



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
5/09/02
Item # 6

MEMORANDUM

DATE: May 3, 2002
TO: Montgomery County Board of Appeals
VIA: John A. Carter, Chief, Community-Based Planning *JAC*
William Barron, Team Leader, Eastern County Team
FROM: Joel A. Gallihue, AICP

REVIEW TYPE: Special Exception
APPLYING FOR: Landscape Contractor
APPLICANT: Mark and Suzanne Simpson
CASE NUMBER: S-2506

ZONE: RE-1
LOCATION: 2000 Spencerville Road
MASTER PLAN: Cloverly Master Plan

FILING DATE: November 11, 2002
PLANNING BOARD: May 9, 2002
PUBLIC HEARING: May 14, 2002 by Hearing Examiner

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioners.
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 worksites before 8:00 a.m. and return no earlier than 6:00 p.m.
5. Deliveries only permitted between the hours of 9:00 a.m. and 4:00 p.m.
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 as proposed Parcel B to determine any adverse effects upon Parcel B relating to the use.
7. The existing driveway shall remain as shown on the site development plan, revised May 2002.
8. Approval of the preliminary 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:
 - a. 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.
 - b. Include measures to control regrowth of Ailanthus and mulberry.
 - c. For afforestation area, replace sweet gum with another species such as black gum or oak.
9. Applicant to comply with Department of Permitting Services regulations for storm water management and sediment and erosion control.

Proposal Description - The applicants, Mark and Suzanne Simpson, are requesting special exception approval for a landscaping operation at 2000 Spencerville Road in the Cloverly area in the RE-1 Zone. The business, known as East Coast Landscaping, has been operating since April of 1999. The petitioners recently became aware that a special exception was required for a landscape contractor use in the RE-1 Zone and filed their petition.

Site and Neighborhood Description - The site is located on the north side of Spencerville Road between Oak Hill and Batson Roads. This is in the segment of in the vicinity of the intersection of Spencerville Road and Good Hope Road. Residential uses surround the site. There are other special exceptions within 1,500 feet. 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). One parcel is the subject of the petition, Parcel 075. The property is approximately 10.12 acres in area and improved with a 1,810 square foot single-family detached residence, a barn and a shed. A subdivision is proposed to divide the north and south portions of the property, roughly in half. The special exception would be located in the rear and accessed

by easement over the front lot.

Elements of the Proposal -

The landscaping business will operate from 7 a.m. to 7 p.m., Monday through Saturday. No production or retail of landscaping related material is proposed. The petition is only for a landscaping contractor use. There will be up to nine 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 eighteen employees. A condition of approval limits the number of employees on-site to nine to prevent parking conflicts. Since there is no production of plants or other landscaping materials, deliveries are periodically made of these items for temporary storage and use off site. The site plan identifies where plants will be stored and locates bins (totaling 100' x 20' in area) for mulch.

New buildings will include two storage structures. "Structure A" will be 80'x40' and "Structure B" will be 80'x60'. Both will be 35' in height. An office, 80'x50' in area and 20 feet in height is also proposed. No greenhouse or shade structure is proposed. (See Attachment 5)

A six-foot tall board-on board fence is to be installed to screen an adjacent residential property from the truck parking referenced on the site plan. Staff notes that a DPS permit is required to install any type of fence or retaining wall over 30" in height.

ANALYSIS

Master Plan - The 1997 Cloverly Master Plan supports the existing RE-1 zoning which allows special exceptions, such as the proposed use, in the zone.

Design – Staff finds the proposed landscaping, screening, and lighting to be acceptable.

Development Standards- The special exception modification is in compliance with the development standards for the RE-1 Zone. Conformance to relevant development is summarized in Table 1 on the following page.

Table 1 – Conformance with Applicable Development Standards S-2506

Development Standard	Requirement	Proposal
Front Yard Setback	50'	50'
Side Yard Setback	17'	50'
Sum of Both Sides	35'	100'
Rear Yard Setback	35'	50'
Use operations setback	50'	50'
Min Lot Area for Use	2 acres	5.86 acres
Min. Lot Area for Zone	40,000 sq.ft.	5.86 Acres = 255, 261.6 Sq. Ft
Lot Width @ Street	25'	370' ¹¹¹
Lot Width @ Front Bldg Line	125'	370'
Building Height	50'	Office-20', Storage A & B – 35'
Building Coverage	15% or 38,289.24 sq.ft.	4.7%, 12,000 sq. ft.
Parking	1 per business/employee vehicle or	
Parking Setback for use (operations)	50'	

Parking

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 will park on the site. The site plan depicts ten parking spaces. (20'x10') It is understood that the parking will be used for employee parking during hours of operation and for business vehicle storage after hours. The plan also shows that the parking will meet the required 50' setback from adjacent properties.

