



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

MCPB
Item # 6
1/23/2003

MEMORANDUM

DATE: January 17, 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: Nursery, Horticultural -Wholesale and Retail
APPLICANT: Nicholas, Pete, James, and Athena Strates
CASE NUMBER: S-874-A

ZONE: RE-2C
LOCATION: 1021 Norwood Road
MASTER PLAN: Cloverly Master Plan

FILING DATE: August 30, 2002
PLANNING BOARD: January 23, 2003
PUBLIC HEARING: February 5, 2003

STAFF RECOMMENDATION: Approval of the proposed special exception 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.
3. Prior to the applicant submitting to the Department of Permitting Services for building permit review, compliance under Chapter 50, Subdivision Regulations is required. At the time of final record plat, dedicate additional right-of-way for 40 feet from the centerline of Norwood Road. Any structures located within the proposed right-of-way must be removed prior to dedication.

4. Submit the final approved preliminary plan to the Board of Appeals record for the special exception.
5. Motorized equipment stored and used on site is limited to the following:
 - a) One (1) skidster type loader;
 - b) One (1) articulating type loader;
 - c) One (1) delivery truck weighing appx. 17,000 lbs.
 - d) One (1) delivery truck weighing appx. 35,000 lbs.
6. The hours of operation are 9 a.m. to 6 p.m., Monday through Saturday and Sunday 10 a.m. to 4 p.m.
7. The proposed modification must demonstrate compliance with the requirements of Noise Ordinance, Chapter 31B of the Montgomery County Code, prior to special exception approval.

PROPOSAL DESCRIPTION

The subject property is approximately 2.2 acres and located on the southeast corner of Ednor Road and Norwood Road at 1021 Norwood Road. (Diagonally across the street from the "Red Door Store") The property has not been subdivided and is known as Parcel 603 on Tax Map JS 342. The Board of Appeals granted S-874, a special exception for a horticultural nursery on July 27, 1983 and transferred it to the Petitioner on August 20, 1999.

The petitioner requests a special exception modification of the approved horticultural nursery special exception to specify a new type of fence in a new location, install a sign requiring a variance, alter the location of a bulk storage area, revise the equipment used on the property as well as revise buildings, landscaping and parking shown on the site plan. Many of the proposed changes have already been made on-site without approval and were identified by the Department of Permitting Services (DPS) as zoning violations. 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 continued the Show Cause Hearing for the violations, scheduled together with this Special Exception Modification Hearing.

Neighborhood Description – The site is in an area identified in the Cloverly Master Plan as a suburban community. The Woodlawn Manor subdivision is adjacent to the property to the East and to the west 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. Garden Gate Landscaping is located at 821 Norwood Road, to the south of this site and operates by grant of special exception.¹ 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.

M-NCPPC has recently acquired a portion of the Red Door Store property, historically known as the Holland Store, under the Legacy Open Space program. The acquisition included most of the associated farm. Part of the farm was retained by the original owners to continue operation of a wholesale mulch and landscaping product distribution operation that is grandfathered as an agricultural use.

Site Description – The subject property is approximately 2.2 acres in area and located in the southeast quadrant of the intersection of Ednor Road Norwood Road. Lot 9 of the Woodlawn Manor subdivision is adjacent to the property to the East and improved with a single-family residence. The property has approximately 182 feet of road frontage along the south side of Ednor Road and 318 feet along the east side of Norwood Road. A single driveway off Norwood Road provides access to the property. The property is improved with three structures a partially constructed pole barn 60' x 30' which requires a building permit, a 12' x 12' building identified as a "pump house" will be demolished to take it out of the 50' setback for zoning conformance and a 30' x 20' structure containing topsoil or compost is also located within the 50' building setback. The proposal is to remove the roof of this structure and utilize a tarp to shelter the material that is stored in the structure.

ZONING HISTORY

S-874, a special exception permitting horticultural nursery and commercial greenhouse, was approved on July 27, 1983. Prior to this approval zoning case C-1321, which proposed a commercial zone, was denied². In the original approval a variance (A-1034) was approved because the house did not meet the 50' setback. The house is no longer in existence. The record reflected that hours of operation would be 7:00 a.m. to 6:00 p.m., Monday through Saturday, with Sunday hours of 10:00 a.m. to 6:00 p.m. It was also stipulated that there would only be two employees on the site at any time. Approval was granted subject to the following conditions of approval:

1. Relocation of a single driveway from Ednor Road to Norwood Road. The access permit shall be approved by the Montgomery County Department of Transportation.

¹ (S-2619 & S-2620, approved 6/5/69 and modified 2/12/87)

² The Zoning Map also appears to have an inaccurate reference to C-1514, which was proposed at another location.

