

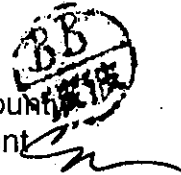
MEMORANDUM

DATE: January 25, 2002
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning
 William Barron, Team Leader, Eastern Montgomery County
FROM: Calvin Nelson, Jr., for the Park and Planning Department

REVIEW TYPE: Special Exception
APPLYING FOR: Landscape Contractor

APPLICANT: Drs. Mark C. Davis and Ann A. Tran
CASE NUMBER: S-2490
REVIEW BASIS: Chapter 59, Zoning Ordinance, Advisory to Board of Appeals
ZONE: RC
LOCATION: 1101-A Ednor Road
MASTER PLAN: Sandy Spring/Ashton

FILING DATE: August 31, 2001
PLANNING BOARD REVIEW: January 31, 2002
PUBLIC HEARING: February 13, 2002



STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. Any existing mulch piles, stored landscape materials or equipment in the yard area which is within 50 feet of the property line, is to be removed and shall be prohibited.
3. The proposed evergreen trees along the western boundary of the site are to be at least 6 to 8 feet in height at the time of planting. The tree buffer shall also extend an additional 40 feet to the southern boundary of the site.
4. The operation of the landscape contractor's use must comply with Montgomery County Noise Ordinance.

PROPOSAL DESCRIPTION

Neighborhood Description – The subject property is located on Ednor Road, approximately 1,300 feet east of its intersection of New Hampshire Avenue in the northwestern part of Cloverly's agricultural wedge area. Single family homes in the RC (Rural Cluster) Zone abut and confront the site. There are several residences located north of the subject site across Ednor Road; one residence located to the east; one residence and a vacant parcel located to the south; and several residences on Carwell Road to the west, whose rear yards back onto the site.

Site Description – The five-acre property is improved with a residence, a swimming pool, and a barn-type structure. A U-shaped driveway provides two points of access to the residence which is centrally located within the property. Another driveway along the western boundary of the property leads back to a two-story barn and parking area on the southwest corner of the property. There are a number of mature trees and other vegetation on the site, the property slopes downward from Ednor Road to the rear boundary of the site.

Background – The Petitioner, Michael P. Cousins, President of Colonial Landscape & Design Inc., ("Colonial") leases the existing barn and associated area from the current property owners, Drs. Mark Davis and Ann Tran. The barn was built in accordance with a building permit issued by Montgomery County's Department of Environmental Protection on May 16, 1988, and was initially utilized for storage of trucks and equipment for Allied Trailers for about 13 years by the previous owner of the property. Colonial has been operating as a landscaping contractor, without a special exception, on the subject site since 1993. (Attachment 4) The entire five-acre property is currently for sale.

In March 2001, the Montgomery County Department of Permitting Services cited the property owners with a notice of violation for operating a landscaping business without a special exception. (Attachment 5) In August 2001, the property owners applied for a special exception to conform with Montgomery County regulations.

Colonial wishes to continue its current operations on the site. A two-acre area that includes the barn, driveway and parking area, has been delineated as the area of the proposed special exception.

Elements of the Proposal – The petitioner's statement of operations was revised for clarification on January 17, 2002, and follows below:

The use of the Property has been and will continue to be limited in nature. Colonial proposes to continue use of the Barn primarily as: (1) an office for

between two (2) and five (5) administrative persons; and (2) for storage of equipment and plant materials.

Colonial employs and/or contracts with no more than twelve (12) individuals. This is inclusive of administrative staff, including Mr. and Mrs. Cousins. Colonial services many commercial and institutional type customers on a long-term basis. As such, equipment is often kept on the job site, or is taken back to an employee's home within a company truck. Colonial keeps at most six (6) trucks on the Property.

Because of the nature of Colonial's business, the use of the Property is minimal in nature. Employees do not often frequent the subject property, but instead go directly to a job site. As such, there are no more than three (3) to four (4) company trucks leaving in the morning, or arriving back to the subject property in the afternoon. If the contractor/employee must pick-up a company vehicle, they leave their car at the Property, and pick up such vehicle at the end of the day. On most days, one would only find Mrs. Cousins on the Property, who answers calls and helps administer the business.

In addition, because of the nature of Colonial's business, clients do not go to the Property. Instead, Colonial meets with clients where the landscaping will occur; that is on the client's property.

The only time that Colonial actually uses its landscaping equipment on the Property is when it is maintaining the adjoining residential house. This usage is no different than any residential property having landscape maintenance work performed, which certainly does not require County or Park & Planning approvals.

The hours of operation of Colonial Landscape are from 7:30 a.m. to 6:00 p.m., Monday through Friday. Administrative staff occasionally work in the barn's office on weekends and in the evenings. If equipment must be retrieved from the Barn for a job, it is retrieved after 7:30 a.m. Such retrieval takes no more than fifteen (15) minutes.

ANALYSIS

A landscape contractor is a permissible special exception use in the RC Zone. The Ordinance, Section 59-A-2.1, defines a landscape contractor as: "The business of designing, installing, planting, or maintaining lawns, gardens, or other landscaping and snow removal at off-site locations with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. The delivery and installation of horticultural products originating on the farm is an accessory use to the farm."

Further, Section 59-G-2.30 details the standards for a landscape contractor, indicating that 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.

Development Standards –

The Ordinance requires that 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. (Sec. 59-G-2.30.(2).