The statement of operations does note the applicant anticipates a need for a maximum of fourteen business vehicles on site. Staff notes that Sec. 59-G-2.30 (3) of the Zoning Ordinance specifically requires for landscape contractor special exceptions that the number and type of business vehicles "for equipment" be identified and limited by condition of approval. The intent of this requirement is to, "Preclude an adverse impact on adjoining uses." Number of vehicles is a typical complaint for this type of use. The statement of operations lists five vehicles that meet this description, three stake body trucks and two pickups. This is limited by condition of approval. For the applicant to change their fleet they must file a modification of the special exception.

No light poles are proposed for the parking / paved work area; the proposed hours of operation are during daylight hours (7 a.m. – 7 p.m.)

¹¹¹ Public road access via an easement over Parcel B.

The Site Plan shows that adjacent residential property to the west will be screened from the parking with an opaque board fence, six feet in height. The required parking falls below the 25-space threshold where a parking facility plan must be submitted. Staff finds the provisions for parking to be sufficient and in accordance with the dimensional requirements of the Zoning Ordinance.

Proposed Sign- Exhibit D (see Attachment 6) of the application represents the applicant intends to locate a sign at the entrance of the driveway to Spencerville Road. This location will become off-site based upon their proposed subdivision. Section 59-F7.1(i) of the Zoning Ordinance prohibits off-site signs. The proposed sign also appears to exceed the dimensional limitations on a sign in a residential zone. If the petitioner were to subdivide the properties so that the proposed sign location remains on-site, a sign not exceeding 2 sq. ft. in area may be built with a permit from DPS, provided it is set back 5 feet from the property line and does not exceed 5 feet in height.

Inherent/Non-Inherent Adverse Effects- The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the RE-1 zone.

Section 59-G-1.2.1 of the Zoning Ordinance states

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 are 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 effect 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 is predominantly one-family residential. The immediate neighborhood does contain a nearby special 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 worksites, 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 does identify where activities will occur on the site. Staff has identified non-inherent adverse effects with characteristics of the use 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. If the special exception were approved as recommended, conformant operation would entail storage of these materials only 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 the petitioner with needing to seek a modification when they change their fleet it protects the residential character of the neighborhood from uncharacteristic groupings of business vehicles.

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 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.

A non-inherent adverse effect relates to the access proposed over an easement over a residential property. Currently the petitioners own and reside on this property. The site development plan proposes to subdivide this parcel. If they were to sell the residential portion of this 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 staff is recommending a condition of approval that a modification of this special

exception shall be required prior to any change in ownership of Parcel B.

Staff concludes that there are no non-inherent adverse effects associated with this application that warrant denial. Staff finds that all of the physical and operational characteristics of the proposed use will be inherent in any potential adverse effect.

Transportation - The Transportation Planning staff has conducted an Adequate Public Facilities (APF) review for this special exception and recommends conditional of approval.

Site Location and Access

The site is located on the north side of Spencerville Road between Good Hope Road and Thompson road. The site access is from Spencerville Road.

Master Plan Roads and Bikeways

According to the *Cloverly Master Plan*, the master plan designation of this segment of Spencerville Road is a four-lane major highway, M-76, with a 120 ft. right-of-way, a planned Class I bikeway, PB-34, and rural streetscaping.

Local Area Transportation Review

The existing residential use of the property generates one peak-hour trip during the weekday morning and evening peak periods. Special exception use related trips in the weekday morning peak period are not anticipated to exceed 16 under the current proposal. Evening peak period trips are not anticipated to exceed 5 under the current proposal, recognizing that employees would leave the site after 6 p.m., which is outside of the peak period. Staff determined a traffic study is not necessary because the site generates fewer than 50 trips in either peak period. Staff also considered the peak period impact of the potential for 14 business vehicles in the future however a modification would be required for any change in fleet. To ensure the peak hour impact of the proposal remains as evaluated, staff is recommending conditions of approval to limit number of employees, vehicles, deliveries and hours of operation.

Policy Area Review / Staging Ceiling

The site is located on the north side of Spencerville Road in the Patuxent Policy Area. The Patuxent Policy Area is considered a rural policy area with no established transportation-staging ceiling for non-residential and residential development under the FY2002 Annual Growth Policy.

