MCPB
ITEM #
DATE

MEMORANDUM

DATE:	December 10, 2007
TO:	Montgomery County Planning Board
VIA:	Rose Krasnow, Chief, Development Review Division
FROM:	Ralph Wilson, Acting Zoning Supervisor
SUBJECT:	Special Exception Application S – 2711, Landscape Contactor and Preliminary Forest Conservation Plan
APPLICANT:	Melody Butler, owner and operator
CASE NUMBER	S-2711
ZONE	Rural Density Transfer (RDT) Zone
FILING DATE:	July 30, 2007
MASTER PLAN:	Functional Master Plan for the Preservation of Agriculture and Rural Open Space and Rustic Roads Functional Master Plan

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STAFF RECOMMENDATION:

1. Approve Preliminary Forest Conservation

All conditions of approval for the preliminary forest conservation plan dated November 5, 2007 must be satisfied before issuance of sediment and erosion control permits by the Department of Permitting Services.

2. **Approve Special Exception Application S-2711, subject to conditions.**

The operation of a landscape contractor business is not an inherently incompatible land use in the agricultural reserve. The Council, in designating a landscape contractor a special exception in the Rural Density Transfer (RDT) zone, established that a landscape contractor is a use compatible with other uses in the zone, absent unacceptable adverse effects on the neighborhood. The zoning ordinance specifically provides that the impact of an agricultural special exception on surrounding land uses in the agricultural zone does not need to be controlled as stringently as might otherwise be required in a residential zone. Agricultural special exceptions, unlike special exceptions in the non-agricultural zones, require only 3 affirmative votes of the Board of Appeals for approval.

The characteristics of the proposed landscape contractor operation and the operational limitations and site improvements being imposed on the applicant mitigate the potential

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for adverse effects on neighboring properties. It is generally established that conditions that alleviate adverse impacts are preferential to a denial.

Staff recommends approval of special exception application S-7711, subject to the following conditions:

1. Regular weekday hours of operation are limited to the hours of 7:00 a.m. to 6:30 p.m., except for snow removal operations which may occur as needed. Saturday hours are permitted during the peak season, from March through May and September through December, from 7:00 a.m. to 6:30 p.m., in order to respond to customer demands. Customers are not permitted on site.

2. No material or equipment is permitted to be loaded on trucks before 8:00 a.m., and the trash dumpster must not be emptied before 7:00 a.m.

3. Number of employees is limited to 7 non-resident employees, and the applicant who resides on site. On-site parking is limited to four employee spaces.

4. Vehicles are limited to a total of five trucks, and will consist of one stake-bed truck weighting one-ton, and four pick-up trucks not exceeding three-quarter tons in weight. The business is limited to four landscape trailers. All vehicles and trailers must be parked in the storage building when not in use or parked off-site.

5. Mulch delivery is not permitted in tractor trailer trucks. Mulch deliveries are limited to three deliveries per week and must not exceed 30 cubic yards of mulch per delivery. Sunday deliveries are not permitted

6. Plant material and mulch must be stored in the rear yard as identified on the site layout plan.

7. All on-site landscape activities, mulch and plant storage, employee parking, and related outdoor operations are restricted to within the 50' foot Building Restriction Line (BRL) identified on the Site and Landscape Plan.

8. A 6' board on board fence must be constructed along the northern property line as shown on the revised layout plan to screen landscape operations from the abutting property,

9. The only lighting permitted on the site is a porch light at the front entrance and rear deck of the existing residence and a motion detector light on the storage building.

10. Bathroom facilities located in the residential home must be made freely available to the employees of the business.

11. The applicant must obtain, if necessary, permits from the Montgomery County Department of Permitting Services for full depth asphalting of the existing driveway as described on the Site and Landscape Plan.

SUMMARY OF APPLICATION

Site Size and Location:	Site size is 2.68 acres. The site is located in the agricultural reserve at 21020 Peach Tree Road in Dickerson. The area surrounding the subject site is rural in character extending along both sides of Peach Tree Road.
Zone and Proposed Use:	The site is classified in the Rural Density Transfer (RDT) Zone. The property is currently improved with a one-family residence. The applicant is seeking approval to operate a small landscape contractor business.
Scope of Operations:	The number of employees and vehicles associated with the proposed use are fewer than frequently associated with a landscape contractor business. No mulching, composting, or on-site customer visits are permitted. Traffic impacts have been studied and found to be within acceptable standards. Lighting will be minimal, as required for safety and security.
Master Plan Consistency:	The proposed use is consistent with the Agricultural Preservation Master Plan. The master plan recommends the site for RDT zoning. Landscape contractors, which are classified as an agricultural-commercial use under the zoning code, are allowed by special exception in the RDT zone. No guidance or criteria is provided in the plan for review of a landscape contractor special exception at the subject site.
Regulatory Review Standard:	Staff's responsibility is to review a landscape contractor application within a regulatory framework that gives preference to agriculturally-related uses in the RDT zone and presumes that approval of a special exception, contingent upon conditions which alleviate the adverse impacts, is preferable to a denial.

Background

The property owner currently operates a landscape contractor business at 21020 Peach Tree Road, Dickerson, MD, without a special exception granted by the Board of Appeals. A Notice of Violation was issued to the property owner on April 27, 2006 by the Department of Permitting Services (DPS). The property owner on July 30, 2007 filed a petition for a landscape contractor special exception to correct the violation. On a motion filed by the attorney for the property owner, the Circuit Court agreed to postpone the trial on the applicant's appeal of the Notice of Violation until after the January 7, 2008 hearing on the special exception petition (S-2711).

Statement of the case

The applicant, Melody Butler, seeks approval to operate a small landscape contractor business at 21020 Peach Tree Road, Dickerson, MD, 20842-9163. The petitioner proposes to use existing structures and construct a new structure to operate the business on the subject property. The new structure will be a prefabricated storage building measuring 60 feet in length by 42 feet in width, with a height of 25 feet. The building will be used to park vehicles associated with the business, as well as to park other smaller equipment typical of a landscape contractor business. Plant materials will not be grown on-site, but some plant stock and mulch will be stored in the area located in the rear yard. There will be no customers visiting the site.

Subject Property

The property is a recorded lot described as Lot 2 (N-614) in the "Peach Tree Estates" subdivision. The property consists of 2.68 acres and is classified in the RDT (Rural Density Transfer) zone. The property is currently improved with a one-family residence, where the applicant resides. There are two existing sheds located in the rear of the property. The existing gravel driveway contains two loops, one in the front yard and a larger loop in the rear yard. The driveway will be used to serve both the existing residence as well as the landscape contracting business. The property is relatively level in topography, with no champion trees identified on the approved Natural Resource Inventory/Forest Stand Delineation (NRI/FDS). There are no significant environmental features associated with the property.

One-family residences are located on either side of the subject property. The north side of the applicant's property is contiguous with the south side of one abutting property. An extensive row of White Pine trees exists along the neighbor's property line. The neighbor has submitted written material for the record that these trees have been "limbed up" as they aged; they have also lost branches due to ice and snow damage; and the effectiveness of these trees as a screen has been compromised by the applicant cutting back branches that extend over the property. Staff believes that disturbances caused by these conditions can be mitigated by the construction of a 6'

board on board fence along the common boundary to further screen landscape operations.




Operations

The applicant proposes to operate the business on weekdays and on Saturdays, between 7:00 and 6:30 a.m. during the peak periods in the Spring and Fall. The hours may vary during the winter months, when vehicles may be used for snow removable purposes as required by the weather. According to the applicant's land use report there will be a maximum of 7 employees on site at any one time, not including the applicant. As proposed by the applicant, employees would arrive on site at approximately 7:00 a.m. to load vehicles in preparation for off-site jobs and return to the property between the hours of 6:00 p.m. and 6:30 p.m. Four parking spaces will be provided on-site in addition to the parking associated with the existing residence. The employees will have access to the basement of the applicant's home where a bathroom will be available for employee use.

There will be a total of 5 vehicles associated with the business including a single-ton dump truck and four smaller pick-up trucks. The vehicles will be used in connection with

the business to transport equipment and plant materials to job sites. The vehicles will be parked in the storage building when not in use. A trash dumpster will be located adjacent to the employee parking area and screened with an eight foot board-on-board fence.

The applicant will maintain an inventory of trees and other container plants used in connection with the business which will be stored in the rear yard area. All services will be provided off-site, and include landscape installation, tree and shrub care, lawn maintenance, seasonal planting, and snow removal. On-site operations are limited to the storing and loading of mulch for customer delivery and the care of trees and container plants stored on the site. Mulch will not be produced for sale on the site. There will not be any retail activity conducted on the property. The landscape services provided will require a variety of small equipment such as lawn mowers, saws, lawn and leaf blowers, and other related small tools. All tools and equipment will be stored out of site in the storage building when not in use.

Surrounding area and general neighborhood

The subject property is located in the Agricultural Reserve and classified in the RDT zone. The area surrounding the subject property is rural in character extending along both sides of Peach Tree Road. According to information provided by Community-Based Planning, the subject property is located within the Western Sector of the Functional Master Plan for the Preservation of Agriculture and Rural Open Space, which describes the area as a relatively undisturbed agricultural region.

The general neighborhood is predominantly one-family residential on relatively large lots. According to data provided by Community-Based Planning, of the 19 properties within the general neighborhood, twelve are residential, four are farms, and three are vacant. All properties are classified in the RDT zone. The area within one-quarter mile of the subject site outside the general neighborhood is predominantly farm land.