The proposed special exception site plan shows that area for parking and loading of trucks will be located no closer than 50 feet from the property line. Planters and paint striped areas will be added to prohibit parking or loading at the western end of the parking lot. The driveway and approximately 17 feet of the west end of the barn fall within the 50-foot required setback. The Department of Permitting Services (DPS) agreed with the applicant's attorney that the driveway and the existing office use within the 50-foot setback, does not fall within the definition of "areas for parking and loading of trucks and equipment as well as other on site operations", and therefore a variance was not required for the driveway location or for the office area of the barn. (Attachment 6)

A portion of the rear or south side of the barn also falls within the 50-foot minimum setback area. The site plan shows that a 19-foot wide section along the rear of the barn will be used only for equipment storage, excluding Colonial's trucks and other vehicles. DPS also agreed with the applicant's attorney that a variance would not be needed for the equipment storage area.

There are 8 parking spaces provided in the parking lot, and 4 spaces are provided in the barn. The 12 provided parking spaces will be adequate since Colonial will have not more than 5 administrative persons, and not more than 6 trucks on the site.

The property meets all of the minimum requirements of the Rural Cluster (RC) zone for a main and accessory building including: lot area; lot width; yard requirements; and is also within the maximum lot coverage and building height requirements.

Master Plan – The subject property is located within the Cloverly Master Plan area. The Plan, Approved and Adopted in 1997, offers factors to maintain to the extent possible, the residential character of the area. (see General Conditions, 59-G-1.21(3) pp.7-8

Traffic – Transportation Planning staff recommends limiting the development to a landscape contractor as specified in the Petition for Special Exception. Based on information submitted by the applicant, the traffic generated by the landscaping activity and existing single-family detached unit would be fewer than 50 peak-hour trips during the weekday morning and evening peak periods. Therefore, a traffic study (to analyze the congestion levels at nearby intersections) is not required to satisfy Local Area transportation review.

The site is located in the Patuxent Policy Area which is a rural policy area. Rural policy areas are not assigned transportation staging ceilings for non-residential and residential development in the *FY 02 Annual Growth Policy (AGP)*.

Although the area north of Spencerville Road (MD198) and east of New Hampshire Avenue is within the Cloverly Planning Area, it is not part of the Cloverly Policy Area. North of Spencerville Road, New Hampshire Avenue forms the border between the Patuxent Policy Area and Cloverly Policy Area. (Attachment 7)

Environmental – Environmental Planning staff has reviewed the special exception application and recommends its approval. A Forest Conservation Plan exemption was granted because the total disturbance is less than 10,000 square feet and forest clearing is less than 5,000 square feet and no specimen or champion trees shall be cleared. In regards to stormwater management, stormwater management concept and sediment/erosion control plans are not required by the Department of Permitting Services if there is less than 5,000 square feet of disturbed area. (Attachment 8)

On September 14, 2001, the Department of Environmental Protection received a complaint of improper runoff of landscaping materials into a stream near the subject property. On September 21, 2001, DEP staff investigated the complaint but saw no evidence of improper discharges to any waterway, or any other evidence of improper materials handling. (Attachment 9)

Citizen Concerns – Staff has received letters and petitions from adjoining and nearby neighbors of the proposed special exception. As of the date of this report, there are two letters from an adjoining neighbor who oppose the special exception, and two letters and seven petitions from other neighbors who support the special exception. (Attachments 10 thru 14)

The opposition letters raise concerns about noise generated by cars, trucks, and landscaping equipment, odors, unsightly debris, and water drainage onto their property.

Compliance with Specific and General Special Exception Provisions

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 inherent adverse effects, are a sufficient basis to deny a special exception.

An inherent effect of the proposed use is noise associated with staff arrival to the site in the morning and their departure in the evening. Additionally, noise occurs when vehicles are started and equipment is loaded in preparation to go to a job site, then unloaded and parked in the evening. Also the operation of motorized equipment, such as lawn mowers for regular maintenance, may create periods of increased noise levels. This activity is inherent given the nature of the use. There is also noise associated with regular yard maintenance of the subject property such cutting the lawn and pruning the trees, which is a typical activity. Staff does recommend however, that that the operation of the proposed use comply with the County's Noise Ordinance to minimize any potential impact on neighboring properties. Use of the property will continue to be limited in nature.

59-G-1.21. General conditions.

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

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

The use is permissible in the RC 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.

(See Sec.59-G-2.30. Landscape Contractor, pp.10 - 12)

- (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 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."

- (a) Maintenance of a residential appearance, where feasible.

The barn structure conveys an utilitarian appearance but is back approximately 620 feet from Ednor Road and views of the barn from the roadway is substantially blocked by the trees on the site.

- (b) Compatibility with the scale and architecture of the adjoining neighborhood, consistent with the proposed use.

The barn occupies 5,000 square-feet of floor space and is 25 feet in height. The size of the building is compatible with development in the area.

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

There are no existing or proposed signage for the business on Ednor Road. Two exterior lights are

mounted on the barn, however they are not left on overnight.

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

The proposed site plan shows that the existing parking and loading area will be modified to include planters near the entrance to the office area of the barn to improve its appearance and circulation. A double row of evergreen trees are proposed along the property boundary in the vicinity of the parking area and the west end of the barn.

- (e) 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 Ednor Road will be retained. As noted in (d) above, a substantial evergreen screen will be provided to minimize the barn and related parking area from view of the adjoining properties to the west.

- (f) When special exceptions are adjacent to each other or to commercial properties, review whether it is feasible and reasonable to consolidate driveways and connect parking areas.

Not applicable.

- (g) 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.

Not applicable.

- (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 structure was built around 1988 by a previous owner, and is compatible in design, scale, and bulk with other development in the area.

- (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 proposed special exception, with the recommended conditions, will 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.

