

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
GOSHEN ENTERPRISES, INC.

Kevin Bohrer
Michael Norton
Michael Lenhart
Jody S. Kline, Esquire
Attorney for the Applicant
For the Application

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OZAH Case No. CU 18-06

Walter A. Romans
Emmet and Diana Tydings
Neighbors Who Withdrew Opposition

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Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On April 3, 2018, Applicant Goshen Enterprises, Inc. filed an application for a landscape contractor conditional use under §59.3.5.5 of the *2014 Zoning Ordinance* (Zoning Ordinance). The use is to be sited on property located at 21201 Zion Road, Brookeville, Maryland, within the AR (Agricultural Reserve) Zone. The conditional use site is part of a larger tract of unplatted land, identified as Parcel P490 on Tax Map HV31 (Addition to Brooke Grove).

For the past 23 years, Goshen has had its base of operations at 5300 Riggs Road, in Laytonsville, Maryland. Goshen would now like to relocate its operations to 21201 Zion Road and work cooperatively with Ace Tree Movers and Ace Nurseries, a tree nursery and installation contractor, presently situated at this location. Goshen and Ace have reached an agreement under which Goshen will acquire all of the land (30.49 acres) now owned by M&M Realty, LLC (Tax Account No. 08-01925313). A portion of that land (5.74 acres) will become the subject of this conditional use application by Goshen. The remainder of the land will be leased to Ace Tree Movers/Ace Nurseries to continue its tree farm and tree installation business, a permitted use in the AR zone, and to be a provider of nursery stock to Goshen for its use in landscape projects. Applicant's Statement of Justification (Exhibit 2, pp. 1-2).

On June 18, 2018, OZAH noticed a public hearing to be held on August 3, 2018. Exhibit 31. On June 29, 2018, the Technical Staff of the Maryland-National Capital Park and Planning Commission issued a report recommending approval of the application, subject to 13 listed conditions (Exhibit 32, p. 2).

On July 12, 2018, the Planning Board voted unanimously (3-0) to recommend approval of the conditional use, subject to all but one of the conditions outlined by the Technical Staff, as reflected in the July 17, 2017 letter of its Chair (Exhibit 34). As stated in that letter:

The Planning Board concurred with the findings and recommendations of the Staff Report. The Planning Board agreed with technical staff's conclusions that the use is compatible with the goals and recommendations of the 2005 Olney Master Plan and that the existing character and scale of development in Olney's rural communities would not be negatively impacted by the proposed use.

The Application satisfies all applicable requirements and regulations for approval of a Landscape Contractor business at this location. The Applicant has also met the burden of proof by showing that operating the use at this location will not be a detriment to the neighborhood and will not adversely affect the public interest.

The one proposed condition changed by the Planning Board (Condition 6) was modified to reduce the number of trucks and trailers permitted on site from 46 to 37. Other corrections to the Staff Report were outlined in an attachment to the Planning Board letter (Exhibit 34(a)). Those corrections were entered into the copy of the Staff Report (Exhibit 32) in OZAH's record.

The Planning Board noted that it had also unanimously approved the associated Preliminary Forest Conservation Plan (PFCP), finding that the use on the property complies with Chapter 22A of the Montgomery County Code. A copy of the Planning Board's Resolution approving the PFCP is included in the record as Exhibit 35.

On July 24, 2018, the Applicant moved to amend the application by modifying numerous plans to comply with recommendations of the Planning Department. Exhibits 37 and 37(a)-(p). A notice of the amendments was issued on the same date (Exhibit 36).

On August 1 and 2, 2018, Emmet Tydings, the owner of property on Zion Road, wrote to express concerns about not receiving notice of the hearing, possible impacts on his property's value, as well as possible effects from use of well water, lights at night and noise (Exhibits 38 and 40). A similar letter was filed on August 2, 2018 by Walter A.1 Romans, who owns confronting property on Zion Road (Exhibit 39).

The Hearing Examiner convened the public hearing, as scheduled, on August 3, 2018, and granted the unopposed motion to amend the plans. Tr. 8/3/18, 7. The Applicant called three

witnesses, and there was no opposition testimony. A second hearing date of September 7, 2018, was set in case Messrs. Tydings and Romans wished to testify and/or cross-examine the Applicant's witnesses. They both did, as did Mr. Tyding's wife, Diana Tydings. Their concerns with the proposed conditional use and the Hearing Examiner's remedies to alleviate those concerns are addressed in Part II. E. of this Report and Decision. Prior to the closing of the record on September 14, 2018, both Mr. Tydings and Mr. Romans filed emails (Exhibits 61, 63 and 64) indicating their withdrawal of any opposition, based on assurances received from the Applicant that it will amend the plans to lower the proposed light fixture poles to 15 feet (Exhibit 62).

