

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2636

PETITION OF FALL CREEK, LLC

OPINION OF THE BOARD
(Opinion Adopted July 27, 2005)
(Effective Date of Opinion: August 3, 2005)

Case No. S-2636 is an application for a special exception pursuant to Section 59-G-2.30 of the Zoning Ordinance for a landscape contracting business. The Hearing Examiner for Montgomery County held a hearing on the application on May 13, 2005, closed the record in the case on July 11, 2005, and on July 15, 2005, issued a Report and Recommendation for approval of the special exception.

The subject property is located at 23601 Laytonsville Road, Laytonsville, Maryland, 20882, in the RDT Zone.

Decision of the Board: **Special Exception granted, subject to the conditions enumerated below.**

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 27, 2005. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report and in the Board's opinion.
2. Petitioner shall obtain access permits, if necessary, from the Maryland State Highway Administration (SHA) for the following curb-cuts from Laytonsville Road, MD 108:

- a. The existing curb-cut that would be retained as a secondary access point to the historic house (*i.e.*, used as part of the business office); and
 - b. A new curb-cut located at the southern end of the site and proposed as the primary commercial access point to the designated parking areas.
3. Petitioner shall update the traffic study, if necessary, to satisfy the Local Area Transportation Review component of the APF test.
4. Petitioner shall obtain the necessary reviews and permits from the Montgomery County Department of Permitting Services (DPS) for the parking layout, circulation and use and occupancy of the on-site structures.
5. Petitioner shall keep the employee soccer field as a permanent feature of the site.
6. The number of employees permitted for this special exception is limited as follows:
 - a. The number of employees stationed on site shall be limited by the availability of on-site parking in accordance with the "Parking Lot Usage" chart on the Site Plan. The special exception is limited to a total of no more than 119 office employees on site.
 - b. The special exception is limited to no more than 120 field employees.
7. Approval of a final forest conservation plan at the time of subdivision should include an Agricultural Declaration of Intent for the residual portion of Parcel 666.
8. (a) Regular hours of operation for business trucks and equipment arrivals and departures from this site (**except for snow removal**) are limited to the hours of 6:00 a.m. to 6:30 p.m., Monday through Friday. Snow removal operations may proceed whenever needed.

(b) During the peak season, from April through November, and in order to meet customer needs, evening hours of operation on weekdays may extend beyond 6:30 p.m., but no later than 8:00 p.m. Weekend operations for the arrival and departure of field crews will also be permitted during peak

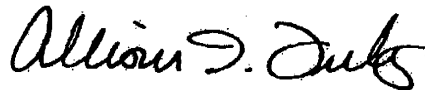
season, in order to respond to customer demands, from 7:30 a.m. to 6:30 p.m. on Saturday. There shall be no operations on Sunday. A revised Site Plan must be filed with the Board of Appeals, no later than September 7, 2005, correctly reflecting these hours of operation.

9. The use is limited to the following trucks: a maximum of 34 production trucks (15,000 to 26,000 gross vehicle weight), 10 pickup trucks or SUVs (called "Manager trucks" by the Planning Board), 2 commercial vehicles (55,000 gross vehicle weight) and 20 equipment trailers.
10. The storage of diesel fuel and gasoline is permitted above or below ground in the fuel station area identified on the site plan and will be stored and maintained in accordance with all applicable federal, state and local regulations.
11. Petitioner shall submit a revised photometric plan [Exhibit No. 5] to incorporate the annotated cut-sheets (as set forth in Exhibit 10 – Site Lighting Design Study – exhibit showing cut sheets and manufacturer's data) for all fixtures to be shown on the plan, no later than September 7, 2005.
12. The lighting on the site will be consistent with the hours of operation as stated in Condition No. 8, except that certain safety lights on buildings will remain illuminated as reflected in the final lighting plan to be submitted by Petitioner in conformance with Condition No. 12 above.
13. The Petitioner shall submit all subsequent government agency approvals related to development on the site to the Board of Appeals to be included in the record of the case, including but not limited to the Historic Preservation Commission Historic Work Permit approval, the Opinion of the Planning Board for the Preliminary Plan of Subdivision, State Highway Administration access permits (if necessary), and sign permits from the Department of Permitting Services.
14. The Petitioner shall maintain tree planting in the tree nursery blocks located to the north of the storage yard area of the special exception site plan, and not fully harvest the trees in these blocks, in order to maintain the screening provided by the tree nursery.
15. Petitioner shall comply with storm water and sediment control regulations of the Montgomery County Department of Permitting Services, and prior to approval of a preliminary plan of subdivision, a Storm Water Management Concept Plan must be approved.

16. Petitioner shall ensure that all chemicals stored on site for use in the business are stored in accordance with applicable Codes.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of August, 2005.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.