

May 10, 2004

Judy J. Daniel, AICP  
Team Leader, Rural Areas  
MNCPPC – Montgomery County  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Subject: Twin Ponds, S-2527, S-2528, S-2529

Dear Ms. Daniel:

The opponents of the Twin Ponds special exception cases have reviewed the current proposal in light of the Resolution to Remand Cases issued by the Board of Appeals. Of the seven points addressed in the remand, we believe these three points are the most important:

*1. The nature and extent of contractor operations remains unclear.*

The conditions proposed by the petitioner are vague, will be difficult to enforce, and create uncertainty about the level of activity the neighbors can expect on the property. We are especially concerned about the exceptions to the limits for employees, which generally exclude members of the limited partnership and outside contractors. Is membership in the LLC limited to the individuals listed on the special exception application or can additional members be added after approval? Will the exception for outside contractors permit the landscaping firms to use independent subcontractors to supplement their employees? The effect of subcontractors upon the neighborhood will be the same as the effects of employees, but the language of the proposed condition could exclude them from the count of "employees."

The Board requested additional information with regards to the number of employees per contractor, how many contractors each of the three operations will have, what activities these contractors will conduct, what types of equipment they will use on site and transport to and from the property. The applicants' responses to date have not resolved the Board's concerns.

*2. We believe subdivision is necessary with respect to Case No. S-2528.*

If subdivision were to occur, each of the three operations would have to clearly identify what activities it will conduct on-site. Moreover, the areas of the site proposed for farm activities only could likewise be identified. This would prohibit each Special Exception from

attributing their activities, contractors, and number of employees, equipment, and vehicles to another Special Exception or to the farm activities, if questions arise during enforcement actions.

In addition, we believe the design, function and capacity of the sediment control trap must account for the special features of runoff from the compost facility. We believe this is a concern for water quality, since this facility is located near the stream valley buffer area, as mentioned in the remand. If subdivision were to occur, this facility would be brought into compliance with County regulations, rather than rely on less stringent Montgomery County Soil Conservation District requirements. We believe that bringing the landscaping operation into compliance with County regulations would better protect the county's resources.

*3. The proposed parking is not sufficient to serve the three Special Exceptions and the proposed location does not meet the requirements of the zoning ordinance.*

The small amount of parking is not consistent with the scale of the operations that they propose. The proposed conditions permit up to 28 employees on the site, not including members of the LLC, employees of the farm operation only, or outside contractors. Only 20 parking spaces are provided in an area of Montgomery County not served by any transit service.

In addition, the applicants have proposed parking in an area that is not accessible to the functions that are dependent on that parking. In addition, the site plan is not clear about parking and outside storage areas for the various vehicles associated with the proposed uses. The petitioners have not presented a parking scenario that can support their own proposed functions. Given the information available, we do not believe the staff can determine whether the petitioners will comply with the applicable parking requirements of the zoning ordinance. This is one of several ways in which the site plan and phasing plan remain insufficient to warrant approval.

Attachment 1 provides a more detailed discussion of our concerns related to the issues in the Board's remand.

We would urge you to take advantage of the review provided by the remand to resolve the inconsistencies between the Special Exception Site Plan and the Phasing Plan. Both documents should show the same activities at the same locations on the site. There appears to be no reason to show any of the "soybean and winter wheat crops" areas shown on the site plan, as part of any phase on the phasing plan. Likewise, the two smaller compost facilities shown on the site plan are excluded by the applicants' recommended conditions and should be removed from both the site plan and the phasing plan. Attachment 2 - Evaluation of Phasing Plan and Special Exception Site Plan contains a more detailed discussion of our concerns related to the site plan.

Judy J. Daniel, AICP  
Team Leader, Rural Areas  
Page 3 of 3

We continue to have numerous concerns related to the proposed activities beyond those raised by the Board of Appeals, however, we recognize that your review is of necessity limited by the language of the remand.

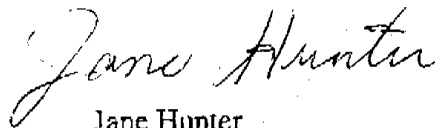
Please call either of us if you wish to discuss the issues raised in this letter or if you require additional information while preparing a response to the Hearing Examiner's recent correspondence.

Regards,




Robert Thommasen  
(301) 916-3199

cc: William Chen, Esq.



Jane Hunter  
(301) 349-5432



Stephanie R. Egly  
John D. Egly  
301-253-8912

Attachment 1 - Evaluation of the Record with respect to the Board of Appeals Remand for Twin Ponds, S-2527, S-2528, S-2529

1. The nature and extent of contractor operations

- a. Neither the Statement of Operations nor Ms. Leatham's response specifies how many employees contractors may bring to the site or the number and types of equipment they might bring. Nor does it specify the range of activities in which they might engage. In fact, her response raises the potential for specialized equipment to "muck" out the ponds - equipment not addressed in the Statement of Operations. Mr. Hughes describes "contractors" coming to the site in the role of customers - either picking up plants and materials or disposing of yard waste in his testimony. Examples can be found on pages 25, 27, 73, and 77 of the transcript of his testimony. In Ms. Egley's line of questioning from pages 80-85 both she and the witness discuss the trucks that "contractors" will bring to the site for the disposal of yard waste. This material belies the assertion in Ms. Leatham's letter of February 17, 2004, that each reference by the applicant to "independent contractor," "private contractor" and "outside contractor" refers to those contractors that would enter the property to perform general maintenance activities on-site on behalf of Twin Ponds Farm.

