



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 3
4/24/2003

MEMORANDUM

DATE: April 18, 2003
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning
Khalid Afzal, Team Leader, Georgia Avenue Corridor *KA*

FROM: Nkosi Yearwood, Community-Based Planning *NY*

REVIEW TYPE: Special Exception Modification
APPLYING FOR: Landscape Contractor
APPLICANT: Kevin P. Clair
CASE NUMBER: S-2266-A

REVIEW BASIS: Chapter 59, Zoning Ordinance
ZONE: RE-1 Zone
LOCATION: 18001 Bowie Mill Road
MASTER PLAN: Olney Master Plan (1980)
FILING DATE: November 8, 2002
PLANNING BOARD: April 24, 2003
PUBLIC HEARING: April 30, 2003 before the Hearing Examiner

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. All existing conditions of approval remain in effect, unless altered by this petition.
3. The number of trucks for this use is limited to 10. Each truck should not be greater than 56,000 lbs in weight with a maximum bed length of 20 feet.
4. On-site parking is limited to only employees of the use.
5. The total number of employees is limited to 27.

6. No on-site gasoline fuel tanks are permitted.
7. The proposed sign must be reviewed and approved by the Board of Appeals or Sign Review Board.

Issues

- Applicant: Request to install two, above ground 300 gallon fuel tanks, which are necessary for the operation as a landscape contractor.
- Staff: The request to install above ground fuel tanks is a non-inherent feature for a landscape contractor and is not necessary to operate the use. The existing use has operated without any fuel tanks since the special exception was granted in 1998.

PROPOSAL DESCRIPTION

Kevin P. Clair, the applicant and operator of Arbor Care Inc., proposes to modify the existing landscape contractor use by increasing the number of automobiles and trucks, parking spaces, as well as increasing the number of employees and adding two-300 gallon fuel tanks. The petition will also provide additional onsite landscaping, an area enclosed by a wooden fence for garbage and recycling material, and reconfigured existing driveway.

Site Description

The subject site is approximately 2.68 acres in size and is zoned RE-1. The rectangular shaped site is located at the intersection of Bowie Mill Road and Bready Road with primary access from Bready Road. There is an existing gravel driveway from Bowie Mill Road, which will be eliminated with this petition.

The property consists of two lots, 16 and 17. The existing the special exception was granted only for lot 17, which has an existing single-family dwelling, block barn, stormwater management facility and truck and car parking spaces. There is an existing pole barn, shed and small stream on lot 16. The pole barn will be relocated to lot 17. Evergreen trees and other trees are on the northern property line, and on the western and southern portion of the site.

Neighborhood Description

Land uses surrounding the subject site are primarily residential. To the north, south, east and west are single-family residential development in the RE-1 and RE-1/TDR zones. North Branch Stream Valley Park is further west of the site along Bowie Mill Road.

The following are approved special exceptions in the surrounding area: an accessory apartment (S-1794) at 18100 Cashell Road; a private riding stable (S-4); an accessory apartment (S-1420) at 17611 Ridge Drive; a non-resident medical practitioner (S-1880); and a dog kennel (S-69) at 4901 Bready Road.

Elements of Proposal

The applicant, Kevin P. Clair, operator of Arbor Care Inc., proposes the expansion of the existing landscape contractor use as follows:

- Four new staff members
- Four automobile and four truck parking spaces
- Addition of one outdoor security sensor light
- Installation of two-300 gallon fuel tanks; each approximately 50 inches in diameter and 72 inches in length
- Storage of pest control materials
- Construction of enclosed fence area (10' by 20') for garbage and recycling materials
- Relocation of an existing pole barn
- A new sign

The following table shows the existing and proposed elements of the use:

	Existing	Proposed Addition	Total
Staff	16 employees (off-site), plus 2 administrative and 2 sales staff	4 employees (off-site), plus 1 administrative and 2 sales staff	27 employees
Vehicles	6 trucks 12 cars	4 trucks 7 cars	10 trucks 19 cars

Note: Off-site employees perform landscaping services.

