



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
11/21/02

Item # 4, 5 & 6

MEMORANDUM

DATE: November 15, 2002
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning Division *JCE*
FROM: Judy Daniel, AICP for the Community Based Planning Division *JD*

REVIEW: Special Exception
APPLYING FOR: Landscape Contractor, Mulch Manufacture, And Wholesale Horticultural Nursery
REVIEW BASIS: Chapter 59, Zoning Ordinance
APPLICANT: John Hughes, Twin Ponds Farm. L.L.C.
CASE NUMBER: S-2527, S-2528, S-2529

ZONE: Rural Density Transfer Zone
LOCATION: 15315 Mt. Nebo Road
MASTER PLAN: Preservation of Agricultural and Rural Open Space

FILING DATE: June 3, 2002
PLANNING BOARD: November 21, 2002
PUBLIC HEARING: December 13, 2002

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

1. The applicant is bound by all submitted statements and plans, as revised.
2. Access to the site for all proposed uses is restricted to left turn ingress and right turn egress onto Mt. Nebo Road. No traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The applicant must inform companies that have delivery activities associated with any of the three uses of this restriction and the applicant is responsible for their adherence to this restriction.
3. Operations on the site are to be limited to the following, as shown on the Phasing Plan submitted by the Applicant:
 - a. Phases 1, 2, and 3 of the Wholesale Nursery operation.
 - b. Phase 1 and 2 of the Compost Operation (consisting of the existing operation area and the proposed Phase 2).

- c. Trucking associated with the Landscape Contracting Operation to be limited to 10 trucks allowed to be stored on the site.

4. Nursery

- a. A Final Forest Conservation Plan must be submitted prior to issuance of sediment and erosion control permit.
- b. An approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.
- c. Hours of operation for delivery or pick-up related to this use are limited to 7:00 AM to 7:00 PM, Monday through Saturday.

5. Landscape Contractor

- a. A Final Forest Conservation Plan must be submitted prior to issuance of sediment and erosion control permit, and building permit.
- b. An approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.
- c. Hours of operation for business vehicle (trucks) and equipment arrivals and departures from this site are limited to 6:00 AM to 8:00 PM, Monday through Saturday.
- d. The use is limited to using no more than 10 commercial pickup trucks or similar vehicles a maximum of 30 feet in length, with the largest having a Roll-Off (dump) bed with a 30 cubic yard capacity. The trucks must be less than 26,000 pounds (13 tons).
- e. When the storage building closest to the north property line is replaced, it must be relocated to meet the 50-foot setback requirement for structures in the RDT Zone.
- f. A 6-foot tall board on board wooden fence to be constructed along the west and east boundary of this area to buffer the noise from the parking area, and to screen the view from the nearest home off-site to the southwest.

6. Mulch Manufacture:

- a. Hours of operation for the operation of general equipment for this use are to be limited to 7:00 AM to 7:00 PM.
 - 1. Wood "chipping" or mulch/compost "mixing" machines may not be used on Sundays or before 9:00 AM on other days.
 - 2. A "stump grinding" machine may be used on the site no more than 3 days per year in conjunction with any of the proposed uses. Use of this machine is limited to weekdays after 9:00 AM.

3. Truck deliveries and pickups for this use are limited to Monday through Saturday.
4. The use is limited to using no more than 5 commercial pickup trucks or similar vehicles a maximum of 30 feet in length, with the largest having a Roll-Off (dump) bed with a 30 cubic yard capacity. The vehicles may not exceed 26,000 pounds (13 tons).

b. A Final Forest Conservation Plan must be submitted prior to issuance of sediment and erosion control permit. This plan shall indicate placement of Category One conservation easements on all areas required for forest retention by the Forest Conservation Law.

c. An approved concept Stormwater Management and Sedimentation and Erosion Control Plan must be submitted to the M-NCPPC Environmental staff prior to issuance of sedimentation and erosion control permits. All sedimentation and erosion control measures shall be maximized to prevent nutrient run-off into the Chisel Branch.

The plan shall include, but not be limited to, 50' wide grass swales, berms, and sediment basins. All sedimentation and erosion control measures must be located outside the stream valley buffer.

d. The applicant must receive all required permits from the Maryland Department of Environment and the Maryland Department of Agriculture to operate the requested uses included (but not limited to) a Natural Wood Waste Recycling Facility Permit from the Department of Environment and registration to create a "Soil Conditioner" product (i.e., the compost) from the Department of Agriculture.

e. The operation must implement the proposed fire prevention plan as noted below:

1. No burning of wood waste to be permitted;
2. A "dry" fire hydrant to be installed along the gravel path leading into the property alongside the existing ponds that will connect to the two ponds to allow Fire and Rescue Services to draw water from the ponds to fight fires along Mt. Nebo Road, as well as on the property;
3. Implementation of methods to allow water delivery from the ponds to the windrows for general maintenance;
4. Continuing maintenance of the gravel road into the property;
5. Spacing of the wind-rows of the mulch/compost operation so as to permit emergency vehicle access between each row; and
6. Regular inspection by employees of the windrows to monitor internal temperatures. Windrows will be turned when internal temperatures near 142 degrees Fahrenheit, per standard practice.

PROPOSAL DESCRIPTION

This is a joint special exception application for a landscape contractor, wholesale horticultural nursery, and mulch manufacturing operation, uses that are often grouped together. The proposed operation is located on a 77-acre property on Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville.