Site operations conducted in accordance with Colonial's statement of operations and the recommended conditions, will 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.

There are no approved special exceptions within the immediate vicinity of the site. A special exception for the property at the northeast corner of New Hampshire Avenue and Ednor Road (Lyons Nursery) was withdrawn in 1987. The subject special exception would not adversely effect or alter the residential 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.

The proposed special exception will not affect the health, safety, security, morals or general welfare of residents or workers at the subject site.

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

The site is served by adequate public services and facilities. The property is served by public water and sanitary waste is handled on site. (See Environmental heading, p. 5)

- (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.

The special exception will have no detrimental effect on the safety of vehicular or pedestrian traffic.

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 subject property is five acres. The area of the proposed special exception is two acres.

- (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 area for parking and loading of trucks and equipment is located a minimum of 50 feet from the property lines. Evergreen screening will be provided to protect adjoining uses from the objectionable effects noted above.

- (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.

There is adequate parking for the landscape contractor use. Eight spaces are provided in the parking area and at least four parking spaces are available within the barn. The applicant will have no more than six trucks on the property.

- (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 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.

Colonial's hours of operation is limited from 7:30 a.m. to 6:00 p.m., Monday through Friday. Administrative staff, limited to not more than five persons, occasionally work in the barn's office area on weekends and in the evenings. If equipment must be retrieved from the barn for a job, it is retrieved after 7:30 a.m.

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

The subject site, and all surrounding properties are zoned Rural Cluster.

CONCLUSION

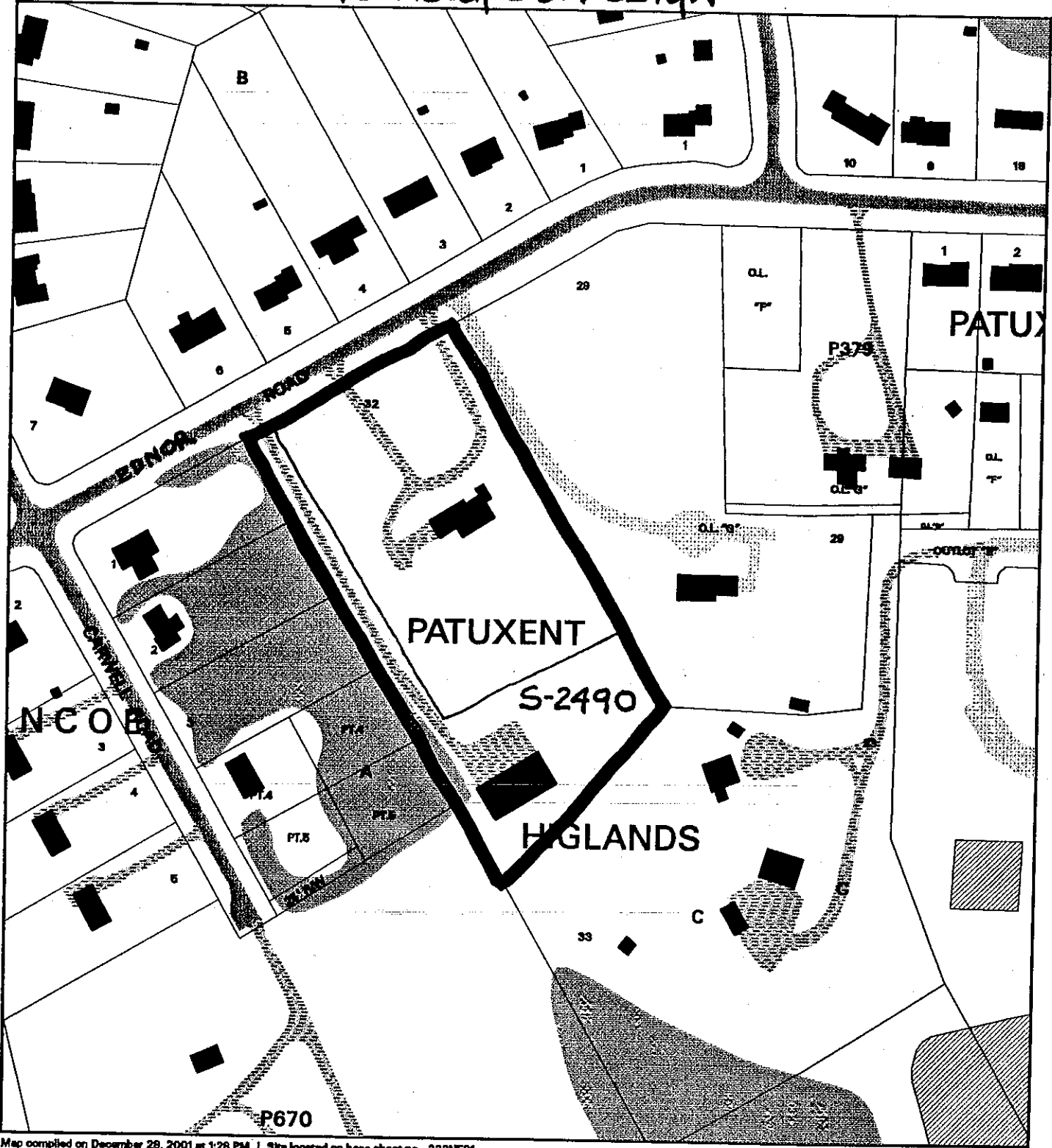
Staff finds that with the recommended conditions, the proposed special exception use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. Staff therefore recommends approval with the conditions stated at the beginning of this report.

