



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #5
2/6/2003

MEMORANDUM

DATE: January 31, 2003
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning *JAC*
Calumn Murray, *CM* Team Leader, Potomac

FROM: Nkosi Yearwood, Community-Based Planning *N.Y.*

REVIEW TYPE: Special Exception Modification
APPLYING FOR: Landscape Contractor and Retail Horticultural Nursery
APPLICANTS: Nick and Moscha Despotides and GEG, Inc.
CASE NUMBER: S-1400-B

REVIEW BASIS: Chapter 59, Zoning Ordinance
ZONE: R-200
LOCATION: 11650 Falls Road and 9308 Glen Road
MASTER PLAN: Potomac Subregion Master Plan (2002)
FILING DATE: October 3, 2002
PLANNING BOARD: February 6, 2003
PUBLIC HEARING: April 7, 2003 before the Hearing Examiner

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted plans and statements.
2. All existing conditions remain, unless altered by this petition.
3. The applicant must receive preliminary plan approval from the Montgomery County Planning Board.
4. The applicant must comply with Department of Permitting Service requirements for stormwater management.
5. The applicant must submit a final Stormwater Management Plan to the M-NCPPC Environmental Planning staff prior to the issuance of building and sedimentation control permits.

6. The applicant must submit a tree save to the M-NCPPC Environmental Planning staff prior to the issuance of building and sedimentation control permits.
7. The applicant must submit a final landscape plan to the M-NCPPC Environmental Planning staff that includes native trees such as American Holly, Red and White Oak and Eastern Redcedar, prior to the issuance of building and sedimentation control permits.
8. The number of vehicle deliveries to the site is limited to five per week.
9. All proposed signs must be reviewed and approved by the Board of Appeals or Sign Review Board.

10. Landscape Contractor

- a) The landscape contractor operation is limited to the following: The delivery and installation of plants sold by Good Earth Garden (GEG) Center to nursery customers' properties. A landscape designer is permitted to recommend to customers appropriate location and planting options of items sold by the Center.
- b) The following activities are prohibited from the landscape contractor operation: Maintenance of lawns, gardens or other landscaping, snow removal services, leaf collection, tree maintenance and removal, and wood chipping
- c) The number of employees for this use is limited to nine full-time employees and six part-time.
- d) Hours of operation for the landscape contractor are limited to 9:00 a.m. to 6:00 p.m. Monday to Sunday.
- e) The number of vehicles for this use is limited to four.

11. Retail Horticultural Nursery

- a) Hours of operation for the retail nursery are limited to Monday through Sunday from 9:00 a.m. to 6:00 p.m. From December 1 to December 23, the retail nursery hours of operation are extended from 6:00 p.m. to 8:00 p.m.
- b) The number of employees for this use is limited to eight full-time employees and 15 part-time employees.
- c) From the Memorial Day weekend to October 31, the incidental sale of seasonal items, such as strawberries and peaches, are permitted.

- d) From December 1 to December 23, the following sales of seasonal items are permitted: firewood, Christmas trees and wreaths.
- e) This use is limited to five trucks.
- f) The number of informational seminars associated with this use is limited to six per year.

Proposal Description

Good Earth Garden Center (GEG), and Nick and Moscha Despotides seek to amend their existing special exception to create an English-style garden center with a new sales building, green houses, shade and canopy structures, exterior plant display and sales area, new paved parking spaces, board-on-board fences and landscaping to screen the property. Further, a storm water management facility will be provided on site because none exists at the present. The modification petition also seeks to transfer the special exception from Allentuck Nursery and Landscaping Co., a previous co-holder of the special exception, to GEG, Inc. This modification petition will also address a citation from the Department of Permitting Service (DPS).

Site Description

The subject property is identified as Parcels 771 and Parcels 774 and is located at the intersection of Falls Road and Glen Road in the Clagett Farm subdivision of Potomac. The site is "L" shaped and is approximately 4.0036 acres in size and is zoned R-200. A survey was recently conducted to verify the size of the property. The property fronts onto Falls Road as well as Glen Road with primary access from Glen Road.

Both parcels are developed with a variety of buildings and gravel parking, including detached dwellings and greenhouses. Parcel 774, which is approximately 1.7 acres in size, contains two detached dwellings, one that is adjacent to Falls Road and another to Glen Road. Most of the retail nursery activities occur on this portion of the property. There are two existing greenhouses, a sales area, sunscreen canopy and plant holding areas, storage areas of mulch, and a woodshed. Several trees are scattered around this portion of the site. Additionally, gravel parking runs parallel to Glen Road and a four-foot high rail fence surrounds this portion of the site. There is a minimal setback from the gravel parking to Glen Road.

A single-family dwelling is located on parcel 771, which is approximately 2.39 acres in size. Glen Road provides access to this dwelling. In addition to the dwelling, this portion of the site contains gravel parking. Trees screen the property lines to the south, west and east. Further, a garden is located at the rear of the dwelling, a frame shed is east of the garden, a plant holding area is to the south, and a four-foot high wire fence surrounds this portion of the property.

Neighborhood Description

Land uses surrounding the subject site are different include, single-family residential and religious institutions. Immediately north of the site across Glen Road is the Church of Jesus Christ of Latter Day Saints in the R-200 zone, and further north along Falls Road is another religious facility, the Washington Hebrew Congregation. Single-family dwellings in the R-200 zone are east of the subject site, across Falls Road, and single-family dwellings are also to the west in the R-200 and R-200/TDR zones. Further west along Glen Road is Wayside Elementary School.

Immediately south of the subject site along Falls Road is a single-family dwelling in the R-200 zone and adjacent to this dwelling is the Congregation Har Shalom, and Rockville Volunteer Fire Department (#33), respectively. An accessory apartment (S-1139) located at 8910 Tuckerman Lane and a private riding stable (S-368) at 9205 Marseille Drive are the only approved special exceptions in the surrounding area. Staff believes that the applicant's modification petition will significantly improve the subject site by consolidating existing uses, providing stormwater management, and effectively screening the property with substantial additional landscaping.

Elements of Proposal

The applicants, GEG Inc., and Nick and Moscha Despotides, proposes the following modifications to the existing retail horticultural nursery and commercial greenhouse:

- Paved parking to accommodate the existing uses and vehicles.
- Extension of retail nursery hours of operation during December.
- Sale of seasonal items.
- Removal of an existing sales building adjacent to Glen Road and construction of a new sales center/building, greenhouses and shade/canopy structures on the property.
- Provision of stormwater management facilities.
- Additional landscaping along Glen Road and Falls Road as well as a six-foot high board-on-board fence will screen the property from surrounding properties.

Background

In 1987, the Board of Appeals (BOA) approved the subject site for a Horticultural Nursery and Commercial Greenhouse (S-1400) and a variance was granted (A-1755) for the use of the single-family dwelling adjacent to Falls Road. This dwelling does not meet the front yard setback of 40 feet. (*See attachment for BOA opinion*). The applicant's statement of operation and subsequent staff reports indicate that a landscape contractor was associated with the use, but the Board of Appeals decision only notes the horticultural nursery and commercial greenhouse use.

Since the 1987 decision, the BOA has approved the following modifications to the use:

- 1990: Administrative modification transferred the special exception from the Despotides to Potomac Valley Garden, Inc., Clifton Gaus, President.
- 1992: Administrative modification transferred the special exception from Potomac Valley Gardens, Inc. to Allentuck Landscaping, Inc.
- 1994: Modification petition (S-1400-A) approved the correction of Allentuck Landscaping to Allentuck Nursery and Landscaping Co., added Nick and Moscha Despotides as co-holders of the special exception, corrected the description of the property as reflecting both parcels, extended the Sunday hours of operation, and authorized the retention of two double-sided signs.

The applicant received a notice of violation from the Department of Permitting Service (DPS) in 2001 for having several items on site that were not approved by the BOA, including a florist, a shed/greenhouse, signs on the property, extension of the gravel parking area and other changes to use. (*See attachment for DPS notice of violation*) The applicant has terminated the use of some of the items, such as the florist, and the modification petition will address the remaining issues in the notice of violation.

Master Plan

The applicant's modification petition is located in the Potomac Planning area. The Approved and Adopted (2002) Potomac Subregion Master Plan provides the following recommendations on special exceptions:

- Limit the impacts of existing special exceptions in established neighborhoods.
- Increase the scrutiny in reviewing special exception applications for highly visible site and properties adjacent to the Chesapeake & Ohio Canal National Historical Park.
- Avoid an excessive concentration of special exceptions along major transportation corridors. (p.33)

The subject site is located at an intersection with existing residential development and religious uses surrounding the site. The applicant's modification petition is located in an area where there are only two other approved special exceptions. The Master Plan also states that: sites along these corridors are more vulnerable to over-concentration because they have high visibility. Uses that might diminish safety or reduce capacity of roadways with too many access points or conflicting turn movements should be discouraged. (p.34)

No specific recommendations are made in the Master Plan for the subject site and the existing R-200 zone is retained. The applicant's modification is consistent with the

Master Plan’s design guidelines for special exceptions since trees and other landscaping will be planted to screen the proposed parking facility along both Falls and Glen Road. Parking spaces parallel to Glen Road have been removed to accommodate additional landscaping on the site.

The Master Plan recommends “parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.”(p.33) Additionally, the Master Plan recommends that “efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.” (p.33) The applicant will provide additional landscaping for all portions of the property, as well as a six-foot high board-on-board fence along the southern and western portions of the property.

Development Standards

The Zoning Ordinance acknowledges that it is quite common for a retail horticultural nursery to be combined with a landscape contractor or mulch/compost manufacturing operation. A retail horticultural nursery and landscape contractor are two distinct uses in the Ordinance, Section 59-G-2.30 and Section 59-G-2.30.00, respectively. The main use of the site is the retail horticultural nursery and the landscape contractor is minor to the main use.

The Ordinance defines a landscape contractor as: “The business of designing, installing, planting, or maintaining lawns, gardens, or other landscaping and snow removal services, including tree installation, maintenance or removal, at off-site locations with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. The delivery and installation of horticultural products originating on the farm is an accessory use to the farm.” The applicant has informed staff that the existing landscape contractor service is limited to the installation and delivery of plants to individual client sites. No lawn care, snow removal, wood-cutting or chipping will occur. Tractors, trailers and lawnmowers will not be stored onsite.

