

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/

(240) 777-6600

Case No. S-2266-A

**PETITION OF KEVIN CLAIR AND ARBORCARE, INC.
[NEW HOLDERS: FALSTONE INVESTMENTS, LLC, AND SOMERSET
STONWORKS]**

RESOLUTION TO TRANSFER SPECIAL EXCEPTION

(Resolution Adopted January 12, 2022)

(Effective Date of Resolution: January 28, 2022)

The Board of Appeals granted Case No. S-2266, effective June 8, 1998, to Kevin and Ann Clair to permit a landscape contracting business pursuant to Section 59-G-2.30(c) of the Zoning Ordinance in effect at the time. On August 30, 2003, in Case No. S-2266-A, the Board granted a major modification of this special exception. Finally, in a decision effective October 29, 2009, the Board transferred this special exception to Kevin Clair and ArborCare, Inc.

The subject property is Lot P17, Block A, Olney Acres Subdivision, located at 18001 Bowie Mill Road in Rockville, Maryland, 20855, in the RE-1 Zone.

The Board of Appeals has received a letter, dated January 4, 2022, from Laura Tallerico, Esquire, and Scott Wallace, Esquire, on behalf of their clients Falstone Investments, LLC, and Somerset Stoneworks, seeking a transfer of this special exception to their clients, contingent on the successful consummation of the sale of the special exception property to Falstone Investments, LLC. Their letter indicates that the property is being sold to Falstone Investments, LLC, and that the special exception landscape contractor use will be operated by Somerset Stoneworks. Their letter further indicates that the new special exception holders agree to abide by the terms and conditions of the existing special exception. Ms. Tallerico and Mr. Wallace include a Purchase and Sale Agreement with their letter as Exhibit C, and written consent to the transfer as Exhibit D.

Due to COVID-19, the Board of Appeals considered the transfer request at a remote Worksession held on January 12, 2022, using Microsoft Teams. Ms. Tallerico

and Mr. Wallace participated in support of the requested transfer, on behalf of their clients. Kevin Clair, the current special exception holder, also participated. Mr. Clair stated, in response to a Board question, that the special exception has been operating without expansion on the subject property since 2003.

Board Because Case No. S-2266-A [S-2266] was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Rule 12.2 of the Board's Rules of Procedure provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of that Ordinance provides:

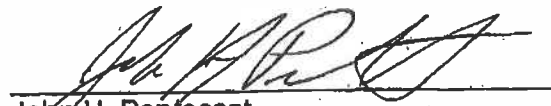
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted by the Board of Appeals, will not intensify the use or substantially change its impact on the immediate neighborhood or on traffic, and thus can be granted. Therefore, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. S-2266-A is re-opened to receive the January 4, 2022, letter with attachments received from Ms. Tallerico and Mr. Wallace; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the requested transfer of the special exception to Falstone Investments, LLC, and Somerset Stoneworks, is granted contingent on the successful transfer of title to the special exception property to Falstone Investments, LLC; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of January, 2022.



Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

