



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item # 2  
03/20/02

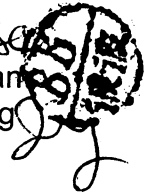
## MEMORANDUM

**DATE:** March 13, 2003  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning  
William Barron, Team Leader, Eastern County Team  
**FROM:** Joel A. Gallihue, AICP, Community-Based Planning

**REVIEW TYPE:** Special Exception Modification  
**APPLYING FOR:** Horticultural Nursery and Commercial Greenhouse  
**APPLICANT:** Charles W. Bowers  
**CASE NUMBER:** CBA 2620-A Garden Gate Nursery

**ZONE:** RE-2C  
**LOCATION:** 821 Norwood Road  
**MASTER PLAN:** Cloverly Master Plan

**FILING DATE:** November 7, 2002  
**PLANNING BOARD:** March 20, 2003  
**PUBLIC HEARING:** April 2, 2003



**STAFF RECOMMENDATION:** Approval with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioners.
2. All previously approved special exception conditions and modifications shall remain in full force and effect, except as modified by these conditions.

## **PROPOSAL DESCRIPTION**

The subject property is approximately 4.5 acres and located on the east side of Norwood Road at 821 Norwood Road. (Across the street from the Llwelien Fields Subdivision) The site is approximately 1,500 feet south of the intersection of Norwood Road and Layhill/Ednor Road. The property has not been subdivided and is known as Parcel 850 on Tax Map JS 343. The Board of Appeals granted

CBA 2620<sup>1</sup>, a special exception for a horticultural nursery on June 5, 1969 and approved modifications administratively on February 12, 1987.

The petitioner requests a special exception modification of the approved horticultural nursery special exception to permit relocation of parking and other rearrangements of the site plan as well as a clarification of the equipment used and approval of a lighting plan. Most of the proposed changes have already been made<sup>2</sup> without approval of a modification to the special exception plan and were identified by the Department of Permitting Services (DPS) as zoning violations.<sup>3</sup> This modification has been filed in the context of this enforcement action, in coordination with DPS and the Board of Appeals. The Board of Appeals has not scheduled a Show Cause Hearing for the violations.

**Neighborhood Description** – The site is in an area identified in the Cloverly Master Plan as a suburban community. The Peterson subdivision is adjacent to the property to the south and east. Adjacent to the North is the Korean Antioch Baptist Church property. Across Norwood Road is the Llewellyn Fields subdivision, a more recent development of one-family homes. Scattered housing is built on Norwood on Norwood Road. While the immediate neighborhood includes residential, it also hosts business and institutional uses. There is also Woodlawn Manor, host to M-NCPPC Park Police horse facilities, and other parkland in the immediate vicinity. The business uses in the neighborhood are primarily related to horticultural products and services. Strates (S-874 is located at 1021 Norwood Road, to the north of this site and operates by grant of special exception.<sup>4</sup> Further to the south is Patton Sod farm, which produces and distributes sod from this site as a grandfathered agricultural use but also hosts Xtra-Care a tenant Landscape contractor business.

Adjacent to Red Door Store property<sup>5</sup>, there is a wholesale mulch and landscaping product distribution business that operates as a grand fathered agricultural use.

**Site Description** – The subject property is approximately 4.5 acres in area and on the east side of Norwood Road. Lot 1 of the Peterson subdivision is adjacent to the property to the south and east. Most of the lots in this subdivision are improved with single-family residences. One developable lot remains near the site. The property has approximately 480 feet of road frontage along the east side of Norwood Road. A single driveway off Norwood Road provides access to the property. The property is improved with several structures.

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<sup>1</sup> Case No. 2619 was also approved at that time for this property. This was a variance for 44.5 feet for the existing dwelling to be used in connection with the business.

<sup>2</sup> The petitioner stopped work on light installation when cited and awaits Board direction.

<sup>3</sup> DPS Violation notice issued by Stan Garber, dated March 11, 2002.

<sup>4</sup> (S-874A, was approved in 1983 and the recent modification was just approved by the Board of Appeals)

<sup>5</sup> M-NCPPC property.

## ZONING HISTORY

CBA-2620A, a special exception permitting horticultural nursery, was approved on June 5, 1969 and modifications were approved administratively on February 12, 1987. In the original approval a variance (Case # 2619) was approved because the house did not meet the 50' setback quoted below. The house remains in existence and now serves as the office.