The applicant’s revised statement of operation notes that “unanticipated growth in both residential and commercial “tree protection” and “forest conservation” service requirements have resulted in the need to increase the number of trucks and field personnel to serve Arbor Care, Inc’s client base.”

The applicant proposes to install two 100-watt flood lights, with sensors at the ridge of the relocated pole barn, and to construct a 10-foot by 20-foot enclosed area to centralize garbage and recycling materials. A 6 and ½ foot high wooden fence will surround this area.

New landscaping, including evergreen trees, is proposed for the northern and southern portion of parking area as well as the area surrounding the relocated pole barn. The existing trucks for the use range from 15, 500 lbs to 56,000 lbs in weight, and bed

lengths from 10 feet to 20 feet. The proposed trucks would be similar in size with trucks no greater than 56,00 lbs and bed lengths no greater than 20 feet.

Background

The Board of Appeals (BOA) approved the existing use for a landscape contractor in 1998 (*See attachment for BOA opinion*). The BOA approved the special exception with several conditions, including hours of operation and the number of trucks. This petition seeks to increase the number of trucks, employees and parking spaces.

The Department of Permitting Service (DPS) issued a notice of violation to the applicant in 2001. Reconfigured parking area with the stormwater management facility and three lights on the existing dwelling were the reasons for the notice of violation (*See attachment for DPS notice of violation*).

ANALYSIS

Master Plan

The subject property is located within the Olney Master Plan area. The Approved and Adopted 1980 Olney Master Plan is silent regarding any special exception, including the proposed modification use. The Master Plan supports the existing RE-1 Zone for the subject property and a landscape contractor is allowed by special exception in that zone.

Development Standards

The proposed modification does meet the development standards for the RE-1 Zone and landscape contractor, including building and operational setbacks. The following table shows the development standards for a landscape contractor:

Landscape Contractor	Requirement	Provided
Minimum lot area	2.0 acres	2.68 acres
Operational setback	50 feet	50 ft., 60 ft., and 118 ft *

*Note: 50 feet from northern property line, 60 feet from the southern property and 118 feet from southern property line.

The proposed two fuel tanks would be 80 feet from the adjacent property line to the north, and approximately 265 feet from the adjacent dwelling to the north. There are no development standards that pertain to the location of a fuel tank on a residential property.

Inherent/Non-inherent Features

Inherent and non-inherent adverse effects of a special exception use must be considered on nearby properties and the general neighborhood at the proposed location. 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 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."

The size, scale and scope of the existing operation are consistent with the physical and operational characteristics of a landscape contractor. Landscape contractors vary in size with some providers offering services at limited times during the year, for example, spring and summer. Whereas other providers, such as the applicant, offer services throughout the year, which tend to employ more individuals. It is common that over a number of years, some landscape contractors will expand their operations.

Other inherent characteristics of a landscape contractor include different services, such as snow removal, wood chipping and lawn maintenance. On-site activities typically include storage of equipment such as, trucks, lawn mowers and blowers, and parking areas for trucks and staff. It is also common that a shed or small buildings are used to store equipment. In some instances, a landscape contractor operates in conjunction with a horticultural nursery or other horticultural uses. In this instance, the landscape contractor is the only use on the subject site.

The existing neighborhood will not be affected with the applicant's proposed modification since no construction modifications are proposed for the existing dwelling. Existing and proposed landscaping will screen the relocated pole barn and the enclosed fence area. Single-family residential dwellings that surround the subject site will remain.

If the applicant's modification request is approved, the number of trips to the site will increase since additional employees will drive and leave from the site in vehicles. The applicant has informed staff that sales personnel are off-site 80% of the time. Transportation Planning staff notes that the modification would have no detrimental impact on adjacent roads. The existing operation is consistent with the activities of a landscape contractor with employees arriving in the morning to pick-up vehicles and equipment and returning in the evening after conducting activities at off-site locations.

