



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PB 4/26/07
Item # 10A
Item # 10B

MEMORANDUM

DATE: April 20, 2007
TO: Hearing Examiner/Montgomery County Board of Appeals
FROM: Sandra Youla, AICP (301-495-4624) *SJY*
 for the Montgomery County Planning Department
VIA: Ralph Wilson, Acting Zoning Supervisor *RW*
 Rose G. Krasnow, Division Chief, Development Review *RJK*

**REVIEW TYPE/
 REVIEW BASIS/
 APPLICANT**

Item # 10A Preliminary Forest Conservation Plan/
 Chapter 22A. Forest Conservation – Trees/
 Zelvova-Shorb Properties, LLC

Item # 10B Special Exception – Landscape Contractor (Sec.
 59-G-2.30.00)/
 Chapter 59. Montgomery County Zoning Ordinance –
 Advisory to the Board of Appeals/
 Zelvova, LLC

CASE NUMBER: S-2684
ZONE: RDT
LOCATION: 18930 Wasche Road
 Dickerson, MD 20842
MASTER PLAN: Preservation of Agriculture and Rural Open Space (October 1980),
 Rustic Roads Functional Master Plan (December 1996)
SPECIAL EXCEPTION
FILING DATE: August 17, 2006
SPECIAL EXCEPTION
PUBLIC HEARING: April 30, 2007, 9:30 a.m. at the Office of the Hearing
 Examiner

STAFF RECOMMENDATION

APPROVAL of Item # 10A -- Preliminary Forest Conservation Plan, with the following conditions:

1. Applicant to submit a Final Forest Conservation Plan (FCP) that meets the requirements of Section 109(B) of the Forest Conservation Regulations. Final FCP must be approved

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by M-NCPPC before any clearing or grading for the new facility.

2. Required site inspections by M-NCPPC monitoring staff under Section 110 of the Forest Conservation Regulations.
3. Applicant to shift the existing farmland access road and stream crossing north, out of the wetland buffer as part of this special exception. The new road location must be shown on the Final FCP.
4. Applicant to place stream valley buffer areas on the property in a Category 1 Conservation Easement.

DENIAL of Item # 10B -- Landscape Contractor Special Exception, for the following reasons:

The scale of operations are excessive in consideration of the proximity to area homes; unavailability of on-site sanitary facilities; unsafe road conditions, restrictions on travel routes, and vulnerability of important rustic roads from heavy truck traffic. In staff's view, the use would constitute a nuisance because of traffic, noise, number of employees, and other factors associated with the use at the proposed location.

The operation of a landscape contractor business is not an inherently incompatible land use in the agricultural community. However, the scale of operations associated with the applicant's proposal is problematic. It is anticipated that 60 employees will arrive at the site each day and return in the evening. There are no sanitary facilities on-site available for employee use. Several rustic roads exist in the area. Because rustic roads often lack base courses, truck traffic could cause serious damage and necessitate more frequent maintenance. There are potential safety issues from heavy truck travel on Wasche Road, which directly serves the site. The noise, dust, and traffic from the use are expected to adversely impact nearby homes. For these reasons, staff recommends that application S-2684 for a landscape contractor special exception not be approved.

PROPOSAL AND BACKGROUND

Introduction

Zelkova, LLC requests a special exception for a landscape contractor on a 5.3-acre portion of a 20-acre property located at 18930 Wasche Road, Dickerson. The 20-acre property ("the property") is zoned RDT (Rural Density Transfer) and is identified as P804 on Montgomery County Tax Map BU51 (see Appendix). The property is more fully described by deed in the land records of the Clerk of the Court in Liber 27436, Folios 645 - 649 as comprising Parcel A and Parcel B, each 10.002 acres.¹ The 5.3-acre portion of land that the applicant proposes to use for a landscape contractor business ("the site") is located along the entire front of the property between the street

¹ This deed incorrectly lists the address as 19630 Wasche Road.

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and the on-site 100-foot stream valley buffer. The property is located on the west side of Wasche Road, about 2160 feet north of its intersection with White's Ferry Road (Route 107). Wasche Road is a designated rustic road. The property has about 800 feet of frontage on Wasche Road.

The applicant, Zelkova, LLC, is the owner of the property. John Shorb, of Zelkova, LLC, currently operates a landscape contractor business in Kensington on Warfield Street. Because Mr. Shorb wishes both to renovate his Kensington property and procure additional space for his expanding operations, he filed this special exception application, S-2684, on 8/17/06. The application was filed pursuant to the Montgomery County Zoning Ordinance's requirements for special exceptions, including Section 59-G-2.30.00 – Landscape Contractor.

This memo constitutes the staff review of special exception application S-2684 and its accompanying preliminary forest conservation plan. The memo's purpose is to complete and correct the case record as necessary, find whether the special exception application and preliminary forest conservation plan meet relevant standards, recommend approval or denial as a consequence, and recommend necessary conditions of approval. Environmental staff makes the recommendation for the preliminary forest conservation plan, and zoning staff incorporates that recommendation into its staff report for the special exception application. In coming to its conclusions, zoning staff considers input from other divisions and agencies, the applicant, the community, and various other parties and sources.

Main Issues

The main question presented by this application is whether the use as proposed would constitute a nuisance, given certain aspects of the application that must be characterized as non-inherent to landscape contractors. These non-inherent aspects include (1) the large scale of operations – 60 employees, 38 employee cars, 20 business vehicles (trucks and van), and 6 trailers that can be attached to these vehicles; (2) the lack of permanent on-site sanitary facilities because the site cannot support a septic system; (3) the close proximity (120 feet approximately) of the nearest house; (5) a land use pattern in the vicinity that shows many properties in residential use despite the RDT zoning, as well as various houses on properties in use for agriculture; (6) the narrowness of the paved width of the road (16 to 19 feet), which makes passing difficult; (6) the restrictions on travel routes due to various road conditions in the area including weight-restricted bridges, posted restrictions against through traffic for trucks over $\frac{3}{4}$ tons, and an exceptional rustic road; and (7) the possible lack of a base course on Wasche Road and West Hunter, which might make them more prone to damage from traffic.

Neighborhood Boundaries, Zoning, Land Uses, and Special Exception Applications

For the purposes of this staff report, the neighborhood is defined as those properties fronting or having access off Wasche Road from its junction with Whites Ferry Road to just below its junction with West Hunter Road. All property in this area is zoned RDT. Several large and some small tracts are used agriculturally, and a number of small tracts are used residentially, according to data in the tax records.

The land immediately to the north and west of the subject property is in agricultural use, but with one or two houses on site. There are two parcels immediately east of the subject property across Wasche Road: one, a large tract in agricultural use, has woodlands along the road and farmland farther to the east and north, with a house and various agricultural outbuildings; the other has a house within approximately 120 feet of the subject site. Immediately to the south of the subject property is a long access drive for two parcels, each in residential use. Just to the south of the access drive is land in agricultural use, with two houses on it. There are numerous small parcels along the east side of Wasche just above its junction with Whites Ferry Road that are in residential use. There are also numerous parcels to the north of the subject site on the west side of Wasche that are in residential use.

Property Description and Sign Posting

The 20-acre property is bisected by a stream that runs roughly north-south. To the west of the stream, the property is an open field. To the east of the stream, the property is also an open field except for a 50-foot by 90-foot metal and frame barn and a farm pond. There is some fencing on the property

When staff visited the site in the afternoon on a weekday, the sign, although hanging from a front fence, was folded in half from the wind and part of it had dropped to the ground. It was thus not readable, and zoning staff called the Secretary of the Board of Appeals, who said that she would notify the applicant to fix the sign.

Wasche Road

In the *Functional Master Plan of Rustic Roads (December 1996)*, Wasche Road is classified as a Rustic Road with a 70-foot-wide right-of-way. Wasche Road intersects Whites Ferry Road (Route 107) to the south and terminates at Martinsburg Road to the north. Whites Ferry Road is a county arterial to the east of its intersection with Wasche Road, and a Rustic Road to the west. Martinsburg Road is an Exceptional Rustic Road. Wasche Road is connected to Darnestown Road (Route 28) via West Hunter Road, another Rustic Road. West Hunter terminates at Wasche Road to the west and Darnestown Road (Route 28) to the east. Please see the attached Transportation memo as well as the graphic entitled "18930 Wasche Road Vicinity" for road designations in the area, bridge restrictions, "no through truck" restrictions, and DPWT-imposed routing restrictions for the proposed special exception use.

The paved width of Wasche Road is 16 to 19 feet, and there are no sidewalks. The southern portion of the road is characterized by hedgerows or individual trees on the west side and forests along the east side. The *Functional Master Plan of Rustic Roads* notes that side banks that enclose the road are a significant feature.

Details of the Proposal

In the revised statement of operation received by zoning staff on 10/31/06 and in other submittals materials, the applicant proposes the following:

- Agricultural use on the rear portion of the property, specifically to grow ornamental trees, shrubs, and annual and perennial flowers on the rear portion. (However, the applicant's attorney later informed zoning staff verbally that the owner is now not certain what sort of agriculture he will undertake on the rear portion of the property, or whether the plants grown will be used for the landscape contractor business, but that he will maintain the rear in agricultural use.)
- A landscape contractor business on the front portion of the property, specifically for "staging of plant and bulk goods, e.g. mulch, topsoil, irrigation supplies, etc., for general dispatch from the property to landscaping jobs, and other activities typically associated with a landscape contractor use.
- Continued provision of an existing access from Wasche Road through the special exception site to the rear of the property.
- Hours of operation: 6:15 a.m. to one hour after sunset. (Number of days per week and number of days or seasons per year were not specified.)
- 60 employees, who, except for an occasional employee, will leave the site during the day for various landscaping jobs and who will return at dusk to return equipment.
- 68 exterior parking spaces for 4 5-ton trucks, 8 stakebody trucks, 2 pickup trucks, 6 trailers, 5 box vans (but the parking standards table on the revised plan received by staff on 3/7/2006 says 6), 37 employee spaces (which is calculated incorrectly, given the assumed car pooling ratio of 1.6 employees per vehicle, and should be 38), and two handicapped spaces.
- Storage of other equipment in the buildings on site. This equipment includes lawnmowers, leaf blowers, skid loaders, tractors, and similar landscaping equipment.
- Vehicle maintenance to be performed indoors.
- No office or retail sales space on-site.
- No on-site customer visits, except on rare occasions.
- 5 deliveries per week, e.g. of fertilizer, stones, plants, mulch, etc.
- Fertilizer and similar material stored inside one of the two barns.
- Other bulk materials stored in outdoor storage areas as shown on the revised site plan received by staff on 3/7/2007.

- Two above-ground fueling stations, maintained by authorized vendor and compliant with all relevant laws.
- No manufacture of mulch or compost on the site.
- No permanent sanitary facilities on the site, in accordance with a letter issued by Department of Permitting Services dated _____. Employees have access to permanent sanitary facilities at some job sites, and can erect temporary sanitary facilities at other job sites. For job sites with no sanitary facilities, the box vans will be outfitted with sanitary toilets, to be serviced by an authorized waste recovery operator.
- A 2-4 foot raised berm along the front of the property to buffer the use.
- A single driveway entrance to site, at existing location.
- Removal of the existing on-site farm pond.
- Construction of a stormwater management facility on site, in accordance with the stormwater management concept plan approved by DPS in a letter dated 2/8/2007.
- Travel routes to be taken by trucks associated with the use per a memo updated on 12/8/2006 by Edward Papazian, the applicants traffic consultant. (See Appendix for memo and also for discussion in Transportation staff memo.) Travel routes for certain trucks that allow them to go over two Whites Ferry Road restricted weight bridges to be done in accordance with a Weight Restriction Waiver granted by DPWT in a letter dated 2/27/2007.
- Landscape, lighting, and signage in accordance with revised plans received by staff on 3/7/07 and the aforementioned revised statement, which indicates that the site will not be used after approximately 1 hour after sunset and that site lighting will be automatically turned off at that time and will be on motion sensors only for security lighting through the night.

ANALYSIS AND CONCLUSION

Analysis and Review Under Current Requirements

Staff reviewed the application under current Zoning Ordinance requirements and found that the application, as noted in the Appendix and described below:

- a) does not meet the Montgomery County Zoning Ordinance's general requirements for grant of a special exceptions (Section 59-G-1.2: Conditions for Granting); and
- b) does not meet the Montgomery County Zoning Ordinance's specific requirements for the landscape contractor use (Section 59-G-2.30.00: Landscape Contractor).

Select findings are noted below.

Master Plan Conformance and Compatibility: Two master plans pertain here: the *Preservation of Agriculture & Rural Open Space Functional Master Plan (October 1980)* and the *Rustic Roads Functional Master Plan (December 1996)*.

The Agriculture Master Plan supports the RDT zoning that allows the landscape contractor use by special exception. It is important to note that when the Agriculture Master Plan was approved and adopted in October 1980, it proposed a new zone, RDT, which when enacted, classified landscape contractors, under the category of horticultural nurseries and commercial greenhouses, as by-right uses. However, in 1985, zoning amendments created standards specifically for landscape contractors and allowed them only by special exception (see ZTA's 85005 and 85014), in recognition that landscape contractors are not exclusively agricultural in character and may have potentially harmful external land use impacts.² Special exceptions, of course, are discretionary land uses, and may be authorized only if they are found to meet all required standards. Hence, even in the RDT zone, where agriculture is the preferred use and landscape contractors are classified as "Agricultural-Commercial" uses, landscape contractors are allowed only if certain standards and requirements are met. Arguments were made at the time of the zoning text amendments that changing agriculturally-related uses from permitted uses to special exception uses weakened the agricultural character of the zone, but the Council nevertheless enacted the amendments, in response to reports from DEP that there had been problems in the prior five year with adverse impacts from some of these permitted uses.

The Rustic Road Plan notes on page 5 that the rustic road designation is not intended to affect the use of adjoining land except in the design of access to subdivision. Hence the designation should not be cited as a reason in itself to deny a special exception use. However, the Plan goes on to note that "many of these roads already do not meet the needs of farmers for farm machinery and equipment between farms" (page 5) and also that many rustic roads may not have a base course (page 27), which makes them more vulnerable to damage from heavy trucks. The proposed use would add heavy trucks to these roads. On page 198, the Plan also says that "additional review relating to siting new buildings should also be considered when the construction of those new buildings has the potential to interrupt or destroy a long view across farm fields..." The proposed special exception use, including both its buildings and many vehicles parked outdoors, would disrupt a long view across farm fields.