The original grant of special exception was made under what was Section 111-37 (p1) a provision of the zoning ordinance that had been adopted in 11/28/69 for "Horticultural Nurseries and Commercial Greenhouses" by special exception in the residential or C-O zone. The provision was as follows:

### *p-1 Horticultural Nurseries And Commercial Greenhouses.*

*In any residential or C-O zone a horticultural nursery or commercial greenhouse, together with buildings incidental thereto, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or other factors. The sale of plants, trees, shrubs, seeds, fertilizers, plant foods, hand tools, hand spraying and watering equipment, and pesticides directly related to residential gardening shall be permitted, provided that such tools and equipment are not displayed outdoors. Nothing herein shall be construed to permit the sale or storage of general hardware or power equipment. No such horticultural nursery or commercial greenhouse shall be located on a tract of land containing less than two acres and no part of any buildings thereon shall be less than fifty feet from the nearest property line. (Ord. 6-65)*

It was clear in the original grant of special exception that the horticultural nursery was only part of the business with the statement, "The contracting for residential landscaping will be done primarily at the customers' homes, but occasionally some customers will come to the subject property." It is also stipulated that, "the petitioner does no commercial landscaping and no retail sales." The petitioner has represented to staff that the nature of the business has remained the same, continuously, which is residential landscaping. To this day there are no retail sales and most plants are only stored, not grown on site.

In the proposal for a horticultural nursery it was stipulated that the petitioner does no commercial landscaping and no retail sales. Approval was granted subject to the following conditions of approval:

1. There shall be no display of tools or equipment.
2. There shall be no sale or storage of general hardware or power equipment.

3. The proposed sign shall meet the Montgomery County Sign Ordinance.
4. Fencing and screening shall be as shown on Exhibits 4-A and 4-B.
5. Petitioner shall file with the Board and with the Department of Inspection and Licenses an affidavit certifying compliance with condition No. 4 not later than January 1, 1970.

This provision under which Garden Gate was approved was superceded by a zoning text amendment, which completely restructured how the horticultural class of businesses is regulated in residential zones. Distinctions were drawn between retail and wholesale nurseries. The uses of Landscape Contractor and Mulch Manufacture were added. The new use of Landscape Contractor accurately describes this operation. Therefore, if Garden Gate were to propose expansion, technical staff would recommend they apply for the Landscape Contractor use, rather than request a modification of the approved Horticultural Nursery use. The initial submission for the proposed modification did request more vehicles and future phases of development however these requests have been withdrawn. Consequently, the instant petition is only a revision of the site plan to show how activities on the site have been arranged and not an expansion of the use. Technical staff believes this may be accomplished as petitioned in the form of a modification of the Horticultural Nursery special exception under the rules in effect when approved. If the Board of Appeals were to determine that any aspect of this application represents an expansion, technical staff would recommend the Board require the applicant to withdraw the instant petition and apply for the Landscape Contractor use. This would require Garden Gate to meet all the current standards. Most importantly, Sec. 59G-2.30.00 (2) the setback for *operations* of a Landscape Contractor would prohibit activities within fifty feet of the property line.

The 1987 administrative modification permitted up to forty-five employees. The hours of operation are approved for 6:30 a.m. to 5:30 p.m. Up to twelve, "trucks, tractors and other essential equipment" are permitted. At that time, a site plan was approved with the modification. Deviations from this site plan led to a zoning enforcement action. (The instant petition proposes to modify this site plan.)

A Notice of Violation was issued on March 11, 2002, which led to the applicant submitting a modification request. No Show Cause Hearing was scheduled. The notice of violation identified the following issues:

1. Site deviates from approved plan for storage, parking and number of buildings.
2. Equipment is more than what was approved by the Board (Loaders etc.)
3. Fuel pumps, vending machines and exterior lighting not shown on approved plan.

The notice required as corrective action the special exception holder to petition for a modification of the special exception including the following:

1. A revised site plan to include new parking lot, retaining walls and patio exhibits as well as all accessory structures and storage areas.
2. Request for all equipment to be used (loaders, trucks, etc.)

The notice states that if the modification is not approved the property should be returned to the condition approved in 1987.

