



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MCPB
5/19/05
Item # 3

MEMORANDUM

DATE: May 13, 2005
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Development Review Chief
Carlton Gilbert, Zoning Supervisor *Ull*
FROM: Joel A. Gallihue, AICP (301) 495-2119 *JAG*
Development Review
SUBJECT: Special Exception Modification S-2506A: Landscape Contractor at 2000 Spencerville Road.
ZONE: RC / RE-1
MASTER PLAN: Cloverly Master Plan
FILING DATE: December 13, 2005
PUBLIC HEARING: May 24, 2005

STAFF RECOMMENDATION: Approval with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioners including the Special Exception Site Plan prepared by Oyster, Imus & Petzold.
2. The number of on-site employees are limited to nine (9).
3. The use is limited to seven (7) business vehicles and equipment consisting of the following:
 - a. Three (3) stake body trucks,
 - b. Two (2) pick-ups,
 - c. One (1) skid loader, and
 - d. One (1) tractor.
4. The hours of operation are 7 a.m. to 7 p.m., Monday through Saturday.
5. A modification of this special exception shall be required prior to

any change in ownership of the area identified as proposed Parcel B to determine any adverse effects upon Parcel B relating to the use.

6. The existing driveway shall remain as shown on the site development plan contingent on grant of setback waivers by the Board of Appeals.
7. Applicant to comply with Department of Permitting Services regulations for storm water management and sediment and erosion control.
8. Approval of a preliminary plan of subdivision must be obtained from The Montgomery County Planning Board prior to the earlier of (a) the issuance of a building permit for the storage/office building; or (b) April 1, 2006. Applicant must provide evidence of subdivision approval to the Board of Appeals to be entered into the record for the special exception.
9. DPS violation notice may not be resolved until an inspection has confirmed that all conditions are met, the permanent office /storage building is constructed, and the trailer and shipping containers have been removed.

Proposal Description – East Coast Landscaping was granted a special exception for a landscaping operation at 2000 Spencerville Road in the Cloverly area in the RC / RE-1 Zone approximately two years ago. The business had been operating since April of 1999 without a special exception when the petitioners became aware that a special exception was required and filed their petition. Recently, Department of Permitting services inspectors cited the petitioner for violation of the special exception. The applicant is now seeking a modification of his approved special exception, in part, to remedy zoning violations that resulted from failure to locate the components of the use in accordance with the approved special exception plan. The number of employees, equipment and hours of operation are not proposed for change. The size and location of structures and buildings are proposed for change. Deer protection fences are proposed. Temporary trailers and shipping containers are proposed for use while the office / storage building is being constructed. Fuel storage tanks and pumps are a new request. Subdivision is indicated on the plan and the special exception area is proposed for increase. The proposed subdivision shows one lot for the residence and one for the business. No frontage on the right-of-way for the special exception is shown on the current plan as required.¹

Procedure for Approval – As with any new special exception or modification, approval by the Board of Appeals is required. Since there is an open notice of violation for this case, the potential exists for Department of Permitting Services (DPS) staff to proceed with a recommendation for a Show Cause hearing before the Board of Appeals, which could result in the revocation of the special exception. Instead, DPS has instructed the applicant to seek a modification of the special

¹ 59-G-1.23 requires that special exceptions meet the development standards of the zone. Access is in the RE-1 zone which has a minimum 25' frontage requirement.

exception to bring the case into compliance. This regulatory strategy depends upon the modification being acceptable to the Board of Appeals, after considering the recommendation of the Planning Board and Hearings Examiner. Significant aspects of this application are not proposed for increase including number of employees, vehicles and hours of operation.

In reviewing the application, staff has recently discovered several detailed matters that were overlooked in the preparation of the modification, including the need for frontage at the right-of-way for the special exception, as noted above. This necessitates a pipe stem lot for the lot that will contain the special exception. Since the parking facility requirements call for double the side yard setback,² a waiver of a setback for a parking facility by the Board of Appeals is necessary. Staff advised the Zoning Hearings Examiner that a postponement of the May 24, 2005 hearing date may be necessary to permit time for noticing the required waivers and receiving any comments from interested parties. The Zoning Hearings Examiner responded that since the Zoning Ordinance only requires that neighbors receive notice of this waiver before a decision is made on the case,³ postponement of the May 24, 2005 hearing date is unnecessary and the record could be left open for comment.