With respect to compatibility, Community-Based Planning staff find that the use as proposed is incompatible with the adjacent residential uses, particularly the confronting neighbor at 18815 Wasche Road, approximately 120 feet distant. Hence, they recommend denial. For details, please refer to their memo, dated 4/3/2007, in the Appendix. Zoning staff agrees with their reasoning. Zoning staff notes that there are many houses in staff's defined neighborhood, as can be seen from the maps and photos in the Appendix,.

² See Technical Staff Report for ZTA 85014, October 14, 1985, pages 7 and 8.

Landscape, Lighting, and Signage:

Landscaping: Based on the landscape and lighting plans received by staff on 3/7/2007, staff finds that landscaping is inadequate. If the Board of Appeals intends to approve the use, the landscape plan must be revised as follows:

- The landscaping plan states that the existing pond shall be removed with MDE approval prior to construction of a new storm water management facility. The plan must also indicate what will replace the pond (on all the relevant plans).
- Additional hollies must be planted in the southern portion of the berm where five hollies are proposed.
- There must be landscaping along the entire front of the property, and hence landscaping must be extended farther south than shown, in order to provide maximum buffering.
- The plant size at planting of the red maple, green vase, sycamore, and river birch trees must be 2.5" to 3.0" caliper rather than 2.0" to 2.5" caliper, as proposed.
- The plant size at planting of the white pine trees must be 6 feet to 8 feet caliper, rather than the 6 feet to 7 feet caliper, as proposed.
- The footing of the proposed retaining wall may be in the stream valley buffer. Therefore, the footing must be moved out of the stream valley buffer, and a detail of the footing must be shown. (Adjust retaining wall location on all plans.)
- Remove the existing access road to the agricultural area north, out of the wetlands area. (Adjust access road location on all plans.)

Lighting and Signage: Based on the landscape and lighting plans received by staff on 3/7/2007 as well as information in the revised statement received by staff on 10/31/06, staff finds there is insufficient information to provide a complete analysis of lighting and signage. If the Board of Appeals intends to approve the use, the lighting/signage plan must be revised as follows to allow further evaluation:

- The applicant must provide a lighting fixture schedule that lists all fixture types, with fixture symbols keyed to site and landscape/lighting plans. Currently, no schedule (table) is provided.
- The schedule and lighting plan must provide details and specifications for all lighting fixtures (free-standing and building mounted exterior), including lamp type, numbers of lights and numbers of lamps, wattage, house shields, mounted height, mounting details, dimensions, hours of operations, and whether the fixture is on a timer or motion detector. Full cut-off fixtures that minimize light trespass as well as glare are preferred. Pole-mounted fixture height must not exceed 20 feet; wall-mounted fixture height must not exceed 16. Currently, numbers of lights and lamps, pole mounting details and pole-mounted height are not provided or clear.
- The applicant must provide a photometric light distribution plan that includes calculations over the entire special exception site up to the special exception site boundaries. The provided "Beam Spread Detail" is insufficient. The plan must provide a Lighting Calculations Summary showing average/maximum and average/minimum

ratios outside of the building structure. Lighting levels must be provided according to IESNA Recommended Practices, including max/min ratios.

Parking: A parking area of 68 spaces and impervious surface covering about 40% of the special exception site area is proposed. Environmental staff notes this could adversely affect the stream, and zoning staff notes that the large scale of the parking area is not rural in character. There are an adequate number of spaces proposed for the use. Because there are more than 25 spaces, a parking facilities plan must be submitted to DPS. The proposed number of parking spaces, 68, is sufficient since 64 are required, assuming the carpooling rates used by the applicant are correct (see parking calculations table on special exception site plan).

Transportation and Traffic Issues: Please refer to the Transportation Memo in the Appendix for Transportation staff's findings. The applicant has maintained the existing access to the property in response to the Rustic Roads Committee request.

Zoning staff notes that there is great community concern that the addition of more trucks on this narrow road will compromise safety. Residents note that they already have to move off the road to allow large trucks to pass. Staff saw deep ruts on the side of the road in front of the site, and also watched a logging truck drive at a fast speed right down the middle of the road in front of the site, leaving no room for anyone to pass. Thus, zoning staff finds concerns about safety credible, even though Transportation staff notes that there is sufficient road capacity. Zoning staff agrees with Community-Based Planning staff that the addition of this many more trips will change the quiet, rural character of the road. Residents also tell Zoning Staff that Route 107 (White's Ferry Road) is busy early in the morning, and there will be traffic delays and problems if landscape contractors cross the weight-restricted bridges in the manner specified by DPWT, i.e. by coming to a complete halt before crossing and only going 5 m.p.h. Finally, zoning staff finds that the proposed routing of trucks may be hard to enforce, allows many trucks to pass residential properties early in the morning, and seems to contravene the commonsense and commonly held understanding of the meaning of "no through-trucks." Trucks would have to traverse the whole length of West Hunter Road, even though it is posted "No Thru Trucks Over ¾ Tons." Although DPWT finds that these trucks should be viewed as local traffic because they would be going to Wasche Road, zoning staff doubts the residents of West Hunter would view it that way.

Environmental Issues: Please see the attached memo from Environmental staff, who recommend approval of the Preliminary Forest Conservation Plan, and who recommend certain conditions of approval for the special exception.

Subdivision: Please see the attached memo from Subdivision staff, who find that the property does not have to go through subdivision.

Water and Sanitary Facilities: Though Department of Permitting Services has written a letter indicating that a landscape contractor could use the site under certain conditions even without permanent on-site sanitary facilities, staff finds that the lack of sanitary facilities for 60 employees arriving from far distances early in the morning is highly likely to cause a public

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nuisance and set a bad precedent. With regard to well water, the applicant has received a permit from Maryland Department of the Environment to draw water for its nursery use only, and although staff spoke with MDE, it is still unclear that there would be sufficient water on site to allow both agriculture (which if using less than 10,000 gallons of water per year does not need a permit) on the rear and the landscape contractor in the front.

Community Concerns: Staff has received numerous phone calls and letters from the community in opposition to this use, and no calls or letters in support. Community members are concerned about traffic safety, as noted above, scarce well water, lack of sanitary facilities and the on-site public nuisance that would cause, and dangers posed from the fuel tanks especially if there were spills. Please refer to the Appendix.

Conclusion

Zoning staff finds that the use as proposed will constitute a nuisance in terms of noise, dust, traffic, and odors, and because there are no permanent sanitary facilities on site. Staff recommends denial.

APPENDICES

- ①-⑤ • **Excerpt from the Montgomery County Zoning Ordinance (Chapter 59 of the Montgomery County Code), as it existed on and subsequent to November 24, 2003, with staff annotation**
- ⑥ • **Vicinity Map**
- ⑦ • **Tax Map**
- ⑧ • **Zoning Map**
- ⑨ • **Aerial Photo**
- ⑩ • **Road Conditions (Road Status, Bridges, Posted Restrictions)**
- ⑪ • **Pictometry**
- ⑮ • **Revised Site Plan (received by staff 3/7/2007)**
- ⑯⑰ • **Revised Landscape and Lighting Plan (2 pages) (received by staff 3/7/2007)**
- ⑱ • **DPS Letter dated 9/19/2005 re: Sanitary Facilities**
- ⑳ • **MDE Water Appropriation and Use Permit effective 1/1/2007**
- ㉔ • **DPS Stormwater Concept Approval dated 2/8/2007**
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- ㉖ • **Community-Based Planning Memo dated 4/10/07**
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- **Transportation Memo dated 3/16/07 with two DPWT attachments (DPWT Review in letter dated 3/15/2007, and DPWT Bridge Waiver Request Approval Letter dated 2/27/07)**
- **Environmental Memo dated 4/11/2007**
- **Subdivision Memo dated 10/30/2006**
- ㉘ • **Letters of Opposition**

APPENDIX: EXCERPT FROM THE MONTGOMERY COUNTY ZONING ORDINANCE (CHAPTER 59 OF THE MONTGOMERY COUNTY CODE), as it existed on and subsequent to November 24, 2003, with staff annotation

ARTICLE 59-G. SPECIAL EXCEPTIONS, VARIANCES, AND NONCONFORMING USES.

DIVISION 59-G-1. SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1 Standard for evaluation.

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The physical and operational characteristics necessarily associated with a landscape contractor include: structures for the storage of plants grown off-site; outdoor storage of mulch, soil, and other landscaping materials, in bulk or in containers; on-site storage of business vehicles and equipment including small trucks and landscaping trailers; traffic associated with trips to the site by employees and suppliers; trips to and from the site by employees engaged in off-site landscaping activities; parking for employees; dust and noise associated with the movement of nursery and landscaping products and the loading and unloading of landscaping equipment; noise associated with the occasional testing of lawn mowers and other landscaping equipment; and early hours of operation.

There are various non-inherent factors associated with the proposed landscape contractor use: the large scale (60 employees, 20 trucks, 6 trailers); the lack of permanent sanitary facilities arising from the site's inability to sustain a septic system; the narrowness of Wasche Road; the possible lack of base course on Wasche Road; the close proximity of the nearest house (120 feet) and the existence of numerous houses in the defined neighborhood, despite the RDT zoning; the travel routing restrictions that derive from the bridge restrictions in the area, the restrictions on truck through- traffic area on certain roads, and an exceptional rustic road nearby that cannot be used for travel; and the lack of availability of public water.

Staff finds that these non-inherent factors would lead to non-inherent adverse effects, which would create a public nuisance, as discussed in the staff report, and thus these non-inherent factors are grounds to recommend denial of the proposed use.

59-G-1.21. General conditions.

A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The use is allowed as a special exception in the RDT zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The use will not be in compliance with these standards and requirements, as discussed in the staff report.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The use as proposed is not consistent with certain aspects of the Preservation of Agriculture and Rural Open Space Plan (October 1980), as discussed in the staff report. The use as proposed could add heavy truck traffic to Wasche Road, which is a Rustic Road that might not have a base course, and thus the use could damage the road and necessitate frequent maintenance. The Rustic Roads Plan (December 1996) warns that many rustic roads do not have base courses. As requested by the Rustic Roads Committee, the applicant is maintaining the single existing access to the site to preserve the hedgerows and shoulders on the road, which are important characteristics of this rustic road, as discussed in the staff report. The use as proposed would impair long views across farm fields.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The use will not be in not harmony with the general character of the surrounding residential neighborhood, which is a mixture of agricultural uses with many houses in the vicinity, as discussed in the staff report. The scale of the use, in combination with other features of the site and roadways, will cause a public nuisance.



- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use as proposed will be detrimental to the use and peaceful enjoyment of the surrounding properties. The nearest neighbor is only 120 feet away and would be subject to noise, traffic, and early morning operating hours. There are many other houses in the defined neighborhood whose residents would also experience the negative effects discussed in the staff report. The road is narrow, and the almost daily additional traffic from the landscape contractor could likely impede the farm vehicles that need to travel the road.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use as proposed will cause a public nuisance, as discussed in the staff report.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The area is zoned RDT, and this finding does not apply.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use will adversely affect the health, safety, and general welfare of residents, visitors, or workers in the area. The traffic is excessive, and no permanent sanitary facilities are possible. It is unreasonable to think that a business, even one where employees are on site only for short periods of time, does not need any sanitary facilities at all on site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the

Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

The use will not be served by adequate public facilities. The use is not going through subdivision. The lack of permanent sanitary facilities compromises the public health. The roads are too narrow to ensure sufficient passing room. Transportation staff have found that there is adequate road capacity for the proposed traffic in peak hours.

- (i) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

Zoning staff finds that the use will reduce the safety of vehicular traffic, because the road is narrow with no shoulders, thus making passing difficult.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

The applicants shall so note.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

The applicant shall so note.

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

Sec. 59-G-2.30.00. Landscape contractor.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

- (1) The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.

S-2684

The proposed special exception site area is 5.3 acres on a larger 20-acre parcel, and this standard is met.

(2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

All proposed areas are located 50 feet from the property line. Additional landscaping is necessary, as discussed in the staff report.

(3) The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

The applicant proposes to 20 trucks and 6 trailers on site, and staff finds this number excessive. Adequate parking is proposed for the proposed number of business vehicles, trailers, and employee parking (assuming the applicant's carpooling ratios are correct). See staff report, see also parking table on revised site plan.

(4) No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse.

No such operations are proposed in this landscape contractor.

(5) The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses.

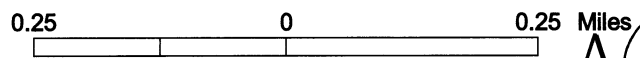
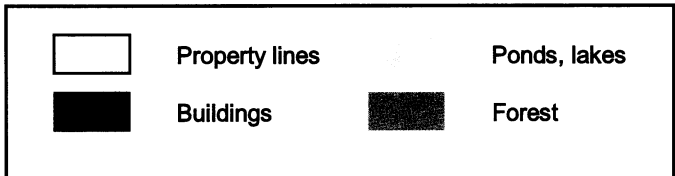
The 6:30 a.m. starting hours of operation are too early and will cause disturbance to the nearest neighbor. The applicant has not noted the number of days per week or number of seasons per year that he proposed to operate. The proposed evening hours, one hour after sunset, is satisfactory.

(6) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessary need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use will not cause adverse effects to the open agricultural land that it abuts on certain sides, but it certainly will cause adverse effects to the residents of houses in the neighborhood, and there are many houses in this neighborhood.

(Legislative History: Ord. No. 10-69, §9; Ord. No. 13-31, §5; Ord. No. 13-107, §3; Ord. No. 13-112, §1; Ord. No. 14-36, § 1; Ord. No. 14-49, § 1.)