The area that surrounds the subject property was classified in 1958 in the Rural Residential (R-R) zone, which permitted residential development on one-half acre lots. In 1973 the surrounding area was reclassified by Sectional Map Amendment from the R-R zone to the 5-acre Rural Zone, and in 1981 the surrounding area was reclassified from the Rural Zone to the 25-acre Rural Density Transfer (RDT)

Zone. The RDT zone permits by right or special exception agricultural and agricultural related uses. A landscape contractor is identified in the zone as an agricultural-commercial use permitted by special exception.

Environmental

Environmental Planning staff reviewed the application and concluded that there are no outstanding environmental features associated with the property. The site does not include any streams, wetlands, or floodplains. There are no steep slopes or highly erodible soils on-site. The property is not within a Special Protection Area or Primary Management Area.

The subject property is located in the Lower Dry Seneca sub-watershed of the Dry Seneca watershed. This tributary is assessed as having good overall conditions. The sub-watershed is designated as an Agricultural Watershed Management Area where the County Stream Protection Strategy recommends voluntary implementation of best management practices.

The property is subject to the Montgomery County Forest Conservation Law and a Forest Conservation plan has been submitted for approval. The applicant must have an approved Forest Conservation Plan before any clearing, grading, or demolition may take place on-site. The applicant will be required to provide afforestation. The afforestation requirement may be met off-site by payment of a fee-in-lieu, protection of existing forest, or planting.

The Forest Conservation Plan shows tree protection measures for the large and specimen trees affected by the proposed improvements. A 33" black locust will be impacted but retained and stress measures used to mitigate impacts.

Functional Master Plans

The subject property is located in the Western Sector of the Functional Master Plan for the Preservation of Agriculture and Rural Open Space, which describes the area as a relatively undisturbed agricultural region. The Agricultural Preservation Master Plan focuses on the preservation of farmland and policies for the continuation of farming in the agriculture reserve. The plan also recognizes the need for commercial and residential uses to serve the agricultural community and the rural community at large. The soils in the Western Sector were not recognized as the very best for crop purposes; however, the Agricultural Preservation Master Plan anticipated that with good land management practices and new methods of land tillage, the continuation of farming in the Western Region was not an unattainable goal.

Although the Plan recommends the subject property for RDT zoning, no guidance or criteria is provided for review of an agricultural special exception at the subject site. Landscape contractors, which are classified as an agricultural-commercial use under the zoning code, are permitted by special exception in the RDT zone. For this reason,

staff concludes that the proposed special exception is consistent with the applicable master plan. Community-Based Planning believes the proposed use is incompatible with the uses, scale, and character of the adjacent and surrounding residential neighborhood, because they feel the immediate area is a residential enclave within the agricultural reserve, and the application is "akin to inserting a commercial enterprise between residential lots of similar size and dimensions".

The subject property is located along Peachtree Road, which is a Rustic Road, and identified as a protected Road in the Rustic Roads Functional Master Plan. The plan recognizes that the traffic associated with a landscape contactor business, includes trucks transporting supplies. Although the plan notes that many Rustic Roads do not have a base course, and continuous heavy weight breaks up the roadway surface, there are no posted weight restriction signs on Peach Tree Road affecting access to the subject property. Community-Based Planning has indicated its concern that the continuous use of trucks the size and weight of a tractor trailer will do substantial damage to the roadway surface. It should be noted that the applicant is not anticipating use of tractor trailers. In staff's view, the rustic road issue is somewhat problematic, since the Council, in establishing a landscape contractor as a special exception in the RDT zone, is presumed to know Rustic Roads exist in the agricultural reserve.

Traffic and roads

Policy area mobility review

Transportation staff reviewed the application for APF purposes under the 2007-2009 Growth Policy approved by the County Council on November 13, 2007. Landscape contractor application S-2711 was filed on July 13, 2007. Since the application does not require subdivision, the APF finding must be made at the time of special exception review. The APF review now includes an area-wide transportation test called Policy Mobility Review (PAMR). Transportation staff finds that the proposed landscape contractor operation satisfies the PAMR requirement. The landscape contractor site is located in the Rural West Policy Area for which no mitigation is required to satisfy PAMR.

Local area transportation review

Based on information submitted by the applicant, the operation of the landscape contractor business would generate 7 peak hour trips during the weekday mornings (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Therefore a traffic study is not required to satisfy Local Area Transportation Review test under either the 2003-2005 Growth Policy or the 2007-2009 Growth Policy.

Site Access

Access to the site is provided from Peach Tree Road, which connects to Darnestown Road (MD 28), an arterial road. According to the information provided by the Montgomery County Department of Public Works and confirmed by staff's field review, there are no posted weight restriction signs on roadways affecting the site's access, including the Peach Tree Road Bridge over the CSX Railroad. The existing driveway from Peach Tree Road is adequate to provide safe access to the site.

Peach Tree Road is classified as a Rustic Road with a 70' right-of-way and Darnestown Road (MD 28) is classified as a County arterial with an 80" foot right-of-way. According to transportation staff, the traffic volumes associated with the proposed landscape contractor application will not adversely affect roadway conditions.

Community concerns

The abutting property owners along the north and south sides of the subject property have expressed concerns with the scope of the applicant's activities and the lack of protection provided for adjoining properties. Of particular concern is the use of tractor trailers to deliver mulch, insufficient screening to dampen visual and noise impacts, the effect of operations on Peachtree Road, and the applicant's proposal to cover the driveway with asphalt. There are no impervious caps established in the RDT zone to prevent the applicant from asphalting the driveway. The paved driveway and the proposed storage building will not significantly increase the site's impervious surface.

However, the abutting property owners have raised legitimate issues, which staff believes can be alleviated by appropriate conditions. The applicant will be required to construct a 6' board on board fence along the length of the northern boundary of the property. Mulch delivery will not be permitted in tractor trailer trucks, which will mitigate dust and noise impacts, and provide greater protection for the condition of Peachtree Road. Vehicles used to transport plantings, equipment, and landscape materials to job sites will be required to be stored out-of-site. The loading of equipment and material in preparation for off-site jobs will not be permitted to begin before 8:00 a.m.

The Sugarloaf Citizens Associating in a letter dated June 6, 2007 wrote to express its opposition to the subject landscape contractor operation and to state its opposition to landscape contractors in general in the agricultural reserve. Mr. Jay W. Lipp, in a letter dated April 16, 2007, expressed similar concerns with the subject landscape contractor operation.

Although staff recognizes the concerns expressed, staff's responsibility is to review a landscape contractor application within a regulatory framework that gives preference to agriculturally-related uses in the RDT zone and presumes that approval of a special exception, contingent upon conditions which alleviate the adverse impacts, is preferable to a denial.

Inherent and non-inherent effects

The standard for evaluation under 59-G-1.21 requires consideration of the inherent and non-inherent effects of the proposed use at the proposed location. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size of scale of operations. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are the physical and operational effects not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverts effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

The inherent characteristics of a landscape contractor include: (1) buildings and structures, as well as outdoor areas for the storage of plants and gardening-related equipment; (2) outdoor areas for the storage of mulch, soil, and other landscape materials, in bulk or in containers; (3) on-site storage of business vehicles and equipment including small trucks and landscaping trailers; (4) traffic associated with trips to the site by employees, suppliers, and customers; (5) trips to and from the site by employees engaged in off-site landscaping activities; (6) adequate parking areas to accommodate customers and staff; (7) dust and noise associated with the movement of landscape products and the loading and unloading of landscape equipment; and (8) long hours of operation.

The applicant's small scale landscape contractor business does not have the characteristics of a larger operation, in kind or degree, which might produce unacceptable adverse effects at the proposed location. There will be no customers visiting the site. The number of employees and vehicles associated with the business are less than frequently associated with an ordinary sized landscape contractor business. The hours of operation are limited to weekdays, and Saturdays during the peak season, except during the winter when vehicles may be used as needed for snow removable purposes. Lighting will be minimal, as required for safety and security. Traffic impacts have been studied and found to be within acceptable standards. Traffic volumes associated with the proposed landscape contractor application have been found not to adversely affect roadway conditions.

The mulch delivery schedule proposed in the applicant's statement of operations assumes delivery by tractor trailer that holds 90 cubic yards of mulch. In response to concerns that many of the Rustic Roads may not have a substantial base course, the applicant is being required to receive mulch in smaller (more frequent) truck deliveries that hold only 30 cubic yards of mulch. In the busiest times of the year, one delivery per week by the large truck had been anticipated by the applicant. Not more than 3 deliveries per week would be required for the smaller truck. Staff finds the revised delivery schedule to be a reasonable balance between the applicant's needs and the legitimate concerns that have been raised concerning the impact of the landscape operation on Rustic Roads in the area. As discussed previously in this report, the

adverse impacts of the proposed landscape contractor operation on nearby properties will be effectively mitigated by the operational limitations and site improvements proposed by staff.

In summary, staff does not find any inherent or non-inherent adverse affect associated with the application sufficient to warrant denial.

Analysis

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:

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

Analysis: A landscape *contractor is allowed by 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.

Analysis: *The application satisfies the standards and requirements for the use as established under 59-G-2.*

(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.

Analysis: The subject property is located in the Functional Master Plan for the Preservation of Agriculture and Open Space. The Agricultural Preservation Master Plan focuses on the preservation of farmland and policies for the continuation of farming in the agriculture reserve. The Plan recommends the subject property for RDT zoning. Although no specific land use recommendation

is made regarding the subject property, landscape contractors are classified as an agricultural-commercial use under the zoning code and permitted by special exception in the RDT zone. For this reason, staff concludes that the proposed special exception is consistent with the General Plan and applicable master plan.