Site and Neighborhood Description - The site is located on the north side of Spencerville Road between Oak Hill and Batson Roads. This is in the segment of in the vicinity of the intersection of Spencerville Road and Good Hope Road. Residential uses surround the site. There are other special exceptions within 1,500 feet. To the west there is a riding stable (S-402) and a storage building for a nursery (S-470). To the east there is a landscaping firm (BAS-1780) and a nursery (BAS-820). To the south there is an accessory apartment (BAS 1279) and a riding stable (BAS-1206). One parcel is the subject of the petition, P-075, which is approximately 10.12 acres in area. The property was improved with a single family detached dwelling when the special exception was initially considered but this home is now being reconstructed. The modification proposes a preliminary plan of subdivision to have the special exception use and the home on separate lots.

The property is split zoned RC & RE-1, and a portion of the property is in the Environmental Overlay Zone for the Upper Paint Branch Special Protection Area. The business is located on the RC zoned portion of the property. The access traverses the RE-1 zone and the overlay zone.

Elements of the Proposal -

The landscaping business will operate from 7 a.m. to 7 p.m., Monday through Saturday. No production or retail of landscaping related material is proposed. The petition is only for a landscaping contractor use. There will be up to nine employees coming to the site during workdays to be dispatched using business vehicles for landscaping work off-site. As is typical of landscaping firms, other employees may

² 59 E 2.83 (b)

³ As discussed in preamble to Sec. 59-E-4.5.

be picked up to join crews during the day up to a maximum of eighteen employees. A condition of approval limits the number of employees on-site to nine to prevent parking conflicts. Since there is no production of plants or other landscaping materials, deliveries are periodically made of these items for temporary storage and use off site. The site plan identifies where plants will be stored and locates bins for holding rocks, topsoil, and mulch.

The original proposal was for three new buildings including two storage structures and one office. No greenhouse or shade structure was proposed. In the review by the Board of Appeals the plan was revised to show one office/storage building. A six-foot tall board-on board fence was installed to screen an adjacent residential property to the west, responding to concerns raised at the hearings for the original special exception.

New / Revised Elements

1. Building – The proposed location of the office/storage building is proposed to move approximately 50 feet to the northeast. (The building has not yet been built in accordance with the original approval.) This location is closer to the adjacent RC zoned lot to the east but this portion of the property does not have a residential use. The new location is further from the residential property to the west. Using the approved bin as a guide for the purpose of the screening fence, the proposed building location is further south than this bin. So it can be concluded that the new building location is still positioned to be screened by the fence. Increasing the fence is not recommended, as it would cause work in the conservation easement. The building will provide parking for three trucks as was approved. The building location is outside of the fifty-foot setback.
2. Parking - Ten parking spaces are proposed to be moved from the south side of the special exception area to the east side. The purpose of this move is to accommodate a septic field easement and to position the parking near the relocated office. Screening of this new location from the residential property to the west remains effective under the same logic used for the building above. The building is outside of the fifty-foot setback.
3. Plant Storage – The plant storage area is being changed from an oval in the center of the work area to a larger shape and another section to the west added. Eight-foot plastic netting deer fences and overhead shade netting will be used to protect plants. The plant storage areas are outside of the fifty-foot setback. Staff notes that no lighting is proposed. Given the variable nature of temporary plant storage staff suggests the applicant could install a few posts marking the fifty-foot setback to guide employees in positioning plants in conformance with standards for use.

4. Paved Area – The paved area is proposed for increase by approximately 30,000 square feet.
5. Temporary Trailer / Shipping Container – These features are needed until the building is constructed. Their location is shown on the plan in the southwest corner of the work area. These locations are outside of the fifty-foot setback. A condition of approval serves as a sunset provision for these temporary features.
6. Fuel Tanks - Two 250 gallon above ground fuel tanks are proposed near the center of the work area. Location, configuration and operation of these tanks must be in accordance with the regulations of the Maryland Department of the Environment, and all other applicable local, state or federal laws. If any changes to the location are required by regulations the applicant should apprise the Board of Appeals in writing with an illustration. Contact should also be made if changes to the contract with the fuel company result in different tanks. Delivery of fuel tanks must conform to approved hours.
7. New Bins - A second set of rock/mulch/soil bins has been proposed. The new location remains behind the screening fence. No manufacture of mulch has been proposed. The purpose of requiring the location of bins on the plan is to aid regulation of the use. In unfortunate examples where this was not required, large heaps of mulch accumulated over time. These heaps can also be suggestive of other operations that require separate special exception approval. In this case, heaps outside of the bins would not be in conformance with the special exception. Approval of the second bin does not present any anticipated problem.
8. Subdivision – As-discussed before, the applicant has clarified in this proposal their intent to subdivide the property so that the residence is separate. In evaluating the proposed subdivision, staff observed that it is not permitted for a special exception to be on a lot that does not meet the frontage requirements for the underlying zone. (A landlocked parcel w/ easement access was proposed.) Staff has recommended that the proposed lot serving the business include a pipe stem lot. As a consequence, this means the driveway would be on-site, and by definition⁴ a part of the parking facility. Parking facilities must be setback double the side yard setback which is 34 feet. Such a setback is impossible with the existing driveway as the driveway is constructed as close to the adjacent residential property as five feet. Moving the driveway is undesirable because it would cause development in the overlay zone and could raise new entrance location issues. Because, the intensity of the use remains the same as originally proposed the adjacent church will not experience any new impact. The nature of this use is not

