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### NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION

**DATE OF DECISION:** November 4, 2016  
**HEARING EXAMINER:** Robert F. Kahoe, Jr.  
**RE:** Zoning Appeal Case No. 5870  
**APPLICANTS:** 3010 Reckord Road LLC and  
Harford Tree Experts & Landscaping, Inc.  
**LOCATION:** 3010 Reckord Road, Fallston  
**REQUEST:** Special exceptions to permit firewood processing  
and distribution and a construction services use  
in the Agricultural District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **NOVEMBER 28, 2016**.

This decision shall be considered a recommended opinion to the Harford County Council, sitting as The Board of Appeals, if a written request for Final Argument before the Harford County Council is filed by the close of business on above date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

**Mylia A. Dixon**  
Council Administrator

Enclosure

cc: Applicant/Attorney; People's Counsel; Department of Planning and Zoning



**APPLICANTS:** 3010 Reckord Road LLC  
Harford Tree Experts & Landscaping

**BEFORE THE**  
**ZONING HEARING EXAMINER**

**REQUEST:** Special exceptions to operate to  
operate a firewood processing and distribution  
use and construction services and suppliers use  
in the Agricultural District

**HARFORD COUNTY**  
**BOARD OF APPEALS**

**HEARING DATE:** October 5, 2016

**Case No. 5870**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** 3010 Reckord Road LLC

**CO-APPLICANT:** Harford Tree Expert & Landscaping, Inc.

**LOCATION:** 3010 Reckord Road, Fallston4025 Norrisville Road, Jarrettsville  
Tax Map: 55 / Grid: 4B / Parcel: 67  
Third (3<sup>rd</sup>) Election District

**ZONING:** AG / Agricultural District

**REQUEST:** Special Exceptions, pursuant to Sections 267-88E(2) and 267-88H(1) of the Harford County Code, to operate a firewood processing and distribution use and construction services and suppliers use in the Agricultural District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The subject property is a 24.671 acre parcel located on the East quadrant of the intersection MD Route 147 (Harford Road) and Reckord Road. The property is improved by a small, single-family dwelling and garage, in disrepair, on its northerly corner and fronting on Harford Road. The remaining property is in mature forest and hosts a portion of Rocky Branch Stream, which is a tributary of the Gunpowder River. The topography is moderately sloping from west to east.

The parcel was subject to a highly contested Board of Appeals action in the mid-1990's which involved the request of the The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., for a special exception to operate a school. The applicant in that case (see Board of Appeals Case No. 4192) had prepared and submitted to Harford County a preliminary site plan showing the proposed facilities. Testimony indicates that much of the wetlands, storm water management area, and Natural Resource Area as shown on the 1996 site plan is being incorporated by the Applicant into its present design, (Applicant's Exhibit 1).

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First for the Applicant testified Dudley Campbell, President of Bay State Land Services. Mr. Campbell was offered and accepted as an expert in land development.

Mr. Campbell described the property as consisting of 24.671 acres that the Applicant proposes to eventually subdivide into two parcels, one for residential use and one for business use.

Mr. Campbell confirmed the property is zoned Agricultural. There are scattered residential uses in the general area. Harford Road is a Major Collector road and Reckord Road is designated as a Minor Collector. Currently, a house and garage are located on the north side of the property, close to Harford Road. The garage is to be demolished as it is located in an area in which the Applicant is required to convert to a Type "E" buffer zone. Furthermore, the drive to the existing home would also be located in the buffer and must be relocated further south along Harford Road. A State Highway access permit will be necessary. The Applicant will be required to fully buffer the area in which the driveway and garage now exist, as well as provide a 50 foot buffer around the entire perimeter of the property. A large portion of the property is designated as a Natural Resource District and Forest Conservation area.

Mr. Campbell stated that the property is serviced by private well and septic. The proposed subdivided residential lot, with the improvements to be built thereon, will also be serviced by private well and sewage disposal.

