



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

MCPB
Item #
4 /17/08



MEMORANDUM

DATE: April 4, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RAK*
Development Review Division

FROM: Richard A. Weaver, Acting Supervisor (301-495-4544) *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: 1 lot for an existing house and landscape contractor

PROJECT NAME: Spencerville Knolls

CASE #: 120061010

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RC/RE-1

LOCATION: On the north side of Spencerville Road (MD 198), approximately 300 feet west of the intersection with Thompson Road

MASTER PLAN: Cloverly

APPLICANT: Mark and Suzanne Simpson

ENGINEER: Oyster, Imus and Petzold, Inc.

ATTORNEY: Lerch, Early and Brewer

FILING DATE: March 30, 2006

HEARING DATE: April 17, 2008

RECOMMENDATION: Approval, subject to the following conditions:

- 1). Applicant is bound by all applicable conditions of Board of Appeals approval for Case No's. S-2506 and S-2506-A for East Coast Landscape, Inc.
- 2) Compliance with the conditions of approval of the Final Forest Conservation Plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) Final preliminary plan must show a revised "Impervious Area Tabulation" that reflects 14,320 square feet of existing imperviousness, the addition of 812 square feet of pavement, the removal of 2100 square feet of imperviousness with a resulting 11,114 square feet of imperviousness for the portion of the property in the Upper Paint Branch Special Protection Area.
- 4) The applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Cloverly Master Plan unless otherwise designated on the preliminary plan.
- 5) The record plat must reflect a Category I easement over all areas of forest conservation.
- 6) The applicant must comply with the conditions of the MCDPS stormwater management approval dated April 10, 2007.
- 7) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated March 12, 2008.
- 8) The applicant must comply with the Fire Department Access Review Plan dated February 28, 2008 prior to issuance of access permits by SHA.
- 9) The applicant must satisfy provisions for access and improvements as required by MCDPWT prior to recordation of plat(s).
- 10) The applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of access permits.
- 11) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board resolution.
- 12) Other necessary easements shall be shown on the record plat.

SITE DESCRIPTION (Attachment A – vicinity map)

The subject property "Subject Property" or "Property" is identified as Parcel 75 on Tax Map KS22 and is located on the north side of Spencerville Road (MD 198), approximately 300 feet west of the intersection with Thompson Road. The Property consists of 10.12 acres; the northern 5.76 acres of the Property is zoned RC, the southern 4.36 acres of the Property is zoned RE-1. 2.68 acres of the Property lie within the Upper Paint Branch Special Protection Area (SPA) and the associated Environmental Overlay Zone for the SPA. 7.44 acres lie within the Patuxent River watershed, but is not within the Patuxent Primary Management Area (PMA) because the property is more than 660 feet from any stream that drains to the Patuxent River. There are approximately 1.40 acres of forest located along the northern and northwestern Property boundaries. Currently, there are existing structures associated with the landscape contracting business on the northern portion of the Property and an existing residential structure

on the southern portion of the Property. Uses surrounding the site include a church to the west and large lot, single family residential uses on the remaining boundaries of the Property.

PROJECT DESCRIPTION (Attachment B – proposed plan)

The proposal is to create one lot from the unplatted parcel to allow an expansion of the landscape contracting business as prescribed by the Board of Appeals approvals, S-2506 and S-2506-A (Attachment C). The house that will remain will be located on the same lot. The property is split zoned as described above. The RE-1 zone portion abuts Spencerville Road and has the existing home on it. The house shares driveway access to the landscaping operation to the rear which is in the RC zoned portion of the Property. A fifty foot wide buffer will be established around the perimeter of the landscaping operation, which will protect the required forest on the site to meet the requirements of the law. Public water and septic systems will serve the Property.

ANALYSIS AND FINDINGS

Master Plan Compliance

The Cloverly Master Plan does not make specific recommendations on the Property other than to confirm the RC and RE-1 zoning. The project was reviewed by staff and the Planning Board at the time of the Special Exception. At that time, the anticipated uses were found to comply with the Cloverly Master Plan. The preliminary plan does not change the uses or the physical layout of the operation to any significant degree, therefore, the application for this preliminary plan continues to comply with the recommendations of the Cloverly Master Plan.

Public Facilities

Roads and Transportation Facilities

The proposed lot does not generate 30 or more vehicle trips during the morning or evening peak-hours so the application is not subject to Local Area Transportation Review. The application was filed prior to January 1, 2007; therefore, the property is not subject to the Policy Area Mobility Review established by the 2007-2009 Annual Growth Policy. The Applicant is required to dedicate right-of-way that conforms to the Cloverly Master Plan recommendations; that dedication is shown correctly on the preliminary plan. Staff supports a waiver of sidewalks along the property frontage since there are no other sidewalks in the area. The applicant will be required to pay into a MCDPWT sidewalk CIP project for future construction of sidewalks along Spencerville Road. With the dedication and frontage improvements required by the SHA and MCDPWT, staff finds that the road and transportation facilities will be adequate to serve the uses on the site.

Pedestrian and vehicular circulation

The site is not likely to generate significant pedestrian activity; therefore, staff supports the sidewalk waiver discussed above with the applicant paying into the future CIP project for sidewalks along Spencerville, Road. A 10 ft. wide Master Plan bikeway is planned for the south side of Spencerville Road; however, since this application is on the north side, the Applicant will not be required to build that bike path. Vehicular circulation was reviewed by staff and the Planning Board as part of the Special Exception cases and found to be adequate. Staff finds that both vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

The site will be served by public water service and private on-site sewage disposal systems. The septic systems have been approved by the Montgomery County Department of Permitting Services by letter dated March 12, 2008. In a letter dated February 28, 2008, the Montgomery County Fire and Rescue Service has approved the access to the site, finding it to be adequate for their vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application is not within a school moratorium area and is not subject to a School Facilities payment. Staff finds that all public facilities are adequate to serve the development.

Environment

Upper Paint Branch SPA Environmental Overlay Zone

Approximately 2.7 acres of the southern portion of the subject site lies within the Upper Paint Branch Special Protection Area (SPA). The Upper Paint Branch SPA Environmental Overlay Zone (Section 59-C-18.15 of the Zoning Ordinance) applies over this portion of the site. Section 59-C-18.152(a)(1)(A) of the Zoning Ordinance states that any impervious surface within the SPA that lawfully existed pursuant to a building permit issued before July 31, 2007 that exceeds the 8 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.

The imperviousness within the SPA portion of the site is slightly in excess of 14,680 square feet, or approximately 12.5 percent imperviousness. The current plan proposes approximately 12,467 square feet of impervious area, or 10.6 percent imperviousness, within the SPA portion of the site. The proposed subdivision results in an overall reduction in impervious surfaces within the SPA, and therefore, the proposed project complies with the Environmental Overlay Zone.

Special Exception Requirements

Special Exception S-2506-A includes a condition stating that "The existing driveway shall remain as shown on the site development plan and shall be maintained in good condition. It

may not be modified absent review by Technical Staff and approval by the Board of Appeals". The intent of the requirement was to limit any additional imperviousness. The portion of the driveway within the SPA portion of the site accounted for 14,320 square feet of the impervious area. The preliminary plan proposes the addition of approximately 812 square feet of impervious area to meet Montgomery County Fire and Rescue requirements and the removal of approximately 2100 square feet of impervious area from areas where the driveway was wider than necessary. The resulting impervious area associated with the driveway improvements is 11,114 square feet. The reduction in imperviousness associated with the new driveway is 3206 square feet. Staff has required, by condition, that the final preliminary plan accurately reflect these numbers. The Board of Appeals may need to review the modification to the driveway.

Environmental Guidelines

There are no streams, wetlands, floodplains, or associated environmental buffers on or adjacent to the subject property.

Forest Conservation

There is a Final Forest Conservation Plan for the Subject Property that was approved in 2002. This plan was approved as part of the original Special Exception (S-2506). The existing 1.40 acres of forest on the Property is protected in a Category I Forest Conservation Easement. The conservation easement surrounds the area proposed for the special exception use (landscape contractor operation). Staff finds that the preliminary plan adequately protects the environmental features of the site and that it complies with Chapter 22A, the Montgomery County Forest Conservation Law.