The Rustic Roads Master Plan notes that many of the rustic roads do not have a base course and continuous heavy weight breaks up the roadway surface. However, there are no posted weight restrictions signs on Peach Tree Road affecting access to the subject property. In response to concerns that many of the rustic roads may not have a substantial base course, and continuous heavy weight may break-up the roadway surface, the applicant has agreed to receiving mulch in smaller (more frequent) deliveries by a truck that holds only 30 yards of mulch. In the busiest times of the year when one weekly delivery by the large truck was anticipated by the applicant, not more than 3 deliveries per week would be required for the smaller truck. Staff finds this revised delivery schedule to be a reasonable balance between the applicant's needs and the legitimate concerns that have been raised concerning the impact of the landscape operation on Rustic Roads in the area. Staff concludes that the proposed special exception is consistent with Rustic Roads Functional Master Plan.

(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.

Analysis: The neighborhood consists of about 19 residential homes on relatively large lots. Staff considers the general neighborhood to be rural in character. The neighborhood is zoned RDT and the RDT zone permits landscape contractors by special exception. The characteristics of the proposed landscape contractor and the operational limitations and site improvements imposed on the applicant mitigate the potential for adverse effects on the neighborhood and harmonize the use with the general character of the neighborhood.

(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.

Analysis: The applicant proposes to operate a small scale landscape contractor business that does not have the characteristics of a larger operation, in kind or degree, which might produce unacceptable adverse effects at the proposed location. There will be adequate landscaping to shield site activities from view and other measures imposed by staff will ensure that the use will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood at the proposed location.

(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.

Analysis: The number of employees and vehicles associated with the proposed use are fewer than frequently associated with a landscape contractor business. Lighting will be minimal, as required for safety and security. No mulching, composting, or on-site customer visits are permitted. Traffic impacts have been studied and found to be within acceptable standards. The machinery and activities associated with the use are consistent with those of a farm operation, which is a preferred use in the RDT zone. Staff concludes that the use will not have unacceptable impacts at the proposed location.

(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.

Analysis: There are no special exceptions within the general neighborhood of the proposed site. For this reason, staff concludes that the proposed special exception would not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. The proposed use is consistent with the recommendations for the site in the applicable master plans and would not alter the nature of the area.

(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.

Analysis: The site layout and nature of the use serve to protect the health, safety, and security of residents, visitors, and workers at the subject site. There is no good reason to believe or evidence to support a finding that the proposed use as restricted by staff would not satisfy this standard.

(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.

ii. 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.

Analysis: The site is subdivided and the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The site would continue to be served by adequate public facilities. There would be no adverse impact on schools, fire protection, sanitary facilities, roads, and other public facilities that serve the site. The traffic volumes associated with the proposed landscape contractor application have been found not to adversely affect roadway conditions or reduce vehicular or pedestrian safety.

Sec. 59-G-1.23. General development standards

Special exceptions are subject to the development standards of the applicable zone, unless otherwise specified under the standards of the special exception. The project equals or exceeds the minimum standards as shown on the following table:

	Development Standard	**Requirement/Allowed**	**Proposed**
	Minimum Lot Area	2.0 acres (minimum)	2.68 acres
	Building Height (Storage Building)	50' (maximum)	22'
	Building coverage (All Buildings)	10 % (Maximum)	3.7%
	Building Setback		
	Front (Peach Tree Road)	50	179'
	Side (North)	50'	50'
	Side (South)	50'	61'
	Rear (West)	50'	250'

Sec. 59-G-2.30.00. Landscape contractor

Sec. 59-G-2.30.00 provides that a landscape contractor 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 manufacturer operation. If a combination of these uses is proposed, the Board of Appeals opinion must specify which combination of uses is approved for the specified location.

Analysis: As previously indicated in this staff report, the proposed use is a small scale landscape contractor business that does not have the characteristics of a larger operation, in kind or degree, which might produce unacceptable adverse effects at the proposed location. The number of employees, vehicles, and scale of operations are fewer than frequently associated with an ordinary sized landscape contractor. Traffic impacts have been studied and found to be within acceptable standards and traffic volumes associated with the proposed landscape contractor application have been found not to adversely affect roadway conditions. The characteristics of the proposed landscape contractor operation and the limitations and conditions imposed on the applicant support a finding that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors.

(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.

Analysis: The site is 2.68 acres and satisfies this standard.

(2) Areas for parking and loading of trucks and equipment as well 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 any other objectionable effects of operations must be provided for such areas.

Analysis: The site layout plan identifies on-site areas for employee parking, storage of mulch and plant stock, location of the trash dumpster, and for loading of trucks and equipment. All areas of operation are located at least 50 feet from property lines. Vehicles used in connection with the proposed landscape contractor operation will be parked out-of-site in the storage building, when not in use. The property to the north is well screened by the existing row of White Pine trees on the property. Additional protection will be provided by the applicant by constructing a 6' board on Board fence along the property line. The abutting property to the south is screened by an existing berm and row of trees planted by the applicant along the property line. A large farm borders the applicant's property to the south.

(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 of Appeals 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.

Analysis: The number of vehicles and trailers permitted on the subject property is limited under staff recommendation #4 on the first page of this report. Only four employee parking spaces will be on-site and vehicles associated with the business will be parked in the proposed storage building when not in use. Staff believes that the on-site parking arrangement precludes adverse impacts on adjoining properties.

(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 of greenhouse.

Analysis: The applicant does not propose the sale of any plant materials or garden supplies on-site. Limited plant stock will be stored on-site to be used for off-site landscape services.

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

Analysis: The applicant proposes to operate weekdays and some Saturdays, between the hours of 7:00 a.m. and 6:30 p.m., except during the winter when the hours may vary because vehicles may be used for snow removable purposes. There will be a maximum of 7 employees, on site at any one time. Employees will arrive on site between 7:00 and 7:30 a.m. in preparation for off-site jobs and return to the property between the hours of 6:00 p.m. and 6:30 p.m. The loading of vehicles with material or equipment is not to occur before 8:00 a.m. The proposed hours of operation as conditioned by staff mitigate adverse impacts on surrounding properties.

(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 necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

Analysis: The proposed use is an agricultural-commercial use permitted by special exception in the RDT zone. The County Council, in designating a landscape contractor a special exception in the RDT zone, established that a landscape contractor is a use generally compatible with other uses in the zone, absent unacceptable adverse effects on the neighborhood.

Conclusion

Based on a careful review of the application and all information of record, staff concludes that the application, with the operational limitations and site improvements imposed by staff, satisfies all relevant standards for grant of a landscape contractor special exception at the proposed site. For these reasons, staff recommends that application S-2711 for a landscape contractor special exception at 21020 Peach Tree Road, Dickerson, MD, be granted by the Board of Appeals.

Attachments	**Circle Number**
1. Memorandum from Community-Based Planning	1-10
2. Memorandum from Environmental Planning	11-12A
3. Memorandum from Transportation	13-14
4. Letter from Surgarloaf Citizens Association	15
5. Letter from Jay and Janice Lipp	16
6. Response to petition from Ms. Cora Weeks	17-31
7. Letter concerning applicant's days of operation	32-33

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

November 15, 2007

To: Ralph Wilson, Acting Zoning Supervisor
Development Review Division

John Carter, Division Chief
Community-Based Planning Division

From: Callum Murray, Team Leader
Potomac Subregion/Rural West Team

Leslie Saville, Planner
Community-Based Planning Division

Subject: Special Exception S-2711
Melody Butler d/b/a Butler Landscape Design

Recommendation

Community-based planning staff recommends DENIAL. Staff finds that the proposed landscape contractor use is not compatible with the uses, scale and character of the adjacent and surrounding residential neighborhood, which was primarily constructed from the 1930s to the 1970s. Additionally, heavy delivery trucks on Peach Tree Road are likely to break up the roadway surface; without approval of the Special Exception petition, these trucks would not be anticipated to traverse this rustic road.

Master Plan Compliance

The land use and zoning of the applicant's property, 21020 Peach Tree Road, is guided by the 1980 *Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County* (AROS). Peach Tree Road is a rustic road, so this application is further guided by the 1996 *Rustic Roads Functional Master Plan*.

Functional Master Plan for the Preservation of Agriculture and Rural Open Space

The Butler property falls within the Western Sector as identified in the AROS plan, which described the area as a relatively undisturbed agricultural region; the plan recommended rezoning from the Rural Zone, which had not been adequately protecting agriculture, to the Rural Density Transfer (RDT) zone (AROS, pp. 55-56). In the RDT

zone, agriculture is the preferred land use (§59-C-9.1). However, as described below, this area is primarily residential; twelve of the nineteen properties within one-quarter mile are residential properties.

Rustic Roads Functional Master Plan

This property lies on Peach Tree Road, a rustic road. This section of Peach Tree Road, originally named Darby Road, was established in 1874 to provide access to Sellman Station, a then-new B&O Railroad stop just over one-quarter mile north of the Butler property. This historic alignment is a significant feature of the road (RRFMP, pp. 128-131.) The road width varies from 14 to 18 feet; there are no shoulders.

This master plan is not intended to affect the use of adjoining land except in the design of access to subdivision, and does not preclude providing adequate roads for the farming community, either for moving farm equipment or getting products to market (p. 5). The plan identifies two kinds of traffic associated with landscapers, including trucks delivering bulk supplies and consumer traffic; this application anticipates only deliveries. On those, the plan notes that many of the rustic roads "do not have a base course, and continuous heavy weight breaks up the roadway surface" (p. 27).