Wasche Road Vicinity - 5-2684





Map compiled on April 12, 2007 at 10:40 AM | Site located on base sheet no - 226NW21 | Date of Orthophotos: April 2006 - Used with permission from Montgomery County Government

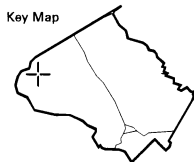
NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map



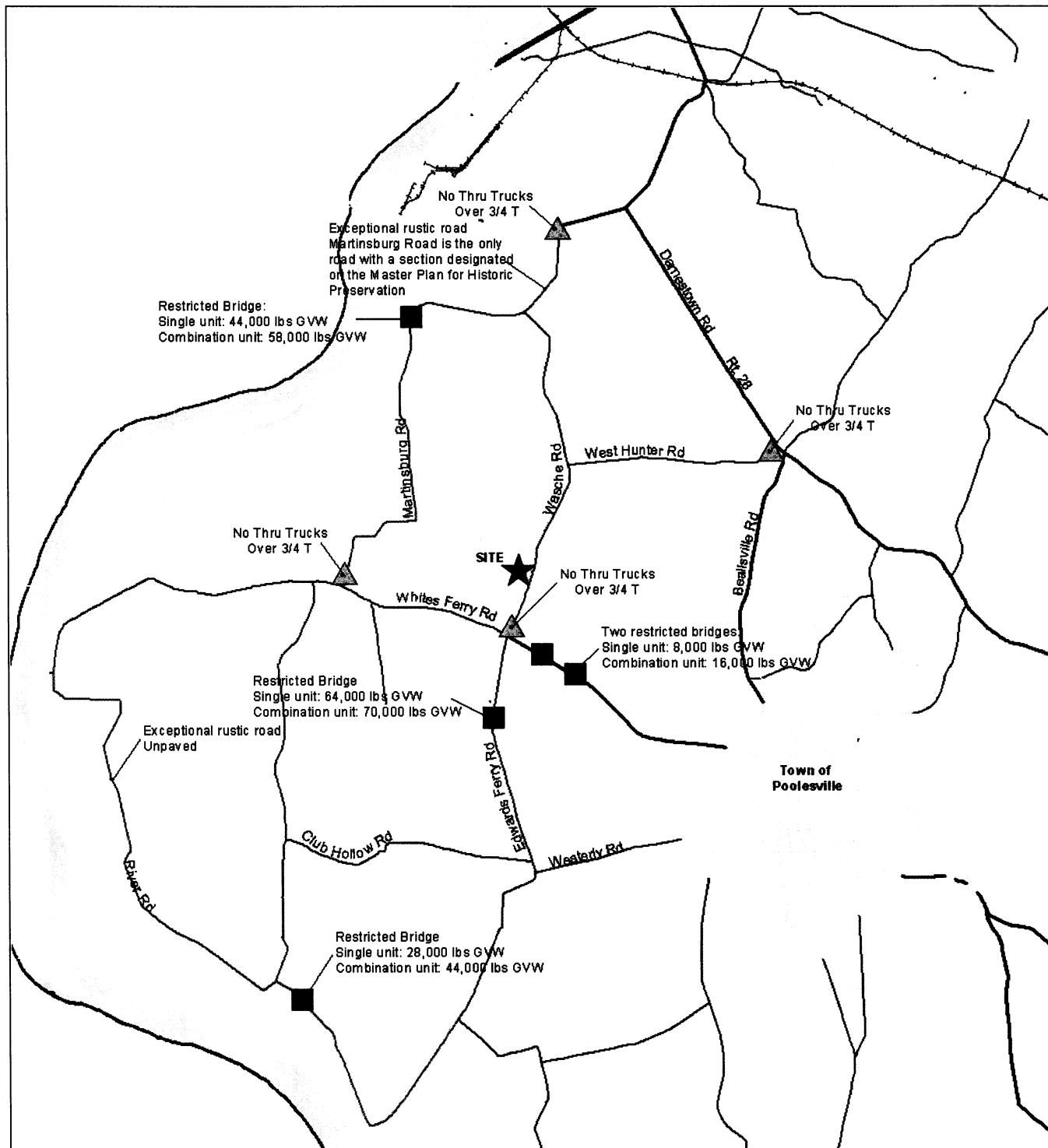
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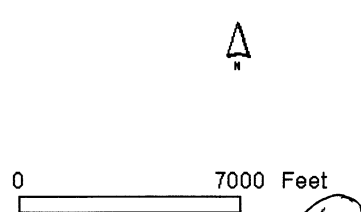
1 inch = 1000 feet
1 : 12000

ROAD CONDITIONS

18930 Wasche Road Vicinity



	No Thru Truck		Arterial (Planned)		County Arterial
	Restricted Bridge		Arterial		County Road
Master Plan of Highways:			Residential Primary (Planned)		Rural Road
	Freeway (Planned)		Residential Primary		Exceptional Rural Road
	Freeway		Principal Secondary		Park Road
	Parkway		Business (Planned)		Rural Business
	Controlled Major Highway (Planned)		Business		Westward Sector Plan (Planned)
	Controlled Major Highway		Industrial (Planned)		Westward Sector Plan
	Major Highway (Planned)		Industrial		Transferway
	Major Highway		County Arterial (Planned)		





11



(c) Copyright 2003, Pictometry International



(c) Copyright 2003, Pictometry International



LIGHTING PLAN

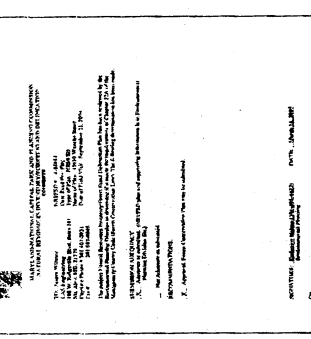
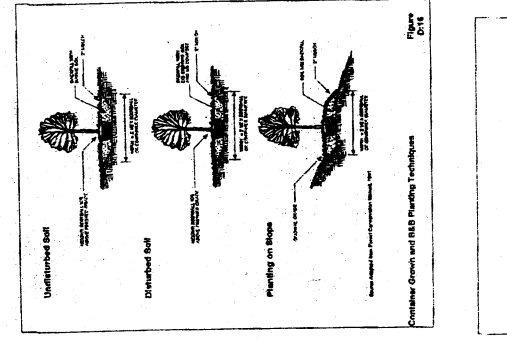
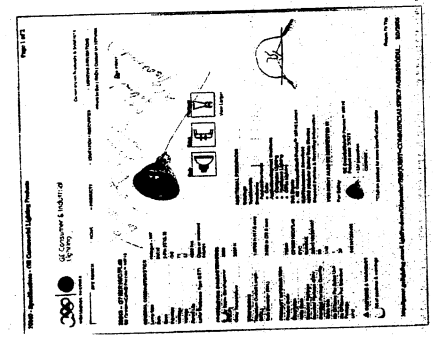
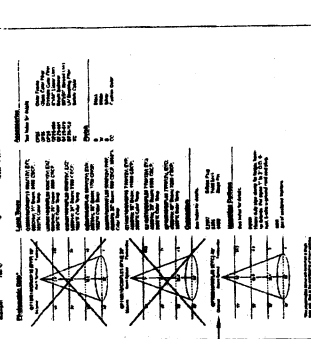
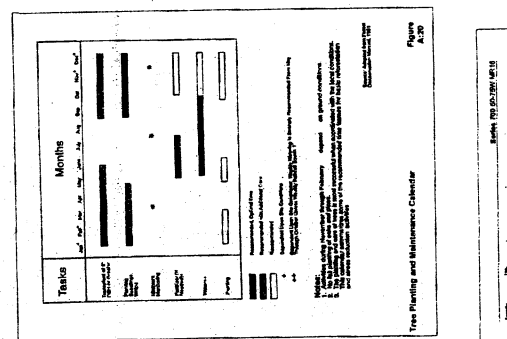
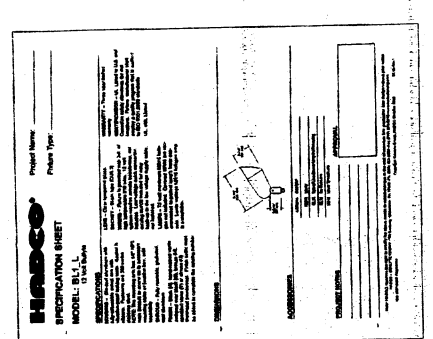
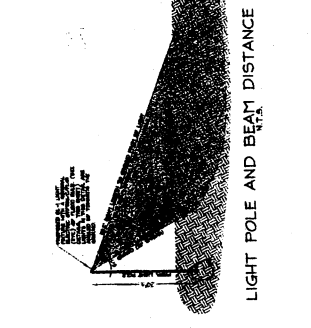
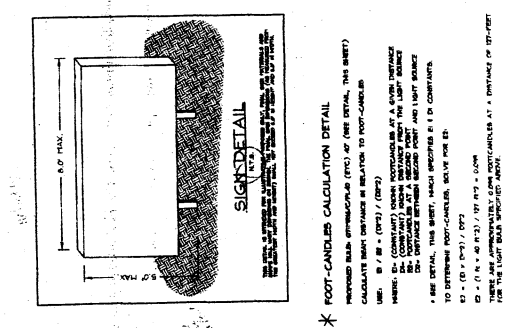
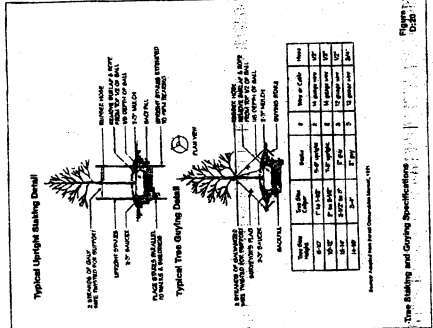
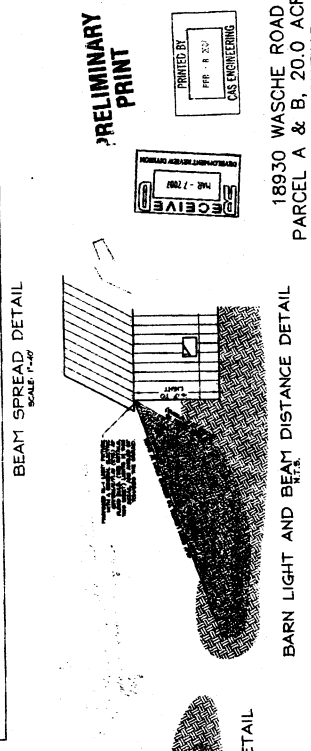
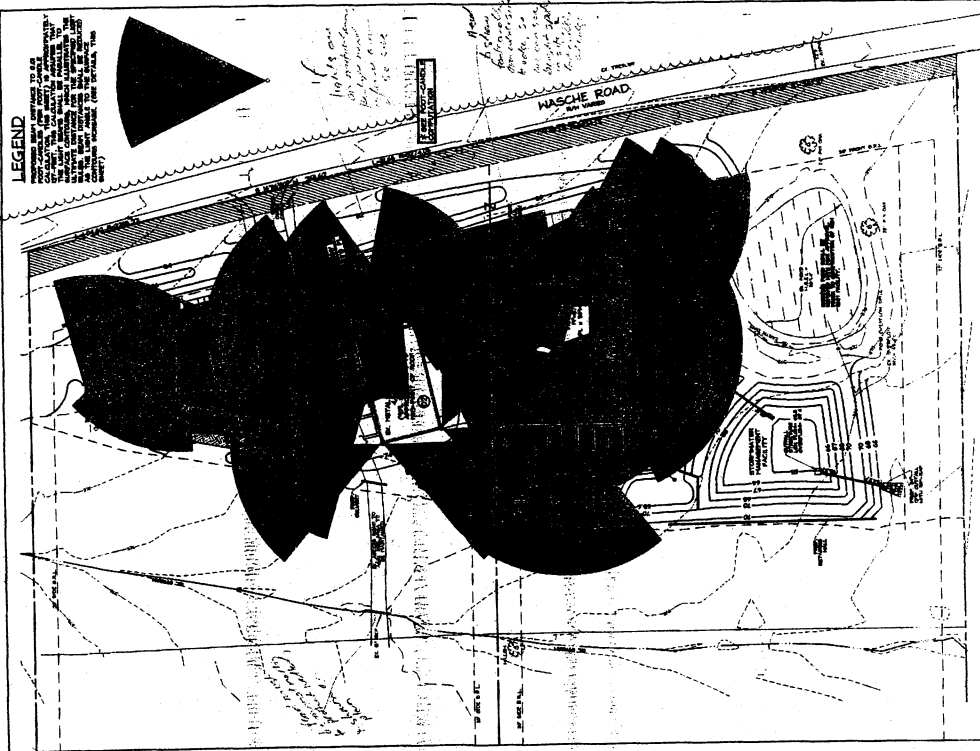
DATE	04/15/06	BY	JMM
REVISION		DESCRIPTION	
01		ISSUED FOR PERMIT	
02		REVISED PER PERMIT	
03		REVISED PER PERMIT	
04		REVISED PER PERMIT	
05		REVISED PER PERMIT	
06		REVISED PER PERMIT	
07		REVISED PER PERMIT	
08		REVISED PER PERMIT	
09		REVISED PER PERMIT	
10		REVISED PER PERMIT	
11		REVISED PER PERMIT	
12		REVISED PER PERMIT	

18930 WASCHIE ROAD
L 1102 / F 232

POLK COUNTY, FLORIDA
POLK COUNTY, FLORIDA

ENGINEERING
CIVIL, SURVEYING, LAND PLANNING
A DIVISION OF CAS ENGINEERING, INC.
10000 W. US HWY 90, SUITE 100, WINTER HAVEN, FL 33884
TEL: (888) 887-8878 FAX: (888) 887-8878

2 of 2



17



DEPARTMENT OF PERMITTING SERVICES

September 19, 2005

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

Part of
applicant's
submission
dated 10/9/07,
rec'd 10/10/05

Mr. John W. Shorb
John Shorb Landscaping, Inc.
10518 Warfield Street
Kensington, Maryland 20895

18930

Re: 19630 Wasche Road, Dickerson

Dear Mr. Shorb:

This letter confirms the Department of Permitting Services' position regarding the operation of a farm and/or landscape contractor use on all or part of the twenty (20) acres of land located at 19630 Wasche Road in Dickerson ("Property").

18930

As discussed with your attorney, Todd Brown, at a meeting on August 17, 2005, operation of a farm on the Property, which could include the growing and maintenance of flowers, trees, shrubs and other plant materials, is permitted by right. However, operation of a landscape contractor use on the Property will require approval of a special exception by the Montgomery County Board of Appeals. Subject to compliance with the operating limitations identified below and applicable legal requirements, including obtaining a landscape contractor special exception from the Board of Appeals, the Department agrees that a landscape contractor use is permitted on the Property.

As discussed at the August 17 meeting, environmental conditions on the Property preclude approval of a private septic system under current regulations, and public sewer service is not available to the Property. Accordingly, although a farm and/or landscape contractor use could be established on the Property, the lack of public or private sanitary sewerage facilities requires that certain limitations be placed on such use.

The Department agrees that one or more buildings may be constructed on the Property, subject to applicable permitting and other requirements, provided such building(s) are used for the storage of equipment, materials and/or vehicles only. Greenhouses for the growing and maintenance of plants may also be erected, again subject to applicable requirements. However, the construction of an office or office station within such structure(s) is not permitted. Further, provided such use is approved by the Board of Appeals, employees may (i) park at the Property; (ii) pick up work vehicles, materials and equipment stored at the Property each morning; (iii) leave for various job sites off the Property; and (iv) return such equipment, etc. to the Property each evening as is typical of a landscape contractor use.