Neighborhood

The surrounding area is wholly within the Agricultural Reserve and very rural in nature. Nearby uses are primarily agricultural to the north, east, and west, and 7-8 large lot residential uses to the south. Adjacent properties to the west, east and southeast are heavily wooded, and the large lot residential uses to the south are a mixture of open fields and woodland.

Site

The property contains one single-family dwelling and two storage buildings. The majority of the land remains in agricultural use, open field, or with forest cover, and row crop agriculture has been the primary use on the property. The northeast side of the site contains a portion of a small stream that flows east toward Horsepen Branch.

Access to the property is via two existing gravel driveways. One runs close to the northern property boundary to the dwelling and storage buildings, and one runs approximately through the center of the property to the rear section. The property is generally level, dropping slightly to the east. There are two ponds on the property, approximately .5 acre each, located between the more southern driveway and the forested area along the northern property boundary. There is a slight ridge at the approximate center of the property, draining to the east and west.

An area of approximately three acres at the east end is currently used for manufacture of mulch for use on the crops raised on the property. The Applicant states that this is a use permitted by right in connection with the continuing farming activity on the property. (Sec. 59-A-2.1 of the Zoning Ordinance notes in the definition of mulch manufacturing and composting - *...The production of mulch and compost as part of a farm operation is an accessory use to the farm.*) This operation receives vegetative debris from landscape contractors (including the applicant's existing business located near Poolesville) for use in this operation.

The subject property surrounds a parcel of approximately 6 acres containing a home, barn and horse pastures owned by Mr. And Mrs. Egly.

Application Description

The applicant proposes three agricultural-commercial special exceptions that are commonly related: landscape contracting, manufacture of mulch and composting, and wholesale horticultural nursery. These are generally seasonal operations, with the late spring, summer, and early fall months being the busiest times. Of the 77 acres on the property, the applicant is proposing to ultimately use 10.4 acres for the mulch composting operation, 7.8 acres for the nursery operation, and .33 acres for the landscape contractor – totaling approximately 18.5 acres of the property. The 58-acre balance of the property would remain in forest or agricultural operations. The applicant is also proposing a phased implementation plan for the use, as noted on the submitted drawing of the property:

Phase One to consist of the existing mulch/compost manufacture area that is currently used for the farm operation, adding the landscape contractor operation, and adding one area of the nursery operation.

Phase Two to add an additional nursery stock area, add two additional areas for the mulch/compost operation, and replace one of the storage buildings with a somewhat larger structure.

Phase Three would add another area of nursery stock and two larger areas of mulch/compost production, and turn the existing tenant home on the property into a business office for these on-site operations.

Also, the more active portions of the proposed uses are to be situated toward the middle and rear of the property, substantially removed from the road. The view of the property from Mt. Nebo Road would be of woodland, agricultural fields, and fields of nursery stock.

A tenant, unrelated to the proposed operations, currently rents the dwelling on the property. A tenant farmer, who also rents other fields in this vicinity, will continue to farm on the site. The applicant notes that these ongoing farming activities on the property require the use of tractors and other large vehicles not associated with the proposed Special Exception uses that will be accessing the property.

Water Usage Plan - The application has submitted a quantification of the anticipated amount of water usage from the operation of the proposed uses that breaks down anticipated water usage by amounts related to the nursery operation and to the manufacture of mulch and composting operation. The nursery operation usage is measured in gallons per *day* while the composting operation usage is measured in gallons per *year*. This information indicates that the maximum amount of water usage from the combined operations in any given day would be 6,180 gallons, below the 10,000 gallons per day "heavy user" threshold.

This analysis assumes there will be no rainfall, which produces a "worst-case" scenario and consequently, assumes more water usage than is likely to occur. Because the nursery stock will only potentially require water eight months of the year, the average annual water use indicates a minimal water usage of less than 2,000 gallons per day for both operations. Some areas of the remainder of the property that will continue to be farmed may also require irrigation.

Truck Access Route – The Applicant proposed a routing plan for the trucks associated with these uses to avoid the use of Mt. Nebo Road to the south. That route is not inappropriate for commercial truck traffic as it leads toward very narrow segments of Mt. Nebo and River Road with several one-lane bridges. Trucks are to depart to the north, turn east on West Offutt, and then south along West Willard to reach River Road. Southeast of West Willard, River Road is appropriate for commercial traffic. Returning vehicles are to follow this same routing to avoid River Road and south Mt. Nebo. No homes access Mt. Nebo Road north of the Twin Ponds site, and few homes are located along this segment of West Offutt.

There will be occasional deliveries of supplies and materials associated with these proposed operations, and although the Applicant has little control over the size of vehicles used for the deliveries, the proposed access roads do not have posted weight limits.

Wholesale Horticultural Nursery - The applicant proposes to plant nursery stock for sale to landscape contractors, including stock for the use of the landscaping contracting operation proposed for the property. The nursery stock is to be located in the northwest portion of the property with a total of approximately 7.7 acres for this use. This use is to be implemented in three phases, and these areas would remain as row crop field until the nursery operation is implemented.

No separate employees are anticipated for this use, and the work to maintain this operation will be done by employees shared with the landscaping operation. Little additional traffic is anticipated for this use, as the primary consumer of these plant stocks will be the applicant's landscape contracting operation and the other landscape contractors bringing organic materials to the site for composting. This use sees little activity outside the growing season.

Landscape Contractor - The applicant proposes to lease a portion of this property to a related business entity that will be a landscape contracting business. This business is to be operated by one or more of the partners of the applicant. This use is also primarily limited to the growing season months.

