



**MEMORANDUM**

DATE: September 9, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Development Review Division

Cathy Conlon, Supervisor 
Development Review Division

FROM: Richard Weaver, Coordinator 
Development Review Division (301) 495-4544

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Approval of One Lot for an Approved Special Exception for a
Landscape Contractor Business

PROJECT NAME: Ruppert Nurseries/Fall Creek Farm East

CASE #: 120050900 (1-05090)

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT (G-835)

LOCATION: On the east side of Laytonsville Road (MD 108), approximately 1200
feet south of the intersection with Hawkins Creamery Road

MASTER PLAN: Agricultural and Rural Open Space (Adopted on March 15, 2005
to be included in the Olney Planning Area)

HEARING DATE: September 15, 2005

**STAFF RECOMMENDATION:** Approval, Subject to the Following Conditions:

1. Applicant is bound by the Board of Appeals conditions of approval for Special Exception Case No. S-2636.
2. Compliance with the conditions of approval for the forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.

3. The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
4. Compliance with the conditions of the MCDPS stormwater management approval dated July 21, 2005.
5. Compliance with conditions of the SHA approval letter dated August 24, 2005.
6. Compliance with conditions of the DPS, Well and Septic approval letter dated July 29, 2005.
7. Prior to recordation of plat, applicant to provide MNCPPC-Environmental Planning Division with a copy of recorded deeds showing Category I easements on off-site forest preservation areas as shown on the approved forest conservation plan.
8. Other necessary easements

BACKGROUND

The Planning Board reviewed and recommended approval of Special Exception No. S-2636 on April 28, 2005. Final approval of the Special Exception was granted by the Board of Appeals on August 3, 2005 (See Attachment 1). At the Planning Board's hearing, the Board considered a request to locate the landscape contracting business on the future lot of approximately 16.04 acres. The remaining acreage around the lot is currently managed as a tree nursery for Ruppert Nurseries, the applicant, and is not part of the preliminary plan application. This preliminary plan application is to create only the lot for the uses approved as part of the Special Exception application.

SITE and PROJECT DESCRIPTION:

The subject property is comprised of one parcel (P820) totaling 2.5 acres and a portion of another parcel (P666) totaling 13.53 acres for a total land area of approximately 16.0 acres (See attachment 2). The property is gently rolling. Laytonsville Road bisects the property into eastern and western portions and Hawkins Creamery Road bisects the western portion into north and south portions. Approximately 50 acres of the site is in the Great Seneca watershed a Use I-P watershed and the remainder is in the Hawlings River Watershed, a Use IV-P watershed and the Patuxent Area Management Area (PMA). A stream and stream buffer runs approximately along the eastern boundary line of the eastern portion of the property. There is approximately 32 acres of existing forest.

An historic house occupies the property (Jacob Allnut Farm 23/123), and will be incorporated into the overall layout of the landscape contracting operation. Historic Preservation staff reviewed the proposal at the Special Exception phase and has given conceptual approval for the project as an adaptive re-use (See attachment 3). A Historic Area Work Permit will need to be issued for the project if it proceeds.

The proposed lot is centrally located within the larger 179 acre property. As stated above, the remainder of the larger parcel (P666) is currently operated as a tree farm. An existing driveway to the house extends to Laytonsville Road (MD 108), a second driveway access point for the new structures to rear of the historic structure is proposed and has been approved for sight distance safety by the State Highway Administration (SHA). SHA has also made specific requirements for improvements to the lot frontage on Laytonsville Road; these requirements are reflected as a condition of approval.

The conditions of approval for the Special Exception detail the operation of the business and the structures proposed. To summarize, the operation will employ up to 119 employees on site and up to 120 field crew employees. Aside from the existing historic structure, there will be an equipment maintenance shop, office barn and building, two pole barns a fuel pump, storage bins and gravel parking. The applicant will also provide a soccer field for employee use. The Special Exception also places restrictions on the hours of operation.

TRANSPORTATION DISCUSSION:

A traffic study was prepared as part of the special exception application. The Countywide Planning Division-Transportation Planning Section found that with the appropriate improvements as required by the SHA, there would be no adverse effects on area roadways based on the stated traffic operations. The improvements, as required by a letter from SHA, are reflected in Condition #5 above.

ENVIRONMENTAL DISCUSSION

Environmental Guidelines

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 4-02273R was re-certified on April 5, 2004. The NRI/FSD identifies the environmental constraints on the subject property and areas of forest. The 179-acre site includes stream buffers, wetlands, and 32-acres of existing forest.

The Environmental Guidelines recommend a 10 percent impervious cap for all properties in the Patuxent River Watershed Primary Management Area (PMA) for which this site is partially located. Approximately 95 acres of the site is within the Primary Management Area. The application proposes 2.1 acres of impervious surfaces within the PMA, which corresponds to 2.2 percent of impervious surfaces. If in the future someone chooses to expand the imperviousness within the 16.04-acre lot or develop the nursery portion of the property into other uses only 7.4 acres of additional imperviousness would be allowed within the PMA.