Attachments

1. Vicinity Map
2. Site Plan
3. Site Views
4. Lease Agreement
5. Violation Notice
6. 12/13/01 Letter to Dept. of Permitting Services
7. Transportation Planning Memo
8. Environmental Planning Memo
9. Dept. of Permitting Services Memo
10. 11/20/01 Letter from D. & S. Lloyd
11. 01/09/02 Letter from D. & S. Lloyd
12. 01/15/02 Letter from R. Mazzuca
13. 01/16/02 Letter from C. Line & A. Apynys
14. Petitions (7)

VICINITY MAP FOR

S-2490 - Colonial Landscape & Design



Map compiled on December 29, 2001 at 1:28 PM | Site located on base sheet no - 223NE01

NOTICE

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

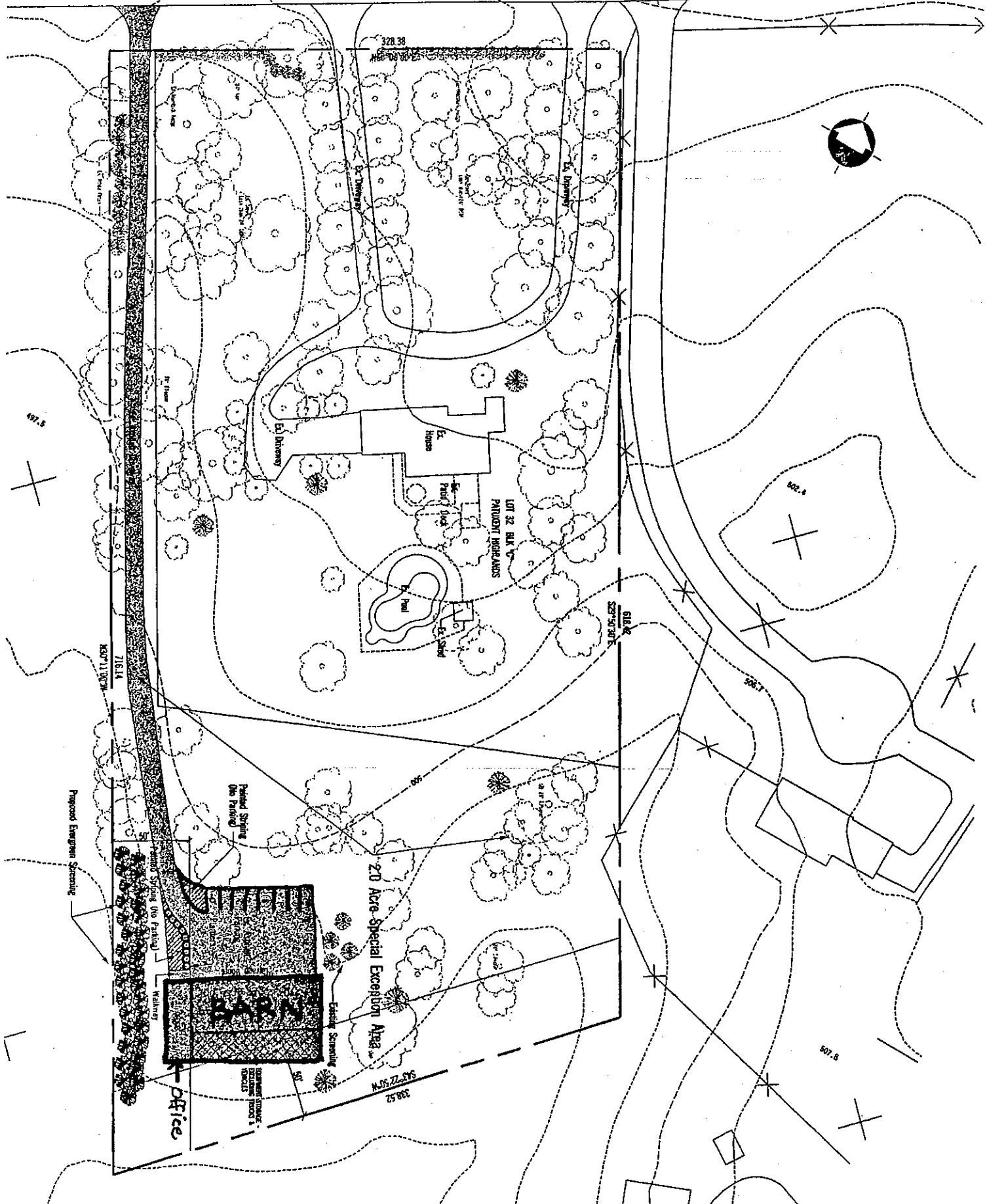
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14,400 scale aerial photography using stereo photogrammetric methods.