Business activities will be concentrated around the area adjacent to the existing home, and eventually within that structure. This area, located near the middle of the property and more than 1,200 feet from Mt. Nebo Road, will be well screened from the road and the nearest neighboring homes. The closest home is approximately 900 feet from this area, the next closest is over 1,300 feet from this area).

A "storage area" for parking the employee cars during the day, and the business trucks during the evenings is proposed at an area near the north-center of the property, well off the road, and behind a stand of trees and the planting areas for the nursery stock. Additional storage of materials, equipment and vehicles to service this business would be in the two existing storage buildings adjacent to the home on the property. The storage building closest to the northern property line is to be replaced by a somewhat larger 60 x 80 square foot building within approximately a year. And an above ground gasoline tank for operating the agricultural and mulching equipment is to be installed near these buildings.

The first phase of this business is proposed to involve up to four vehicles each supporting a "team" of two employees. As the business grows, the number of "teams" (1 vehicle and 2 employees) is expected to increase to a total of fifteen, for a total of 15 vehicles and 30 employees, although no specific number of vehicles is proposed for the second phase of this business. The business will use commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, with the largest having a Roll-Off (dump) bed with a 30 cubic yard capacity. The smaller trucks will be less than 10,000 pounds (or 5 tons), and the larger vehicles will be less than 26,000 pounds (13 tons).

Most vehicle trips associated with this use are planned to occur before and after the peak periods. To reach work sites in the early morning, the work vehicles must leave the site no later than 7:00 AM. Thus, the employees would arrive between 6:15 AM and 6:45 AM in their personal vehicles. A certain amount of carpooling is anticipated among these employees. Because they would be returning from work sites of varied distances, employees would return to the site over the course of the afternoon and early evening, so the return trips would be spread out over several hours.

Manufacture of Mulch and Composting – The applicant proposes to manufacture and sell (on a wholesale basis) a “soil amendment” agricultural product that is used as an additive to soil to provide additional nutrition for growing agricultural and horticultural products. The applicant began making this product for use in his existing agricultural operation, but with the special exception approval plans to sell the product to others. The product is also to be used as a part of the proposed landscape contractor operation.

This operation will primarily function in the spring, summer and early fall as little organic material is available during the winter. Maintenance of the product once or twice a month is the primary activity in the winter.

The current operation, which would become Phase One of this operation, utilizes approximately 3 acres and is located at the easternmost tip of the property; shielded from surrounding properties by woodland and berms installed by the applicant. The portions of the adjoining properties immediately adjacent to this operation are heavily forested.

The next phases of the operation plan submitted by the applicant indicate that this use would be expanded as available material and demand for the product increase. The area proposed for the second phase is approximately 2.5 acres (located just west of the current site and also an area along the northern edge of the property), and the third phase area would be approximately 3.3 acres (located just across the driveway from the ponds). The applicant states that these areas would remain in crop production until required for expansion of the mulch operation.

The creation of this product involves composting organic products that are then mixed with topsoil in various proportions depending on the request of a customer for various horticultural conditions. The organic material to be used consists of leaves, wood chips, ground brush, and manure. This material is generally brought to the site by truck, gathered by landscape contracting operations (the applicant’s and others) and from local horse operations. There are areas for storing the various components until needed. The material is placed in the composting areas and arranged in long rows, called “windrows”.

Depending on the moisture content of the rows, they are turned by a front-end loader one to two times per month. This machine can turn 6 rows (usually a bit longer than 200 feet) in one to two hours. This machine is to be stored on site in a covered shed. The first phase would require the use of this machine for two to four hours (no more than half a day) per month, adding phase two would require its use for eight to sixteen hours (about one day) per month; and adding phase three would require its use for an additional day per month.

Some of the organic materials used must be chipped into small particles before they can be mixed with the other materials. To do this, the applicant proposes to rent a “processor” two to three times per year – usually for one day at a time – to process the materials. This is a noisy machine, so the applicant proposes to do this processing at the rear of the property, furthest from existing homes. Once the material has composted completely, it is combined with soil by processing through another machine, and then stored under a covered structure to keep it dry until it is retrieved for use. This machine will be stored on the site, and will run only as needed, only during daylight hours. This machine is already being used for the current on-site operation.

The stated intent is that most of the trucks that deliver the organic material would then pick up loads of the soil amendment or products of the wholesale nursery. These trucks will be a part of the on-site landscape contracting operation and other contract sources. Up to 5 trucks are proposed as a part of these operations, to be stored on the site with the trucks and other

equipment related to the landscape contracting business. These will be commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, with the largest having a Roll-Off (dump) bed with a 30 cubic yard capacity with a weight of less than 26,000 pounds (13 tons), making no more than 10 trips per day.

The applicant anticipates two to three truck trips per day during the Phase 1 to unload the organic material and load the soil amendment. The applicant anticipates up to ten truck trips per day by the implementation of Phase 3. These trips would generally arrive and depart outside of peak periods, but never before 7:00 AM or after 8:00 PM. As with the Nursery operation, few employees will work at the site specifically for this operation. Employees of the proposed landscape contractor operation or the tenant farmer who cares for the row crops are to handle turning the "windrows" and other associated activities.

Environmental Issues – Run-off from the composting areas is to be managed by earth berms and storm water control ponds to ensure that the compost materials will not leach into the ponds or wetlands on the property. The applicant plans to reuse any run-off to irrigate the compost rows and thus speed manufacture of the product.

