

## Prince George's County Council

### Agenda Item Summary

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<b>Meeting Date:</b>	7/21/2004
<b>Reference No.:</b>	CB-021-2004
<b>Draft No.:</b>	2
<b>Proposer(s):</b>	Dean, Peters
<b>Sponsor(s):</b>	Dean, Peters
<b>Item Title:</b>	An Ordinance reducing the minimum area requirement for landscaping contractor's business

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<b>Drafter:</b>	Jackie Brown, Director, PZED Committee
<b>Resource Personnel:</b>	Richard J. Santos, Administrative Aide

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#### LEGISLATIVE HISTORY:

<b>Date Presented:</b>	4/6/2004	<b>Executive Action:</b>	
<b>Committee Referral:</b>	4/6/2004 - PZED	<b>Effective Date:</b>	9/7/2004
<b>Committee Action:</b>	4/22/2004 - HELD 5/18/2004 - HELD 6/2/2004 - FAV(A)		
<b>Date Introduced:</b>	6/15/2004		
<b>Public Hearing:</b>	7/21/2004 - 10:00 AM		
<b>Council Action (1)</b>	7/21/2004 - ENACTED		
<b>Council Votes:</b>	MB:-, SHD:A, TD:A, CE:A, DCH:A, TH:-, TK:A, DP:A, PS:-		
<b>Pass/Fail:</b>	P		
<b>Remarks:</b>			

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#### AFFECTED CODE SECTIONS:

27-369

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#### COMMITTEE REPORTS:

##### PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

**Date 6/2/2004**

Committee Vote: Favorable with amendments, 5-0 (In favor: Council Members Dernoga, Bland, Dean, Exum and Harrington)

Staff presented a Proposed Draft-2A (DR-2A) with additional language concerning applicant's submittal requirements and minimization of adverse impacts as discussed at the May 18 committee meeting.

Section 27-369(a) is amended in DR-2A as follows:

“The District Council may reduce this area requirement to no less than five (5) contiguous acres provided:

(A) In addition to the justification statement, the applicant files an impact statement explaining the scope of the business, including without limitation, the number of employees, the number and type of trucks and other vehicles and the provisions to protect adjoining and adjacent residential properties from noise, vibration, visual, odor, or other

adverse effects; and

(B) The District Council determines, from the impact statement and evidence in the record, that landscaping, screening, buffering, green area, or special conditions on the subject property will adequately protect adjoining and adjacent residential properties.”

Council Member Bland expressed concern that a new process is being created by this legislation for landscaping contractor’s business special exceptions. Ms. Bland inquired about ramifications to these businesses if they are out of compliance.

Council Member Dernoga, Committee Chair, responded that the Department of Environmental Resources’ zoning enforcement inspectors are responsible for ensuring compliance. He indicated that violation notices may be issued, and if after the allowed time has lapsed for correcting the violations has lapsed and such violations have not been corrected, the property owner could be fined and could ultimately receive notice to appear in District Court for enforcement of the notice of violation. He also noted that a persistent failure to comply could result in an action to revoke the special exception.

Dorothy Troutman was present to indicate her support of Proposed DR-2A. Ms. Troutman believes that the additional language will help in avoiding large operations on small properties.

Aisha Braveboy, representing the County Executive’s Office, indicated that the Executive supports CB-21-2004.

#### **PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE**

**Date 5/18/2004**

Held in committee.

Staff presented a Proposed Draft-2 (DR-2) of the legislation that was prepared based on the discussion at the April 22 committee meeting. Proposed DR-2 included the following additional language in Section 27-369 (a)(1): “to no less than five (5) contiguous acres” so that the sentence would read: “The District Council may reduce this area requirement to no less than five (5) contiguous acres when it determines that the landscaping, screening, and buffering requirements in the Landscape Manual, green area, or other conditions, will adequately protect abutting residential property.”

Ed Gibbs, Law Offices of Gibbs and Haller, proposed the minimum five-acre requirement to address concerns raised at the prior meeting. Mr. Gibbs commented that there is a presumption of compatibility when submitting a special exception application based on the existing criteria for special exception review.

Dorothy Troutman presented a letter dated May 17, 2004 that indicated the objection of citizens in her area to reducing the minimum area required for a landscaping contractor’s business without relating the area of land to the extent of the operation. Ms. Troutman explained that while five acres might be adequate for a small operation with a few employees, it would not be adequate for a large-scale operation with dump trucks, agricultural-sized spraying equipment, tractors, augurs, snowplows, etc., which would require more employees, cause more traffic and generate more noise. She also suggested that this business be classified as “low-impact,” with a minimum requirement of five acres, and “high-impact,” with the requirement that the property contain at least 25 contiguous acres.

Council Member Bland inquired about enforcement and monitoring of the landscaping contractor’s businesses after legislation is passed that allows a reduced area. Ms. Bland noted her concern regarding these businesses operating beyond the scope that is approved pursuant to their special exception application.

The committee held the legislation to allow staff time to prepare amendments that would include additional findings and appropriate conditions to ensure that adverse impacts are minimized.

#### **PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE**

**Date 4/22/2004**

Held in committee.

Staff summarized the purpose of CB-21-2004 and referral comments that were received. This legislation amends the Zoning Ordinance to reduce the minimum area required for a special exception for a landscaping contractor's business. The Ordinance requires a minimum of 25 acres for this type of business, and CB-21-2004 proposes to allow the District Council to reduce this area requirement under certain circumstances.

The Principal Counsel, District Council, reviewed the bill and provided the following comments. Presently a landscaping contractor cannot locate the business on a residential parcel smaller than 25 acres. The amendment in the bill authorizes the District Council to reduce this area requirement where it determines that Landscape Manual requirements or conditions on a property "will adequately protect abutting residential property."

This proposed authorization, intended to increase District Council flexibility in most landscaping contractor cases, does not seem inconsistent with Zoning Ordinance provisions for low-intensity commercial uses on residentially zoned land. But the Council should note that if and when a number of these special exceptions are approved, where the subject properties are considerably less than 25 acres in size but the proposed screening and buffering is found adequate, then the 25-acre requirement may as a practical matter become meaningless.

The minimum acreage requirement is obviously intended to require the landscaping contractor to keep all nuisance-type activities, such as fertilizer use, for example, or the operation of heavy or noisy equipment, away from neighboring residential properties. (That can be readily accomplished on large parcels, but it is not so easy on smaller ones.) The bill will allow every future special exception applicant to replace the 25-acre requirement with one much easier to meet, simply by buffering and screening the undesirable activities from the neighbors.

The Legislative Officer and the Office of Law determined that the bill is in proper legislative form. The Planning Board supports CB-21-2004 as an appropriate relaxation of regulations pertaining to landscaping contractor's businesses. Upon adoption, the full complement of rules applicable to landscaping contractor's businesses would be sufficient to protect abutting residential property.

Ed Gibbs spoke in support of the bill. Mr. Gibbs informed the committee that his firm represents two clients with properties less than 25 acres that would like to operate landscaping contractor's businesses. He believes that the legislation is necessary to allow a reduced area based on the different types of contractor's businesses.

Council Member Dean, the bill's sponsor, commented that these businesses currently tend to operate illegally because they do not meet the minimum area requirement. Mr. Dean indicated that the provision proposed in CB-21-2004 allows the Council to determine as part of the special exception review if certain measures are taken to ensure that impacts on the surrounding neighborhood are minimized if the property area is reduced.

Council Member Dernoga expressed concern that the legislation does not require a minimum area and lacks specific criteria. Mr. Dernoga suggested that the bill include additional language to address these concerns.

Dorothy Troutman addressed the committee regarding her concern that the bill provides no control on size or activity.

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#### **BACKGROUND INFORMATION/FISCAL IMPACT:**

(Includes reason for proposal, as well as any unique statutory requirements)

Landscaping contractor's businesses are permitted by special exception in the R-O-S, O-S, R-A, R-E and R-R Zones. One of the requirements for approval of a special exception for a landscaping contractor's business is that the property contain at least 25 contiguous acres. This legislation allows the District Council to reduce the area requirement if it is determined that certain measures will adequately protect abutting properties.

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#### **CODE INDEX TOPICS:**

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**INCLUSION FILES:**

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