' witness although their names are on the well inventory list which was submitted into evidence.

Russell Meyer testified again as a Protestant, stating that Bill 12-93 required that no stream on the property be affected. He was concerned about the stream that feeds the pond and stated that it is not from water sitting on top of the clay.

Kevin Dooley again testified for the County and submitted into evidence a letter from the director of the Department of Public Works regarding the condition of Conway Road from the intersection with Patuxent Road to the proposed entrance of the site. The letter stated that Conway Road did not meet the current county standards for a collector road.

Robert R. Strott testified as a Protestant. He is one of the developers of Piney Orchard and does not believe the Petitioners have met the criteria of Bill 12-93 because they have not shown the location of other landfills in the area and have not given records of annual volume for the last five years. Also, the Petitioners have not given records certified by the Department of Public Works showing the total volume of rubble for the next three years.

Richard Klein testified for the Protestants regarding the aquatic environment. He stated that there are four aquatic resources at risk and the greatest impact is from the leachate. He put into evidence a table of rubble landfill leachate compiled from rubble landfills in Maryland. The table shows that dangerous substances are released from landfills that are toxic to aquatic

life. He also put into evidence geologic cross sections he prepared which show the underlying clay material. He stated that the groundwater flows toward the Little Patuxent River. He stated that the facility has received a groundwater discharge permit which protects drinking water, but not aquatic life, which has higher standards. Since the project will have a net negative impact upon aquatic life, the Petitioners cannot meet the showing required in Bill 12-93.

Called as a rebuttal witness, Mark Schultz again testified for the Petitioners as an expert in hydrogeology. He explained how he prepared his report regarding the well inventory and how he conducted the research. He referred to Petitioners' Exhibit No. 28 regarding the water quality certificate. He stated that there was very little potential for contaminated water to reach the Little Patuxent River; the water has to meet drinking water standards, so it would be of a very high quality. The wells would be monitored throughout the time of the landfill.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

FINDINGS AND CONCLUSIONS

In this case, the Board is asked to grant special exceptions for sand and gravel and rubble landfill operations. For the rubble landfill, the Board is further asked to grant variances to two locational requirements: first, a 760 foot variance to the requirement that the rubble landfill operation be located 1,000 feet from residences and institutions (§12-242(b)(8)); and second, a 100 foot variance from the requirement that the fill area be located at least 100 feet from any neighboring property (§12-242(b)(9)).

To make this case even more difficult, legislation for new special exception criteria regulating rubble landfills was proposed while the hearings on this matter were before the Board. Bill 12-93 passed and took effect on April 12, 1993. Section 5 of the bill requires any special exception granted after January 19, 1993 for a rubble landfill be governed by Bill 12-93. Although the hearing process had ended prior to the January date, the Board deliberations were not concluded by that time. Hence, this Board believes that the special exception request comes under the new legislation. In fairness to the Petitioners, the Board reopened hearings to permit the Petitioners to offer additional testimony to demonstrate their ability to comply with the new regulations.

After an on-site inspection, no fewer than 16 hearing dates, and numerous meetings for deliberation, this Board has concluded, with the conditions which it will impose, that the Petitioners are capable of meeting all of the performance standards for the sand and gravel operation as required in §12-212 of Article 28 of the County Code and for the rubble landfill as required in Bill 12-93, which will be codified as §12-242 of Article 28. The Board also believes that the Petitioners have met their burden of showing the necessity for the requested variances and thus will grant those variances as well.

Because the sand and gravel and rubble landfill operations will occur on the same property, and most of the opposition stems from the general standards for granting a special exception, the Board will first address those standards. Section 12-104 of Article 28 states eleven findings which must be made in the affirmative prior to addressing the specific performance standards for a given special exception. This Board believes that the testimony regarding the facilities to be needed or used at the site prove that they are adequate to handle the proposed operations. The testimony of J. A. Chisholm regarding the site plans adequately explained the operations to the Board, and the Board believes that, because of the location of the site, the use will be compatible with the appropriate and orderly development of the district in

which it is located. The areas of concern for both the Protestants and the County center on the public health, safety and welfare. Of particular concern are well, river and bay contamination from leachate; traffic, particularly along Patuxent Road, Conway Road, and the intersection of Maryland Route 424 and Route 3; and the environmental impact on the wetlands located on the site and on the Patuxent River watershed.

This Board believes that the concerns raised by the Protestants and the County are certainly legitimate concerns; however, it also believes that, with the conditions the Board will impose on the granting of the special exceptions and variances, the Board adequately addresses those concerns.

As to the concern about water quality, particularly the shallow wells located near the site, the Board believes that the expert testimony of the Petitioners' hydrogeologist was convincing that the clay layer is sufficiently established to provide for blockage of any leachate. However, the Board will require the Petitioners to notify all property owners within a three-quarter mile distance from the property to offer the replacement -- at the Petitioners' expense -- of an existing shallow well located within that area, since the Protestants voiced concern about leachate contamination of wells which do not have the depth now mandated by the County Health Department. Concerns about the wetlands and the

Patuxent River watershed should be alleviated by positioning the entrance to the operations on Conway Road; this Board will prohibit the use of Patuxent Road for the entrance to the site. Although the County argues that the Petitioners could not suggest this alternative entrance after filing the initial appeal (an argument which this Board rejects), the County also indicated in its closing argument that the Conway Road entrance is a much better choice because it avoids the wetlands and heavier traffic on Patuxent Road as well as directing the traffic further from the Patuxent River. This Board has often accepted modifications to an initial plan when the modifications were offered during the hearing process. There does not appear to be any reason that the proposed use of the Conway Road entrance must be rejected by this Board.