The original site plan prepared for The Board of Child Care showed a storm water management area to the east side of the property within the Natural Resource District. Mr. Campbell stated that while the platted storm water management area is most likely greater than what will be required for the proposed improvements, it will nevertheless be retained by the Applicant. According to Mr. Campbell, and as shown on the Applicant's site plan, the storage area to be constructed by the Applicant will be located to the Harford Road side of the parcel, and will consist of a 180 foot by 200 foot area screened by an 8 foot high solid fence. Within the storage area the Applicant will construct a 50 foot by 100 foot pole barn with solid sides. The Applicant will park all of the equipment which he uses in his landscaping, tree removal, log and firewood processing operation within the 180 foot by 200 foot storage area. The firewood processor will be housed within the building. According to Mr. Campbell, the Applicant believes that the storage area will be of sufficient size to store all his equipment plus necessary storage of firewood. The entire storage area will be paved. Employees will use the bathroom in the existing dwelling on the parcel.

Mr. Campbell observed that the use of the property will be substantially less intense than the use proposed by The Board of Child Care, as shown on its 1996 site plan. The Board of Child Care proposed a 53,000 square foot building, also to be serviced by well water, among other improvements. Mr. Campbell has followed all major elements as shown in the 1996 site plan, including storm water management features, access driveway, and the Natural Resource area and wetlands designation.

Mr. Campbell stated that a 50 foot deep buffer yard will be required and will be installed by the Applicant. The existing driveway to the house must be relocated as it is within the required buffer area. A 50 foot Type "E" buffer is the most restrictive of all Harford County buffers.

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Mr. Campbell also confirmed that only one driveway will be constructed off Reckord Road, to access the proposed construction/firewood storage area, the proposed dwelling on the lot to be subdivided, and the storm water management area.

Mr. Campbell emphasized that the storage area and pole barn will be shielded from the view of passersby and adjoining properties by not only the 8 foot high solid fence, but also by the 50 foot Type “E” buffer.

Mr. Campbell stated all uses will be located outside of the Natural Resource District.

In Mr. Campbell’s opinion, all applicable conditions are satisfied. He sees no particular adverse impact if the uses are allowed on the subject property, and certainly no impact greater than if the uses were located at any other location in the zone. Mr. Campbell also believes that the Department of Planning and Zoning’s suggested conditions are appropriate, as are the additional conditions proposed by the Applicant. Those additional conditions include no commercial burning on-site; no dumping of soils or debris on-site; no refuse to be permitted on-site; and no significant grading or changes to the topography of the property, except as may be required in order to comply with Harford County Subdivision Regulations and use regulations.

On cross-examination, Mr. Campbell stated that adequate sight lines exist along Reckord and Harford Roads.

Mr. Campbell described the log processing equipment, which consists of a conveyor belt and splitter powered by a diesel engine. The conveyor belt is fed with logs, typically 16 feet in length delivered by skid loader. The cutter then cuts the logs to appropriate lengths and splits for firewood.

Next testified Mark Jolly, who identified himself as the sole owner of Harford Tree Experts and Landscaping, Inc. Mr. Jolly described his business as being 90% tree removal and firewood processing, and 10% landscaping. Many of the trees which Mr. Jolly removes in his tree removal business are processed into firewood. Much of the firewood that his business generates is sold at local convenience stores. Mr. Jolly’s business employs 6 employees.

Mr. Jolly uses approximately 16 vehicles in his business, including backhoes, skid loaders, chippers, and transport vehicles.

Mr. Jolly will have no retail sales on the subject property. Most of his sales are wholesale to convenience stores that sell bundled firewood. His log processor is operated approximately 100 hours per year, and needs three people to fully operate.

Typical hours of operation are 7:00 am to 3:30 pm daily. Mr. Jolly indicated that vehicles do not come or leave the property before or after those times. Many of his vehicles are actually maintained at the various job sites and would infrequently come on the subject property.

No other construction or landscaping materials, hardscape, stone or other similar materials would be kept on-site. Necessary materials would be delivered by third-party providers to the job sites.

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Mr. Jolly explained the reasons for purchasing the subject property. It is close to Baltimore, where he has a fair amount of business, and close to Interstate 95. He plans to eventually subdivide a small, 2.6 acre parcel from the approximate center of the subject property and build and live in a residence there with his family. He believes that the proposed storage area and pole barn will be sufficient for his future business needs. All conditions as proposed by the Department of Planning and Zoning are acceptable.