2. The site plan shall show a 10-foot buffer strip on the site along the common property line with the adjoining residence.
3. A landscape and lighting plan shall be reviewed and approved by the technical staff of the Maryland-National Capital Park and Planning Commission. Landscaping in the 10-foot buffer strip shall consist of six-to-seven foot hemlocks staggered with intermittent rhododendron.
4. An on-site septic and well facility shall be approved by the County Health Department.
5. The applicant shall obtain approval from MSCD in conjunction with the County agricultural agent. The applicant shall keep his pesticide applicator's license in force at all times.
6. The applicant shall submit a revised site plan incorporating all of the above conditions as approved by the appropriate agencies to the Technical Staff of the Maryland-National Capital Park and Planning Commission. Two copies of the approved revised site plan shall be submitted to the Board of Appeals for their record.

The special exception was amended on March 8, 1984 to change the location of parking away from Ednor Road. On September 18, 1986 the special exception changed ownership. Ownership changed again on January 2, 1988. The special exception was amended on August 31, 1988 to transfer ownership and revise the following stipulations and conditions:

- A. The last sentence in Condition #3 was revised to read, "Landscaping in the 10-foot buffer strip shall consist of white pine, planted according to the site plan as originally approved.
- B. The hours of operation were revised to be as follows:
 - i. *April-June, September, October and December* – 9:00 am to 8:00 p.m. Monday – Saturday and 9:00 a.m. – 6:00 p.m. Sunday.
 - ii. *March, July, August and November* – 9:00 a.m. – 6:00 p.m. Seven (7) days a week.
 - iii. *January and February* – Closed.
- C. A requirement was made for immediate compliance with Condition #4 for the petitioner to install a well and septic facility.
- D. The number of permitted employees was increased to eight.

The special exception was transferred to the current property owner on August 20, 1999. Notices of violation were issued on March 11 and 12, 2002, which led to a Show Cause Hearing on June 26, 2002 and continued the Show Cause hearing to July 31, 2002. In the hearings it was shown that many violations had been addressed. The Board found that there had been progress in compliance

with the requirements of the special exception. The Board also concluded that use continues to operate beyond the scope of the 1983 opinion. A modification was submitted in response to this finding.

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

General

A special exception modification to existing horticultural nursery special exception is proposed. Petition includes request to revise the plan to show changes to the buildings, sign and fence as well as the mulch storage area and equipment used on the property.

Personnel and Hours

No changes to the number of personnel are proposed. Changes to hours of operation are proposed. The current approved hours are as follows:

- i. *April-June, September, October and December* – 9:00 am to 8:00 p.m. Monday – Saturday and 9:00 a.m. – 6:00 p.m. Sunday.
- ii. March, July, August and November – 9:00 a.m. – 6:00 p.m. Seven (7) days a week.
- iii. January and February – Closed.

The petition requests the following hours of operation:

Monday thru Saturday -	6:00 am to 6:00 pm
Sunday -	10:00 am to 4:00 pm

The petitioner proposes consistent hours of operation and comments that they are close to the original approval as discussed in the Zoning History section above. Staff finds consistent hours of operation are much clearer and therefore easier to enforce. The difference in the new proposal is operations with heavy equipment proposed and the start time will be three hours earlier. When the start time was 7 AM under the original grant of special exception, no operation of heavy equipment was anticipated. No equipment was contemplated when the start time was changed to 9 AM. As discussed below in the environmental section of this report, the proposed hours include an hour when the more restrictive nighttime noise standard would be in effect. Staff does not recommend the earlier hours because the application has not met the burden of proof that this standard will not be exceeded. Staff can recommend that the current start time as approved above be incorporated into more consistent hours of operations in the following condition:

The hours of operation are 9 a.m. to 6 p.m., Monday through Saturday, and Sunday 10 a.m. to 4 p.m.

Fence

A split rail fence was approved with the original special exception grant, which was subsequently replaced with a chain link fence. DPS identified that this change in fence did not follow a modification. Portions of the fence were also located off the property. The instant modification proposes to revise the original approval for a split rail fence to substitute a "board fence." An elevation of the board fence is shown on the attached site plan. The proposed fence consists of wooden vertical posts affixed with three boards in parallel. Between the top and middle board is fourth board affixed in an alternating diagonal to create a contrast. Replacing the chain link with wood is more consistent with the original approval. The proposed design is also more consistent with the horse fence at Woodlawn Manor, directly across Ednor Road. The new fence would be placed on the two sides of the property that front public roads. (Norwood and Ednor)

In reviewing the proposed fence, staff considered the dedication that will be required on Norwood Road. Staff notes that this will result in a change in the property line and the location of the proposed fence must change to accommodate this dedication. Therefore the condition of approval requiring subdivision prohibits structures in the right-of-way. At preliminary plan the fence must be shown out of the right-of-way. A separate condition requires submission of the approved preliminary plan to the Board of Appeals record for the special exception.