Stormwater Management

Section 19-62 of the Montgomery County Code states that "the requirements for a water inventory and a preliminary and final water quality plan apply in any area designated as a special protection area to a person proposing a land disturbing activity on privately owned property: (1) who is required by law to obtain approval of a development plan, diagrammatic plan, schematic development plan, project plan, special exception, preliminary plan of subdivision, or site..." Land disturbing activity is defined as land disturbance that *covers 5000 square feet or more of land area*. The project proposes approximately 2900 square feet of land disturbance within the SPA portion of the site. Therefore, no SPA water quality inventory or plan is required for the proposed preliminary plan.

The MCDPS Stormwater Management Section is, however, required to approve a stormwater management concept and did so on April 10, 2007. The concept consists of water quality controls including bio-retention areas and other non-structural controls. Channel protection requirements are waived because post development discharge from the entire site is less than 2.0 cubic feet per second. Staff finds that the plan complies with the requirement to have an approved stormwater management concept prior to Planning Board consideration.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections of this Chapter. In a review of the lot pattern that has developed in the surrounding neighborhood, staff is of the opinion that the proposed lot's size, width, shape and orientation is consistent with the same general characteristics found in the lots within the neighborhood. Staff, therefore, finds that proposed lot is of the appropriate configuration and orientation given its location within the subdivision. Staff has also found that the site can be served adequately by all public utilities and services.

The lots were reviewed for compliance with the dimensional requirements for the RC and RE-1 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks for the two zones in which it lies. Staff has determined that the lot's frontage on Spencerville Road, which is in the RE-1 zone, does have adequate frontage and width for lots within that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

The application was filed prior to the requirement for the Applicant to hold a pre-submission meeting. The plan has been reviewed by the Board of Appeals on two separate occasions. To date, no correspondence has been received by staff to be placed in the file. Staff finds that the concerns of interested citizen have been adequately addressed by the proposed plan, or with the recommended changes.

CONCLUSION

The proposed lot meets all requirements established in the Subdivision Regulations, the Zoning Ordinance, the Board of Appeals and comply with the recommendations of the Cloverly Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

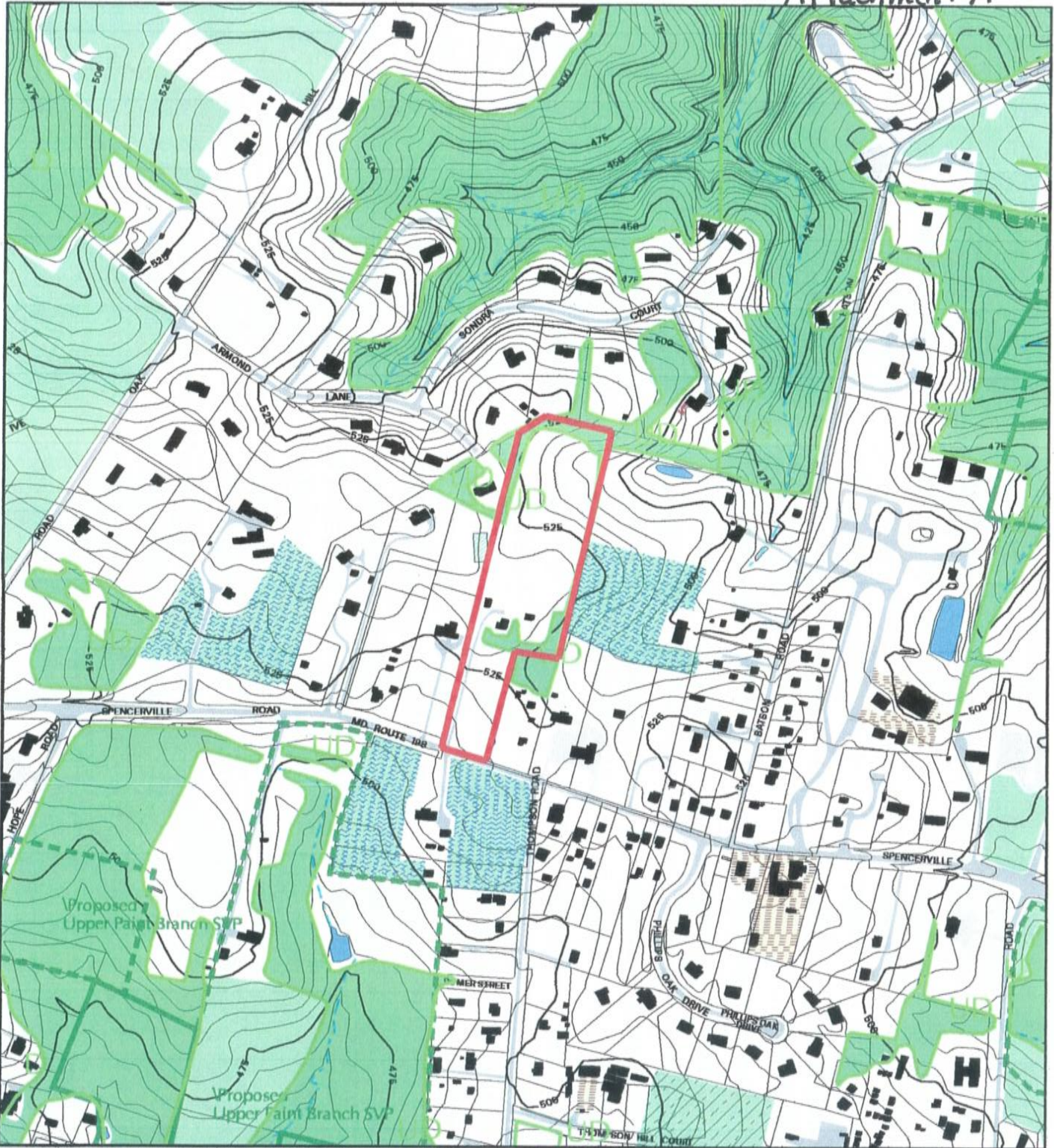
Attachment A – Vicinity Development Map
Attachment B – Proposed Development Plan
Attachment C – S-2506 and S-2506-A

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Spencerville Knolls				
Plan Number: 120061010				
Zoning: RC/RE-1				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Residential/Landscape Contractor				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	RC - 40,000sq. ft. RE-1 40,000 sq. ft.	9.90 acres	RW	4/4/08
Lot Width	RC - 125 ft. RE-1 - 125 ft..	355 ft.	RW	↓
Lot Frontage	RE-1 25 ft.	25 ft.	RW	
Setbacks				
Front	Est. by BOA	Must meet BOA	RW	
Side	Est. by BOA	Must meet BOA	RW	
Rear	Est. by BOA	Must meet BOA	RW	
Height	Est. by BOA	Must meet BOA	RW	
Max Resid'l d.u. per Zoning	2 res. Units	1	RW	
MPDUs	No		RW	
TDRs	No		RW	
Site Plan Req'd?	No		RW	
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	RW	4/4/08	
Road dedication and frontage improvements	Yes	Agency letter	5/26/06	
Environmental Guidelines	N/a			
Forest Conservation	Yes	Staff memo	4/4/08	
Master Plan Compliance	Yes	RW	4/4/08	
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Agency letter	4/10/07	
Water and Sewer (WSSC)	Yes	Agency comments	11/13/07	
10-yr Water and Sewer Plan Compliance	Yes	RW	11/13/07	
Well and Septic	Yes	Agency letter	3/12/08	
Local Area Traffic Review	N/a			
Policy Area Mobility Review	N/a			
Transportation Management Agreement	No	RW	4/4/08	
School Cluster in Moratorium?	No	RW	4/4/08	
School Facilities Payment	No	RW	4/4/08	
Fire and Rescue	Yes	Agency letter	2/28/08	
Other (i.e., schools)				

SPENCERVILLE KNOLLS (120061010) - RETAKE

Attachment A



Map compiled on October 16, 2007 at 9:20 AM | Site located on base sheet no - 221NE02