Mr. Jolly concluded by agreeing there will be no commercial equipment at or around the small house which now exists on the property, and he intends to lease the property to an employee for residential purposes.

Next testified Anthony McClune, Chief of Current Planning for the Department of Planning and Zoning. Mr. McClune explained that the required 50 foot Type “E” buffer is the most significant under Harford County Zoning Regulations.

The Applicant can meet or exceed all applicable special exception standards, provided the Applicant adheres to all conditions recommended by the Harford County Department of Planning and Zoning.

The Staff Report concludes by stating:

“The Applicant can meet all of the required conditions for the special exceptions. The uses should have no greater impact on the surrounding community than would be expected on a similar AG zoned property within the County.”

While there were a number of concerned neighbors present during the hearing, they had agreed not to oppose the request provided all conditions proposed by the Harford County Department of Planning and Zoning, and those additional conditions agreed to between the parties, were made a part of the final decision and are complied with by the Applicant.

**APPLICABLE LAW:**

This special exception request is governed by the following of the Harford County Code Sections:

Section 267-88E(2)

*“Natural resource uses.*

- (2) *Sawmills, firewood processing and distribution. These uses may be granted in the AG and B3 Districts, provided that:*
  - (a) *A minimum parcel area of 10 acres is required.*
  - (b) *Storage areas are fully buffered from view of public roads and neighboring residences by means of a solid fence or wall at least 8 feet high.*
  - (c) *A Type "E" buffer yard [See § 267-30 (Buffer yards).] shall be provided along any adjacent road right-of-way or adjacent property.*

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- (d) *No wood products shall be piled more than 6 feet high or above the level of the buffering, whichever is greater.”*

**Section 267-88H(1)**

*“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that:*

- (a) *A minimum parcel area of 5 acres in the AG District and 1 acre in the VB District is required.*
- (b) *If the use includes the storage of commercial vehicles and equipment, the vehicles and equipment must be stored entirely within an enclosed building or fully buffered from view of adjacent residential lots and public roads.*
- (c) *All parking and storage areas must be paved.*
- (d) *A Type "C" buffer, pursuant to Section 267-30 (Buffer yards), shall be provided along any adjacent road rights-of-way or adjacent residential lots.”*

Section 267-9I, “Limitations, Guides and Standards” is also applicable to this request and will be discussed below.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicant wishes to operate its tree removal, landscaping and firewood processing business from the subject property. The Applicant’s business employs as many as 16 vehicles, including backhoes, skid loaders and chippers, which, at least on occasion must be stored on the property. Its firewood processing business requires logs to be brought onto the property to be finished on-site by a firewood processor, which consists of a diesel engine, conveyor belt and a splitting machine. While the processor itself will operate within a fairly large pole barn, the combination of various parked vehicles, stored timber, stored processed firewood, the pole barn and the log processor within the pole barn will constitute a relatively intense commercial use.

Due to their inherent nature, the combination of these two special exception uses would generally have quite a significant impact. However, the property on which the Applicant proposes to operate appears to be well situated and configured for such an operation. The parcel is 24-1/2 acres in size, is heavily wooded, is located at the intersection of two fairly heavily travelled roads, and will be surrounded by a 50 foot buffer. In fact, much of the property is heavily wooded and the Applicant would only need to construct a buffer within certain fairly limited areas. The storage yard will be no closer than 70 feet to MD Route 147 and, as indicated above, will be separated from it by at least a 50 foot deep buffer. Furthermore, the storage area and pole barn itself will be surrounded by an 8 foot high solid fence. The pole barn will contain the log processor which, because of the noise generated, would be the most impactful item to be maintained by the Applicant on the property. Certainly, the natural features of the subject property, to be improved by the Applicant, should act to minimize, to a large extent, those adverse impacts.

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In short, the Applicant has presented a convincing case that, while certainly having impactful features, the proposed special exceptions will not have a greater adverse impact at the proposed location than if located elsewhere. Indeed, the Applicant has made a commendable effort to minimize those impacts by its well-designed site improvements, and by its agreement to abide by a protective set of conditions. Obviously, the neighbors agree as they have withheld their opposition provided the conditions agreed to by the Applicant are complied with.

