

IN THE MATTER OF : BEFORE THE
CHAD ZIRK : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 16-016C&V
 Reconsideration Order

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RECONSIDERATION ORDER

On December 15, 2016, the Hearing Examiner in Board of Appeals Case No 16-016C&V granted Chad Zirk's (Petitioner) petition for Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, which decision was supported by findings and facts set forth in the decision and subject to 15 conditions of approval (Approval Conditions).

On December 29, 2016, Petitioner, through counsel Thomas Coale, Esq., submitted a timely request for reconsideration, wherein Petitioner asks the Hearing Examiner to remove the last sentence of Approval Condition #11, which states:

Petitioner shall submit a site development plan for review and approval. This requirement for site development plan approval may not be waived. No alternative compliance is permitted. The site development plan shall denote Areas 1 and 2 and their square footage, which shall be noted as the Conditional Use Site, the location of all parking areas, paving surface materials, and the location of all vehicle and equipment parking/storage areas. Seven employee parking spaces shall be noted on the site development plan. The site development plan shall also specify the type of materials/supplies to be stored within Area 1, their location and manner of storage and the location and size of contained storage areas for the wood chipping material brought back to the site for long-term storage. These storage areas shall comply with all state and county laws and regulations. *No open storage of chipped wood is permitted.* (Emphasis added.)

In support of the requested revision to this Approval Condition, Petitioner alleges a

mistake of fact, stating that the bar against open storage is contrary to prior Hearing Examiner landscaping contractor decisions and that wood chips are organic material that cannot be stored in closed structures. Petitioner requests that Approval Condition #11 be revised to remove the prohibition on the open storage of chipped wood.

Rules of Procedure & Standard of Review

Pursuant to Hearing Examiner Rule 11.2, a request for reconsideration must be made in writing and submitted within 15 days after the issuance of the decision. The request must state the reasons for the request, and may include a request for a hearing and a request to suspend the decision. The party making the request must send a copy of the request to each party and certify that a copy has been sent to each party.

In accordance with Hearing Examiner Rule 11.5, the Hearing Examiner will revise a decision only upon a finding of mistake of fact or mistake of law. Under this standard, then, the Hearing Examiner may only reconsider Petitioner's requests only upon a finding it was improperly decided as a matter of law or upon a finding of factual error.

Discussion

Upon review, the Hearing Examiner has determined the prohibition against the open storage of chipped wood is a mistake of fact.

Based on this information, the "Order" section of the decision and order is revised as follows.

ORDER

Based upon the foregoing, it is this **17th day of January 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Chad Zirk for a Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district are hereby

GRANTED;

Provided, however, that:

1. The Conditional Use and Variance shall apply only to the uses and structures as described in the petition, the Amended Plan, and the Findings of Fact and not to any other activities, uses, structures, or additions on the Property and as subject to all conditions of approval.
2. The approved hours of operation are 6:30am to 6:00pm, Monday through Saturday.
3. A maximum of 15 employees, including the Petitioner, is approved.
4. The entire perimeter of Area 1 shall be fenced. The fence shall be comply with HCZR § 128.0.A.9 and shall be erected no later than 30 calendar days upon final inspection of the building in Area 1.
5. Equipment and vehicles to be used and/or stored on the site will include only the following, or similar machinery: two chip trucks, two chippers, a spare chipper, two trailers, and a mini-skid stored on the trailer attached to the truck, a log truck and a log trailer. When the work crew increases to 15, two additional trucks are approved.
6. Petitioner shall provide an appropriately sized dumpster within Area 1. The size and location of the dumpster shall be depicted on the site development plan.
7. Petitioner shall obtain all permits, including a building permit for the equipment repair structure in Area 1 and any required fence permit.
8. The Landscape Contractor operation shall comply with the Howard County Noise Ordinance.

9. No mulching or wood chipping or any type of chipping or processing of wood is permitted within any part of the Conditional Use Site. No mulching or chipping associated with the approved use shall be performed elsewhere on Parcels 362 or 504.

10. No Bulk Firewood Processing shall be conducted within the Conditional Use site or on Parcels 362 or 504.

11. Petitioner shall submit a site development plan for review and approval. This requirement for site development plan approval may not be waived. No alternative compliance is permitted. The site development plan shall denote Areas 1 and 2 and their square footage, which shall be noted as the Conditional Use Site, the location of all parking areas, paving surface materials, and the location of all vehicle and equipment parking/storage areas. Seven employee parking spaces shall be noted on the site development plan. The site development plan shall also specify the type of materials/supplies to be stored within Area 1, their location and manner of storage and the location of all chipped wood materials brought back to the site for long-term storage. All storage areas and the manner of all materials/supplies storage shall comply with state and county laws and regulations.

12. The Site Development Plan shall comply with the Bureau of Environmental Health's comment: "The proposed conditional use plan shows the vehicle and equipment storage area overlapping a large portion of the sewage disposal area. The sewage disposal area must remain free from buildings and any other permanent or physical objects, and may not be disturbed by earth moving, compaction, tree removal or grading."

13. The Site Development Plan shall contain a note stating a Landscape Contractor Conditional Use and Variances were granted in BA No. 16-016C&V, decided December 15, 2016, for Parcels 362 and 504. The note shall list all approval conditions.

14. Pursuant to Howard County Zoning Regulations § 131.0.1.2, the approved Conditional Use shall not commence until all required building permits are issued.

15. The use-in-common easement shall be recorded in the Land Records of Howard County prior to submission of the Site Development Plan. The Site Development plan shall reference the easement recording liber and folio.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFavre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.