The following table shows the development standards for a landscape contractor and a retail horticultural nursery:

Landscape Contractor	Requirement	Provided
Minimum area	2.0 acres	4.0 acres
Operational setback	50 feet	50’ (a) and 111’(b)*

*Note: 50 feet from other property lines and 111 feet from western property line.

Retail Nursery	Requirement	Provided
Minimum area	2.0 acres	4.0 acres
Building setback	50 feet	50 feet
Parking	5 spaces per 1,000 leasable square feet	58 spaces*

*Note: The provided number of spaces includes both uses as well as employee and truck parking.

The applicant's modification petition is consistent with the development standards of the R-200 zone. The existing dwelling along Falls Road has an approved variance (A-1755) since it does not meet the front yard setback of 40 feet.

Design and Lighting

The reconfigured design for the retail nursery will consist of open shade canopies, shade pergolas, and a new sales center. The size of the pergolas varies from 800 square feet to 1,200 square feet and the new sales center is approximately 2,700 square feet. Glass walls will surround the new sales center as well as the enclosed green house. The height of the new sales building will be 36'-6" in height, which is within the 50 feet height limit for the R-200 zone. Two signs are proposed for the site.

Glen Road will provide primary access to the site and parking spaces will be immediately adjacent to the new sales center and proposed pergolas. A freestanding pergola, approximately 4,144 square feet in size, is proposed west of the retail nursery area. Behind this pergola will be three greenhouses, each about 480 square feet, and parking.

The applicant has redesigned the site to improve the parking setback from Glen Road and to increase the landscaping adjacent to the road. Further, this reconfiguration has reduced the number of parking spaces for the use. However, a parking waiver of 10 feet is still required to adhere to the Section 59-E-2.81 (a), which requires a front yard setback of 40 feet for parking facilities. Staff supports the request for the waiver since the applicant has relocated the parking spaces that were adjacent to Glen Road, increased the setback from 10 feet as originally proposed to 30 feet, provided additional landscaping for the area, and adheres to other setbacks for both uses.

Four freestanding light poles are proposed for the parking facility near the new sales center and pergolas. Each proposed light pole is 10 feet in height on a three-foot base. Based on the submitted photometric lighting plan, no lights will spill onto the adjacent right-of-way or any neighboring property.

Subdivision

A preliminary plan of subdivision is required since two separate lots are being consolidated into one. At subdivision, the applicant will dedicate additional right-of-way from Falls Road, approximately 60 feet from the centerline. The Master Plan recommends Falls Road as a major highway with a 120-foot right-of-way.

Inherent/Non-inherent Characteristics

The inherent characteristics of a landscape contractor range from snow removal to wood chipping to lawn maintenance. The landscaping aspect of the applicant's petition is minor when considering the larger use of the site. More importantly, no wood chipping, snow removal or other activities typically associated with a landscape contractor are associated with the applicant's operation. Therefore, associated noise emanating from blowers and chippers were not occur onsite. The applicant's landscape contractor is limited to installation and planting of plants sold at the nursery at individual clients' residences.

Typical activities for a landscape contractor occur offsite with employees arriving in the morning to pick-up vehicles and equipment and returning in the evening after conducting activities at different locations. Landscaping contractor activities, especially lawn care, typically occur from April to September. Some landscape contractors provide snow removal services during winter months in addition to the lawn maintenance. Onsite activities typically include storage of equipment such as, trucks, lawn mowers and blowers, and parking areas for trucks and staff.

Inherent features of a retail nursery include the following: retail sale of commercial or residential planting items such as trees, annuals, perennials, house plants, rakes, shovels another other tools typically associated with planting. Watering cans, wheel barrows, fertilizers, herbicides, mulch, and other plant care items are typically sold at a retail nursery. It is not uncommon at limited times during the year, such as during the summer and Christmas, to find seasonal items for sale. Some retail nurseries have greenhouses to store plants, display areas for some plants, and storage of mulch and other items sold at the retail nursery.

As a retail operation, this use will have customers arriving during various parts of the day with peak activities occurring on weekends. At special times during the year, such as Mother's Day, activity level at retail nurseries increases when compared to other times of the year. The applicant notes that Mother's Day weekend was one of the highest levels of activity annually. Staff for a retail nursery varies in size. Some nurseries, such as the applicant's, typically hire teenagers for part-time employment. Further, some employees work different shifts during the day.

Delivery of gardening and nursery stock via trucks or other large vehicles typically occurs once or twice a week depending on the size and type of plants the retail center sells. The applicant notes that during its peak season of activity there are no more

than five deliveries in vehicles larger than a typical UPS truck. During off-peak seasons, the number of vehicle deliveries varies from one to three per week. As a condition of approval, staff recommends that the number of vehicle deliveries to the site be limited to five per week.

The applicant's modification petition is consistent with the inherent impacts of a landscape contractor and a horticultural retail nursery. There are no non-inherent impacts of the applicant's petition that would warrant denial.

Environment

Environmental Planning staff has reviewed the applicant's modification petition and recommends its approval. The modification proposal would not result in the cumulative clearing of more than 5000 square feet of forest. However, a tree save plan is required. Environmental Planning staff notes that tree save measures shown on the tree save plan must include protective fencing around specimen trees prior to any construction on site. (*See Environmental Planning staff for more information*)

Stormwater Management

Three new stormwater management facilities are proposed for the site, which will provide both quality and quantity control. The applicant has submitted a concept plan to the Department of Permitting Service (DPS) for its review. As a condition of approval, the applicant must submit a final stormwater management plan to Environmental Planning prior to the issuance of building permits.

Forest Conservation

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject site. There are different trees scattered on the site including a 48" Black Locust, 42" Red Maple, 38" Black Locust and a 24" Sugar Maple. A Forest/Tree Conservation Plan has been submitted and is approved subject to the tree protection measures.

Water Quality

The site is located in the Buck Branch subwatershed of the Cabin John Creek watershed. The subwatershed is largely built up with remaining woodland restricted mainly to stream valleys. The Countywide Stream Protection Strategy (CSPS) rates the Buck Branch sub-watershed on the margin between good and fair. The subwatershed is listed as an area for remedial watershed protection plan.

Transportation

Transportation Planning staff has reviewed the subject petition and recommends its approval and notes that proposed modification would have no detrimental effects on adjacent intersections and roads (*See Transportation Memo for more information*).

Access

Primary access to the subject site is from Glen Road, a primary residential street with a 70-foot right-of-way with two lanes for traffic. No access is available to the site from Falls Road. Falls Road is classified as a major highway with a 120 right-of-way. The Master Plan recommends a Class I bikeway along Falls Road from Wootton Parkway to MacArthur Boulevard.

Local Area Transportation Review

Based on the submitted traffic statement by the applicant, Transportation Planning staff notes that the proposed modification would generate additional trips, but the amount of site-generated peak hour trips during weekday peak periods (6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.) would be less than 50 trips. The retail nursery opens at 9:00 a.m. to the public.

The Local Area Transportation Review (LATR) Guidelines provide specific procedures for the Potomac Policy Area. These guidelines provide a set of special procedures that do not require a LATR unless intersections along Seven Locks Road and in the vicinity of Montgomery Mall are affected. This petition would not require a traffic study.

The intersection of Falls Road and Glen Road is currently operating at acceptable Critical Lane Volumes, 1, 286 and 912 during the a.m. and p.m. peak hours, respectively. Both intersections are substantially lower than the 1525 CLV congested standard. This acceptable level will continue with the future traffic from approved developments in the area and any additional site-generated traffic.

Parking Standards

Section 59-G-2.30, retail horticultural nursery, states that adequate parking must be provided onsite in accordance with the requirements for general retail sales under Section 59-E. This section states: "Commercial establishments devoted to retail sales, merchandising or other similar use, except furniture stores, 5 parking spaces for each 1,000 gross leasable square feet." Both the retail nursery and landscape contractor office space will produce approximately 33 spaces. A total of 58 parking spaces will be provided on site and includes parking for employees and trucks.

Parking Waiver

A parking waiver is required for the front parking surface since it does not meet the front yard setback of 40 feet for the R-200 zone. Section 59-E-2.81 (a) requires that "All parking surfaces, spaces and driveways must be setback a distance not less than the applicable front, rear, or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility." The applicant has modified the parking layout to increase the setback and screening along Glen Road. A parking waiver of 30 feet was requested with the original application, which has been reduced to 10 feet with the current layout. Staff supports the request for a 10-foot waiver.

Community Concerns

The applicant met with the West Montgomery County Citizens Association on November 25, 2002. Staff has spoken to two residents who desired more information on the applicant's petition. Staff has received no other written or oral comments from neighboring residents.

Compliance with the Specific and General Conditions of the Special Exception

Sec. 59-G-2.30-Nursery, horticultural retail

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 with a wholesale horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operations. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specific location.

- (1) The sale of the following materials and equipment directly related to residential gardening is allowed:
 - (i) Plants, trees, shrubs, seeds, and bulbs, whether or not grown or produced on site;
 - (ii) Fertilizers, plant foods, and pesticides; and
 - (iii) Hand tools, hand spraying, and watering equipment.

The applicant's statement of operations notes that items listed above are sold onsite, including shrubs, perennials, trees, fertilizers and herbicides.

- (2) The incidental sale of seasonal items may also be allowed.

From Memorial Day weekend to October 31, the applicant sells fresh produce including strawberries, apples and peaches. Between December 1 and December 23, the applicant sells firewood, Christmas trees and wreaths.

(3) The following restrictions on operations apply:

(i) Tools and equipment for sale must not be displayed outdoors.

No tools and equipment for sale will be displayed outdoors.

(ii) The sale of general hardware or power equipment is not allowed.

No general hardware will be sold onsite.

(iii) The board may limit hours of operation and number of employees to prevent adverse impact on adjoining uses.

As a condition of approval, the applicant's petition is limited in terms of the hours of operation and number of employees.

(iv) The manufacture of mulch, other than by composting of plant material, is not allowed.

No manufacturing of mulch occurs onsite.

(4) Location and development standards are as follows:

(i) The minimum area of the lot is 2 acres.

The subject site is 4.0036 acres in size and meets the minimum area requirement.

(ii) The minimum building setback from any property line is 50 feet.

The proposed new sales center, open shade canopy and pergola adhere to the 50-foot setback. The existing dwelling adjacent to Falls Road does not meet the setback for the use but has an approved variance (A-1755) for its use.