The Board's remand inquires about "the nature and extent of *contractor* operations, specifically: the number of employees, the number and types of equipment, and the types of activities." Their question is not limited to private, independent and/or outside contractors. The applicant's testimony on the record includes references to "contractors" other than those providing services on-site on behalf of the Twin Ponds property.

- b. No definition is provided for the phrase "outside contractors." In condition 20 of S-2527, the language refers to "outside contractors used to perform specialized tasks which cannot be performed by employees dedicated to any of the special exceptions (such as pesticide applications, etc.)" This language implies some limits on the role of outside contractors but applies only to the nursery operation.
- c. Except for the language cited above, the decisions make no distinction between outside contractors who:
- may come to the property to perform tasks associated with the uses on-site,

- the landscape contractors or subcontractors who may come to the site to obtain work assignments or materials to be used on other sites and
- the contractor customers who will come to the site to dispose of materials at the compost operation.

The combination of these three groups of contractors has the potential to yield a considerable number of trips to and from the site. As stated in the remand, testimony from the applicants has not yet addressed these questions. These questions have not been adequately addressed in any written responses from Ms. Leatham.

- d. The recommendations place a limit on the number of "outside contractors" that may be on the property on any given day but does not limit the number of employees that any contractor may bring to the property.
- e. In condition 7 of S-2527 there is a reference to an "independent contractor" who processes materials for the manufacturing of mulch and composting. Is this an "outside contractor" subject to the limit of one per day (See a. above)? Condition 26 of S-2529 refers to "haulers." Are these also "outside contractors" or are they classified as "deliveries and/or pick-ups"
- f. The limits on deliveries and pick-ups appear to be separate from limits on "outside contractors" coming to the site.
- g. There are conflicting limits on equipment to be used on-site when compared to the limits on "outside contractors" and the use of track vehicles.
  - Condition 7 of S-2527 (Nursery) limits deliveries to the subject property to two per day. Only three track vehicles may operate on-site per day. Of the three track vehicles, two will be used by the "independent contractor" responsible for processing materials for the manufacturing of mulch and composting.
  - Condition 26 of S-2529 permits the use of "up to two front-end or track loaders to manage and move materials (as used as part of the nursery operation and farm operation)." Condition 26 also says that "an additional two loaders may be brought to the site by haulers...provided the loaders are not stored on site."

Does this mean that the limit on equipment use applies only to equipment that is part of the on-site operation, not equipment brought on-site by "outside contractors," "contractors," "independent contractors" or "haulers"?

2. Applicable parking requirements for the uses and compliance of the applications with those standards

The record contains little information on the proposed parking beyond its location and size. There is no testimony about the compliance of the parking area with the code. This is of specific concern related to the landscaping business. The staff report (Exhibit 36, p. 20) says that the area designated for parking trucks and equipment is approximately 200 feet from the nearest property line. The applicant testified that the trucks would be stored in the existing gravel parking lot along the gravel road, the same lot that would be used by employees. This lot is located some 650 feet from the nearest property line. Therefore, the staff conclusion that parking would be adequate is not based upon the parking arrangements proposed by the applicant at the hearing.

The Montgomery County Zoning ordinance does not contain specific on-site parking requirements for any of the uses proposed in these special exceptions. Given the mixed-use nature of the operations and the concerns about run-off and stream impacts from the site, it is imperative to address this issue. The applicant has proposed one parking lot containing about 20 spaces to serve all three special exceptions and the existing farm operations.

Preliminary analysis shows that the Hearing Examiner's recommendations permit as many as 31 full-time and two part-time employees of the special exception uses on the site. This number does not include any of the members of the LCC, employees of the farm operations nor does it include any "outside contractors," "contractors," "independent contractors" or "haulers."

In addition the Hearing Examiner's recommendations permit up to 12 trucks, 12-13 additional pieces of specified equipment and an unlimited number of trailers on the site. No limit is placed on equipment such as tractors, mowers, plow blades and similar equipment typically used in the special exception activities.

There is also an ongoing farm operation at the site, which the applicant maintains is not subject to the special exception limits. An unknown and unlimited number of vehicles connected with the farm operations will also be on site.

A parking area for 30-50 spaces, at a minimum, will be necessary to accommodate the motor vehicles associated with the special exception activities proposed. The Montgomery County ordinances require that the parking area be located with 500 feet of the pedestrian entrance to the uses - which in this case would likely be the office, storage buildings and fenced outside storage yard. The proposed parking area is clearly located farther from these buildings and operations and no pedestrian connections are depicted.

The parking area to serve employees of the each business on-site should be in a different location than the parking area for equipment used in each business. The parking and storage areas for equipment should be secured.

3. Whether subdivision is required with respect to Case S-2528

If any of the special exceptions are approved, each special exception should be associated with a specific area of the property, each having a separate lot, for the purposes of clarity and enforcement. This will have the additional benefit of allowing county staff the opportunity to review the final activities and site plan to assure compliance with any final decision.

Only one business should be approved on any one lot. Each of the three existing partners in the LLC operates a separate business today. If, as the testimony suggests, each partner will continue to operate his own business, each should be located on a separate lot with an associated special exception approval so that the equipment associated with each use can be accounted for. If more than one landscape contractor business operates from the site, each business should be located on a separate lot and be subject to a separate special exception case.