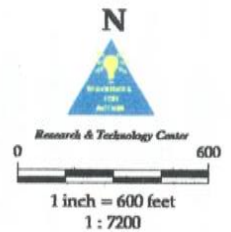
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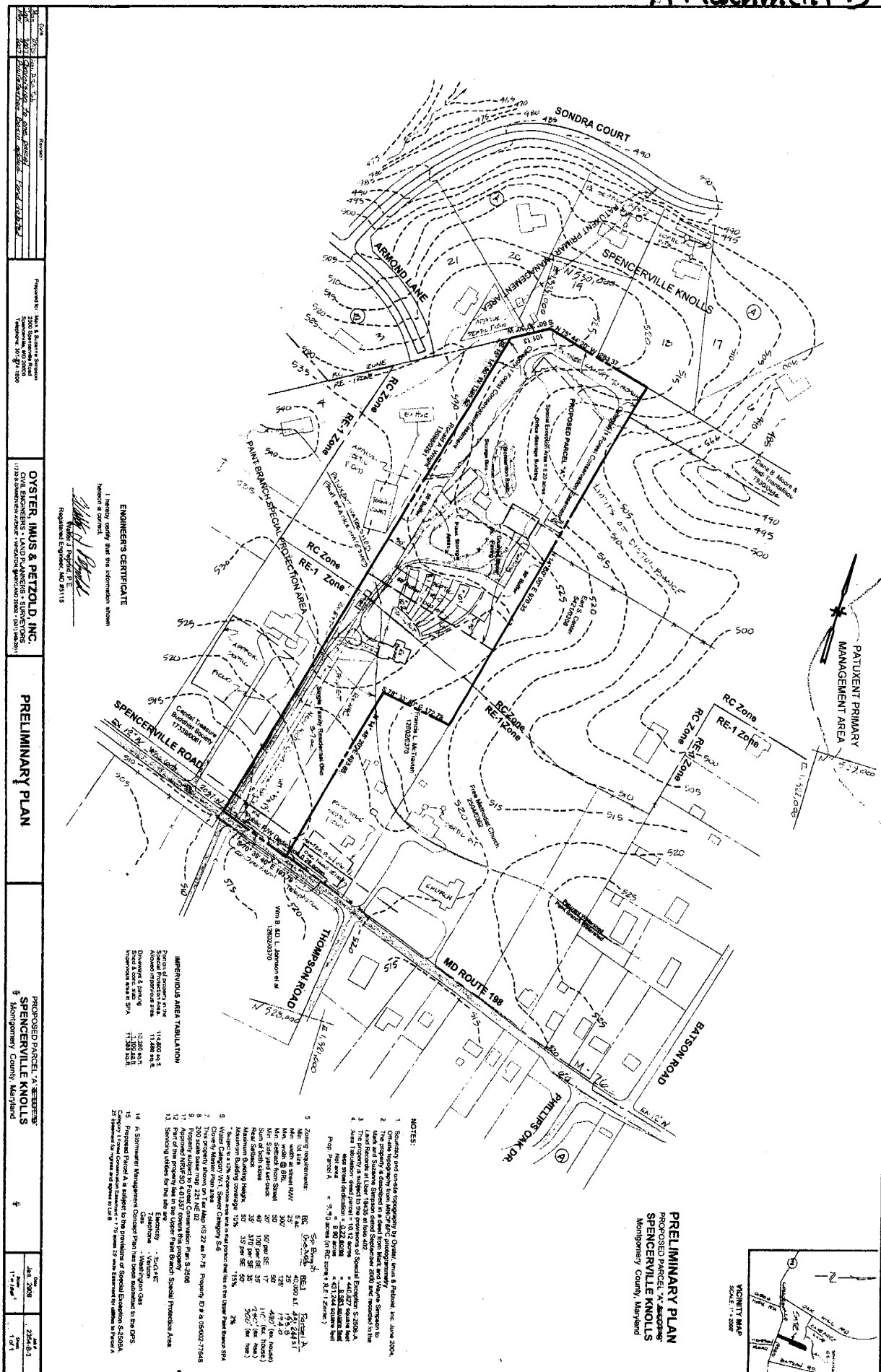
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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3700





ENGINEER'S CERTIFICATE
I hereby certify that the information shown on this drawing is correct.
William J. Papford
William J. Papford, P.E.
Registered Engineer, MD 05118

PRELIMINARY PLAN

PROPOSED PARCEL "A" ~~SPENCERVILLE~~
SPENCERVILLE KNOLLS

Jan. 2008	2354
Phone	Phone

Aftachama

¹ As a result of modifications made by the Petitioner during the course of these proceedings, it appears that Mr. McTavish (his attorney, Mr. McCarthy) and Mr. and Mrs. Krause are no longer in opposition to the Petition.

I. STATEMENT OF THE CASE

Petition S-2506, filed November 11, 2001, requests a special exception to permit a landscape contractor on Parcel P75, on Tax Map KS 22, on the north side of Spencerville Road, also known as 2000 Spencerville Road, Spencerville, Maryland in the RE-1 and RC Zones. The property is approximately 10.12 acres in area and is improved with a 1,810 square foot single family detached residence, a barn and a shed. By Resolution effective March 7, 2002, the Board of Appeals referred the above-captioned matter to the Office of Zoning and Administrative Hearings (OZAH) acting under the provisions of §59-A-4.125 of the Montgomery County Zoning Ordinance. The Board requested the OZAH to schedule and conduct a hearing on the petition and submit a report and recommendation for consideration by the Board.

The instant petition was initially reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated May 3, 2002, recommended approval of the Petition subject to ten conditions.² The Planning Board considered the petition on July 18, 2002, and, by a 4 to 0 vote, recommended approval subject to eleven conditions.

A public hearing was convened by the undersigned Hearing Examiner on September 13, 2002. Several neighbors appeared in opposition. Robert McCarthy, Esquire appeared on behalf of Monty McTavish of 2020 Spencerville Road. Mr. McTavish is one of the neighbors in opposition to the petition. Mr. McCarthy noted that the Petitioner modified its plans in response to conditions recommended by the Planning Board. Mr. McCarthy requested that the hearing be postponed to provide the neighbors with additional time to review the revised plans submitted by the Petitioner. He stated that the neighbors received notice of the amended plans on or about August 24, 2002 and have not had enough time to review the revised plans and consult with an expert.

² This case was originally scheduled to be heard by the Planning Board on May 9, 2002. The case was deferred to the Planning Board's July 18, 2002 hearing to permit the Petitioner to resolve screening concerns with an adjacent property owner. Although the Staff Report is dated May 3, 2002, it includes references to modified plans that were revised on July 11, 2002. Therefore, although the Technical Staff report is dated May 3, 2002, it was clearly updated and reissued between July 11, 2002 and July 18, 2002.

Initially, Martin Hutt, Esquire, the Petitioner's attorney, objected to the continuance arguing that the revisions were made solely to comply with the conditions recommended by the Planning Board and that the revisions had been discussed at the Planning Board hearing in July. As a result, the neighbors had received almost 3 weeks to review the revised plans. After discussions between counsel, the Petitioner agreed to a continuance. Accordingly, the hearing was continued to October 9, 2002. The new hearing date was announced at the September 13, 2002 hearing and notice of the new hearing date was mailed to all interested parties.

A hearing was convened on October 9, 2002. At this hearing, the Hearing Examiner was advised that the parties had not discussed the revised plans and the neighbors' concerns regarding those plans. With the consent of all present, the hearing was continued to November 12, 2002 to provide the parties with an opportunity to resolve their differences.

On November 12, 2002, a further hearing was convened. At this hearing, the Petitioner's counsel stated that certain additional modifications had been made to the plans to address the neighbors' concern. The only neighbor who appeared at the November 12, 2002 hearing was Earl Center, the owner of 1602 Batson Road, Spencerville. At the November 12, 2002 hearing, testimony was presented in support of the petition. Mr. Center expressed concerns regarding the Petitioner's operations. Each party was provided the opportunity to cross-examine all witnesses. People's Counsel, Martin Klauber, Esquire, requested that the Petitioner submit a lighting plan for the record of this matter (including the specific lighting fixtures proposed by the Petitioner and a photometric plan). At the conclusion of the November 12, 2002 hearing, the record was left open to permit the Petitioner to submit a lighting plan on or before November 27, 2002 and to provide an opportunity for any party to comment on the lighting plan on or before December 18, 2002. On December 18, 2002, the record in the above-captioned case was closed.

