

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-2807**

**PETITION OF J.B. KLINE, JR. LANDSCAPING  
AND LAWN MAINTENANCE, INC.**

OPINION OF THE BOARD

(Opinion Adopted December 7, 2011)

(Effective Date of Opinion: December 15, 2011)

Case No. S-2807 seeks a special exception under Zoning Ordinance 59—G-2.30.00 to allow the continued operation of an established landscaping business. The application also includes requests for eight parking waivers. The Hearing Examiner for Montgomery County held a hearing on the application on October 7, 2011, closed the record in the case on October 20, 2011, and on November 10, 2011 issued a Report and Recommendation for approval of the special exception.

The subject property is located 6720 Olney Laytonsville Road, Laytonsville, Maryland 20882 in the R-200 Zone.

Decision of the Board:                      Special Exception **Granted** Subject to the  
Terms and Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on December 7, 2011. The Board also had before it a request for Oral Argument from Kevin B. Deutsch and a letter from Todd Brown, Esquire, on behalf of J. B. Kline Landscaping, opposing Oral Argument. The Board has carefully reviewed the record in the case, together with the correspondence from Mr. Deutsch and Mr. Brown. The Board finds that the Hearing Examiner has compiled a record and a report that thoroughly consider and analyze the issues in the case.

Therefore, on a motion by Carolyn J. Shawaker, seconded by Catherine G. Titus, Chair, with Stanley B. Boyd and Walter S. Booth in agreement, and David K.

Perdue, Vice-Chair, not in agreement, the Board **denies** the request for Oral Argument.

On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception and requested parking waivers subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such testimony and evidence are identified in the Hearing Examiner's report and in this opinion.
2. A maximum of twenty-five (25) employees are permitted on site at any one time.
3. Regular weekday hours of operation are limited to 6:00 A.M. to 6:00 P.M. for office workers and 7:00 A.M. to 6:00 P.M. for yard staff and landscape crews, except for snow removal operations which may occur as needed. Saturday hours are limited to 7:00 A.M. to 6:00 P.M. for office workers and 8:00 A.M. to 4:00 P.M. for yard staff and landscape crews. Customers are not permitted on-site.
4. Vehicles are limited to a total of twelve (12) work trucks, three (3) sales vehicles, nine (9) trailers, two (2) rubber tire loaders, and two (2) skid loaders. All vehicles, when not in use, must be parked in the designated parking areas, as indicated by the provided site plan. On-site parking is limited to a total of twelve (12) employee parking spaces, which includes one handicapped parking space.
5. All deliveries and pick-ups must occur between 8 A.M. and 4 P.M., Monday through Friday.
6. A corner of the existing office must be removed, an existing metal garage must be removed, and corners of the employee gravel parking lot must be removed to come into compliance with the 50-foot setback requirements. All on-site landscape activities, including storage, parking, and related outdoor operations, are restricted to within the 50-foot Building Restriction Line (BRL) identified on the Site and Landscape Plan. No manufacturing for mulch or compost, or selling of plants will take place on-site.
7. No materials classified as hazardous waste may be stored on the property, and no pesticides, manure, or chemicals may be stored on site at any time with the exception of fertilizer and 'Ice Melt,' which must be stored in bags, within a building and off the ground.

8. Tree chippers or splitters must not be used on-site.
9. There must be no outdoor lighting, except that which exists in the vicinity of the residence, office building, and storage building.
10. The existing sign must be removed unless a sign variance is granted or the Petitioner brings the sign into compliance with the requirements of the Zoning Ordinance. If a sign variance is obtained, the Board approves the existing, freestanding, non-illuminated sign, as depicted on the Landscape and Lighting Plan (Exhibit 21(b)). Petitioner must file a copy of its sign permit with the Board of Appeals.
11. Gravel parking spaces must be designated by wheel stops.
12. Trucks must be loaded and reversed in place in the afternoon to pull forward in the morning without backup beepers.
13. Petitioner must comply with the terms of its Statement of Operations (Exhibit 30(b)), but the conditions specified in the Board's Resolution control in the event of any conflict.
14. Petitioner is granted a waiver of the parking standards of Chapter 59-E of the Zoning Ordinance to the extent necessary to allow parking spaces on site to be configured as on the Schematic Parking Plan (Exhibit 21(h)). The waivers apply to Zoning Ordinance §§59- E-2.21 (arrangement and marking), 2.4 (access and circulation), 2.41 (driveways), 2.42 (walkways), 2.43 (separation of parking spaces), 2.6 (lighting), 2.7 (landscaping) and 2.83 (shading of parking area).
15. Petitioner must comply with the terms of the Preliminary/Final Water Quality Plan (Exhibits 21(o) and (p)), approved by DPS on September 1, 2011 (Exhibit 27) and the Planning Board on October 20, 2011 (Exhibit 31(a)), as conditioned therein.<sup>1</sup>
16. The storage of fuel is permitted in the existing fuel station area identified on the site plan, but it must be stored and maintained in accordance with all applicable federal, state and local regulations.

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<sup>1</sup> The Hearing Examiner noted in his report that the Planning Board voted to approve the Preliminary/Final Water Quality Plan on October 20, 2011, as indicated in Exhibits 31 and 31(a), but the final version of the Planning Board's resolution is dated October 28, 2011, the date it was mailed out (Exhibit 32). Because the record had already closed on October 20, 2011, that final version is not included in the hearing record, although a copy is retained in the file as Exhibit 32. The Hearing Examiner found the evidence of Planning Board approval submitted on October 20, 2011, to be sufficient.

17. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 15<sup>th</sup> day of December, 2011.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests

in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.