18

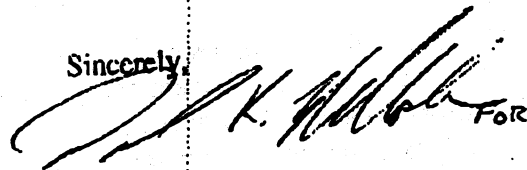
Mr. John W. Shorb
September 19, 2005
Page 2

As further discussed, the Department understands that one or more employees will be needed to water, prune and otherwise maintain the flowers, trees and other plant materials to be grown on the Property and perform other activities typical of a farm or landscape contractor use. In this regard, the Department agrees such activities may occur, but must be performed by persons who do not remain on the Property for the entire workday.

Lastly, as provided in COMCOR Section 27A.00.01.09, chemical toilets may be used only for special short term events and in the abatement of problems. The Department agrees the use of chemical toilets at the Property for 1-2 weeks during peak growing or harvesting operations is permitted (typically 3-4 peak periods per year for greenhouse production and 2-3 peak periods per year for field container production). Chemical toilets may not be installed on the Property at any other time without express Department authorization. Moreover, with respect to employees who may be on-site to maintain plant materials during non-peak times as discussed above, because there will be no bathroom facilities of any kind during these non-peak periods, provision must be made for such employees to access bathroom facilities off-site to avoid public nuisance.

If you have any questions concerning the contents of this letter, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Scala-Deiby". To the right of the signature, the word "For" is written in a smaller, less legible script.

Susan Scala-Deiby
Permitting Services Manager

slightly red'd 3/7/07

**STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION**

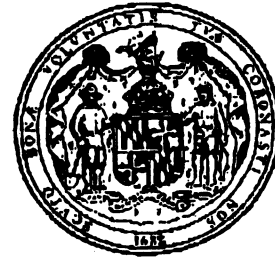
WATER APPROPRIATION AND USE PERMIT

PERMIT NUMBER: MO2006G010(02)

EFFECTIVE DATE: JANUARY 1, 2007

EXPIRATION DATE: JANUARY 1, 2019

FIRST APPROPRIATION: DECEMBER 1, 2006

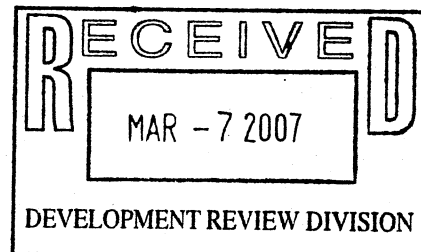


ZELKOVA, LLC

HEREINAFTER REFERRED TO AS THE "PERMITTEE", IS AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION, HEREINAFTER REFERRED TO AS THE "ADMINISTRATION" PURSUANT TO THE PROVISIONS OF TITLE 5 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME) AS AMENDED, TO APPROPRIATE AND USE WATERS OF THE STATE SUBJECT TO THE FOLLOWING CONDITIONS:

1. ALLOCATION - THE WATER WITHDRAWAL GRANTED BY THIS PERMIT IS LIMITED TO:
A DAILY AVERAGE OF 2,000 GALLONS ON A YEARLY BASIS AND
A DAILY AVERAGE OF 4,000 GALLONS FOR THE MONTH OF MAXIMUM USE.
2. USE - THE WATER IS TO BE USED FOR IRRIGATION OF A NURSERY, SPECIFICALLY FOR TWO CONTAINERIZED PLANTS AREA NOT TO EXCEED 0.5 ACRE.
3. SOURCE - THE WATER SHALL BE TAKEN FROM ONE WELL IN THE NEWARK GROUP, NEW OXFORD FORMATION.
4. LOCATION - THE POINT(S) OF WITHDRAWAL SHALL BE LOCATED AT 18930 WASCHE ROAD, DICKERSON, MONTGOMERY, MARYLAND.

CONTINUED ON PAGE 2



20

PERMIT NUMBER: MO2006G010(02)
PAGE NUMBER TWO

5. RIGHT OF ENTRY - THE PERMITTEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE ADMINISTRATION ACCESS TO THE PERMITTEE'S FACILITY TO CONDUCT INSPECTIONS AND EVALUATIONS NECESSARY TO ASSURE COMPLIANCE WITH THE CONDITIONS OF THIS PERMIT. THE PERMITTEE SHALL PROVIDE SUCH ASSISTANCE AS MAY BE NECESSARY TO EFFECTIVELY AND SAFELY CONDUCT SUCH INSPECTIONS AND EVALUATIONS.
6. PERMIT REVIEW - THE PERMITTEE WILL BE QUERIED EVERY THREE YEARS (TRIENNIAL REVIEW) REGARDING WATER USE UNDER THE TERMS AND CONDITIONS OF THIS PERMIT. FAILURE TO RETURN THE TRIENNIAL REVIEW QUERY WILL RESULT IN SUSPENSION OR REVOCATION OF THIS PERMIT.
7. PERMIT RENEWAL - THIS PERMIT WILL EXPIRE ON THE DATE INDICATED ON THE FIRST PAGE OF THIS PERMIT. IN ORDER TO RENEW THE PERMIT THE PERMITTEE SHALL FILE A RENEWAL APPLICATION WITH THE ADMINISTRATION NO LATER THAN 45 DAYS PRIOR TO THE EXPIRATION.
8. PERMIT SUSPENSION OR REVOCATION - THIS PERMIT MAY BE SUSPENDED OR REVOKED BY THE ADMINISTRATION UPON VIOLATION OF THE CONDITIONS OF THIS PERMIT, OR UPON VIOLATION OF ANY REGULATION PROMULGATED PURSUANT TO TITLE 5 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME) AS AMENDED.
9. CHANGE OF OPERATIONS - ANY ANTICIPATED CHANGE IN APPROPRIATION WHICH MAY RESULT IN A NEW OR DIFFERENT USE, QUANTITY, SOURCE, OR PLACE OF USE OF WATER SHALL BE REPORTED TO THE ADMINISTRATION BY THE PERMITTEE BY SUBMISSION OF A NEW APPLICATION.
10. ADDITIONAL PERMIT CONDITIONS - THE ADMINISTRATION MAY AT ANYTIME (INCLUDING TRIENNIAL PERMIT REVIEW OR WHEN A CHANGE APPLICATION IS SUBMITTED) REVISE ANY CONDITION OF THIS PERMIT OR ADD ADDITIONAL CONDITIONS CONCERNING THE CHARACTER, AMOUNT, MEANS AND MANNER OF THE APPROPRIATION OR USE, WHICH MAY BE NECESSARY TO PROPERLY PROTECT, CONTROL AND MANAGE THE WATER RESOURCES OF THE STATE. CONDITION REVISIONS AND ADDITIONS WILL BE ACCOMPLISHED BY ISSUANCE OF A REVISED PERMIT.

CONTINUED ON PAGE 3

21

PERMIT NUMBER: MO2006G010(02)
PAGE NUMBER THREE

11. DROUGHT PERIOD EMERGENCY RESTRICTIONS - IF THE DEPARTMENT DETERMINES THAT A DROUGHT PERIOD OR EMERGENCY EXISTS, THE PERMITTEE MAY BE REQUIRED UNDER THE DEPARTMENT'S DIRECTION TO STOP OR REDUCE WATER USE. ANY CESSATION OR REDUCTION OF WATER USE MUST CONTINUE FOR THE DURATION OF THE DROUGHT PERIOD OR EMERGENCY, OR UNTIL THE DEPARTMENT DIRECTS THE PERMITTEE THAT WATER USE UNDER STANDARD PERMIT CONDITIONS MAY BE RESUMED.
12. NON-TRANSFERRABLE - THIS PERMIT IS NON-TRANSFERRABLE. A NEW OWNER MAY ACQUIRE AUTHORIZATION TO CONTINUE THIS APPROPRIATION BY FILING A NEW APPLICATION WITH THE ADMINISTRATION. AUTHORIZATION WILL BE ACCOMPLISHED BY ISSUANCE OF A NEW PERMIT.
13. WATER LEVEL MEASUREMENTS - FOR ALL THE APPLICANT'S WELLS FOUR (4) INCHES IN DIAMETER OR LARGER, PUMPING EQUIPMENT SHALL BE INSTALLED SO THAT WATER LEVELS CAN BE MEASURED DURING PUMPING AND NONPUMPING PERIODS WITHOUT DISMANTLING ANY EQUIPMENT. ANY OPENING FOR TAPE MEASUREMENTS OF WATER LEVELS SHALL HAVE A MINIMUM INSIDE DIAMETER OF 0.5 INCHES AND BE SEALED BY A REMOVABLE CAP OR PLUG. THE PERMITTEE SHALL PROVIDE A TAP FOR TAKING RAW WATER SAMPLES BEFORE WATER ENTERS A TREATMENT FACILITY, PRESSURE TANK, OR STORAGE TANK.
14. PERMIT SUPERSESSION - THIS PERMIT HAS BEEN REVIEWED AND REVISED AND SUPERSEDES THE APPROPRIATION AND USE GRANTED BY THE FOLLOWING PRIOR PERMIT ISSUED TO:
ZELKOVA, LLC ON DECEMBER 1, 2006 (MO2006G010(01))

BY AUTHORITY OF THE DIRECTOR
WATER MANAGEMENT ADMINISTRATION


for John W. Grace, Chief
SOURCE PROTECTION AND APPROPRIATION DIV

GMB

JAN-17-2007 08:41 FROM:MDE WSP

410 537 3157

TO:3018972967

P.6/6

PERMIT NO.: MO2006G010(02) ACTID: 200680486 January 16, 2007

APPLICANT: ZELKOVA, LLC
REMARKS: ZELKOVA, LLC
PROJECT DESC: ZELKOVA, LLC

WATER TYPE: F REPORT CODE: N
AQUIFER TEST: N WQ ANALYSIS: N

ADC MAP: 15 H 5
MD GRIDS: NORTH 485000 EAST 0670000
TAX MAP NO.: BU BLOCK NO.: BSU1 PARCEL: 804 SBDN BLOCK:
LOT:
CO GEO-HYDRO MAP: B USGS TOPO: POOLSVILLE, MD

SUB-BASIN: 02-14-02-02 STREAM CODE: AQUIFER CODE: 231
WATER USE: CODE 1 CODE 2 CODE 3 CODE 4
| 205 100.0 | 0.0 | 0.0 | 0.0 |

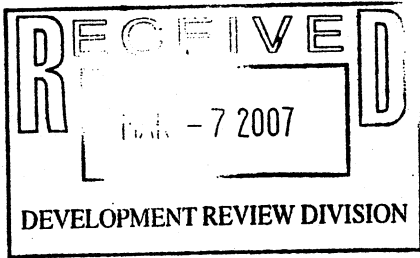
INTAKES: INTAKE ID N GRID E GRID USE PERCENT

CARBON COPIES:

SUPPLEMENTAL/RELATED (S/R):

SECONDARY NAMES:
JOHN SHORB
JOHN SHORB LANDSCAPING INC.

23



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

February 8, 2007

Reginald Jetter
Acting Director

Mr. James Witmer
CAS Engineering
108 West Ridgeville Boulevard, Suite 101
Mount Airy, MD 21771

Re: Stormwater Management **CONCEPT** Request
for 18930 Wasche Road
Preliminary Plan #: N/A
SM File #: 227537
Tract Size/Zone: 20/RDT
Total Concept Area: 5.3ac
Lots/Block: N/A
Parcel(s): A & B
Watershed: Broad Run

Dear Mr. Witmer:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via the use of a dry pond. On-site water quality control and onsite recharge are provided via the use of a surface sand filter and non structural measures.

The following **items** will need to be addressed **during/prior** to the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. The existing pond must be removed with the site layout as shown. All applicable permits to remove the pond must be obtained prior to sediment control permit issuance.
5. Geotechnical recommendations that address any potential rock or groundwater concerns must be submitted with the first detailed plan review.
6. The potential water storage facility must be located in an area that will not impact SWM drainage flows.
7. An acceptable pretreatment method must be provided prior to the sand filter for the fueling station areas.

This list may not be all-inclusive and may change based on available information at the time.

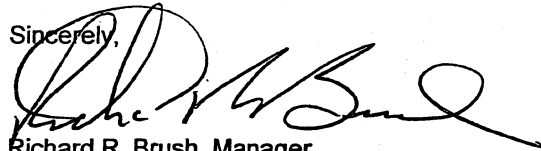
Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.



This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-6309.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm CN 227537

cc: C. Conlon
S. Federline
SM File # 227537

QN - On Site; Acres: 5.3ac
QL - On Site; Acres: 5.3ac
Recharge is provided



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 10, 2007

MEMORANDUM

TO: Sandra Youla, Zoning Analyst
Community-Based Planning Division

VIA: John A. Carter, Chief
Community-Based Planning Division

FROM: ^{CM} Callum Murray, Team Leader, Potomac and Rural Area West (301-495-4733)
Community-Based Planning Division

Leslie Saville, Planner, Potomac and Rural Area West Team

SUBJECT: Special Exception Petition S-2684 - Landscape Contractor
18930 Wasche Road

Community-Based Planning Recommendation – Denial

This property is a 20-acre parcel on Wasche Road, west of the Town of Poolesville. It lies within the Agricultural Preserve in the Rural Density Transfer (RDT) Zone, and is located on a rustic road. The Special Exception Petition proposes a landscape contractor business.

Relationship to the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (AROS) (1980)

The Foreword to the AROS Plan states, "This Plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County" (emphasis in original). The subject property is located in the Rural Density Transfer (RDT) Zone; agriculture is the preferred use in this zone (p. 79).

The RDT Zone identifies a landscape contractor use as an "agricultural-commercial" use. Section 59-C-9.3 does not identify all uses as agricultural in nature. The RDT zone use classifications also include "residential", "resource production and extraction", "transportation, communication and utilities", "commercial", "services", and "cultural, entertainment and recreational" use categories. These are all in addition to the "agricultural", "agricultural-commercial" and "agricultural-industrial" use categories. There is therefore a distinction between uses of an agricultural nature and other non-agricultural uses permitted in the RDT Zone. Landscape contractors are placed in the "agricultural-commercial" use category and not the "commercial" or "services" use category (under which other uses are identified in Section 59-C-9.3. Approximately 15 acres of the property is the subject of a declaration of intent to continue agricultural use or place into agricultural use.

The applicant therefore does not have to prove that the proposed landscape contracting use is an agricultural activity, supports agriculture or contributes to the preservation of farmland or farming. The proposed use is not in conflict with the Master Plan, but community-based

planning staff finds that it would adversely and detrimentally affect the use of the adjacent residences.