Signs

The notice of violation referenced unapproved signs. Subsequent to the notice the signs were removed. New signs are proposed. The petitioner filed an application with the Montgomery County Sign Review Board requesting a variance from Section 59-F-4.2(a)(1) which requires a sign in a residential zone to be no more than two (2) square feet in area, and not exceed five (5) feet in height. The proposed freestanding sign is depicted on the site plan. It will be located five feet back from the corner of Ednor and Norwood Road. The sign dimensions will be 8' x 8', sixty-four (64) square feet in area and Eleven foot and six inches 11' 6" in height. The sign will be ground-lit with lights that cut off at midnight. It will incorporate a logo, business name and three tracks of changeable text. The Sign

Review Board has approved of this sign subject to the following conditions:

1. Maximum total height of eight (8) feet, and maximum width of eight (8) feet;
2. Top portion of sign (sign-face) to be four (4) feet in height with medium-dark background and light colored letters;
3. Maximum of three interchangeable letter lines, each six (6) inches in height, with a total height of two feet;
4. Ground lighting to be shut-off at midnight.
5. Contingent upon Special Exception approval.

Accessory Buildings in 50' Setback

The special exception use prohibits any buildings within 50' of the property line. Two accessory buildings are currently is located within the 50' setback for the use.

The first is an existing accessory building identified as a pump house. The proposal was to move this building west approximately 13' so that it is located out of the setback, eliminating the need for a variance. The petitioner subsequently decided to move the equipment in the pump house into the pole barn and demolish the pump house.

The second is a three-sided shed is located to the northeast of the pole barn. The structure appears to function as a mulch bin that is covered with a roof. The structure meets the definition of a building in the Zoning Ordinance³, which is not permitted within 50' of the property line.

The petitioner has proposed to remove the roof of this building and utilize a tarp to cover the mulch that is stored in the structure. This would allow the shed to be considered a structure⁴ rather than a building and which would not need to meet a setback requirement.

The Board of Appeals has three alternatives in considering the proposed remedy at the show cause hearing. The Board may require the building be demolished or moved out of the setback. A second option is to grant a variance for the building if some hardship could be demonstrated. A third option is to accept the proposed removal of the roof, rendering the building a structure

³ Article A: Page 59A-10, of 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."

⁴ Article A: Page 59A-42, of the Zoning Ordinance defines structure as, "An assembly of materials forming a construction for occupancy or use including among others, buildings open sheds, coal bins, shelters, fences, walls, signs ... etc."

Landscaped Buffer

The original approval, as subsequently modified, required a ten-foot screen of two staggered rows of white pines adjacent to residential property. Staff had recommended a 50' buffer on the original site plan, however the Board of Appeals approved the buffer at ten feet. No increase in the width of the buffer is proposed. This screen has been recently replanted to replace dead trees. The applicant has replanted in excess of the original approval. On the East side, thirty-nine (39) trees were increased to fifty-three (53). On the south side, twenty-three (23) trees were increased to twenty-five (25).

Mulch Storage Area

The original special exception plan located mulch storage in the center of the site. The violation notice found that mulch was being stored in the northeast corner of the site. The petition requested that this location be affirmed allowing for separation from the retail component of the business. Staff observed that this location was closer to the adjacent residential lots and that the proposed area of 9,350 square feet was excessive for the site. In response to this concern, the plan was revised to move the mulch to the east side of the property, reduce the proposed area from to 1,500 square feet and to screen it on two sides with a six foot high opaque screening fence. This location is as close as possible to the original location without interfering with the location of the septic system.

Parking

The violation identified parking that was not in accordance with the approved site plan. The parking has been returned to its original condition. According to 59-G-2.30, retail nursery uses must conform to the general retail parking requirements, which call for 5 spaces per 1,000 square feet of gross floor area. The existing one-story building is 1,800 square feet. Five parking spaces are required for each 1,000 gross leasable square feet. This would require 9 parking spaces, with one handicap accessible space required. 15 are provided, including four handicap spaces.

Pole Barn

A Pole Barn has been partially constructed on the site without a building permit. The property has not been subdivided. Subdivision is required to obtain a building permit. Therefore, staff recommends the following condition of approval :

Prior to the applicant submitting to the Department of Permitting Services for building permit review, compliance under Chapter 50, Subdivision Regulations is required. At the time of final record plat, dedicate additional right-of-way for 40 feet from the

centerline of Norwood Road. The proposed fence must be located outside of the Norwood Road right-of-way.

Construction of a porch addition to the pole barn is proposed. The porch is noted on the special exception site plan. Staff has no objection to the porch.