As well as addressing concerns about the environment, the use of Conway Road also addresses a number of traffic concerns. However, the Board acknowledges that the use of Conway Road also presents some concerns. The Board will condition the granting of the special exceptions to require improvements to Conway Road to bring the road to County standards. Travel lanes shall be 12 feet in width, and there shall be 8 foot shoulders where County right-of-way exists. The Board notes that it is a problem that the County does not own the right-of-way along the entire affected length of Conway Road. Although the Board does not believe that it

can compel the Petitioners to have eight foot shoulders where they cannot obtain the right-of-way from private property owners, it strongly encourages the Petitioners to use their best efforts to obtain such rights-of-way to construct the eight foot shoulders.

Another area of concern is the intersection at Conway Road and Maryland Route 3. The Board will require the Petitioners to construct a right turn lane on eastbound Conway Road at Maryland Route 3; the turn lane shall have a minimum length of 500 feet. The Board believes that imposing these conditions will assure that the health, safety and welfare of the citizens will be protected.

Although the Board is very concerned about problems of traffic, the only expert testimony before this Board regarding traffic issues was offered by the witness for the Petitioners, who testified that the traffic problems would be mitigated by the proposed improvements and would thus meet the necessary criteria.

This Board also finds that operations related to the sand and gravel and rubble landfill uses will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in permitted uses. A farming operation, which would be a permitted use in a RA zoned district, would offer a comparable amount of noise, fumes and vibration because of farm machinery and animals. Light does not appear to be an issue with these operations. To help to alleviate the noise issue and traffic

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during a portion of the peak afternoon period, the Board will limit the hours of both operations from 7:00 a.m. to 5:00 p.m. Also, on weekends when families are home during the day, neither operation will be permitted to be open for business.

Another health, safety and welfare issue which the Board has addressed is to require the Petitioners to fence the area of active operation with a fence at least six feet in height and to allow access through one lockable gate only.

The County voiced concerns that the Petitioners will use an existing rail line to transport rubble to the site and questions the ability to monitor rail transport in the same fashion that truckloads of rubble are monitored. This Board will neither approve nor prohibit rubble to arrive at the site by rail; however, it will require the Petitioners to notify the County if they intend to implement rail transport, and to obtain the appropriate approvals for rail transported rubble from the County and other agencies which monitor rubble landfills.

This Board must also find that the Petitioners have presented sufficient evidence of public need for the proposed uses. We find that the evidence presented by the Petitioners indicates a need for sand and gravel for the Petitioners' construction projects throughout the county. There is also a public need for a rubble landfill. Although operations such as landfills are virtually

always unpopular within a community because of the health and safety concerns, it is an unfortunate fact that such operations continue to be needed to deal with the wastes which our society creates. The Petitioners' witnesses testified that thousands of dwelling units are scheduled to be built, which will increase the need for the rubble landfill.

As to the specific performance standards for a sand and gravel operation as found in Article 28, §12-212 of the County Code, this Board finds that the Petitioners have offered testimony and evidence which convinces the Board that they will be able to meet all of the necessary standards.

As to the performance standards for a rubble landfill, as determined by Bill 12-93 (codified as Article 28, §12-242), the Board also finds that the Petitioners are capable of meeting the standards, except for the locational standards for which the Petitioners have requested variances. In order to grant the requested variances, the Petitioners must meet the standards found in §11-102.1 of Article 28. This regulation requires the Board to find either unique physical conditions or exceptional circumstances other than financial considerations prior to granting the variances. From the Board's observations at its on-site inspection of the property, the Board believes that there are exceptional topographical conditions peculiar to this particular site. Because of

previous mining which has occurred on this property, the land is cratered virtually up to the property line. The purpose of granting the variances would be to permit the Petitioners to fill in these areas so that the dangerous and eroding conditions no longer exist. In this Board's opinion, filling in this area is part of the reclamation of the area which must be accomplished. Because of concerns as to what materials will be used to fill the area, the Board will condition the grant of the variances to require the fill to be of the same material which must be used for the construction of a berm pursuant to Bill 12-93, which requires: "rock and similar irreducible materials such as concrete, non-refractory brick, and asphalt created as a result of construction activities, mining, or regrading projects without limit as to size, provided voids are not formed into which overlaying soils may be washed; and topsoil intermittently layered with non-organic soil." Since these are the only materials which may be used to fill the area, the Board believes that granting the variances will not be detrimental to the public welfare. The variances are the minimum variances necessary to afford relief, because the number of feet of the requested variances is dictated by the location of the area which must be filled. This Board further finds that granting the variances will not alter the essential character of the neighborhood or district in which the site is located. Once the fill of

this area has been completed, it will be a benefit to the community over the existing conditions. For the same reason, the Board finds that granting the variances will not substantially impair the appropriate use or development of adjacent property. Since all activity will take place on the Petitioners' property and it will be a matter of filling an eroding area, the eventual effect on the neighboring property will be positive. The Board does not need to address the Critical Area criteria for granting variances since the property is not located within the Critical Area.

ORDER

For the reasons set forth in the foregoing opinion, it is this 23rd day of December, 1993, by the County Board of Appeals of Anne Arundel County, ORDERED that the appeals are hereby granted as follows:

Special Exceptions

The special exceptions for a sand and gravel operation and rubble landfill operation are granted with the following conditions:

1. Patuxent Road shall not be used as an entrance to the operation.

2. Conway Road is to be used as the entrance to the operations, with the following conditions:

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a. A right turn lane shall be constructed on eastbound Conway Road at Maryland Route 3 to a minimum length of 500 feet.

b. 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 improved to county standards (pursuant to Article 26, §3-202(d), Anne Arundel County Code) where the county right-of-way exists. Additionally, the Petitioners shall pursue a diligent course to obtain the right-of-way from private property owners where possible.

c. The road improvements on Conway Road from Route 3 to