Environmental – 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^{2[2]}. About 1.4 acres of forest is located along the northern and northwestern property boundaries, which is within the Patuxent River watershed. There are also individual trees located throughout the property, particularly along the property boundaries and near the existing house. There are no streams, wetlands, floodplains, or associated environmental buffers on or adjacent to the subject property.

Violation of the Forest Conservation Law

Prior to staff review and approval of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD), the property owner cleared almost understory vegetation and some trees within the on-site forest. There was no forest conservation plan or exemption that authorized this clearing activity. This was a violation of the forest conservation law. An administrative order requiring corrective action was issued on April 22, 2002 (Attachment A). The corrective action includes replanting the understory and larger trees in the forest and placing a Category I conservation easement. Under the forest conservation law, there is the ability to impose a civil penalty on the violator. Staff has not imposed a civil penalty because staff believes the severity of the violation is relatively small and not in the SPA portion of the property.

The property owner has agreed to comply with the corrective action (Attachment B). A plan for replanting the understory of the existing forest and the commitment to place the forest in a conservation easement is incorporated into the preliminary forest conservation plan (FCP) that has been submitted for the proposed special exception. The preliminary FCP does show replanting in the existing forest and the placement of a Category I conservation easement. Staff believes these two elements of the FCP are acceptable. However, staff believes the amounts, sizes, and species of trees and shrubs to be planted in the existing forest should be modified to include larger trees and shrubs. Staff would recommend that these revisions be done as part of the final FCP.

Forest Conservation

As indicated above, a preliminary FCP for the proposed special exception has been submitted. In addition to replanting the understory of the existing forest and placing the forest in a conservation easement to correct the forest conservation law violation, the FCP shows 0.60 acre of afforestation adjacent to the existing forest along part of the eastern and western property boundaries. This meets the requirements of the forest conservation law. Staff recommends conditional approval of the preliminary FCP.

Special Protection Area

^{2[2]} 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 applicant 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 an existing house, is to remain a residential use. Therefore, Montgomery County Department of Permitting Services (DPS) has determined that a SPA water quality plan is not needed for the proposed special exception (see Attachment C). A condition prohibiting changes to the driveway, which is in the SPA, prevents changes without the benefit of staff review in the context of a special exception modification.

Stormwater Management

The site development plan conceptually shows a stormwater management (SWM) facility at the northern end of the property outside the existing forest. The applicant has not submitted a SWM concept plan at this time. The submission of a concept plan would occur as part of the preliminary subdivision plan. DPS would review the SWM plan as part of the subdivision process.

Community Concerns – The applicant has met with neighbors regarding the application and has represented to staff that concerns were raised about number of employees, number of vehicles and hours of operation. The conditions of approval limit all of these aspects of the application.

Compliance with General and Specific Special Exception Provisions- The staff has reviewed the petition for compliance with the applicable special exception provisions. As noted in the attachment, all general and specific requirements for a landscape contractor found in Sections 59-G-1.21 and 59-G-2.30.00 will be satisfied.

Conclusion – The staff finds that the special exception satisfies all of the applicable special exception provisions for a landscape contractor found in the Zoning Ordinance. Therefore, we recommend approval with the conditions found in the beginning of the report.

Attachments

1. Zoning Criteria Analysis.
2. Vicinity Map.
3. Site Development Plan for Special Exception.
4. Landscaping Plan for Special Exception.
5. Building Elevations.
6. Sign Concept.

**Attachment 1.
Montgomery County Zoning Ordinance
Compliance with Specific and General Special Exception Provisions**

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

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 use is allowed in the RE-1 zone.
 - (2) Complies with the standards and requirements set forth for the use in division 59-G-2.

The use complies with these standards.
 - (3) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the Commission.

The subject property is covered by the 1997 Cloverly Master Plan. Staff finds that the proposed special exception is consistent with the recommendations in the approved and adopted master plan.
 - (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The use will be in harmony with the neighborhood when considering these criteria.
 - (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

The use will not have a detrimental effect for any of these reasons.
 - (6) Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area,

increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Special exception uses in accord with the recommendations of a master or sector plan are deemed not to alter the nature of an area.

The proposed use when evaluated in conjunction with other existing and approved special exceptions in the area will not affect 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. Staff visited the site and considered the scale of the other operations, the fact that they are well established and highway context and determined that this use, as conditioned, would not adversely affect the area or alter its residential character. The owner living in a house in front of the use factored in this determination.

- (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

The use will not adversely affect the safety of area residents.

- (8) 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. If the special exception use requires approval of a preliminary plan of subdivision in accordance with chapter 50 of this Code, title "Subdivision of Land," the adequacy of public facilities will be determined by the Planning Board at the time of subdivision approval. In that case, the Board of Appeals must include such Planning Board approval as a condition of the grant of the special exception.

Not applicable.

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.

No combination of uses is proposed.

- (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 as a single lot of 10.12 acres or under the proposed subdivision depicted on the site development plans.

- (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.

- (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.

A condition of approval implements this requirement.

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

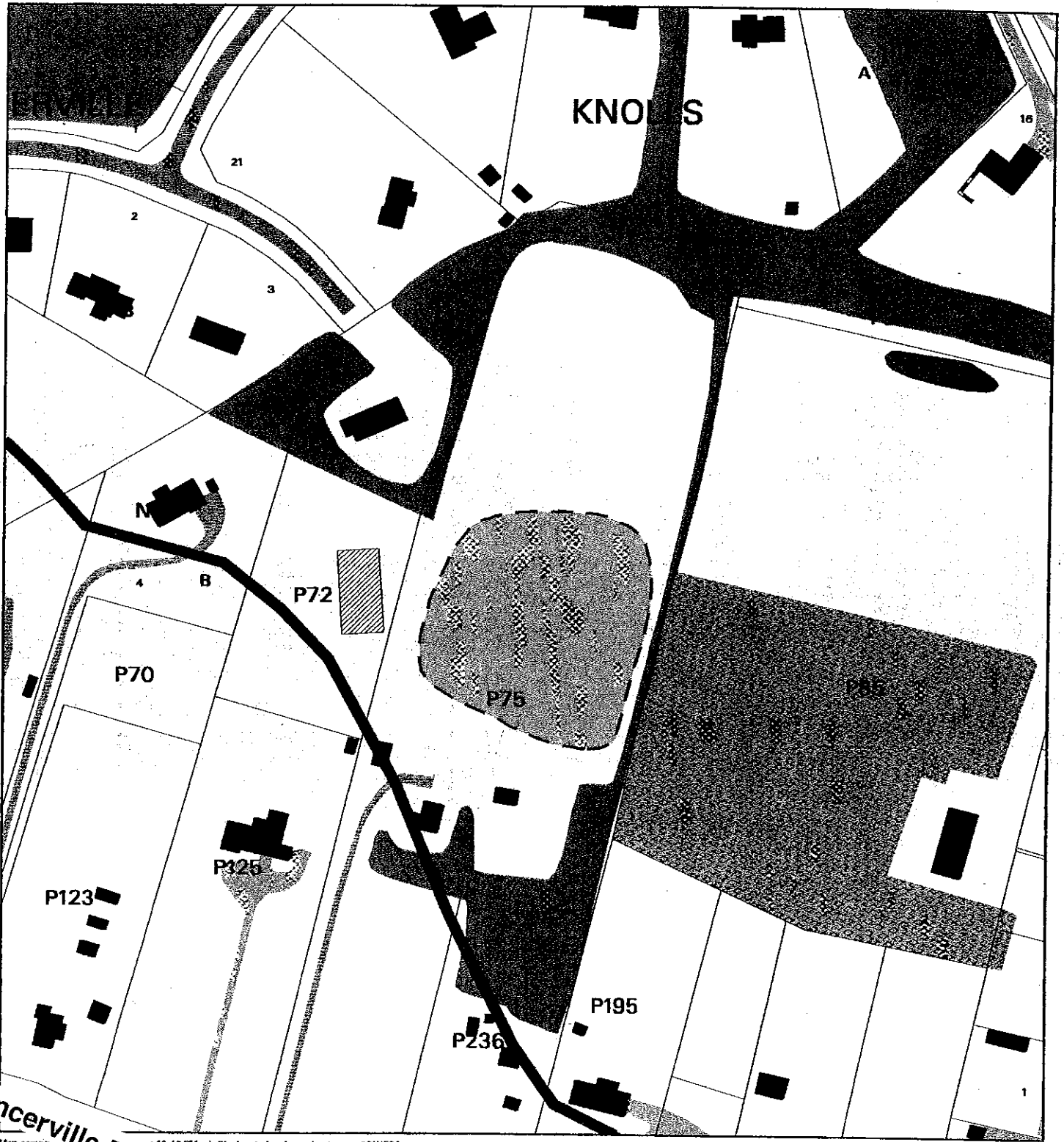
No sale of such materials is proposed.

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

A condition of approval implements this requirement.

(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 not being developed in an agricultural zone.



Map completed 12:42 PM Site located on base sheet no. Z21NE02

NOTICE

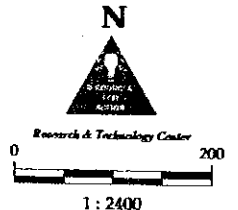
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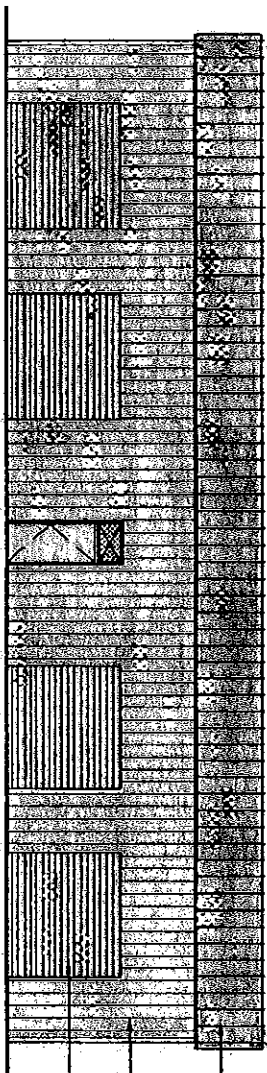
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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
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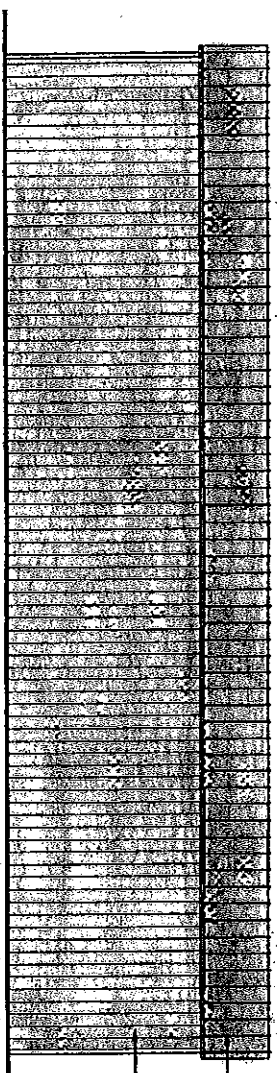
Key Map



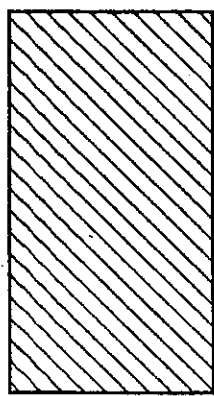
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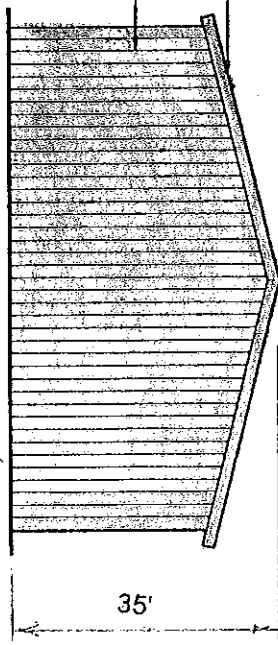
FRONT ELEVATION



REAR ELEVATION



PLAN



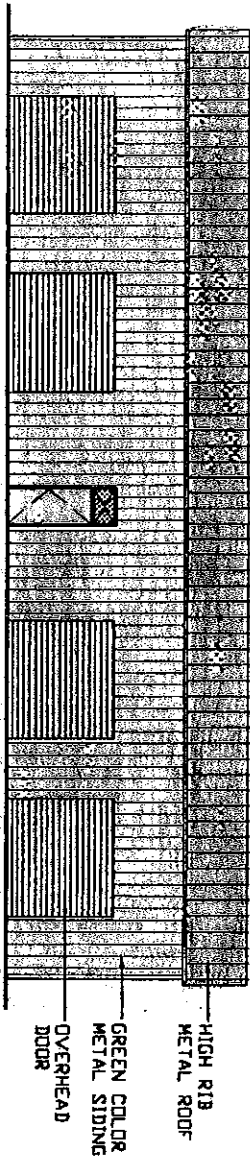
SIDE ELEVATION

PROPOSED STORAGE BUILDING 'A'
 Parcel A, Spencerville Knolls

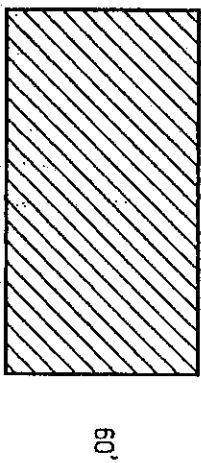
EXHIBIT

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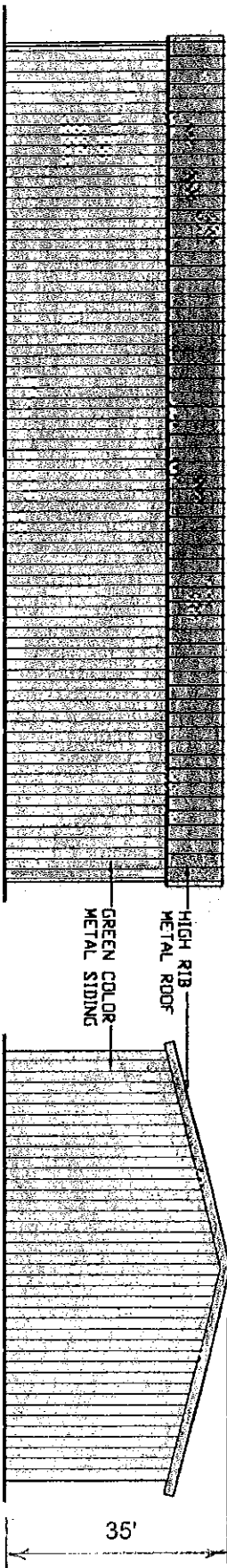
B



FRONT ELEVATION



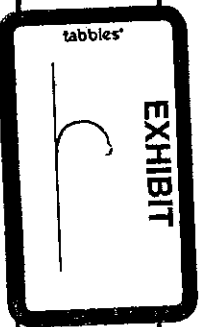
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REAR ELEVATION

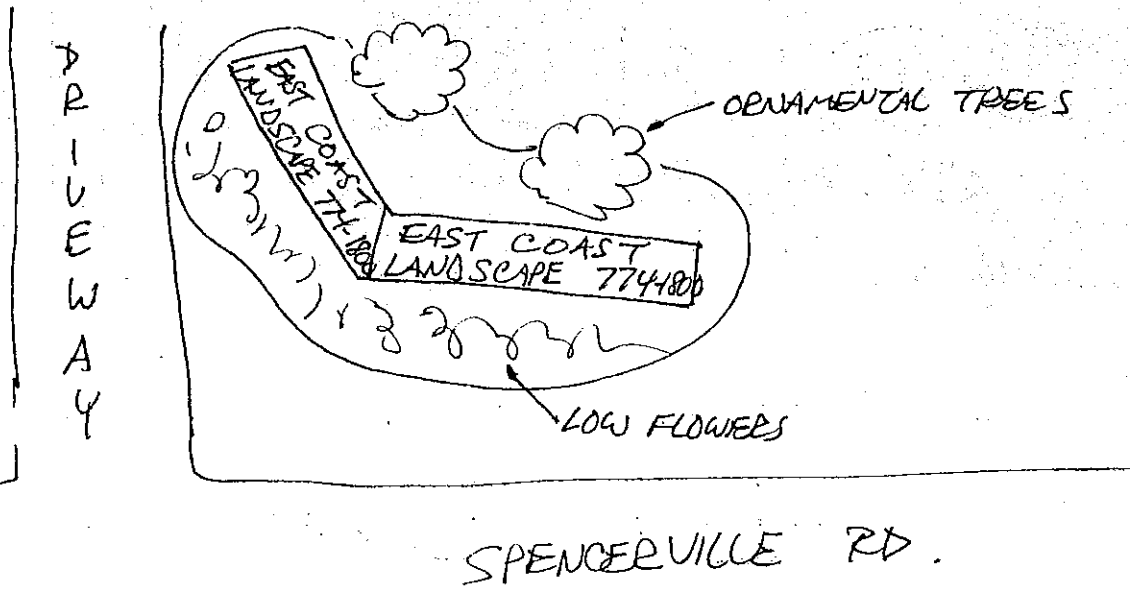
SIDE ELEVATION

PROPOSED STORAGE BUILDING 'B'
 Parcel A, Spencerville Knolls



PROPOSED SIGN

WOODEN STRUCTURE APPROXIMATELY 14' LONG BY 5' TALL.
ILLUMINATED BY 3 LOW VOLTAGE LIGHTS



A6

EXHIBIT

D

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