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



Attachment 2 Site Plan

EDNOR ROAD

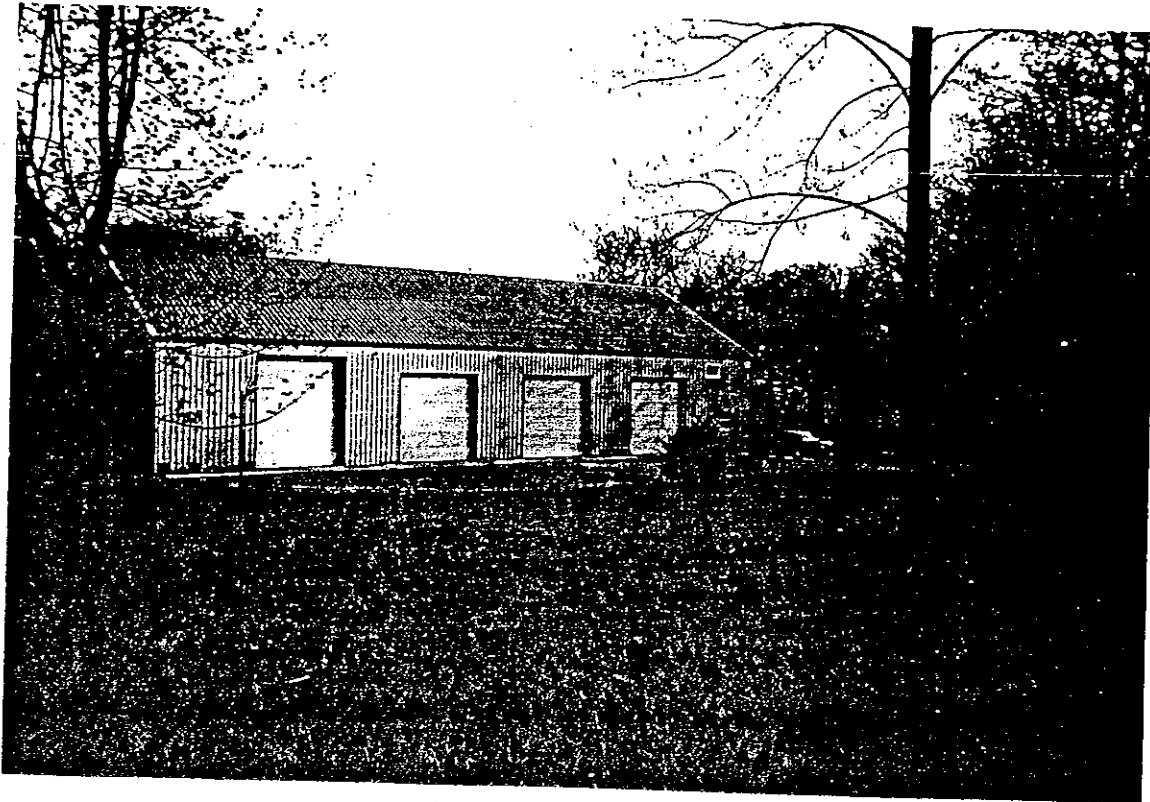


Attachment 3

View of driveway to Barn at Subject Property



View of Barn at Subject Property



Attachment 4

AGREEMENT

This is an Agreement between Drs. Mark Davis and Ann Tran (the "Davis Family") and Colonial Landscape & Design, Inc. ("Colonial"), collectively the Parties, pertaining to the property located at 1107 Ednor Road, Silver Spring, Maryland 20905.

1. The Parties hereby agree that the Davis Family will provide to Colonial the full and exclusive use of the four-car garage and office located at the rear of the Property for the purpose of Colonial operating its business as a landscape contractor. The Parties hereby acknowledge that Colonial has enjoyed the above described use of the Property since 1993.
2. In exchange for the promises set forth in paragraph 1, Colonial agrees to provide the following landscape maintenance services to the Property at no cost to the Davis Family: lawn cutting, weeding, pruning, mulching and leaf removal.
3. This Agreement shall remain in effect for five (5) years from the execution of this Agreement, and shall be renewed from year to year without further action of the Parties.
4. Either of the Parties may terminate this Agreement with six (6) months written notice to the other.

Date 10/14/01

Ann Tran Ann A. Tran

Mark Davis Mark Davis

Michael Cousins
Michael Cousins, President
Colonial Landscape & Design, Inc.

Attachment 5

REVISED 2002

Montgomery County, Maryland
DEPARTMENT OF PERMITTING SERVICES
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166



NOTICE OF VIOLATION

LOCATION: 1101 Edmon Rd. CASE NO.: 204165

DEFENDANT NAME: Mr. Mark C. Davis & Ann A. Tran

ADDRESS: 1101 Edmon Rd
Silver Spring, Md. 20905-5105

DATE OF VIOLATION: 3/2/01

CODE SECTION: Ch. 59-C-9.3

VIOLATION: Use of property for Colonial Landscaping business
without a special exception.

CORRECTIVE ACTION TO ELIMINATE VIOLATION: cease operation and remove equipment
or obtain a special exception as a landscaper.

A RE-INSPECTION AMOUNT OF \$ _____ IS REQUIRED IN ADDITION TO THE APPLICATION FEE(S).

COMPLIANCE TIME: 4/2/01

YOU MAY APPEAL THIS NOTICE OF VIOLATION TO THE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE. THE BOARD OF APPEALS IS LOCATED IN THE COUNCIL OFFICE BUILDING, ROOM 217, 100 MARYLAND AVENUE, ROCKVILLE, MARYLAND 20850, (240) 777-8600.

REMARKS: One must file (either yourself or Mr. Tran)
lawsuit with the County Board of Appeals for a
special exception. To obtain an application to the BOA's
phone # is 240-777-6600

FAILURE TO COMPLY WITH THIS NOTICE WILL RESULT IN A \$ 500.00 CIVIL CITATION AND/OR A COURT ORDER TO INSURE COMPLIANCE.