(iii) Adequate parking must be provided onsite in accordance with the requirements for general retail sales under Article 59-E.

A total number of 58 parking spaces will be provided for both the landscape contractor and retail nursery uses, as well as employees.

- (iv) The property must front on and have direct access to a public road built to primary or higher standards, with the possible exception of properties in the Rural, Rural Cluster, and Rural Density Transfer zones. In the Rural, Rural Cluster, and Rural Density Transfer zones, frontage on and access to a public road built to primary or higher standard is not required if the Board makes the following findings:

— Road access will be safe and adequate for the anticipated traffic to be generated; and

— The use at this location will not be an intrusion into an established residential neighborhood.

These requirements apply only to petitions filed on or after March 25, 1986. A nursery or commercial greenhouse special exception for which a petition was filed with the Board prior to March 25, 1986, is a conforming use and may be amended in accordance with the modification provision of Section 59-G-1.3 (c).

Glen Road provides primary access to the site, which is classified as a primary residential street, and the use is not an intrusion into the established neighborhood.

- (5) Any retail nursery or garden center established as a permitted use before October 22, 1985, and any retail nursery established pursuant to a building permit application filed before October 22, 1985, is not required to obtain a special exception, except for any future expansion or diversification beyond the scope of paragraphs (1) and (2).

Not applicable.

Sec. 59-G-2.30.00 Landscape contractor:

- (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 site is 4.0 acres in size.

- (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.

Areas for parking of trucks are approximately 104 feet from the western property line, 78 feet from the southern property line and 50 feet from the eastern property line. Existing and proposed landscaping will screen the truck parking area. The truck parking area is approximately 155 feet from the residential dwelling to the west.

- (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.

As a condition of approval, staff recommends that the number of trucks should be limited to five as proposed.

- (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 sale of garden supplies and plant material occur onsite with the retail nursery operation.

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

Staff has recommended limitations on the hours of operation and days of the week, Monday to Sunday from 9:00 a.m. to 6:00 p.m.

- (6) In evaluating the compatibility of this use with surrounding land uses in the Rural, Rural Cluster or RDT zone, the Board must determine whether those uses are primarily agricultural or residential. The impact of the use on agricultural uses does not necessarily need to be controlled as stringently as its impact on residential uses.

Not applicable.

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 special exception is permissible in the R-200 zone.

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

The special exception modification petition complies with Section 59-G-2.30.00 for a landscape contractor and Section 59-G-2.30 for a retail nursery.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an 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 the 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 modification petition is consistent with the 2002 Approved and Adopted Potomac Subregion 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 modification petition is in harmony with the general character of the neighborhood since additional landscaping and board-on-board fence will substantially screen the property more than at present. Further, the new sales center is consistent with development standards for the R-200 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 proposal will not have a detrimental effect for any of these reasons since the applicant's landscape contractor operation is limited in scope with only off-site installation services. The modifications to the retail nursery will improve the aesthetic quality of the subject site.

- (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.

Noise is limited to employee and client arrival and departure as well as arrival of plant materials from trucks. Physical activity is limited to staff and patrons who visit the site, which currently occurs. Based on the submitted lighting plan, no glare or illumination will affect surrounding properties.

- (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 special exception modification will not adversely alter the residential nature of the area and will not increase the number, intensity and scope of approved special exceptions in 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 on any adverse effects the use might have if established elsewhere in the zone.

The modification petition will not cause any of these effects.

- (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 subject site is served by adequate public services.

- (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.

A preliminary plan is required for this modification petition. As a condition of approval, the applicant must obtain preliminary plan approval from Montgomery County Planning Board.

- (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 proposal will not have a detrimental effect on pedestrian safety and vehicular traffic.

Conclusion

Staff finds that the subject special exception meets all of the specific and general standards for a landscape contractor and retail horticultural nursery. Subsequently, staff recommends approval of special exception with the conditions listed on pages one to three.

Attachments

Vicinity Map	A-1
Zoning Map	A-2
Site Plan	A-3
Landscaping Plan	A-4
Floor Plans	A-5
Building Elevations	A-6
Lighting Plan	A-7
Environmental Memo	A-8
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Board of Appeals Opinions and Resolutions	A-10
DPS Notice of Violation	A-11

VICINITY MAP FOR
S-1400-B



Map compiled on January 30, 2003 at 10:40 AM | Site located on base sheet no - 215NW09