4. The configuration of the entry and exit control proposed for Mt. Nebo Road

The testimony in the case and in the Statement of Operations indicates that the existing gravel road will be used for ingress and egress. The condition for a "pork chop" entrance relates to the gravel drive, as does the proposal to erect a directional sign. However, there are two existing entrances to this site:

- The gravel drive serving the parking lot and the larger area of the compost operation, and
- The asphalt drive serving the existing house, storage buildings, the fenced area for the landscape contractor and a portion of the compost operation.

There are no internal roads, existing or proposed, to connect these two drives or the areas of the property that they serve.

Addressing the configuration for entry and exit control requires additional explanation and testimony regarding the future of the asphalt drive and the network of internal drives that will service the site. Or, will internal site traffic traveling between the two areas use Mt. Nebo Road? How will trucks stored in the parking area get to the landscape operation, the storage buildings and the nursery stock necessary for their work off-site? How will the equipment stored in the barns get to the compost areas without turning left on Mt. Nebo Road?

Attachment 2 - Evaluation of Phasing Plan and Special Exception Site Plan

The site plan shows three composting areas. The existing 3.65 acre compost area, located in the east corner of the property as well as a 1.38 acre parcel and a 1.02 acre parcel located on the north central and southeast edges of the property, respectively. Total acreage proposed for composting is 6.05 acres, less than the original requested proposed amount of 9 acres. The applicants' recommended conditions in Exhibit 161(a-2) request that that "Operations onsite are limited to the following .... c. Phase 1 of the Manufacture of Mulch and Composting Operation."

The phasing plan shows:

Phase 1	Nursery stock	2.00 ac
	Compost	3.65 ac
Phase 2	no measured area shown on Phasing Plan	
Phase 3	Nursery Stock Area	2.64 ac
	4 other areas	26.2 ac

The Phasing Plan describes five areas in Phase 3. The following is a comparison of these areas to the uses shown on the Site Plan. The areas proposed for Phase 3 consist of a Nursery Stock Area and four areas of unspecified use. These areas are described below moving clockwise around the property, starting at the paved driveway at Mount Nebo Road.

1. Nursery Stock Area (2.64 ac), located on the northwest corner of the property, adjacent to Mt. Nebo Road.

The Site Plan shows this area as a portion of the Nursery Stock (7.40 ac).

2. Shown as of soybean and winter wheat crops on the Phasing Plan, 5.72 acres, located east of, and adjacent to, the existing farm buildings.

The Site Plan shows this area as 4.70 ac of soybean and winter wheat crops and 1.02 ac of Compost (wind-ROWS).

3. Shown as soybean and winter wheat crops on the Phasing Plan, 1.38 acres, located west of the existing compost operation, between the gravel road (north) and Outlot A of Hammer's Grove (south).

The Site Plan shows this area as 1.38 ac of Compost (wind-ROWS).



4. Shown as soybean and winter wheat crops on the Phasing Plan, 17.67 acres, located south of the gravel road from the twin ponds westward, up to the forest buffer along Mount Nebo Road. The Phasing Plan shows a modest buffer between this use and the Egly parcel to the east and north. This use is located adjacent to the entire east boundary to a significant portion of the northern property boundary of the Egly parcel.

The Site Plan also shows this area of 17.67 acres of soybean and winter wheat crops.

5. Shown as soybean and winter wheat crops on the Phasing Plan, 1.43 acres, located in a portion of the property bounded by Mount Nebo Road to the west, the Egly property to the north and Lot 2 of the Hamer's grove parcel to the south.

The Site Plan also shows this area of 1.43 acres as soybean and winter wheat crops.

The Phasing Plan and Site Plan do not show any access between the paved drive and the gravel drive on the property. The restricted access onto Mount Nebo Road, as required by the recommended conditions, is not shown on the Phasing Plan or the Special Exception Site Plan.

CHEN, WALSH, TECLER & MCCABE, LLP

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\*ALSO ADMITTED IN THE  
DISTRICT OF COLUMBIA

1-800-229-9510

June 17, 2004

Montgomery County Planning Board  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Derick P. Berlage

Re: Special Exception Case Nos. S-2527, S-2528, and S-  
2529, Petitions of Twin Ponds Farm, LLC, Before the  
Board of Appeals for Montgomery County, Maryland

Dear Chairman Berlage and Board members:

During the Board's discussions on June 10, 2004, certain questions arose as to the conditions for the proposed Twin Ponds Farm special exceptions. Given those questions, the following documents are submitted to assist the Board in this matter:

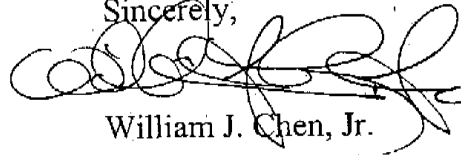
1. A list of all special exceptions for Wholesale Horticultural Nurseries approved by the Montgomery County Board of Appeals;
2. A list of all Landscape Contractor special exceptions approved by the Montgomery County Board of Appeals;
3. A list of all Mulch/Compost Manufacturing special exceptions approved by the Montgomery County Board of Appeals; and
4. A tabular list of all Hearing Examiner and M-NCPPC technical staff proposed conditions for all three special exceptions identifying those conditions which require on-going enforcement and those which involve a on-time requirement.