To ensure that environmental concerns are addressed, the Applicant is working with the Montgomery County Soil Conservation District ("SCD") to develop a sediment control plan for the existing composting operation, as well as the remainder of the property; and the applicant will install any necessary sediment control and stormwater management control measures. The SCD is in the process of preparing a conceptual plan and will forward the plan to the M-NCPPC environmental staff as soon as it is available.

This plan creates a series of berms to direct run-off to specialized retention facilities where the water can be recycled for use on the windrows or held until any contaminants have been broken down. As future phases are implemented, similar plans will be developed and necessary facilities installed. The Applicant has also agreed to prepare a stormwater management plan for review and approval by the Department of Permitting Services ("DPS") prior to the implementation of each phase.

The applicant requests that any conditions should be flexible and based on SCD/DPS approvals, so that changes in circumstances can be accommodated without needing to re-open or modify the Special Exception for the future phases of operation.

Odors associated with the production of this product are not a problem if properly managed by sufficient turning of the "windrows" on a regular basis. When correctly managed, the product has an "earthy" odor that is not offensive. It is certainly no more offensive than the odors from many livestock operations, permitted by right in agricultural zones. Decomposition of organic material is accomplished by aerobic bacteria that require oxygen for proper functioning. Aerobic bacteria produce more heat and fewer odor-causing by-products than anaerobic bacteria that appear in the absence of sufficient oxygen. Aerating the "rows" supplies oxygen to the core, as well as the outer layers of the "rows", and thus sufficiently controls odors.

Fire Prevention Plan - The Applicant, in conjunction with preparation of the State permit discussed below, and after consultation with the local Fire and Rescue Department officials, has developed a Fire Prevention Plan for the Manufacture of Mulch and Composting use. In addition to complying with all usual local and state regulations relating to fire prevention and suppression, the conceptual plan contains the following supplemental elements:

1. No burning of wood waste will be permitted;
2. A "dry" fire hydrant will be installed along the gravel path leading into the property alongside the existing ponds. The hydrant will connect to the two ponds to allow Fire and Rescue Services to draw water from the ponds to fight fires along Mt. Nebo Road, as well as on the property;
3. Separate measures will be implemented to allow water delivery from the ponds to the wind-rows for general maintenance;
4. Maintenance of the all-weather gravel road into the property;
5. Spacing of the wind-rows so as to permit emergency vehicle access between each row; and
6. Regular inspection of the windrows by employees to monitor internal temperatures. Windrows will be turned when internal temperatures near 142 degrees Fahrenheit, per standard practice.

State Permit Requirements - The application also notes that the proposed manufacture of mulch and composting use requires permits from the Maryland Departments of Environment and Agriculture. Specifically, a Natural Wood Waste Recycling Facility Permit from the Department of Environment and registration of the "Soil Conditioner" (i.e., the compost), with the Department of Agriculture will be required. The Applicant is currently preparing the materials for the various State permits and will submit them to the respective Departments in the near future.

The Natural Wood Waste Recycling Facility Permit requires the submission of: (i) a statement of operations, (ii) an approved sediment control plan and stormwater management plan and (iii) a fire suppression plan, among numerous other items. The Department reviews the documents for safety and environmental concerns before issuing the permit, and inspectors are permitted on-site to ensure compliance with the terms of the approvals.

Registration of the "Soil Conditioner" is required to allow the State to categorize and track the sale of the materials. The Department of Agriculture is permitted to sample the compost to ensure that the material meets specific standards and to inspect the property for compliance with standards.

Buffering from Adjacent Property - To buffer the Egly property from impacts deriving from the proposed uses, the areas around that property, comprising agricultural and forest uses, are proposed to remain in those uses. The Applicant has also proposed creating a 100 foot "buffer" area along the perimeter boundary with their property. The "buffer" would be composed of trees and/or shrubs adjoining the property lines, some existing and some to be planted, supplemented by an area of crops to a total, combined depth of one hundred feet from the property boundary.

Finally, this property will also continue to operate as a functioning farm. The farming activity has seasonal harvests where trucks and other vehicles, along with additional workers, enter and exit the property to gather crops and/or plant and cultivate the fields, and harvest the crops. Conditions associated with the Special Exceptions may not interfere with these permitted agricultural operations.

ANALYSIS

ZONING

The proposed use is in the Rural Density Transfer Zone, an agricultural zone that encourages agricultural and agriculturally related uses. The proposed uses are categorized as Agricultural-Commercial uses in this zone and allowed by special exception.

MASTER PLANS

The proposed use is under the guidance of the Master Plan for the Preservation of Agricultural and Rural Open Space, which encourages agriculturally related uses. Thus, the proposed uses, within the limits of the conditions proposed are appropriate for the area and in harmony with the intent of the master plan.

TRANSPORTATION

The staff concludes that the proposed uses would not have an adverse impact on the surrounding roadway network. The roadway system as it currently exists, with a recommended site access routing restriction, is adequate to accommodate traffic to be generated by the proposed operations.

Site Access and Circulation – The access point to the site is from Mt. Nebo Road, a two-lane roadway with a posted speed limit of 25 mph, classified as a Rustic Road. The applicant proposes to limit commercial access to a route going north on Mt. Nebo, east on West Offutt, and south of West Willard to River Road. Access to the site on both driveways is recommended to be restricted to “left turn in and right turn out only” so that no traffic using this site may use Mt. Nebo Road to the south to and from River Road. This must include the vehicles of the operations on the site, and all of their customers and suppliers.