⁴ 59-E-2.83 (b)

retail. After crews leave for the workday there will be low traffic until they return. Existing mature vegetation along the driveway provides adequate screening in character with the neighborhood. Staff believes the waiver permitted under 59 E 4.5 may be approved. The objectives of safety and lighting are not compromised in any way. Given the existing driveway, unchanged intensity of the special exception use, adjacent institutional use, there is no apparent threat to health, safety or welfare to those who use adjoining land or road by a waiver of the side yard setback of 59 E 2.83.

ANALYSIS

Master Plan - The 1997 Cloverly Master Plan supports the existing RC / RE-1 zoning which allow special exceptions, such as the proposed use, in the zone.

Design – Staff finds the proposed landscaping, screening, and lighting to be acceptable. No light poles are proposed for the parking / paved work area; the proposed hours of operation are during daylight hours (7 a.m. – 7 p.m.)

Development Standards- The special exception modification is in compliance with the development standards for the RC and RE-1 Zone. A waiver of the parking facility requirements is requested. Conformance to relevant development is summarized in Table 1 on the following page.

Table 1 – Conformance with Applicable Development Standards S-2506A		
Development Standard	Requirement	Proposal
Front Yard Setback	50'	50'
Side Yard Setback	17'	50'
Sum of Both Sides	35'	100'
Rear Yard Setback	35'	50'
Use operations setback	50'	50'
Min Lot Area for Use	2 acres	5.86 acres
Min. Lot Area for Zone	40,000 sq.ft. / 5 acres	5.86 Acres = 255, 261.6 Sq. Ft
Lot Width @ Street	25'	370' ⁵
Lot Width @ Front Bldg Line	125'	370'
Building Height	50'	35'
Building Coverage	15% or 38,289.24 sq.ft.	4.7%, 12,000 sq. ft.
Parking	13	13
Parking Setback for use (operations)	50'	50'

⁵ Subject to change after subdivision.

Parking

Thirteen parking spaces were approved with the original application, ten outdoor spaces and three garage spaces in the office/storage building. No change to the number of spaces is proposed. The location of the parking has been shifted xxx The statement of operations lists business vehicles including: three stake body trucks, two pickups, a skid loader and a tractor. No trailers are listed. It is represented in the statement of operations that up to nine employees will park on the site. The site plan depicts ten parking spaces. (20'x10') It is understood that the parking will be used for employee parking during hours of operation and for business vehicle storage after hours. The plan also shows that the parking will meet the required 50' setback from adjacent properties.

Staff notes that Sec. 59-G-2.30.00 (3) of the Zoning Ordinance specifically requires for landscape contractor special exceptions that the number and type of business vehicles "for equipment" be identified and limited by condition of approval. The intent of this requirement is to, "Preclude an adverse impact on adjoining uses." Number of vehicles is a typical complaint for this type of use. The statement of operations lists five vehicles that meet this description, three stake body trucks and two pickups. This is limited by condition of approval. For the applicant to change their fleet they must file a modification of the special exception.

The Site Plan shows that adjacent residential property to the west will be screened from the parking with an opaque board fence, six feet in height. The required parking falls below the 25-space threshold where a parking facility plan must be submitted. Staff finds the provisions for parking to be sufficient and in accordance with the dimensional requirements of the Zoning Ordinance.

Proposed Sign- In the original application, the proposed sign also appeared to exceed the dimensional limitations on a sign in a residential zone. This was a matter of concern to the Planning Board, particularly any lighting of the sign. The petitioner never sought a sign variance and as advised staff that they would only build what is permitted by-right. An unlit sign not exceeding 2 sq. ft. in area may be built with a permit from DPS, provided it is set back 5 feet from the property line and does not exceed 5 feet in height. A location outside of the master plan right-of-way is identified on the plan.

Inherent/Non-Inherent Adverse Effects- The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the R-200 zone.

Section 59-G-1.2.1 of the Zoning Ordinance states

Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical

size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics are not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. It is understood that every special exception has some or all of these effect in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The general neighborhood affected by the proposed is predominantly one-family residential.