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CHEN, WALSH, TECLER & MCCABE, LLP.

Hopefully, the enclosures will assist the Board in its consideration of this very important matter.

Sincerely,



William J. Chen, Jr.

WJC:mmml

Enclosures

- cc: Judy Daniel (w/encls.)
- Martin Klauber, Esq. (w/encls.)
- Erica A. Leatham, Esq. (w/encls.)
- Dolores Milmoie (w/encls.)

# Wholesale Horticultural Nursery Special Exceptions

## Listing of Appeals by "Type of Use" and Date

17-Jun-04

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-1437	John D. Hyman	2630 Spencerville Rd.	Spencerville, MD.	Special Exception	Wholesale Nursery & Landscape Contracting Business	Denied	4/17/1987
S-1738	Charles & Joan Pheelan	702 Lamberon Drive	Silver Spring, Maryland	Home Occup/Insurance	continue operation of family run wholesale insurance business	GRANTED	8/31/1989
S-1782	Potomac Nurseries, Inc	9545 River Road	Potomac MD	Special Exception	Retail nursery or garden center/landscape contractor/wholesale nursery or garden center	pt granted, pt denied	2/22/1990
S-2070	Johnson Enterprises	Darnestown Road	Darnestown, MD	Special exception	to permit replacement and operation of wholesale/retail nursery, greenhouse, garden center	granted	11/29/1993
S-2108	Bethke Landscaping, Inc.	16650 Norwood Rd.	Sandy Spring, MD	special exception	Horticultural Nursery(retail & wholesale nursery & landscape contractor)	dismiss (withdrawn)	8/5/1994

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# Wholesale Horticultural Nursery Special Exceptions

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SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2181	Environmental Quality Resources	15721 New Hampshire Avenue	Silver Spring MD	Special exception	wholesale nursery/greenhouse ; and landscape contractor		5/12/1995
S-2200	Joseph T. VanHouten	14041 Travilah Road	Rockville MD	Special Exception	to permit a retail nursery or garden center & a wholesale nursery and greenhouse		10/16/1995
S-2390	Farm and Home Service, Inc.	23000 Davis Mill Road	Germantown MD	Special Exception	to permit a horticultural nursery, retail and wholesale	Granted	4/20/1999
S-2527	Twin Ponds Farm, LLC c/o John Hughes	15315 Mt. Nebo Road	Poolesville MD	Special Exception	to permit the operation of a wholesale nursery. The petitioner proposes to plant nursery stock for sale to landscape contractors on approximately 8 acres of the 77 acre subject property. The proposed hours of operation are Monday through Friday during		6/3/2002

# Wholesale Horticultural Nursery Special Exceptions

SAC Case No	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-874-A	Nicholas Strates	1021 Norwood Road	Silver Spring MD	Special Exception	Modification of a horticultural nursery for retail and wholesale use.	reopened	8/30/2002

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# Landscape Contractor Special Exceptions

## Listing of Appeals by "Type of Use" and Date

14-Jun-04

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-1831	Melvin H. Glover, Jr.	23200 Stringtown Road	Clarksburg, Maryland	Special Exception	proposed landscape contractor	granted	10/19/1990
CBA-1201	Good Hope Garden, Inc.	14907 Good Hope Road	Silver Spring MD	Modification	to permit the addition of a landscape contractor use, expand an existing shade structure and obtain approval for the existing perimeter fence		11/30/2001
S-1417	Apple Landscaping	28601 Clarksburg Rd.	Damascus, MD.	Special Exception	Landscape Contractor	Granted	3/5/1987
S-1431	R.J. Landscape Contractors, Inc.	15915 Darnestown-Germantown Rd.	Germantown, MD.	Special Exception	Landscape Contractor	Granted	4/10/1987
S-1438	D. & A. Dunley Landscapers	17030 Longcraft Rd.	Gaithersburg, MD.	Special Exception	Landscape Contractor	Granted	4/10/1987
S-1496	I.D. & Karen Barrier/George Boot	22501 & 22415 Whites Ferry Rd.	Dickerson, MD.	Special Exception	Landscape Contractor	Denied	10/30/1987
S-1570	John P. Adams	1502 Jasper St.	Silver Spring, MD.	Special Exception	Landscape Contractor	Granted	6/9/1988

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# Landscape Contractor Special Exceptions

SA Case No	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-1580	Jeff L. Miskin	8820 Hunnmaster Rd.	Gaithersburg, MD.	Special Exception	Landscape Contractor	Granted	6/29/1988
S-1611	William Eger, Jr./Ronald Bethke	1017 Gold Mine Rd.	Brookeville, MD.	Special Exception	Landscape Contractor	transfer granted	9/13/1988
S-1629	Harland J. Shoemaker & Sons, Inc	18811 Darnestown Rd.	Poolesville, MD.	Special Exception	Landscape Contractor	Granted	10/29/1988
S-1641	David & Evangeline M. Dunlevy	Morrow Rd.	Poolesville, MD.	Special Exception	Landscape Contractor	Granted	12/6/1988
S-1679	S. Kurt Temp	13860 Travilah Road	Rockville MD	Special Exception	a landscape contractor	Granted	3/2/1989
S-1700	Stephen D'Amato	13841 Robey Rd.	Silver Spring, MD.	Special Exception	Landscape Contractors		4/28/1989
S-1713	T & J Lawn Services, Inc.	22610 Georgia Ave.	Brookeville, MD.	Special Exception	Landscape Contractor	Granted	6/7/1989
S-1732	Elmer Rossi	2925 Maplehill Road	Burtons ville, Maryland	SE/Home Occup	Home occupation/landscape contractor	dismissed	8/16/1989
s-1745	David M. Henry	13761 Travilah Road	Rockville, MD	special exception	landscape contractor	Granted	9/11/1989
S-1845	B. Lancaster, C. Lancaster	23820 Frederick Road	Clarksburg, Maryland	Special Exception	retail nursery and landscape contractor	granted	12/19/1990