The portion of Mt. Nebo Road south of the site to River Road is substantially narrow (approximately 14' to 16') and contains substandard vertical/horizontal curves and two one-lane bridges. River Road, from the Mt. Nebo intersection to West Willard Road is similarly restricted. Thus, all site traffic must be prohibited from using this portion of Mt. Nebo Road.

Mt. Nebo Road north of the site is approximately 18' wide. West Offutt Road and West Willard Road, also classified as Rustic Roads, are approximately 18' and 24' wide with posted speed limits of 30 mph and 35 mph, respectively. None of these road segments have substandard curves or vehicle weight restrictions. The staff finds that access to the site, using the proposed routing north along Mt. Nebo Road via West Offutt Road to West Willard Road, is adequate to accommodate the site traffic. And site access and the internal vehicular circulation system shown on the site plan are adequate, with the recommended turning restriction

Pedestrian Facilities - The site is located in the rural policy area, where the County's roadway design standards do not include pedestrian facilities due to the relatively low level of pedestrian activity and inconsistency with rural character. The proposed development is not expected to generate pedestrian activity along public roadways.

Congestion Levels at Nearby Roadways and Intersections - A traffic analysis for the proposed development was prepared to determine the impact of development on nearby roadways and intersection capacities. The following is a summary of the traffic analysis.

The site is located in the rural area where the existing traffic volumes are significantly low. Based on the traffic data collected by the applicant's traffic consultant, three site access roadways, Mt. Nebo Road, West Offutt Road, and West Willard Road, carry approximately 260 to 360 trips per day or 20 to 40 trips during the weekday peak hour. These volumes represent significantly low volumes for these two lane roadways, and traffic operates at Level of Service "A" based on the roadway link capacity analysis.

At full expansion, the proposed development is projected to generate up to 70 daily trips, or less than 10 peak hour trips. These additional trips on the proposed roadways will not adversely affect the existing traffic conditions from the perspective of roadway capacity. These are not wholly additional trips, as some traffic is already using the site in conjunction with the existing permitted agricultural and mulch operations. The intersection capacity for the River Road at West Willard Road intersection was analyzed and the result indicates that the existing and projected Critical Lane Volume (CLV) is less than 100.

A concern has been raised by the adjoining property owner that the analysis does not use appropriate assumptions regarding the existing conditions for the design speed, percentage of buses, and terrain conditions in calculating the link capacity. The staff finds that recalculating the link capacity using different assumptions for a lower design speed, higher percentage of buses, and rolling terrain conditions will not change the results because the traffic volumes are significantly low.

This property owner also expressed a concern that the proposed development would generate excessive truck traffic and the existing roadways are not adequate to handle the projected truck traffic. Based on the information provided by the applicant in his traffic study and statement of operations, the proposed development would generate (at maximum expansion) 30 daily truck trips from the landscaping business and 10 daily truck trips from the manufacturing mulch and composting activities. These trucks are mostly commercial pickup trucks and a maximum of length will be 30 feet. The applicant is bound to these stated limits on truck numbers and trips.

The staff believes the existing roadways are sufficient for the projected traffic and vehicles. The intersections along the truck routes all have radii of at least of 35 feet. Most of the vehicles will be commercial pickup trucks, with a limited number of tractors and other large vehicles associated with the landscape contractor and wholesale nursery operation – as well as the large equipment already used for the farming operations. The staff believes that the proposed uses will maintain the low volume nature of the roadways, and since no vehicle weight restrictions are imposed on the proposed truck routes, the surrounding roadways appear adequate to handle the projected truck traffic safely.

Finally, although Mt. Nebo Road is a Rustic Road, the designation of Rustic Road status is not to be used to limit otherwise permitted land uses. Page 5 of the Rustic Roads Master Plan states: "*The rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivision.*" Further, the area of Mt. Nebo of primary interest in the Rustic Road Master Plan description is the southern end, where truck traffic is to be restricted. The Plan states: "*The northern half (of Mt. Nebo) is generally flat with long, straight sections.*"

Staging Ceiling - The subject site is located in the Rural Policy Area where there are no assigned staging ceilings.

LANDSCAPING AND LIGHTING

No lighting is proposed for this use, and landscaping, other than buffers proposed for screening are not necessary at this location since the appearance of the site from Mt. Nebo road will be of agricultural uses.

ENVIRONMENTAL

Water Quality - This property is located in the Chisel Branch subwatershed of the Cabin Branch/Chisel Branch watershed. This subwatershed is designated as an Agricultural Watershed Management Area by the Countywide Stream Protection Strategy (CSPS). The State of Maryland designates the Cabin and Chisel Branch tributaries as Use I-P waters. Use I waters are suited for water contact recreation and protection of aquatic life and are suited as a source for public drinking water supply. The subwatershed of the Chisel Branch tributary has not been rated, but is surrounded by subwatersheds having good to fair stream and habitat conditions. In addition to the use of best management practices on the agricultural areas, good stewardship and stream valley conservation measures are highly recommended for these areas by the CSPS.

Forest Conservation - These applications have an approved NRI/FSD and a Preliminary Forest Conservation Plan. A Final Forest Conservation Plan is required prior to issuance of sedimentation and erosion control or building permits. A Tree Save Plan is not required because there are no specimen or significant sized trees on site.

Wholesale Nursery - The staff sees little potential for this use to have negative impact and no additional conditions are recommended.