The applicant's request to add a sensor light with the relocated pole barn and to approve the existing lights on the dwelling is appropriate for safety and security reasons.

The lights will only illuminate when a motion sensor is triggered. Based on the submitted photometric lighting plan, no lights will spill onto any surrounding property or public right-of-way.

The applicant's request to install two 300-gallon fuel tanks is an adverse non-inherent feature (*See attachment for type of fuel tanks*). The Zoning Ordinance states that an adverse non-inherent effect is a "physical and operational characteristic not necessarily associated with the particular use." Staff believes that on-site fuel storage and dispensing of fuel is not an operational characteristic that is typically associated with a landscape contractor.

Primary activities for the use occur off-site. The landscape contractor use is not dependent upon on-site fuel tanks and has been functioning successfully without them. The applicant's original statement of operations noted: "onsite storage of regular and diesel fuel is a necessary component of a landscape contractor's operation to ensure efficiency. The storage of fuel onsite is needed to minimize costs, eliminate additional on the road travel to obtain fuel, diminish the time spent fueling the production trucks on route to jobs and to fill up brush chippers, small tools and sales vehicles." However, the applicant has operated as a landscape contractor since 1988 without any onsite fuel tanks.

The inclusion of fuel tanks is contrary to the Zoning Ordinance definition of a landscape contractor. This definition acknowledges that supplies, equipment and vehicles to conduct offsite landscaping activities are stored onsite. The inclusion and provision of on-site storage and dispensing of fuel is not explicitly stated or implied in the definition of the use. Section 59-A-2.1 defines a landscaping 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 business location. The delivery and installation of horticultural products originating on the farm is an accessory use to the farm.

Dispensing and storage of fuel, approximately 600 gallons, is more appropriate for a commercial use, such as an automobile filling station, rather than a residential property. An automobile filling station is defined in the Ordinance as: "Any area of land, including buildings and other structures thereon, that is used to dispense motor vehicle fuels, oils and accessories at retail, where repair service is incidental and no storage or parking space is offered for rent."

If the gasoline fuel tanks are permitted, the applicant must receive all necessary permits from Montgomery County's Fire Marshal and a hazardous materials permit issued by the Emergency Management Group. Both permits are renewed annually.

Staff has determined that the applicant's request to provide two gasoline fuel tanks on-site is an adverse non-inherent effect and should not be permitted. The other

aspects to the applicant's petition are consistent with the inherent impacts of a landscaping contractor, and therefore are supported by staff.

Environment

Environmental Planning staff has reviewed the applicant's petition and recommends its approval without the inclusion of two above-ground fuel tanks.

Watershed Protection Issues

The subject site is located within a Use III watershed (Upper Rock Creek above Muncaster Mill Road). It is also in the headwaters of the North Branch of Upper Rock Creek within an area that is designated in the Countywide Stream Protection Strategy (CSPS) as a Watershed Protection Area (special level). Consequently, fuel storage tanks are not recommended on this site. (*See Environmental Planning memo for more details*)

Forest Conservation

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been submitted and approved (#4-97189). A revised Forest Conservation Plan showing modifications to the site plan and additional landscape plantings has been submitted and approved.

Transportation

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

Site Access

The site is located in the southeast quadrant of the intersection of Bowie Mill Road and Bready Road. Access to the site is provided via a 20-foot driveway from Bready Road. No sidewalk is either existing or proposed along either Bowie Mill Road or Bready Road.

Master Plan Roadways and Bikeways

The Olney Master Plan classifies Bowie Mill Road, A-42, as an arterial road with a recommended 80-foot right-of-way. Bready Road is not a Master Plan roadway and no bikeways are planned in the vicinity of the site.