The applicant has not provided the weights of mulch or dumpster trucks that will be delivering to the site, but a tractor trailer load of mulch (which the applicant anticipates weekly in the spring) can weigh 80,000 pounds. It is unlikely that the 1874 section of Peach Tree Road in front of the applicant's residence has the engineered base that would be appropriate for the additional traffic of this type that would be associated with this Special Exception petition.

Routing of trucks has not been provided, and there are numerous rustic and exceptional rustic roads in this area which might also be impacted by this use. At the northern end of Peach Tree Road, through trucks over 7,000 pounds are not permitted.

This application was presented to the Rustic Roads Advisory Committee (RRAC) on November 8, 2007. Without further information about the weights of delivery trucks and the base course of the road, they were unable to make any findings. In reviewing the plan, the committee noted the width of the driveway that is shown as existing—62 feet at the edge of the road and 50 feet at the property line. This should be reviewed against the driveway permit. If it exceeds what is allowed by the permit, proposed changes should be returned to the RRAC.

Location and Surrounding Area

The 2.68-acre property lies on the west side of Peach Tree Road about 320 feet north of the intersection with Whites Store Road, a rustic road, and just over a quarter mile south of the CSX line. The property is in the Rural Density Transfer (RDT) zone.

Within a one-quarter mile radius of the property lie 19 properties. The State Department

of Assessment and Taxation identifies twelve of these properties as residential (including that of the applicant), four as farms, and the remaining three as vacant (see Attachment 1). As shown on the map and aerial photo (see Attachment 2), the two immediately adjacent properties are both residential, and each is less than 130 feet from the house on the Butler property. Acreages along with the sizes and the ages of the twelve homes in the vicinity follow:

Address	Acres	Year Built	Gross Floor Area
21100 Peach Tree Road	0.685	1930	1350
17730 Whites Store Road	0.480	1962	753
17900 Sellman Road	2.000	1999	3108
20830 Peach Tree Road	1.100	1967	1552
20901 Peach Tree Road	1.260	1958	1200
20910 Peach Tree Road	17.970	1966	2007
21010 Peach Tree Road	2.730	1991	3300
21020 Peach Tree Road (Butler)	***2.680***	***1965***	***1908***
21030 Peach Tree Road	3.390	1974	1224
21110 Peach Tree Road	0.500	1957	952
21121 Peach Tree Road	4.030	1949	3995
21210 Peach Tree Road	3.880	1961	1832
Source: State Department of Assessment and Taxation			

In 1958, this area was zoned R-R; 1951 aerial photos show these three properties being farmed. In 1964, this lot, Peach Tree Estates Lot 2, was created, and the house constructed a year later. The 1973 Rural Sectional Map Amendment rezoned this area to Rural, and in 1981, the Sectional Map Amendment for the AROS plan rezoned the area to RDT. By the time the AROS plan was adopted, ten of the current twelve residential properties were built.

The Zoning Ordinance provides, in Section 59-G-2.30.00 (6) that "*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 necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.*"

However, the immediate residential area, including the subject property, was subdivided prior to recognition of the Agricultural Reserve, and was platted in 1964. The immediate area is therefore a residential enclave within the agricultural reserve, and the subject petition is akin to inserting a commercial enterprise between residential lots of similar size and dimensions.

The property was purchased by the applicant on April 4, 2006[1]. A Notice of Violation was issued by the Montgomery County Department of Permitting Services 23 days

[1] State Department of Assessment and Taxation (SDAT) records obtained November 8, 2007.

later. The commercial enterprise commenced without approval and continued in the face of a violation notice and the concerns of neighbors. This raises concerns as to whether conditions attached to any potential approval would be followed.

The 40 x 60 proposed building would be larger than the dwelling unit on the property as well as larger than eight of the other residential properties. It is not compatible with the character of abutting residential neighborhood. Ingress and egress for large commercial trucks would not be harmonious with the adjacent residences.

There are significant gaps in information on the submitted plans, including the following:

1. Location and dimensions of septic field.
2. Stormwater management concept for the significant increase in impervious surfaces.
3. A well permit for agricultural/commercial use may be required.
4. A permit for business septic use may be required.
5. Descriptions and weights of trucks—onsite and delivery.
6. Dumpster size, truck weight.
7. Additional deliveries—plants, stone, other materials.
8. Noise information – reversing trucks and equipment.
9. Routing of trucks.
10. Need for this location (the firm is based in Culpeper, VA)—locations of clients.
11. Engineering sufficiency of roads without a base course.
12. Location of lighting on plan.

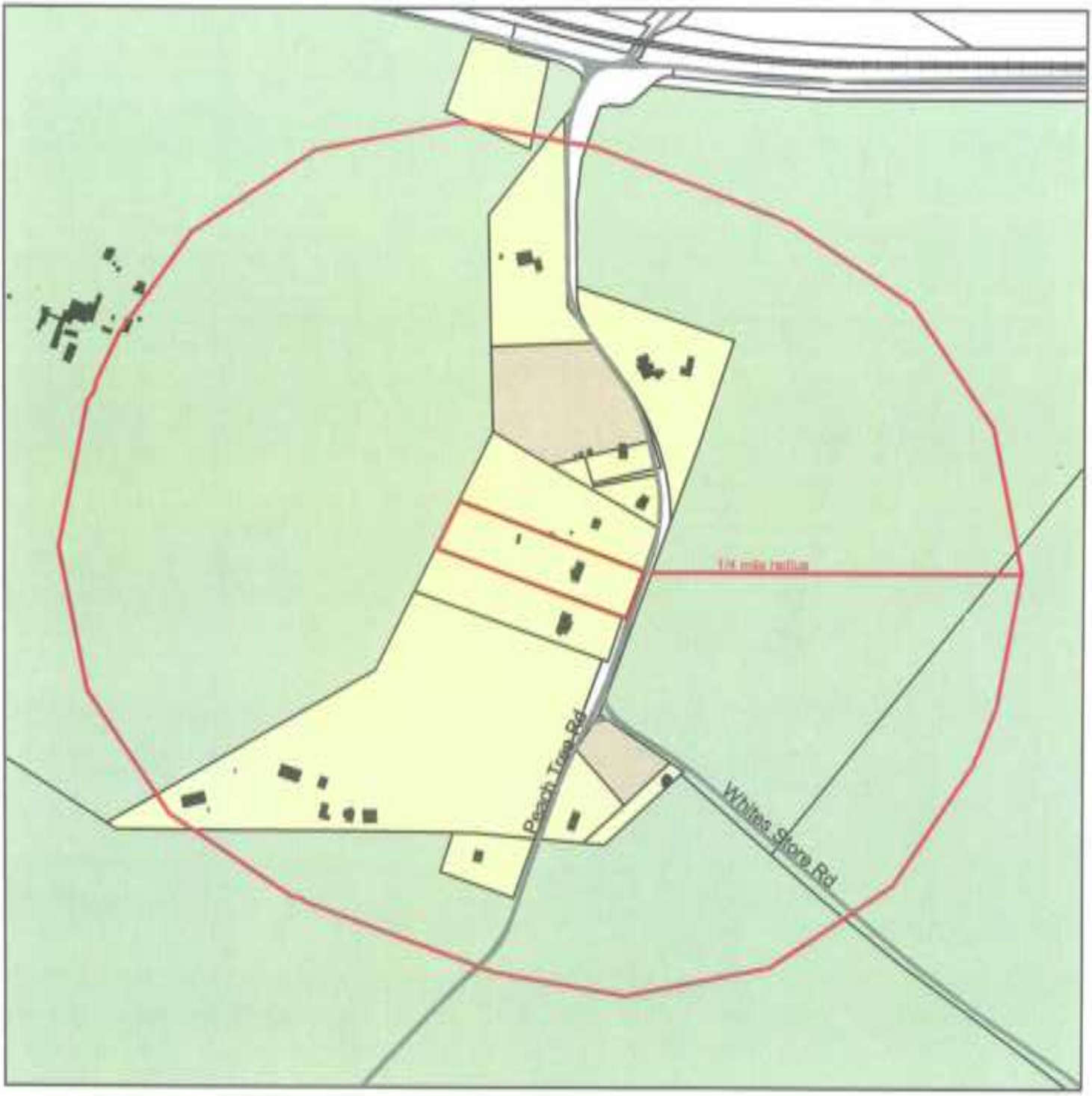
Conclusion

Staff finds the proposed use to be incompatible with the surrounding land uses and recommends DENIAL

G:/Murray/SE No. S-2711

Attachments
1. Vicinity Map of Land Uses
2. Aerial Photograph
3. 1964 Plat
4. Excerpt of SM<A G-2666, 1981

