BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. CBA-2180-A

PETITION OF JOHNSON FAMILY ENTERPRISES LIMITED PARTNERSHIP

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution Adopted November 29, 2006)
(Effective Date of Resolution: March 7, 2007)

The Board of Appeals has received a letter, dated November 8, 2006, from Stanley D. Abrams, Esquire, on behalf of Johnson Family Enterprises Limited Partnership. Mr. Abrams requests administrative modification of the special exception for permission to:

1) erect a six foot high wood, stockade fence and gate to enclose the existing hoop green house, a small parking area and two proposed fuel storage tanks;

2) erect and maintain two above ground three hundred gallon tanks and containment trays; one tank would store gasoline and one tank would store diesel fuel; the location of the tanks is illustrated on a site plan which Mr. Abrams submits as Attachment B;

3) modify Condition Number 7 of the Board's March 24, 2004 Opinion in Case No. CBA-2180-A to increase the number of pick up trucks from 4 to 7 trucks, and to increase the number of stake body trucks from 1 to 8 stake body trucks.

The Board of Appeals granted Case No. CBA-2180 to J.H. Burton & Sons of Hyattsville, Inc., on May 2, 1967, to permit the construction and operation of a horticultural nursery and commercial greenhouses. Effective July 8, 1997, the Board transferred the special exception to Johnson Family Enterprises Limited Partnership, and effective March 24, 2004, the Board granted Case No. CBA-2180-A, a comprehensive modification of the special exception.

The subject property contains 28.3449 acres, located at 5011 Laytonsville Road, Olney, Maryland, in the former RDT Zone.

The Board of Appeals considered the modification request at its Worksession on November 29, 2007. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

> If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the addition of two storage fuel tanks and an increase in the number of trucks will not substantially change the nature, character of intensity of the special exception, or its effect on traffic or on the immediate neighborhood. There is adequate parking on site to accommodate all proposed vehicles, and there will be no increase in the number of employees. Therefore, on a motion by Catherine G. Titus, seconded by Caryn L. Hines, with Wendell M. Holloway, and Donna L. Barron Vice Chair in agreement, and Allison Ishihara Fultz, Chair necessarily not participating:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-2180-A is re-opened to receive Stanley D. Abrams letter dated November 8, 2006, with attachments, as Exhibit Nos. 40(a)-(e); and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request of modify the special exception is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

Donna L. Barron

Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of March, 2007.

Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.

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Case No. CBA-2180-A

PETITION OF JOHNSON FAMILY ENTERPRISES LTD. PARTNERSHIP

OPINION OF THE BOARD
(Effective Date of Opinion: March 24, 2004)

Case No. CBA-2180-A is an application for a special exception modification is to permit: (1) the renovation of approximately 9,990 square feet of existing indoor retail space and of 500 square feet of office space to approximately 7,050 square feet of indoor retail space and 3,440 square feet of office storage and product design space; (2) the building of 16,800 square feet of new indoor retail space to replace approximately 13,270 square feet of existing indoor retail space, the relocation of the existing greenhouse structure used for existing indoor retail to location on-site for greenhouse use; (3) the remodeling of 38,250 square feet of outdoor retail space; (4) the re-striping of the existing parking lot to create handicap parking and two pick-up areas; (5) the relocation of the exiting retail greenhouse to become a greenhouse for growing only and to permit no customer access; (6) the relocation of the existing gate to a new location; (7) the enhancement of the existing evergreen buffer with an 6-8 foot Norway Spruce along Mount Zion Road; (8) the replacement of the existing chain-link and split-rail fence with a 6-foot aluminum and black chain-link security fence; (9) the existing sales of propane gas; (10) the retention of the existing 2,250 square feet of outdoor retail sales; (11) the retention of the existing 5,250 square feet of outdoor retail sales; (12) addition of a 2,400 square foot hoop house; (13) reface existing signage with new sign; (14) retention of the two existing above ground diesel fuel tanks and one oil recycling tank; (15) the storage of dry chemicals in the Block Building No. 19; (16) the marking of all existing parking spaces to County standards; (16) the expansion of the existing retail and wholesale use to include landscape design/contracting, which has been an accessory use of this operation since its inception; (18) allow the existing sale of propane gas to retail customers.

Pursuant to the authority contained in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to hold a hearing and submit a Report and Recommendation to the Board. The Hearing Examiner convened a hearing on November 4, 2003, closed the record on November 11, 2003, and on December 11, 2003, issued a Report and Recommendation for approval of the requested modifications.

Decision of the Board: Special Exception Modification **Granted**
Subject to conditions Enumerated Below.

The Board of Appeals considered the modification request at its Worksession on January 21, 2004. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception modification, 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 identified in the Hearing Examiner's Report and Recommendation, and adopted in this opinion.

2. All terms and conditions of the approved special exceptions (CBA-2180 and S-254) shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.

3. Approval of a Preliminary Plan of Subdivision is required, and plats must be recorded before building permits can be issued for this proposed modification.

4. The Petitioner shall continue to operate as a combined retail horticultural nursery and landscape contractor.

5. The hours of operation for the combined nursery and landscape contractor shall be 8:00 a.m. to 8:00 p.m., 7 days/week during Spring season (April and May) and 9:00 a.m. - 6:00 p.m., 7 days/week during Summer, Fall and Winter seasons.

6. The total number of employees for the combined nursery and landscape contractor on site at any one time shall be not exceed 50 employees.

7. Business vehicles and equipment stored or parked on-site shall be limited to the following items or their replacements:

   2 vans
   4 pick up trucks
   3 stake body trucks with dump
   1 stake body truck
   1 16' box truck

1 14' box truck

5 dump trucks

2 trailers

1 skid steer loader

2 forklifts

1 Taylor-Dunn electric cart

8. All elements of the revised Site Plan (Exhibit 19(a)) and the revised Landscape Plan (Exhibit 19(b)) must be implemented, including but not limited to the following:

9.

   a. Moving the Mulch Bay to the rear of the existing shade house, with a setback of 96 feet from Mt. Zion Road, as indicated in the revised Site Plan, and
   b. Planting 22 Norway Spruce trees along Mt. Zion Road as indicated in the revised Site Plan to serve as a buffer and screen for the landscape contractor's staging and storage area.

8. The Petitioner shall comply with any conditions imposed by the Maryland State Highway Administration at Site Plan Review.

9. At the time of Preliminary Plan, Petitioner shall dedicate additional right-of-way, as needed, along MD Route 108 and Mt. Zion Road.

10. Petitioner shall coordinate with the Montgomery County Department of Public Works and Transportation and the Maryland State Highway Administration to ensure adequate sight distance at the site access driveways.

11. Petitioner shall comply with storm water and sediment control regulations of the Montgomery County Department of Permitting Services, and prior to approval of a preliminary plan of subdivision, a Storm Water Management Concept Plan must be approved.

12. Petitioner shall comply with any noise study that may be required by the Montgomery County Department of Environmental Protection.

13. Petitioner shall see to it that the existing fuel storage tanks on site meet required technical standards as well as all county, state and federal permitting requirements.

14. Petitioner shall ensure that all chemicals stored on site for retail sale or for use in the business are stored in accordance with applicable Codes.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

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.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 24th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

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.

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Case No. CBA-2180-A

PETITION OF JOHNSON FAMILY ENTERPRISES LTD. PARTNERSHIP

RESOLUTION TO EXTEND TIME TO IMPLEMENT MODIFICATION
(Resolution Adopted February 22, 2006)
(Effective Date of Resolution: May 5, 2006)

The Board of Appeals has received a letter from Stanley D. Abrams, Esquire, on behalf of Johnson Family Enterprises. Mr. Abrams requests an extension of time, for twelve months, to implement the captioned special exception modification, which the Board of Appeals granted March 24, 2004. He explains that the successful achievement of component percolation tests in a related, required application for preliminary subdivision plan approval took a considerable time to accomplish.

The subject property contains 28.3449 acres, located at 5011 Laytonsville Road, Olney, Maryland, in the former R-R Zone.

The Board of Appeals considered the request for an extension of time to implement the modification at its Worksession on February 22, 2006. Section 59-A-4.53 (c) of the Montgomery Code provides that "The board may extend the time limit for a variance or special exception if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. For a special exception, each extension must not exceed 12 months. If the board grants an extension, the board must set a date by which the erection or alteration of the building must be started or the use established." The Board finds that the basis for the request falls within the purview of Section 59-A-4.53. Therefore, on a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Angelo M. Caputo, Caryn L. Hines and Allison Ishihara Fultz, Chair,in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in case No. CBA-2180-A is re-opened to receive Stanley D. Abrams letter dated February 9, 2006, and;

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the time to implement the modification is extended to May 5, 2007.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of May, 2006.

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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(301) 217-6600

Case No. CBA-2180 and S-254

PETITION OF J. H. BURTON AND SONS, OF HYATTSVILLE, INC.
(Resolution adopted December 15, 1998)

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Effective date of Resolution: January 15, 1999)

The Board of Appeals received correspondence from Kevin P. Fay, Esq., petitioner's attorney. Mr. Fay's December 10, 1998 correspondence states, in part:

"This office represents Johnson Family Enterprises Limited Partnership. It owns the property at 5011 Laytonsville Road in Olney, and operates Johnson's Flower and Garden Center at the site under Special Exception granted in 1967 in Case Number CBA-2180, and modified in 1993 in Case Number S-254. The Special Exception was transferred to Johnson's in June of this year, when it purchased the property."

"This letter requests that the Board of Appeals consider a minor construction modification in Worksession."

"A diagram of the principal retail structures is enclosed. The main retail store is a one story brick and frame building, 131 feet long by 46 feet deep. Behind the store is a greenhouse for horticultural display and customer shopping, 150 feet long by 25 feet deep. This greenhouse is 5 feet behind the retail store building. To allow customers to comfortably walk between the store and the greenhouse, Johnson's would like to cover a 70 foot long portion of this open 5 foot area."

"The covering would be a translucent polycarbonate material, which would coordinate with the structures and roofs of the retail store and the greenhouse behind it. The covering will not be visible from the street, because it will be below the crest of the retail building's roof. Covering this area will make no change in the use of the space. Once approved, the job would be started promptly, and be completed within 7 to 10 days."

"This modification is for customer convenience, and will not substantially change the nature, character or intensity of the use."

The Board of Appeals considered this request at its worksession on December 15, 1998. After careful consideration of the correspondence and a review of the record in the above-referenced case, the Board finds that the request to modify the above-referenced special exception can be granted without the necessity of a public hearing. The Board finds that the modification will not substantially change the nature, character or intensity of the use. The Board further finds that the request will have no effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case Nos. CBA-2180 and S-254 are hereby reopened to receive Mr. Fay's December 7, 1998 letter with diagram; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the modification to cover a 70 foot long portion of the 5 foot open area between the store and the greenhouse is **Granted,** and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the previous special exception, identified by Case Numbers CBA-2180 and S-254, as modified, shall remain in full force and effect.

The subject property contains approximately 28.3449 acres, located at 5011 Laytonsville Road, Olney, Maryland in the former R-R Zone.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron and Wendell M. Holloway and Susan W. Turnbull, Chair, in agreement, the Board adopted the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County,
Maryland, this 15th day of
January, l999.

_____
Katherine Freeman
Acting Executive Secretary to the Board

NOTE: 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.

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall

specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

BOARD OF APPEALS
for
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Case No. CBA-2180 and S-254

PETITION OF J. H. BURTON AND SONS, OF HYATTSVILLE, INC.

Resolution to Deny Administrative Modification Request
(Resolution Adopted October 31, 2000)
(Effective Date of Resolution: July 31, 2001)

The Board of Appeals received a letter from Kevin P. Fay, Esquire, requesting an administrative modification of the above captioned special exception.

The subject property contains approximately 28.3449 acres, located at 5011 Laytonsville Road, Olney, Maryland in the former R-R Zone.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board of Appeals Worksession minutes for October 31, 2000 here attached are adopted as the Resolution required by law as the Board's decision on the above-entitled case.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Mindy Pittell Hurwitz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 31st day of July, 2001.

Katherine Freeman
Executive Secretary to the Board

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 Procedures.

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
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301 217-6600

Case Nos. CBA-2180 and S-254

PETITIONS OF J. H. BURTON & SONS, OF HYATTSVILLE, INC.

RESOLUTION TO SUBSTITUTE SPECIAL EXCEPTION HOLDER
(Resolution adopted June 2, 1998)
(Effective date of Resolution: July 8, 1997)

The Board has received a letter dated May 20, 1998, from Kevin P. Fay, Esquire, which states, in part:

"I represent Johnson Family Enterprises Limited Partnership, a Maryland Limited Partnership. On April 10, 1998, Johnson's entered into a contract with J. H. Burton and Sons, Inc. to purchase the property located at 5011 Laytonsville Road, Olney ... The settlement is scheduled for the end of June, 1998.

"The purpose of this letter is to request a transfer of the special exception which was granted in the above referenced case ... to permit the operation of a horticultural nursery and commercial greenhouse ... The transfer of the Special Exception would be from J. H. Burton and Sons, Inc., formerly known as J. H. Burton and Sons of Hyattsville, Inc. to Johnson Family Enterprises Limited Partnership, a Maryland Limited Partnership. Johnsons would agree not to alter the terms and/or conditions of the special exception originally granted nor to substantially change the nature, character or intensity of the use specified in the original grant or as modified in Case No. S-254. ..."

Enclosed with Mr. Fay's request is a portion of the Purchase Agreement signed by both parties and an updated list of adjoining and confronting property owners.

Based on the foregoing information, the Board finds that the change of holder of the special exception will not be cause for a change in the nature, character or intensity of the use as at present and will not change the effect on traffic, or adversely affect the immediate area. Therefore, pursuant to Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case Nos. CBA-2180 and S-254, shall be, and hereby are re-opened to receive the following exhibits, the originals to be placed in Case No. CBA-2180 and copies in Case No. S-254: Kevin Fay's May 20, 1998, letter; a portion of the Purchase Agreement; and an updated list of adjoining and confronting property owners; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Johnson Family Enterprises Limited Partnership as the special exception holder in the above-referenced cases shall be and hereby is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that this transfer shall become effective upon written notification that settlement between the parties has taken place.

All terms and conditions of the original special exception and any modifications thereto, shall remain in full force and effect.

The subject property contains approximately 28.3449 acres, located at 5011 Laytonsville Road, Olney, Maryland, in the former R-R Zone.

The foregoing Resolution was proposed by Angelo Caputo and concurred in by Louise L. Mayer, Wendell M. Holloway, Donna L. Barron and Susan W. Turnbull, Chair.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 8th day of July, 1998.

Tedi S. Osias
Executive Secretary to the Board

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COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-254

PETITION OF J. H. BURTON & SONS
OF HYATTSVILLE, INC.
(Hearing held June 21, 1973)

OPINION OF THE BOARD

This proceeding is on a petition for a Special Exception pursuant to Section 111-37. p-1 of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended) to permit the continued operation of a horticultural nursery and commercial greenhouse; to relocate certain structures proposed in the previous special exception, and to erect additional structures and install additional parking facilities. The subject property contains approximately 28.3449 acres, located north of the intersection of Maryland Route 108 and Mt. Zion Road, recorded among the land records of Montgomery County, in Liber 825, at Folio 4167, and Liber 2981 at Folio 297, at 5011 Olney-Laytonsville Road, Olney, Maryland, in an R-R Zone.

Exhibit No. 11 was entered into the record to show the proposed layout in the original Case No. 2180 granted May 2, 1967. Testimony revealed that additional park land has been acquired since that time by the County so that petitioner's property is surrounded by farm land, park land and the Potomac Electric Power Company right-of-way. The original site plan showed a proposed sales office, lathe houses, and storage areas for materials and parking areas. It was further revealed that construction had occurred not in conformance with the previously granted special exception. Petitioner proposes to retain what was approved by the Board but asks approval of the relocation of some of the items. Exhibit 12 was entered into the record to show present structures and the proposed additions and changes in the original site plan.

Petitioner sketched in red on Exhibit 12 to show how the present proposal relates to the original plan. The proposed parking on the original plan was for more trucks than the petitioner owns, or anticipates owning. A proposed office building was not built; it was found that an existing building served the function of the proposed office building. The plan to build the 60-foot new sales building, shown on Exhibit 3-B, has been abandoned and will not be constructed; therefore, the septic tank shown on the exhibit will not be necessary and will not be built.

The buildings will all be located more than 160 feet from the property line and over 100 feet from the proposed right-of-way of Route 108. Six of the petitioner's buildings are temporary structures which could be dismantled easily, and do not require a building permit.

Petitioner wishes the Board to approve the amended site plan for the re-location of certain buildings and greenhouses as shown on Exhibit 3-B. He also proposes to develop parking for 90 cars adjacent to the highway. No screening for the parking area is shown on the exhibit, however, petitioner stated he would not object to planting 3-foot high evergreen plantings, in addition to the post and rail fence which now encloses the area.

Petitioner did not believe the traffic situation on Route 108 had changed since the original case was heard and the number of customers projected for the horticultural nursery in the original traffic study has not yet been realized.

Based on the testimony and evidence of record, the Board finds that, as conditioned herein, the amended site plan and the proposed additions thereto will not substantially change the operation of the horticultural nursery.

Accordingly, the subject request for a special exception to amend the original site plan and construct additions to the horticultural nursery is granted as proposed by Exhibit 12 in the record, subject to the following conditions:

1. The parking lot shall be screened in accordance with Section 111-27 which shall include Section 111-27. d. (screening, traffic control, safety, and site plan requirements); the plantings shall be of an evergreen variety and shall be at least three feet high at time of planting. Said plan shall be approved by the Building Inspector before a building permit is issued and said parking lot shall comply with the approved plan before an occupancy permit is issued for the occupancy of the greenhouse or other structures on the site requiring a building permit.

2. Entrance to the parking lot shall be from the existing driveway entrance.

3. The existing post and rail fence enclosing the proposed parking lot area shall be retained.

4. A copy of the approved parking lot with its screening shall be submitted to the Board for the record.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Joseph E. O'Brien, Jr., and concurred in Mmes. Beveraly S. Pearson, Chairman, Shirley S. Lynne, Messrs. Bernard D. Gladhill and James G. Early, constituting all the members of the Board.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 6th day of July, 1973.

Dollie K. Kyte
Clerk to the Board

NOTE: See Section 111-32. c. of the Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

For information relating to the petition, call Board of Appeals, Tel. No. 279-1226; for information relating to compliance, call Department of Environmental Protection, Tel. No. 279-1426.

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. 2180

PETITION OF J. H. BURTON & SONS OF HYATTSVILLE, INC.
REGARDING AN EXTENSION OF TIME
(Hearing held May 23, 1968)

OPINION OF THE BOARD

This proceeding is on a request by J. H. Burton & Sons of Hyattsville, Inc., in accordance with Section 111-32. d. of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended). The petitioners seek an extension of the time with regard to establishing the use of the Special Exception granted in the above case for the construction and operation of a horticultural nursery and commercial greenhouses. The subject property contains approximately 28.3449 acres, located northwest of the intersection of Maryland Route 108 (Laytonsville-Olney Road) and Maryland Route 582 (Mt. Zion Road), Olney, Maryland, in an R-R Zone.

The Board was advised at the hearing on the instant request that the petitioners' proposed move was based on the anticipation that the State Roads Commission would acquire the property in Hyattsville for widening the road for Interstate 95. No action has been taken by the State Roads Commission and the move before selling the property would be a hardship upon the petitioners to operate two units at the same time. The petitioners would like an 18 months' extension in order to establish use of the Special Exception granted on May 2, 1967.

Testimony revealed that except for some trees having been planted and the pasture land mowed, the physical condition of the property remains basically the same as it was in May of 1967, and as such does not presently constitute a danger or a nuisance in the area. The Board finds that the continuation of the subject property in its present condition would not be detrimental to the use of adjoining properties.

Accordingly, an extension of time is granted for a period of 18 months to terminate on the 24th day of November, 1969.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Helen H. Burkart and concurred in by Messrs. Calvin R. Sanders, Chairman, Bernard D. Gladhill, Kenneth E. denOuter and Rourke J. Sheehan, constituting all the members of the Board.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 25th day of June, 1968.

Dollie N. Kytt
Clerk to the Board

This opinion mailed to all persons who received notice of the hearing.

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. 2180

PETITION OF J. H. BURTON & SONS OF HYATTSVILLE, INC.
(Hearing held March 30, 1967)

OPINION OF THE BOARD

This proceeding is on a Petition for a Special Exception under Section 111-37. p-1. of the Zoning Ordinance (formerly Section 104-29. p-1.), Chap. 111, Mont. Co. Code 1965, as amended, to permit the construction and operation of a horticultural nursery and commercial greenhouses. The subject property contains approximately 28.3449 acres, lies northwest of the intersection of Maryland Route 108 (Laytonsville-Olney Road) and Maryland Route 582 (Mt. Zion Road), Olney, Maryland, in an R-R Zone.

Based on the testimony and evidence adduced at the time of the public hearing, and upon consideration thereof, including the documents and exhibits, the Board makes the following findings of fact and conclusions:

1. Petitioner proposes the construction of a masonry sales and office building, two greenhouses, two lath houses, an equipment maintenance building, and a shelter for the storage of materials (peat moss, humus, gravel, tools, etc.).

2. The Petitioner proposes 42 customer parking spaces, 15 employee parking spaces and 31 parking spaces for trucks and other equipment used in connection with the nursery. Parking areas will be lighted with non-glare automatic lights.

3. Ingress and egress to and from the customer parking spaces will be by way of one-way driveways from and to Route 108.

4. Access to and from the employee parking spaces and the truck parking spaces will be by means of one-way driveways to and from Route 582 and a two-way driveway from Route 108.

5. The truck parking area will be screened by evergreen plantings five to six feet in height.

6. All of the proposed buildings and structures will be located more than 50 feet from the proposed right-of-way lines of Route 108 and Route 582 as shown on the Master Plan for Olney. Evidence was presented by the petitioner that the existing right-of-way along Route 108 will be widened to 150 feet, setting back 90 feet from the existing right-of-way, and that Mt. Zion Road will be widened to 70 feet and that the existing right-of-way along said road will be increased by 35 feet.

7. It is proposed that the sign will be 14 to 15 feet high.

8. The retail sales office will be open from 9:00 A.M. to 6:00 P.M., seven days a week during the season. Working hours for the employees will be from 7:30 A.M. to 6:00 P.M.

9. The Board finds that the additional traffic generated by this facility will not be such as to constitute a nuisance, nor will such use create a nuisance because of noise; and

10. The proposed use will not affect adversely the General Plan for the physical development of the District as embodied in the Ordinance and in any Master Plan or portion thereof; and

11. The proposed use will not affect adversely the health and safety of residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood, which is predominantly rural in character.

12. The Board finds that a need exists in the general neighborhood for the proposed use; in determining the existence of such need, the Board has considered the availability of land, space, and facilities in the general neighborhood.

By virtue of the foregoing findings of fact and conclusions and in accordance with the testimony and exhibits of record, the Special Exception is granted, subject to the following conditions:

1. The proposed lights referred to in finding No. 2 shall not exceed 8 feet in height and be of mushroom type designed so as not to reflect or cause glare.

2. The petitioner's plans shall be subject to the approval and recommendation of the sediment control provisions of the newly adopted County Ordinance.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled Petition."

The foregoing Resolution was proposed by Mr. Kenneth E. denOuter and concurred in by Mrs. Helen H. Burkart, Messrs. Charles R. Richey, Chairman, and Bernard D. Gladhill. Mr. Calvin R. Sanders, Vice Chairman, was necessarily absent for the hearing in this case and did not participate in this decision.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 2nd day of May, 1967.

Dollie H. Kite
Clerk to the Board

NOTE: Please see Section 111-32. c. of the Ordinance regarding the 12 months' period within which the right granted by the Board must be exercised.

This opinion mailed to all persons who received notice of the hearing.