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# Landscape Contractor Special Exceptions

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-1861	Michael & Mari- Ellen Uzzo	7210 Hawkins Creamery Road	Gaithersburg, Maryland	Special Exception	landscape contractor and retail nursery	granted	4/9/1991
S-1895	Richard L. Clark, Jr.	5826 Olney- Layonsville Road	Gaithersburg, Maryland	Special Exception	landscape contractor & retail nursery	granted	8/16/1991
S-1947	Paul Saiz t/a Maryland Landscape	20310 Georgia Avenue	Brookville, Maryland	special exception	landscape contractor	granted	4/17/1992
S-2108	Bethke Landscaping, Inc.	16650 Norwood Rd.	Sandy Spring, MD	special exception	Horticultural Nursery/retail & wholesale nursery & landscape contractor)	dismiss (withdrawn)	8/5/1994
S-2160	Clarkson Sherwood, Jr.	20315 Georgia Ave.	Brookville, MD	special exception	retail garden center, landscape contractor, manufacture of mulch	dismissed	2/17/1995
S-2224	Deborah Fling	13109 Piney Meekinghouse Road	Rockville MD	Special Exception	a landscape contractor and the manufacture of mulch	Granted	2/26/1996
S-2266	Kevin P. Clair	18001 Bowie Mill Road	Derwood MD	Special Exception	to permit a landscape contractor	Granted	1/24/1997
S-2289	Kalen Corporation	8521 Gue Road	Damascus MD	Special Exception	Landscape contractor	Granted	7/3/1997

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# Landscape Contractor Special Exceptions

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2290	Kuhn Tree Service	1220 Briggs Chaney Road	Silver Spring MD	Special Exception	to permit a landscape contractor	Granted	7/7/1997
S-2429	Allen Holbrook Corporation	23820 Frederick Road	Clarksburg MD	Special Exception	to permit the operation of a landscape contractor	Dismissed	3/6/2000
S-2490	Colonial Landscape & Design Inc.	1101-A Ednor Road	Silver Spring MD	Special Exception	to permit the continued operation of a landscape contractor. The petitioner proposes to continue to use the Barn structure as an office for 2 to 5 administrative staff on weekdays only. The Barn is located on two acres of the five acre subject property	Denied	8/31/2001

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# Landscape Contractor Special Exceptions

SAC Case No	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2506	East Coast Landscape, Inc.	2000 Spencerville Road	Spencerville MD	Special Exception	to permit the operation of a landscape contractor on the northern 5.86-acre section of the subject property. The petitioner proposes to construct three, 35 foot tall buildings: (1) 80' x 50' office, (2) an 80' x 40' storage building and (3) an 80' x 60'	Granted	1/11/2002
S-2527	Twin Ponds Farm, LLC c/o John Hughes	15315 Mt. Nebo Road	Poolesville MD	Special Exception	to permit the operation of a wholesale nursery. The petitioner proposes to plant nursery stock for sale to landscape contractors on approximately 8 acres of the 77 acre subject property. The proposed hours of operation are Monday through Friday during		6/3/2002

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# Landscape Contractor Special Exceptions

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2590	Scott D. Brown	26721 Purdum Road	Damascus, MD	Special Exception	Landscape contractor	Denied	8/19/2003
S-2605	Francis and Maria Romero	14680 Sugarland Road	Poolesville, Maryland	Special Exception	Landscape contractor together with existing residential/agricult ural use		1/29/2004

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# Mulch/Compost Mfg Special Exceptions

## Listing of Appeals by "Type of Use" and Date

14-Jun-04

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2160	Clarkson Sherwood, Jr.	20315 Georgia Ave.	Brookville, MD	special exception	retail garden center; landscape contractor; manufacture of mulch	dismissed	2/17/1995
S-2224	Deborah Fling	13109 Piney Meetinghouse Road	Rockville MD	Special Exception	a landscape contractor and the manufacture of mulch	Granted	2/26/1996
S-2529	Twin Ponds Farms, LLC c/o John Hughes	15315 Mt. Nebo Road	Poolesville MD	Special Exception	The petitioner proposed to manufacture mulch and compost for sale to on approximately 9 acres of the 77 acre subject property. The hours of operations are Monday through Friday during daylight hours.		6/3/2002

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# Mulch/Compost Mfg Special Exceptions

## Listing of Appeals by "Type of Use" and Date

14-Jun-04

SACaseNo	Petitioner	Address	City/State	Type of Case	Use Requested	Disposition	Application Filed
S-2529	Twin Ponds Farms, LLC c/o John Hughes	15315 Mt. Nebo Road	Poolersville MD	Special Exception	The petitioner proposed to manufacture mulch and compost for sale to on approximately 9 acres of the 77 acre subject property. The hours of operations are Monday through Friday during daylight hours.		6/3/2002

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S-2527

S-2528

S-2529

Enforcement

1. Petitioner is bound by testimony, exhibits, attorneys' representations, to the extent that the evidence and representations are identified in this report and recommendation.