S-2711 Vicinity Map of Land Uses



Land uses

- Housing - SFD
- Farms
- Vacant

500 0 500 1000 Feet

N

5

S-2711 Aerial Photo of Site

Aerial photo dated February/March 2006

100 0 100 200 Feet

N

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING BOARD

Approved: Sept 2 1964
Date

Kenneth A. Grosdell
Acting Chairman

Jno. F. Nickolas
Secretary-Treasurer

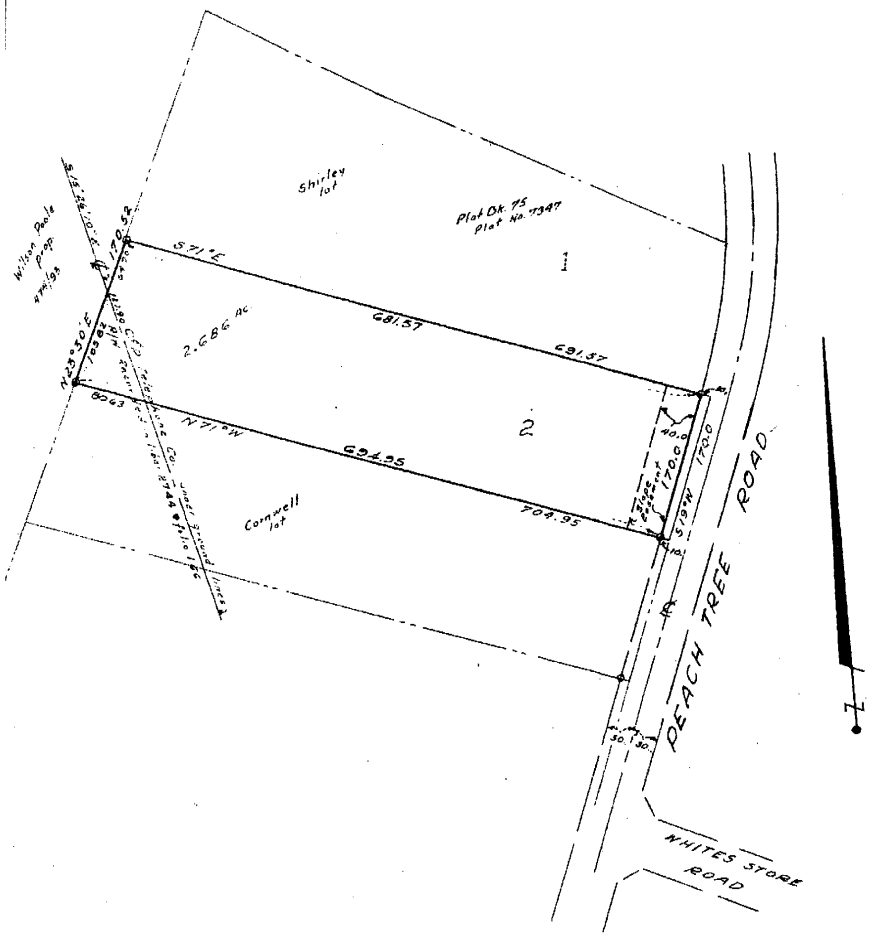
M.N.C.P.&P.C. Record File No 189-84

MONTGOMERY COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS

Approved. SEPT. 9, 1964
Date

As to road and street grades

By: Richard J. Lynch.
Dep. Director, M.C.D.P.W.



SURVEYOR'S CERTIFICATE

I hereby certify that the plan shown hereon is correct, that it is a subdivision of all the land conveyed from George C. Cornwell Jr. & Marjorie H. Cornwell, his wife to Lee John Thew & Joicey Lee Thew, his wife, by deed dated July 10, 1964 and recorded among the Land Records of Montgomery County, Maryland in Liber 3250 at folio 476, and that iron pipes marked thus ⊙ have been placed where shown. The total area of dedication of Peach Tree Road is 1700 ±.

August 21, 1964
Date:

William Neal Hurley Jr.
William Neal Hurley Jr. Surveyor
Maryland Registration No. 3025

OWNERS DEDICATION

We, Lee John Thew & Joicey Lee Thew, his wife, owners of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines, the slope easement as shown and dedicate the street to public use.

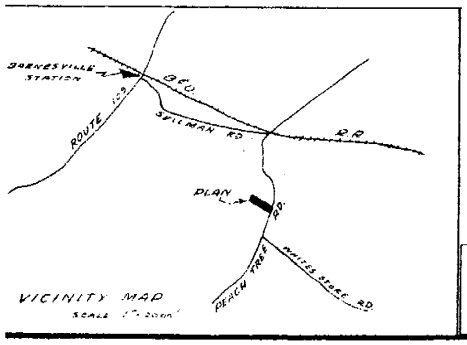
Dorothy C. Kilb 8/21/64 Lee John Thew
Witness Date Lee John Thew

Dorothy C. Kilb 8/21/64 Joicey Lee Thew
Witness Date Joicey Lee Thew

LOT 2
PEACH TREE ESTATES

BARNESVILLE DISTRICT
MONTGOMERY COUNTY MARYLAND
SCALE 1" = 100' AUG. 1964

HURLEY & CISSEL SURVEYS
24 S. Perry St.
Rockville, Maryland



VICINITY MAP
SCALE 1" = 2000'

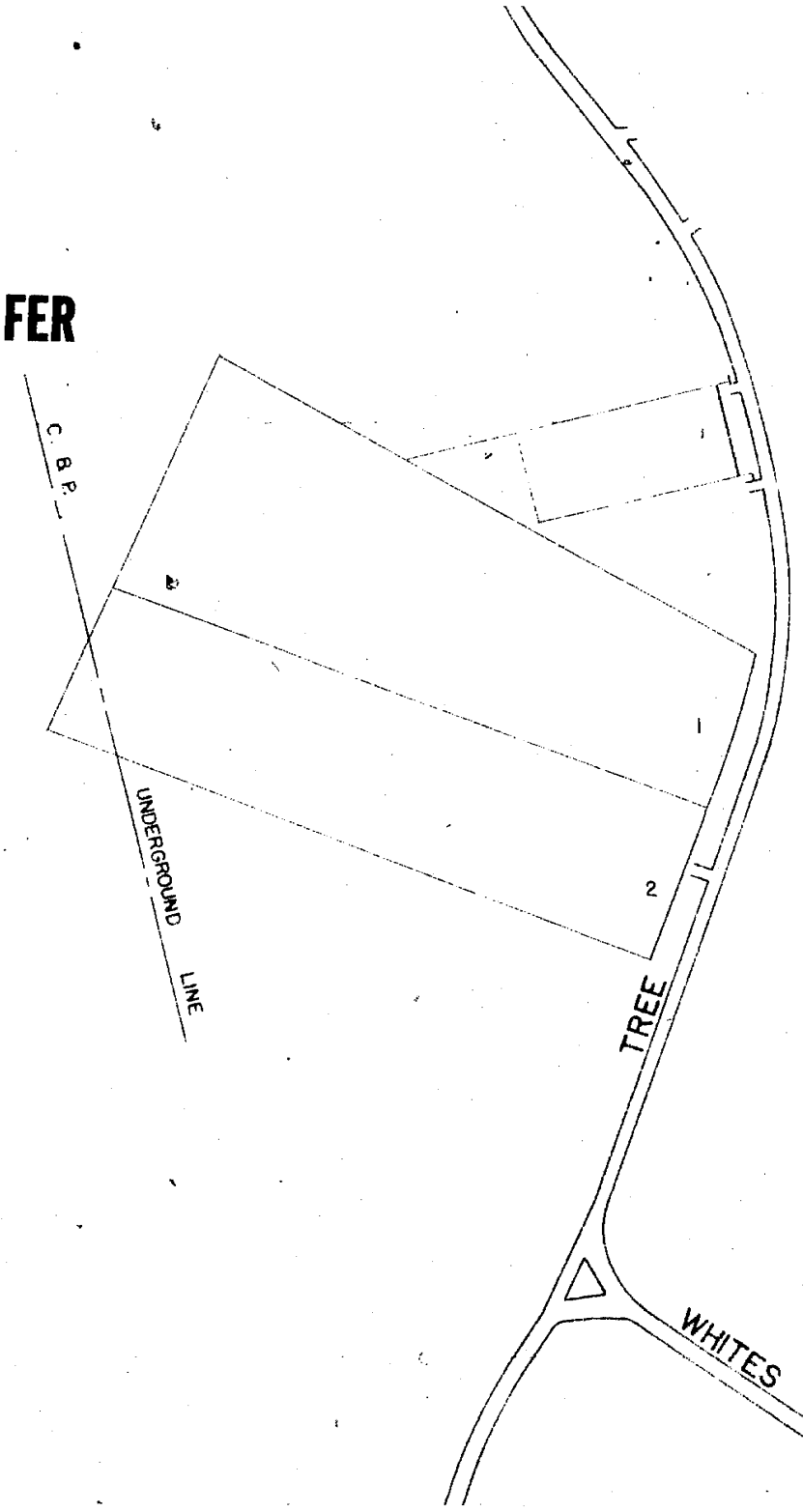
RECORDED: 9-24-64
PLAT BOOK: 76
PLAT NO.: 7545

189 84

7

RURAL DENSITY TRANSFER

~~RURAL~~



(9)