**Elements of the Proposal** – The applicant summarizes the proposed modification as follows:

### **Parking Lot**

The 1987 plan showed employee parking on the southeast side of the property. The petitioner removed this parking to create a demonstration garden depicted on the current plan and shown in photographs. The new parking area is in the northwest corner of the property adjacent to the Korean Church. This location was previously used for plant storage and already had a gravel base. Employee parking is approximately 3,000 square feet in area and is not striped. It could accommodate approximately 75 vehicles. The use is limited to a maximum of forty-five employees. The lot is screened from the road by a six-foot high stockade fence. The boundary w/ the Korean Church property is screened with White Pines. Customer parking remains unchanged and is located between the employee parking and the office, behind the gate. The gravel parking will accommodate approximately twenty-six vehicles. Equipment parking remains in the maintenance shop vicinity. The new configuration moves employee parking away from residential property and closer to institutional property. Technical staff notes that on the southeast side site plan there is a out-of-date reference to an "unbuildable lot." In fact, all of the lots in the Peterson subdivision are now buildable.

### **Demonstration Garden**

As noted above, the original employee parking has been removed and converted into a demonstration garden. This change is shown on the proposed site plan. A white pine screen is adjacent to the southeast property line. The garden extends southeast from the existing patio and gazebo. The area is fenced in with a six-foot stockade fence and accessible only to employees and clients.

### **Fuel Pumps – Vending Machines**

The 1987 plan did not indicate a location for fuel pumps or vending machines. The violation notes the existence of these features without an approved modification. The applicant has submitted photographic

evidence to indicate that both fuel pumps and vending machines have been in their location on the property since the 1970's.

The new site plan is labeled with the location for fuel pumps and vending machines. The location is in the interior of the site and not accessible to the public. Both are clearly for internal use.

### **Number of Buildings**

The zoning violation noted that the site deviates from the approved plan with respect to number of buildings. The petitioner responds that the number of buildings has not changed and that there are three buildings in accordance with the current approval. They are the office buildings and the workshop/garage. The 1987 approval did also show nine sheds, three shade structures and one pump house. The sheds and pump house also meet the definition of a building. The sheds were constructed of wood and had deteriorated. Prior to the violation notice, the applicant removed and replaced most of them with fifteen steel shipping containers. The shade structures have been relocated the plant storage area along the north property line and adjacent to the Korean Church. The pump house remains.

The 1987 plan indicates two covered bins on the south side of the workshop. Since the bins are covered they meet the definition of a building<sup>6</sup>. The Zoning Inspector did not cite the covered bins as a violation because they were shown on the approved plan. The plan approved by the Board of Appeals in 1987 notes these covered bins but does not refer to them as buildings. The Board however, did not explicitly grant a variance for the bins. Technical staff believes that since the 50' building setback predates the approval of the original special exception the covered bins must meet the requirement of the 50' building setback. If The Board of Appeals were to find the covered bins in violation they may require them to be removed or approve a variance.

### **Equipment Approval**

The original grant of special exception included a list of vehicles that the applicant stipulated would be used on the property. It also included a list of the types but not the number of pieces of other equipment (lawnmowers etc.) that would be used on site. The 1987 modification permitted, "six to twelve trucks" to be used. These trucks and along with "tractors and other essential equipment" are required to be parked in the rear as indicated on the site plan. The current proposal does not seek to increase the number of trucks. The submission stipulates a list of vehicles and

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<sup>6</sup> The Zoning Ordinance defines a building as, "A structure having one or more stories and a roof, designed primarily for shelter, support or enclosure of persons, animals or property of any kind."

notes that all trucks do not exceed 26,000 lbs in weight. The phrase "tractors and other essential equipment" from the 1987 grant is also clarified in the current modification. A list of four loader types is presented. In an addendum to the statement of operations it is also noted that the equipment list includes six trailers. These changes will make the grant of special exception more precise, which will better enable zoning enforcement to monitor compliance.

### **Lighting**

The violation notice found that the 1987 grant did not show exterior lighting. The applicant has submitted exhibit D-2, a lighting plan, as an amendment to the application. This exhibit shows the location and spread of the exterior lighting. There are five security/work lights. These are shielded and directed downward to prevent glare. These will replace unshielded work lights currently located on the property that do cause glare. The demonstration garden and office area are lit with a combination of aesthetic lights. The plan key notes that "garden down lights", "path lights" and "up lights" are used on the site. The down light and path light are directed and appear to present no risk of glare. The up lights direct a beam of light into specimen trees for accent. The plan indicates that at twenty feet the beam will have spread 13.8 feet and the light intensity will have dissipated from 15.7 foot-candles to 0.6 foot-candles. These do not appear to present a negative effect off of the property.