Same as S-2527.

Same as S-2527.

On-going

2. Petitioner is bound by all submitted statements and plans, as revised.

Same as S-2527.

Same as S-2527.

On-going

3. Commercial vehicle access to the site is restricted to left turn ingress and right turn egress onto Mt. Nebo Road via a channelized island. The design of the channelized island for the southernmost driveway must be approved by the Rustic Roads Advisory Committee. No special exception related truck or other heavy vehicle traffic to and from the site, may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.

Same as S-2527.

Same as S-2527.

On-going

Only employees working primarily in the business office (up to 4 employees), those with business in the office, and the 3 managing partners of the Twin Ponds, LLC may use the northern most driveway and park in that area.

Same as S-2527.

Same as S-2527.

On-going

Trucks picking up trees or other plant materials at the wholesale nursery must enter via the channelized driveway and access the nursery loading area via the interior drive adjacent to the vehicle parking area. After pick-up they must exit via the same route.

Same as S-2527.

Same as S-2527.

On-going

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S-2527	S-2528	S-2529	Enforcement
<p>4. For the three special exceptions, a total of one outside contractor may be on the property per day, and no more than 10 (ten) per month. This contractor may have <del>more than one</del> up to five employees to carry out work on the site. The type of work that can be anticipated to be performed by outside contractors on the site will include (but not necessarily be limited to) tasks related to the care and maintenance of the property, equipment, or structures; or to provide special limited and occasional services related to the business process such as maintenance of the gravel driveways, "mucking out" sediment traps and ponds on the site, or processing of large plant material. Such activities are anticipated to be infrequent, generally on an as-needed basis (usually annually or semi-annually). No third party contractor deliveries of materials for customers or storage are permitted unless specifically authorized by the terms of the special exceptions.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>On-going</p>
<p>5. Operations on the site are limited to the following, as shown on the amended Phasing Plan by the Petitioner: a. Phase 1, 2 and 3 of the Wholesale Nursery operation; b. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles, all of which must be stored on-site; c. Phase 1 of the Manufacture of Mulch and Composting operation.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>On-going</p>
<p>6. The Petitioner shall install the landscaping described on the Revised Site Plan (Exhibit 154) prior to commencement of operations and shall properly maintain these landscaped areas and promptly replace any dead trees. A majority of the trees for screening along the boundary line with the Thomassen property shall be Thuja "Green Giant" evergreens. At the time of installation, all buffer trees shall be at least 5 feet in height above the top of the proposed 2 foot to 3 foot berm (for a total height above the general grade of 7 to 8 feet).</p>	<p>6. Same as S-2527 20. Petitioner shall install plantings in accordance with the Site Plan (Exhibit 154).</p>	<p>Same as S-2527</p>	<p>One-time</p>



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S-2527	S-2528	S-2529	Enforcement
<p>7. The only track vehicles used on the property (1) a loader and (2) vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations.</p>	<p>Same as S-2527</p>	<p>Same as S-2527 and (See Condition 26)</p>	<p>On-going</p>
<p>8. No burial or burning of any material on the Subject property.</p>	<p>Same as S-2527.</p>	<p>No burial or burning of any material on the subject properties of these special exceptions.</p>	<p>On-going</p>
<p>9. Any relevant federal, state or county agency has the right to inspect any special exception pursuant to the standard procedures for access to the property.</p>	<p>Same as S-2527</p>	<p>Same as S-2527</p>	<p>On-going</p>
<p>10. Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. CLC shall include adjacent and confronting property owners and a representative from Sugarloaf Citizens Assoc.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>On-going</p>
<p>11. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. The Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 10, above. In addition, all logs shall be compiled annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>On-going</p>
<p>12. Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel, inspected regularly and replaced as needed.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>On-going</p>
<p>13. Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.</p>	<p>Same as S-2527.</p>	<p>Same as S-2527.</p>	<p>One-time</p>

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S-2527	S-2528	S-2529	Enforcement
<p>14. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and erosion Control permit and any building permit. (If required by the Department of Permitting Services.)</p>	<p>Same as S-2527.</p>	<p>14. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and erosion Control permit or any building permit. (If required by the Department of Permitting Services.) The Final Forest Conservation Plan must show reforestation of the stream valley buffer in the area of the existing compost piles. No new forest clearing is allowed. The Plan must also shall indicate placement of a Category One conservation easement on all areas required for forest retention by the Forest Conservation Law. If the applicant is found to have cleared area on the adjoining property to the north, the applicant must work with that property owner to reforest any cleared area on that property.</p>	<p>One-time</p>
<p>15. If required by Chapter 19 of the Montgomery County Code, 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.</p>	<p>Same as S-2527.</p>	<p>16. Stormwater management and Sediment and Erosion Control Plans must be consistent with the Final Forest Conservation Plan approved by the Department of Permitting Services prior to issuance of any Sedimentation and Erosion Control permit. The Permittee must obtain approval of the required Sediment and Erosion Control Permit by Montgomery County Department of Permitting Services must be based on the plan prepared by the Natural Resource Conservation Service of the Montgomery County Soil Conservation District. The Sediment And Erosion Control plan shall include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins, and another buffer area in the form of a grassed filter strip and utilizing some of the compost windrows as diversions. Approximately 1/2 acre must be removed from compost production and placed into conservation practices. All sedimentation and control measures must be located entirely outside the stream valley buffer.</p>	<p>One-time</p>

