

ATTACHMENT 1

Compliance Specific and General Conditions of the Special Exception

Sec. 59-G-2.30.00. Landscape contractor.

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 or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

- (1). The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.

The subject site is 2.3 acres in size.

- (2). Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

The areas indicated on the site plan for truck/trailer parking is 150 feet from the western property line, 50 feet from the northern (rear) and eastern property lines, and 110 feet from the southern (front) property line.

- (3). The number of motor vehicles and trailers for equipment and supplies perated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

As a condition of approval, the staff recommends that the number of trucks and trailers be limited to six (6) trucks and six (6) trailers that will be parked within the enclosed area north and to the rear of the existing residence.

- (4). No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse.

No sale of any goods or services will occur onsite, which is a condition of approval.

(5). The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses.

The staff recommends that the proposed hours of operation be limited to Monday through Friday: 6:30a.m. – 7:30 p.m. and Saturday 7:30 a.m. to 2:00 p.m., as proposed by the applicant. In the event of inclement weather, hours of operation may be extended on Sundays.

(6). 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.

The proposed use is compatible with adjacent land uses on surrounding properties.

(Legislative History: Ord. No. 10-69, §9; Ord. No. 13-31, §5; Ord. No. 13-107, §3; Ord. No. 13-112, §1; Ord. No. 14-36, § 1; Ord. No. 14-49, § 1.)

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation.

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. 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 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 inherent adverse effects, are a sufficient basis to deny a special exception.

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 special exception is permissible in the RDT 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 special exception complies with Section 59-G-2.30 for a landscape contractor.

- (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 a special exception must be consistent with any recommendation in a 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 proposed use is consistent with the approved and adopted 1980 Preservation of Agriculture and Rural Open Space Master Plan and its amendments.

- (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.

The use is compatible with the surrounding neighborhood.

- (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 use will not have a detrimental effect for any of these reasons.

- (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 have any such adverse impacts.

- (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.

Not applicable. The area is rural in character, with agricultural zoning.

- (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 use will not adversely affect the safety of the area residents.

- (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.

The proposed use is served by adequate public services and 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. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

This special exception does not require approval of a preliminary plan of subdivision. This application is in accordance with the FY 2004 Annual Growth Policy review.

- (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 not reduce the safety of vehicular or pedestrian traffic.

This special exception petition will not have a detrimental effect on pedestrian safety and vehicular traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department, which approves or licenses the project.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.