### **Future Phases of Development**

The initial submission for the modification included a list of, "minor changes with Garden Gate Landscaping would like to make in the future." The proposed phases included a variety of maintenance and construction projects and the addition of two trucks. Staff commented in discussions with the applicant that this aspect of the application was difficult to recommend for approval. In an addendum to the statement of operations the applicant withdrew this request.

### **Composting**

The violation notice did not cite the composting operation referenced in a letter from Francis R. Gouin to the Chairman written on behalf of Garden Gate. The letter explains that Garden Gate composts leaves, grass clippings, printings, sod, plants and soils from jobsites. The resulting compost is then reused on subsequent jobs. Mr. Gouin establishes his credentials as an expert in composting and asserts that the composing follows best practices and is consistent with state and county recycling goals.

DPS staff has made a determination that this operation is a violation of the zoning ordinance. Composing is a separate special exception use in the

zoning ordinance. Garden Gate does not have an approved special exception for this use and when the use was added to the ordinance there was no grand- fathering provision. Technical staff does not believe Garden Gate could obtain a special exception for this use as the site is currently configured because the ordinance has a five-acre minimum lot size for this use. The applicant has noted that if they are not permitted to compost they will cease the operation. The materials from the site will be disposed of elsewhere.

## ANALYSIS

**Master Plan** –The subject property is covered by the 1997 Approved and Adopted Cloverly Master Plan. The existing land use plan in the Master Plan identifies the property as single family residential. The Master Plan recommends the RE-2C Zone for the property and Landscaping Contractors are allowed by special exception in that zone. This special exception was in existence when the master plan was developed.

<b>Development Standards</b>	<b>Requirement</b>	<b>Proposal</b>
Front Yard Setback	50', approved variance for house	82'
Side Yard Setback	50'	8' <sup>7</sup>
Rear Yard Setback	50'	250'
Min Lot Area for Use	2 acres	4.5 acres
Min. Lot Area for Zone	2 acres	4.5 acres
Lot Width @ Street	25'	480'
Lot Width @ Front Bldg Line	100'	480'
Building Height	50'	24'
Parking	20 spaces <sup>8</sup>	appx. 100 spaces

## Environmental

<sup>7</sup> See previous discussion of covered bins.

<sup>8</sup> Ord. 5-102 – Parking for Commercial establishment devoted to ... trade etc. 1 space per 300 square feet of floor space used for office storage or other purposes.



The Environmental Planning staff has reviewed the special exception application referenced above. Staff recommends approval of this request with the following condition that the compost and mulch manufacturing operation be removed. DPS has found that this operation is not permitted without a special exception.

#### Forest Conservation

This application has an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). An exemption from forest conservation plan has been granted because this is a modification to an existing developed property, with no more than a total of 5,000 square feet of forest cleared; no forest clearing within a stream buffer or on property subject to stream protection strategy or water quality plan requirements. There are no specimen or significant trees impacted by conditions of this request.

#### Water Quality

A stormwater management and sedimentation and erosion control permit is not required because there is less than 5000 square feet of proposed disturbance.

This site is located in the Upper Main B (formerly known as Sandy Spring south) tributary in the headwaters of the Northwest Branch watershed. The Countywide Stream Protection Strategy (CSPS) rates stream and habitat conditions good and places this tributary in a Watershed Protection Area – Remedial Level. A remedial level of protection is recommended by CSPS because erosion in some stream reaches associated with land clearing activities have resulted in destabilization of stream banks. CSPS recommends best management practices be applied to projects located in this area especially where erodible soils or poor to marginal bank stability is present.

#### Noise

If the petitioner were to seek a special exception of the compost manufacturing operation, a noise evaluation by a qualified acoustic engineer would be required. This evaluation would compare sound levels measured for the existing use to standards required by the Montgomery County Noise Ordinance

### **Transportation**

#### Site Location, Vehicular Access, and Pedestrian Facilities

The site, unrecorded parcel P 850, is located to the east side of Norwood Road approximately midway between Layhill Road/Ednor Road and the recently opened Norbeck Road Extended. Vehicular access to and from the site is through an existing access point on Norwood Road.