S-2527	S-2528	S-2529	Enforcement
<p>16. Hours of operation for delivery or pick-up 7:00 AM to 7:00 PM Monday thru Friday. 7:30 AM to 4:30 PM Saturday, provided that employees may arrive between 6:45 and 7:00 AM. Operation of machinery or departures to job sites is not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.</p>	<p>16. Hours of operation are restricted to 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM on Saturday, provided that employees may arrive at the property between 6:45 and 7:00 AM. Operation of machinery or departures to job sites are not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.</p>	<p>15. Hours of operation for the operation of general equipment for this use are limited to 8:30 AM to 4:30 PM (or daylight hours, whichever is less) Monday through Friday. However, deliveries may occur between 7:00 AM and 7:00 PM, Monday through Friday. Saturday operations shall be limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation; provided that up to two employees will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.</p>	<p>One-time</p>
<p>17. Any person or entity handling, storing or spraying any pesticides or fertilizer must have a Certified Private Applicator Certificate issued by the Maryland Department of Agriculture. Copies of all required notifications regarding application of pesticides and herbicides will be forwarded to the address specified for the Community Liaison Committee established for these special exceptions.</p>			<p>On-going</p>
<p>18. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pick-ups from the property (after initial installation of all plant material) excluding deliveries and/or pick-ups via the (12) twelve vehicles used for the Landscape Contractor Special Exception operation that are anticipated to make no more than one round trip per day. Only one vehicle per month may be attached to a tractor-trailer; all other vehicles may be no larger than a thirty cubic yard capacity truck. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.</p>	<p>18. This special exception is limited to using no more than twelve (12) commercial pick-up trucks, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 lbs. Trailers may be attached to such vehicles that are anticipated to make no more than one round trip per day, in addition to one tractor-trailer per month to make deliveries. Any tractor-trailer visiting the site in connection with this use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.</p>	<p>17. (part) No more than eight (8) vehicles per day may make deliveries and/or pick-ups from the property, excluding deliveries and/or pick-ups via the 12 (twelve) vehicles used for the Landscape Contractor operation (that are anticipated to make no more than one round trip per day). 19. Only one tractor-trailer per month may visit the site in connection with this special exception. This visit may not be on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.</p>	<p>On-going</p>

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S-2527	S-2528	S-2529	Enforcement
<p>19. Petitioner shall keep log of all vehicles, except employees' personal vehicles, entering or leaving the property. Time of day the vehicle enters or departs, truck type and size, type of load, truck number (Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for vehicle (e.g. Petitioner, third party contractor, etc.) In addition to company vehicles, the log will record vehicles of customers delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.</p>	<p>18 (cont') The parking/storage area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan. The parking area must be expanded to create a parking area for 30 vehicles in order to accommodate anticipated vehicles of workers and storage for the 12 trucks associated with this use, and occasional use by customers or contractors performing tasks as defined and limited in Condition 4. Equipment and supplies to be used for this special exception must be stored so that the equipment is not visible from the street, in the locations noted on the Site Plan.</p>	<p>17. (part) Petitioner shall keep log of all vehicles (except employees' personal vehicles) entering or leaving the property. Time of day the vehicle enters or departs, truck type and size, type of load, truck number (Petitioner's vehicles), as well as the special exception to which the trip is assigned, entity responsible for vehicle (e.g. Petitioner, third party contractor, etc.) and the times and dates of each delivery and/or pick-up. In addition to company vehicles, the log will record commercial vehicles of customers delivering or picking up materials from the site as well as commercial vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.</p>	<p>On-going</p>

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S-2527	S-2528	S-2529	Enforcement
<p>20. No more than two (2) employees (who are primarily employees of the landscape contracting operation) may be used to maintain the Nursery, excluding the three individual members of the Twin Ponds LLC and the occasional use of outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4.</p>	<p>21. Petitioner is limited to no more than twenty-eight (28) employees for this special exception, excluding the three individual members of the Petitioner-LLC. This use is also authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4, and outside contractors.</p>	<p>28. Employees associated with this use are limited to one full-time employee to manage the operation who must be a qualified certified compost operator as described in Condition 25), with assistance from up to two (2) additional employees (who are primarily employees of the landscape contracting operation). This excludes excluding the three individual members of the Petitioner-LLC. However, an independent contractor hired to perform a raw materials processing operation associated with this special exception on an occasional basis for the use as defined in Condition 4 and limited in Condition 18, may bring up to three (3) additional employees employed by an outside party--are permitted to assist an independent contractor associated with this special exception. And the use is authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions as defined and limited in Condition 4.</p>	<p>On-going</p>
<p>21. Equipment to be used for this special exception shall be stored within the equipment storage area or storage structures so that the equipment is not visible from the street. In the locations noted on the Special Exceptions Site Plan, Vehicles to be used and stored on site will include the following: (1) similar machinery; (1) a front end loader and (2) a "Bobcat" with spade attachment (both of which are also used on the farm and/or mulch/composting operation).</p>	<p>18. (cont.) Equipment to be stored on the site will include the following, or similar: 12 trailers for hauling equipment; lawn mowing equipment, snow removal equipment, and a assorted smaller equipment. Materials to be occasionally stored on the site will include auxiliary supplies such as mulch and plant materials required for larger jobs.</p>	<p>26. Equipment to be used and/or stored on the site will include the following, or similar machinery:            (1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm) to be stored in the mulch manufacture area.            (2) a processor run by a typical tractor/combine diesel engine (such as a "Bendit" recycler) to break down raw materials into smaller sizes (this item will be transported to site and may be left in the mulch manufacture area on a temporary as needed basis consistent with the limits requirements for use of the item in of Condition 18 above (no more than 3 weekdays days per month);            (3) up to two tractors (also used on the farm) to manage and move materials that will generally be stored in the equipment storage buildings behind the office structure;</p>	<p>On-going</p>