Forest Conservation

The applicant submitted a preliminary forest conservation plan as part of the preliminary plan of subdivision. Under section 22A-12(f) of the Montgomery County Code properties in agricultural resource areas must plant or retain a certain percentage of the forest onsite. Section 22A-5(c) of the Montgomery County Code allows exemptions from the forest conservation requirements for tree nurseries. All but 16.04 acres of the 179-acre site is exempt from forest conservation. On the remaining 16.04 acres of property there is no forest and no stream buffers. The applicant will meet the conservation threshold by preserving 6.24 acres of existing forest on the "exempt" portion of the property. This forest will be permanently protected by a Category I forest conservation easement. The project complies with Section 22A of the Montgomery County Code.

MASTER PLAN DISCUSSION

This property is currently in the Agricultural and Rural Open Space Master Plan (AROS) but was recently adopted into the Olney Master Plan area on March 15, 2005. A future sectional map amendment will need to confirm the zoning and land use for this property. Neither the AROS plan nor the Olney Master Plan make recommendations on Special Exceptions for this area.

At the Planning Board hearing, Community Based Planning Division found that the use is permitted in the RDT zone and meets all development standards of the zone. Further, staff believes that the uses, as proposed, will not have adverse impacts to the surrounding properties.

CONCLUSION

Staff has reviewed the preliminary plan application for Ruppert Nurseries 120050900 (1-05090) for compliance with the Subdivision Regulations and Master Plan. Under the Subdivision Regulations, staff must make a finding that there are adequate public facilities available to serve the proposed uses. With approvals from the SHA for access and frontage improvement and DPS, for well and septic and stormwater management facilities, staff believes that the proposal is adequately served by public facilities. Transportation Planning believes that there will be no adverse impacts to the local roadway system.

The proposal is consistent with both the AROS and Olney Master Plans for RDT zoned properties which envision a continuation of agriculture and agriculturally related uses. Further, the lot created by this subdivision complies with the dimensional standards for lots in the RDT Zone. (See Table 1 – Checklist)

Attachments:

- 1) Board of Appeals Opinion
- 2) Vicinity Map
- 3) Preliminary Plan
- 4) Agency Approval Letters

Preliminary Plan Data Table and Checklist

TABLE 1

Plan Name: Ruppert Nurseries/Falls Creek Farm				
Plan Number: 1-05090 / 120050900				
PLAN DATA	Required	Provided	Verified	Date
Zoning	RDT	RDT	RW	Sept. 23, 2005
# of Lots	N/A	1	RW	Sept. 23, 2005
# of Outlots	N/A		RW	Sept. 23, 2005
Minimum Lot Area	40,000 sq.ft.	16.04 Acres	RW	Sept. 23, 2005
Lot Width	125 ft. at building	830 ft	RW	Sept. 23, 2005
Lot Frontage	25 at right-of-way	920 ft.	RW	Sept. 23, 2005
Setbacks (Main Bld.)				
Front	50 ft. min.	.Must meet min	RW	Sept. 23, 2005
Side	20/20 ft. min.	Must meet min	RW	Sept. 23, 2005
Rear	35 ft. min.	Must meet min	RW	Sept. 23, 2005
Height	50 ft. max.	Must meet max.	RW	Sept. 23, 2005
Max Resid'l d.u. or Comm'l s.f. per Zoning	One single family dwelling unit or agricultural uses	23,700 square feet commercial agriculture	RW	Sept. 23, 2005
Dev. Type				
Resid'l d.u.				
Comm'l s.f.		23,700 sq. ft.	RW	Sept. 23, 2005
MPDUs	N/A			
TDRs	N/A			
Site Plan Req'd?	No			
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	Yes – 920 ft.	RW	Sept. 23, 2005
Road dedication and frontage improvements	60 ft. from centerline	60 ft. from centerline	RW	Sept. 23, 2005
Environmental Guidelines	N/A	No buffers on-site	RW	
Forest Conservation	Yes	Met off-site	By agency memo attached	June 27, 2005
Master Plan Compliance	Yes	Conforms	RW	Sept. 23, 2005
Other	N/A			
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Yes	By agency memo attached	July 21, 2005 October 16, 2004
Water and Sewer or Well and Septic	Yes	Yes	By agency memo attached	July 29, 2005
Local Area Traffic Review	N/A	N/A	By agency memo attached	September 8, 2005
Fire and Rescue	No comments ¹			
SHA	Yes	Yes	By agency memo attached	August 24, 2005

¹ Agency received 30-day opportunity to review plans. No comments received within the review period is understood as acceptance of the plan.

**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.