Equipment

The violation identified the use of motorized equipment on the property, namely a skid loader and a front-end loader. The original opinion is interpreted to have prohibited the use of motorized equipment on the property. The opinion recites the original petitioners statement, which stipulated that, "There will be no sale or storage of general hardware or motorized equipment." This was made in the context of a paragraph that limits the types of products sold on the property. Staff believes the objective was to narrowly define the commercial activities on the site.

The Petitioner requests that the modification permit the use of following equipment on the property:

1. One (1) skidster type loader;
2. One (1) articulating type loader;
3. One (1) delivery truck weighing appx. 17,000 lbs.
4. One (1) delivery truck weighing appx. 35,000 lbs.

Staff is of the opinion that it is useful to have some condition that limits large equipment, particularly on a small site. Therefore, staff proposes to apply the following condition of approval that revises the original statement of operations and limits large equipment to only what is proposed⁵:

Motorized equipment stored and used on site is limited to the following:

1. One (1) skidster type loader;
2. One (1) articulating type loader;
3. One (1) delivery truck weighing appx. 17,000 lbs.
4. One (1) delivery truck weighing appx. 35,000 lbs.

The special exception site plan identifies the storage area as an area behind the pole barn enclosed in a 6' high privacy fence. Any future change in equipment requires a modification, which will allow technical staff to then assess if there has been any change in intensity of the use, before making a recommendation.

⁵ Subject to compliance with the provisions of the Noise Ordinance, as required by Condition #7.

Environmental

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

This site is located in the headwaters of the Northwest Branch watershed. The Countywide Stream Protection Strategy rates stream quality fair.

Noise

The proposed addition of motorized equipment must meet the residential standards of the Noise Ordinance. Only with a noise analysis demonstrating compliance with the Noise Ordinance can a finding that the proposed use will not constitute a nuisance with respect to noise. Staff recommended that the applicant conduct a noise analysis to confirm the daytime standard⁶ could be met, prior to approval of this modification. The applicant chose not to pursue a study at this time consequently staff is recommending the following condition:

The proposed modification must demonstrate compliance with the requirements of Noise Ordinance, Chapter 31B of the Montgomery County Code, prior to special exception approval.

Compliance with the Ordinance requirements may require further modifications or restrictions to the proposed motorized equipment such as changes in the noise profile of the proposed equipment. Other remedies may include relocation of uses on site, restriction in hours of operation, and/or use of landscape berms or physical barriers at or near the property line.

The requested change in hours of operations to start at 6 AM is not recommended because the more restrictive nighttime standards would be in effect and could be exceeded by the proposed equipment. The 9 AM start time that is currently in effect would be within the daytime standards, which are less restrictive.⁷

⁶ Weekday Residential Daytime (7AM-9PM) Allowable Noise Level is 65 dBA at the property line. The Nighttime standard is 55 dBA

⁷ At 10 dBA more than Nighttime, this represents a doubling of the perceived loudness

Transportation

Site Location, Vehicular Access, and Pedestrian Facilities

The site, P603, is located in the eastern quadrant of Norwood Road and Ednor Road. Vehicular access is from the existing access point from Norwood Road. The proposed special exception use will not affect pedestrian access; no changes are proposed.

Master Plan Roadways and Bikeways

In accordance with the Cloverly Master Plan, the adjacent and nearby roadways and bikeways are designated as follows:

1. Norwood Road between Ednor Road and New Hampshire Avenue (MD 650), is designated as a four-lane arterial road, A-51, with an 80-foot right-of-way and a proposed Class II bikeway, PB-38. The existing right-of-way along the subject property is from 29.5 to 33.5 feet from the centerline of Norwood Road. At the time of final record plat, the applicant would be required to dedicate additional right-of-way for 40 feet from the centerline of Norwood Road.
2. Ednor Road between Norwood Road and New Hampshire Avenue is designated as a two-lane arterial road, A-50, with an 80-foot right-of-way and a proposed Class I bikeway, PB-40. The existing right-of-way along the Ednor Road frontage is from 40 to 44 feet from the centerline of the road. No dedication is required.

Related Transportation Project

The Maryland State Highway Administration's (SHA) Congestion Relief Study project was completed in 2001 for improvements at the intersection of Norwood Road and Ednor Road-Layhill Road.

Special Exception History and Related Transportation Conditions

Special Exception Case S-874 was originally granted in 1983 and was amended, modified, or had substituted the special exception holder between 1984 and 1999. The hours of operation and number of employees on the site were modified in 1988 from that what was originally granted in 1983. As of 1988, the weekday hours of operation start at 9:00 a.m. and end either at 6:00 p.m. or 8:00 p.m., depending upon season. At any time, no more than eight employees work during the busy season and no more than two employees during the other times of the year.