The Applicant clearly meets the special exception requirements of Section 267-88E(2) as follows:

- (2) *Sawmills, firewood processing and distribution. These uses may be granted in the AG and B3 Districts, provided that:*
  - (a) *A minimum parcel area of 10 acres is required.*

The property is zoned Agricultural and greatly exceeds the 10 acre minimum.

- (b) *Storage areas are fully buffered from view of public roads and neighboring residences by means of a solid fence or wall at least 8 feet high.*

The storage area and pole barn will be surrounded by an 8 foot high solid fence.

- (c) *A Type "E" buffer yard [See § 267-30 (Buffer yards).] shall be provided along any adjacent road right-of-way or adjacent property.*

The Applicant has agreed to construct and maintain a Type "E" buffer around the perimeter of his property.

- (d) *No wood products shall be piled more than 6 feet high or above the level of the buffering, whichever is greater."*

The Applicant has agreed to abide by the requirement.

The Applicant, accordingly, fully complies with the firewood processing special exception requirements.

It is also found that the Applicant fully complies with Section 267-88H(1) of the Harford County Code, as follows:

*Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that:*

- (a) *A minimum parcel area of 5 acres in the AG District and 1 acre in the VB District is required.*

The property is zoned Agricultural and the parcel greatly exceeds the 5 acre minimum parcel requirement.

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- (b) *If the use includes the storage of commercial vehicles and equipment, the vehicles and equipment must be stored entirely within an enclosed building or fully buffered from view of adjacent residential lots and public roads.*

The storage area within which the vehicles will be stored will be enclosed by an 8 foot high solid fence. The storage area and fence will also be buffered from adjoining parcels by a 50 foot Type “E” buffer.

- (c) *All parking and storage areas must be paved.*

Testimony is that the storage area will be paved and this will be made a condition of approval.

- (d) *A Type "C" buffer, pursuant to Section 267-30 (Buffer yards), shall be provided along any adjacent road rights-of-way or adjacent residential lots.*

A Type “E” buffer, the most stringent of all buffers, will be provided.

The Applicant’s operations also successfully comply with the more general standards of Section 267-9I “Limitations, Guides and Standards”, as follows:

*“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:*

- (1) *The number of persons living or working in the immediate area.*

The Applicant proposes to use only a small portion of this 24-1/2 acre parcel for its business operations. The parcel is heavily wooded and bordered on two sides by public roads. While there are surrounding residences to the south and west, existing roadways, the required 50 foot buffer, existing natural vegetation, the 8 foot solid fence, and the pole barn within which the firewood processor will be operating should act to minimize impact on those residences. Accordingly, the businesses should have no appreciable impact on the number of persons living or working in the area.

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- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Harford Road (MD Route 147) is a major collector road. Reckord Road is a county minor collector road. The business will be wholesale sales only, with no retail customers coming on-site. Relatively few workers will report to the property in the morning to either pick up a piece of equipment for travel to various jobsites or to work in the firewood processing business. Sight distances along Reckord Road from the proposed driveway entrance have been described as adequate. A County Highway Access Permit will be required. A State Highway Access Permit will be required for the relocated driveway to the existing home to the north side of the property. There should be no adverse traffic impact. The proposed uses will generate no pedestrian traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

This uses are permitted as special exceptions in the Agricultural District.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The uses will generate odors, dust, smoke, fumes and vibration. However, compliance with the agreed upon conditions should act to minimize to an acceptable degree the impact of these emissions on adjoining parcels and the neighbors.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Police protection will be provided by the Sheriff's Department and the Maryland State Police. Fire protection will be provided by the local volunteer fire and ambulance company. The property is serviced by private on-site well and septic system.

The Applicant had originally testified that the bathroom facilities in the existing house would be used by his employees. However, the Applicant indicated later in his testimony that the house would be rented to an employee. Given the lack of a defined plan for bathroom facilities, a condition of this recommended approval will be that the Applicant maintain a portable bathroom facility, i.e. Spot-A-Pot, on-site for use by his employees.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The uses, as proposed and as conditioned, are consistent with generally accepted planning principles.