Relationship to the Rustic Roads Functional Master Plan (1996)

This property is located on Wasche Road, a Rustic Road identified by the Rustic Roads Functional Master Plan (RRFMP). The following sections of the RRFMP are relevant:

p. 5: A location along a rustic road is not intended to affect land use.

p. 27: "Various types of large trucks and automobiles are used and travel on the roads within the Study Area.Some of the equipment needed for grain production are 10- to 18- wheeler trucks with trailers to deliver supplies and take products to market.Two types of traffic are associated with landscapers and nurseries that are located in this area – trucks delivering bulk products and supplies and consumer traffic.

Many of the roads, particularly those that are being considered for designation as rustic, do not have a base course, and continuous heavy weight breaks up the road surface."

p. 164: In the description and map for Wasche Road, neither scenic views nor historic resources are located in the vicinity of the property. p. 36 discusses the anticipated change in character of rustic roads. The last paragraph of the "Changing Character" section states: "Should development occur within identified view sheds, this Master Plan recommends that, at the time of subdivision, a review should be undertaken in the development approval process **"not to restrict development"** (emphasis in original) but to recommend placement of buildings in order to maintain a scenic vista, if practical."

In this instance, the Master Plan (p. 164, Map) does not identify any important scenic view in the vicinity of the property. Page 36 of the Master Plan states that development (i.e. placement of buildings) is not to be restricted even if proposed within identified view sheds. The Rustic Roads Master Plan therefore does not restrict placement of buildings in areas that do not have any identified scenic views.

Although very significant, placement of buildings is merely one element in the universe of development impacts. In the case of the subject application, the non-inherent impacts are detrimental and will adversely affect the use of adjacent residences.

Analysis

Constraints:

- **Water:** Water availability is limited to water for irrigation of a nursery consisting of two containerized plant areas of less than half an acre.
- **Sanitary constraints:** There are no permanent sanitary facilities at this location; workers must use facilities at job sites or in vans equipped with facilities. Sanitary facilities are not available to agricultural or farm workers at this site.

Although the impact of a special exception on surrounding land uses in the agricultural zones is not controlled as stringently as in a residential zone, community-based planning staff concludes that the proposed intensity of activity is incompatible with the adjacent residences, particularly

the property at 18815 Wasche Road, approximately 120 feet away.

The Neighborhood defined by the Land Use & Zoning Analysis prepared for the applicant by Site Solutions, Inc., is described as encompassing "approximately 10 single family homes." This appears to be an underestimate of the number of dwelling units 1000 feet from the subject site on the north, west and east, and extending south to Whites Ferry Road.

Based on the Revised Statement of Petitioner and because of the types of road surrounding this site, impacts are expected to extend beyond 1,000 feet of the property. Potential impacts to the neighbors and the surrounding roads considered by staff include:

- Traffic: The applicant anticipates up to 60 employees arriving in 37 cars at about 6:15 a.m.; the employees will then leave in 19 work trucks. The process will reverse each evening. These additional trips will not exceed roadway capacity, but will more than double the existing peak volumes which will change the character of the neighborhood and the roads.
- Truck sizes and weights:
 - Whites Ferry Road east of Wasche Road is the only road to the site that is not a rustic or exceptional rustic road. Rustic roads are usually narrow and do not have shoulders. Roads surrounding the site are between 16 and 19 feet wide. All rustic roads approaching the site are signed, "No Thru Trucks Over ¾ Ton."
 - To minimize impacts to rustic roads, access by Whites Ferry Road from the east is preferred. Two bridges on that section of Whites Ferry Road are weight-limited. DPW&T has issued a waiver allowing 13 of the applicant's trucks to cross them after stopping and proceeding at 5 mph.
 - The vendor trucks delivering stone and mulch, and other trucks without waivers will be directed to use Route 28 to West Hunter Road (a rustic road) to Wasche Road (a rustic road). Many rustic roads do not have a base course. The Rustic Roads Master Plan warns that heavy weights break up the roadway surface.
 - Based on the Revised Statement of Petitioner (19 trucks), permitting this use will add about 11,000 truck trips annually to these roads. The Waiver Application included stone and mulch deliveries but did not include plant deliveries, dumpster pick-up and deliveries, fuel deliveries or other likely deliveries by truck.
- Hours and days of operations have not been specified. Hours have been estimated as beginning about 6:15 a.m. and ending about an hour after sunset. The petition is silent on the number of days per week the site will be in use. Agricultural uses can include long hours and seven-day weeks during certain seasons, but not for extended periods.
- Well and septic: According to the Revised Statement, the area outside of the special exception petition will be used for growing ornamental trees, shrubs and annual and perennial flowers. According to the Water Appropriation and Use Permit (Number MO2006G010(02), effective January 1, 2007), the water from the approved well is "for irrigation of a nursery, specifically for two containerized plant areas not to exceed 0.5 acre." The latter two areas appear on the Site Plan in the special exception area. This apparent discrepancy should be explained and corrected as necessary. No septic will be on the site. No information has been provided on wash areas for trucks and equipment.

- Noise from cars, trucks, lawnmowers, leaf blowers, skid loaders, tractors, and other equipment should be anticipated during hours of operation.
- Odors from exhaust should be expected, as well as odor from mulch. Dust and particulate matter (especially from diesel engines) can also be expected from these sources. Odor and exhaust could reasonably be anticipated from agricultural activities, but on a seasonal basis, rather than the intensity of use proposed by the special exception petition.
- According to the Revised Statement, only minimal lighting is proposed. According to the Landscape, Lighting and Signage Plan, there will be 16 lights with two lamps each for a total of 32 lamps, each 16 to 20 feet high. The existence of motion sensors are noted on the Revised Statement but not on the Site Plan. The Revised Statement should be explicit about the number of lights and the existence of motion sensors should be clarified.

Additional factors considered, from the Revised Statement:

- The special exception use will include the staging of plant and bulk goods, the storage of 19 motor vehicles and six trailers, and the use of lawnmowers, leaf blowers, skid loaders, tractors, and similar landscaping equipment.
- Fertilizer, stones, plants, mulch, and fuel will be stored on site.
- The maximum number of employees on the site at one time will be 60 employees.
- Customers are located in Maryland, Virginia, and the District of Columbia.
- There will be no permanent sanitary facilities on the property. Five utility vans will include sanitary toilets.

Additional factors, noted from the Site Plan:

- About 5 acres of the property appears to be included in the Site Plan, with the balance either included in the stream buffer or in the area designated for agricultural uses. Within the five acres, about one-third is taken by the existing pond or proposed storm water management facilities. The remaining two-thirds are largely paved, with much of that area designated as parking.
- The property consists of Parcel A and Parcel B. The parcels mostly mirror one another, with two of each land use shown on each. This creates duplicate indoor storage areas, construction materials storage areas, plant storage areas, fueling stations, dumpsters and parking, including truck and handicap parking.

Site Considerations

In the description of Wasche Road, the Rustic Roads Functional Master Plan (RRFMP) designates the Significant Features of the road as the side banks that enclose the road and the stonewall near Martinsburg Road (pp. 164-165). The Driving Experience notes of this portion of the road, "[t]he southern section... has forests along portions of the east side and hedgerows or individual trees on the west side." The road frontage of this property includes both side banks and hedgerows. The applicant has worked with the Rustic Roads Advisory Committee and staff

to retain the existing driveway, thereby retaining both the side banks and the hedgerows. Likewise, the applicant has made adjustments to the planting plan to include mostly native plants that are consistent with the rural character of the area; many appear on neighboring properties.

Impacts to Wasche Road and Surrounding Rustic Roads

Access to this site is from Martinsburg and West Hunter Roads to the north, and Whites Ferry and Edwards Ferry Roads to the south. The Revised Statement of Petitioner indicates that 60 employees will arrive on site daily, and work trucks for the operation include 19 trucks and vans, and six trailers that will be traveling to and from the site. Approximately five deliveries of fertilizer, stones, plants and mulch are expected weekly.

West Hunter, Edwards Ferry and the west side of Whites Ferry Roads are rustic roads, Martinsburg Road is an exceptional rustic road, and the east side of Whites Ferry Road is a country arterial. To minimize the impact on the rustic and exceptional rustic roads, the preferred route to the site is to travel from the east on Whites Ferry Road, then turn north onto Wasche Road. But, because of two severely weight-restricted bridges on this section of Whites Ferry Road, the applicant's work trucks can only cross these bridges with a waiver, and a waiver application denies use of these bridges to delivery trucks.

Site access is constrained in several ways:

- truck restriction signs indicate No Thru Trucks Over $\frac{3}{4}$ Ton;
- weight-restricted bridges are marked;
- narrow widths and one-lane bridges slow two-way traffic; and
- roadway base courses may not exist on some roads.

The applicant has offered an agreement whereby trucks use only specific roads. The agreement specifies that trucks will approach the site from Route 28, turning west onto West Hunter Road (a rustic road), then turning south on Wasche Road to the site. Two questions arise from this: whether West Hunter and Wasche Roads can withstand the weight of these trucks and how the agreement can be enforced. The Rustic Roads Master Plan states: "Many of the roads, particularly those being considered for designation as rustic, do not have a base course, and continuous heavy weight breaks up the roadway surface" (p. 27). No record has been found that indicates whether Wasche and West Hunter Roads have a base course.

The adequacy of these roads to handle the weight of additional truck traffic should be established before approval of a special exception use requiring numerous new truck trips initiated from the site and deliveries of heavy materials to the site.

CONCLUSION

This proposed use is clearly incompatible with the adjacent residential uses, particularly the confronting neighbor at 18815 Wasche Road, approximately 120 feet distant. The contributing factors are non-inherent. Arrival of multiple vehicles and employees in the pre-dawn darkness, up to 32 lighting lamps, 16 to 20 feet high, start up noise from diesel engines, beeping of reversing vehicles, odor from exhausts, and potentially seven day-a-week operations. The proposed intensity of use far outweighs the existing or potential agricultural activities on the site. Coupled with the lack of sanitary facilities and the inadequacy of roads to handle the weight of substantial additional truck traffic, the proposed use is incompatible with the adjacent

residences. Community-based planning staff recommend that the petition be denied.

CM:ha: G/Murray/S-2684



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Sly 120 01 S 12/1/07
S-2684

March 16, 2007

MEMORANDUM

TO: Sandra Youla
Development Review Division

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: Ki H. Kim, Planner/Coordinator *KKK*
Transportation Planning

SUBJECT: Landscape Contractor
Special Exception Case No. S-2684

This memorandum represents the Transportation Planning staff's Adequate Public Facilities (APF) review and recommendations on the subject Special Exception application for permitting operation of a landscape contracting business on a site located at 18930 Wasche Road in Dickerson, Maryland.

RECOMMENDATION

The Transportation Planning staff recommends the following conditions for transportation requirements related to approval of this application:

1. The number of employees under the Special Exception application S-2684 should be limited to a maximum of 60.
2. No truck traffic to and from the site will be allowed via Martinsburg Road. The applicant's employees and vendors are to enter into binding employment agreements and vendor contracts to prohibit truck travel via Martinsburg Road.
3. The applicant shall provide an easement for a future right-of-way dedication to a point thirty-five-feet from the centerline for their frontage along Wasche Road.
4. The applicant shall obtain a permit for site access as shown on the site plan dated February 07, 2007.

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DISCUSSION

Site Location

The currently vacant site is located on the west side of Wasche Road, just north of the intersection of Whites Ferry Road and Wasche Road in Dickerson.

Site Vehicle Access

A single access point to the site is proposed from Wasche Road. Wasche Road is classified as a Rustic Road with a 70-foot-wide right-of-way and the traffic volumes (57 trips during the weekday peak hour) associated with the proposed landscaping facility are relatively low and will not adversely affect the rustic road classification of Wasche Road. The proposed development is not subject to subdivision as part of the special exception, but the petitioner has agreed to preserve the master planned right-of-way via an easement for future dedication. Because of the rustic road classification, Wasche Road is not anticipated for any improvement except spot safety improvements. The Staff accepted the applicant's request for an easement for a future right-of-way dedication at such time as Wasche Road may need to be improved by the County. The Rustic Roads Advisory Committee (RRAC) reviewed an initial proposed access point, and requested that the access point be moved to the north so that their site access minimizes impact on the qualities that merited that rustic road classification. The applicant revised the site plan to reflect the RRAC's request to show the new access point acceptable to the RRAC. The staff reviewed the site plan and finds the proposed access to the site and the internal traffic circulation system, as shown on the site plan, are safe and adequate. Due to its location in a rural area without existing sidewalks, no pedestrian facilities are needed for this use.

Truck Travel Route

There are several weight-restricted bridges in the vicinity of the site. On Whites Ferry Road east of Wasche Road, two bridges restricting weight to 8,000 pounds for single-unit vehicles and 16,000 pounds for combination-unit vehicles exist. On Edwards Ferry Road south of Whites Ferry Road, one bridge restricting weights to 64,000 pounds for single-unit vehicles and 70,000 pounds for combination-unit vehicles exists. Also, "No Thru Trucks Over ¾ Ton" signs exist on Wasche Road and West Hunter Road.

The applicant submitted a supplemental analysis for truck travel routes to be taken by the landscaping trucks on November 13, 2006 and updated on December 8, 2006. The supplemental analysis includes alternative truck routes to avoid weight-restricted bridges on Whites Ferry Road and addresses the "No Thru Trucks Over ¾ Ton" restrictions on Wasche Road, West Hunter Road and Martinsburg Road. The applicant has requested a Weight Restriction Waiver to cross the two Whites Ferry Road bridges, and obtained a grant. A copy of the Division of Capital Development's February 27, 2007 approval letter is attached. It is noted that this permit only applies to the work trucks owned by the applicant and does not extend to the vendors' delivery trucks. Further, the permit must be renewed periodically.

The Transportation Planning staff has reviewed the proposed alternative route, north along Wasche Road and east along West Hunter Road to MD 28, with DPWT staff. We agree with the DPWT staff's finding that the alternative truck routes are adequate as described in Gregory Leck's March 15, 2007 letter (copy attached). In light of the "No Thru Trucks Over ¾ Ton" restriction on Wasche Road, West Hunter Road and Martinsburg Road, the Transportation Planning staff agrees with the DPWT staff's finding that truck travel accessing the site from the northeast by way of West Hunter and Wasche Roads is considered local in nature. As local traffic, the trucks do not violate these restrictions.