Norwood Road is a two-lane roadway with paved shoulders between Layhill Road/Ednor Road and Norbeck Road Extended. It has a posted speed limit of 40 mph. Currently, there are no pedestrian facilities on Norwood Road. Since

no off-site changes are proposed as part of the Special Exception Modification, pedestrian accessibility will not be impacted.

#### Master Plan Roadways and Bikeways

The Cloverly Master Plan describes Norwood Road, the site frontage roadway, as a northwest-southeast four-lane arterial (A-51) between Ednor Road/Layhill Road to the northwest and New Hampshire Avenue (MD 650) to the southeast, with a proposed rural streetscape and a Class II bikeway (PB-38) within an 80-foot right-of-way (minimum).

If this Special Exception Modification case were to require a building permit or were part of a Preliminary Plan of subdivision or another special exception use, the applicant would be required to dedicate additional right-of-way, as needed, to provide 40 feet of right-of-way from the centerline of Norwood Road. Associated with this requirement, any building, fence or other improvements on the site would be required to be removed or located outside of the right-of-way.

#### Related Transportation Project

The Maryland State Highway Administration (SHA) completed improvements at the nearby intersection of Norwood Road and Ednor Road/Layhill Road in 2001 as part of its Congestion Relief Study project. Additionally, the Department of Public Works and Transportation (DPWT) completed its Norbeck Road Extended project in December 2002. The SHA's MD 28/MD 198 Corridor Improvement Study is currently in the Alternatives Retained for Detailed Study (ARDS) phase and is funded for planning only.

#### Special Exception History and Related Transportation Conditions

Special Exception Modification Case No. CBA-2620-A was originally granted in 1969 and modified in 1987. The number of employees, landscaping trucks and loaders on the site, and the business hours were modified in 1987 from that originally granted in 1969. No new employees or vehicles are proposed. No change in hours of operation is proposed.

#### Local Area Transportation Review

The purpose of this Special Exception Modification is to document existing site conditions in response to a notice of violation dated March 11, 2002.

This Special Exception Modification will not change the number of employees on the site, their work hours, or the business operating hours from that granted in 1987. Additionally, according to the amendment to the current request, the number of landscaping trucks currently on the site (12) will correspond to that granted in the 1987 Special Exception amendment. This will result in no change

to existing transportation-related operations on the site and site-related peak-hour trips during the weekday morning (6:30- a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Therefore, with no anticipated increase to site-generated traffic, a traffic study to analyze congestion levels at nearby intersections to satisfy Local Area Transportation Review (LATR) is not required.

#### Policy Area Review/Staging Ceiling Condition

Under the provisions of the FY03 Annual Growth Policy (AGP) transportation staging ceilings, the Cloverly Policy Area is in deficit for jobs (negative 49 jobs as of January 31, 2003). However, "jobs" associated with the existing non-residential land use on the site are already reflected in the Cloverly Policy Area transportation staging ceiling calculations. The Special Exception Modification will not change the above estimates since the number of vehicles on site, the number of employees, their work hours, and the business operating hours will not change from that granted in 1987. Consequently, the proposed application will satisfy Policy Area Transportation Review (PATR) test as well.

**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 RE-2C 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.*

The inherent, generic physical and operational characteristics arising from the given use, in this case a nursery, horticultural retail and landscape contractor include temporary storage of nursery materials for sale, permanent storage of business vehicles and equipment, storage buildings and bins and an office. All of these activities must be arranged on the site in a logical manner, with buildings 50' or more from the property line. The site development plan for the proposal does identify where activities will occur on the site. Staff concludes that there are no non-inherent adverse effects associated with this application, as conditioned, that warrant denial. Staff finds that all of the physical and operational

characteristics of the proposed modification will be compatible with existing development.

**Community Concerns** – Llewellen Fields Home Owners' Association and representatives of the Cloverly Civic Association have raised objections to this proposal in the context of the recent hearing for S-874A. In light of these concerns, the applicant eliminated the proposed increase in vehicles.

**Compliance with General and Specific Special Exception Provisions-** The staff has reviewed the petition for compliance with the applicable special exception provisions in Attachment 1.

**Conclusion** – The staff finds that the proposed special exception modification satisfies applicable special exception provisions for Nursery, Horticultural contractor found in the Zoning Ordinance. Therefore we recommend approval.

#### Attachments

1. General and Specific Special Exception Provisions
2. Vicinity Map
3. Proposed Special Exception Site Plan
4. 1987 Special Exception Site Plan
5. Lighting Plan