II. BACKGROUND FACTS

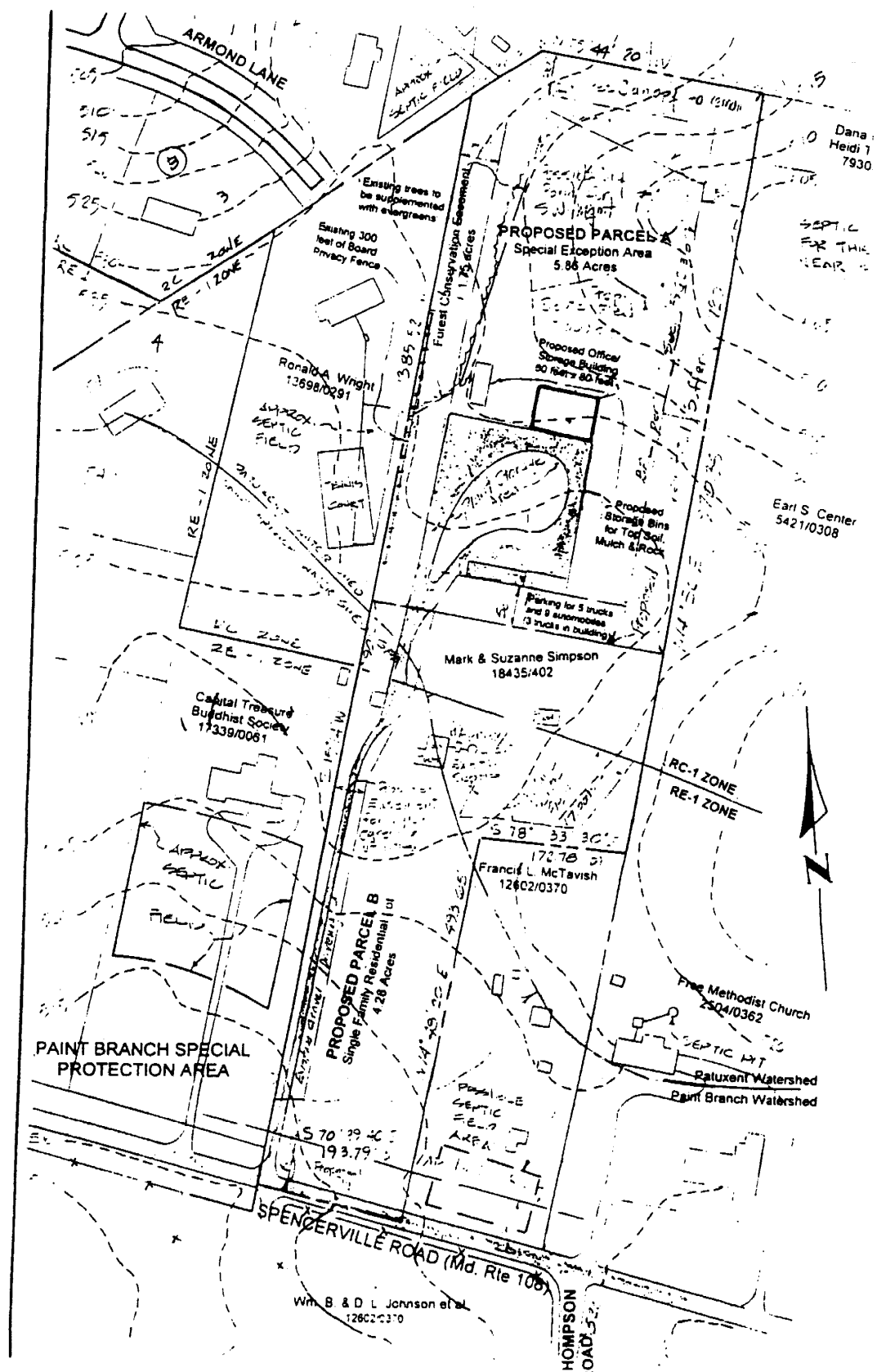
For the convenience of the reader, the background facts are grouped by subject matter. Where there are any conflicts in the evidence, they are resolved under the preponderance of evidence test.

A. The Subject Property

The subject property contains 10.12 acres and is located on the north side of Spencerville Road between Oak Hill and Batson Roads. The northern portion of the property is in the RC Zone. The southern portion of the property with frontage on Spencerville Road is in the RE-1 Zone. The Petitioner proposes to subdivide the subject property into two lots so that the special exception use would be operated on the rear lot to be known as "Parcel A" which would contain 5.86 acres. Access to the rear lot would be across proposed "Parcel B", which would contain 4.2 acres and be held as a single family residential lot. A site plan of the subject property showing the zoning category boundary and proposed subdivision is depicted on page 5, *infra*.

The southern 2.68 acres of the 10.12-acre property lie within the Upper Paint Branch Special Protection Area, and the northern 7.44 acres lie within the Patuxent River Watershed. The portion of the property within the Patuxent River watershed does not lie within a Primary Management Area (PMA) because it is more than 660 feet from a stream in the Patuxent River system.

The special exception boundaries lie on the part of the property outside the Upper Paint Branch SPA. The Petitioner does not propose any grading, land disturbance, or increase in impervious cover on that part of the property within the SPA. This part of the property, which includes the existing house, is to remain a residential use. Therefore, the Montgomery County Department of Permitting Services (DPS) has determined that a SPA water quality plan is not needed for the proposed special exception. A condition prohibiting changes to the driveway, which is in the SPA (proposed condition number 7), would prevent changes without the benefit of a special exception modification.



B. The Neighborhood and Its Character

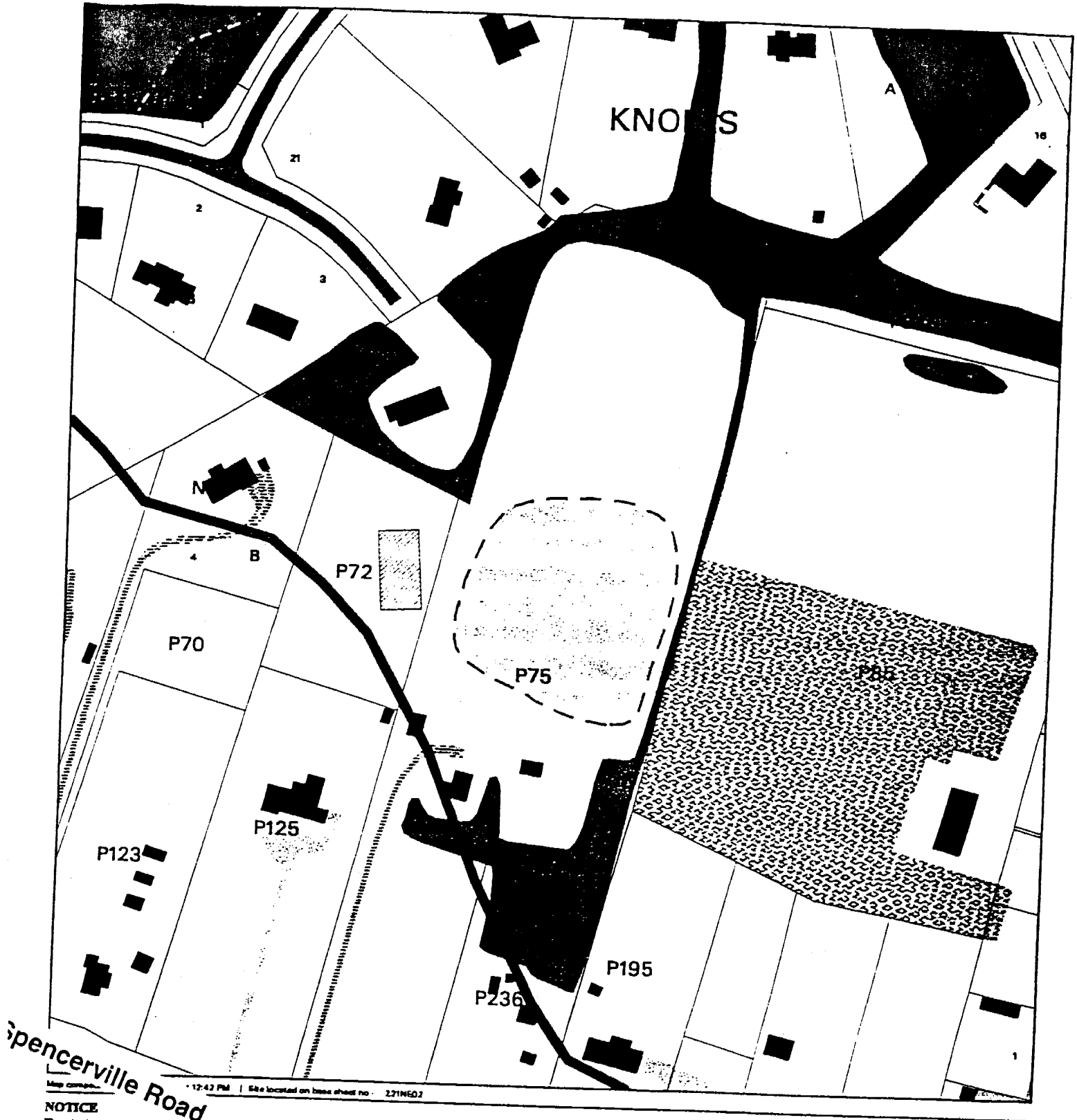
The subject property is located within the Cloverly Master Plan area. The surrounding area is primarily residential. However, there are six other special exceptions within 1,500 feet of the subject property. To the west there is a riding stable (S-402) and a storage building for a nursery (S-470). To the east, there is a landscaping firm (BAS-1780) and a nursery (BAS-820). To the south, there is an accessory apartment (BAS-1279) and a riding stable (BAS-1206).