Martinsburg Road between Wasche Road and the Mirant plant entrance is a 9-foot-wide concrete pavement augmented by 4-foot-wide (nominal width) gravel shoulders. The concrete shows signs of deterioration and there are potholes in the gravel shoulders. The applicant's trucks could exacerbate those conditions. In light of its rare cross-section and Exceptional Rustic Road designation, trucks will not be allowed to enter or exit the site by way of Martinsburg Road. We agree with the DPWT staff's recommendation that the conditions of approval of the Special Exception include the applicant's proposal to have employees and vendors enter into binding employment agreement and vendor contracts to prohibit truck travel over Martinsburg Road and the weight-restricted bridges on White's Ferry Road.

Local Area Transportation Review

Four intersections were identified as critical intersections to be affected by the proposed development, and were examined in the traffic study to determine whether they met the applicable congestion standard. The congestion standard in the Rural Policy Area is 1,400 Critical Lane Volumes (CLV). The critical lane volume (CLV) impacts of the proposed development to the site on critical intersections in the vicinity of the site were analyzed and are summarized in Table 1.

Table 1

Intersection Capacity Analysis with CLV				
During the Weekday Peak Hour				
Intersection	Existing Traffic Volumes		Background and Total Future Traffic Volumes	
	AM	PM	AM	PM
Wasche Road/Whites Ferry Road	135	148	137	180
Wasche Road/Site Entrance	-	-	76	81
Wasche Road/West Hunter Road	26	31	46	56
Darnestown Road/West Hunter Road	1204	790	1224	810

As shown in the above table, all intersections analyzed are currently operating at acceptable CLVs (below 1,400), and this acceptable level will continue for the background (the existing traffic plus traffic from approved and unbuilt developments) and total future development conditions during the weekday morning and evening peak hours. Alternative options for different truck travel routes have a small effect on the numeric CLV values, but do not affect the staff conclusion that the application passes the LATR test.

SUMMARY

The Transportation staff concludes that approval of the proposed landscaping contractor under the subject Special Exception application with the conditions identified above would not adversely impact the surrounding roadway system. The applicant has adequately addressed the road sufficiency issues as related to truck weight restrictions and rustic roads in the vicinity of the site.

KHK: H\WPDOCS\ SPEX S-2684- Revised Memo for SPEC S-2684

KK:mj

Attachments

03/15/07 THU 15:03 FAX 2407772080

TRAFFIC ENGR

002



DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

March 15, 2007

Mr. Ki Kim, Planner Coordinator
Transportation Planning
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE Special Exception No. S-2684
Zelkova, LLC
18930 Wasche Road

Dear Mr. Kim:

We have completed our review of the Local Area Transportation Review Traffic Impact Study and supplemental documents submitted by the applicant's representatives for the above-referenced project. We recommend approval of this Special Exception subject to the following comments:

- 1) As discussed in my November 9, 2006 e-mail message, from a CLV-calculations standpoint, we agree that the applicant's projected site-generated traffic volumes will not cause any unacceptable traffic congestion.
- 2) Our Division of Capital Development has conditionally granted the applicant a Weight Restriction Waiver Request to cross Whites Ferry Road Bridges Nos. M-187 and M-189. A copy of their February 27, 2007 approval letter is enclosed. Please note that this permit only applies to the work trucks owned by the applicant (JSLI); it does not extend to the vendors' delivery trucks nor does it extend (for any party) to any other weight-restricted bridge in the vicinity of the site. The vendors' delivery trucks will need to bypass Whites Ferry Road Bridges Nos. M-187 and M-189 using a detour route.
- 3) In light of its rare cross-section and Exceptional Rustic Road designation, trucks will not be allowed to enter or exit the site by way of Martinsburg Road. We agree that trucks accessing the site from the northeast by way of West Hunter and Wasche Roads are considered local in nature; as such, they are exempt from the "No Through Trucks over 3/4 Ton" restrictions.

Division of Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
240-777-6000 • 240-777-6013 TTY • 240-777-6030 FAX
www.montgomerycountymd.gov

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Mr. Ki Kim
 Special Exception No. S-2684
 March 15, 2007
 Page 2

- 4) We have reviewed the alternate route proposed by Edward Y. Papazian of Kimley-Horn and Associates, Inc. for vehicles traveling to the site that exceed the nearby bridge weight restrictions. We accept the route being proposed by Mr. Papazian.

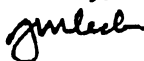
We do not object to his proposal to have employees and vendors enter into binding employment agreements and vendor contracts to prohibit travel over Martinsburg Road and the weight-restricted bridges. However, we believe such restrictions should be a condition of approval of the Special Exception and should also apply to the applicant.

We recommend that, as a condition of Special Exception approval, that these restrictions apply to the applicant, his employees, and his vendors. We also encourage the Planning Board and the Board of Appeals to condition their approvals on a binding commitment or other mechanism from the applicant that ensures their trucks (and their vendors' trucks) will not use Martinsburg Road to enter or exit the site.

- 5) Wasche Road is classified as a Rustic Road; as such, the applicant will need to minimize impact on the qualities that merited that classification. We recommend the applicant be required to dedicate right-of-way to a point thirty-five (35) feet from centerline. Site access and any other construction within the right-of-way will require a permit from the Department of Permitting Services.

Thank you for the opportunity to review this Special Exception application. If you have any questions or comments regarding this letter, please contact me at 240-777-2197 or e-mail me at greg.leck@montgomerycountymd.gov.

Sincerely,



Gregory M. Leck, Manager
 Development Review Group
 Traffic Engineering and Operations Section

Enclosure

M:\sub\gm\docs\TIS\S-2684, Shorb Landscaping, 18930 Wasche Rd FINAL

cc: Todd D. Brown; Linowes and Blocher, LLP
 Edward Y. Papazian; Kimley-Horn and Associates, Inc.
 Sandra L. Youla; M-NCPPC Development Review
 Martin L. Grossman; Board of Appeals
 Sarah R. Navid; DPS Right-of-Way Permitting and Plan Review
 Greg Hwang; DPWT Capital Development/Design
 Emil Wolanin; DPWT Traffic Engineering and Operations
 Kyle K. Liang; DPWT Traffic Engineering and Operations
 David C. Adams; DPWT Traffic Engineering and Operations

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DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

February 27, 2007

Arthur Holmes, Jr.
Director

Ms. Heather Dlhopsky
Mr. Todd D. Brown
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814-4842

Re: Whites Ferry Road Bridge No.
M-187 and M-189; Weight Restriction
Waiver Request; Zelkova, LLC at
18930 Wasche Road,
Dickerson, Maryland

Dear Mr. Brown and Ms. Dlhopsky:

This is in response to your waiver request of February 8, 2007, on behalf of Zelkova, LLC (Applicant), for the trucks specified in the request to cross the referenced two structures.

Your waiver request for vender's delivery trucks owned by Riverside Mulch or Tri-State Stone is denied. The specified gross weight of each truck exceeds the absolute maximum permissible load level of each structure to which the structure may be subjected. A detour must be used for these trucks to bypass the structures.

The permit for crossing these two structures is granted for the specified Applicant's work trucks owned by JSLI subject to the following conditions:

1. The permit is only valid for the business related to Zelkova, LLC for the property located at 18930 Wasche Road in Dickerson, Maryland.
2. The permit is only valid for the JSLI trucks, as submitted, with a maximum gross weight specified. Number of crossings for each truck will not be restricted.
3. The truck must come to a complete stop before proceeding across the bridge at a maximum speed of five (5) miles per hour.

Division of Capital Development

101 Monroe Street, 11th Floor • Rockville, Maryland 20850 • 240-777-7221 • 240-777-6003 FAX
www.montgomerycountymd.gov

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Ms. Heather Dlhopsky
Mr. Todd D. Brown
February 27, 2007
Page 2


4. Zelkova, LLC agrees to indemnify and save harmless the County against all liabilities, claims and demands for personal injury or property or other expenses suffered or rising out of or caused by any negligent act or omission of the permittee, its subcontractors, agents, and/or employees in connection with this waiver.
5. Zelkova, LLC also agrees to defend the County in any action or suit brought against the County caused by the permittee's negligence error, and/or omission.
6. This permit will expire on February 20, 2008. An application for a new waiver permit shall be submitted to our office at least 3 weeks before the expiration date. The County will re-evaluate each truck to determine if a new permit will be granted.

The County will strictly enforce these conditions to protect the safety of the bridge and the traveling public. Please be advised that this permit does not allow the permittee or any subcontractor to use any other restricted bridge in the vicinity of this location.

If these written conditions are acceptable to Zelkova, LLC, please have John W. Shorb of Zelkova, LLC sign below indicating their concurrence and return the original to the County before proceeding with the crossing.

If you have any questions, please call Mr. Barry N. Fuss, at 240-777-7261 or Mr. Greg Hwang, at 240-777-7279 for further clarification.

Sincerely,



Bruce E. Johnston, Chief
Division of Capital Development

CONCURRENCE:
John W. Shorb
Zelkova, LLC

BEJ/gl

cc: Barry N. Fuss
Greg Hwang
Project File/Reading File



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

TO: Sandra Youla, Community Based Planning

VIA: Mary Dolan, Acting Chief, Countywide Planning *H*

FROM: Michael Zamore, Environmental Planning *mz*

DATE: April 11, 2007

SUBJECT: 1. Forest Conservation Plan
Landscape Contractor, 18930 Wasche Road

2. Special Exception S-2684
Landscape Contractor, 18930 Wasche Road

STAFF RECOMMENDATIONS

W. Dolan
Approval of the Forest Conservation Plan, with the following conditions:

1. Applicant to submit a Final Forest Conservation Plan (FCP) that meets the requirements of Section 109(B) of the Forest Conservation Regulations. Final FCP to be approved by M-NCPPC prior to any clearing or grading for the new facility.
2. Required site inspections by M-NCPPC monitoring staff per Section 110 of the Forest Conservation Regulations.
3. Applicant to shift the existing farmland access road and stream crossing north, out of the wetland buffer as part of this special exception. The new road location must be shown on the Final FCP.
4. Applicant to place stream valley buffer areas on the property in a Category 1 Conservation Easement.

Approval of Board of Appeals petition No. S-2684 with the following conditions:

1. Compliance with the conditions of the Montgomery County Department of Permitting Services (DPS) letter of February 8, 2007 approving the project's Stormwater Management Concept Request.
2. Compliance with the Montgomery County Noise Control Ordinance (Chapter 31B of the Montgomery County Code).
3. Compliance with the conditions contained in the Maryland Department of the Environment's Water Appropriation and Use Permit of January 1, 2007.
4. Fuel storage tanks must meet required technical standards and must comply with all county, state and federal air and water quality permitting requirements.

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Forest Conservation

The site has an approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) (No. 42005064) issued on January 8, 2007. Environmental Planning staff has reviewed the Preliminary Forest Conservation Plan (FCP) submitted for the project. The plan shows the 20-acre site as unforested. The Conservation Threshold is 4.32 acres and the Afforestation Threshold is 1.73 acres. By planting 1.73 acres onsite within the stream valley buffer as proposed, the project will meet the requirements of Forest Conservation Law. We recommend approval of the FCP.

Environmental Guidelines

This site is not located within a Special Protection Area. A small stream with associated wetlands flows south near the center of the property. Wetlands and stream valley buffer areas are being protected per the Environmental Guidelines (*Guidelines for Environmental Management of Development in Montgomery County*). The applicant has agreed to remove the existing farm pond and reforest part of the stream valley buffer, which will help reduce thermal impacts to the stream. The existing farm access road currently crosses into the wetland buffer. Proposed regrading of the site and paving of most of the special exception area, could both negatively impact the wetlands. We have conditioned our approval of the FCP in part, on the applicant shifting the road north, out of the wetland buffer.

Imperviousness

The applicant proposes to pave an extensive area close to the stream (approximately 40% of the special exception area), which could adversely affect the stream. Efforts should be made to reduce imperviousness and allow more groundwater recharge through rain gardens or increased landscaping.

Watershed Protection

The property is in the Broad Run watershed draining directly to the Potomac River. The Broad Run originates west of Poolesville near Wasche Road and West Hunter Road. Flowing south towards the Potomac River it passes through an area of Montgomery County that has changed little in over one hundred years. The Montgomery County *Countywide Stream Protection Strategy* (CSPS, 2003 Update) lists stream quality, current habitat status, and average stream conditions in the Broad Run as 'good' and habitat stability as 'stable' based on data collected between 1994 and 2000. CSPS has designated the Broad Run as an Agricultural Watershed Management Area.

Because of the area's high water table, fuel or chemical spills on the site could quickly lead to groundwater contamination. Extra care must be taken to quickly contain any such spills if they occur. Additionally, the applicant provided no information on wash areas for trucks and equipment. The applicant must ensure that these activities do not lead to groundwater contamination or reduction in stream quality.

Quality of Open Space

The project site is in the Agricultural Reserve, an area set aside in 1980 to conserve farmland and rural open space and to protect such areas from development. As a commercial venture the project has the potential to mar the area's rural character and be contrary to the objectives of the *Preservation of Agricultural and Rural Open Space Functional Master Plan* that focuses on the protection of farmland and rural open spaces.

Stormwater Management

The applicant has an approved stormwater management concept. The stormwater management concept consists of on-site channel protection measures via the use of a dry pond. On-site water quality control and onsite recharge will be provided via the use of a surface sand filter and non-structural measures. In its letter of February 8, 2007 approving the project's Stormwater Management Concept Request, DPS listed specific issues that the applicant must address at detailed sediment control/stormwater management plan stage,

Water and Sewer Availability

The area is within the Agricultural Preserve. Individual parcels in the area are served by private wells and septic systems. The Maryland Department of the Environment (MDE) has set conditions for the facility's withdrawal and use of water, in its January 1, 2007 approval of a Water Appropriation and Use Permit for the project. The Department of Public Works and Transportation (DPWT) has limited the use of sanitation facilities for the site to portable facilities. This seems inadequate to serve the 60 people associated with the project and could lead to contamination of the site.

Noise

The operation must comply with all applicable provisions of the Montgomery County Noise Control Ordinance (Chapter 31B of the Montgomery County Code). Under the Ordinance the receiving property line limits are 65 dBA (daytime) and 55 dBA (nighttime).