G-266
1981

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING BOARD

Approved: Sept 2 1964
Date

Acting Chairman — Secretary-Treasurer

M.N.C.P.&P.C. Record File No. 189-84

MONTGOMERY COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS

Approved: SEPT. 9, 1964
Date

As to road and street grades

By: Richard J. Lynch
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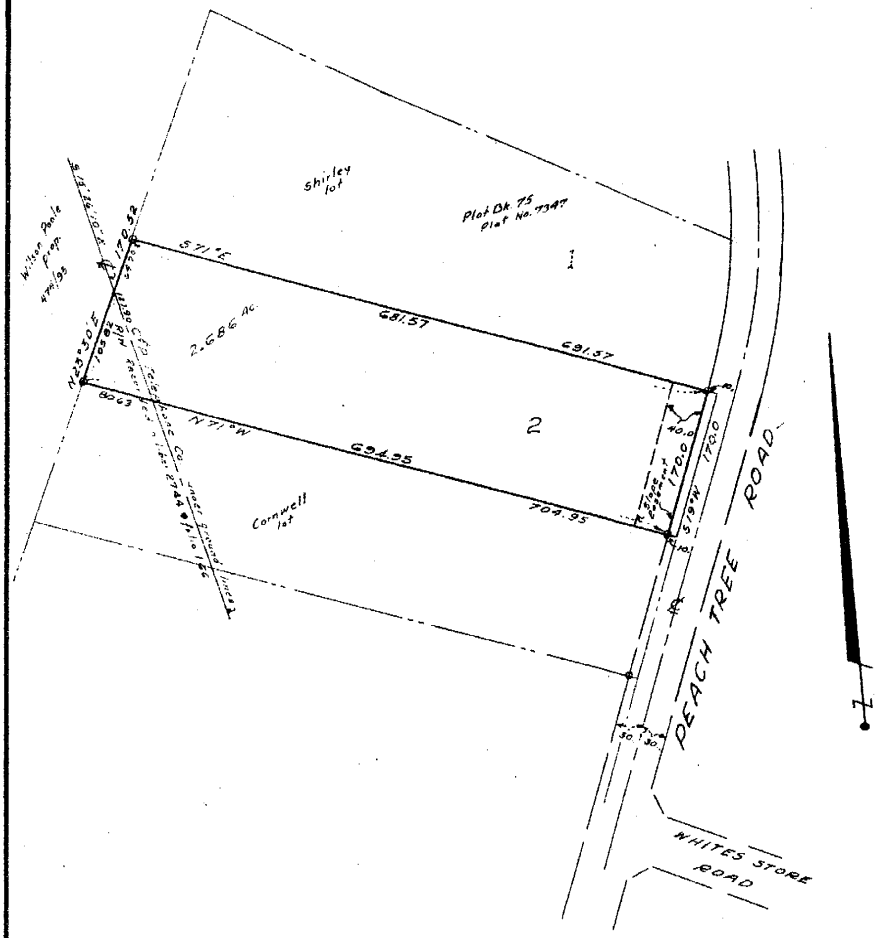

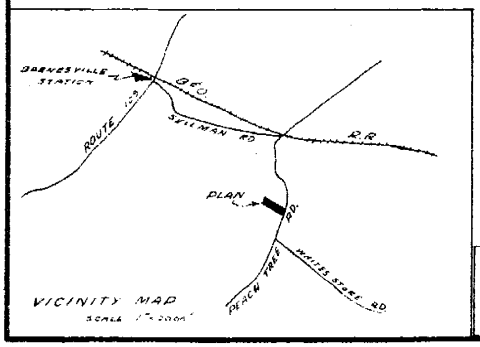

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August 21, 1964 — William Neal Hurley
Date: — William Neal Hurley Jr. Surveyor
Maryland Registration No. 3025

OWNERS DEDICATION

We, Lee John Thew & Joicey Lee Thew, his wife, owners of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines, the slope easement as shown and dedicate the street to public use.

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Witness — Date — Lee John Thew

Dorothy C. Kite 8/21/64 — Joicey Lee Thew
Witness — Date — Joicey Lee Thew

LOT 2
PEACH TREE ESTATES

BARNESVILLE DISTRICT
MONTGOMERY COUNTY MARYLAND
SCALE 1" = 100' AUG. 1964

HURLEY & CISSEL SURVEYS
24 S. Perry St.
Rockville, Maryland

RECORDED: 9-24-64
PLAT BOOK: 76
PLAT NO.: 7545

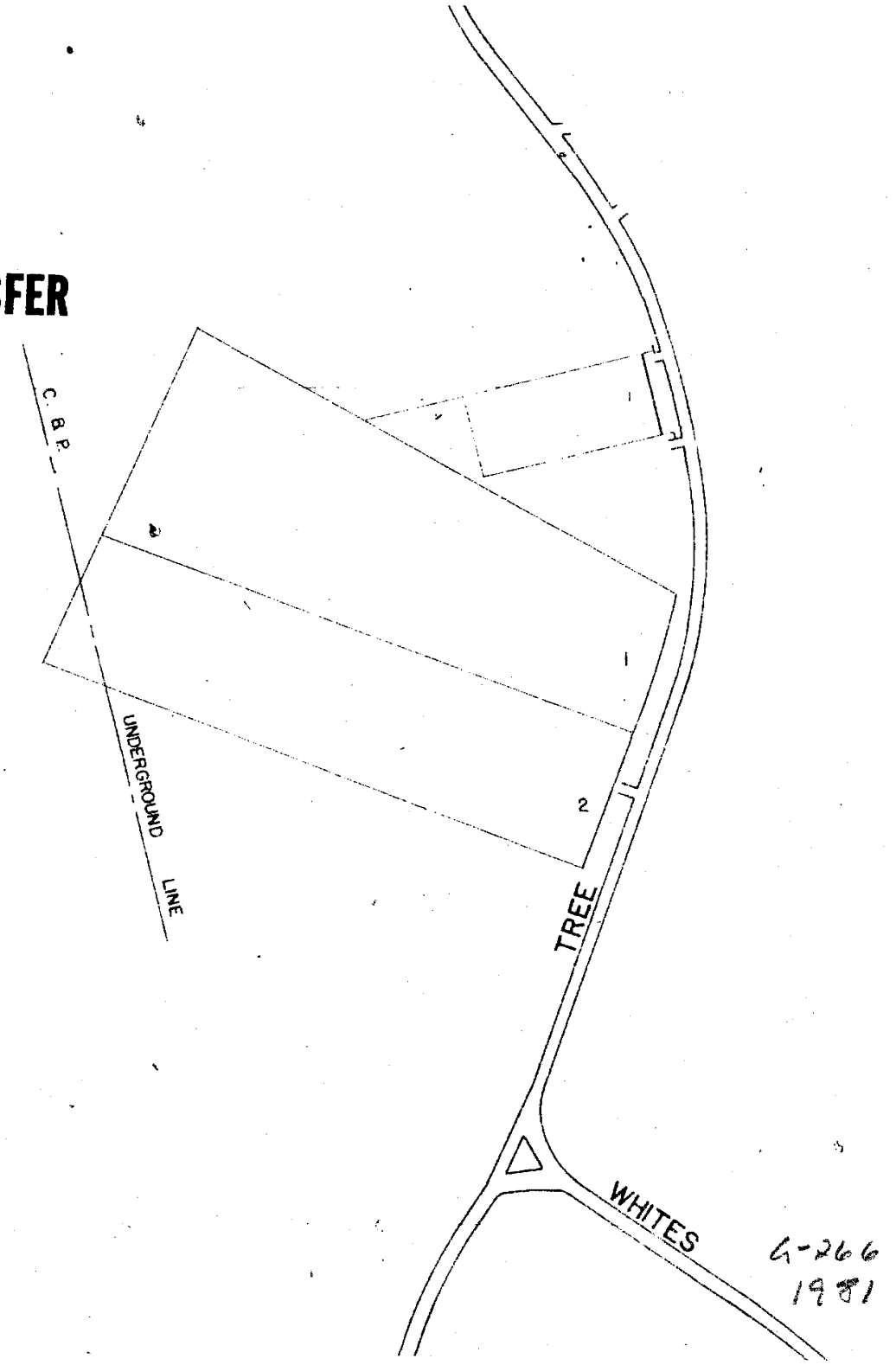
64524

189 84

9

RURAL DENSITY TRANSFER

~~RURAL~~



(2)

G-266
1981

MCPB

ITEMS #5 ~~AND #~~

December 20, 2007

MEMORANDUM

DATE: December 7, 2007

TO: Montgomery County Planning Board

VIA: Mary Dolan, Acting Chief, Countywide Planning Division

Stephen D. Federline, Supervisor, Environmental Planning, Countywide Planning Division

FROM: Amy Lindsey, Senior Planner, Environmental Planning, Countywide Planning Division

SUBJECT: Staff Recommendations for Board Approval of Preliminary Forest Conservation Plan
For Board of Appeals No. S-2711, 21020 Peach Tree Road, Dickerson

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STAFF RECOMMENDATIONS

Staff recommendations are made below for one Board action on the following plan:

A. Preliminary Forest Conservation Plan approval recommendations:

Approval of the preliminary forest conservation plan subject to the following conditions:

1. Compliance with the conditions of approval for the preliminary forest conservation plan dated November 5, 2007. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permit(s), as appropriate.

(11)

DISCUSSION

There are two items for Planning Board review for the 21020 Peach Tree Road project: the special exception and the Preliminary Forest Conservation Plan. This memorandum covers staff's review and recommendations on the Preliminary Forest Conservation Plan for the proposed project.

The Board's action on the Preliminary Forest Conservation Plan is regulatory and binding. The Planning Board must act on the Forest Conservation Plan before it can act on the special exception.

The 2.68-acre property is located in Montgomery County on Peach Tree Road in Dickerson, which is covered by the *Preservation of Agriculture and Rural Open Space*. The applicant proposes to bring a small landscaping contracting operation into compliance by obtaining a special exception to legalize operations. Further improvements include an asphalt parking lot and a prefabricated storage building. There is no forest onsite but two specimen trees and one large tree present. There are no streams, wetlands, or any associated buffers onsite. The property is within the Dry Seneca Creek watershed; a Use I/I-P watershed.