Local Area Transportation Review

The proposed modifications are to reflect and improve the current operations with changes to fencing, signs, a storage area, adding another building, the parking area, and add vehicles. These proposed modifications are in response to the notice of violation and show cause hearing and do not change the existing transportation-related impact. Thus the number of peak-hour trips would not be increased during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and the weekday evening peak period (4:00 p.m. to 7:00 p.m.). Likewise with no increase in site-generated traffic, a traffic study (to analyze the traffic impact at nearby intersections) is not required to satisfy Local Area Transportation Review.

Policy Area Review/Staging Ceiling Condition

The "jobs" associated with the existing non-residential land use are already considered in the staging ceiling calculations for the Cloverly Policy Area. The subject special exception modification will not change that calculation because the number of employees remains the same. Maintaining these same operating conditions would result in the same staging ceiling "job" calculation. Thus, the applicant would not be required to mitigate their traffic impact to satisfy Policy Area Transportation Review because the Cloverly Policy Area has a remaining capacity of negative 49 jobs as of September 30, 2002, under the *Annual Growth Policy* (AGP) staging ceiling capacity.

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 (wholesale and retail) 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 – Llewellyn Fields Home Owners' Association has written and representatives of the Cloverly Civic Association have contacted staff with objections to this proposal. The letter from Llewellyn Fields Home Owners' Association is an attachment to this report.

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 special exception satisfies applicable special exception provisions for Nursery, Horticultural -Wholesale and Retail found in the Zoning Ordinance. Therefore we recommend approval.

Attachments

1. General and Specific Special Exception Provisions
2. Vicinity Map
3. Special Exception Site Plan
4. Llewellyn Fields Homeowner's Association Correspondence

Attachment 1.
Montgomery County Zoning Ordinance
Compliance with Specific and General Special Exception Provisions

59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The proposed modification of a Horticultural Nursery is permissible in the RE-2C Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed modification of a Horticultural Nursery complies with the standards and requirements set forth in Division 59-G-2.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The subject property is covered by the 1997 Cloverly Master Plan. Staff finds that the existing location of the Nursery, Horticultural - Wholesale and Retail is consistent with the recommendations in the approved and adopted master plan.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

Staff finds that the proposed modification of a Horticultural Nursery in harmony with the existing neighborhood given the limitations on scale and operations and considering the screening and limitations on access.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The special exception use has been in effect for many years but was recently cited for violations. The modification addresses the violations and will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not cause objectionable noise and must conform to the county noise ordinance. Nothing was represented to suggest excessive vibrations, fumes, odors, dust, or physical activity, given the proposed configuration. Light fixtures on the pole barn will have cut-off luminaries to control illumination and glare.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The proposed modification when evaluated in conjunction with other existing and approved special exceptions in the area will not affect area adversely or alter its residential character.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed special exception will not cause any of these effects.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.
- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The special exception uses does require approval of a preliminary plan of subdivision. On site well and septic facilities have been approved. Existing public safety facilities will serve the development.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

No change in access is proposed.

Sec. 59-G-2.30.00. Nursery, horticultural retail.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.

A combination of uses is proposed.

- (1) The sale of the following materials and equipment directly related to residential gardening is allowed:
- (i) Plants, trees, shrubs, seeds, and bulbs, whether or not grown or produced on site;
- (ii) Fertilizers, plant foods, and pesticides; and
- (iii) Hand tools, hand spraying, and watering equipment.

The petition represents the above referenced items are sold on the property.

(2) The incidental sale of seasonal items may also be allowed.
Seasonal items are sold on the property.

(3) The following restrictions on operations apply:

(i) Tools and equipment for sale must not be displayed outdoors.

Limited by existing opinion.

(ii) The sale of general hardware or power equipment is not allowed.

Limited by existing opinion and proposed condition.

(iii) The board may limit hours of operation and number of employees to prevent adverse impact on adjoining uses.

Limited by existing opinion. The following new hours are proposed – M-F 6:00 a.m. to 6:00 p.m. Sunday 10:00 a.m to 4:00 p.m. Staff recommends a 9:00 a.m. start by condition of approval.

(iv) The manufacture of mulch, other than by composting of plant material, is not allowed.

No manufacture of mulch is proposed.

(4) Location and development standards are as follows:

(i) The minimum area of the lot is 2 acres.

The lot exceed two acres in area.

(ii) The minimum building setback from any property line is 50 feet.

The 50' building setback is met.

(iii) Adequate parking must be provided on site in accordance with the requirements for general retail sales under Article 59-E.

The existing one-story building is 1,800 square feet.