The inherent, generic physical and operational characteristics arising from the given use, in this case a landscape contractor include temporary storage of landscaping materials, permanent storage of business vehicles and equipment, storage buildings and bins and an office. From an operational perspective the operations and traffic associated with daily and occasional activities do not overburden the transportation network.

In the analysis of the original application staff noted that a potential non-inherent adverse effect relates to the narrow rectangular shape of the property potentially limiting the petitioner's ability to expand the operations and still meet the 50' use setback. The review of this modification confirms that there continues to be adequate space for the proposed operations. A condition of approval binds the applicant to the arrangement depicted on the site plan.

Staff concludes that there are no non-inherent adverse effects associated with this application that warrant denial. Staff finds that all of the physical and operational characteristics of the proposed use will be inherent in any potential adverse effect.

Transportation - The Transportation Planning staff recommends the following condition as part of the Adequate Public Facilities (APF) test for transportation requirements related to this special exception modification:

Master Plan Roads and Bikeways

According to the Cloverly Master Plan, the master plan designation of this segment of Spencerville Road is a four-lane major highway, M-76, with a 120 ft. right-of-way, a planned Class I bikeway, PB-34, and rural streetscaping.

Site Location and Access

Subsequent to Planning Board consideration of the original special exception, the State Highway Administration identified a concern regarding the location of the existing entrance along Spencerville Road (MD 198). The applicant's engineer was asked to study the sight distance for this entrance and provide analysis to SHA. Mr. Petzold proceeded with this analysis and has now received approval from SHA for use of this entrance.

Local Area Transportation Review

The existing residential use of the property generates one peak-hour trip during the weekday morning and evening peak periods. Special exception use related trips in the weekday morning peak period are not anticipated to exceed 16 under the current proposal. Evening peak period trips are not anticipated to exceed 5 under the current proposal, recognizing that employees would leave the site after 6 p.m., which is outside of the peak period. Staff determined a traffic study is not necessary because the site generates fewer than 50 trips in either peak period. Staff also considered the peak period impact of the potential for 14 business vehicles in the future however a modification would be required for any change in fleet.

Environmental – The southern 2.68 acres of the 10.12-acre property lie within the Upper Paint Branch Special Protection Area, and the northern 7.44 acres lie within the Patuxent River watershed⁶. About 1.4 acres of forest is located along the northern and northwestern property boundaries, which is within the Patuxent River watershed. There are also individual trees located throughout the property, particularly along the property boundaries and near the existing house. There are no streams, wetlands, floodplains, or associated environmental buffers on or adjacent to the subject property.

Violation of the Forest Conservation Law

It was established in the previous application that clearing of forest had occurred with no approved forest conservation plan or exemption. This violation resulted in an administrative order requiring corrective action including replanting the understory and larger trees in the forest and recording a Category I conservation easement. Replanting has subsequently occurred but trees have not survived.

Special Protection Area

The business is located on the part of the property outside the Upper Paint Branch SPA. The applicant does not propose any grading, land disturbance, or increase in impervious cover on that part of the property within the SPA. This part of the property does include the driveway. Since this exists, there will be no

⁶ The portion of the property within the Patuxent River watershed does not lie within a Primary Management Area (PMA) because it is more than 660 feet from a stream in the Patuxent River system.

development within the SPA which may trigger the ten percent impervious surface cap of the overlay zone. An condition prohibiting changes to the driveway, which is in the SPA, prevents changes with out the benefit of staff review in the context of a special exception modification.

Stormwater Management

The site development plan conceptually shows a stormwater management (SWM) facility at the northern end of the property outside the existing forest. The applicant has not submitted a SWM concept plan at this time. The submission of a concept plan would occur as part of the preliminary subdivision plan. DPS would review the SWM plan as part of the subdivision process and confirm all water quality requirements are met.

Community Concerns – In the original special exception one neighbor became involved with concerns, which resulted in additional fencing. No concerns have been raised about the modification to date.

Compliance with General and Specific Special Exception Provisions- The staff has reviewed the petition for compliance with the applicable special exception provisions. As noted in the attachment, all general and specific requirements for a landscape contractor found in Sections 59-G-1.21 and 59-G-2.30.00 will be satisfied.

Conclusion – The staff finds that the special exception satisfies all of the applicable special exception provisions for a landscape contractor found in the Zoning Ordinance. Therefore, we recommend approval with the conditions found in the beginning of the report.

Attachments

1. Zoning Criteria Analysis
2. Vicinity Maps
3. Site Development Plan for Special Exception
4. Landscaping Plan for Special Exception
5. Environmental Memorandum
6. Transportation Memorandum