Environmental Guidelines

The site does not include any streams, wetlands, or floodplains. There are no steep slopes or highly erodible soils on-site. This property is not within a Special Protection Area or Primary Management Area.

Forest Conservation

This property is subject to the Montgomery County Forest Conservation Law and a Forest Conservation Plan has been submitted for approval. There is a 0.40 acre afforestation requirement, which will be met off-site by payment of fee-in-lieu, protection of existing forest, or planting.

Tree Save

The Forest Conservation Plan shows tree protections measures for the large and specimen trees affected by the proposed improvements. A 33" DBH black locust will be impacted but retained and stress measures used to mitigate the impact.

Green Building

This project will not need to comply with County Council Bill 17-06, Montgomery County Green Buildings Law.

Water Quality

The subject property is located in the Lower Dry Seneca subwatershed of the Dry Seneca watershed. The *Countywide Stream Protection Strategy* (CSPS) assesses this tributary as having

good overall conditions. The subwatershed is designated an Agricultural Watershed Management Area where the CSPS recommends voluntary implementation of best management practices.

12A

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

November 20, 2007

MEMORANDUM:

TO: Ralph Wilson
Development Review Division

VIA: Daniel K. Hardy, Supervisor DKH
Transportation Planning

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

SUBJECT: Special Exception Application No. S-2711
Landscape Contractor at 21020 Peach Tree Road
Dickerson

This memorandum is Transportation Planning staff's Adequate Public Facilities (APF) review of the subject special exception petition. The subject special exception is for permitting the operation of a landscaping facility currently located at 21020 Peach Tree Road, Dickerson.

RECOMMENDATION

Staff recommends no conditions required to support approval of the referenced Special Exception petition since the application meets the transportation-related requirements of the APF test.

DISCUSSION

Policy Area Mobility Review (PAMR)

With the approval of the FY 2007-2009 Growth Policy by the County Council on November 13, 2007, the APF review now includes an area-wide transportation test called Policy Area Mobility Review (PAMR). The FY 2007-2009 Growth Policy transportation tests are retroactively applicable to subdivisions filed after January 1, 2007 but not approved as of November 13, 2007. The subject special application was filed on July 13, 2007 to the Board of Appeals. This special exception application does not require subdivision.

Therefore, per Section 59G-1.21(a)(9) of the Zoning Ordinance, the APF finding must be made at time of special exception application. Transportation Planning staff interprets the retroactivity of the County Council action to apply to this case. Transportation Planning staff finds that this development satisfies the PAMR requirement. The subject development is located in the Rural West Policy Area for which no mitigation is required to satisfy PAMR

Local Area Transportation Review

Based on information submitted by the applicant, the operation of the landscaping facility would generate seven (7) peak hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Therefore, no traffic study is required to satisfy the Local Area Transportation Review test under either the FY 2003-2005 Growth Policy or the FY 2007-2009 Growth Policy.

Site Location and Access

The site is located on the west side of Peach Tree Road approximately 2,000 feet north of Darnestown Road (MD 28). Access to the site is provided from Peach Tree Road which connects to Darnestown Road (MD 28), an arterial roadway. According to the information provided by the Montgomery County Department of Public Works and Transportation and confirmed by staff's field review, there are no posted weight restriction signs on roadways affecting site access, including the Peach Tree Road bridge over the CSX Railroad. Staff finds that the existing 30-foot wide driveway from Peach Tree Road is adequate to provide safe access to the site. Due to its location in a rural area without existing sidewalks or notable pedestrian activity, no pedestrian facilities are needed for this use.

Peach Tree Road is classified as a rustic road with a 70' right-of-way and Darnestown Road (MD 28) is classified as a country arterial with 80' right-of-way. The traffic volumes associated with the proposed landscaping facility will not adversely affect roadway conditions.

KK:ft

Subj: **Illigal Peachtree Landscape Operation**
Date: 6/6/2007 10:29:11 AM Pacific Standard Time
From: JBrownDC
To: sandra.youla@mncppc-mc.org, ajcinque@mindspring.com, CinqueJ@CSR.NIH.GOV, MegMBEvans, HTrashqueen1, Gil R1, blyman4@earthlink.net, gvalen4@earthlink.net, Annets1, matthew.mcmillen@faa.gov, cgkirby@verizon.net, secq@earthlink.net, tinathiemebrown@comcast.net, proctortp@starpower.net, georgekmiller@comcast.net, ellen@gordonballard.com, f.a.r.m@erols.com, Coraweeks
CC: lawpool@verizon.net

June 6, 2007

Ms. Sandra Youla
Zoning Analyst
Community Based Planning Division
Montgomery County Planning Board

Dear Ms. Youla:

On behalf of the Sugarloaf Citizens Association I am writing to express our strong opposition to the Butler landscaping company that is operating illegally on Peachtree Rd. in the Ag Reserve. It is our understanding that the operator is under a court order to cease operations yet is continuing to operate without the required Montgomery County zoning approvals and permits.

SCA plans to write the Planning Board and would like to know if you have assigned a case # as of this time? The operator claims she has applied for a Special Exception as is the proper procedure but we cannot confirm that this step has in fact been taken.

Sugarloaf is consistent in our opposition to these types of illegal operations as the record will demonstrate. Our overarching goal is the preservation of agriculture in the Reserve, not further industrialization. Operations of this scale and intensity also have adverse affects on surrounding property owners and properly licensed and permitted agriculture activities. Lack of approved sanitation facilities, and heavy truck traffic are other safety concerns especially when you take into consideration the rustic and historic aspects of a very narrow and winding Peachtree Rd. The safe movement of farm equipment on this road and others ion the Reserve should be the County's priority, not huge dump trucks operating out of a illegal commercial operation.

SCA will be prepared to further intervene in the matter subject to actions taken by the County.

Many thanks for your time and consideration.

Jim Brown SCA President

15

21121 Peach Tree Road
Dickerson, Maryland 20842
April 16, 2007

Zoning Board

Ladies/Gentlemen:

Our employment commitments prevent our presence at the hearing on Tuesday, April 17, but we do have concerns about the unauthorized nursery operation being conducted at 21020 Peach Tree Road. Not only is the volume and type of traffic generated by this business disruptive to the neighborhood's peace, but there are very real concerns about the amount of water it pulls from our common aquafer

While a "plant business" may seem appropriate to our rural setting, the large piles of debris, high water use, and heavy truck traffic are in no way compatible with our residential properties. Some years ago there was a proposal to build a golf course further north on Peach Tree Road, and that was disallowed because of traffic and water concerns. This seems to be a very similar situation.

Thank you for hearing our voices.

Yours truly,

Jay W. Lipp
Janice Lynn Lipp

16

Response to Petition S-2711

MELODY BUTLER dba Butler Landscape Design is identified as the Petitioner on BOA Form 1. This form provides a line for the signature of the petitioner. It is not signed by Ms.Butler. Her attorney signed her own name on the line provided. It raises the question as to who is affirming "that all the statements and information contained in or filed with the petition are true and correct."

Petitioner's Summary of Proof

Petitioner's submission is a reiteration of the General Conditions in Article 59-G-1.21(a). Paragraph (c) under this Article provides that the petitioner has the burden of proof "to show that the proposed use satisfies all applicable general and specific standards under this Article." This burden has not been met.

Statement of Operations

Petitioner's Statement of Operation states that the petitioner currently operates a special exemption for a landscape contracting business (Page 2) and that she filed her petition in response to a Notice of Violation issued by Montgomery County Department of Permitting Services. The Civil Citation issued by Permitting Services was issued on June 1, 2006. Ms. Butler did not respond to the Citation by filing as directed. The District Court of Maryland on April 17, 2007 found that the operation was in violation of Montgomery County Code, Section 59-c-9.3 and ordered her to cease operation in no less than 30 days, file a petition with the Board of Appeals within 30 days, and if petition is not filed within specified time, to immediately abate. As stated by the petitioner, she is currently operating - operation which is in defiance of the Court's ruling. Her operation at the Peach Tree Road site has been illegal since it's inception.

Petitioner states that "Nursery stock is currently stored in an outdoor area located at the rear of the subject property where it will continue to be located." This statement is inconsistent with the proposed plat. On the proposed plat, the plant storage area is located 50 feet from the north line of the property. At the present time, the nursery stock is located within about 25 feet from Lot 1. Loading of plants takes place next to Lot 1 as shown by the ruts made in the area by the truck tires.

-[Picture]

(17)

Vehicles

In addition to the dump truck and four pick-up trucks, there are a large flat bed truck, and a Bob-Cats on the property. It has been noted that only the dump truck has Maryland License Plates while all of the other vehicles are licensed in Virginia.

[Picture]

Petitioner states that mulch is delivered by tractor-trailer once per week during March to July and once every three weeks between July and December. When mulch is delivered several tractor-trailers arrive on the property. There have been as many as five tractor-trailers lined up on the site to unload mulch. Mulch is often delivered to the site on the week-ends and has even been delivered on a Sunday evening. Peach Tree Road is a rustic road and is used by bicyclists and motorists visiting the orchards especially on the weekends. While the petitioner's use of the road is contrary to the intention of its designation as a rustic road, its use by the petitioner's suppliers on the weekends is especially offensive and dangerous to others

The petitioner does not mention the delivery of firewood.

[Picture]

She fails to mention the number of loads of mulch (or firewood) are (loaded onto trucks with the Bob-Cat) that are required to deliver tractor trailer quantities to her customers.

Section 59.G.2.300.00(6) is not applicable.