Five parking spaces are required for each 1,000 gross leasable square feet. This would require 9 parking spaces. 15 are provided.

(iv) The property must front on and have direct access to a public road built to primary or higher standards, with the possible exception of properties in the Rural, Rural Cluster, and Rural Density Transfer zones. In the Rural, Rural Cluster, and Rural Density Transfer zones, frontage on and access to a public road built to primary or higher standard is not required if the Board makes the following findings:

- Road access will be safe and adequate for the anticipated traffic to be generated; and
- The use at this location will not be an intrusion into an established residential neighborhood.

The property fronts and has direct access to Norwood Road, designated arterial in the Cloverly Master Plan. These requirements apply only to petitions filed on or after March 25, 1986. This special exception was originally filed with the Board prior to March 25, 1986, and is consequently a conforming use and may be amended in accordance with the modification provision of Section 59-G-1.3(c).

- (5) Any retail nursery or garden center established as a permitted use before October 22, 1985, and any retail nursery established pursuant to a building permit application filed before October 22, 1985, is not required to obtain a special exception, except for any future expansion or diversification beyond the scope of paragraphs (1) and (2).
The modification petition arises from a zoning enforcement action.

Sec. 59-G-2.30.0. Nursery, horticultural - wholesale.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a retail horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.

A combination of uses is proposed.

- (1) Plants, trees, shrubs, seeds, and bulbs may be grown or produced and sold on a wholesale basis.
- (2) Fertilizers, plant foods, and pesticides must not be produced but may be stocked and sold on a wholesale basis.
No production of fertilizer is proposed.
- (3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 50-G-2.30 (1):
 - (i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.
A retail nursery garden center is a part of this application and equipment for operation is proposed.
 - (ii) The retail sale of plant materials or garden supplies or equipment.
A retail nursery garden center is a part of this application and retail sale of plant materials is proposed.
- (4) The minimum area of the lot is 2 acres.
The lot exceeds two acres.
- (5) The minimum building setback from any property line is 50 feet.

The 50' setback is met.

- (6) Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E.

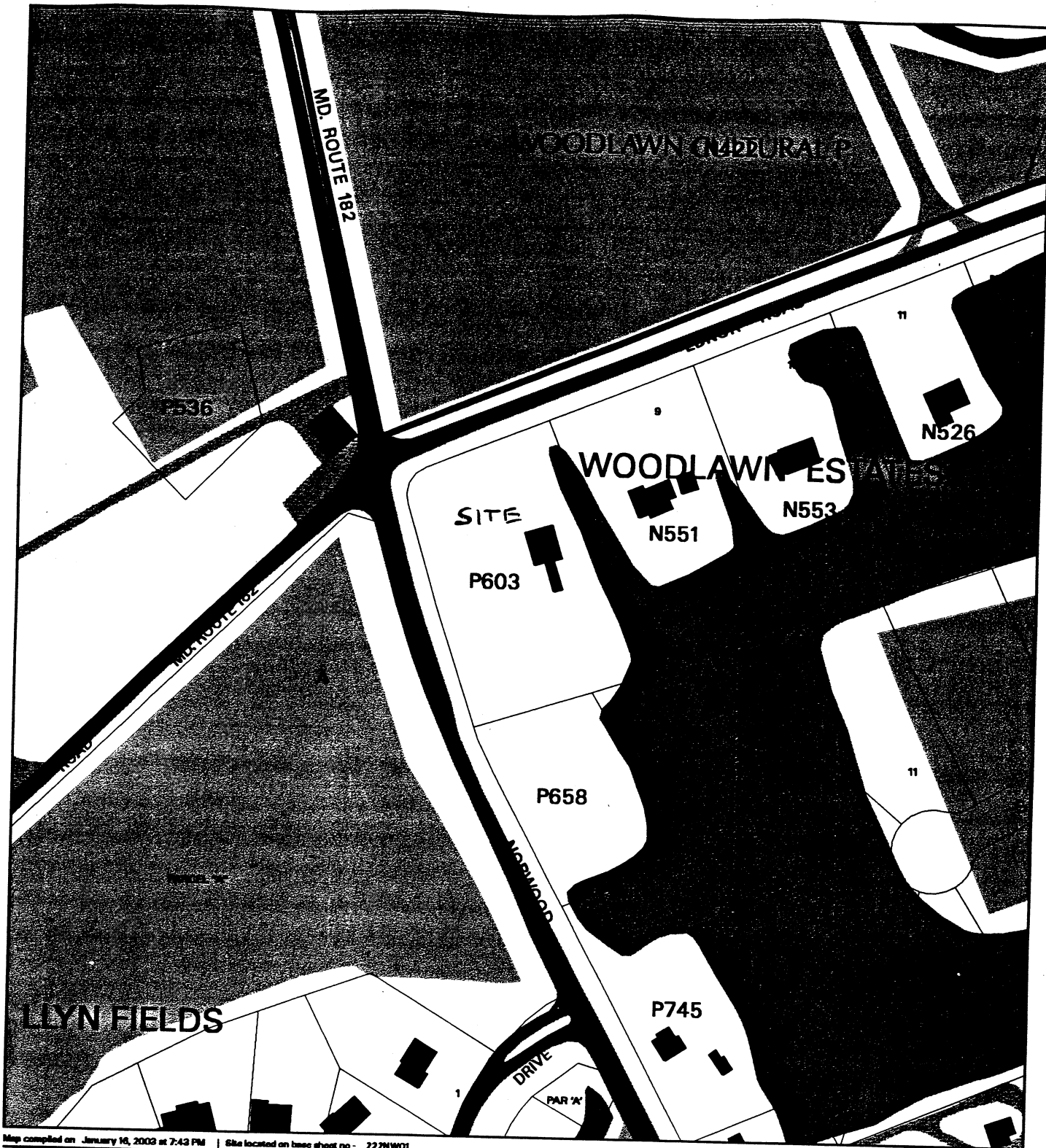
The existing one-story building is 1,800 square feet. One and one-half parking spaces are required for each 1,000 gross leasable square feet. This would require 3 parking spaces. 15 are provided.