Landscape Contractor - With the other conditions proposed to limit this use, the staff sees little potential for negative impact and no additional conditions are recommended.

Mulch Manufacture

Surface Run-off: The applicant is working with the Montgomery Soil Conservation District (SCD) to develop a Soil Conservation Plan for the proposed uses. This plan includes Best Management Practices for agricultural pesticide and herbicide application for the nursery and agricultural operations and sedimentation and erosion control to preserve water quality for the existing composting operation. Methods to manage runoff will include, but not be limited to, 50' wide grass swales, berms, and sediment basins; and all sedimentation and erosion control measures are to be located outside the stream valley buffer. The approved plan must be submitted to the M-NCPPC Environmental Planning staff for verification prior to issuance of sedimentation and erosion control permits from the Department of Permitting Services (DPS).

This plan does not include Phase 2 or 3 of the proposed composting operation. Plans for Phases 2 and 3 would similarly require approval from an SCD approved plan to be submitted to DPS, and the approved plan to be submitted to the M-NCPPC Environmental Planning staff for verification prior to issuance of sedimentation and erosion control permits from DPS.

Groundwater Protection – Because Best Management Practices are to be used for this use, the Montgomery County Department of Environmental Protection foresees a minimal possibility of groundwater contamination from this operation, no additional conditions are recommended.

SUBDIVISION

Although agriculturally related, the proposed use is commercial in nature and requires a building permit for the construction of any new buildings, or expansion of existing buildings. Therefore, when the existing storage buildings are proposed for expansion in conjunction with the Landscape Contractor use, the applicant will be required to go through subdivision.

COMPLIANCE WITH SPECIFIC AND GENERAL SPECIAL EXCEPTION PROVISIONS

As noted in the attached review, the application meets the special exception criteria for the use.

CITIZEN CONCERNS

The staff has met with, talked to several times, and received extensive correspondence from Mrs. Stephanie Egly, the immediately adjacent neighbor whose property is surrounded by the subject site. Mrs. Egly is extremely concerned about these applications - especially the proposed manufacture of mulch application and the trucks that would be used by these operations. Her letter to the Board is attached. Although landscaped berms and field and forest buffers of up to 500 feet from her property line are proposed, she firmly believes the applicant will not fulfill the terms of their special exception, and will cause severe harm to her, her livestock, her drinking water supply, the safety of the area roads, and her property value. She strongly believes the use will contaminate the water, cause very loud disruptions to her peaceful enjoyment of her property, and bring noxious smells across her property line. She is very opposed to this operation and plans to make a presentation at the meeting.

The Applicant has submitted letters of support from several property owners in the area (attached), two on Mt. Nebo (south of the subject property) and two on West Offutt (along the route the business trucks would take). As of the date of this report, the staff has received no additional correspondence regarding this application.

INHERENT/NON-INHERENT

These three uses are often grouped together because they are related businesses. The inherent characteristic of a *wholesale nursery* operation is that it sells horticultural products either grown on-site, or brought to the site when small and grown on the site for a time until sold. And these products must be brought to the site on trucks and moved from the site on trucks. Environmental permits are required, but this type of use usually generates little impact beyond the trucks necessary for the operation.

A *landscape contractor* operation can vary considerably in size and intensity. This business inherently uses trucks (of variable sizes) to move equipment and products from where they are stored to where the work is performed. The use usually has stores of products (such as mulch or compost) that it delivers to work sites, and the same vehicles take organic debris from the work sites to places where that debris is recycled into compost or otherwise disposed of in a landfill. If is, of course, preferable that the material be recycled. This type of use usually creates the greatest disruption from the reality that the employees must arrive very early in the

morning to get the trucks and equipment out to job sites early in the morning. This is compounded by the reality that most landscape contractors are looking for sites further and further out in rural areas to avoid the inevitable disruptions to more densely settled residential areas. So the further they are located from their jobsites in residential or business areas, the earlier they must leave the business location in the morning.

A *manufacture of mulch or compost* operation takes organic debris – vegetative or from farm animals (primarily horses or cows) – and recycles it into products used to fertilize or otherwise “feed” soil used to grow crops or in landscaping operations. This use inherently must have areas where the process of transformation can be performed in a safe and correct manner. The use must have large areas where “windrows” of the material in various stages of re-composition are placed, turned, and stored prior to being sold. Environmental permits and facilities are required, but if properly managed they have little odor beyond an “earthy” smell, and they do not create impervious surface and excess runoff. They inherently do require some noise in operating the equipment necessary for the use, and the trucks that bring the materials and take the product away. Noise associated with the use includes the machines that must occasionally grind up larger wood debris, and the machine (like a front-end scoop) that keeps the rows properly turned to avoid inadequate oxygen getting to the materials while they recompose into product. There is no way to avoid these elements of intrusion totally if the mulch or compost manufacture is to be properly managed.

With the conditions recommended, the staff does not see any significant non-inherent impacts of the proposed uses at this location that would require a denial of the special exception. The staff considered the landscape contractor use and the compost/mulch manufacture use particularly closely. The staff does not believe that the proposed ultimate size of either of these operations would cause excessive non-inherent impact on a site of this size, if properly managed as indicated in the statement of operations.

CONCLUSION

The staff believes that the proposed uses are appropriate in the Rural Density Transfer Zone. They are agricultural-commercial uses in an agricultural zone. The staff believes that the proposed operations, as submitted by the applicant, will function appropriately if conducted as proposed and cause no detrimental impacts to the surrounding area. This is a large property in a rural location with few existing homes in the area, especially to the north along the proposed travel route for the business vehicles. The staff believes this area to be more appropriate than one would be on a smaller site with more homes in the immediate area – even if in the same RDT Zone.