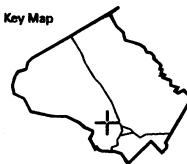
NOTICE

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

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Key Map



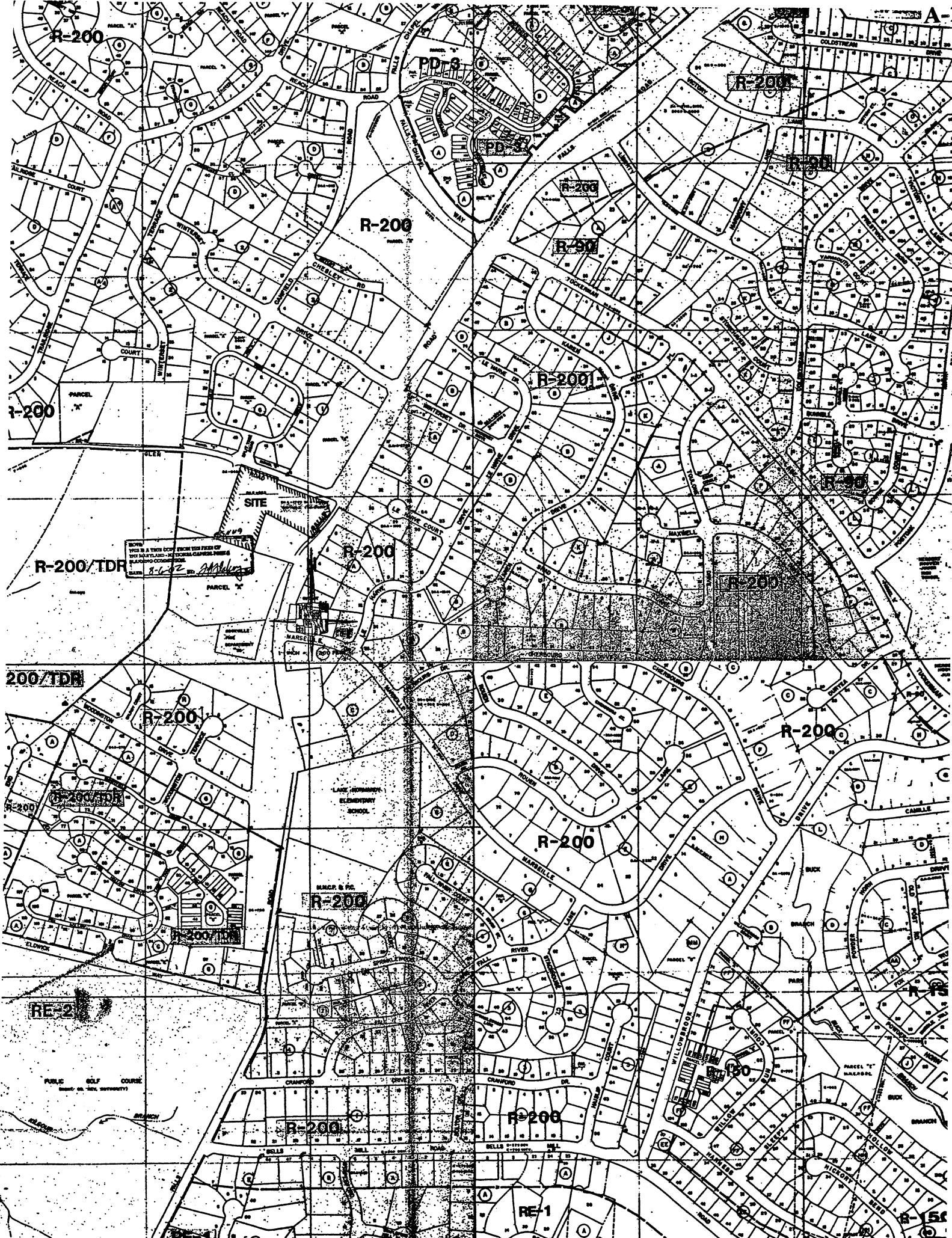
Research & Technology Center



1 : 2400

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

8787 Georgia Avenue - Silver Spring, Maryland 20910-3760



R-200

R-200

R-200

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R-200/TDR

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RE-2

PUBLIC GOLF COURSE

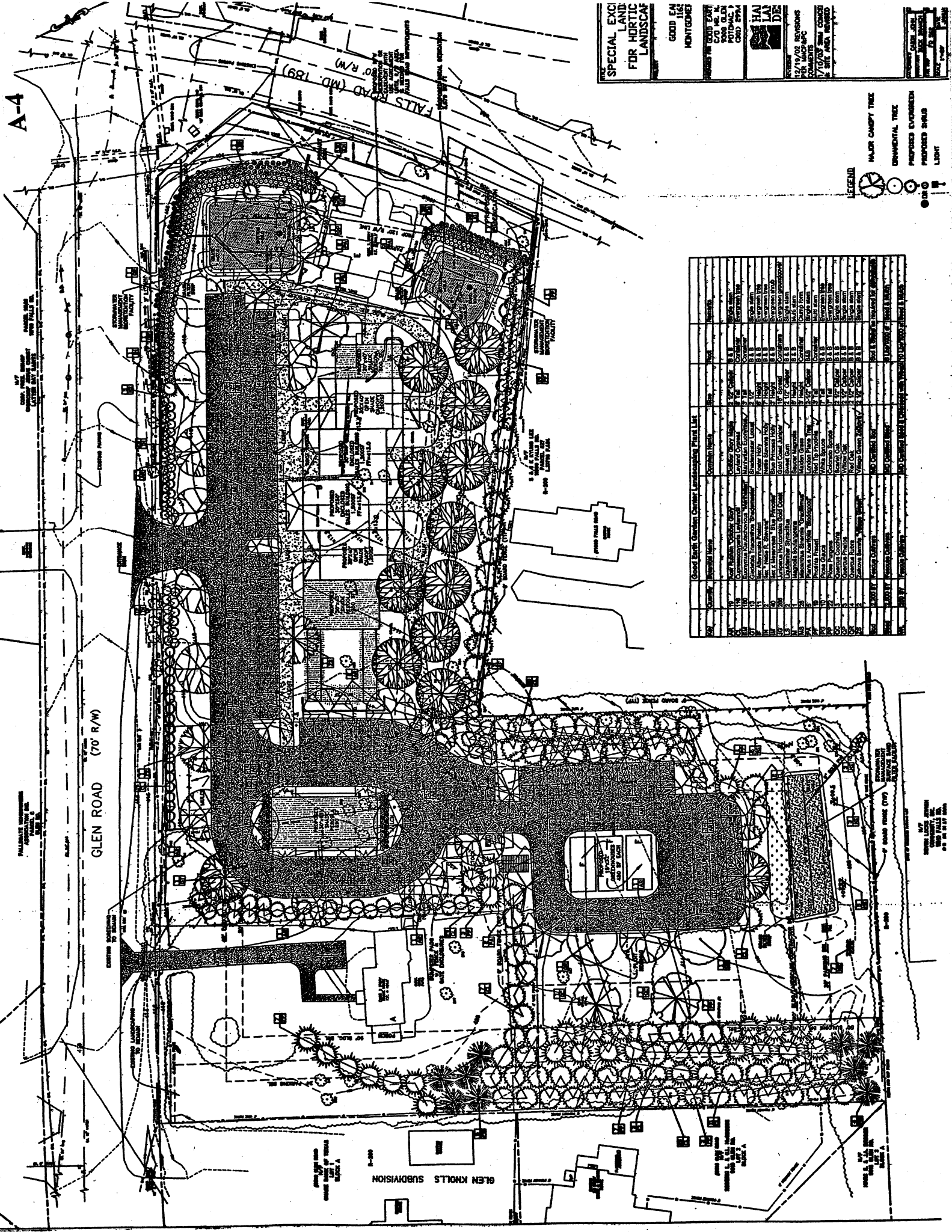
R-200

R-200

RE-1

R-50

A-4



SPECIAL EXCISE LAND FOR HORTIC LANDSCAPE

GOOD EN 116 MONTGOMERY

12/19/03 REVISIONS PER M&S-AFC COMMENTS

1/7/03 S&S COMES FROM S&S ARCHITECTS

HAIR CAMP TREE

ORNAMENTAL TREE

PROPOSED EVERGREEN

PROPOSED SHrub

LIGHT

Glen Knolls Garden Center Landscaping Plant List

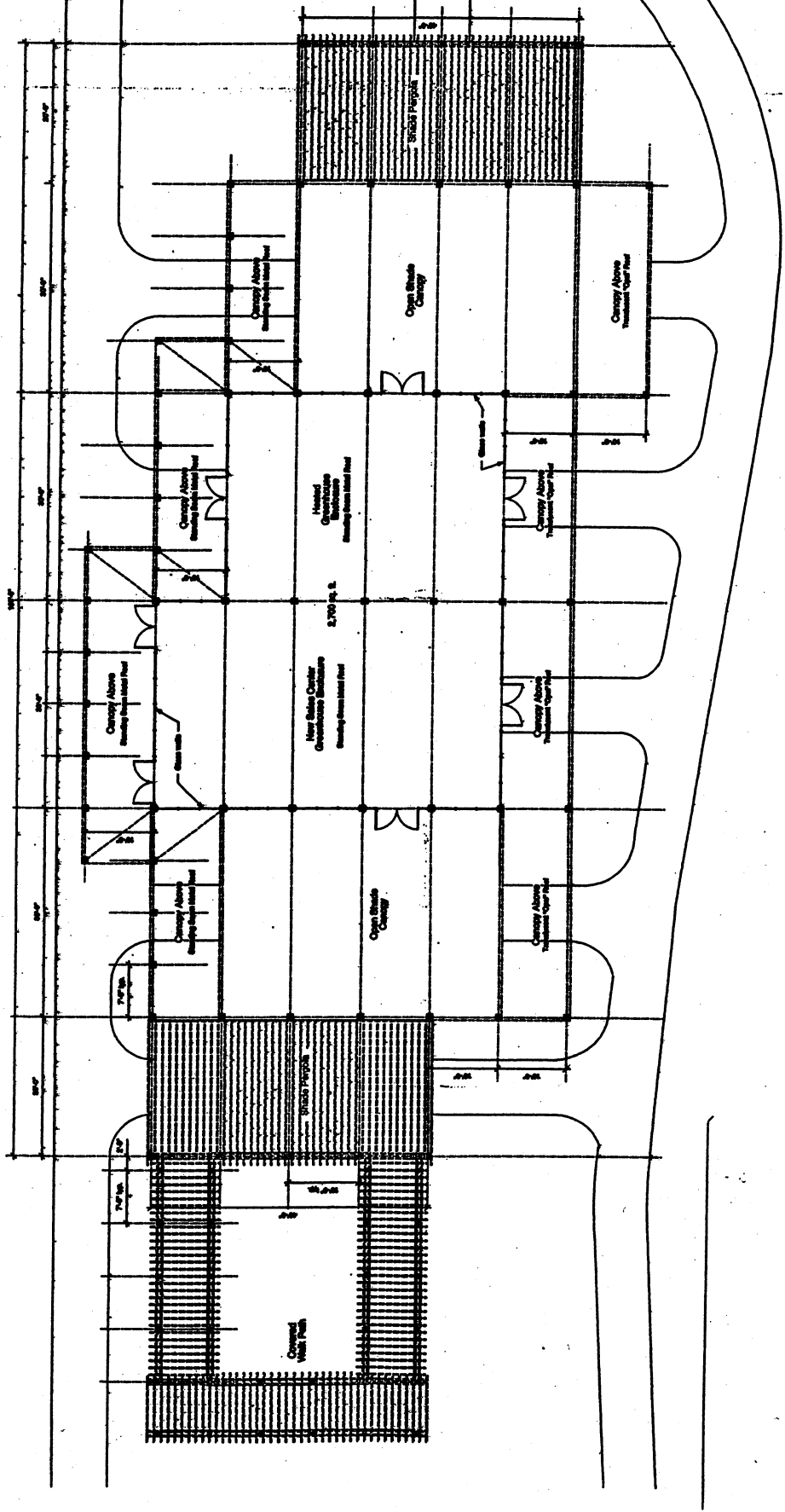
No.	Plant Name	Quantity	Notes
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GLEN ROAD (70' R/W)

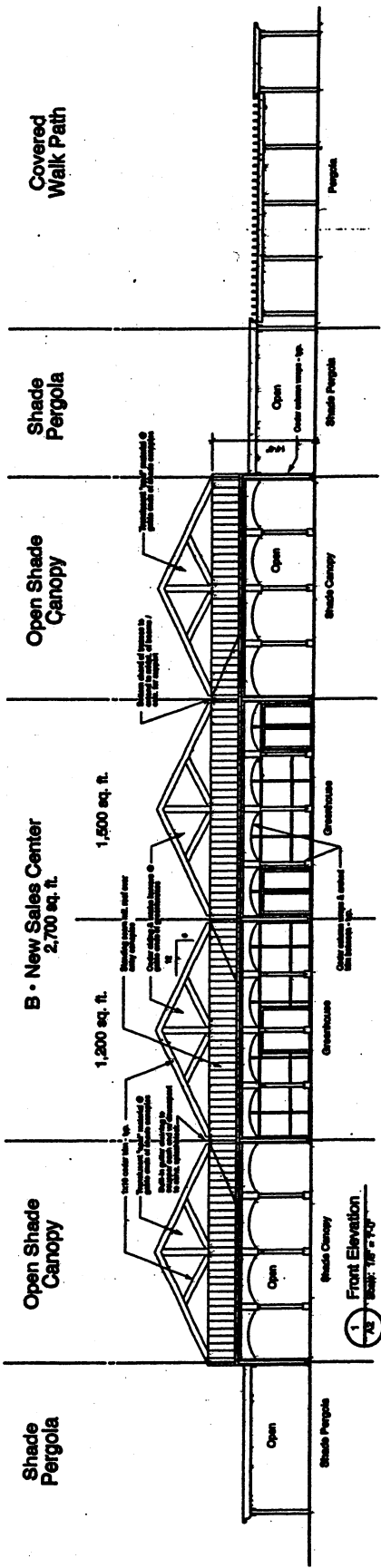
FALLS ROAD (MD 185) (60' R/W)

GLEN KNOLLS SUBDIVISION

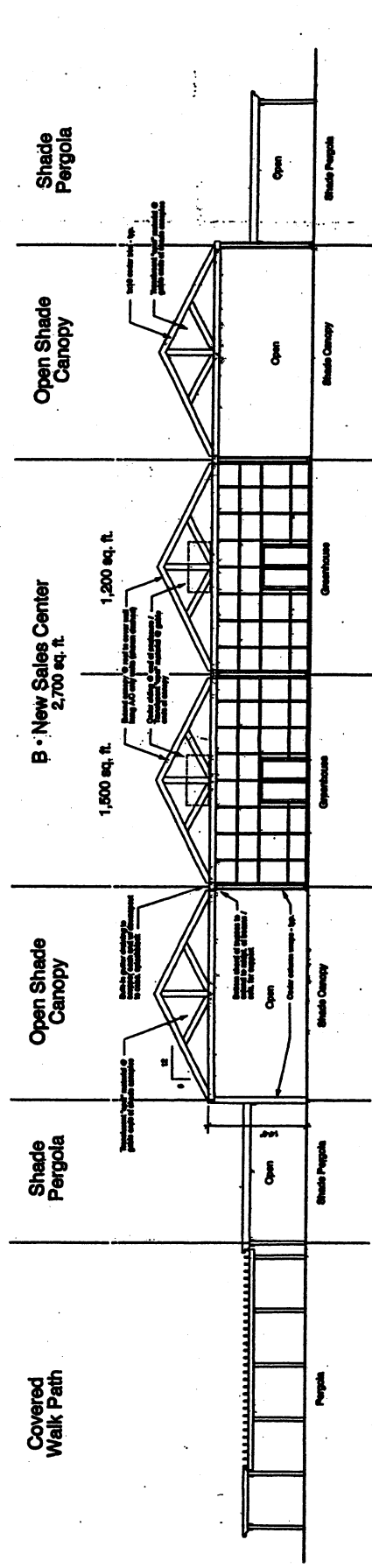
PLANTING NOTES:
1. ALL PLANTS TO BE INSTALLED BY 10/1/04.
2. ALL PLANTS TO BE INSTALLED AT 10% OF TOTAL QUANTITY.
3. ALL PLANTS TO BE INSTALLED AT 10% OF TOTAL QUANTITY.