ISSUED BY: Frank DeLance DATE: 3/15/01 PHONE NO.: (301) 370-3655

PRINT NAME: Frank DeLance

Attachment 6

Dec-13-01 12:37pm From: HOLLAND & KNIGHT LLP BETH
HOLLAND & KNIGHT LLP

3018583978

T-618 P.002/028 F-404

3 Bethesda Metro Center
Suite 800
Bethesda, Maryland 20814-6301

901-654-7800
FAX 301-858-3878
www.hklaw.com

Baltimore	Washington, D.C.
Bethesda	Washington, D.C.
Boston	West Palm Beach
Bradenton	
Chicago	
Fort Lauderdale	
Jacksonville	
Laurel	
Los Angeles	
Metairie	
Miami	
International Office	
Costa Mesa	
Indianapolis	
Phoenix	
Portland	
San Francisco	
Seattle	
Tampa	
Washington, D.C.	
West Palm Beach	
San Jose	
San Antonio	
Tokyo	

December 13, 2001

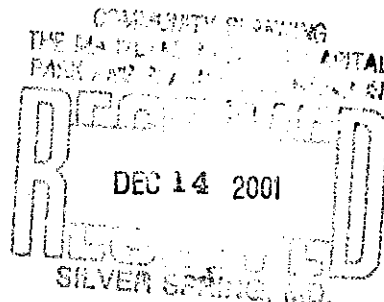
STACY PLOTKIN SILBER
301-664-7621

Internet Address:
spsilber@hklaw.com

VIA FACSIMILE

Ms. Susan Scala-Demby
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

Re: Colonial Landscape & Design
1101-A Ednor Lane



Dear Ms. Scala-Demby:

As we discussed, we represent Colonial Landscape & Design with property located at 1101-A Ednor Lane (the "Property"). For over nine (9) years, Colonial Landscape & Design has operated a landscape contractor operation out of a barn located on the Property. The barn was built in accordance with a building permit issued by Montgomery County's Department of Environmental Protection on May 16, 1988.

Colonial is seeking a special exception from the Board of Appeals to affirm the allowance of such landscape contractor use. The purpose of this letter is to confirm that Colonial Landscape & Design does not need a variance from the 50 foot setback requirement, as provided within Section 59-G-2.30.00(2) of the Montgomery County Zoning Ordinance (the "Zoning Ordinance"), to operate the existing use on the Property.

As you are aware, Section 59-G-2.30.00 of the Zoning Ordinance provides the criteria for Landscape Contractor Operations. Specifically, Section 59-G-2.30.00(2) requires that "[a]reas 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."

Dec-13-01 12:37pm From: HOLLAND & KNIGHT LLP BETH

3016563978

T-618 P.003/028 F-404

December 13, 2001

Page 2

Attachment 6

The driveway, providing access to the Property from Ednor Road, is closer than 50 feet to the property line. It is our understanding that because the driveway does not fall within the definition of "areas for parking and loading of trucks and equipment as well as other on site operations," it is exempt from the 50 foot setback requirements set forth in Section 59-G-2.30.00(2). As a result, a variance is not needed for the location of the existing driveway.

In addition, as we discussed, part of the existing barn is also closer than 50 feet to the property line. This area includes the office use, and part of the storage area in the barn. It is our understanding that an office use does not fall within the definition of "areas for parking and loading of trucks and equipment as well as other on site operations," and thus Colonial does not need to seek a variance for this area of the building.

Part of the storage area, located to the rear of the Property also is located closer than 50 feet to the Property line. Colonial proposes to not use any of this portion of the building for its landscape contractor operation use. As such, it is our understanding that a variance is not needed for any part of the building as it relates to setback requirements. For your reference, I am attaching copies of the Board of Appeal's Opinion, and the Staff Report regarding Case No. S-2439. Case No. S-2439 also involved a Landscape Contractor Use. As you will see, Staff and the Board found that although part of the subject buildings fell within the 50 foot setback area, the applicant was in compliance with Section 59-G-2.30.00(2) as long as that part of the encroaching building was not utilized for "any landscape purposes." (See, Staff Report at pp. 8,8-9).

We appreciate your review of the information contained herein. We request that if you agree with the conclusions set forth in this letter, that you counter sign in the space provided below, and return a copy to us at your earliest convenience.

Please contact us should you have any questions.

Very truly yours,

HOLLAND & KNIGHT LLP


Stacy Plotkin Silber

Dec-13-01 12:37pm From: HOLLAND & KNIGHT LLP BETH

3016563878

T-618 P.004/026 F-404

December 13, 2001
Page 8

Attachment 6

AGREED TO:

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES

By: Susan Scala-Demby
Susan Scala-Demby

Title: Permitting Services Specialist

Date: 12-13-01

Enclosures

BSA1 #17228 v1

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

January 23, 2002

MEMORANDUM

TO: Calvin Nelson, Jr., Planner
Community-Based Planning Division

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

FROM: Ed Axler, Planner/Coordinator *EA*
Transportation Planning

SUBJECT: Special Exception Case No. S-2490
Colonel Landscaping & Design, Inc.
1101-A Ednor Road, Silver Spring
Putuxent (Rural) Oak Policy Area

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject special exception case on Lot 32, Block C, Putuxent Highlands.

RECOMMENDATION

Transportation Planning staff recommends the following condition as part of the transportation-related requirements to approve this Special Exception Case:

Limit the development to a landscape contractor with operations as specified in the Petition for Special Exception.

DISCUSSION

Site Location and Access

The site is located on the south side of Ednor Road approximately 1,300 feet east of New Hampshire Ave (MD 650). Site access is from an existing curb cut along Ednor Road.

Master Plan Road

According to the Sandy Spring-Ashton Master Plan, Ednor Road is designated as a two-lane country arterial, CA-50, with an 80-foot right-of-way.

