

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Special Exception Application No. 4468 requesting for establishment of a Landscaping Contractor's business and associated variances from the minimum 25 contiguous acre requirement in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, the Technical Staff Report released on April 16, 2003, recommended DENIAL of the request; and

WHEREAS, after consideration of the evidence presented at the public hearing on September 25, 2003 the Prince George's County Planning Board disagreed with the staff recommendation and finds

- A. **Location and Field Inspection:** The subject property is located on the east side of Crestwood Avenue South, 500 feet north of its intersection with Moore's Road. The property consists of six parcels of land with a combined area of 7.37 acres. It is irregularly shaped with the western portion (Parcels 79, 151, 181) forming a triangular shape and the eastern portion (parcels 54, 55, 182) forming a trapezoidal shape. The property is improved with a single-family dwelling, an office/ equipment storage structure, a parking area, and a greenhouse. The major portion of the eastern side of the property is densely wooded and is defined by steep slopes and a streambed.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-R	R-R
Use(s)	Landscaping Contractor's Business	Landscaping Contractor's Business
Acreage	7.37	7.37
Parcels	181,79,151,54,182,55	181,79,151,54,182,55

- C. **History:** The subject property was incorporated into the Maryland-Washington Regional District on April 24, 1961. The 1993 Subregion V Sectional Map Amendment retained the property's R-R zoning.
- D. **Master Plan Recommendation:** The 1993 Subregion V Master Plan recommends the site for low-suburban density residential land use with up to 2.6 dwelling units per acre.
- E. **Request:** The applicant requests validation of a landscaping contractor's business that has been operating on the site since 1999. A landscaping contractor's business is allowed in the R-R Zone only with approval of a special exception request. The applicant is also requesting a variance of 17.63 acres from the 25-acre minimum area requirement for the proposed use. In addition, the

applicant is requesting a departure for the driveway to a loading space that is located less than 50 feet from residentially zoned property.

- F. **Neighborhood and Surrounding Uses:** Staff defines the following neighborhood boundaries for the subject application:

North:	Piscataway Creek
East/Southeast:	Lusby Lane
South:	Dyson Road
West:	Branch Avenue

The neighborhood is characterized by single-family residential developments in the R-R Zone and several undeveloped wooded parcels. All of the adjoining properties are zoned R-R. The subject property and the adjoining property to the north are developed with single-family dwellings. The properties located to the east are currently undeveloped and are a subject of Preliminary Plan of Subdivision No. 4-02056 (the Loveless property). The properties to the south and to the west, across Crestwood Avenue South, are undeveloped.

- G. **Specific Requirements:** A landscaping contractor's business may be permitted in the R-R Zone as a special exception. **Section 27-369** sets forth the specific special exception requirements for a landscaping contractor's business in the R-R Zone.

- (1) **The subject property shall contain at least 25 contiguous acres.**

The subject property consists of only 7.37 acres. The applicant requests a variance of 17.63 acres from this requirement.

- (2) **The subject property shall have frontage on, direct vehicular access to, an existing street with sufficient capacity to accommodate the type and amount of traffic to be generated by the business.**

The proposed site plan shows a direct vehicular access, through a gravel driveway to the adjoining street, Crestwood Avenue South, with sufficient capacity to accommodate the type and amount of traffic to be generated by the business. The applicant has indicated that the subject landscaping contractor's business operates with 23 employees and 10 medium and light trucks. According to the applicant, with the exception of loading the trucks in the morning and recovering crews and vehicles in the evening, all of the business activities occur off site. The subject business has been operating on the site since 1999 with no apparent adverse impact on the immediate neighborhood or the road in terms of the type and amount of traffic being generated by the use. The Transportation Planning Section offered the following comments:

Regarding traffic being generated by the property and its impact on the nearby streets, the closest major intersection is the intersection of MD 5 and Moore's Road. This intersection is unsignalized, however, there are no traffic data available to staff from which any conclusion regarding its operation can be drawn. Because the existing use has been in effect since 1999 and the current operation will remain in effect should the subject application be approved, staff does not anticipate any additional traffic as a result of the impending approval. Consequently, from the perspective of traffic operations, the approval of the subject application will not negatively impact the surrounding transportation network.

(3) Vehicular access to the subject property shall not be by means of streets internal to residential subdivisions.

Crestwood Avenue South is not internal to a residential division. The site plan shows Crestwood Avenue South with a 50-foot right-of-way width. In a memorandum dated March 11, 2003, the Department of Public Works and Transportation (DPW&T) has stated that the site plan needs to be revised to reflect a 60-foot-wide right-of-way.

(4) All business operations (except the outdoor growing of nursery stock) shall be located at least 200 feet from any abutting land in any residential zone, or land proposed to be used for residential purposes on the approved Basic Plan for Comprehensive Design Zone, approved for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan. The District Council may waive this setback requirement if it determines that the buffer yard required in the *Landscape Manual* will adequately protect abutting residential land. These operations shall be screened from the view of abutting residential land on accordance with the *Landscape Manual*.

Due to the irregular shape of the property and the fact that a vast portion of the property is undevelopable, most of the operation is located within 200 feet from abutting land in a residential zone. The 2,976-square-foot greenhouse and the 1,850-square-foot equipment storage house are located 72 feet and 91 feet, respectively, from the southwestern property line. The greenhouse and the office are also located approximately 150 feet and 90 feet, respectively, from the northeastern property line. In addition, the residentially zoned undeveloped property to the west of the subject property across Crestwood Avenue South is located about 183 feet from the greenhouse. The applicant's revised site/landscape plan submitted on April 4, 2003, indicates that the property meets the 40-foot bufferyard requirement of the *Landscape Manual* for the areas along the southwestern property line and for the northern and northeastern property lines. There is, however, a small area along the northeastern property line where the 40-foot bufferyard could not be fully provided. This is due to a 960-square-foot dwelling that was constructed in the 1930s and located near the boundary line. The applicant indicated that the dwelling is strictly used for residential purposes and is surrounded on three sides with a combination of fence and plant materials.

The revised site/landscape plan provides for a combination of fences (six feet high, board-on-board) and plant units as part of the bufferyard requirement. Moreover, the subject business is completely screened from Crestwood Avenue by densely grown mature evergreen trees along the western property line. The south and southeastern portions, which account for over 50 percent of the property, contain 188,700 square feet of wooded area, steep slopes and a stream. Moreover, 1.7 acres of the southernmost portion of the property are reserved for a tree conservation area. The applicant indicated that the varying topographical features render this portion of the property undevelopable.

An April 15, 2003, memorandum from the Urban Design Section notes that the revised landscape plan shows that the operation will be completely screened from the view of abutting residential properties in accordance with the *Landscape Manual*, in a manner that is either equal to or better than the *Landscape Manual* requirements, both in terms of size and number of plant units. To ensure the consistency with the *Landscape Manual*, it is recommended that the existing dwelling may not be used for anything other than residential purposes. If the dwelling is to be used for non-residential purposes, a revision of the site plan is required.

(5) Outdoor storage of equipment and materials (except nursery stock) shall not be visible from a street.

The applicant's landscape plan indicates that the existing 24,000-square-foot plant storage area is sufficiently buffered from Crestwood Avenue South by the existing wooded bufferyard. The plant storage area is not visible from the street. Moreover, a one-story, 1,800-square-foot frame structure that is attached to the office building and identified on the site/landscape plan as equipment storage is located at least 270 feet from the street and is completely screened from the street by existing trees and the landscape bufferyard.

In a telephone communication, the applicant indicated that some of the ten trucks are stored in the southern portion of the plant stock storage area and the remainder are stored in a service aisle behind the office/equipment storage structure. These areas should be labeled as a "vehicle storage area" on the site plan. The site plan needs to be revised accordingly. This area is also completely screened from the street and the adjoining residentially zoned properties.

H. Parking Regulations: Section 27-568 of the Zoning Ordinance requires one parking space for every 500 square feet of gross floor area for all buildings associated with the subject landscaping contractor's business.

A total of 11 spaces are required to serve the subject use. There is no parking requirement for the single-family dwelling that was constructed in the 1930s. The site plan provides 17 parking spaces, including one van-accessible handicap parking space. The parking schedule needs to be revised to reflect the correct breakdown and allocation of spaces. The use also requires one loading space. The site/landscape plan provides for one loading space (33 feet by 12 feet). The applicant is requesting a departure from the 50-foot setback requirement from a residential zone for access to the loading space.

- I. ***Landscape Manual Requirements:*** The Zoning Ordinance exempts the proposal from compliance with the landscaping, buffering and screening requirements of the *Landscape Manual* because the use will not involve the construction, enlargement, or extension of a building.

Although the proposal is exempt from the *Landscape Manual* in this case, it still has to meet the landscaping, buffering and screening requirements of the specific requirements of Section 27-369(4) to support the request for the waiver of the 200-foot setback requirement. The applicant's revised landscape plan provides landscaping, buffering and screening in a manner that is equal or better than what is required by the *Landscape Manual*.

- J. **Signs:** No freestanding signs are proposed with this application.

- K. **Zone Standards:** With the revised site and landscape plans, the proposal requires a variance from the requirement for a minimum of 25 acres. The issues related to the variance will be addressed in section L of this report.

- L. **Variance Request:**

The applicant is requesting a variance from **Section 27-369(a)(1)** to waive the requirement that the subject property shall contain at least 25 contiguous acres.

Section 27-230 requires the Planning Board to make the following findings in order to grant a variance.

1. **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.**

The subject site is indeed exceptional in terms of shape and topographical conditions. A portion of the property is triangularly shaped and is improved with the subject use. The remaining portion that is trapezoidally shaped is a portion that is rendered undevelopable due to varying topographical features including a stream, steep slopes and heavily wooded areas.

The applicant purchased the property, which is made up of five parcels, and moved his landscaping contractor's business on it in 1999. Later, the applicant added parcel 55 and the property formed its current shape. The applicant was not aware of the classification of the subject zone as a special exception use and the fact that the minimum size requirement is not met when acquiring the property. The business had operated on the property for two years when the applicant became aware, by coincidence, of the need for special exception requirement during a permit process for a renovation of one of the buildings.

The Board finds that the exceptional shape and topography of the property and the inability of the applicant to acquire additional property to cure the area deficit create an extra ordinary condition that affects the applicant's ability to meet the requirement.

2. The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or undue hardship upon, the owner of the property.

The strict application of the Ordinance would result in peculiar and unusual practical difficulties and undue hardship upon the owner of the property. The Board finds that a strict application of the minimum acreage requirement will cause the owner the loss of his livelihood as well as the livelihood of 27 other families.

3. The variance will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan.

The requested variance is needed to validate a condition, which existed on the property for the past three years. This variance will not impair the intent, purpose or integrity of the master plan. The Community Planning Division has offered the following comments:

The requested variance is for a reduction of 17.63 acres from the special exception minimum lot size requirement of 25.0 acres that would allow the existing 7.37-acre parcel to be approved for the special exception. The intent of the 2002 General Plan is for higher-intensity development around a future Corridor node in the vicinity of the subject property. With respect to the General Plan, the proposed landscaping contractor's business can be viewed as an appropriate interim use until revised plans define appropriate land uses and there is a market for development more consistent with General Plan concepts. With adequate buffering and screening of operations for surrounding properties, the location of this business on a lot smaller than normally required will not impair the intent, purpose or integrity of either the General Plan or the master plan.

M. Required Findings:

Section 27-317(a) of the Zoning Ordinance provides that a special exception may be roved if:

(1) The proposed use and site plan are in harmony with the purposes of this Subtitle.

The fundamental purposes of the Zoning Ordinance, as found in Section 27-102, are to protect the health, safety and welfare of the public and promote compatible relationships between the various types of land uses. The proposal does not meet the specific requirement of the special exception for a minimum size of 25 contiguous acres of land for the subject use. The applicant requested a variance from this requirement and has made the required findings to justify the variance. With the approval of the variance and the recommended conditions, the special exception is in harmony with the purposes of this subtitle.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

The subject property is located in the R-R Zone, which permits the subject landscaping contractor's business by special exception provided that certain specific requirements are met. The proposal fails to meet two zoning requirements. The applicant has requested a variance and a departure to bring the property into compliance with current requirements of the Zoning Ordinance. With the recommended conditions, the proposed use conforms to all applicable requirements and regulations of this subtitle.

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Map Plan, the General Plan.

The proposed use will not result in the substantial impairment of the Subregion V Master Plan. The 1993 Subregion V Master Plan recommends the site for low-suburban density residential land use. Upon reviewing the applicant's proposal, the Community Planning Division offers the following comments:

Although not a residential proposal, the requested landscaping contractor's business in the R-R Zone may be compatible and should not impair the recommendations of the master plan for Low Suburban residential land use in this part of the Brandywine-Cedarville community. Living Area Guidelines relevant to the review of this application include (Plan text, pp. 53-54):

- "1. Living areas should contain no uses or activities which are incompatible with the residential activities.
- "3. A living area design proposal should include an analysis of internal traffic circulation, as well as an examination of the development's potential impact on the local transportation system.
- "9. Agricultural uses should, wherever possible, be protected from adjoining incompatible uses by buffers.
- "10. Buffering in the form of landscaping, open space, attractive fencing, and/or other creative site planning techniques should be utilized to protect residential areas from commercial, industrial or other incompatible uses.
- "11. Where feasible, building setbacks and/or berms or acoustical fencing should be utilized to deflect noise and to screen visual impacts...where conflicts may develop between land uses."

The proposed special exception to recognize the existing landscaping contractor's business in the R-R Zone does not substantially impair the recommendations of the 1993 Subregion V Master Plan for Low Suburban residential land use in this part of the Brandywine community.

- (4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area; and**
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

The subject use and its operation will not adversely affect the health, safety or welfare of residents or workers in the area, and there is no indication that it would be detrimental to the use of other properties in the neighborhood.

There is extensive buffering, in the form of a landscape bufferyard, topography, existing mature trees and wooded areas, between the nearest residential properties and the proposed use. The property is completely screened from the adjoining properties and the road. Moreover, due to the nature of the use and the topography of the property, approximately 92 percent of the subject property is maintained as green area.

The schedule of services for the subject landscaping contractor's business is from 7:30 am to 5:00 p.m. These service hours are not likely to be disruptive to the adjacent properties or the general neighborhood.

The Transportation Planning Section has indicated that, from the standpoint of transportation, approval of the subject application will not negatively impact the surrounding transportation network and would not be detrimental to health, safety or welfare of the residents of the area.

- (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.**

A revised tree conservation plan reviewed by the Environmental Planning Section would generally meet the requirements for a Type II Tree Conservation Plan but is being reviewed as a Type I Tree Conservation Plan to meet the ordinance requirements (see attached comments from the environmental Planning Section).

The Environmental Planning Section has recommended the following conditions for approval of the proposed Type I Tree Conservation Plan:

Prior to certification, the Type I Tree Conservation Plan shall be revised to:

- a. Show the minimum 50-foot stream buffer on the plan and in the legend.
- b. Show the expanded stream buffer.
- c. Revise note #1 to read "SE-4468" and not "4-00033."
- d. Revise the wording in the worksheet to correctly use the words "required" and provided."

- e. Show the gross tract in the worksheet as 7.37 acres.
- f. Remove the 0.25 acre of reforestation/replacement from the worksheet.
- g. Correct the area of additional woodland retained but not any part of the requirement to read 3.42 acres.
- h. Add an approval block.
- i. Have the revised plan signed and dated by a qualified professional.

An approved Type I Tree Conservation Plan needs to be submitted prior to the Zoning Hearing Examiner's hearing.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George's County, Maryland that the above-noted application be APPROVED, subject to the following conditions:

- 1. The two areas where trucks will be stored shall be labeled as "vehicle storage area" on the site plan.
- 2. Crestwood Avenue South shall be depicted on the site plan as a 60-foot-wide right-of-way.
- 3. Prior to certification, the Type I Tree Conservation Plan shall be revised to:
 - a. Show the minimum 50-foot stream buffer on the plan and in the legend.
 - b. Show the expanded stream buffer.
 - c. Revise note #1 to read "SE-4468" and not "4-00033."
 - d. Revise the wording in the worksheet to correctly use the words "required" and "provided."
 - e. Show the gross tract in the worksheet as 7.37 acres.
 - f. Remove the 0.25 acre of reforestation/replacement from the worksheet.
 - g. Correct the area of additional woodland retained but not any part of the requirement to read 3.42 acres.
 - h. Add an approval block.

- i. Have the revised plan signed.
4. The parking schedule shall be revised to reflect the correct breakdown and allocation of spaces.
5. Hours of operation shall be from 7:30 a.m. to 5:00 p.m.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Lowe, seconded by Commissioner Harley, with Commissioners Lowe, Harley, Eley and Hewlett voting in favor of the motion, and with Commissioner Vaughns opposing the motion at its regular meeting held on Thursday, September 25, 2003, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of October 2003.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:ET:rmk

(Revised 8/9/01)