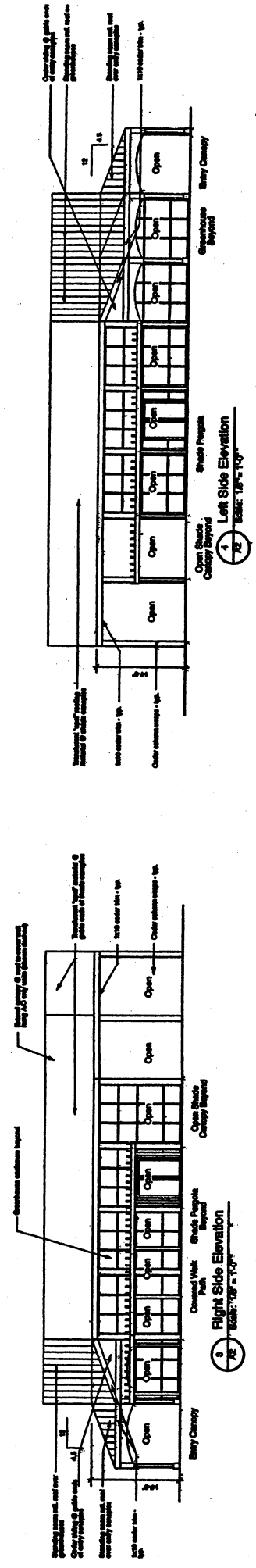
1 Floor Plan
Scale: 1/8" = 1'-0"



1
Front Elevation
Scale: 1/8" = 1'-0"

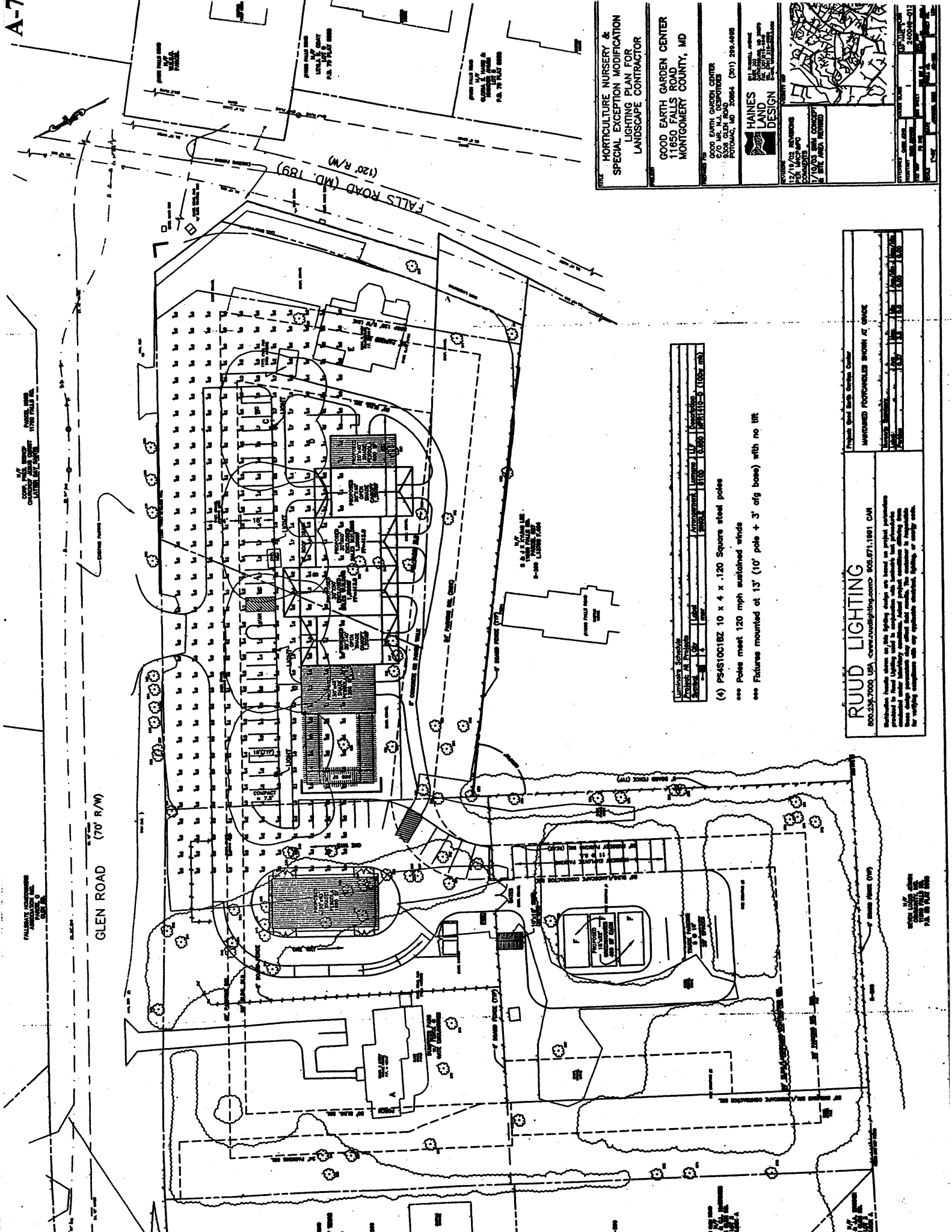


2
Rear Elevation
Scale: 1/8" = 1'-0"



3
Right Side Elevation
Scale: 1/8" = 1'-0"

4
Left Side Elevation
Scale: 1/8" = 1'-0"



HORTICULTURE NURSERY & SPECIAL EXCEPTION MODIFICATION LIGHTING PLAN FOR LANDSCAPE CONTRACTOR

GOOD EARTH GARDEN CENTER
11650 FALLS ROAD
MONTGOMERY COUNTY, MD

GOOD EARTH GARDEN CENTER
5070 MOUNTAIN VIEW DRIVE
POTOMAC, MD 20854 (301) 299-4695

HAINES LAND DESIGN
12/19/02 REVISIONS PER MDC2 AND COMMENTS
17' DIA. POLES MOUNTED AT 30' HGT. AS SHOWN

12/19/02 REVISIONS PER MDC2 AND COMMENTS
17' DIA. POLES MOUNTED AT 30' HGT. AS SHOWN

PROJECT NO. 02-0001
DATE: 12/19/02
DRAWN BY: J. HAINES
CHECKED BY: J. HAINES
SCALE: AS SHOWN

Item	Description	Quantity	Unit	Notes
1	PS4S10C1BZ 10 x 4 x .120 Square steel poles	10	poles	see Notes
2	120 mph sustained winds	10	poles	see Notes
3	Figures mounted at 13' (10' pole + 3' dfg base) with no tilt	10	poles	see Notes

(4) PS4S10C1BZ 10 x 4 x .120 Square steel poles
see Poles meet 120 mph sustained winds
see Figures mounted at 13' (10' pole + 3' dfg base) with no tilt

RUUD LIGHTING
800-234-7000 USA www.ruudlighting.com 905.671.1991 CAN

Manufacture's liability for the lighting design and layout on project pertains to the lighting design and layout only. The manufacturer is not responsible for the lighting design and layout on project. The manufacturer is not responsible for the lighting design and layout on project. The manufacturer is not responsible for the lighting design and layout on project.

Project: Good Earth Garden Center
Approved Photovoltaic shown at grade

GOOD EARTH GARDEN CENTER
11650 FALLS ROAD
MONTGOMERY COUNTY, MD

GLEN ROAD (70' R/W)

FALLS ROAD (MD 189)
(120' R/W)

SPRING FIELDS NURSERY
11650 FALLS ROAD
MONTGOMERY COUNTY, MD



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MEMORANDUM

TO: Nkosi Yearwood, Community Based Planning

VIA: Mary Dolan, Environmental Planning *MD*

FROM: Michael Zamore, Environmental Planning *MZ*

DATE: January 28, 2003

SUBJECT: Board of Appeals Petition No. S-1400-B
Modification to an Existing Special Exception

The Environmental Planning staff has reviewed the abovementioned request for modification to an existing Special Exception for a retail nursery and landscape contractor located on 11650 Falls Road and 9308 Glenn Road, Potomac. Staff recommends **approval** of the application on the following conditions:

1. The applicant must comply with stormwater and sediment control regulations of the Montgomery County Department of Permitting Services.
2. Although the property is exempt from forest conservation plan requirements, a tree save plan is required. Tree save measures shown on that plan must include protective fencing around specimen trees prior to commencement of grading or construction work, root pruning of specimen tree # 579 at the point where its critical root zone will be impacted, and pruning of trees that will be impacted by construction.
3. In keeping with the objectives of afforestation, emphasis must be placed on selecting a native species mix that best meets the environmental objectives for the site. In that regard non-natives such as the Holly species, Manhattan Euonymus, Red Tip Photinia, and Village Green Zelkova listed on the Landscape Plan should be replaced by more suitable native species.
4. Consideration should be given to transplanting (and using for landscaping) the 8" White Pine (*Pinus strobus*) trees near the proposed stormwater management facility, as well as Oak (*Quercus* sp.) and any other trees of transplantable size in areas earmarked for building construction.
5. Every effort shall be made to retain, and improve where possible, tree buffers and vegetative screening along the perimeter of the property to minimize noise, light and dust impacts to neighbors.

Forest Conservation

The proposed modification of the special exception is exempt from Forest Conservation Plan requirements because it is a modification of an existing use and it will not result in the cumulative

clearing of more than 5000 additional square feet of forest. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the site. The property is open with scattered trees the largest of which are a 48" Black Locust (*Robinia pseudoacacia*), a 42" Red Maple (*Acer rubrum*), a 38" Black Locust, and a 24" Sugar Maple (*Acer saccharum*). The 38" Black Locust specimen tree (#559) is in visibly poor condition.

Water Quality

The site is located in the Buck Branch subwatershed of the Cabin John Creek watershed. The subwatershed is largely built up with remaining woodland restricted mainly to stream valleys. Impervious area stands at 18% but is projected to increase to 25 to 30%. The Countywide Stream Protection Strategy (CSPS) rates the Buck Branch tributary as being on the margin between good and fair. It describes the Buck Branch subwatershed as being significantly impacted by suburban development, especially impacts resulting from uncontrolled stormflows and sediment deposition. This has resulted in flow-related bank stability and sediment deposition problems, with subsequent impacts on in-stream and benthic habitat. The subwatershed is listed as an area for remedial watershed protection action.