Air Quality

Dust and fumes from truck exhausts could potentially be problematic. The applicant must make an effort to ensure that trucks using the facility are in compliance (at least certification) with MVAP and other air quality standards. All installations that are potential sources of air pollution (including stationary sources such as gasoline storage tanks and fuel pumps) are regulated and require permits of approval from county and state authorities. State regulations (COMAR 26.11.24 and COMAR 26.11.13.04C) require the use of both Stage I and Stage II systems. Stage I vapor recovery systems trap gasoline vapors emitted during refilling of storage tanks by a tank truck, while Stage II vapor recovery systems capture gasoline vapors emitted during vehicle refueling. Using Stage I with Stage II recovery creates a closed system that recovers all gasoline vapors and returns them to the gasoline storage tank for eventual return to the fuel processing plant. Fuel storage tank and fuel pump installation and use, must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE). In particular, the applicant must properly install, maintain and use Stage I and Stage II Vapor Recovery systems and a Vapor balance line, and must obtain applicable air quality permits to construct.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

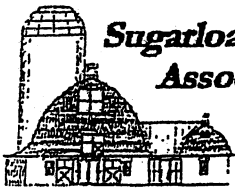
MEMORANDUM

Date: October 30, 2006
To: Sandra Youla
Community Based Planning Division
From: Taslima Alam
Subject: Board of Appeals Petition No. S-2684

According to the application, the special exception proposes use of a 20-acre property consisting of two parcels, for a landscape contractor operation. The proposal includes use of an existing barn, and a construction of a new barn, for storage of agricultural material and equipment. No office or retail space will be included, and the property will not have well or septic facilities. Approximately 15 acres of land will continue to be farmed.

In the staffs opinion, the subject property is exempt from subdivision requirements under Section 50-9 (a)(2) of the Subdivision Regulations, which states that recording of a subdivision plat is not required for land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires issuance of a building permit. This includes a special exception use approved under divisions 59-G-1 and 59-G-2, Montgomery County Code, unless the Board of Appeals requires subdivision as a condition of the special exception.

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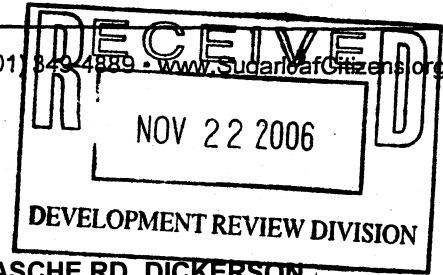
**Sugarloaf Citizens'
Association**

*5/4 rec'd at T11/28/2006
5-2684*

"Fighting to protect our rural legacy"

Linden Farm, 20900 Martinsburg Road, Dickerson, Maryland 20842 • Phone (301) 849-4880 • www.SugarloafCitizens.org

November 20, 2006



**OPPOSITION TO PROPOSED SPECIAL EXCEPTION AT 18930 WASCHE RD, DICKERSON MD.
CASE NO.S-2684**

TO: Sandra Youla, AICP, HKIP
Zoning Analyst
Community-Based Planning Division

Dear Ms. Youla,

For over thirty years, the Sugarloaf Citizens Association has taken a pro active role in preserving the integrity of the Agricultural Reserve. Our track record as a strong civic and environmental organization is well known throughout the county. After examining the proposal for Special Exception, Case # S-2684, for 18930 Wasche Rd, Dickerson, we have taken action to oppose the plan.

This unanimous vote of opposition on the part of our Sugarloaf Board reflects grave concerns for the cumulative impacts and scale of this proposal on our Agricultural Reserve. Time and again we have seen such proposals which cross the line into industrial use in terms of their impacts on already existing agricultural and long-standing residential communities. Clearly, the intensity and scale of this proposal are well beyond reasonable boundaries for a landscape-contractor special exception.

Having just celebrated the 25th anniversary of the nationally acclaimed Agricultural Reserve, our hope is that the county will take great care in evaluating this type of special exception. We fully endorse the community's concerns that this proposal "would have severe non inherent adverse affects on the surrounding neighborhood." First, in terms of traffic, we would remind you that Wasche Rd. is a designated "Rustic Road" and as such, is not equipped to handle the numbers and scale of trucks and other vehicular traffic associated with the proposed use. It is telling that their driveway design is significantly wider than Wasche Rd. itself.

Their plan for year round portable outhouses to serve the 60 plus employees is expressly forbidden under the County Health Department Code which permits portables only for one time events. Their plan also indicates that the on-site employee will apparently have to seek off-site lavatory facilities. This sanitation issue alone should stop the proposal in its tracks.

Other environmental concerns include the on site fueling station, fuel tanks and chemical containers. These present serious safety and environmental hazards in a community which, unlike urbanized areas, does not have a fire hydrant system and is solely dependent on a fire station some distance away in the town of

44

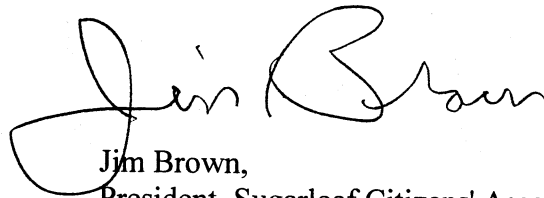
Beallsville. This region also sits atop the federally designated "Piedmont Sole Source Aquifer," a recognition that the groundwater aquifer here is the only source for potable water for humans and livestock, as well as for irrigation of crops. With a facility this size, there is significant potential for groundwater contamination. There is also an exceptionally large impervious surface proposed to service the trucks, landscaping equipment and other vehicles. We object to this because of the loss of groundwater recharge to the aquifer, the paving over of agricultural lands, as well as the potential for hazardous waste runoff into the watershed.

Further, the County Code specifies that the special exception "Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone." We submit that this proposal will have significant negative impacts on existing nearby farming operations and on the movement of agricultural equipment in the region on the network of rustic roads. It is safe to say that the proposal is "not in harmony with the general character of the neighborhood," an overarching principle by which all special exceptions should be measured.

Because of its scale, industrial design, associated lights, noise and traffic, this proposal is clearly a "trucking terminal" masquerading as a landscape contractor special exception. Aside from the token plan for a small area to be planted in nursery stock, it in no way contributes to the mission of preserving agriculture and open space as specified in the 1980 Master Plan.

We therefore urge denial of this special exception.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Brown". The signature is written in a cursive, flowing style with a large initial "J".

Jim Brown,
President, Sugarloaf Citizens' Association

202-365-2113

5/4 rec'd 3/14/2007



RUSTIC ROADS ADVISORY COMMITTEE

March 8, 2007

Ms. Sandra Youla
Development Review Division
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: S-2684 Landscape Contractor – Wasche Road

Dear Ms. Youla:

We are writing to advise you of the Rustic Roads Advisory Committee's comments regarding the proposed site. We reviewed the plans and the Revised Statement of the Petitioner at our meeting on November 30, 2006.

It is our understanding that delivery trucks to the site will be directed to not use Martinsburg Road, an exceptional rustic road; we support this requirement. However, because of the two weight- restricted bridges on Whites Ferry Road, it appears that most trucks accessing the site will need to travel more circuitous routes along other rustic roads (Wasche Road, West Hunter Road, Edwards Ferry Road, Westerly Road). The Committee has concern that additional trucks using roads that have not been constructed for such traffic will contribute to the break up of the roads' surfaces.

Regarding the impact of the proposed site on the adjacent section of Wasche Road, we recommend that the existing driveway be incorporated into the site plan, rather than cutting a new one through the existing embankment and line of foliage. The trees and vegetation along the road should be preserved. Additionally, we would like to see any signage in keeping with the rustic character of the road in terms of size and design.

We appreciate the opportunity to comment on this plan. If you have any questions regarding our comments, you may contact us through our staff coordinator, Ms. Sarah Navid in the Department of Permitting Services.

Sincerely,

Jim Arnoult, Interim Chair
Rustic Roads Advisory Committee

- | | |
|-------------------|--------------|
| Laura Van Etten | Todd Butler |
| Cheryl Imperatore | Kevin Foster |
| Fred Lechliden | Mike Seebold |

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Department of Permitting Services

FROM :OZAH

FAX NO. :2407776665

Jan. 12 2007 01:21PM P2

*S-2684 1
slg rec'd TO 1/16/07*

**REPORT ON ADVERSE AFFECTS OF PROPOSED SPECIAL EXCEPTION AT
18930 WASCHE RD, DICKERSON MD.**

CASE NO.S-2684

**TO: BOARD OF APPEALS FOR MONTGOMERY COUNTY
Office of Zoning and Administrative Hearings
Attn: Martin L. Grossman
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville Md. 20850**

RECEIVED

JAN - 5 2007

**OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS**

**PREPARED BY: Gil and Anne Rocha
18815 Wasche Rd.
Dickerson, MD. 20842**

DATE: 1-3-07

PAGES: 7, including this one.

Dear Mr. Grossman;

Thank you for considering these important issues concerning the petition for special exception at 18930 Wasche Rd. My wife and I own the property at 18815 Wasche Rd., across the street of the applicant's property. Our property is shown as plat 960 on the county tax map. I am confident that after considering the following information, you, the Planning Board and Board of Appeals will agree that the proposed use for this property falls far short of the standards set in the Montgomery County Code.

Contrary to what the applicant states in his petition, the proposed use would have severe non-inherent adverse affects on the surrounding neighborhood. It would cause significant traffic safety hazards and problems on this small country road. It would pose a fire and chemical threat from the on site fueling station, and have fuel tanks and chemical containers which would be a possible source of contamination to the surrounding private wells, should there be any spills. It is not in harmony with the general character of the neighborhood. And without restroom facilities, it would be a sanitary nightmare, turning the area into a literal cesspool.

cc:gloria

EXHIBIT NO. 37
REFERRAL NO. S-2684

(47)

FROM : OZAH

FAX NO. : 2407776665

Jan. 12 2007 01:22PM P3

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I. NON-INHERENT ADVERSE AFFECTS TO NEIGHBORHOOD

A. NOISE:

The noise generated by 60 people shutting the car doors, starting and warming 20 trucks, loading commercial mowers on to trailers, loading material onto trucks with fork lifts, and bobcats, and the back up beepers of all these vehicles, will destroy the peaceful enjoyment and economic value of our property, as well as that of the other neighbors. The County Code only allows granting of a special exception as follows:

59-G-1.21 (a) A special exception may be granted when the Board, Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

59-G-1.21 (a) (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The applicant states in his Exhibit "K" - Land Use and Zoning Analysis, on page 9, item 5, "The nearest residence is nearly 1000 feet away from the edge of the proposed use." In fact the distance from the side of our house to the fence on the applicant's side of Wasche Rd, is 153 feet. The applicant's statement of "1000 feet" is a gross misrepresentation of the truth, and I believe, a deliberate attempt to deceive the Board. I would expect the board to refer this misrepresentation of the facts to the proper department for further investigation, just as any other time false information is entered on official documents for the purpose of financial gain. Regardless of the applicant's incorrect statement of distance, our bedroom window is less than a stones throw away from the center of the proposed use site. Clearly the noise generated by this level of activity will be detrimental to the peaceful enjoyment and economic value of our property.

B. FUMES AND DUST:

In addition to the noise, the fumes and dust of up to 60 cars, 20 trucks and multiple mowers starting, loading and fueling in a gravel parking area, will inundate our property. Again the Code specifically list these items as cause to disqualify the granting of a special exception.

59-G-1.21 (a) (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The applicants use site sits Northwest of our house. As I'm sure you are aware, every time a cold front comes thru our area, we are hit with steady Northwest winds that often last for days. This will stream all fumes, dust and odors from the applicant's property directly across our house.

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C. SAFETY:**1. Fire Hazard:**

The close proximity of the site to our house means the danger of any kind of fire on the applicants site would devastate our home. With large volume fuel tanks, as well as dozens of vehicles with gas tanks, one careless cigarette tossed into the grass to smolder long after the last employee has left the property could ignite a fire ball. There are no fire hydrants on Wasche Rd. The fire department would have to use the shallow pond for water once their tank runs out, assuming the fire did not prevent them from accessing it.

2. Contamination of Ground Water:

There would also be the serious treat of contamination of ground water. Should any of the fuel leak or be spilled, the ground water may become contaminated. Our sole source of water is well water. Granting this special exception would be an unjustifiable threat to our water supply.

3. Road Capacity To Handle Large Vehicles:

This project will create safety hazards and problems due to the small size of Wasche rd. The applicant shows on his site plan that Wasche is a 22 foot wide asphalt road. Measurements taken today, of the asphalt between the applicant's property and ours, show that the asphalt is less than 18 feet wide in several places. Wasche Rd. is posted for thru trucks of ¾ ton maximum. The width of the road is a problem every time large vehicles traveling in opposite directions pass each other. When this occurs, one or both of the vehicles must leave the pavement in order to pass. This causes large ruts on the side of the street as the heavy vehicles hit the soil when the ground is wet, and cause the edge of the pavement to break off. Subsequent rain then causes significant erosion. The increase in large truck traffic associated with a landscape contractor will on make this problem worse.

D. SANITATION

1. The project is seriously flawed in designed due to the fact that there are not sanitation facilities proposed. It is beyond belief that anyone is considering having 60 employees drive out to the Northwest corner of the county at 6:00AM, park in the dark, load 20 work trucks for the day and drive back down county, and not have any restroom facilities. Where are these 60 people going to relieve themselves, and wash their hands? The applicant's revised statement of petitioner states that he will have vans with on board porta-jons. The applicant refers to Exhibit "M" of his petition, the letter from the Department of Public Works. I suggest he read it. Paragraph 2, on page 2 of the DPS letter clearly states that :

"chemical toilets may be used only for special short term events and in the abatement of problems. The Department agrees the use of chemical toilets at the Property for 1-2 weeks during peak growing or harvesting operations is permitted (typically 3-4 peak periods per year for greenhouse production and 2-3 peak periods per year for field container production). Chemical toilets may not be installed on the Property at any other time without the express department authorization. ..."

The likely scenario is that the applicant's site landscaping improvements with serve as relief stations for 60 people twice daily. The whole neighborhood will soon smell like a cesspool.

II. SUBDIVISION OF PROPERTY

The applicant has gone to great lengths to make it clear that the petition for special exception only applies to the front of the property. However, he claims that his intended plantings on the back of the property legitimize his claim to suitability for this project in the Ag reserve. I urge the Board of Appeals to exercise its discretion to require the entire property be subject to the conditions established in any possible special exception. Failure to do so would mean the applicant could simply change his mind about using the rear of the property for agricultural purposes.

We believe that it is clear that the applicant plans to use the rear of the property in a way other than what he has stated. Consider that he has previously submitted a pre preliminary site plan for 2 houses on the rear of the property. This plan is still on file at the Park and Planning Office. When that plan is compared to the site plan for the special exception plan, it becomes apparent that he is keeping the area proposed for the special exception at the front of the property separated from the area in his preliminary site plan for the 2 houses on the rear of the property. According to Staff at Park and Planning, the applicant has argued that he is entitled to put 2 houses on the 20 acre lot because the property was divided by deed prior to being rezoned.

The applicants subsequent submission of Exhibit "S" - Agricultural Declaration of Intent- dated 9-1-07, is meaningless due to the fact the peoples *intent* changes like the wind. Should this Special Exception be granted, his *intent* may change to that of challenging the county on the number of houses he can build on the rear of the property, or to subdividing the property to sell the rear as a building lot.