The staff also accepts that a fairly large operation of this type will create a changed environment, especially for the immediate property owner to the south, whose land is surrounded by the applicant's property. Even though the composting operations are substantially removed from her property, there will be a change in activity levels and noise from the trucks and equipment that are inherent to these operations. Therefore, the staff believes that it is fair to this immediately adjoining neighbor, and others who live in the area, that the proposed uses with the most potential for disruption should have a phased implementation.

Phasing, with modification required for full implementation, will allow the applicant to prove to the community and the Board of Appeals that they are fully abiding by the terms of their special exception, and thus should be authorized to expand to the full extent proposed. The applicant states that full implementation is to occur over a multi-year term anyway, so this will allow time for the surrounding community to observe whether the requirements for the uses are properly observed.

Thus the staff recommends approval of this use for:

1. All Phases of the wholesale nursery use.
2. Phase 1 (the existing operation area) and Phase 2 of the mulch/compost manufacture use.
3. A Phase 1 for the landscape contractor operation authorizing all elements except limiting vehicles to 10 trucks stored on the site.

If a modification is requested, it would incorporate the final area of mulch/compost manufacture and the 5 additional trucks for the landscape contractor use.

The staff strongly believes the proposed uses are appropriate in the zone and are the particular types of uses encouraged in the master plan. They are agriculturally related uses in an agricultural zone. The staff has found the transportation and environmental aspects of the proposed uses acceptable – with limiting conditions noted. The staff is enthusiastic about the concept of the mulch/compost use. This is an excellent example of recycling of organic material, an agriculturally related use that turns biomatter byproducts into a useful non-chemical soil additive.

These uses will cause some disruption on an occasional basis from the machines necessary to properly conduct operations, but the uses do not appear excessive – especially if limited as noted above. With a good track record after a period of operation, the applicant can apply for a modification to include the third phase of the mulch/compost manufacture and the additional trucks for the landscape contracting operation.

Because only two phases of the mulch manufacture operation are recommended for approval, the staff does not believe it will be necessary for the application to install the buffer proposed by the Applicant. The area that would be closest to the Egly property is in the third phase, not recommended for approval at this time. If the Board should authorize approval for all three phases at this time, the staff recommends a condition that this buffer be created when the phase three operations begin.

With the conditions discussed above and listed at the beginning of this report, the staff recommends approval of the proposed uses.

Attachments

Special Exception Requirements
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 proposed uses are permitted by special exception in the Rural Density Transfer 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 proposed uses, as limited in the recommended restrictions, comply with the standards and requirements 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 adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location: If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The proposed uses are consistent with the Master Plan for the Preservation of Agricultural and Rural Open Space, as they are specifically noted as Agricultural-Commercial uses in the zoning ordinance, and therefore appropriate, with the recommendations for limits on the uses, in the Rural Density Transfer Zone.

- (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 proposed uses, as limited by the applicant and by staff recommendations, will be in harmony with the general character of this rural area.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed uses, as limited by the applicant and by staff recommendations, will not be detrimental to this rural area.

- (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.

The proposed uses, as limited by the applicant and by staff recommendations, will not cause objectionable noise, vibrations, fumes, odors, dust or other impacts. The potential for impact is limited by the size of the property, the operations plans, and the specific limitations and modifications agreed to by the applicant and proposed by the staff.

- (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 proposed use is not located in a one-family residential area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not adversely affect the health, safety, security, morals, or general welfare.

- (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 proposed uses will have adequate public services and facilities.

- (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 in the applicable Annual Growth Policy.

The proposed uses meet Local Area Transportation Review and the Policy Area Transportation Review requirements.

- (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 not reduce the safety of vehicular or pedestrian traffic.

The proposed uses, as limited in the recommendations for approval, will not reduce the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department that approves or licenses the project.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

The staff does not believe that further requirements are necessary for this use.

SPECIFIC CONDITIONS

Sec. 59-G-2.30.0. Nursery, horticultural - wholesale.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a retail horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.

The proposed application is for a combination of a wholesale horticultural nursery, a landscape contractor, and a manufacture of mulch/compost soil additive.

- (1) Plants, trees, shrubs, seeds, and bulbs may be grown or produced and sold on a wholesale basis.

The applicant plans to sell such horticultural products – primarily trees and shrubs - on a wholesale basis from plant stock brought in and grown for a time before being sold.

- (2) Fertilizers, plant foods, and pesticides must not be produced but may be stocked and sold on a wholesale basis.

Only compost material manufactured on the site in conjunction with the special exception for mulch/compost manufacture is to be sold.

- (3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 50-G-2.30 (1):

- (i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.
(ii) The retail sale of plant materials or garden supplies or equipment.

The applicant does not intend to operate a retail use.

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

The proposed use is on a 77- acre property.

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

No structures are proposed for this use.

- (6) Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E.

No parking area is proposed specifically related to this use. The parking requirement is based on floor area provided, and no structure is proposed for this use. The use will share parking area with the adjoining landscape contractor use on the site.

- (7) Adequate screening and buffering must be provided for all parking areas and other on-site operations having a potentially adverse impact on adjoining residential or agricultural uses.

No buffering is recommended for this use, as the only operation is growing horticultural products.