Reduction of impervious surface wherever possible, on the Good Earth Nursery site will complement watershed protection efforts within the wider Cabin John Creek watershed.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

A-9

December 24, 2002

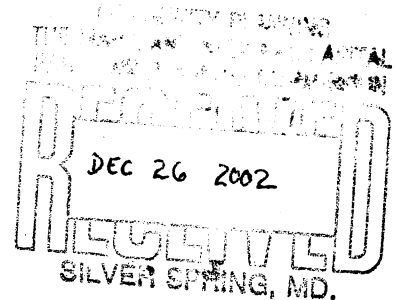
MEMORANDUM:

TO: Nkosi Yearwood, Planner
Community-Based Planning Division

VIA: Ronald C. Welke, Supervisor
Transportation Planning

FROM: Ki H. Kim, Planner
Transportation Planning

SUBJECT: Special Exception Application No. S-1400-B
Good Earth Garden Center
Potomac



This memorandum represents Transportation Planning staff's review and recommendations on the subject special exception application for the proposed modification to the existing horticultural nursery and landscaping contractor operation on a site located in the southwestern quadrant of the Falls Road/Glen Road intersection in the Potomac area.

RECOMMENDATION

Transportation Planning staff supports approval of the subject special exception application based on our findings that the proposed modification to the existing operation would have no detrimental effect on adjacent intersections and roads.

TRAFFIC IMPLICATION OF PROPOSED DEVELOPMENT UNDER APF REVIEW

For Local Area Transportation Review (LATR), the traffic statement submitted by the applicant indicates that the proposed modification would generate additional trips during the weekday peak hour. It is staff's opinion that there would be some additional traffic to be generated by the proposed modification but the amount of the site-generated peak hour trips during weekday peak periods (6:30 am to 9:30 am and 4:00 pm to 7:00

pm) would be less than 50 trips. Also, the site is in the Potomac Policy area for which the LATR Guidelines provide a set of special procedures that do not require a LATR unless intersections along Seven Locks Road and in the vicinity of Montgomery Mall are affected. Thus, this special exception would not require a traffic study.

Based on information provided by the applicant's traffic consultant, the intersection of Falls Road and Glen Road is currently operating at acceptable Critical Lane Volumes (1,286 and 912 during the am and pm peak hours, respectively) and within the congestion standard of 1525. This acceptable level will continue with the future traffic from approved developments in the area and any additional site-generated traffic.

For Policy Area Transportation Review, the current FY03 AGP indicates that the Potomac Policy Area has employment staging ceiling capacity available (1,797 jobs as of December 31, 2002).

ACCESS AND CIRCULATION

The access to the site exists from Glen Road. Glen Road is classified as a primary residential street with 70' right-of-way in the Potomac Master Plan. The existing access point from Glen Road to the site and traffic circulation system shown on the plan are adequate.

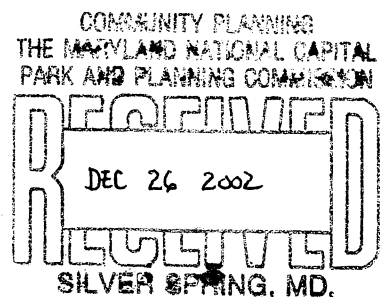
The site plan indicates that no changes to the existing pedestrian system are proposed and no impacts are expected.

CONCLUSIONS

Staff concludes that granting of the requested Special Exception to allow the proposed modification to the existing horticultural nursery and landscaping contractor operation would not have an adverse effect on the nearby road system. Therefore, staff supports approval of the subject special exception application.

KHK:cmd

Memo for SE 1400-B Good Earth Garden Center.doc



COUNTY BOARD OF APPEALS

FOR

MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

A-10

Telephone
Area Code 301
279-1226

CASE NOS. S-1400 and A-1755

PETITION AND APPEAL OF NICK AND MOSCHA DESPOTIDES
(Hearing held May 14, 1987)

OPINION OF THE BOARD

Case No. S-1400 is a petition filed for a special exception pursuant to Section 59-G-2.30 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1984, as amended), to permit the continued use of a Horticultural Nursery and Commercial Greenhouse.

Case No. A-1755 is a request for a variance from Section 59-G-2.30 of the Zoning Ordinance, which requires that no part of any building shall be less than fifty feet (50') from the nearest property line for a horticultural nursery and commercial greenhouse. Since the existing building from Falls Road is set back only twenty-eight feet (28'), a variance of twenty-two feet (22') is required.

The subject property is Parcel 774, Tax Map FO 562, located at 11650 Falls Road, Potomac, Maryland in an R-200 Zone (Tax Account No. 251397).

Decision of the Board: ~~Special Exception granted to petitioner only,~~ subject to conditions enumerated herein. Variance granted for special exception use only.

Petitioner and witnesses appeared and presented binding testimony and evidence as follows:

The petitioners, Nick and Moscha Despotides, request a special exception to permit the continued use of a Horticultural Nursery and Commercial Greenhouse. A variance of twenty-two feet (22') is also requested to permit an existing building set back twenty-eight feet (28') from Falls Road to be in conformance with Section 59-G-2.30.

The subject property contains 4.13 acres and is located at the intersection of Falls Road and Glen Road in Potomac, Maryland. The land immediately fronting the subject property on Falls Road to the east is zoned R-200 and currently is improved with single-family residential homes. Two parcels to the south of the subject property are also zoned R-200. Across Glen Road to the north of the property is zoned R-200 and is currently improved with a church. To the west is land zoned R-200 and is improved with a single-family dwelling.

Petitioners stated that their proposed use of the property is for a Horticultural Nursery and activities to be conducted will be within the existing two-story, single-family structure, greenhouse and out buildings presently located on the property as well as the surrounding grounds.

The existing single-family structure on the special exception site is over 100 years old and is within the Master Plan right-of-way of Falls Road. In the event that Falls Road is widened, the existing two-story, single-family structure would have to be razed and in such event, petitioners have requested that they be allowed to construct a new building of the same size to house those activities currently conducted in the existing structure.

Petitioners testified that their normal business hours are 9:00 a.m. to 6:00 p.m., Monday thru Saturday and 12 noon to 5:00 p.m. on Sundays. The nursery employs four full-time employees and four-to-five additional full-time staff during the summer months only. Equipment used in connection with the nursery operations is typical of that found at and used by other nurseries and includes a rotor tiller, lawn mower, front-end loader, four trucks and a van. All equipment is parked on-site.

Petitioners stated that during the winter months, approximately three-to-four patrons per day visit the site and on weekends, approximately five-to-eight patrons visit the site. During the summer months, approximately five-to-eight patrons visit the site during the weekdays and twenty-to-twenty-five on Saturdays and Sundays.

Lee Cunningham testified concerning traffic and land use. He stated that the proposed special exception is in conformance with the Master Plan for the Potomac Subregion which recommends the property remain in the R-200 Zone and it will be consistent with the Master Plan. There are no other special exception uses in the area. He further testified that the horticultural nursery has had no adverse effect on the community and it is consistent with the general plan and the general character of the area and it does not overburden existing public facilities.

Concerning parking, there is adequate parking on-site for both employees and customers. A gravel parking area is along the entrance to the site and there is also an additional area to the rear of the site. The ingress/egress to and from the site is 105 feet west of Falls Road on Glen Road.

With respect to traffic, Mr. Cunningham stated that he looked at the intersections of Falls Road and Glen Road and Falls Road and Tuckerman Lane to the north. The Level of Service in the a.m. peak is "C" and during the p.m. peak is "B" and the LOS will not change. If the subject property were developed in the R-200 Zone, the LOS would deteriorate somewhat.

Mr. Stuart Wiesenberger, a civil engineer, testified concerning the site plan and storm water management. He stated that the runoff would drain toward Glen and Falls Roads; the drainage in the area can accommodate runoff; 92% of the site is pervious; there are no paved areas and no concentrated area of storm water runoff. Storm water runoff is less than if the property would be developed according to R-200 standards with single-family dwellings. He further stated that water and sewer are in the W-1 and S-1 categories, which are more than adequate. Mr. Wiesenberger concluded by stating that applicants will apply for a storm water management waiver for both quantity and quality of water and that the applicants have no plans to pave any parking lot at this time.

Mr. and Mrs. Troy Hash, adjoining property owners, testified in support of the special exception, stating that they have lived at 11600 Falls Road for twenty-seven years and there has been no problem. Ms. Florence Butt, adjoining property owner to the west, at 9312 Glen Road, also testified in support, stating she is in complete accord with the operation and would rather have trees than children.

Opposition

Ms. Sharon M. Sienkiewicz, who resides across Falls Road from the subject property, stated her concern about future expansion as well as storm water runoff problems she felt were caused by operation of the horticultural nursery.

Maryland-National Capital Park and Planning Commission, Staff Report and Planning Board Recommendations

The Maryland-National Capital Park and Planning Commission recommends conditional approval of the proposed special exception.

Findings of the Board

The Board has carefully reviewed the testimony and evidence of record and finds that the special exception, Horticultural Nursery and Commercial Greenhouse, and variance requested should be granted. All of the general requirements for a grant of the special exception have been met, in that:

1. is a permissible special exception in the zone;
2. complies with the standards and requirements set forth for the use in Division 59-G-2;
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;

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 a number of similar uses;
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;
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 predominately residential nature;
7. will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
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 improvements. ...

With respect to the specific conditions found in Section 59-G-2.30 of the Zoning Ordinance, the Board finds that the operation meets all of the specific conditions and will not have an adverse impact on adjoining properties. The Board also finds that a horticultural nursery is a permitted use in the R-200 Zone, that it will not constitute a nuisance because of noise, traffic, hours of operation or number of employees.

Further, the proposed special exception meets the development standards in that the minimum area of the lot must be two acres (the subject property contains 4.13 acres); the minimum building setback from any property line must be fifty feet (see Case No. A-1755); adequate parking is provided on-site; the property fronts on and has direct access to a public road and road access is safe and adequate for the anticipated traffic to be generated (105 feet west of the intersection of Falls and Glen Roads on Glen Road).

With respect to the requested variance, it is clear that the two-story structure for which the variance is required will have to be removed in the event Falls Road is widened, and the petitioners understand this requirement.