The proposed use, known as East Coast Landscape, has been operating on the site since April of 1999. The Petitioner recently became aware that a special exception was required for a landscape contractor use in the RC and RE-1 Zones and filed the subject petition. The location of existing buildings in the immediate vicinity of the subject property is depicted on page 7, *infra*. The zoning in the neighborhood is depicted on page 8, *infra*.

C. Summary of Proposal

The Petitioner has requested a special exception for a landscape contractor use at 2000 Spencerville Road. The proposed landscaping business would operate from 7:00 a.m. to 7:00 p.m., Monday through Saturday. No production or retail sales of landscaping related materials is proposed. The petition is for a landscaping contractor use. There would be up to 9 employees coming to the site during workdays to be dispatched using business vehicles for landscaping work off site. As is typical of landscaping firms, other employees may be picked up to join crews during the day up to a maximum of 18 employees. A proposed condition of approval, to which the Petitioner has agreed, limits the number of employees on site to 9 to prevent parking conflicts. Inasmuch as there is no production of plants or other landscaping materials on site, deliveries are periodically made to the subject property where these materials are temporarily stored for installation off

VICINITY MAP FOR
S-2506



Map compiled 12:42 PM Site located on base sheet no. 231NE02

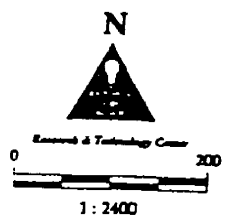
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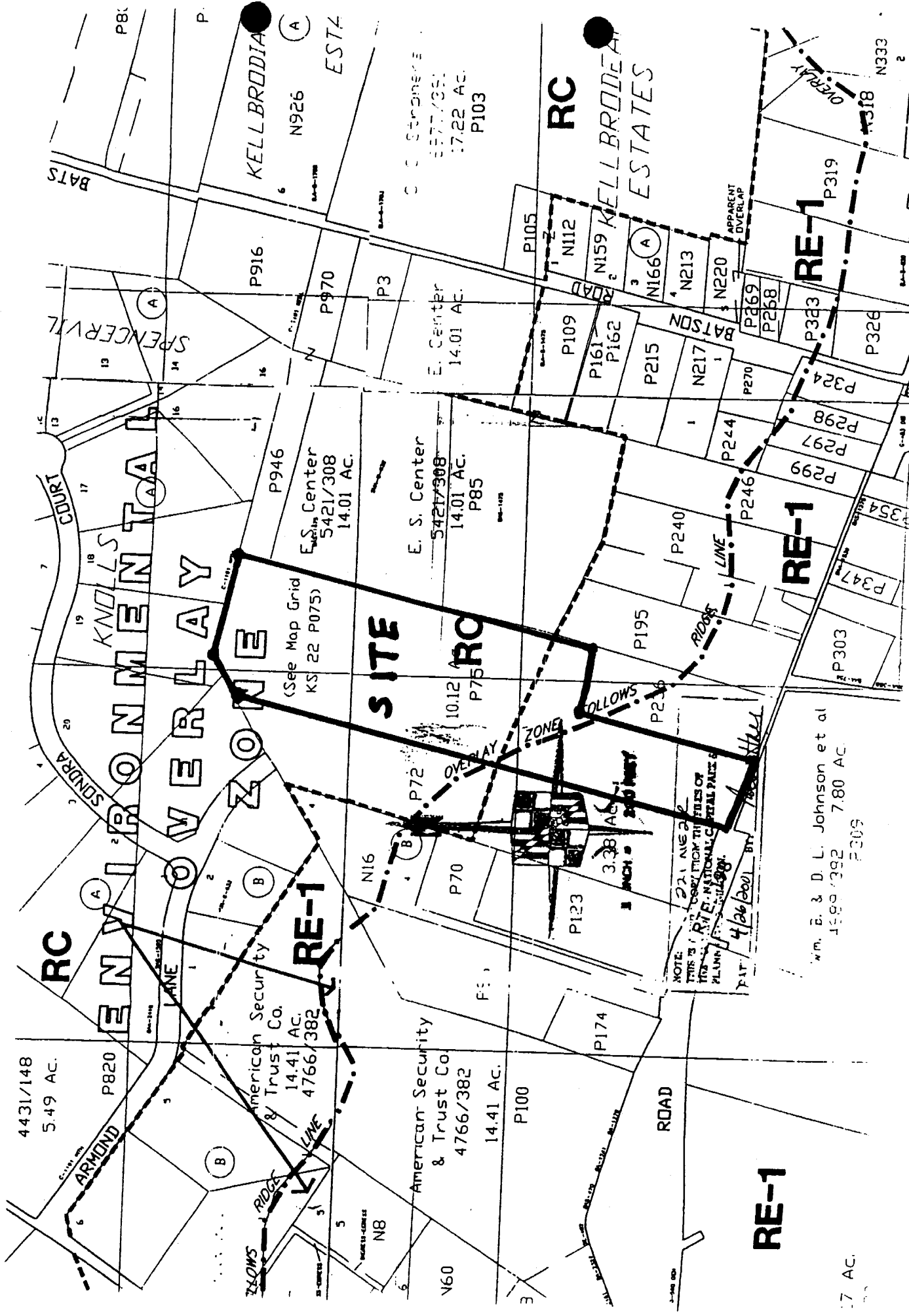
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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
1787 Georgia Avenue - Silver Spring, Maryland 20910-2260



A7



RE-1

RE-1

RE-1

Wm. E. & D. L. Johnson et al
1999/392 7.80 AC.
P309

NOTE:
THIS IS A PRELIMINARY PLAT
FOR THE RE-1 NATIONAL CAPITAL PARK
PLANNING DISTRICT.
DATE 4/26/2001 BY [signature]

4431/148
5.49 AC.

American Security
& Trust Co.
14.41 AC.
4766/382

American Security
& Trust Co.
4766/382
14.41 AC.

V60

P100

P174

P123

P70

N16

RE-1

SITE

RC

E. S. Center
5421/308
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P85

E. S. Center
5421/308
14.01 AC.

P946

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P970

P3

E. Center
14.01 AC.

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site. The site plan identifies where plants would be stored and locates bins (totaling 100 feet by 20 feet in area) for mulch.

One new building is proposed. The structure would be 80 feet long by 60 feet wide and 35 feet in height. No greenhouse or shade structure is proposed. The building would have 4 garage doors and 6 skylights. The appearance of the proposed building would be similar to a barn. This building would have green tinted siding. Windows were added to the design of the building to create a more residential appearance. Any additional buildings would require a modification of the special exception. A 6-foot tall board on board fence is to be installed along the western property line to screen adjacent properties from the use. The proposed fence would be 300 feet long.

According to the Technical Staff, nine parking spaces are required for the proposed use, one for each proposed business vehicle/employee parking space. The statement of operations lists business vehicles including: three stake body trucks, two pickups, a skid loader and a tractor. No trailers are listed. It is represented in the statement of operations that up to nine employees would park on the site. The site plan depicts ten designated outdoor parking spaces (20'x10') plus space for 3 vehicles in the storage building. The outdoor parking would be used for employee parking during hours of operation and for business vehicle storage after hours. The plan also shows that the parking would meet the required 50' setback from adjacent properties. No light poles are proposed for the parking/paved work area as the proposed hours of operation are primarily during daylight hours. However, there would be two motion-sensitive lights attached to the barn.