Attachment 7

Local Area Transportation Review

Beside the one peak-hour trip generated by the existing single-family detached unit, the on-site landscaping activity (according to the Petition for Special Exception) would be as follows:

1. According to the statement of operation in the Petition for Special Exception, up to twelve persons are proposed to be on the site at one time; however, the current operations has from two to five "administrative" staff persons. The other employees travel directly between their home and the job location off this site.
2. Up to four trucks leaving this site in the morning and returning in the evening peak hours of the weekday morning peak period (7:00 to 9:00 a.m.) and the weekday evening peak period (4:00 to 6:00 p.m.), respectively.
3. Storage of equipment and plant materials (including the four vehicles described above), which does not generate traffic.
4. Clients do not travel to this site, but are met at the job location.
5. Works hours from 7:30 a.m. to 6:00 p.m. where vehicular trips would occur during the weekday morning and evening peak periods.

Based on the information above, the traffic generated by the landscaping activity and existing single-family detached unit would be fewer than 50 peak-hour trips during the weekday morning and evening peak periods. Therefore, a traffic study (to analyze the congestion levels at nearby intersections) is not required to satisfy Local Area transportation Review.

Policy Area Review/Staging Ceiling Condition

The site is located in the Patuxent Policy Area, which is a rural policy area. Rural policy areas are not assigned transportation staging ceilings for non-residential and residential development in the *FY 02 Annual Growth Policy (AGP)*.

Although the area north of Spencerville Road (MD 198) and east of New Hampshire Avenue is within the Cloverly Planning Area, it is not part of the Cloverly Policy Area. North of Spencerville Road, New Hampshire Avenue forms the border between the Patuxent Policy Area and Cloverly Policy Area.

EA:cmd

cc: Stacy Plotkin Siber
Holland & Knight

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MEMORANDUM

DATE: October 25, 2001

TO: Bill Barron, Community Based Planning Division

VIA: Mary Dolan, Environmental Planning Division *MD*

FROM: Marion Clark, Environmental Planning Division *M*

SUBJECT: Special Exception request No. S-2490
Colonial Landscaping 1101-A Ednor Rd., Silver Spring

The Environmental Planning staff has reviewed the special exception application referenced above. Staff recommends **approval** of this request.

Forest Conservation

A Forest Conservation Plan exemption was granted because the total disturbance is less than 10,000 square feet and forest clearing is less than 5000 square feet and no specimen or champion trees shall be cleared.

Stormwater Management

Stormwater management concept and sediment/erosion control plans are not required by the Department of Permitting Services if there is less than 5000 square feet of disturbed area.

Attachment 9



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Douglas M. Duncan
County Executive

October 9, 2001

James A. Caldwell
Director

Mr. Chris Cousins
Colonial Landscaping and Design Inc.
1101 A Ednor Rd.
Silver Spring, MD 20912

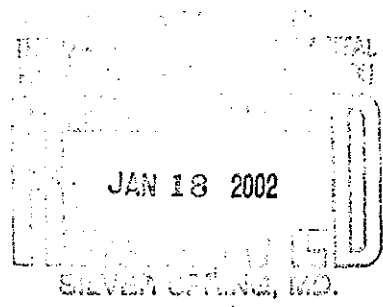
Dear Mr. Cousins:

On September 14, 2001, the Montgomery County Department of Environmental Protection, Division of Environmental Policy and Compliance, received a complaint of improper runoff of landscaping materials into a stream near your property at 1101 A Ednor Rd., Silver Spring, MD. On September 21, 2001, I met with you on site to conduct an investigation of that complaint. On that date, I saw no evidence of any improper discharges to any waterway, or any other evidence of improper materials handling.

If you have any other questions regarding this matter, please contact me at 240-777-7743.

Sincerely,

Pamela P. Parker
Environmental Specialist II



Attachment 10

Shirley and Donald Lloyd

17105 Carwell Road

Silver Spring, MD 20905

November 20, 2001

CNS

Marilyn J. Praisner
District 4 Councilwoman
Council Office Building
100 Maryland Avenue
Rockville, MD 20850

RECD NOV 20 2001

Dear Councilwoman Praisner,

It was with great interest that we read your article in the November 14th Gazette about the glut of zoning exemptions in Montgomery County and the need for another look at how these exemptions are granted. Not only are the large giants of business guilty of building in residential areas but so are many smaller businesses.

We have a personal interest in such practices. We have lived at our present home for twenty six years in a residential zoned area. About two years ago a landscaping business, namely Colonial Landscaping & Design, Inc. owned by Michael P. Cousins moved into a pole barn in back of us without any notification. The subject property is located at 1101-A Ednor Road, Silver Spring, MD. 20905. This business is approximately six feet from our backyard. He has no exemption or anything else that we know of, except permission to occupy the premises from the owners of these five acres. Because of all the trucks, cars, and noise, unsightly debris, not to mention water drainage onto our property and a stream, we reported him to the county in March 2001. Someone from the county then came out and talked to the business owner so after 6 months he has now applied for an exemption. We have been notified that the case # S-2490 is scheduled for hearing on Jan. 16th, 2002 at 1:30pm.

As you might note, we are quite distressed over this situation as we are sure many other homeowners face similar situations here in the county. We feel that he should be fined because he has been breaking the law and seems to have gotten away with it. Such businesses that disturb the peace should not be allowed to operate in residential neighborhoods. What good are zoning laws if exemptions are made that disrupt the very nature of a residential area?

Attachment 10

Another question that we have is that this particular property with a house and five acres is for sale. How can he apply for an exemption for land that he does not own? It should also be noted that prior perk tests required five acres per house and now this business located in the barn has running water and probably a bathroom which again violates the law.