Case Nos. S-1400 and A-1755

With regard to the opposition, we find that the operation of the horticultural nursery predates acquisition of the neighboring property by the opposition. Furthermore, there is insufficient evidence to show that any storm water problem is being created by the nursery.

Based on the foregoing, the Board grants the request for a special exception to permit the continued operation of a Horticultural Nursery and Commercial Greenhouse, to petitioners only, subject to the following conditions:

1. Petitioners shall be strictly bound by all testimony, evidence and exhibits in the record.
2. Petitioners shall prepare a landscape plan addressing the concerns of buffering, parking, lighting and signage to be reviewed and approved by the Technical Staff of M-NCPPC. Two copies of the approved plan shall be submitted to the Board for its record.
3. Petitioners shall furnish proof of a storm water management waiver or prepare an on-site storm water management plan.
4. In the event that the two-story structure for which the variance is being granted (Case No. A-1755) is razed, the petitioners must file for a modification of the special exception showing the location of a replacement structure by submitting a new site plan.


In addition to the grant of the special exception, the requested variance of twenty-two feet (22') less than the required fifty feet (50') setback from the nearest property line (Falls Road) is granted for the two-story structure being used in connection with the operation of the Horticultural Nursery and Commercial Greenhouse.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr. and concurred in by Thomas S. Israel, Chairman, Howard Jenkins, Jr., Max H. Novinsky and Helen R. Strang.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 13th day of July, 1987.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-1400-A

PETITION OF ALLENTUCK LANDSCAPING, INC.,
t/a Allentuck Nursery and Landscaping Company
(Hearing held February 2, 1994)

OPINION OF THE BOARD
(Effective date of Opinion: March 30, 1994)

Case No. S-1400-A is a request for a modification of a special exception for a horticultural nursery and commercial greenhouse pursuant to Section 59-G-2.30 of the Zoning Ordinance to permit: (1) a change in the Sunday hours of operation to 9 AM to 6 PM; (2) a correction in the name of the owner and operator of the nursery to Allentuck Landscaping, Inc. t/a Allentuck Nursery and Landscaping Co.; (3) the addition of Nick J. and Moscha Despotides, owners of the property, as co-holders of the special exception; and (4) approval of two signs.

The subject property is Parcel 771 and Parcel 774, located at 11650 Falls Road, Potomac, Maryland, in the R-200 Zone.

Decision of the Board: Special exception modification GRANTED.

Susan Goldberg, Esquire, represented Bruce M. Allentuck, owner and operator of Allentuck Landscaping, Inc., and holder of the special exception. Susan Embrey, who lives across Falls Road from the subject property, also appeared at the hearing.

Petitioner's Testimony

Ms. Goldberg asked that two technical corrections be incorporated into the record. First, the proper name of the entity holding the special exception should be Allentuck Landscaping, Inc. t/a Allentuck Nursery and Landscaping Co.. Also, the property description should be corrected to reflect that two parcels, Parcel 771 and Parcel 774, are covered by the special exception.

Ms. Goldberg explained that the special exception was originally held by Nick J. and Moscha Despotides. It was transferred to Allentuck Landscaping, Inc. in 1992. Mr. and Mrs. Despotides had not intended to be deleted from the special exception, but expected to share it with the operator of the business.

The proposed modification has two substantive elements. First, the original special exception specified that Sunday hours would be noon to 5:00 PM. In fact, the Sunday hours have been 9:00 AM to 6:00 PM since the special exception was originally granted in 1987. Mr. Allentuck is requesting approval of the Sunday hours during which the business has, in practice, been open.

Mr. Allentuck explained that activity at the property on Sunday morning normally involves cleaning up from the week and setting up for the next week, and staff organization. A few customers visit the property early on Sunday mornings. Business normally is more intense later in the day. There are no deliveries on Sunday. A maximum of four full-time and three part-time employees are on site during the busy season.

The second modification proposes the retention of two signs on the property. Each measures four feet by six feet. They are displayed in one structure, perpendicular to Falls Road. The top of the structure is approximately 18' tall. One sign has the name of the building, and the second sign is a blackboard which lists the special items for sale. There is no sign on Glen Road.

Testimony of Sharon Embrey

Ms. Embrey lives across Falls Road from the subject property. She testified that she appeared at the original special exception hearing in 1987 to express concern about a water runoff and erosion problem, and she has seen the problem deteriorate in the intervening seven years. Ms. Embrey described a path of water from the nursery across Falls Road and from her neighbor's home to the north in a southerly direction to her property. She indicated that the shrubs and trees located on the nursery property along Falls Road are balled and burlapped, but they are watered regularly. Inasmuch as they are not planted, the excess water runs off and across Falls Road. Regarding Sunday morning hours, Ms. Embrey indicated that she has no problem with the business opening at 9:00 AM, although she would not want them to use heavy equipment at that time.

Redirect, Mr. Allentuck

Mr. Allentuck indicated that he was unaware that a water runoff problem existed until he saw Ms. Embrey's letter in the file. He committed himself to evaluating the problem in the spring when watering the plants begins again, and working with Ms. Embrey to ameliorate the problem. One possible solution is the installation of permanent landscaping along Falls Road.

Mr. Allentuck stated that the front end loader is the only piece of "heavy equipment," and that he would not be using it Sunday mornings.

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Technical Staff at M-NCPPC recommended approval with conditions (Exhibit No. 12).

FINDINGS OF THE BOARD

After reviewing the testimony and evidence of record, the Board finds that the special exception continues to fulfill the general requirements for special exception contained in Section 59-G-1.21 as well as the specific

requirements for a horticultural nursery and commercial greenhouse contained in Section 59-G-2.30. The technical corrections are granted, including the addition of Nick J. and Moscha Despotides as co-holders of the special exception and the change in the name of the other co-holder to Allentuck Landscaping, Inc., t/a Allentuck Nursery and Landscaping Co.. The corrected property description, including both Parcels 771 and 774, will also be adopted.

The Board finds that Sunday hours of 9:00 AM to 6:00 PM are acceptable. The fact that the nursery has been operating with these hours for many years, and the Board has not been made aware of problems relating to those hours, leads the Board to the finding that these Sunday hours will not have a detrimental impact. The Board is persuaded that the business is relatively small, and that early Sunday morning activity is light. As long as Mr. Allentuck abides by his statement that heavy equipment will not be used on Sunday morning, the Board believes that these Sunday hours will create no problem.

With respect to the sign, the Board is concerned about the height, and somewhat confused about what the height actually is. The Board finds that two signs, each measuring four feet by six feet, mounted on one structure, is acceptable. However, the Board does not believe that it is necessary for the top of the structure to be eighteen feet high. Instead, the Board agrees with the recommendation of the Technical Staff at M-NCPPC that the maximum height should be fourteen feet.

The Board is also concerned about the water runoff problem as described by the neighbor, Ms. Embrey. Mr. Allentuck must proceed expeditiously to evaluate and rectify the problem and to work with Ms. Embrey as he testified at the hearing. To insure that a solution is implemented quickly, the Board will require Mr. Allentuck to submit the plans for the solution to Technical Staff at M-NCPPC for their review and approval within four months of the effective date of this Opinion.

Therefore, the modification to the special exception to permit Sunday hours of 9:00 AM to 6:00 PM, installation of the proposed sign, addition of Nick J. and Moscha Despotides as co-holders of the special exception, and several technical corrections, is hereby granted to the petitioner only, subject to the following conditions:

1. Petitioner is bound by the testimony, evidence and exhibits in the record.
2. Petitioner must submit a landscape and water runoff control plan to the Technical Staff of the Maryland-National Capital Park and Planning Commission for review and approval within four months of the effective date of this Opinion. Plant material must be maintained and replaced as necessary. One copy of the approved plan must be submitted to the Board for its records. Another copy must be submitted to the Zoning Supervisor of the Department of Environmental Protection.

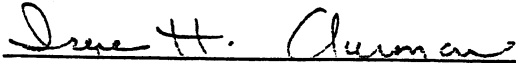
3. Sunday hours of operation may be extended to 9:00 AM to 6:00 PM. No heavy equipment may be used in the morning on Sunday. No deliveries may take place on Sunday.
4. The two existing signs, both measuring four feet by six feet and contained in a single structure, may be retained. The top of the structure must not exceed fourteen feet in height. The petitioner must obtain a sign permit from the Department of Environment Protection.
5. All terms and conditions of the original special exceptions and any modifications, except as modified by this Opinion, remain in full force and effect.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by Helen R. Strang and concurred in by William S. Green, Allison Bryant, Judith B. Heimann, Chairman, and K. Lindsay Raufaste.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 30th day of March, 1994.



Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four-months' period within which the right granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit.

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-1400

PETITION OF NICK AND MOSCHA DESPOTIDES

RESOLUTION TO SUBSTITUTE SPECIAL EXCEPTION HOLDER
(Resolution Adopted March 21, 1990)

The Board is in receipt of correspondence received March 15, 1990, from Nick Despotides, the co-special exception holder, which states, in part:

"I am writing to request an administrative modification to the above special exception for my horticultural nursery ... Potomac Valley Gardens, Inc., has contacted with my wife, Moscha, and I to purchase our business, lease the property and continue operating the nursery as it currently operates. ...

"I am therefore requesting that you transfer special exception number S-1400 to the name of Potomac Valley Gardens, Inc., contingent upon the settlement of the transaction. ..." /s/ Nick Despotides and Clifton R. Gaus, President, Potomac Valley Gardens, Inc.

Based on the foregoing information, the Board finds that the change of owners of the special exception will not be cause for a change in the nature, character or intensity of the use as at present, and will not change the effect on traffic, or adversely affect the immediate area. Therefore, pursuant to Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-1400, Petition of Nick and Moscha Despotides, shall be and hereby is re-opened to receive the letter signed by Nick Despotides and Clifton R. Gaus as Exhibit No. 20; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Clifton R. Gaus, President, Potomac Valley Gardens, Inc., as the special exception holder in the above-referenced case shall be and hereby is granted, to become effective upon settlement date; and

BE IT FURTHER RESOLVED that all terms and conditions of the original special exception granted the 13th day of July, 1987, shall remain in full force and effect.

The subject property is Parcel 774, located at 11650 Falls Road, Potomac, Maryland, in the R-200 Zone.



The foregoing Resolution was proposed by Howard Jenkins, Jr., and concurred in by Helen R. Strang, K. Lindsay Raufaste, William Green and Judith B. Heimann, Chairman.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 27th day of March, 1990.