- (7) Adequate screening and buffering must be provided for all parking areas and other on-site operations having a potentially adverse impact on adjoining residential or agricultural uses.

Screening of the parking area and existing building is provided by the plantings on the periphery of the property.

- (8) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

Not applicable.



Map compiled on January 10, 2002 at 7:43 PM | Site located on base sheet no - 222NW01

NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map



Research & Technology Center

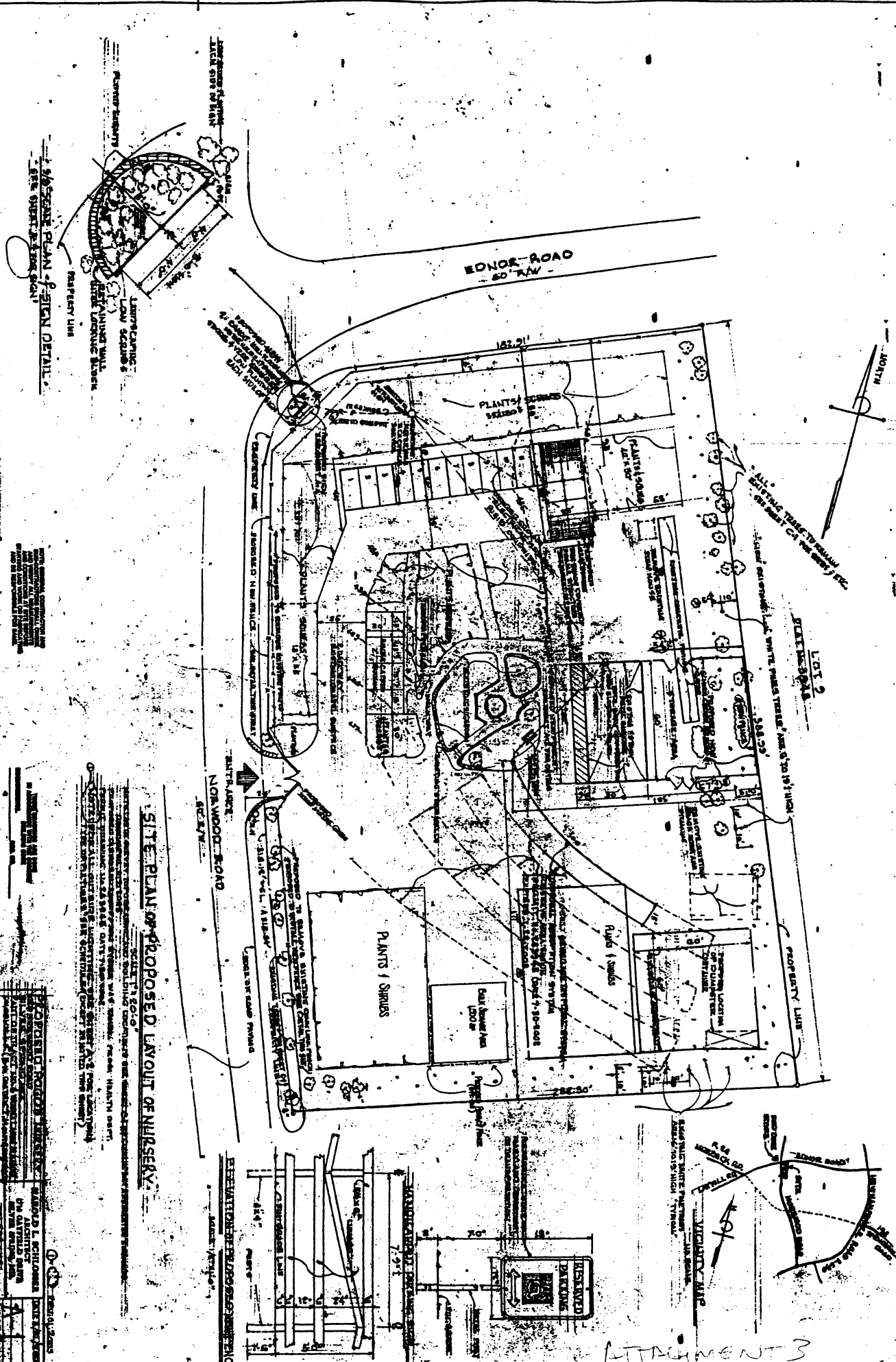


1 : 2400

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

2707 Georgia Avenue - Silver Spring, Maryland 20910-2760

ATTACHMENT 2



WESTERN PLAN - SIGN DETAIL
 - SEE SHEET 2 FOR POINT
 - REAR FLOOR LINE
 - LAMP CAPING
 - LAMP SCREWS
 - LIGHT FIXTURE WALL
 - LIGHT FIXTURE BRACKET

THESE NOTES APPLY TO THE ENTIRE PROJECT AND SHOULD BE READ IN CONJUNCTION WITH THE SPECIFICATIONS AND CONTRACT DOCUMENTS.

THESE NOTES APPLY TO THE ENTIRE PROJECT AND SHOULD BE READ IN CONJUNCTION WITH THE SPECIFICATIONS AND CONTRACT DOCUMENTS.

PROPOSED NURSERY LAYOUT
 SHEET NO. 1
 SCALE: 1" = 20'-0"
 PREPARED BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]

SITE PLAN OF PROPOSED LAYOUT OF NURSERY

NORWOOD ROAD
 60' R/W

EDNOR ROAD
 60' R/W

NORTH

PROPERTY LINE

PLANTS & SHRUBS

PLANTS & SHRUBS

PLANTS & SHRUBS

PLANTS & SHRUBS

PLANTS & SHRUBS

PLANTS & SHRUBS

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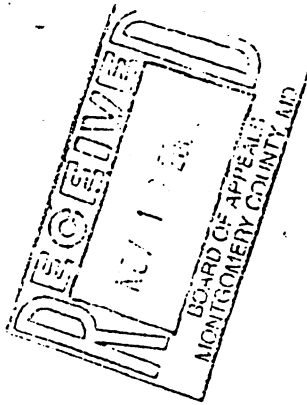
PLANTS & SHRUBS

PLANTS & SHRUBS

PLANTS & SHRUBS

ATTACHMENT 3

E1 [signature]



DR. ROBERT E. KING

November 17, 2002

Board of Appeals for Montgomery County
100 Maryland Avenue, Room 200
Rockville, MD 20850

Reference: Case Nos. S-874 and S-874-A

To Whom It May Concern:

