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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-892
Permit # 05-0432

Variance Request: For a variance from the required maximum height of 50 feet to 130 feet for a dried bio-solids system at 675 Quaker Hill Road, Union Bridge, MD in Election District 12 by Lehigh Cement Company. Lehigh was represented at the hearing by Mr. J. Brooks Leahy.

Basis for Variance: § 223-128, § 223-180 and § 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Approved, with conditions.

Basis for Decision:
The basis for a variance under the Carroll County Code is defined under § 223-2 as follows: "a relaxation of the terms of this chapter in accordance with §§ 223-176, 223-178, and 223-186 where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the chapter would result in practical difficulty or unreasonable hardship." In addition under §223-181.2, the Zoning Administrator "may not grant a variance or administrative adjustment if to do so would violate the purpose and intent of the regulation, or cause or be likely to cause substantial injury to the public health, safety, and general welfare."

Further guidance is provided in Maryland Case Law, most predominately cited in *Cromwell v. Ward, 102 Md. App 691,651 A.2d 424 (1995).* There is a two prong sequential process with the first step requiring a finding that the property whereupon structures are to be placed (or uses conducted) is, in and of itself unique and unusual. The second step is a determination whether an unreasonable hardship (or practical difficulty) resulting from disproportionate impact of the ordinance caused by the property's uniqueness exists. Self-inflicted or self-created hardship is never considered as grounds for a variance (*Guide to Maryland Zoning Decisions, Stanley Abrams, LexisNexis 2002*). Both tests apply to all variance cases.

During the variance hearing, the applicant presented testimony that the proposed silo structure will store approximately 800 metric tons of material, which equates to a three day fuel supply and that approximately 5 truck shipments daily will be necessary to keep the silo full. The applicant did not present evidence as to what effect this additional truck traffic may have on area roads nor was it disclosed where the material would originate from and which roadways would be used in transport. However, these matters may be more sufficiently addressed in the Site Plan process.

In reviewing the issue of height for this structure, one cannot help but place this silo in context of the existing plant and the previous decision of Zoning Administrator George Beiser on November 30, 1999, which decision granted a height variance for the 460 ft. tall preheater tower and 22

other new structures at the plant. The applicant testified that the height of the proposed silo for bio-solid storage will necessarily be located near the preheater tower near three other silos/structures which are the same height or taller. The applicant testified that the new silo will only be visible to the public from the South, which was verified in the field by the Zoning Administrator; although, it should be noted that the primary reason this silo will not be seen from other directions is because it would be hidden and dwarfed by the preheater and other structures which have already been constructed. There was public concern expressed at the hearing about the height of the proposed silo; that perhaps a portion of the silo could be constructed in an excavation or that three smaller structures could be built in lieu of this one. The applicant testified that there was not sufficient footprint in the area to allow for multiple structures and that the silo height was needed for storage capacity and functionality. The applicant stated that the Lehigh Plant has been in continuous operation since 1910, with Lehigh actually purchasing the plant in 1925 and initiating at least four modernizations, the most substantial of which began in 2000. The property is within the Mineral Resource Overlay Area which recognizes the mineral resource in the subsurface of the property and the anticipation of attendant resource recovery operations.

In reviewing the testimony and evidence presented at the hearing, I find that the structure would need to be located in the proposed location and at this point in time I feel visual impacts from a 130 ft. tall structure *at this particular location on the Lehigh grounds* are acceptable due to the cluster of the existing tall structures at this location. I believe that the height of the proposed silo is needed for functionality and do not believe that smaller structures would be practical. I find that the uniqueness of the property is evident – it is all about producing limestone and manufacturing Portland cement and has been for almost a century.

The very enormity of the Lehigh plant and the accessory structures needed to serve it must be considered in this decision. I believe that a practical hardship in this case is made in light of the uniqueness of the site and operations there. In a perfect world we would be addressing the matter of where one can store bio-solids before we address a vessel to contain them in but we have the situation at hand and on the issue of height alone I believe both tests for a variance are sufficiently addressed. Accordingly, I hereby grant the variance requested.

However, I find it necessary to make clear that the granting of this height variance in no way constitutes an approval of the proposed use of the silo structure. The applicant presented testimony that the proposed silo structure was to be used for the storage of dried bio-solids or sewage sludge. Under § 223-26 of the County Code, the storage of sewage sludge is specifically prohibited in all zoning districts unless accessory to a publicly owned wastewater treatment plant. While the use of Bio-Solids to augment the coal used to fire the kiln may be a beneficial use of this material, storage of the dried bio-solids is clearly prohibited under the current County Code. Hence, the variance granted is conditioned as follows: No quantity of sewage sludge, including bio-solids may be stored in the silo.

15 April 2005

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and Ordinances, appeals of this decision must be made within 30 days of the date of the decision to the Board of Zoning appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter contest the Zoning Administrator's decision.