III. SUMMARY OF TESTIMONY

At the October 13, 2002 hearing, Mark W. Simpson, president of East Coast Landscaping, Inc., appeared in support of the petition. Mr. Simpson explained that the southern portion of the existing property is improved by a single family home in which Mr. and Mrs. Simpson reside. The northern portion of the property is the area to be subject to the special exception. Mr. Simpson testified that the Petitioner started

operating the landscaping business from the subject property after the Simpsons moved into the residence in 1999.

According to Mr. Simpson, the Petitioner custom designs landscapes and installs trees and shrubs. The Petitioner does not conduct retail business from the site and customers do not visit the site. Mr. Simpson stated that no materials are grown on site. Trees and shrubs are delivered in the spring and fall by truck. The Petitioner receives approximately 4 deliveries over a 2 to 3 week period in the spring, and approximately 2 deliveries during a similar period during the fall. Mr. Simpson testified that there is sufficient room on site for trucks to turn around. According to Mr. Simpson, approximately 1 hour is required to unload a truck.

Mr. Simpson testified that the Petitioner would have up to 9 employees on the site. The employees arrive approximately 7:00 a.m. and generally leave for the job site between 8:00 a.m. and 8:30 a.m. in company vehicles. From 6:00 p.m. to 7:00 p.m. the employees return to the site. Mr. Simpson stated that most material is containerized. Mulch and topsoil are each delivered every 3 to 4 weeks by a tractor trailer. He stated that mulch requires one-half hour or less to unload and topsoil requires approximately 10 minutes to unload. Mr. Simpson testified that the office manager is the only employee on site all day. He stated that plant materials are irrigated on site through the use of an overhead irrigation system. The company uses 7 vehicles which include 3 stake-body trucks, 2 pickup trucks, a skid loader and a tractor. According to Mr. Simpson, the only illumination on the site is motion-sensitive lighting on the building. The Petitioner proposes to install a 14 foot long, 5 foot high wooden identification sign that would not be illuminated. The Petitioner understands that the sign must receive approval from the sign review board. The Petitioner also agreed that any sign would be submitted to the Board of Appeals for review of its compatibility. Mr. Simpson testified that the Petitioner accepts the conditions recommended by the Technical Staff in the staff report.

On cross-examination, Mr. Simpson acknowledged that the Petitioner uses some herbicides and that employees are instructed to wear gloves when using such chemicals. Mr. Simpson acknowledged that an excavator hired by the Petitioner accidentally removed a portion of the fence on Mr. Center's property. Mr. Simpson agreed that the Petitioner would use no herbicides or pesticides on the special exception site and would store as much inside the building as possible to minimize the visual impact of the use.

At the November 12, 2002 hearing, Mr. Hutt represented that the Petitioner and some of the neighbors had agreed to a resolution of some of the neighbors' concerns. The Petitioner will install 5 White Pines, 6 to 8 feet in height at the time of planting, with a 12 month warranty, on the Krauses' property to provide a visual screen between the Krauses' home and the Petitioner's property. The Petitioner will also remove 1 Dogwood tree from the Krauses' property. Further, the Petitioner has agreed to install 300 feet of fencing along the west property line and has added windows to the proposed building to create a more residential appearance. The revised building would have the same footprint and height as previously proposed, but would also include windows, skylights and double doors.

Walter Petzold was recognized as an expert in civil engineering and land planning and testified in support of the petition. He reviewed the site plan and noted that the special exception area is about 500 feet from Spencerville Road and testified that the special exception use would not be readily visible from the roadway. He testified that there would be no change to the residential area of the Petitioner's property and the driveway is already paved. The only change that would be visible from Spencerville Road is the installation of a sign, subject to approval of the Sign Review Board and the Board of Appeals. The Petitioner proposes to retain all existing woodlands and is establishing a Category 1 forest conservation easement. The Petitioner would install supplemental plantings on the northeast portion of the site adjacent to Mr. Center's property.

There would be a 50-foot buffer around all sides and no on site operations would take place in the buffer area. He confirmed that the Petitioner will install the Pine trees and fence described by Mr. Hutt.

Mr. Petzold noted that a landscaping contractor uses a special exception in both the RC Zone that applies to the rear portion of the property and the RE-1 Zone that governs the front portion of the property. According to Mr. Petzold, there is nothing in the Master Plan prohibiting special exceptions in this area and he reviewed several existing special exceptions in the neighborhood. Mr. Petzold agreed with the Staff's definition of "neighborhood" and described the neighborhood as having a semi-rural atmosphere. He testified that the Petition meets all requirements of the zone. He explained that a stormwater management facility would be located to the rear of the proposed building and the runoff from the site would be no greater than the current flow as is required by the County Code. Both quantity and quality controls would be included.

Mr. Petzold reviewed the adjacent uses which include residential uses, a horse pasture, a farm and two churches. He testified that the proposed use would be in harmony with the neighborhood and is consistent with the Master Plan. Because employees arrive before the a.m. peak hour³, no adverse traffic effects would occur. He testified that the barn structure is consistent with the size of other similar structures in the neighborhood. Mr. Petzold reviewed each of the standards for granting a special exception and concluded that the petition meets all requirements. He does not believe there are any non-inherent impacts of the proposed use. Finally, Mr. Petzold testified that he agreed with all Technical Staff findings and the parking area would not be visible due to the improved fencing and screening.

At the November 12, 2002 hearing, Mr. Center appeared and expressed concern about water runoff and the possibility that workers may conduct on site operations too close to Mr. Center's property. In response, Mr. Simpson testified that the employees would not conduct any activities in the afforestation buffer area nor within

³ At the time the subject petition was filed and at the time Mr. Petzold performed his analysis, the a.m. peak hours started at 7:00 a.m. The a.m. peak hours are now considered to commence at 6:30 a.m.

50 feet of any property line. He emphasized that the Petitioner would not spray any plants with herbicides and, therefore, no airborne herbicides would blow onto Mr. Center's property.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided pre-set legislative standards are met. The special exception is evaluated in a site-specific context because there may be locations where it is not appropriate. Nevertheless, a special exception use is deemed compatible within the zoning district in which it is authorized unless specific adverse conditions at the proposed location are shown to overcome this presumption. Impacts which are inherent in the special exception use, regardless of where it is located within the zoning district, may not be the sole basis for denial of a special exception.

A. Standard for Evaluation

Sec. 59-G-1.2.1. Standard for evaluation.

A special exception must not be granted absent 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 the inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The general neighborhood affected by the proposed exception for the same use.

The inherent, generic physical and operational characteristics arising from the given use, in this case a landscape contractor, include temporary storage of landscaping materials to be taken by crews to work

sites, permanent storage of business vehicles and equipment, storage buildings and bins and an office. All of these activities must be arranged on the site in a logical manner, 50' or more from the property line. The site development plan for the proposal identifies where activities would occur on the site. Staff identified possible non-inherent adverse effects relating to storage of landscape materials, vehicle parking, deliveries and a potential easement over a proposed residential lot.

A non-inherent adverse effect would occur if the temporary storage of landscaping materials were to occur in volumes out of scale with the residential character of the site. This issue is of particular concern with mulch and other ground cover materials that may be cheaper for the business to obtain in volume. The site plan clearly identifies the location of the mulch bins. To avoid any non-inherent adverse effects, storage of these materials must occur in these bins.

In a similar fashion proliferation of trucks and other vehicles can render a generic aspect of the use, business vehicles, non-inherent. This is particularly problematic when broken vehicles are being stored for parts or parking spaces are rented to other businesses. The zoning ordinance specifically requires that the number of vehicles be identified and limited by special exception. While this requirement does burden a petitioner with needing to seek a modification when the petitioner's fleet is changed, it protects the residential character of the neighborhood from uncharacteristic groupings of business vehicles. In the present case the number of vehicles would be limited to 7 vehicles by proposed condition number 3.