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- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The request is consistent with the 2016 Master Land Use.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The subject property is heavily wooded and is impacted by a large Natural Resource District designation, which includes both non-tidal wetlands and the 100 year Flood Plain. The proposed storage of the firewood processing operation will be located outside of these areas and on the northwest side of the property, approximately 500 feet from the on-site wetlands. The proposed uses should not have deleterious effect on them.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

The applications must, lastly, be judged in light of the precepts of Schultz v. Pritts, 291 Md. 1, 432 A2d. 1319 (1981), which requires a finding that the uses will be no more adverse at the location proposed than at some other more generalized location within the zone.

Because of the size of the parcel, its topography, extensive buffering which exists and which will be supplemented by the Applicant, and the conditions to which the Applicant has agreed, it is found that the proposed use will have no greater impact at the location proposed than it would at some other location within the zone.

Indeed, because of the natural characteristics of the property and its location, the use should have a less intense impact here than at many other locations within the Agricultural District in Harford County.

**CONCLUSION:**

Accordingly, it is recommended that the requested special exceptions be approved, subject to the following conditions:

1. The Applicant shall submit a preliminary plan and site plan for review and approval through the Development Advisory Committee.
2. The proposed lot for residential use shall be limited to a maximum parcel of 2.67 acres.
3. The two lots shall share a common access on Reckord Road. A common drive agreement shall be recorded with the final plat.

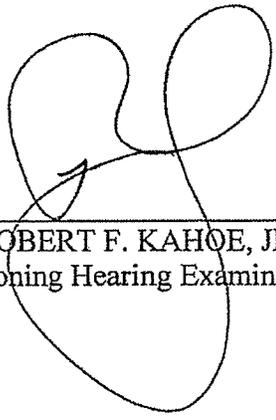
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4. The required buffer(s) shall be planted and established prior to commencement of the special exceptions. A detailed Landscaping Plan delineating the buffer yards shall be required as part of the Site Plan submission and review. The required buffers shall be recorded on the revised plat.
5. The business hours of operation shall be limited to the hours of 7:00 a.m. until 5:00 p.m., Monday through Saturday. There shall be no firewood processing or other business operations conducted on Sunday.
6. The Applicant shall be limited to eight (8) employees for the construction services use and one (1) employee for the firewood business.
7. The remaining forest outside of the proposed fenced area, driveway and stormwater management facility shall be maintained. Only selective harvesting of individual trees shall be permitted outside of the limit of disturbance proposed for the special exceptions. A Forest Harvest Permit will be required for harvesting of individual trees.
8. All business equipment, including vehicles, shall be stored within the pole barn and fenced area. The firewood processing machinery shall be operated within the pole barn.
9. In addition to the required buffer yard, the Applicant shall construct a solid fence, 8 feet in height, to screen business operations. The type of fencing shall be approved by the Department of Planning and Zoning.
10. The approval does not include mulch processing or sales.
11. The firewood processing and construction services uses are limited to the area shown on the Site Plan. Wood products shall not be piled higher than 6 feet or above the level of the buffering, whichever is greater.
12. The Applicant shall obtain all necessary permits and inspections.
13. There shall be no retail sales of firewood conducted on-site.
14. The approval is for the Applicant only and shall be void if the subject property or the proposed residential lot are sold or transferred.
15. There shall be no burning on the property save for the purpose of heating the tenant house and/or a future residence on the property as shown on the Site Plan.
16. The Applicant shall not dump any construction debris or soil on the property and not otherwise change the topography thereof without all necessary permits.
17. The Applicant agrees that no tree stumps, wood or other refuse shall be permitted on the property other than as used in the Applicant's firewood processing business.

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18. The existing dwelling on the property shall be used as a single-family tenant house, and not as offices for Applicant's firewood processing and/or construction services business.
19. The Applicant maintain a portable bathroom facility, i.e. Spot-A-Pot, on-site for use by his employees.

Date: NOVEMBER 4, 2016



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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 28, 2016.**