

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

MCPB  
Item #4  
DATE

**MEMORANDUM**

**DATE:** June 18, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning Division  
**FROM:** Judy Daniel, AICP, Rural Area Team Leader (301-495-4555)  
Community-Based Planning Division

**REVIEW TYPE:** Special Exception Remand  
**APPLYING FOR:** Wholesale Nursery, Landscape Contractor, Mulch Manufacture  
**APPLICANT:** Twin Ponds Partnership, Ltd.  
**CASE NUMBERS:** S-2527, 2528, 2529  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**ZONE:** Rural Density Transfer Zone  
**LOCATION:** 15315 Mt. Nebo Road  
**MASTER PLAN:** Preservation of Agricultural and Rural Open Space

**FILING DATE:** June 3, 2002

---

**STAFF RECOMMENDATION: Approval with conditions**

**BACKGROUND**

On June 10, 2004, the Planning Board reviewed a staff analysis of the current plan for the three Twin Ponds special exceptions, in response to a remand of these petitions from the Hearing Examiner. The Planning Board determined that the staff report did not provide a sufficiently detailed explanation of how these Petitions differed from what they had reviewed in November of 2002 ("Original Plans"). This report addresses that concern.

On November 21, 2002 the Planning Board reviewed the Original Plans for the special exception applications of Twin Ponds Farm, LLC for a joint landscape contractor, wholesale nursery, and mulch manufacture operation on Mt. Nebo Road in the Rural

Density Transfer Zone ("Petitions"). The Board recommended approval of the Petitions with conditions. After nine hearings the Hearing Examiner forwarded these Petitions, which included the Original Plans as amended by the Hearing Examiner's recommendations ("Final Plans"), with a recommendation for approval to the Board of Appeals (attached). At the Board of Appeals the Opposition requested additional oral argument on these Petitions. After reviewing the submitted reports from the Hearing Examiner, the Board of Appeals remanded the Petitions back to the Hearing Examiner (remand attached) requesting additional information or clarification about certain specific items regarding the applications. The Board of Appeals stated that they needed this information before they could determine either the merits of the Petitions or whether further oral argument was warranted.

The resolution of the Hearing Examiner (attached) orders the Petitioner to transmit to the Planning Board a copy of the Final Plans (including, but not limited to, the final Statement of Operations, amended Phasing Plan, revised Site Plan and all other documents showing the final proposal.) The Planning Board and Technical Staff are requested to submit their comments, if any, with respect to the Final Plans.

## **ANALYSIS**

The Planning Board has requested a full evaluation of how the Final Plans differ from the Original Plans in order to discern if the Final Plans for these Petitions are still acceptable to the Planning Board. It is the understanding of the staff in consultation with the legal staff, that the Planning Board may evaluate and make comment on the sufficiency and adequacy of the Final Plans for these Petitions. The staff believes that nothing in the materials submitted for review indicate a reason for changing the prior recommendation of approval for these uses. But there are elements that the staff believes need modification.

### Overview

This was originally an application for three special exceptions proposed in phases. The revised plans for the Petitions submitted to the Board of Appeals eliminate potential future phases. The staff believes that many of the modifications are primarily attempts to clarify, define, and limit operations agreed to by the applicant in repeated attempts to address the concerns of the Opposition.

The Planning Board had recommended approval of Phase 1 of each these operations rather than attempt to discern the necessary conditions required to limit the impact of the entire scope of operations. The Hearing Examiner and People's Counsel spent many months – through the nine hearings and other consultations – going through a process of establishing a more defined scope of operations for these uses. Since the current plan recommends approval of these uses without the potential for future phases, more conditions of approval were necessary to refine and limit the requested operations. Despite the best efforts of the Hearing Examiner and the People's Counsel, strong animosities continue to surround this case.

The staff believes that the animosities in this case seem to stem from mutual mistrust leading to mutual assumptions of intentionally misleading information. Over the past 18 months the opposition raised numerous elements of concern that the applicant seemed to sincerely try to address in good faith. But because the concerns raised arose from questions raised by the opposition rather than initial disclosure by the applicant, the opposition appears to believe that these attempts are evidence of misleading intent rather than the Petitioner not providing an extremely well defined business plan in the submitted statement of operations.

The staff believes that it became a difficult circle with the Petitioner's attempts to address the concerns leading to more suspicions that he was hiding other elements, and attempts to pin down any possible objectionable elements leading to further conditions in an attempt to address the concerns. And this led to the extensive, but not unreasonable when studied, set of conditions for approval that attempt to very closely define and limit the uses proposed.

## RECOMMENDATIONS

Many elements of the current plan replicate the recommendations of the Planning Board in November of 2002, and some are modified and expanded versions of those conditions of approval. The discussion below describes the Final Plans for these uses and compares them to the version previously evaluated by the Planning Board. The chart attached to this report summarizes the conditions for approval for all the uses and allows a comparison of how many of them are duplicative.

At a larger scale, these uses might become a problem at this location, but as now proposed and limited, the staff believes they will – as concluded by the Hearing Examiner – be an appropriate scale at an appropriate location.