Deliveries of landscaping materials can present a non-inherent adverse effect. While shipping and loading activities can occur in commercial and industrial areas with little impact, in a residential zone the timing and frequency can be of significant concern. In this case, the timing of deliveries has been limited by a proposed condition of approval to the period between the hours of 9:00 a.m. and 4:00 p.m. This serves to protect the residential neighborhood from disturbance during any evening or early morning hours and protects the traffic network from conflicts during peak hours. Based on the volume of deliveries anticipated, the effects of traffic would be typical for a landscape contractor and, therefore, inherent.

A non-inherent adverse effect relates to the access proposed over an easement over a residential property. Currently, the owners of the corporate Petitioner own and reside on this property. The site development plan proposes to subdivide the parcel. If the Simpsons were to sell the residential portion of the property, the current driveway configuration may adversely affect new owners that may not have an interest in the business. Potential solutions like fencing or reconfiguring the driveway are difficult to anticipate at this time. This effect is mitigated by the current ownership situation but must be considered prior to any future sale. In addition, zoning requirements such as screening of parking and the impervious surface limitations of the environmental overlay zone would need to be reevaluated. Therefore, Technical Staff recommended a condition of approval that a modification of this special exception shall be required prior to any change in ownership of Parcel B. Subject to the foregoing, Technical Staff concluded that there are no non-inherent adverse effects associated with this Petition that warrant denial. Technical Staff found that, subject to the recommended conditions of approval, all

of the physical and operational characteristics of the proposed use would be inherent. The undersigned concurs with the Technical Staff's findings.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a).

Sec. 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.

The property is zoned RC and RE-1, both of which permit a landscape contractor by special exception.

- (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 proposed use complies with the standards and requirements set forth for the use in Division 59-G-2, as is more specifically discussed on pages 20 and 21, infra.. Also, the proposed use complies with the development standards for the RC Zone as follows:

Table 1 - Conformance with Applicable Development Standards S-2506		
Development Standards - RC	Requirement	Proposal
Front Yard Setback	50'	
Side Yard Setback	20'	50'
Sum of Both Sides	40	50'
Rear Yard Setback	35'	100'
Use operations setback	50'	460'
Min Lot Area for Use	2 acres	50'
Min. Lot Area for Zone	5 acres	5.86 acres
Lot Width @ Street	300'	5.86 Acres = 255, 261.6 Sq. Ft
Lot Width @ Front Bldg Line	300'	370' ¹⁽¹⁾
Building Height	50'	370'
Building Coverage	10%	Office-20', Storage A & B - 35'
Parking	1 per business/employee vehicle ⁴	4.7%, 12,000 sq. ft.
Parking Setback for use (operations)	50'	13 50'

- (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 special exception must be consistent with any recommendation in an approved and adopted 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 subject property is within the 1997 Cloverly Master Plan area. The approved and adopted 1997 Cloverly Master Plan states that: "When the Board of Appeals considers any application for a special exception in the Cloverly Master Plan Area, it should consider the following factors in order to maintain, to the greatest extent feasible, the residential character of the area."

- *Maintenance of a residential appearance, where feasible.*

The Petitioner proposes the construction of a barn. The barn would be set back approximately 500 feet from Spencerville Road. The view of the barn from the roadway would be substantially blocked by the trees on the site. The barn would be substantially screened from most of the rear yards of the adjoining properties by a 300 foot long fence on the west side of the site and existing forest. The additional screening proposed by the Petitioner, would render the barn almost invisible from the rear yards of nearby properties. Further, the barn has been redesigned to include skylights, windows and doors that create a residential appearance.

- *Compatibility with the scale and architecture of the adjoining neighborhood, consistent with the proposed use.*

As discussed above, the barn has been designed to be compatible with the residential architecture of the neighborhood. Although the barn structure would be larger than the residence on the property, it is not much larger than other homes in the neighborhood. The building's

⁴ Conditions 3 and 5 limit the number of business vehicles (7) and employees (5) on site. For a brief period in the morning there may be as many as 9 employees on site. However, at least 4 of these employees would be on the site solely to pick up trucks that would be driven to job sites. The trucks would leave the site when the employees' vehicles arrive. Inasmuch as there is ample temporary storage room for vehicles in the driveway, separate permanent parking spaces for both the business vehicles and these employees' vehicles is not necessary. Therefore, only 12 long-term spaces are necessary.

size and type do not make it incompatible with development in the area given that there are other barn-type structures also located in the area. The barn is consistent with the landscape contractors use. Also, the extensive forest on the site minimizes the visual impact of the building.

- The impact of signs, lighting, and other physical features on surrounding residential communities.

There are no existing signs for the business on Spencerville Road. A proposed future sign is not part of this application and would require a modification subject to approval of both the Sign Review Board and the Board of Appeals. Two motion sensitive exterior lights would be mounted on the barn, however they would shine toward the parking area and the rear of the Simpson's home. The photometric plan (Exhibit 36(a)) reveals that lighting would not have a material effect on adjoining properties.

- Location of parking, loading, and other service areas to maintain residential appearances to the extent feasible.

The proposed site plan shows that the parking and loading area would be near the entrance to the barn and would be screened by the fence along the west property line and existing and proposed plantings. As Mr. Petzold testified the "parking area would not be visible" from adjoining properties.

- Options for landscaping that minimizes the non-residential appearance of the site and the view from surrounding properties and roads. It is preferable for landscaping to reinforce Cloverly's rural character and be consistent with the streetscape standards (see page 49 in Transportation Chapter) of the Master Plan and the landscaping standards for special exceptions.

The residential appearance of the property from Spencerville Road would be retained. As noted above, substantial screening would be provided in addition to the existing forest to minimize the view of the barn and related parking area from the adjoining properties.

- Any special exception application that exceeds the recommended imperviousness level for a particular watershed in a SPA must be reviewed to determine compliance with the appropriate laws.

The use would be limited to that portion of the site that is not in the special protection area.

- (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 barn is designed and would be screened to be in harmony with the neighborhood. The use would have no effect on population density and the intensity and character of activities are compatible with the area. All parking would be accommodated on site and, subject to the proposed conditions of approval, the traffic impact of the use would be negligible. The landscape contractor's use on the site, subject to the recommended conditions, would be in harmony with the general character of the neighborhood considering the factors noted above. Also, it should be noted that the RC Zone is a rural zone.

- (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 landscape contractors use, with the recommended conditions, would not be detrimental to the surrounding properties for any of the reasons noted above.

- (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 operation of the use as proposed would cause no non-inherent effects of the type described above. Subject to the proposed conditions of approval, the use would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site.

- (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 proposed use when evaluated in conjunction with other existing and approved special exceptions in the area would not affect the area adversely or alter its residential character. Nearby there is one

landscaping firm, two nurseries, two riding stables and an accessory apartment. A certain number of special exceptions are not inconsistent with the residential character given the fact that Spencerville Road is a rural highway. This would be more of an issue if all of the uses were specifically landscape contractors. Technical Staff and the Hearing Examiner independently visited the site and considered the scale of the other operations, the fact that they are well established, and the highway context and determined that this use, as conditioned, would not adversely affect the area or alter its residential character. The owners of the corporate Petitioner living in a house in front of the use factored in this determination.

- (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 proposed special exception would not adversely affect residents or workers for the above noted reasons. No health, safety, security, or moral impacts have been identified and for the reasons discussed above, the proposed use would not materially adversely affect the welfare of residents, visitors or workers in the area.

- (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.

The Petitioner's expert witness, Walter Petzold, testified that the use would be served by adequate services and public facilities. The evidence supports Mr. Petzold's conclusion and there is no evidence that any public services or facilities would be inadequate.

- (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.

The special exception use does not require approval of a preliminary plan of subdivision.

- (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 have no detrimental effect on the safety of vehicular or pedestrian traffic.

If the proposed conditions of approval are adopted by the Board, the special exception would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

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.

The minimum lot area for the use of 2 acres is exceeded if the entire parcel is treated as a single lot of 10.12 acres. The minimum lot area is also satisfied by the 5.86 acres of proposed "Parcel A" as depicted on the site development plan. (See page 5, supra).

- (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.

The 50-foot use setback is correctly depicted on the site development plan and all special exception activities are located outside of this setback. (See page 5, supra) The site plan reflects extensive buffering and screening that would amply protect adjoining uses.

- (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.

Proposed condition of approval number 3 implements this requirement. This condition provides:

3. *The use is limited to seven (7) business vehicles and equipment consisting of the following:*

- a. *Three (3) stake body trucks,*
- b. *Two (2) pick-ups,*

- c. One (1) skid loader, and
- d. One (1) tractor.

