

7/17

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(6126 Ebenezer Road)
15th Election District
6th Councilmanic District
Perry & Laureen Wright
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **Case No. 2013-0272-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 6126-6130 Ebenezer Road. The Petitions were filed by J. Neil Lanzi, Esq., on behalf of Perry and Laureen Wright, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to allow a landscape service operation. The Petition for Variance seeks relief under B.C.Z.R. Sections 404.1B and 404.1C: (1) to allow accessory structures 44 ft., 3 ft., 38 ft. and 10 ft. from the property line in lieu of the required 50 ft.; and (2) to allow the loading and unloading of vehicles for the purpose of shipping and receiving goods 10 ft. from the property line adjacent to a residentially zoned or used property in lieu of the required 100 ft. The subject property and requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioners' Exhibits 4 & 5.

Appearing at the hearing in support of the Petitions were Perry and Laureen Wright and Mitchell Kellman, whose firm prepared the plans. J. Neil Lanzi, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive ZAC comments were received from Department of Environmental Protection and Sustainability (DEPS) dated July 3, 2013 indicating the Petitioners must comply with the Forest Conservation Regulations. The Department of Planning (DOP) and Bureau of Development Plans Review (DPR) noted that a landscape plan shall be approved prior to the issuance of permits.

Testimony and evidence offered at the hearing revealed that the subject property is 1.370 acres and is zoned RC 2. As shown on the plan, the subject property is improved with three single family dwellings, and to the rear of the dwellings the Petitioners store equipment and machinery (in a building) for a landscaping business. The business has been in operation for many years, and after his father's death the Petitioner took over the operation. Recently, the Petitioner received a code enforcement correction notice, stating he needed zoning approval for the landscape business, and thus this case was filed. All of the neighbors in the area signed a petition (Exhibit 2) expressing support for the zoning requests.

SPECIAL EXCEPTION

Under Maryland law, a Special Exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use. In this case, there was no evidence submitted that would tend to rebut this presumption. In fact, Mr. Kellman testified the proposal satisfied the B.C.Z.R. §502.1 standards, and that the landscape

business would not have a detrimental impact upon the neighborhood.

VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. As noted by Mr. Kellman, the subject property is comprised of three (3) individual lots, each of which is long and narrow. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, in that they would need to raze certain accessory buildings that have been in place, without complaint, for years. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County opposition and the strong support of the neighborhood.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of July, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., to allow a landscape service operation, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. Sections 404.1B and 404.1C: (1) to allow accessory structures 44 ft., 3 ft., 38 ft. and 10 ft. from the property line in lieu of the required 50 ft.; and (2) to allow the loading and unloading of

vehicles for the purpose of shipping and receiving goods 10 ft. from the property line adjacent to a residentially zoned or used property in lieu of the required 100 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. No commercial use (or parking of commercial vehicles) of the premises in the area between the single family dwellings and Ebenezer Road.
3. Submission to and approval by the County of a landscape plan.
4. No additional impervious surfaces may be created on the property.
5. It is understood and agreed that the area of the Special Exception granted herein shall include all those parcels shown on the site plan (known as parcels 272, 273 and 467). This area designation is made to allow Petitioners to access the landscape operation on site, and other than such access there shall be no commercial use or activity of any sort between the single family dwellings and Ebenezer Road.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 6126, 6128, 6130 Ebenezer Rd Balto MD which is presently zoned RC2Deed Reference 08334/00158 ** 10 Digit Tax Account # 1513000010 **Property Owner(s) Printed Name(s) Perry Wright and Laureen Wright(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve2. X a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

See attached

3. X a Variance from Section(s)

See attached

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Wright's Country Landscaping Services Inc.

Name- Type or Print

Signature

6126 Ebenezer Rd Balto MD

Mailing Address

City

State

21220

413-829-4687

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Perry Wright

Laureen Wright

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

6126 Ebenezer Rd Balto MD

Mailing Address

City

State

21220

410-335-5905

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

J. Neil Lanzi, Esquire

Name- Type or Print

Signature

409 Washington Avenue Ste 617 Towson MD

Mailing Address

City

State

21204

410-296-0686

nlanzi@lanzilaw.com

Zip Code

Telephone #

Email Address

Representative to be contacted:

Neil Lanzi

Name - Type or Print

Signature

409 Washington Ave Ste 617 Towson MD

Mailing Address

City

State

21204

410-296-0686

nlanzi@lanzilaw.com

Zip Code

Telephone #

Email Address

2013-0272-XA

CASE NUMBER

Filing Date

5-17-13

Do Not Schedule Dates:

Reviewer

JF

SPECIAL EXCEPTION AND VARIANCE ATTACHMENT

Perry and Lauren Wright, Property Owners and Wright's Country Landscaping Services, Inc., Contract Purchaser, hereby petition the Administrative Law Judge for the following zoning relief with regard to the properties known as 6126, 6128 and 6130 Ebenezer Road:

1. A Special Exception pursuant to Section 1A01.2C(14) of the BCZR to allow a landscape service operation.
2. Variance from Section 404.1B of the BCZR to allow accessory structures 44 feet, 3 feet, 38 feet and 10 feet respectively from the property line in lieu of the 50 feet required.
3. Variance from Section 404.1C of the BCZR to allow the loading or unloading of vehicles for the purpose of shipping and receiving goods 10 feet from the property line adjacent to a residentially zoned or used property in lieu of the 100 feet required.
4. For any further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

The Administrative Hearing Officer has the power to grant special exceptions and variances that will not be detrimental to the health, safety or general welfare of the locality involved. Petitioners will be providing additional reasons in support of the zoning relief requested at the hearing.



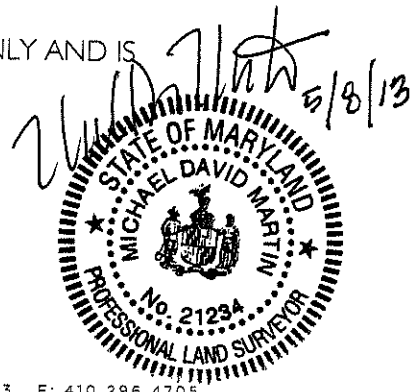
Description
To Accompany Petition
For a Variance, Special Exception
And/or Special Hearing
6126, 6128, and 6130 Ebenezer Road
Baltimore County, Maryland

Beginning for the same at the end of the second of the following two courses and distances, measured from the point formed by the intersection of the centerline of Bird River Road with the centerline of Ebenezer Road, Northwesterly along the centerline of Ebenezer Road, 820 feet, more or less, to the point of beginning; thence leaving said point of beginning and running with and binding on a portion of Ebenezer Road, referring all courses of this description to the Maryland Coordinate System (NAD 83/1991), the four following courses and distances: (1) North 36 degrees 23 minutes 33 seconds West 246.14 feet; thence (2) North 38 degrees 33 minutes 45 seconds East 217.24 feet; thence (3) South 49 degrees 22 minutes 07 seconds East 236.44 feet; and thence (4) South 38 degrees 15 minutes 55 seconds West 272.60 feet to the point of beginning; containing 1.332 acres of land, more or less, as now described by Daft-McCune-Walker, Inc., in May 2013.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

May 08, 2013

Project No. 13012 (L13012)





KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

July 2, 2013

ad
PMZ

Perry & Laureen Wright
6126 Ebenezer Road
Baltimore MD 21220

RE: Case Number: 2013-0272, Address: 6126, 6128, 6130 Ebenezer Road

Dear Mr. & Ms. Wright:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on May 17, 2013. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Neil Lanzi, Esquire, 409 Washington Avenue, Suite 617, Towson MD 21204
Wright's Country Landscaping Services Inc., 6126 Ebenezer Road, Baltimore MD 21220



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Darrell B. Mobley, Acting Secretary
Melinda B. Peters, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 5-22-13

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County

Item No 2013-0272-XA

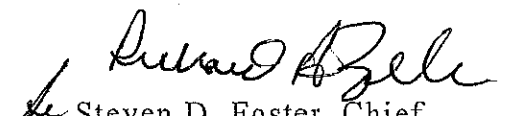
Special Exception Variance
Perry & Laureen Wright
6126, 6128, 6130
Ebenezer Road

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2013-0272-XA.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,


Steven D. Foster, Chief
Access Management Division

SDF/raz

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 27, 2013
Item No. 2013-0272

DATE: May 24, 2013

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

A landscape plan shall be received and approved prior to the approval of this permit.

DAK: CEN.
Cc: file.
ZAC-ITEM NO 13-0272-05272013.doc

6124113
WCR

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: June 18, 2013

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 6126, 6128, and 6130 Ebenezer Road

INFORMATION:

Item Number: 13-272

Petitioner: Perry and Laureen Wright

Zoning: RC 2

Requested Action: Special Exception and Variance

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's requests provided the following conditions are met:

1. Clearly delineate the area of the special exception on the site plan.
2. Prepare and submit a landscape plan to the Department of Planning for review and to Jean Tansey, Baltimore County Landscape Architect for review and approval.
3. The site should be properly screened to mitigate any adverse impact on adjacent properties.
4. Delineate customer and business parking on the site plan. Landscaping vehicles and equipment shall not be parked or stored in front of the residential dwellings.

For further information concerning the matters stated here in, please contact Matt Diana at 410-887-3480.

Prepared By:

Division Chief:
AVA/LL:cjm

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE OFFICE
AND VARIANCE		
6126, 6128 & 6130 Ebenezer Rd; NE/S	*	OF ADMINSTRATIVE
Ebenezer Road, 820' NW c/line Bird River Rd		
15 th Election & 6 th Councilmanic Districts	*	HEARINGS FOR
Legal Owner(s): Perry & Laureen Wright		
Contract Purchaser(s): Wright's Country	*	BALTIMORE COUNTY
Landscaping Services, Inc		
Petitioner(s)	*	2013-272-XA

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED

MAY 22 2013

He
.....

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2013, a copy of the foregoing Entry of Appearance was mailed to J. Neil Lanzi, Esquire, 409 Washington Avenue, Suite 617, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



© 2013 Google

Google earth

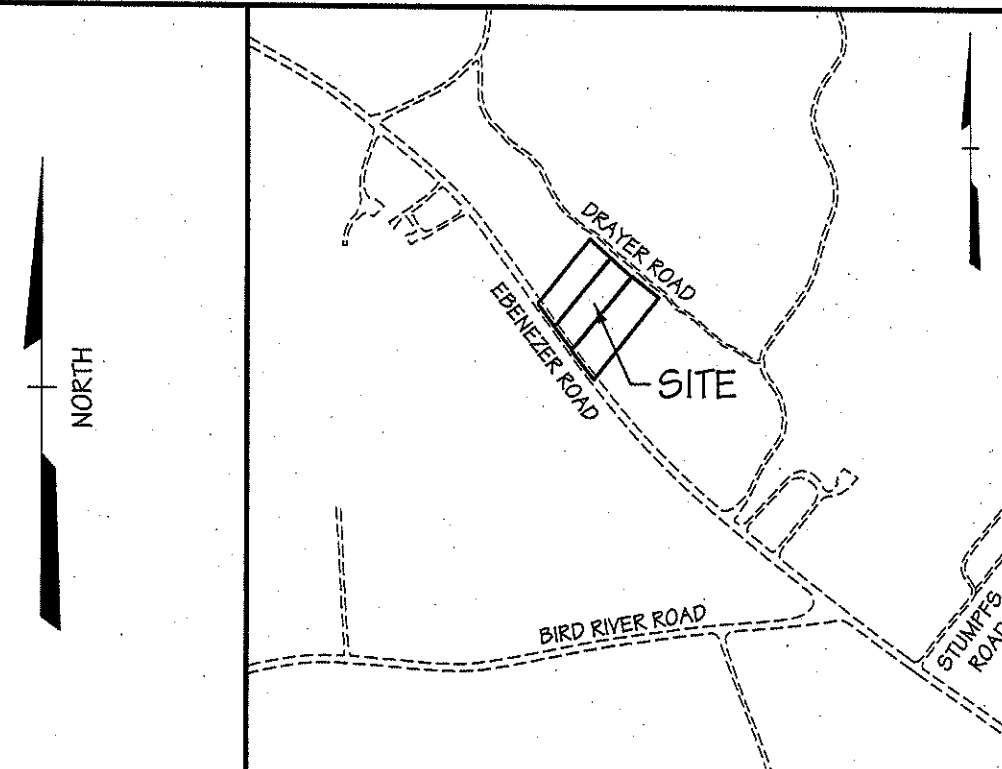
Google earth

feet 200
meters 80



ZONING RELIEF:

1. A SPECIAL EXCEPTION PURSUANT TO SECTION 1A01.2C(14) OF BC2R TO ALLOW A LANDSCAPE SERVICE OPERATION IN A RC2 ZONE.
2. VARIANCE FROM SECTION 404.1B OF THE BC2R TO ALLOW ACCESSORY STRUCTURES 44 FEET, 3 FEET, 30 FEET AND 10 FEET RESPECTIVELY FROM THE PROPERTY LINE IN LIEU OF THE 50 FEET REQUIRED.
3. VARIANCE FROM SECTION 404.1C OF THE BC2R TO ALLOW THE LOADING OR UNLOADING OF VEHICLES FOR THE PURPOSE OF SHIPPING AND RECEIVING GOODS 10 FEET FROM THE PROPERTY LINE ADJACENT TO A RESIDENTIALLY ZONED OR USED PROPERTY IN LIEU OF THE 100 FEET REQUIRED.



VICINITY MAP
SCALE: 1" = 500'

GENERAL NOTES:

1. OWNER: PERRY C. WRIGHT
LAUREN L. WRIGHT
2. ADDRESS: 6126, 6128 & 6130 EBENEZER ROAD
BALTIMORE, MD 21220
3. DEED REFERENCES: 0834/00158 (#6126)
26135/00617 (#6128)
24898/00642 (#6130)
4. TAX MAP 83, GRID 0008, PARCEL 273 (#6126)
TAX MAP 83, GRID 0008, PARCEL 272 (#6128)
TAX MAP 83, GRID 0008, PARCEL 467 (#6130)
5. ACREAGE: PARCEL 273 - 0.399 AC. (17,400 SQ.FT.)
PARCEL 272 - 0.422 AC. (18,375 SQ.FT.)
PARCEL 467 - 0.549 AC. (23,920 SQ.FT.)
PER SDAT TOTAL 1.370 AC. (59,695 SQ.FT.)
PER DEEDS TOTAL 1.392 AC.
6. TAX ACCOUNT NUMBERS: 1513000010 (#6126)
1523870130 (#6128)
1523350950 (#6130)
7. ELECTION DISTRICT 15, COUNCILMANIC DISTRICT 6.
8. ZONING CLASSIFICATION: RC2
200 SCALE GRIDS: 083A1, 083A2
9. THE SITE IS NOT WITHIN A BALTIMORE COUNTY/NATIONAL REGISTER HISTORIC DISTRICT, AND THERE ARE NO ON-SITE BUILDINGS ON THE BALTIMORE COUNTY LANDMARKS LIST (BASED ON CURRENT COUNTY GIS).
10. THE SITE IS NOT WITHIN THE CHESAPEAKE BAY CRITICAL AREA AND IS NOT WITHIN A FLOOD HAZARD AREA.
11. FLOOR AREA RATION (FAR) AND AMENITY OPEN SPACE (AOS) DOES NOT APPLY TO THE SITE/USE.
12. RESIDENTIAL TRANSITION AREA (RTA) DOES NOT APPLY TO THE SITE/USE.
13. THERE ARE NO ZONING ORDERS OR DEVELOPMENT PROCESS ACTIONS ON THE PROPERTY (CRG, JSPC, DEVELOPMENT PLAN).
14. MAXIMUM BUILDING HEIGHT IS 35 FEET.
15. WATER IS PUBLIC, SEWER IS PRIVATE.
16. THERE ARE NO KNOWN BASIC SERVICE MAP ISSUES ON/FOR THE PROPERTY.
17. ALL EXISTING AND/OR PROPOSED SIGNS WILL COMPLY WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS.
18. PARKING REQUIRED:
2 PER DWELLING = 6 SPACES
PARKING PROPOSED = 6 SPACES
+ AREA FOR LANDSCAPING
EQUIPMENT AND VEHICLES
19. THE 10' SETBACK FOR LOADING/UNLOADING OF VEHICLES WILL BE LANDSCAPED IN CERTAIN PORTIONS AS REQUIRED BY BALTIMORE COUNTY.
20. THE SPECIAL EXCEPTION AREA INCLUDES ALL THREE PARCELS (272, 273 & 467).
21. THE OUTDOOR STORAGE AREA OF MATERIALS USED FOR LANDSCAPING PURPOSES, INCLUDING BUT NOT LIMITED TO, TOOLS, DRAINAGE PIPES, RAILROAD TIES, DECORATIVE STONES, MULCH AND FERTILIZERS SHALL BE COMPATIBLE WITH SURROUNDING USES AND SCREENED FROM RESIDENTIALLY ZONED OR USED PROPERTIES.

DMW

DAFT MCCUNE WALKER INC

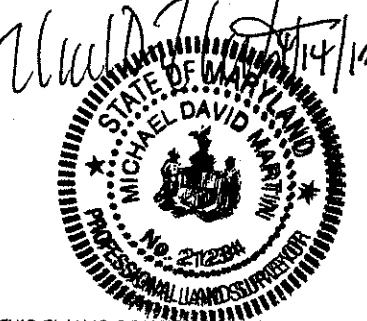
200 EAST PENNSYLVANIA TOWSON, MD 21286
P: 410 296 3333 F: 410 296 4705 WWW.DMW.COM

A TEAM OF LAND PLANNERS, LANDSCAPE ARCHITECTS,
ENGINEERS, SURVEYORS & ENVIRONMENTAL PROFESSIONALS

PLAN TO ACCOMPANY SPECIAL EXCEPTION,
VARIANCE, AND/OR SPECIAL HEARING REQUEST
FOR

WRIGHT'S COUNTRY
LANDSCAPING SERVICES, INC.

#6126, #6128 & #6130 EBENEZER ROAD
MIDDLE RIVER, MARYLAND 21220
TAX MAP 83, GRID 8, PARCELS 272, 273 & 467



THIS PLAN IS SEALED FOR RECORDING PURPOSES
ONLY AND ILLUSTRATES INFORMATION OBTAINED
BY DEED AND BALTIMORE COUNTY GIS.

DATE BY REVISIONS

Scale: 1"=20'

Date: 05/10/2013

Project No: 13012.00

Field Crew:

Processed by: R.C.

Drawn by: R.C.

Project Manager: M.D.M.

Checked by: Date:

LEGEND:

RC2 BL ZONING LINE
PROPERTY LINE



GRAPHIC SCALE