S-2527

S-2528

S-2529

Enforcement

22. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Wholesale Horticultural Nursery Special Exception operation, the building must be relocated along the same axis, adjusted to meet the setback required in the RDT Zone and subdivision will be required.

19. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis, adjusted to meet the setback required in the RDT Zone and subdivision will be required.

22. Prior to implementation of this special exception, the existing residential tenancy of the dwelling unit on the property shall be terminated in order to provide sanitary facilities for the employees of the landscape contractor operation.

26. (cont'd) (4) up to two front-end or track loaders (2.5 - 5 cubic yard bucket) to manage and move materials (see also used as part of the nursery and farm operation that will generally be stored in the mulch manufacture area;  
 (5) an additional two (2) loaders may be brought to the site on an as needed basis to expedite organic debris material processing by independent contractors as discussed in Condition 18 hereafter when material or equipment is taken to the site, provided the loaders are not stored on the site; and  
 (6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product to be stored in the proximity of the pole barn in the mulch manufacture area.

One-time

One-time

18. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month that will usually be sequential. Use of this machine (as described in condition 26 below) is limited to weekdays between 8:30 AM and 4:30 PM. A log, in the same form as the sample log submitted to the record, shall be maintained to identify the days and hours of operation of the processor (see Exhibit 150).

On-going

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S-2527	S-2528	S-2529	Enforcement
		<p>20. The Petitioner must receive all permits required by state or county agencies, including, but not limited to, a Natural Wood Waste Recycling Permit from MDE and registration to create a "Soil Conditioner" product (i.e., the compost) from the MD Dept. Agriculture.</p>	One-time
		<p>21. The operation must implement the fire prevention plan below: a. No smoking is permitted on the site of this special exception. b. No burning of wood waste is permitted on the site of this special exception. c. A "dry" fire hydrant must 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 for fire suppression purposes. Water from the ponds may not be used for any other purpose. d. The Petitioner shall maintain the existing gravel road (Exhibit 152). Such maintenance shall include, but not be limited to, monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as appropriate and as permitted by the Department of Permitting Services in accordance with the Statement of Operations. e. The Petitioner must implement dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations (Exhibit 152). f.</p>	On-going
		<p>22. The Petitioner may not accept any manure for use in the Manufacture of Mulch and Composting operation.</p>	On-going
		<p>23. The Petitioner shall comply with the odor control measures in the Statement of Operations (Exhibit 152).</p>	On-going
		<p>24. A sign identifying the hours of operation for deliveries and pick-ups and the emergency number shall be posted at the entrance of the property. The sign shall conform to the draft sign submitted to the record (Exhibit 151).</p>	One-time

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S-2527	S-2528	S-2529	Enforcement
		<p>25. A duly qualified Certified Compost Operator (as defined by COMAR 15.18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, <u>and as well as</u> supervise the inspection and maintenance of the windrows. The Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.</p> <p>27. The Petitioner must comply with Chapter 3, Air Pollution, and Chapter 31B, Noise Pollution (for residential receiving areas), of the Montgomery County Code.</p>	<p>On-going</p>
		<p>29. The Petitioner must obtain an approved Nutrient Management Plan from the MD Dept. Agriculture for the special exception within six (6) months of approval.</p> <p>30. Prior to abandonment of the Manufacture of Mulch and Composting use, the Petitioner must remove all materials associated with that special exception use from the site. In addition, the Petitioner must re-seed and stabilize all areas used in the special exception composting operations, as prescribed by the MOCO Soil Conservation Service.</p>	<p>One-time</p>
		<p>31. Rows of finished compost product shall not exceed fifty (50) feet high, fifty (50) feet wide and one hundred (100) feet wide, excluding product stored under the existing pole barn. Rows of finished mulch shall not exceed twenty (20) feet high, twenty (20) feet wide and one hundred (100) feet long.</p> <p>32. All raw Natural Wood Waste must be processed within 30 days of receipt.</p>	<p>On-going</p>
		<p>33. No additives, such as phosphates, lime and fertilizer may be added to the compost or mulch.</p> <p>34. Petitioner shall only accept Natural Wood Waste as defined in COMAR 29.04.09.02(B)(4), except that no food materials shall be accepted. Any solid waste other than Natural Wood Waste shall be stored in the appropriate container and promptly removed from the property.</p>	<p>On-going</p>
			<p>On-going</p>