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

The proposed use is in the "agricultural-commercial" character, and the wholesale nursery portion of this proposed use will have little impact on the surrounding uses and is wholly appropriate in this rural area of the Rural Density Transfer Zone.

Sec. 59-G-2.30.00. Landscape contractor.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

The proposed operation combines the landscape contractor with a wholesale horticultural nursery and a mulch/compost manufacturing operation is proposed.

- (1) The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.

The proposed use is on a property of 77 acres.

- (2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

The area designated for parking trucks and equipment is approximately 200 feet from the nearest property line, and over 900 feet from the nearest home off-site. This distance is sufficient but a fence is recommended to provide some further protection from noise of vehicles starting and leaving in the early morning hours. The staff recommends that a 6-foot tall board on board wooden fence be built along the west and south boundary of this area to buffer the noise from the parking area, and screen it from the view of the nearest home off-site.

In addition, existing storage barns will be used for storing equipment and supplies. One of the existing barns is to be replaced with a slightly larger structure. This structure does not currently meet the setback requirement, so a condition of approval is for the location of this structure to be moved enough to meet the setback requirement when it is replaced. All of the other existing structures meet the required setbacks.

- (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.

The applicant currently has trucks arriving at the site daily as part of a permitted use, dropping off organic debris (chipped trees and greenery) and leaving empty. If the proposed use is approved, many of the same trucks will be parked at the site, leaving the site with loads of mulch, and returning with the organic debris. Consequently, there will be few additional trucks. The application proposes up to 15 trucks in conjunction with the landscape contracting business.

However, in the interest of concerns expressed by an adjoining neighbor related to potential for disruption from the operations of this use, the staff recommends that this use be approved for a first phase operation for up to 10 trucks, and return at a later date for a modification to expand to the use of 15 trucks as proposed.

The use is limited to the use of no more than 10 commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, the largest with a dump bed with a 30 cubic yard capacity. The smaller trucks must be less than 10,000 pounds (or 5 tons), and the larger vehicles must be less than 26,000 pounds (13 tons).

The proposed site for parking the vehicles and equipment is adequate in size, and with the addition of the fence recommended by the staff, it will provide adequate buffering from the noise of the equipment and vehicles.

- (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 applicant is proposing a wholesale horticultural nursery operation.

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

The staff believes the proposed hours of operation of 6:00 AM to 8:00 PM are acceptable. The workers must arrive at the site very early to get to their work sites in more densely settled areas before major traffic congestion in the morning, and will generally return to the site before major traffic congestion in the afternoon.

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

The proposed use is categorized as an "agricultural-commercial" use, and at the size and scale proposed, the landscape contractor use is appropriate in the Rural Density Transfer Zone.

Sec. 59-G-2.30.000. Manufacture of mulch and composting.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery or a landscape contractor. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

The proposed uses on the property combine mulch/compost manufacture with a wholesale horticultural nursery and a landscape contractor. I

- (1) The minimum area of the lot must be 5 acres.

The proposed property for this use contains 77 acres.

- (2) The operating area as well as areas for parking and loading must be a minimum of 50 feet from any property line and adequately enclosed, screened, and buffered, or otherwise constructed or arranged so as to protect adjoining uses from noise, dust, odors, and other objectionable impacts.

The applicant proposes an operation to be expanded in three phases:

The mulch area of the first phase is located 50 feet from the closest property line, and 1,500 feet from the nearest off-site home.

The mulch operation area of the second phase is located 50 feet from the closest property line, and over 1,000 feet from the nearest off-site home.

The mulch operation area of the third phase is located 50 feet from the closest property line, and over 500 feet from the nearest off-site home.

The staff recommends that only Phases One and Two of the mulch manufacture operation be approved, and the Phase Three only be considered via a modification after the operation has operated for a time.

If Phase Three is recommended by the Board, the staff recommends that when implementation of that phase begins, the applicant be required to install a 5-foot tall berm, planted with evergreen shrubs along the property line closest to the nearest off-site home, and to dedicate a 50-foot wide buffer. The staff also recommends that the applicant install a 6 foot tall, board on board fence along the western edge of the mulch operation closest to the nearest off-site home.

- (3) The Board may regulate the hours of operation so as to prevent any adverse impact on adjoining uses.

The staff recommends hours of operation for the operation of general equipment for this use be limited to 7:00 AM to 7:00 PM. Further, wood "chipping" or mulch/compost "mixing" machines not to be used on Sundays or before 9:00 AM on other days; and a "stump grinding" machine may be used on the site no more than 3 times per year. Use of this machine is limited to weekdays after 9:00 AM.

- (4) The Board may limit the number of motor vehicles operated in connection with the business or parked on the site so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles permitted; and must not be less than required for an industrial or manufacturing establishment or warehouse, under Article 59-E.

Trucks for this use are limited to no more than 5 commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, with the largest having a Roll-Off (dump) bed with a 30 cubic yard capacity, weighing less than 26,000 pounds (13 tons). Trucks to be used in association with this use will be a part of the associated landscape contractor use or outside contracts. Parking requirements in Article 59-E relate to interior floor area, and no buildings are proposed for this use.

Limited equipment, as noted in the statement of operations, is used for the manufacture process. Those machines are provided storage space on the site.

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

The proposed use is designated as an "agricultural-commercial" use, and with the limit to Phases One and Two of the mulch manufacture operation is compatible in the Rural Density Transfer Zone. A period of operation is recommended before authorization of Phase Three via a modification of the special exception.