On behalf of the Llewellyn Fields Homeowners' Association, I am writing to you with regard to the request for a special modification exemption for the property located at 1021 Norwood Road, Silver Spring, MD 20905. The request includes nine separate items, and the position of the Homeowners' Association on each of the nine items follows:

- 1) the construction of a board fence – no objection;
- 2) the installation of an 8x8 foot wooden sign – no objection;
- 3) the relocation of bulk storage to the northeast corner – no objection;
- 4) the approval of the site plan with the existing white pine trees – no objection;
- 5) the relocation of the 12x12 foot pump house – no objection;
- 6) the removal and reconstruction of a 60x60 foot lean-to – no objection;
- 7) the use of various loaders and trucks – see below;
- 8) the construction of a porch – no objection;
- 9) a change in the hours of operation to Monday through Saturday from 6:00 am to 6:00 pm – see below.

With regard to item number 7, the Homeowners' Association objects to any modification that will increase the size and scope of the business, or that will have an impact on the neighboring communities. In this regard, the increase in truck traffic will be detrimental to Llewellyn Fields, as will the increase in noise caused by the use of loaders and trucks. With regard to item number 9, our objection is to the impact of the noise on our community of the loaders and trucks in the early morning hours. If the owners truly wish to lessen the impact of truck traffic on the morning rush hour, we suggest that the opening be delayed on Monday through Friday until 9:30 am. Likewise, on Saturday we would like to see the business not open until 9:00 am, which is the time that power equipment is allowed to be used in our community.

Alternatively, the Homeowners' Association is willing to see early hours of operation