We strongly oppose this request for an exemption as it not only infringes upon our residential neighborhood, but if it goes through we may be forced to sell our home, probably at a lower price because of the noise levels and traffic. We feel he is taking advantage of us and the county's overloaded situation, as well as exploiting the community, with no concern for the impact of such a business on our neighborhood. There are already five landscaping business on Ednor Road, a narrow, winding, two lane road. It is already impacted enough without allowing another commercial enterprise to move in. Are there no homeowner's rights?

We appreciate your time and concern and hope that your office will be able to help us with this situation. Thank you.

Sincerely,

Donald and Shirley Lloyd

Attachment 11

Shirley and Donald Lloyd
17105 Carwell Road
Silver Spring, MD 20905
(301) 421-1210
January 9, 2002

Michael Ma
Special Exemptions & Zoning
Park and Planning
8787 Georgia Avenue and Spring Street
Silver Spring, MD 20910

JAN 14 2002

Dear Mr. Ma,

We would like to go on record that we strongly oppose the special exemption requested by Colonial Landscape & Design, Inc.- Case# S 2490, located on the Davis property at 1101-A Ednor Road, Silver Spring, MD 20905.

Because this business is less than 50 feet from our property, the noise from cars and trucks entering and exiting is very disturbing, not to mention the unsightly appearance of equipment, parked cars and trucks, the odor produced by piled mulch. Further noise is produced by a mowing machine, a front end loader, the garbage truck at least once a week, and especially leaf blowing machines which penetrate the house no matter where we are. We are unable to sit on our deck, enjoy our pool, or work outside in our garden because there always seems to be activity.

We feel that such businesses that disturb the peace should not be allowed to operate in residential neighborhoods. I hope that your office will give some consideration to our complaints. We would also like to know the name of the planner for this site at 1101-A Ednor Road, Case # S 2490.

Thank you.

Sincerely,



Donald and Shirley Lloyd

Attachment 12

Robert W. Mazzuca
1001 Ednor Rd.
1/15/02

The Honorable Donald H. Spence Jr., Chair
Montgomery County Board of Appeals
100 Maryland Ave.
Rockville, MD 20850

RE: Colonial Landscape & Design, Inc.
1101-A Ednor Rd.
Special Exception Case Number S-2490

Dear Mr. Spence,

I am writing this letter to you to show my support for the special exemption for Colonial Landscaping which occupies the property directly behind my house. Since moving here almost two years ago, I have become great friends with Chris, Gloria and Mike, a nice family with an honorable and good family business. I have seen firsthand how they conduct their business, how clean their shop and grounds are, and how they treat their neighbors. I think these people are the salt of the earth.

Being a Montgomery County Police Officer working primarily nights and spending many of the corresponding days in court, I still go out of my way to make time to visit Chris and Gloria one or two times a week. In addition to being good, hardworking and respectable people, they are helpful to their neighbors. I know they have loaned people chippers, cut limbs and dispensed advice free of charge. They are a great resource to have in the neighborhood and it would be a mistake and more importantly, a shame to force them to leave. Please approve the proposed exemption or you will be forcing some of the best neighbors anyone could ask for out of town. Thank you.

Sincerely,


Robert W. Mazzuca

Christopher Line and Anne Apynys
17113 Carwell Rd.
Silver Spring, MD, 20905
301-421-0857
January 16, 2002

The Honorable Donald H. Spence, Jr.
Chair
Montgomery County Board of Appeals
100 Maryland Avenue
Rockville, MD, 20850

Re: Colonial Landscape & Design
1101-A Ednor Road
Special Exception Case No. S-2490

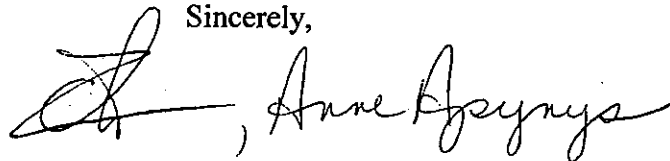
Dear Chairman Spence:

We have lived at 17113 Carwell Rd. since June of 2001. Our property adjoins Colonial Landscape & Design.

The owner of Colonial Landscape & Design, Chris Cousins, and his employees have been nothing except wonderful and helpful neighbors to us since we arrived in the area. On several occasions they have personally and cheerfully advised and assisted us regarding our property. They have always acted in a responsible and considerate manner regarding us personally and the neighborhood generally. We write to express our strong support for the proposed special exception.

We ask that you consider our active support while making your decision. Please contact us if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne Apynys". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Christopher Line
Anne Apynys

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	<i>William J. Vance Jr</i>	<i>17040 CLEAR CREEK DR</i>
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	<i>James Brown</i>	#577 17000 Calver Rd
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

S.S.

Attachment 14

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	Michelle Fegan	1110 Ednor Rd. S.S. MD 20905
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	Kelley Neigel	1106 Ednor Rd
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attachment 14

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	Angel Maldonado	1104 Ednor Rd
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attachment 14

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	CHRIS LINE	17113 CARWELL RD SS. 20905
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attachment 14

Petition in Support of Request by Drs. Mark C. Davis and Ann A. Tran
and Colonial Landscaping and Design, Inc. to
Grant Special Exception to Permit
Colonial to Operate Its Landscape Contractor Business from 1101 Ednor Road

The undersigned, who are property owners adjacent to and abutting 1101 Ednor Road, Silver Spring, Maryland 20905, have signed this petition to indicate that they do not oppose the request by Drs. Mark C. Davis and Ann. A. Tran and Colonial Landscape and Design, Inc. to grant a special exception to allow Colonial to operate its landscape contractor business from 1101 Ednor Road.

	NAME	ADDRESS
1.	<i>Richard A. Bentley</i>	<i>1100 Ednor Road</i>
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		