Parking is adequate for these vehicles. The Petitioner proposes 10 outdoor designated parking spaces plus parking for 3 vehicles in the building. Inasmuch as not more than 5 employees would be on the site during the day, parking is adequate for the employees and the business vehicles. Other employees who come to the subject property to drive a truck to a job site would park their cars in the space vacated by the truck that would be going to the job site. In view of the substantial circular driveway on the site, as employees arrive, business vehicles can temporarily be moved into the driveway to provide open spaces for employees' vehicles.

- (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.

The Petitioner does not propose to sell any plant materials or garden supplies on the site.

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

Proposed conditions of approval 4 and 5 implement this requirement. These conditions provide:

- 4. *The hours of operation are 7 a.m. to 7 p.m., Monday through Saturday. Landscaping crews must leave for work sites before 8:30 a.m.*
- 5. *Deliveries are only permitted between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday*
- (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.

This use is being developed primarily in the RC Zone which is an agricultural zone.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions, I recommend that Petition No. S-2506, for a special exception under the RC and RE-1 Zones for a landscape contractor use, on property

known as Parcel P75 on Tax Map KS 22, on the north side of Spencerville Road, also known as 2000 Spencerville Road, Spencerville, Maryland, be approved subject to the following conditions:

1. The Petitioner is bound by all of the Petitioner's testimony and exhibits of record and is bound by the testimony of the Petitioner's witnesses and attorneys' representations, to the extent that the evidence and representations are identified in this report and recommendation (Section 59-A-4.127).

2. The number of on-site employees is limited to nine (9).

3. The use is limited to seven (7) business vehicles and equipment consisting of the following:

- a. Three (3) stake body trucks,
- b. Two (2) pick-ups,
- c. One (1) skid loader, and
- d. One (1) tractor.

4. The hours of operation are 7 a.m. to 7 p.m., Monday through Saturday. Landscaping crews must leave for work sites before 8:30 a.m.

5. Deliveries are only permitted between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. A maximum of five (5) landscaping crew members may remain on the site to unload the deliveries.

6. A modification of this special exception shall be required prior to any change in ownership of the area identified on the Site Development Plan (Exhibit 27(a)) as "proposed Parcel B", to determine any adverse effects upon Parcel B relating to the use.

7. Special exception use shall be limited to the area outside of the Upper Paint Branch Special Protection Area and the existing driveway shall remain as shown on the site development plan, as revised in October, 2002 (Exhibit 27(a)).

8. The Petitioner shall comply with the conditions of approval of the preliminary forest conservation plan (FCP) including:

- a. The Petitioner shall place a Category I conservation easement over the existing forest where understory will be replanted and over required afforestation areas.
- b. Limits of disturbance, including any for stormwater management facilities, to be located outside of the conservation easement.
- c. The Petitioner must submit a revised final forest conservation plan (FCP) as part of a preliminary subdivision plan or prior to release of sediment and erosion control permits, as appropriate. Revisions to the FCP include, but are not limited to, the following:
 1. Species, sizes, and numbers of trees and shrubs for forest understory plantings to include trees that are 4' to 6' in height and shrubs of 18" to 24" in height.
 2. Include measures to control regrowth of Ailanthus and mulberry.
 3. For afforestation area, replace sweet gum with another species such as black gum or oak.

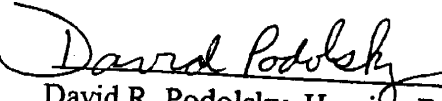
9. The Petitioner shall comply with Department of Permitting Services regulations for stormwater management and sediment and erosion control.

10. The Petitioner shall install an opaque screening fence on the western property line in the vicinity of the adjacent residence as shown on the revised site plan (Exhibit 27(a)). The details of fence shall be shown as part of final forest conservation plan and to include measures to avoid damage to existing trees within conservation easement.

11. If the Sign Board approves a variance, the Petitioner shall return to the Board of Appeals and request a modification to the special exception.

Dated: January 13, 2003

Respectfully submitted,


David R. Podolsky, Hearing Examiner

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2506

PETITION OF EAST COAST LANDSCAPE, INC.

OPINION OF THE BOARD

(Hearing Dates: October 9, 2002, November 12, 2002)
(Effective Date of Opinion: March 13, 2003)

Case No. S-2506 is an application for a special exception pursuant to Section 59-G-2.30.00 (Landscape Contractor) of the Zoning Ordinance to permit the operation of a landscape contractor on the northern 5.86-acre section of the subject property. The petitioner proposes to construct three, 35 foot tall buildings: (1) an 80' x 50' office, (2) an 80' x 60' storage building and (3) an 80' x 40' storage building. The petitioner will operate 7:00 a.m. to 7:00 p.m. Monday through Saturday with a maximum of eighteen employees and fourteen business vehicles and equipment.

Pursuant to the authority in Section 59-A-4.125 of the Montgomery County Code, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing on the application. The Hearing Examiner convened a hearing on October 9, 2002. The hearing was continued to November 12, 2002, and the record in the case closed on December 18, 2002. On January 13, 2002, the Hearing Examiner issued a written Report and Recommendation for approval of the special exception.

The subject property is Lot P075, Spencerville Knolls Subdivision, located at 2000 Spencerville Road, Spencerville, Maryland, in the RE-1 and Rural Cluster Zones.

Decision of the Board:

Special exception granted, subject
to conditions enumerated below.

At its Worksession on February 12, 2003, the Board of Appeals voted to adopt the Hearing Examiner's Report and Recommendation, and grant the special exception subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and

representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.

2. The number of employees on-site is limited to nine (9).
3. The use is limited to seven (7) business vehicles and equipment consisting of the following:
 - a. Three (3) stake body trucks;
 - b. Two (2) pick-ups;
 - c. One (1) skid loader, and
 - d. One (1) tractor.
4. The hours of operation are 7 a.m. to 7 p.m., Monday through Saturday. Landscaping crews must leave for work sites before 8:30 a.m.
5. Deliveries are only permitted between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. A maximum of five (5) landscaping crew members may remain on the site to unload the deliveries.
6. A modification of this special exception shall be required prior to any change in ownership of the area identified on the Site Development Plan [Exhibit No. 27(a)] as "proposed Parcel B", to determine any adverse effects upon Parcel B relating to the use.
7. The special exception use shall be limited to the area outside of the Upper Paint Branch Special Protection Area and the existing driveway shall remain as shown on the site development plan, as revised in October, 2002 [Exhibit No. 27(a)].
8. The Petitioner shall comply with the conditions of approval of the preliminary forest conservation plan (FCP) including:
 - a. The Petitioner shall place a Category I conservation easement over the existing forest where understory will be replanted and over required afforestation areas.
 - b. Limits of disturbance, including any for stormwater management facilities, are to be located outside of the conservation easement.

c. The Petitioner must submit a revised final forest conservation plan (FCP) as part of a preliminary subdivision plan or prior to release of sediment and erosion control permits, as appropriate. Revisions to the FCP include, but are not limited to, the following:

1. Species, sizes, and numbers of trees and shrubs for forest understory plantings to include trees that are 4' to 6' in height and shrubs of 18" to 24" in height.
2. Include measures to control regrowth of Ailanthus and mulberry.
3. For afforestation area, replace sweet gum with another species such as black gum or oak.

9. The Petitioner shall comply with Department of Permitting Services regulations for stormwater management and sediment erosion control.

10. The Petitioner shall install an opaque screening fence on the western property line in the vicinity of the adjacent residence as shown on the revised site plan [Exhibit No. 27(a)]. The details of the fence shall be shown as part of the final forest conservation plan and shall include measures to avoid damage to existing trees within the conservation easement.

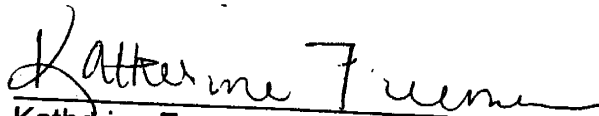
11. If the Sign Review Board approves a variance, the Petitioner shall return to the Board of Appeals and request a modification to the special exception.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donna L. Barron, Vice Chairman in agreement and Donald H. Spence, Jr., Chairman, not participating, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of March, 2003.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.