

**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](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**CASE NO. S-2695**

**PETITION OF FABRICIO AND VIVIANE FIDELIS**

OPINION OF THE BOARD

(Opinion Adopted September 5, 2007)

(Effective Date of Opinion: September 11, 2007)

In Case No. S-2695, Fabricio and Viviane Fidelis, d/b/a Flower Valley Landscaping, seek a special exception for a landscape contracting business. The Hearing Examiner for Montgomery County held a hearing on the application on June 8, 2007, closed the record in the case on June 15, 2007, and on July 10, 2007 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 28, Seneca Valley Estates Subdivision, located at 7420 Damascus Road, Gaithersburg, Maryland, 20882, in the RDT Zone.

Decision of the Board:                      Special Exception **Granted**, Subject  
To Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 5, 2007. After careful consideration and review of the record in the case, on a motion by Wendell M. Holloway, seconded by Donna L. Barron, Vice-Chair, with Caryn L. Hines, Catherine G. Titus, and Allison Ishihara Fultz, Chair in agreement, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in the Hearing Examiner's report and in the Board's opinion. All representations made by Petitioners' counsel at the hearing and in filings included in the record are hereby so identified.

2. Petitioners must submit a Final Forest Conservation Plan (FCP) that meets the requirements of Section 109(B) of the Forest Conservation Regulations. The Final FCP must be approved by the Planning Board prior to any further work on the project.
3. Petitioners must place the 1.25-acre onsite afforestation area in a Category 1 Conservation Easement. The easement must be protected by split-rail fencing or other measures approved by the Planning Board.
4. The afforestation area must be planted during the first planting season after approval of the final Forest Conversation Plan.
5. The maximum number of employees, excluding the Petitioners, must be limited to 10.
6. Hours of operation for the landscape contractor business are limited to 7:00 a.m. through 6:00 p.m., Monday through Friday.
7. Use of bathroom facilities located in the residential home must be made freely available to the employees of the business.
8. The landscape contractor business must not have more than six trucks and four trailers (*i.e.*, no expansion of the current operation). The six trucks include two dump trucks and an assortment of one half-ton, one-ton and two-ton work trucks. There may also be up to twelve mowers, four lawn and garden tractors, tractors, blowers, spreaders, aerators, shovels, hoses, various landscaping tools, and four snow plows.
9. The Petitioners must obtain a commercial access permit from the State Highway Administration and improve the existing 20-foot-wide service driveway onto MD 108 to a 25-foot width for a distance of 30 feet from MD 108, and make any other improvements in the driveway required by SHA's permit specifications.
10. There must be no identification sign placed on the property.
11. The landscape contractor business must comply with Montgomery County's Noise Ordinance.
12. Visitors to the site in connection with the proposed use must be limited only to the employees of the landscape contractor business. All business arrangements including consultation and sales meetings that require the physical presence of customers must be conducted off-site.
13. A six-foot privacy fence, extending 105 feet on the southern side of the storage area and 213 feet on the northeastern side of the storage area, shall be maintained.

14. Eight parking spaces shall be located along the six-foot privacy fence and at least two spaces inside the storage and maintenance building, to be used for employee and truck parking during the day and overnight.
15. No wholesale or retail horticultural nursery, or mulch/compost manufacturing operation, shall be conducted on the property. Plants, mulch and topsoil are to be stored on site in bags behind the six-foot privacy fence. There should be no storage of chemicals, pesticides, manure or debris on site.
16. Landscaping on the site must be in accordance with the revised Landscape & Lighting plan (Exhibit 28(c)), approved by the Board of Appeals, including bushes separating the service and residential driveways and Leyland Cypress screening along the property lines. Vehicles servicing the landscaping operation may use only the service driveway.
17. Petitioners must apply for subdivision in a form authorized by the Planning Board, and approval of subdivision for the subject site by the Planning Board is a condition of the special exception.
18. The Petitioners shall submit all government agency approvals obtained subsequent to the date of this Resolution and related to development on the site to the Board of Appeals to be included in the record of the case, including but not limited to Planning Board approvals of subdivision, the Final Forest Conservation Plan and Category 1 Conservation Easement, and State Highway Administration permits regarding access onto MD 108.
19. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements



Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 11<sup>th</sup> day of September, 2007.

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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.