

and approved pursuant to Condition No. 4 below, the final landscape plan to be submitted and approved pursuant to Condition No. 3 below, and the Lighting and Photometric Plan, Ex. 55(e).

2. All terms and conditions of the approved special exception shall remain in full force and effect, except where specifically amended by this modification.
3. This modification shall not take effect until the submission and approval by the Board of Appeals of a revised landscape plan with the following language added under Landscape Notes, item 2.B:

“C. All existing trees located on the Johnson’s flower and Garden Center property within the area identified as “Existing Vegetation,” to be replaced with trees of a similar species.”
Petitioner shall submit five copies of the revised landscape plan for the Board’s review and approval.

4. This modification shall not take effect until the submission and approval by the Board of Appeals of a revised site plan with the covered walkways shifted 25 feet to the north. Petitioner shall submit five copies of the revised site plan for the Board’s review and approval.
5. Petitioner shall not submit any application for a building permit or demolition permit in connection with this modification until satisfactory evidence of the following have been submitted to the Board of Appeals:
 - a. Petitioner has obtained all necessary governmental approvals for the separate ingress/egress access road to the adjacent commercially zoned property, as shown on the approved Site Plan, including from any applicable Montgomery County or State agency.
 - b. Petitioner has obtained all necessary approvals or agreements for the separate ingress/egress access road to the adjacent commercially zoned property, as shown on the approved Site Plan, from the owners of the businesses abutting the location of the access road (Safeway and Chevron).
6. Petitioner shall not submit any application for a building permit or demolition permit in connection with this modification until the Board of Appeals has approved a modification of the special

exception for the adjacent Chevron station that permits construction of the proposed access road. If Petitioner believes no modification is necessary, it shall so indicate to the Board in writing and request the Board's written concurrence.

7. Petitioner shall construct the separate ingress/egress access road to the adjacent commercially zoned property, as shown on the Site Plan, before release of any occupancy permit in connection with this modification.
8. Before release of any building permit in connection with this modification, Petitioner shall provide full funding under an irrevocable letter of credit for a separate, southbound right-turn lane from Riffle Ford Road onto Darnestown Road (Route 28), as provided for in Petitioner's LATR study in support of this modification.
9. Total development under this special exception is limited to 24,700 square feet of interior, retail nursery use space, 31,538 square feet of greenhouse building and a 4,500 square foot storage building.
10. Exterior lighting shall be turned off after closing each day pursuant to the schedule stated on the Lighting and Photometric Plan, Ex. 55(e):
 - a. Interior building lights, including in the greenhouses, shall be turned off within 45 minutes after closing.
 - b. The six westernmost light poles, as marked on Exhibit 55(e), shall be turned off within 45 minutes after closing.
 - c. The remaining parking lot pole lights may remain on all night for security purposes.
 - d. Lights mounted on the exterior of buildings shall be turned off within 45 minutes after closing, but may be placed on motion sensors.
 - e. The covered walkway lights shall be turned off within ten minutes after closing.
11. Following approval of the modification, and before the close of the school year for Quince Orchard High School, Petitioner shall conduct professional traffic counts, both vehicular and pedestrian, at the intersection of Route 28 (Darnestown Road) and Copen Meadow Drive. The method and timing of these counts shall be determined in consultation with Technical Staff. Following implementation of the modification, these counts must be repeated during the first three months of the first

school year following the first spring season of operation of the new nursery. Petitioner shall then conduct an analysis of traffic conditions at the subject intersection and how they are affected by the new nursery on the subject site and traffic increases (actual or projected) at Quince Orchard Marketplace. The methodology for this analysis shall be determined in consultation with Technical Staff, and may follow LATR requirements or any other methodology considered appropriate, such as Level of Service analysis. Upon completion of this analysis, Petitioner shall submit a written report to the Board of Appeals and to Technical Staff, with a request that Staff review the report and provide written comment to the Board of Appeals within 30 days of receiving the report. Petitioner's report shall include recommendations to mitigate any adverse traffic impacts identified in the report. The Board of Appeals shall provide parties of record with notice of these submissions and the opportunity to comment. Following the close of the comment period, the Board of Appeals shall approve or reject the report and, if the report is approved, may impose additional conditions as necessary to carry out recommended traffic mitigation measures.

12. The combined use shall have no more than 55 employees on site at any one time.
13. The combined use shall be limited to nine business vehicles, and may increase to a maximum of 12 without seeking further Board of Appeals approval.
14. Signage shall be limited to the size and style of sign shown on the final, approved landscape plan (to be submitted pursuant to Condition No. 3 above). Petitioner shall submit to the Board of Appeals written documentation of any sign variance that may be obtained, together with a representation of the appearance of the approved sign.
15. The Petitioner shall be permitted to sell those products permitted under the specific conditions for "Nursery, horticultural retail" codified in Section 59-G-2.30 of the Zoning Ordinance as that section may be amended or recodified from time to time, and shall also be permitted to sell seasonal items such as pumpkins and Christmas trees.
16. The Petitioner shall operate a combined retail/wholesale horticultural nursery and garden center. The combined

operation must follow the schedule that follows with regard to hours of operation and deliveries:

<u>Time of Year</u>	<u>Hours of Operation</u> (maximum)	<u>Hours of Product Deliveries to the Site</u> (maximum)	<u>Number of Product Deliveries to the Site</u> Prior to 7:30 a.m.
Dec. 26 – Feb. 28 (except Valentine’s week)	9 – 6 (7 days)	8 – 6	0
March 1 – June 30 (and Valentine’s week)	8-7 M-Fri 8-6 Sat 9-6 Sun	7-7 M-Sat 8-6 Sun	1-3/day (maximum)
July 1 – Nov. 20 [^]	9-6 M-Sat 10-5 Sun	8-6 Sat 9-5 Sun	0
Nov. 20 – Dec. 25*	9-8 M-Sat 9-6 Sun	8-8 M-Sat 8-6 Sun	0

Other Notes:

1. [^] During this time, Johnson’s may sell pumpkins.
2. * During this time, Johnson’s may sell Christmas trees.
3. Customer delivery times are limited to hours of operation.
4. Maximum number of customer deliveries throughout year (except for holidays): 60 deliveries per week.
5. Trash pickups are limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Saturday.
6. Maximum number of trash pickups per week throughout year: 4 trash pickups per week (no more than 1 per day).
7. Maximum number of product deliveries to the site from March 1 – June 30: 45 trucks per week.
8. Maximum number of product deliveries to the site during other times of year: 30 trucks per week.

17. Petitioner shall establish a Community Liaison Council, whose members shall include, at a minimum, representatives of the Orchard Hills Homeowners’ Association, the Quince Haven Homeowners’ Association, the Hidden Ponds Homeowners’ Association, the Willow Ridge Civic Association and Quince Orchard High School (either staff or members of the Parent Student Teacher Association, but not residents of the

surrounding community). The People's Counsel shall serve as an ex officio member. The Community Liaison Council shall meet at least twice a year, and the holder of the special exception must submit an annual report to the Board of Appeals that describes how the conditions of the special exception are being implemented and how concerns raised by the community have been addressed. Minutes of the Community Liaison Council meetings shall be attached to this annual report.

18. Petitioner must comply with any applicable requirements of Chapter 22A (forest conservation), Chapter 50 (subdivision) and chapter 31(b) (noise control).
19. Petitioner must comply with the conditions stated by the Department of Permitting Services ("DPS") in its letter of May 20, 2005 approving the proposed Stormwater Management Concept, and any other DPS requirements for stormwater management.

On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Wendell M. Holloway and Donna L. Barron, Vice Chair, in agreement, and Allison Ishihara Fultz, Chair necessarily absent, the Board adopted the following Resolution:

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.

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 19th day of January, 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.