Local Area Transportation Review (LATR)

The applicant's statement of operations states that no clients visit the site. Field crew employees arrive at the site at 6:30 a.m. and depart the site in the company trucks

around 7:00 a.m. returning to the site between 2:00 and 4:00 p.m. The office staff arrives at 8:00 a.m. and leaves at 5:00 p.m.

Changes in the LATR Guidelines, amended in 2002, extended the weekday morning peak period from (7:00 a.m. to 9:00 a.m.) to (6:30 a.m. to 9:30 a.m.) and the afternoon peak period from (4:00 to 6:00 p.m.) to (4:00 to 7:00 p.m.). This change results in more trips to the site during peak periods.

Employees make 32 trips to and from the site during the one-hour period between 6:30 and 7:30 a.m., which is the highest one-hour volume based on the existing operations. The modified use is expected to generate, approximately eight additional trips, which is fewer than the LATR threshold of 50 peak hour trips. The trips generated by the modified use can be accommodated on the existing roadway network.

Parking Requirements

There are no specific parking requirements in the Ordinance for a landscape contractor. However, the existing gravel parking area is sufficient to accommodate the proposed expanded car and truck parking.

The applicant's proposal, as well as the existing landscaping, will screen the parking area from Bready Road and adjacent dwelling. Additionally, the landscaping proposal will adhere to Section 59-E-2.83, parking and loading for special exception uses in residential zones.

Community Concerns

As of date of this report, staff has received no written letters or telephone calls on this modification petition.

Compliance with the Specific and General Conditions of the Special Exception

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 2.68 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 vehicle parking are approximately 84 feet from the western property line, 94 feet from the southern property line, and 540 feet from the eastern property line. Existing and proposed landscaping will screen the parking area. The relocated pole barn will be 50 feet from the northern property line.

- (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 10, including the existing six trucks.

- (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 garden supplies and plant material will occur onsite, which is an existing condition of approval.

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

The existing use hours of operation are limited to 6:30 a.m. to 4:30 p.m. Staff recommends that these hours of operation be maintained.

- (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 modification is permissible in the RE-1 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. Staff has determined that the applicant's request to permit two above-ground fuel tanks is non-inherent for the use, and should not be included with this petition.

- (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, with staff recommendation, is consistent with the 1980 Olney 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, with staff recommendation, is in harmony with the general character of the neighborhood since additional landscaping will screen the parking area and the property. However, the inclusion of fuel tanks is not consistent with the residential character of the surrounding neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general

neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposal, with staff recommendation, will not have a detrimental effect for any of these reasons since additional landscaping is proposed to screen the parking area and relocated pole barn. Further, staff does not support the inclusion of fuel tanks for the subject use.

- (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 arrival and departure, truck movement, and maintenance of equipment. Onsite physical activity is limited to staff activities. Based on the submitted lighting plan, no glare or illumination will affect surrounding properties and adjacent public-rights-of-way.

- (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.

This modification petition will not adversely alter the residential nature of 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, with staff recommendations, will not cause any of these effects. If the fuel tanks are included with this petition, any accident associated with the tanks could impact the onsite environment, parking area, and relocated pole barn. Staff does not recommend the approval of fuel tanks for this use.

- (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, including water and sanitary sewer.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required by the applicable Annual Growth Policy.

A preliminary plan is not required for this modification petition. Transportation Planning staff notes that the Olney Policy area has a capacity of 2,033 jobs as of February 28, 2003. The number of trips to the site during the morning peak period (6:30 a.m. to 9:30 a.m.) is 32, which represents employees arriving and leaving the site. This number is fewer than the Local Area Transportation Review (LATR) threshold of 50 peak hour trips, which would require a traffic study.

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

Conclusion

Based on the applicant's petition, staff recommends approval with conditions listed on the first page of this report. Staff does not recommend the inclusion of any above-ground fuel tanks with this application since it is an adverse non-inherent characteristic and is not necessary for the proposed use.