Irene H. Surman,
Clerk to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-1400

PETITION OF CLIFTON R. GAUS

RESOLUTION TO TRANSFER SPECIAL EXCEPTION
(Resolution adopted March 17, 1992)

The Board is in receipt of correspondence dated March 4, 1992, signed by Bruce M. Allentuck, President, Allentuck Landscaping, Inc., Clifton R. Gaus, President, Potomac Valley Gardens, Inc. and Nick and Moscha Despotides, Land Owners, which states, in part:

"I, Bruce Allentuck, ... request an administrative modification of the special exceptions for a horticultural nursery ...

"My corporation has purchased the nursery from Potomac Valley Gardens, Inc., who is the current holder of the special exceptions pursuant to the resolution adopted by you on March 22, 1990 ... I, on behalf of the corporation, request the transfer of the special exception to my corporation. Both Potomac Valley Gardens, Inc. and the land owners, Nick and Moscha Despotides join in this request with me." /s/ Bruce M. Allentuck.

The second portion of the letter states:

"We jointly request you approve the transfer of the special exception for horticultural nursery in Case number S-1400 to Allentuck Landscaping, Inc." /s/ Potomac Valley Gardens, Inc., by Clifton R. Gaus, President; Nick Despotides, Land Owner; Moscha Despotides, Land Owner.

Based on the foregoing information and upon review of the record, the Board is of the opinion that a change of owners of the special exception (Horticultural Nursery and Commercial Greenhouse) with operation continued in the same manner, will not be cause for a change in the nature, character or intensity of the use of the property, nor will it change the effect on traffic or on the immediate neighborhood. THEREFORE, in accordance with the provisions of Section 59-G-1.2(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-1400, Petition of Clifton R. Gaus, shall be and hereby is re-opened to receive the letter dated February 27, 1992, requesting transfer signed by Bruce M. Allentuck, President, Allentuck Landscaping, Inc., Potomac Valley Gardens, Inc. by Clifton R. Gaus, President, and Nick and Moscha Despotides, Land Owners, as Exhibit No. 22; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Bruce M. Allentuck t/a as Allentuck Landscaping, Inc., as the special exception holder in the above-referenced case shall be and hereby is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception granted the 13th day of July, 1987, and any modifications thereto, shall remain in full force and effect.

The subject property is Parcel 774, located at 11650 Falls Road, Potomac, Maryland, in the R-200 Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by Howard Jenkins, Jr., K. Lindsay Raufaste and Judith B. Heimann, Chairman. William Green was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 30th day of April, 1992.


Irene H. Gurman
Clerk to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.



MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

PART 1 OF 3

NOTICE OF VIOLATION

A-11

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, 7/25/01 the recipient of this NOTICE, GOOD EARTH

Date

Recipient's Name

11650 FALLS ROAD POTOMAC MD 20854

Street Address

City, State, Zip

is notified that a violation of Montgomery County Code, Section: 59-G-1.3(a)(1), 59-A-3.1, AND 59-C-1.324,

exists at: SEE ABOVE

Location

SPECIAL EXCEPTION CASE NOS. S-1400 + S-1400.

Case #

The violation is described as: THE SITE NO LONGER RESEMBLES MNCPPC'S APPROVED LANDSCAPE LIGHTING PLAN DATED 12-2-90. CHANGES MADE ARE AS FOLLOWS: ADDITIONAL STRUCTURES ERECTED ON THE TWO PROPERTIES THAT HAVE SHEDS, ARBORS AND TENTS WITHOUT APPROVAL, ADDITIONAL LIGHTING MADE TO STRUCTURES AND THE LOT. GRAVEL AREAS ENLARGED AND ALTERED THAT PROVIDE ADDITIONAL PARKING AND ROADWAYS. TRAILER WITH ELECTRICAL INSTALLATION (TO COOL STORED ITEMS) ON PREMISES W/OUT PERMITS OR APPROVAL BY THE BOARD OF APPEALS. STOCK PILED ITEMS IN LOCATIONS NOT DEPICTED ON PLAN. SMALLER GREEN-

The following corrective action(s) must be performed immediately as directed: REMOVE ALL STRUCTURES, LIGHTING, ACCESSORY STRUCTURES SUCH AS SHEDS, TENTS + ARBORS WHERE NOT DEPICTED ON SITE PLAN. REMOVE ALL GRAVEL IN AREAS NOT DEPICTED ON PLAN. PROVIDE PARKING IN AREA DEPICTED ON PLAN. REMOVE TRAILER AND WIRING TO THIS TRAILER. STORE STOCK PILED MULCH ONLY IN AREA DEPICTED ON PLAN. REMOVE THE FLOREST AND PARTY HOUSE FROM THE PROPERTY. REMOVE ALL SIGNS WITHOUT ISSUED PERMITS. RESTORE THE SIGN UNDER PERMIT AS PER THE EXHIBIT. REPLACE

An inspection fee of \$ _____ is required in addition to any application fee(s).

Compliance Time: SEE PAGE 3

Failure to comply with this notice will result in the issuance of one or more \$500.00 civil citations.

This Notice of Violation may be appealed to the Montgomery County Board of Appeals within 30 days of the issue date. The Board of Appeals is located in the Council Office Building, 100 Maryland Avenue, Room 217, Rockville, Maryland 20850, telephone 240-777-6600.

ISSUED BY: STAN GALDEN
Printed Name

[Signature]
Signature

7/25/01
Date

Phone No. _____

RECEIVED BY: _____
Printed Name

Signature

Date

Phone No. _____

Sent by Registered Mail/Return Receipt On: 7/25/01

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION



MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES 255 Rockville Pike, 2nd Floor Rockville, Maryland 20850-4166

PART 2 OF 3 NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, 7/25/01 the recipient of this NOTICE, GOOD EARTH 11650 Falls Road Recipient's Name Street Address City, State, Zip

is notified that a violation of Montgomery County Code, Section: 59-6-1.3(a)(1), 59-A-3.1, AND 59-C-1.326, exists at: SEE ABOVE Location Case # S SPECIAL EXCEPTION CASE NOS. S-1400 + S-1402

The violation is described as: HOUSES (2) AS WELL AS SHED/GREENHOUSE ON BOTH LOTS, ARE WITHOUT APPROVAL AND MAY VIOLATE THE REQUIRED SETBACKS FOR ALL ADDITIONAL STRUCTURES. ADDITIONAL SIGNS ON THE PROPERTY WITHOUT PERMITS. THE SIGN PERMIT ISSUED IN 1994 HAS CHANGED AS PER EXHIBIT TO THE BOARD BY ALLENTUCK NURSERY. MISSING PLANTINGS IN AREA'S AS PER MNCPP2'S APPROVED PLAN. SALE OF PRODUCE ON SITE WITHOUT APPROVAL BY THE BOARD. THE HOUSE HAS A FLOREST (PLANTS ETC.) AND PARTY HOUSE (EXQUISITE BALLON CREATIONS) WITHOUT

The following corrective action(s) must be performed immediately as directed: EXISTING TREES AND PLANTS WHERE MISSING AS PER THE APPROVED PLAN. REMOVE THE PRODUCE OPERATION. MODIFY THE SPECIAL EXCEPTION FOR CHANGE IN OWNERSHIP. (GRANTED TO ALLENTUCK LANDSCAPING, INC.) CHANGE IN STATEMENT OF OPERATIONS, (TRUCKS, EQUIPMENT + NO. OF EMPLOYEES) REMOVE THE VENDING MASHINS + SALE OF CAWN FURNITURE. YOU MAY ALSO MODIFY THE SPECIAL EXCEPTION FOR ALL VIOLATIONS LISTED REQUESTING A PUBLIC HEARING ON THE MATTER. A TRAFFIC ANALYSIS

An inspection fee of \$ is required in addition to any application fee(s).

Compliance Time: SEE PAGE 3

Failure to comply with this notice will result in the issuance of one or more \$500.00 civil citations.

This Notice of Violation may be appealed to the Montgomery County Board of Appeals within 30 days of the issue date. The Board of Appeals is located in the Council Office Building, 100 Maryland Avenue, Room 217, Rockville, Maryland 20850, telephone 240-777-6600.

ISSUED BY: STAN GARDEN Printed Name Signature Date 7/25/01

RECEIVED BY: Printed Name Signature Date

Phone No. Sent by Registered Mail/Return Receipt On: 7/25/01

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION



MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES 255 Rockville Pike, 2nd Floor Rockville, Maryland 20850-4166

PART 3 OF 3

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, 7/25/01 the recipient of this NOTICE, GOOD EARTH

11650 FALLS ROAD Street Address

is notified that a violation of Montgomery County Code, Section: 59-6-1.3(a)(1), 59-A-3.1. & 59-C-1.326,

exists at: SEE ABOVE Location

The violation is described as: THE BOARD'S APPROVAL LAWN FURNITURE FOR SALE AND SODA MACHINES ON PROPERTY WITHOUT APPROVAL. ADDITIONAL TRUCKS ADDED TO THE OPERATION. ADDITIONAL EQUIPMENT ADDED AS WELL.

The following corrective action(s) must be performed immediately as directed: FOR THE SPECIAL EXCEPTION MODIFICATION WOULD BENEFIT THE COMMUNITIES CONCERNS INsofar AS THE TRAFFIC GENERATED BY EXPANDING THE USE OF THE SPECIAL EXCEPTION. THE NOTICE OF VIOLATION DATED 7/24/01 IS HEREBY RESCINDED.

An inspection fee of \$ is required in addition to any application fee(s).

Compliance Time: THIRTY DAYS TO FILE FOR A MODIFICATION OR, A PROPOSED PLAN TO RETURN THE OPERATION FOR WHICH IT WAS GRANTED. Failure to comply with this notice will result in the issuance of one or more \$500.00 civil citations.

This Notice of Violation may be appealed to the Montgomery County Board of Appeals within 30 days of the issue date. The Board of Appeals is located in the Council Office Building, 100 Maryland Avenue, Room 217, Rockville, Maryland 20850, telephone 240-777-6600.

ISSUED BY: STAN GARBER Printed Name Signature Date 7/25/01

Phone No. 301-370-3656

RECEIVED BY: Printed Name Signature Date

Phone No. *Sent by Registered Mail/Return Receipt On: 7/25/01

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION