

BOARD OF APPEALS
FOR
MONTGOMERY COUNTY
Stella B. Warner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(301) 217-6600

Case No. S-2266

PETITION OF KEVIN P. CLAIR
(Hearings held October 15, 1997 and January 28, 1998)

OPINION OF THE BOARD
Effective Date of Opinion: June 8, 1998

Case No. S-2266 is an application filed for a special exception pursuant to Section 59-G-2.30 (c) of the Zoning Ordinance to permit a landscape contractor operation.

The subject property is Lot 17, Block A, Olney Acres Subdivision, located at 18001 Bowie Mill Road, Derwood, Maryland, in the RE-1 Zone.

Decision of the Board: The Special Exception is GRANTED,
subject to conditions enumerated below.

Stephen J. Orens, Esquire, represented the petitioner, Kevin P. Clair and his wife, Ann Clair. He called the following witnesses: Norman Haines, landscape architect and land planner, Haines Land Design; Phil Perrine, expert in land planning, Perrine Planning & Zoning; Kevin and Ann Clair, petitioners and operators of ArborCare, Inc.; and Mark Butterfield, licensed realtor.

Timothy E. Clarke, Esquire, represented the opposition, Dr. Richard Mattson and Sheryl Mattson. On behalf of the opposition, testimony was heard from: Sheryl Mattson, adjoining property owner, Cindy Koutsos, and Clark Baugher, neighboring residents.

PETITIONER'S CASE

The petitioner requests this special exception, S-2266, in order to secure approval for a landscape contractors operation, a permitted special exception use in the RE-1 zone. The applicants own and operate ArborCare, Inc., which provides professional tree care to residential and commercial clients.

The subject property consists of approximately 2.68 acres, located at the intersection of Bowie Mill Road and Bready Road. The property is improved by a single family brick rambler and a Dutch style barn. The petitioner propose to operate ArborCare from the house on the subject property, and construct or move an existing barn onto the site for equipment storage.

The petitioner's original submission requested inclusion of their adjoining property, Lot 16, to accommodate parking for the landscaping company. Petitioner subsequently amended their request to exclude the adjoining property and to locate all of the parking on the subject property, Lot 17.

Norman Haines testified that he was a landscape architect who was engaged in March 1997 to prepare the site plan, landscape plan, and natural resource inventory and forest delineation plan. Mr. Haines stated that he designed the plan to accommodate the landscape contractor operation, provide a place to park vehicles and employee cars, and mitigate off site and environmental impacts.

Mr. Haines testified he was familiar with the special exception provisions of the Montgomery County Zoning Ordinance pertaining to landscape contractors and took those requirements into account in preparation of the site plan. He testified that the minimum acreage required for a permitted landscape contractor special exception use in the RE-1 Zone is two acres.

Mr. Haines used the natural resources inventory forest stand delineation map to describe the location of existing structures on the subject property, the topography, and the site's natural features. The proposed parking lot is situated between two hills, in one of the two natural saddles on the property, to provide additional screening of the use from adjacent roads and property.

Mr. Haines explained that the side of the subject property adjacent to the adjoining neighbor's property, the Mattson's, contains a row of pine and spruce trees. The majority of the fence line surrounding the property contains a variety of existing brush, hedge rows, and tree materials. An intermittent stream flows through the adjoining Lot 16. A 150 foot buffer from the stream is provided.

The proposed construction includes a new driveway at the front of the lot on Bready Road and a parking lot for up to six trucks and twelve cars. The existing driveway entrance from Bowie Mill Road will be abandoned. Mr. Haines testified he designed the plan to minimize unnecessary paving and permit cars to pull in and leave the property on a one-way basis, so trucks would not have to back up. Mr. Haines felt a gravel surface was appropriate for this use because the gravel does not emit dust, the lot will be used infrequently, and the gravel will minimize runoff and storm water problems. He observed that the adjacent Mattson property driveway is also composed of a gravel surface.

The special exception proposal includes supplemental evergreen and deciduous screening surrounding the parking area to mitigate off site views. Mr. Haines stated that with the proposed screening, plant materials would be the only objects seen on the site from the Mattson property. Mr. Haines noted that in addition to the planned screening, a reforestation area was planned for the area near the intermittent stream, both on the special exception site and on the adjacent property, Lot 16.

Mr. Haines testified that all of the parking facilities and the house in which office activity is planned are beyond a 50 foot setback from the property line. The parking facility is approximately 80 feet from the adjoining property line. A proposed future pole barn for future use is also depicted on the site plan, and is also located beyond the 50 foot setback.

Based on the statement of operations, Mr. Haines stated that ArborCare does not have any client visitation on site. No signs or lighting are proposed for the location. No storage for landscape materials is needed or planned for this operation.

Mr. Haines testified that the existing septic field has performed satisfactorily for the family use of 300-350 gallons per day, and this level should drop to about 100 gallons a day for employee use.

Based on the site plan he designed, Mr. Haines opined that the proposed special exception use will not be detrimental to the use or enjoyment of the adjoining neighboring properties, nor will it adversely affect the health, safety, security, morals, and general welfare of the residents, visitors, and workers of the area. Mr. Haines explained that the use is separated physically as well as visually through planned screening plantings. Additionally, the proposed use is within a depression topographically, and there are existing plant materials along the property lines that provide a screening effect.

The opposition questioned Mr. Haines in regard to the truck noise on the gravel and beeping sounds when driven in reverse. Mr. Haines responded that the one-way driveway circulation pattern eliminates the need for trucks to travel in reverse.

Mr. Haines also stated that the proposed driveway does not pose any traffic safety problem given its physical characteristics, posted speed, and location. He noted that the characteristics of unpaved shoulders and absence of sidewalks on Bready Road are typical of other RE-1 streets in the area.

Philip E. Perrine qualified as an expert in land planning. He testified that he reviewed the proposed site plan in connection with the applicable Olney Master Plan and determined the proposed special exception use is consistent with the recommendations of that plan.

In his description of neighboring properties, Mr. Perrine reported that the Planning Board staff reviewed the effect of the proposed use on a historic house located near the subject property off Bready Road, and concluded there was no impact on the historic property.

The only existing special exceptions in the vicinity still in use are a commercial riding stable and an elder care facility, both approximately half a mile from the subject property. Mr. Perrine noted that according to Board of Appeal records, other special exceptions in the area had lapsed. In his opinion, the proposed use will not result in an over concentration of special exception uses in the area and will not affect the residential nature or adversely affect the area based on the existing special exceptions in the area.

The proposed hours of operation for ArborCare are from 6:30 a.m. to 4:30 p.m. for the landscape operation itself, with the office closing around 5:00 p.m. There is no on-site activity other than the trucks leaving the site in the morning and returning in the evening, and the employees leaving the site after parking the trucks. There will be no activities occurring on the property that are typically associated with a landscaping contractor operation, such as storage of plant materials or mulch, splitting or chipping of wood, or retail sales.

Mr. Perrine explained that ArborCare uses only 4 trucks currently, but the proposed parking can accommodate a total of 6 trucks to pull through the property and park. Along with the truck spaces there is adequate parking for the employees, one space per maximum potential number of employees (12).

Mr. Perrine stated the proposed use will not have an adverse impact on surrounding properties, and added that the technical staff concluded that the special exception will have no impact in terms of traffic in the area. The road system and arterial roads are adequate to accommodate the trucks associated with the use.

In comparison to other landscaping contracting special exception applications, Mr. Perrine opined that this use is appropriate for the location. He added that the special exception use will have a reduced impact in this location because of the topography and landscape screening, the position of the parking lot on the property, and the limited use of the property for the landscaping business. The screening and low level of planned site activity also contributed to Mr. Perrine's conclusion that the use will not be detrimental to the harmony, use, peaceful enjoyment, economic value or development of the general neighborhood and surrounding properties.

Mr. Perrine considers the proposed screening and buffering depicted on the site plan adequate to protect adjoining uses from noise, dust, odors, glare, and other offensive operations. The gravel for the proposed parking lot has a smooth surface, so as not to create dust.

Mr. Perrine compared the scale and bulk of the proposed barn with existing barns in the area and indicated the proposed special exception use will be in harmony with the general character of the neighborhood.

The petitioner, Kevin Clair, testified that ArborCare is a tree preservation and landscape company which he and his wife, Ann Clair, own. It serves primarily residential customers, and a few commercial clients. All customer interaction is conducted over the telephone and at the customer's property. Two people in addition to Ann Clair perform the clerical work on site, and that number is not expected to increase. Mr. Clair indicated that ArborCare does not require signage.

ArborCare has three medium duty trucks, weighing about 2 1/2 tons, and a 1 ton light duty truck. The trucks are white with green lettering, and are the standard industry trucks for landscape contractors. Mr. Clair anticipates needing no more than 2 more trucks to correspond with the business strategy planned for ArborCare. The trucks and lawn equipment are maintained regularly off-site at local truck dealerships.

Mr. Clair told the Board that the trucks have never been cited for noise, nor has noise been a problem in the past. He testified that starting operations later in the morning would not only be detrimental to the business because of traffic and time concerns, but also could be hazardous because of conflicting school bus schedules.

The maximum number of employees Mr. Clair anticipates for ArborCare is twelve, but during the busy summer season some part time employees may be hired on a temporary basis. The field crew usually arrives between 6:30 a.m. and 7:00 a.m. by carpool, and heads out to the job site within a few minutes. The field crew arrives back on the property at approximately 4:00 p.m. and leaves shortly thereafter. Mr. Clair noted that sometimes the crew may finish later in the afternoon after completing a project, to prevent having to go back the next day for only an hour.

ArborCare is open all year long. Mr. Clair testified that occasionally on questionable rainy days, the field crew may show up but not be sent out on a job. ArborCare also does snow removal, using the pickup trucks.

Mr. Clair testified that plant material is not stored on site and no tree cutting equipment is used on site, except for property maintenance. Wood chips produced from chipping the limbs at job sites are disposed of off the ArborCare property, typically recycled as mulch by customers and organizations. There are no gas pumps on the property or pesticides stored on the property.

Mr. Clair stated that he and his wife purchased the subject property in November, 1990 intending to live on the property and operate ArborCare. The Clairs moved off the property in March 1997, to meet expanding family needs. Mr. Clair testified they did not apply for a special exception originally because their realtor gave them the impression that parking the vehicles on property over 2 acres was permissible.

The house on the property is currently being rented for residential use, but it will be used solely as office space following approval of the special exception.

Upon advice from a business colleague, the Clairs investigated special exception applications in December of 1996. They had received no complaints or notices from neighbors or from the Montgomery County Department of Permitting Services. The Clairs retained professional help to survey the land and handle the application process after neighbors indicated they opposed the application.

A survey performed by Mr. Haines revealed that a barn the Clairs erected on Lot 16 was too close to the property line and that the gravel driveway to the barn was partially on the Mattson's property. Mr. Clair testified he offered to remove the gravel driveway, but the Mattson's erected a fence along the property line and told him not to bother. The barn and driveway are not on the special exception property.

Mr. Clair stated that in seven years of operation, he had received no complaints concerning traffic on Bready Road. Mr. Clair explained he only learned of concerns of residents of Bready Road regarding his trucks a few days before the second hearing, and agreed that a reasonable condition of approval of the special exception would be to prohibit the ArborCare trucks from using Bready Road unless a customer lives on the road.

The opposition questioned Mr. Clair regarding his January, 1997 letter to the Board indicating the Clairs intended to run the business out of their home. Mr. Clair responded that he and his wife did not have the contract on their new home at the time of that letter.

The opposition questioned Mr. Clair regarding signage on each end of Bready Road stating no through trucks over 3/4 tons. Mr. Clair indicated the signs were erected after the application for the special exception was submitted. Mr. Clair indicated he would enforce a condition of the special exception requiring that upon leaving the property on Bready Road, ArborCare trucks would only travel on Bowie Mill Road, and not travel on Bready Road.

The opposition challenged the adequacy of permitting the special exception without resolving the intent of the Department of Transportation signs. The Board noted that the Planning Board staff, which coordinates with the Montgomery County Department of Public Works and Transportation, made site visits after the signs were erected, and found adequate site access for the type and number of vehicles proposed for the application. Additionally, Board members noted that if the sign states no through traffic over 3/4 ton, compared to no traffic over 3/4 ton, the intent is only to prohibit through traffic, not all traffic.

Ann Clair testified about the character of the office work on site. She stated that she has two staff members with her, one full-time and one part-time, typically from 8:00 a.m. to 5:00 p.m. Office supplies are delivered approximately once a month. No chemicals are stored on site, and no customers ever come to the office. The field crew may come in to submit paperwork and pick up paychecks. Mrs. Clair concurred that the original intent was to live in the house on the property and run the business from there.

Mark Butterfield, a licensed real estate broker since 1980, with experience valuing property, testified on behalf of the petitioner. Mr. Butterfield testified that after review of the subject property, the surrounding properties, and the site plan, he concluded that approval of the special exception will not have a negative impact on the property value of neighboring properties.

On cross by the opposition, Mr. Butterfield stated that he observed that the Mattson property had been listed for sale from January 1997 through July 1997, when the special exception sign was posted on the property. Mr. Butterfield stated that he contacted the listing agent, who told him the Mattson's had received an offer to buy their property, but did not accept it.

OPPOSITION'S CASE

Sheryl Mattson testified that she and her husband have lived in the property adjacent to the subject property for sixteen years. Mrs. Mattson stated that she advised Mr. Clair to have the property line surveyed before the barn currently located on Lot 16 was built, because he had an incorrect notion of the location of the property line.

Mrs. Mattson stated the trucks and wood chippers are disruptive to her. She is awakened in the morning by the noise from the vehicles starting and the beeping noise from vehicles in reverse gear. She indicated that the trucks come back to the property between 5:30 to 7:30 p.m., and when her sons worked for the Clairs they would return at these hours.

Mrs. Mattson stated that she and her husband originally agreed to let the Clairs operate the business on the property to be neighborly. They believed the business would be kept under control as long as the Clairs lived on the property. She stated the Clairs had originally indicated to the Mattson's that the barn on Lot 16 would be a smaller size.

Mrs. Mattson testified that she and her husband put their property on the market on January 4, 1997. They listed the property for \$399,000 after the appraisal for the property came in at \$385,000. They had one offer for \$350,000. Mrs. Mattson testified that potential purchasers asked about the pending special exception application, after observing the posted sign on the Clair property. Mrs. Mattson believes that the operation of a business next door has negatively impacted the value of her property.

Mrs. Mattson stated that there is a new residential subdivision development on Bowie Mill Road with new homes that are approximately the same size as the Mattson home, on smaller lots. She guessed they were selling for approximately \$400,000.

Mrs. Mattson indicated that there were accidents at the intersection of Bowie Mill Road and Bready Road and she believes that the intersection is dangerous. Based on Mrs. Mattson's observations, vehicles traveling on Bready Road simultaneously with a truck will be squeezed because there is no shoulder on the road.

The opposition presented photographic exhibits of the current barn on Lot 16, which the applicants may move to the new location if the special exception is approved. Mrs. Mattson stated there were approximately three other properties in the neighborhood with barns.

Mrs. Mattson testified that her objections to the application are the traffic, the noise, the disruption and the safety issues with the trucks.

Cindy Koutsos, a resident who lives on the corner of Cashell and Bready Roads, opposes the special exception on this property primarily because of the truck activity. She has observed the trucks arriving on the property after 4:30 p.m. several days a month. Ms. Koutsos believes that Bready Road and Cashell Road are unsafe for the ArborCare trucks, and that the signs stating no through trucks have been posted for years.

Ms. Koutsos suggested that there are enough special exceptions in the vicinity. She testified that a special exception for a child care facility for 59 children for a nearby church has also been submitted for Board approval. She fully supports that use.

Clark Baugher, a resident who lives on Bready Road, opposes the change this special exception will bring to the neighborhood. He testified that the signs on the truck weight limitations have been posted for more than nine years. He reiterated that Bready Road is a dangerous road in general, especially for the trucks.

Mr. Baugher expressed his concerns about noise and safety. He does not believe ArborCare can be considered a family business due to its size. Mr. Baugher stated he did complain to the Clairs about the trucks when they first moved on the property seven years ago.

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

The technical staff of the M-NCPPC recommended approval of the special exception with conditions [Exhibit No. 17(a) and (b)].

FINDINGS OF THE BOARD

Based on the testimony and exhibits of record, the Board finds that the proposed special exception, Case No. S-2266, satisfies both the general special exception requirements of Section 59-G-1.21 as well as the specific standards for the use in Section 59-G-2.30(c), as discussed below.

Section 59-G-1.21

1. The special exception is a permissible special exception use in the RE-1 Zone.
2. The petition complies with standards and requirements of Section 59-G-2.30(c), as set forth below.
3. The special exception use is consistent with the general plan for the physical development of the district, including the Master Plan. The master plan recommends RE-1 Zoning for this property, which is the zone in which it is classified. A landscape contractor is a permissible special exception in that zone.
4. The Board agrees with the Planning staff that the use will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of proposed new structures, intensity and care of activity traffic and parking conditions of similar uses. The Board finds that there are other barns, stables, and uses in the area similar to the proposed use, and that the proposed landscaping and screening around the parking area is compatible with the neighborhood character.

5. The Board finds that the use will not cause any objectionable vibration, fumes, odors, glare, or physical activity. The Board concludes that the use will not be detrimental to the use, peaceful enjoyment, economic value and development of surrounding properties in the general neighborhood, or cause objectionable noise.

The Board is not persuaded that the use would have a negative impact on the economic value of neighboring properties. The Board finds that since new homes on smaller lots across the street from the use are selling for the same or more than the property adjacent to the site, this indicates a propensity for people to still purchase in the area. The Board reasons that home buyers differ on the priorities of their purchases. The economic value of surrounding properties is not diminished any differently for this use on this property than would any other property in the zone where a similar special exception use might be located.
6. The Board concludes that the use will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. There are two special exceptions for private riding stables, and one for a kennel within a half mile radius of the site. The Board finds that an additional six trucks with this special exception use will not significantly impact traffic on Bowie Mill Road. The Board finds that the residential character of the area will not be altered.
7. The Boards finds that this special exception use of the property will not adversely affect the health, safety, security, morals or general welfare of the residents, visitors or workers in the general area.
8. The public services and facilities, including water, sanitary sewer, public roads, storm drainage, are adequate for the special exception use. The special exception use does not require Planning Board approval of a preliminary plan of subdivision. The Board takes into account the Planning Board advice as stated in the report and recommendation in accordance with Section 59-A-4.44-8(b)(2) in making its determination.

Section 59-G-2.30

The Board finds that this use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors for the reasons listed below.

Section 59-G-2.30(c)

1. The 2.6 acre lot of the special exception meets the minimum 2 acre requirement.
2. The areas for parking and loading the trucks and equipment, and areas for office operations all comply with the 50 feet setback requirement. The Board finds that the petitioner will provide adequate screening and buffering to protect the adjoining uses from noise, dust, odor and other objectionable effects.

The Board is persuaded that the petitioner's design and landscaping and screening plan for the parking lot and barn coordinate to reduce visibility of the lot and reduce any noise from the trucks entering and exiting the property. The petitioner designed a one-way driveway to eliminate reverse motion noise from the landscape

trucks. The conditions of the special exception prohibiting travel along Bready Road addresses both safety concerns and truck noise reduction. The limited activity of the trucks on the site also reduce the impact of any noise emitted by the trucks. The Board understands that the trucks are typical landscape vehicles and are maintained properly.

The gravel used to pave the parking lot consists of a smooth surface that does not emit dust. The petitioner submits that there are no hazardous substances stored or used on the property that would endanger the neighborhood. The property will not be used for plant material storage, and no other materials tending to emit odors or objectionable effects will be used or stored on the property. Except for private use on the subject property, no wood chipping activity creating noise and/or fumes will occur on the site.

3. The Board limits the vehicles used for the operation to six to preclude adverse impacts on adjoining uses. The Board finds that the twelve parking spaces proposed are adequate for the employees, and the Board limits the parking on the site for use by the business and employees of the business only.
4. No sale of plant material or garden supplies or equipment is permitted on the property.
5. The Board finds that the proposed hours of operation between 6:30 a.m. and 4:30 p.m. are appropriate with the office remaining open until 5:00 p.m. The Board recognizes that in extraordinary situations trucks may return later than 4:30 p.m. The Board also understands that the trucks will not travel on Cashell Road during school bus operating hours.
6. The Board determines that the subject site is surrounded by RE-1 and RE-1 TDR zoned property, therefore the evaluation of the compatibility of the use is considered in terms of a primarily residential zoning area, not agricultural.

For all these reasons, the requested special exception to permit a landscape contractor operation, Case No. S-2266, is GRANTED, subject to the following conditions:

1. The petitioner is bound by all oral and written evidence.
2. The hours of operation are from 6:30 a.m. to 4:30 p.m., and the office may remain open until 5:00 p.m. Trucks must not travel on Cashell Road during school bus operating hours.
3. No more than six trucks may be used in connection with this special exception use. The parking on the site is for use by the business and employees of the business only.
4. No sale of plant material or garden supplies or equipment is permitted on the property.
5. Petitioner must obtain approval of a stormwater management plan or a waiver request from the Montgomery County Department of Permitting Services.
6. Petitioner must obtain approval of a final Forest Conservation Plan by M-NCPPC staff prior to issuance of a grading permit and a sediment and erosion control permit.

7. The holder of the special exception must submit a landscape and lighting plan to the M-NCPPC Technical Staff for review and approval. One copy of the approved plan must be submitted to the Zoning Supervisor at the Department of Permitting Services. One copy must be submitted to the Board for its records. All plant material must be installed according to plan and maintained and replaced as necessary.
8. Petitioners must obtain approval of a driveway access permit from the Department of Public Works and Transportation.

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.

On a motion by Wendell M. Holloway, seconded by Louise L. Mayer, with Susan W. Turnbull and Angelo M. Caputo in agreement, the Board adopted the foregoing Resolution. Mr. Caputo was not a Board member at the time of the October 15, 1997 hearing. He has read the transcript and reviewed the record and concurs with the Board's Resolution. Donna Barron did not participate in the foregoing resolution.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of June, 1998.



Tedi S. Oslas
Executive Secretary of the Board

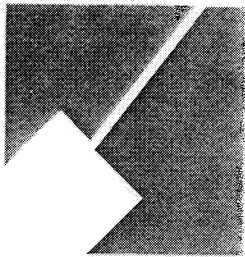
NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty four months' period within which the special exception granted by the Board must be implemented.

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

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 Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See the Board's Rules of Procedure for information about the process for requesting reconsideration.



April 1, 2003

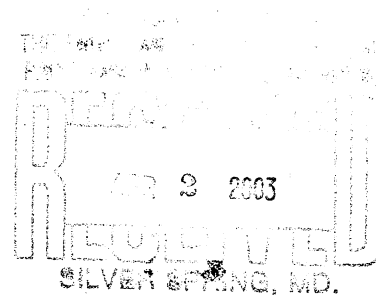
MEMORANDUM

TO: Nkosi Yearwood, Planner
Community Based Planning Division

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

FROM: Janet E. Gregor, Planner/Coordinator *DKH for*
Transportation Planning

SUBJECT: Board of Appeals Petition No. S-2266-A
Modification to Existing Special Exception for Landscape Contractor
18001 Bowie Mill Road, Rockville Maryland
Olney Policy Area



This memorandum provides Transportation Planning staff's adequate public facilities (APF) review regarding the expansion of ArborCare Inc. to include four additional employees and parking for the employees and the four new commercial vehicles to be acquired for their use.

RECOMMENDATION

Staff recommends the following conditions as part of the APF test for transportation requirements for this special exception modification:

1. All conditions of the original special exception approved on June 8, 1998, shall remain in effect except as modified below.
2. Limit the number of business related vehicles parked on site to 10, with 10 parking spaces provided for these vehicles.
3. Limit the field crew employees to no more than 16, with no more than 18 staff parking spaces provided on site.

DISCUSSION

Site Location and Access

The site is located in the southeast quadrant of the intersection of Bowie Mill Road and Bready Road. Site access is provided via 20-foot drive from Bready Road. No sidewalk is either existing or proposed along either Bowie Mill Road or Bready Road due to the relatively rural character of the area. The proposed actions will not adversely affect pedestrian access or safety. Transportation Planning staff made a visit to the site on March 19, 2003. Observations indicated sufficient area for the additional parking spaces and sight distance appears to be adequate at the driveway.

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. No bikeways are planned in the vicinity of the site.

Local Area Transportation Review (LATR)

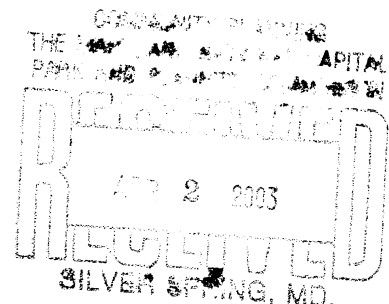
The Plan of Operations provided in conjunction with approval of Special Exception No. S-2266 provides that no clients visit the site. Field crew employees arrive at the site at 6:30 a.m. and depart the site in the company trucks around 7:00 a.m. returning to the site between 2:00 and 4:00 p.m. The office staff arrive at 8:00 a.m. and leave at 5:00 p.m. The LATR Guidelines were amended in 2002. The changes included an extension of the weekday peak periods from two hours in the morning (7:00 to 9:00 a.m.) and afternoon (4:00 to 6:00 p.m.) to three hours in the morning (6:30 to 9:30 a.m.) and afternoon (4:00 to 7:00 p.m.). This change results in more of the ArborCare trips being made during the peak periods. The field crew employees make 32 trips to and from the site during the one-hour period between 6:30 and 7:30 a.m. This is the highest one-hour volume based on the approved plan of operations. ArborCare is, therefore, expected to generate fewer than LATR threshold of 50 peak hour trips, which require a traffic study. The trips generated by ArborCare can be accommodated on the existing roadway network.

Policy Area Review/Staging Ceiling Analysis

ArborCare, Inc. is located in the Olney Policy Area, which has a remaining job capacity of 2,033 jobs as of February 28, 2003.

JEG/ct

cc: Khalid Afzal
Greg Cooke
Mary Goodman
Jeff Riese



ltr to yearwood re S-2266 ArborCare.doc



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

A-8

April 7, 2003

MEMORANDUM

TO: Nkosi Yearwood, Community-Based Planning
VIA: Mary G. Dolan, Environmental Planning Division *MD*
FROM: Mark Symborski, Environmental Planning Division *MAS*
SUBJECT: Modification to Special Exception No. S-2266-A
Arbor Care, 18001 Bowie Mill Road

The Environmental Planning staff has reviewed the special exception referenced above and recommends **approval** of the special exception modification request subject to the following conditions:

- No fuel storage tanks to be used onsite
- The applicant must submit revised plans to DPS for stormwater management review

Forest Conservation

The Natural Resource Inventory/Forest Stand Delineation (#4-97189) has been approved.

A revised Forest Conservation Plan showing the modifications to the site plan and additional landscape plantings has been submitted and approved.

Watershed Protection Issues

The applicant proposes to install two 300 gallon above-ground fuel storage tanks onsite. The Arbor Care 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 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. If these tanks are approved as part of this special exception, the applicant must comply with all regulations that apply to the construction, operation and maintenance of such tanks. The applicant will need to obtain all permits required by the county. Montgomery County regulates (in conformance to Maryland Department of the Environment standards) the placement and maintenance of above-ground fuel storage tanks (with site totals of less than 10,000 gallons) through two different permitting processes, 1) a Fire Marshall issued permit, and 2) a hazardous materials permit issued by the Emergency Management Group. Both permits must be renewed annually.

Stormwater Management

The applicant has a stormwater management plan for the operation of this facility that was approved by

DPS for the original special exception. Because of the proposed modifications, the applicant will need to submit the revised plans to DPS for stormwater management review. DPS may require a separate stormwater concept request and a new concept plan.



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

NOTICE OF VIOLATION

A-9

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

On, 12/17/01 the recipient of this NOTICE, KEVIN P. CLAIR Date Recipient's Name

18001 BOWIE MILL ROAD DELWOOD MD. Street Address City, State, Zip

is notified that a violation of Montgomery County Code, Section: 59-6-1.3(a)(1)

exists at: SEE ABOVE Location Case #

The violation is described as: CONDITION NOS. 1 AND 7 ARE IN VIOLATION FOR SPECIAL EXCEPTION CASE NO. S-2266.

The following corrective action(s) must be performed immediately as directed: MODIFY THE SPECIAL EXCEPTION FOR ANY CHANGES MADE TO THE PARKING FACILITY LIGHTING FOR ALL STRUCTURES ASSOCIATED WITH THE SPECIAL EXCEPTION FOR BOARD OF APPEALS APPROVALS. SUBMIT A COPY TO THE BOARD AND THE DEPARTMENT WHICH APPROVES THE LANDSCAPE LIGHTING PLAN FROM M-NEP-021 CORRECT THE TYPE AND NUMBER OF TRUCKS USED FOR THE SPECIAL EXCEPTION.

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

Compliance Time: THIRTY DAYS

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 RAMBER Printed Name Signature Date 12/17/01

Phone No. 301-370-3656

RECEIVED BY: X Kevin P. Clair Printed Name Signature Date 12/17/01

Phone No. 301-570-6033

Sent by Registered Mail/Return Receipt On:

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