

Case No. S.E. 4774
VSE 4774

Applicant: Palmer Road Landfill,
Inc. (aka Palmer Road
Landfill Company) and
Palmer Road, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

AN ORDINANCE, denying an application request for a temporary Special Exception and Variance to continue a Class 3 fill site located on the north side of Palmer Road, Fort Washington, in Councilmanic District 8.

For reasons that follow, the application for a temporary Special Exception and Variance is denied because the Zoning Hearing Examiner's hearing and decision failed to comply with statutory requirements of the Zoning Ordinance.

A. Procedural Background

On or about October 10, 2016, Planning Board accepted an application request from Palmer Road Landfill, Inc., for a temporary Special Exception, to continue operation of a Class 3 fill site facility for five (5) years pursuant to PGCC § 27-405.01. The application also requested a Variance from PGCC § 27-405.01(a)(5), which prohibits the subject property of the application from being located within a three (3) mile radius of properties containing an active or pre-existing approved or non-conforming Class 3 fill, sanitary landfill, transfer station, rubble fill, recycling facility, mining facility, sludge facility, processing facility, and sand and gravel operation, or wash plant. ZHE Ex. 1, Application Form, 9/29/15.

On or about March 15, 2017, the Technical Staff of the Planning Board completed its Report on the application. Staff recommended approval of the application. ZHE Ex. 15, Staff

Report, 3/15/17. The Planning Board did not hold a hearing on the application but accepted Staff's recommendation. ZHE Ex. 17(a).

The Zoning Hearing Examiner held a hearing to consider the application on June 21, 2017. (6/21/2017, Tr.). The Examiner filed her decision with the District Council on July 21, 2017. Notice of Decision, 7/21/17.

The District Council elected to make the final decision on the application on September 11, 2017. Zoning Agenda, 2/12/2018.

Oral argument was held on October 23, 2017. The case was taken under advisement. Zoning Agenda, 2/12/2018.

B. Class 3 Fill Temporary Special Exception

In 2003, the District Council enacted CB-87-2003, a Zoning Bill, defining Class 3 fills, requiring a special exception for Class 3 fills in all zones where they are permitted and providing a limitation on grading permit renewals for Class 3 fills. The purpose of CB-87-2003, was to provide regulations that would allow the County to have better oversight of new and existing Class 3 fill operations. The bill included time limitations for processing a special exception application for a Class 3 fill, including time limits for the Examiner's hearing and decision, as well as the Council's. A Class 3 fill in existence as of October 7, 2003, that is operating pursuant to any validly issued grading permit, and is not in violation, shall be permitted to continue in operation as a matter of right, but is limited to the fill area established by any previously issued grading permit, not to exceed two renewals of the permit. CB-87-2003, Agenda Item Summary, PGCC § 27-441, Footnote 71.

C. Grading Permits

In September 2003, the Applicant obtained a grading permit, which expired on September 26, 2005. Amend. Stat. of Justification, p. 4, 9/28/2016.

In September 2005, the Applicant was issued another grading permit, which expired on September 29, 2010. Amend. Stat. of Justification, p. 4, 9/28/2016.

In September 2010, the Applicant was issued yet another grading permit, which expired on September 29, 2015. Amend. Stat. of Justification, p. 4, 9/28/2016.

D. The Application

The application for a temporary Special Exception and Variance to continue the Class 3 fill site was signed and dated on September 29, 2015—the same day the last valid grading permit expired for the subject Class 3 fill site. ZHE Ex. 1, Application Form, 9/29/15.

The application was not accepted by the Planning Board until October 10, 2016—almost a year after the last valid grading permit expired for the subject Class 3 fill site. ZHE Ex. 1, Application Form, 9/29/15.

The subject Class 3 fill site has no grading permit. Amend. Stat. of Justification, p. 4, 9/28/2016.

The opposition to the application was Stephen Briggs, et al. Notice of Decision, 7/21/17.

E. Applicable law

In relevant part, under the County Code, a Class 3 fill may be permitted as a temporary Special Exception, subject to the following:

Within one hundred and twenty (120) days after an application for a Class 3 fill is accepted by the Planning Board, the Zoning Hearing Examiner shall conduct a public hearing. The Zoning Hearing Examiner's written decision on an application shall be issued within thirty (30) days after the public hearing. Where the District Council makes the final decision, the Council's final order shall be issued within sixty (60) days of the Examiner's decision. PGCC § 27-405.01(a)(1).

F. Legal Analysis

The hearing and subsequent written decision by the Zoning Hearing Examiner to approve the temporary Special Exception and Variance for the subject Class 3 fill site to operate violated

the procedural requirements of PGCC § 27.405(a)(1). The County Code required that the Examiner conduct a public hearing on the application within 120 days after Planning Board accepted the application on October 10, 2016. By operation of law, the deadline to conduct the public hearing was Tuesday, February 7, 2017. The Examiner conducted the public hearing on June 21, 2017—more than 254 days after Planning Board accepted the application and more than 134 days after the deadline to conduct the public hearing on the application. *See* PGGC § 27-127 – Powers and duties to conduct hearings (The Zoning Hearing Examiner shall conduct a complete public hearing on the case in question, **subject to all the requirements and restrictions imposed by law upon the District Council**) (Emphasis added). The Examiner’s written decision also violated the procedural requirements of PGCC § 27.405(a)(1) because it was filed more than 30 days after the last day that a public hearing was required to be conducted on the application—i.e.—Thursday, March 9, 2017.

These procedural defects violated the limitations and restrictions imposed by law to approve a temporary Special Exception and Variance in this case.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1: As expressly authorized by the Regional District Act within Titles 22 and 25 of the Land Use Article of the Annotated Code of Maryland, and Subtitle 27 of the Prince George’s County Code, the application requesting a temporary Special Exception and Variance to continue a Class 3 fill site, located on the north side of Palmer Road, Fort Washington, Maryland, in Councilmanic District 8, is hereby, DENIED.

SECTION 2: This Ordinance shall take effect on the date of its enactment.

ENACTED this 12th day of February, 2018, by the following vote:

In Favor: Council Members Davis, Franklin, Glaros, Harrison, Lehman, Patterson, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Member Toles.

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Dannielle M. Glaros, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council