The point is that there would not be any legal restriction to using the rear of the property for purposes other than agriculture.

III. CODE DEFINITIONS

- A. Sec. 59-A-2.1 Landscape contractor: The business of designing, installing, planting, or maintaining lawns, gardens, or other landscaping and snow removal services, including tree installation, maintenance or removal, at off-site locations with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. The delivery and installation of horticultural products originating on the farm is an accessory use to the farm.**

The proposed use for this site falls short of actually being a Landscape Contractor. While the applicant obviously has a Landscape Contracting business, it is in Kensington. There will not be any office activities here, a critical part of any contracting business. The applicant makes this point himself as the reason that he doesn't need restroom facilities. The property is being turned into a truck depot and parking lot. In fact, it fits the Code's definition of Truck Terminal much better.

- B. 59-A-2.1 Trucking terminal: A tract of land used for the loading or unloading of trucks and the temporary storage of goods and commodities being transported ●in● interstate and/or intrastate shipment. A trucking terminal may include loading and unloading platforms, warehouse facilities for temporary storage of goods ●in● transit reservoir parking for trucks and truck trailers waiting to be loaded or unloaded and related business offices.**

Trucking terminals are not listed as a permitted use in the RDT zone, but are required to be in the II zone. Even if they were, I believe they would be required to have restrooms.

IV. DEFICIENCIES IN LIGHTING AND LANDSCAPE PLANS

A. Lighting:

Our property is at a 5 foot higher elevation than the applicants property. The Shamlian's is several feet higher than ours. The source of the lights shown of the proposed plan would be visible from our houses and properties. The plans to have the lights on motion detectors means that the lights will be going on frequently at night due to the areas abundant wildlife.

B. Berm:

Do to the higher elevation of the surrounding properties, a 2-4 foot berm would be insufficient screening.

(52)

FROM :OZAH

FAX NO. :2407776665

Jan. 12 2007 01:23PM PB

7

SUMMARY:

The granting of this special exception would be in clear contradiction to both the spirit and letter of the law in the county code. The non-inherent adverse effects on the neighborhood are numerous and severe. They are also sufficient for the denial of the petition.

Sec. 59-G-1.2. Conditions for granting.**59-G-1.2.1. Standard for evaluation.**

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

59-G-1.21. General conditions.

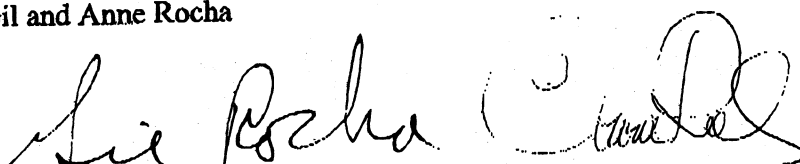
(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

This proposed use is not in harmony with the neighborhood. As I type this report, the applicant has workers on his property running machinery. My entire house is vibrating from the noise. It sounds as if a jetliner is taxiing outside the house. There are no other similar uses in the neighborhood. This use would keep us from ever being able to open the windows again at night, as the industrial activity starting before 6:00AM would surely be hell every morning.

Sincerely:

Gil and Anne Rocha




Warren S Shamlan Jr.
18810 Wasche Road
Dickerson Maryland 20842

November 9, 2006
Martin L Grossman
Hearing Examiner
Montgomery County Maryland
100 Maryland Ave. Room 200
Rockville Maryland 20850

Dear Martin L Grossman:

I have just received your letter regarding Motion to Amend Petition for Zelkova LLC. Case # S-2684.

My wife and I have been opposed of this entire project from the beginning and now they want to add even more.

My family and other neighbors need more time to go over and understand completely the Petitioners latest requests

Sincerely, Warren & Shirley Shamlan Residents since 1983

RECEIVED

NOV 15 2006

**OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS**

(54)

slightly rec'd 10/11/07

January 15th 2007

Case No. S-2684

Dear Sandra Youla and Martin Grossman
Of the Md. National Capital Park & Planning Commission
And the Office of Zoning Administration:

My wife Nancy and I moved to Wasche Road in 1980, the very year the Agricultural Reserve was established. We were attracted to its quiet rural life, surrounded by farms and neighbors that appreciated the same. Over the years the landscape here on Wasche Rd. has not changed, even though we have endured county projects that include a composte facility, an incinerator and the future development of a county landfill. Thanks to all our responsible citizens of the county who choose to recycle their refuse, the landfill has for now been postponed. And thanks to the responsive and sensitive approach the county's leaders and workers have shown, the projects have been only slightly objectionable. I realize the importance and magnitude of these projects were for the greater good of all the citizens in the county.

Now comes a commercial landscaping giant, Zelkova LLC, that claims a zoning exception is in order so it can stage its operations here on Wasche Road while they Renovate their primary Kensington location. This request serves no greater good to anyone but Zelkova's owners and operators. No one will benefit from their activities but their company "selves!" With the majority of landscape customers located in the District of Columbia and the lower Montgomery County area, the employees of Zelkova will have to drive from their homes in the metro area to Dickerson and then ride back down county or D.C. to work, return at the end of the day back to Dickerson and then drive back to their homes around the metro area. Seems like a waste of time and resources! There may be a strategy though that involves the temporary use of the Wasche Road commercial facility for its landscape operations and when the Kensington facility has been renovated, to sell the newly zoned commercial parcel to another business and take a huge profit by its sale. It's my understanding that the 20 acre property purchased by Zelkova LLC across the road from me sold for the equivalent of my 2 and a third acre newly assessed property value.

Now I don't object to commerce per se, but I see some real problems and hardships with approving this rezoning classification. The principal of protecting the Agricultural Reserve is badly compromised. Everyone claims they want the "AR" protected from commerce and development. In fact just about every candidate and elected official for county and state offices this past fall promised they would protect and preserve the Agricultural Reserve. I heard no one mention that "other than large commercial landscape companies, we will protect and preserve the AR!!" Approving Zelkova LLC's request goes against the promises and reassurances that our elected local government officials made to all of us. Let's ask them what they think!

Our neighborhood will be seriously impacted by the daily operations of this commercial landscaping business. The sheer magnitude of it's activities will negatively effect the

neighbors, the local and cross-state commuters and the recreational bicyclists, who use Wasche Road as an enjoyable, safe route of choice. The safety of children and schoolbus routes, commuters and even the employees of Zelkova LLC will be challenged at the intersection of Wasche road and Whites Ferry Road (Route 107). The majority of commercial landscape vehicles are underpowered due to the payload they carry. Most vehicles tow equipment and materials along with the weight of the the labor crews. Whites Ferry Road (Rt. 107) is a major commuter route from Virginia into Maryland and Maryland into Virginia. The Wasche Rd./Whites Ferry Rd. intersection is dangerous especially due to the westbound traffic approaching the crossroad without a clear view because of the hill just before the intersection. In the 26 years of my living here, there have been many near miss collisions in attempting to make a left turn from Wasche Rd. onto Whites Ferry Rd. east, you simply can't see the oncoming traffic fast enough. There is always little time to react to this blind approaching intersection. Should 20 commercial landscape trucks, many towing a trailer, and approximately 60 employees making 2 to 4 trips per day, there will be motor vehicle accidents and injury and possibly loss of life.

The scale of Zelkova LLC's project is too extensive for our rural community and the daily fallout is neither desireable or warranted. We do not want the threat, burden or hardship that this project represents and plead that you help protect Wasche Road and our community. Thank you for your considerations.

Sincerely,



Thomas F. Brown
18701 Wasche Rd.
Dickerson, Md. 20842



Residential, Commercial, Farm and Country Properties

November 7, 2006

RECEIVED

Board of Appeals for Montgomery County
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, MD 20850

NOV 7 2006
**OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS**

Re: Case No. S-2684, Petition of Zelkova, LLC

Dear Board of Appeals:

I am opposed to the petition of Zelkova, LLC for a special exception to operate a commercial landscape contracting business at 18930 Wasche Road, Dickerson, Maryland.

My brothers, sisters, and I own the 130-acre farm across the road from this property. As this is an active agricultural property, we feel that this exception will devalue our property. We do not believe that this is a compatible use in an agriculture zone. We can understand a small operation—a few employees, a few trucks—but 60 employees and 19 motor vehicles is a commercial operation and does not conform to agriculture zoning. This operation would be more suitably placed in areas such as the Montgomery County Airpark.

Furthermore, Wasche Road is classified as a Rural Rustic Road and not capable of handling the traffic that this business will generate. Local farmers move large machinery—combines, tractors, grain trucks, planters—on this road as a normal course of agricultural business. Additional traffic will be burdensome and cause a dangerous safety condition.

I urge you to deny this exception and instruct the petitioners to downsize their operation or locate their commercial business in the properly zoned part of the County.

Sincerely,

Franklin A. Jamison
President

EXHIBIT NO. 24
REFERRAL NO. S-2684

19939 Fisher Avenue ~ P.O. Box 86 ~ Poolesville, MD 20837
Phone (301) 428-8200 Fax (301) 428-8133
E-Mail jamison@jamisonrealestate.com Internet <http://www.jamisonrealestate.com>

11/9/06
cc: S. Youde

(57)

John R Yates
19016 Wasche Rd
Dickerson, Md 20842
301-972-7051

Wasche Road

Wasche Road is a designated rustic road - narrow with very little or no shoulder. From Hunter Road to White's Ferry there are roughly forty dwellings and in a sense it is our neighborhood. People have moved here for a variety of reasons two of which are affordability and the desire to live ~~in~~ a quiet, peaceful life in a rural area.

Dwellings vary considerably from modest to 'average' to five or six rather large houses. Many raise farm animals either for their own use or to provide income. Some have gardens, others with more land grow farm crops such as corn, soybeans, wheat, and pasture.

I own 45 acres adjoining 18930's north boundary. My wife and I ^{Sally} bought this property in 1959 and have lived here for most of the time since. In the 1960's, with permission, I grazed sheep there to supplement my own pasture. The land, like much of the land around it tends to be shallow with poor drainage. I have seen at least two owners try and fail to get a septic permit.

I know the land rather well as I do the neighborhood.

One problem I have with this proposal is that it help create traffic that could well cause problems. I frequently walk either up or down Wasche between the hours of 6:30 and 7:30. When two cars meet coming in opposite directions I step well to the side of the road into the weeds to assure my safety. Without pedestrians, or cyclists traffic does all right, but for large trucks going in opposite directions it's close; make that a truck and large combine and one of them pull way over. The more we add to this the more dangerous it becomes especially with A.M. school buses factored in.

Noise is another problem for those of us ^{living} ~~living~~

living near the staging area. Twenty to forty cars pulling into the gravel parking area at 6:15 will do more than just add to road traffic problems. Engine noise of backing cars and trucks, the slamming of doors, banging of hoods, the sounds of fork lifts loading sand, gravel, large potted plants and shrubs; all of this will certainly be disturbing to those of us in close proximity to it. These are not everyday agricultural pursuits esp. # when they go on five to seven days a week. This seems more like an industrial operation and does not belong in a neighborhood like ours. Not only will our way of life be disturbed, our property values will surely drop.

I have environmental and sanitation concerns as well. Nearly every large landscaping operation I know of has large quantities of material to dispose of such as dirt, rocks, hunks of concrete and asphalt plus wood, grass and other debris. They have said they will not make mulch but what about compost? Will they use Shady Grove to dispose of unwanted material or will it end up here? It is a concern.

There will undoubtedly be agricultural poisons as well as fuels which even in the best of circumstances could seriously contaminate areas of soil and even our water supply.

Another most important point. ~~There~~ There is neither toilet facilities nor wash up facilities on the property for those coming in to use before going out for the day nor for those few who will remain on the site all day. This not only endangers the health of the employees those who might be subject to disease from the effects of unsafe sewage not properly and safely disposed of.

Finally there is the matter of water usage. A large landscaping operation ~~tends~~ growing the plants, shrubs, trees, and flowers it plans to use will use a considerable ~~quantity~~ quantity of water. It is my experience that even using trickle irrigation on my garden crops tends to lower the ~~water~~ level.

(1)

of the water in my pond very quickly in dry periods
so very usual in this area.

I know there is a pond already on the property
and that another is proposed. If these two can
deliver the considerable volume needed for this
operation, then well and good. Resort to well
drilling, which has not been discussed, fortunately,
could have serious effects on neighboring wells.

In conclusion, for the reasons mentioned I do
not feel that the proposal and its amendments
are not in keeping with the agricultural zoning
of this area.

Sincerely
Jack Yates

54 rec'd Tues 11/28/06
S-2684

Sandra Youla
Parks and Planning
301-495-4624
301-495-1304 (fax)

Dear Ms. Youla,

I am writing today as a concerned resident on Wasche Road in Montgomery County Maryland. As you are aware Zelkova, LLC, has applied for a special exception case # S-2684 to run a large landscaping business.

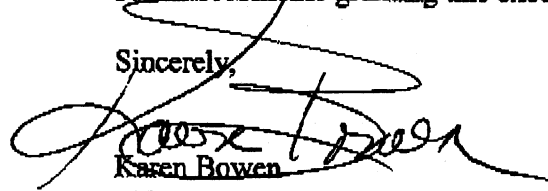
I am concerned for several reasons:

1. Increased traffic on our quiet road. The road is a very small two lane road with little room for error due to no sidewalks or even much space on either side of the road. Children riding bikes, walkers and the numerous bicyclists will be put in danger.
2. Excessive noise: Ours is a quiet neighborhood and the noise will be a nuisance.
3. Road Maintenance I am sure that increased traffic with heavy vehicles will cause road damage, who will be liable to pay for the damages????
4. Odor: There may be strong odors emitted from the business.
5. Lack of sanitation: I understand that no septic permit has been applied for, so what are the 60-80 employees to do to relieve themselves, GO OUT INTO THE FIELD?????
6. Spillage: It is also my understanding that the business plans to maintain a large fuel tank on site to re fuel the vehicles. All residents have well water, what happens when leakage from the fuel tanks contaminates our wells/drinking water.
WHO WILL BE LIABLE???

I AM VERY CONCERED ABOUT THIS EXCEPTION BEING GRANTED. WHO WILL BE LIABLE WHEN THE CURRENT RESIDENTS PROPERTIES ARE RUINED DUE TO LACK OF COMPLIANCE BY THE BUSINESS OWNERS AND EMPLOYEES???????

Please reconsider granting this exception.

Sincerely,



Karen Bowen
19320 Wasche Road
Dickerson, MD. 20842
301-407-0003 (home)
240-848-6734 (cell)

(65)