The petitioner relies on the provision in Section 59.G.2.30.00(6) that the impact of an agricultural special exemption in the agricultural zone does not necessarily need to be controlled as stringently as it would need to be controlled in residential zones.

The extant and proposed operation is not agricultural.

As described by the petitioner and as observed, the operation has more of the attributes of a commercial or industrial receiving and shipping operation than it does of an agricultural operation. The only nexus with agriculture is the identity of the goods moved in and out – plants and mulch. The plant stock is either balled or bur lapped or in containers and when received it is placed on plastic sheets covered with mulch or straw. There is no in-ground propagation or cultivation of plants. It is noted that on the plat and in the petitioner's submission to the BOA the terms "plant storage" or "stored plants" are used.

The stored material could be any commodity, such as automobile parts, and the operation would be the same.

[Picture]

The NRI inventory found none of the site to be in agricultural use.

[Copy of NRI Table]

Contiguous agricultural zone

Only 10 percent of the perimeter of the site is contiguous with property in agricultural use. This segment is the west side of the site. As shown on the plats, the petitioner's property on the west end extends more than 20 feet beyond the area used for the business operation. This 20 foot swath is overgrown with, among the plants, briars, Multiflora Rose, and mulberry, wild cherry, and black walnut trees. The vegetation in this swath effectively screens the agricultural property from the petitioner's operation.

[Picture

The petition's contention that 59.G.2.30.00(6) operates to provide less protection to the adjoining property owners due to the nature of her operation or the location of the site is not sustained. Indeed, the petitioner has afforded the agricultural use more protection than that given residential properties..

It cannot be inferred that the creation of the Agricultural Reserve served to diminish the rights of existing residential property owners. Furthermore, the wording of the above cited section shows that it s application is discretionary with the Board and not mandatory.

Screening

Extant and proposed screening

The petitioner has plant evergreens on the south side of Lot 2 to screen her operation from Lot 3. The petitioner proposes to supplement the screen on the south side with additional planting of white pines. The proposed 60 ft long building on the east side of her operational area would screen her residence from the business operation.

Absence of screen on North side of Butler site.

The north side of the Butler property is contiguous with Lot 1. Thirty-five years ago, the owner of this Lot planted White Pine along the border. These trees have "limbed up" as they aged. The trees have also lost branches due to ice and snow storm damage. The effectiveness of these trees as a screen has been further compromised by the petitioner cutting back branches that extended over the property line as it is her right to do. Although the petitioner characterizes this border as "well-screened", the Lot 1 property owner does not agree. Furthermore, the petitioner's heavy vehicles running over the root zone of the pines will eventually cause their decline.

The plats submitted to the Board do not indicate the existence of an area in the north-west corner that is used to store hardscape materials, pallets, tires, pipes, etc.

[Picture]

The petitioner apparently recognizes the need to screen her operation on this side as she has stated that a wall will be constructed around the trash dumpster to "screen" it from adjacent properties.

Environmental Impact of Proposed Plat and the extant operation.

The site naturally slopes from north to south. A berm was constructed by the petitioner on the south boundary of the property. Adjacent to the berm ,on the petitioners side , the soil is compacted by tracker trailers delivering mulch to the south-west corner of the property and other vehicular traffic.

[Picture}

The area adjacent to the berm accumulated rain water. In order to drain her property, the owner cut a channel in the berm so that the water drains onto the neighboring lot. This channel is shown on the plat.

[Pictures]

Although Lot 3 would be the natural destination of drainage from Lot 2, compaction of soil and the direction of the water into a narrow channel largely eliminated the natural infiltration of the water into the soil and formed a swale that is visible from space.

[Picture]

The petitioner's proposal to cover the driveway with "full depth" asphalt and to construct a building, along with other impervious surfaces, further reduces the area of land available for infiltration and alters natural hydrologic .patterns. The area designated for plant storage is covered with plastic over which straw or mulch has been placed. Thus approximately 30 percent of the lot which is designated for the business is an impervious surface. These actions will greatly exacerbate run-off conditions.

Adequacy of public services

The petitioner states that the proposed use will be served by adequate public services, *inter alia*, the following:

Water – The site at issue and all other properties on Peach Tree Road have wells. There is no access to a public source of water. The petitioner has installed pipes around the plant storage area with spray nozzles affixed to the top of the pipes. These nozzles spray water essentially daily and have been noted to spray for 24 hours. There are no rain sensors affixed to the nozzles and water sprays even when it is raining. It is interesting that the petitioner proposes to affix a motion detector to her proposed building that will turn on lights presumably if a deer passes by while she does not install sensors that will protect the water supply of her neighbors.

[Picture]

Fire protection – The fire department is located approximately 3 miles from the Butler site. However there are no fire hydrants on Peach Tree Road. It is noted that the petitioner stores combustible materials – mulch and firewood – on the site.

.Road – Peach Tree Road is designated as a Rustic Road by legislation. It is only 19 feet wide and has no shoulders. In the vicinity of the petitioner's site, there is a posted hidden entrance and the road has sharp curves and changes in elevation. It is used by local traffic, school buses, agriculture equipment used to cultivate fields or harvest crops, horse trailers (the entrance to the Potomac Hunt is 0.3 miles from the site at issue), bicyclists and pedestrians.

It is also used by tractor trailers making deliveries to the Butler site…The apron of the petitioner's driveway has been widened to approximately 55 feet apparently to accommodate the turning radius of the large tractor trailers making deliveries to the site.

[Picture]

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Sanitary Sewer – All properties have septic systems. There is no public sewage system in the area.

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Health concerns

Human/Animal

The petitioner states that in the proposed operation, the employees will have access to toilet facilities. In the past, they defecated on Lot 1 under the pines. When she was informed of this practice by Permitting Services, she took steps to allow them to use the facility in her residence. Although continuation of the practice ceased, no action was taken to remove the contaminated soil, throw lime on the area, or at least cover the feces with mulch. The offending material is a source of enteric pathogens. Although the fecal matter has dried, it remains and dust from the site is a health hazard. (Rosas et al., International Journal of Hygiene and Environmental Health, 209 (5) 461-470 (2006).) The petitioner's failure to ameliorate the situation demonstrates a cavalier attitude towards the conjoining properties.

[Pictures]

Plant

The Maryland Department of Agriculture has adopted rules and regulations to provide *inter alia* for the certification of plant dealers and brokers to prevent the sale and distribution of plants that may be infested or infected with dangerously injurious pests. Everyone selling plants in Maryland must be licensed by the MDA. I have not been able to ascertain the petitioner is licensed. as required by Sections 5-301 through 5-313, Agriculture Article, Annotated Code of Maryland, 1985. The MDA is involved not because plant brokers are agriculturists but rather because they are possible vectors for the spread of plant pests or disease. [Costco, Safeway, Wal-Mart, Lowes, Home Depot, etc. all have plant broker licenses, but are not considered as agricultural facilities.]

Proposed Use is not in harmony with the area

The petitioner avers that her proposed use will be in harmony with the general character of the neighborhood, will not be detrimental to the use peaceful enjoyment of surrounding properties or the neighborhood, etc. Property owners in the area have signed

a petition indicating that their findings are to the contrary. The property owners have had almost two years to observe {and be affected by}her operation. The Sugarloaf Citizens Association has also expressed in a letter to the County their opposition to the Butler operation.

Cora Weeks
21030 Peach Tree Road
Dickerson, MD 20842

Looking north on Peach Tree Road from in front of 21020

Apron at end of driveway to Butler property where it joins Peach Tree Road. Apron is more than 50 ft wide, Peach Tree Road is 19 feet wide.

Figure 1. Plant storage area adjacent to Lot 1. Ruts are the result of loading plants onto trailers in this area. This area is the root zone for white pines on Lot 1.

Figures 2. In addition to the vehicles mentioned in the petitioner there are actually two dump trucks and a Bob-Cat on the site.

Channel cut into berm to drain water onto adjacent property.

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November 15, 2007

Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

RE: Special Exception for Landscape Contractor
Petition of Melody Butler d/b/a Butler Landscape Design
Special Exception S-2711

Dear Chairman Fultz and Members of the Board of Appeals:

I am writing to you on behalf of my client, Melody Butler d/b/a Butler Landscape Design, to provide additional clarification concerning the proposed days of operation. The proposed landscape contracting operation will normally operate on weekdays between the hours of 7:00 a.m. and 6:30 p.m. as described in the Petitioner's Statement of Operations. During the busiest times of the year in the spring and fall, Petitioner proposes to operate on Saturdays during the same hours. During the remainder of the year when operations slow down, the proposed operation would be conducted only on weekdays. One exception to the proposed days/hours of operation would be the occasional delivery of mulch which might have to be rescheduled to a Sunday if weather conditions prohibited its delivery on a scheduled weekday. The other exception to the weekend hours would be in the event of an emergency when crews might have to be dispatched on either a Saturday or Sunday. For example, if a tree fell down and had to be removed from one of the properties maintained by the Petitioner, it is possible that a crew would need to be dispatched on a Saturday or Sunday. Similarly, trucks must sometime dispatch to off-site locations outside the regular business hours when there are snow storms.

Thank for your attention to this matter.

Very truly yours,

MILLER, MILLER & CANBY

Susan W. Carter

Susan W. Carter

SWC/dlt

J:\B\Butler\17438 - Peach Tree Road\BOA ltr.doc
11/15/2007 4:34:00 PM

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cc: Francoise Carrier
Martin Klauber, Esquire
Ralph Wilson
Ki Kim
Melody Butler
Brian Donnelly