Based on the entire record, the Hearing Examiner finds that the application meets all the standards for approval of the conditional use set forth in the Zoning Ordinance. The Hearing Examiner has therefore granted the application, with the conditions imposed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. Subject Property

The subject site was listed in the 2005 Olney Master Plan and in a subsequent Sectional Map Amendment as in the RDT zone. However, the 2014 Zoning Ordinance renamed the RDT Zone as the Agricultural Reserve (AR) Zone, which is the current zoning. Exhibit 32, p. 5. The property is well described by Technical Staff (Exhibit 32, p. 3):

The subject property is located at 21201 Zion Road at the northeast corner of its intersection with Riggs Road in Brookville. The property consists of approximately 30.5 acres of land on an unplatted parcel known as P490 on tax map HV31, Addition to Brook Grove. The subject property is an elongated trapezoid, improved with a 6,100 square-foot large building currently used as a warehouse, storage facility, repair shop and administrative office for the existing tree nursery use. Other improvements on the property include gravel parking areas and various small sheds associated with the operation of the existing use.

The property is generally flat with smooth slopes interspersed with drainageways. It is located within the Use IV-P Hawlings River Watershed and is within the Patuxent Primary Management Area (PMA).

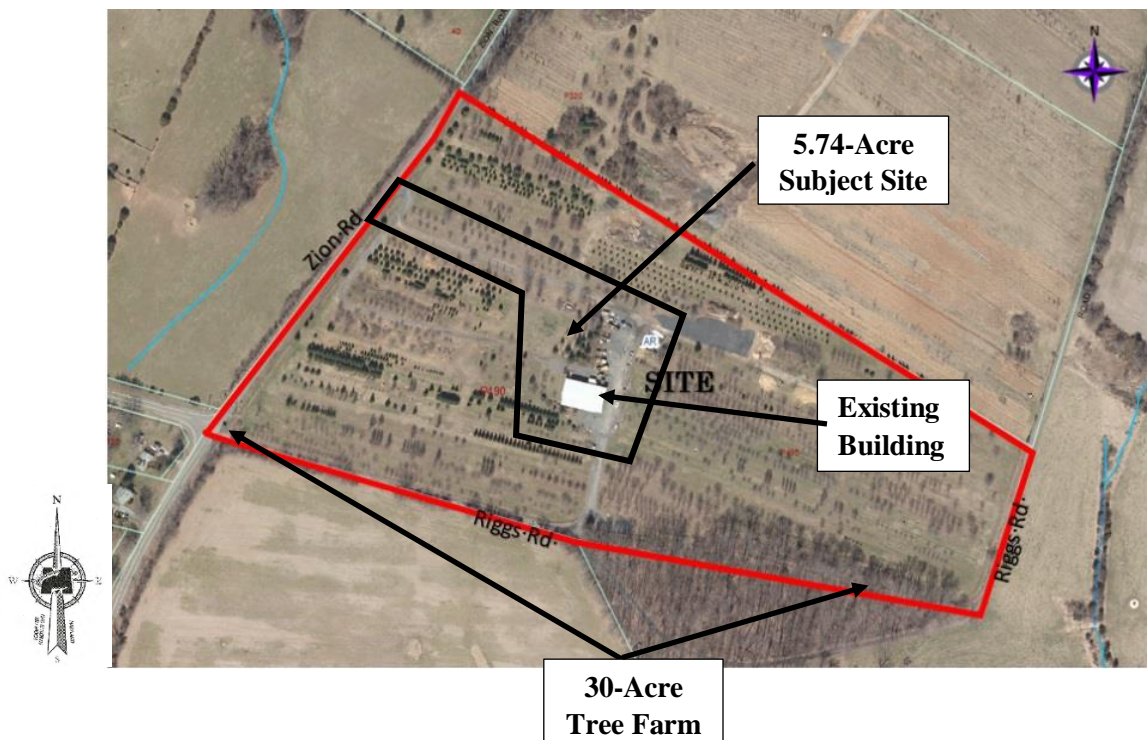
There are no streams, wetland areas, 100-year floodplains or highly erodible soils on the property. There are no rare, threatened or endangered species on the property.

The property is not designated as historic. Currently, the property has access from both Zion Road and Riggs Road, both of which are designated Rustic Roads.

The location of the site can be seen in a Vicinity Map provided by Staff (Exhibit 32, p. 3):



Staff also included an aerial photo of the subject site (Exhibit 32, p. 3):

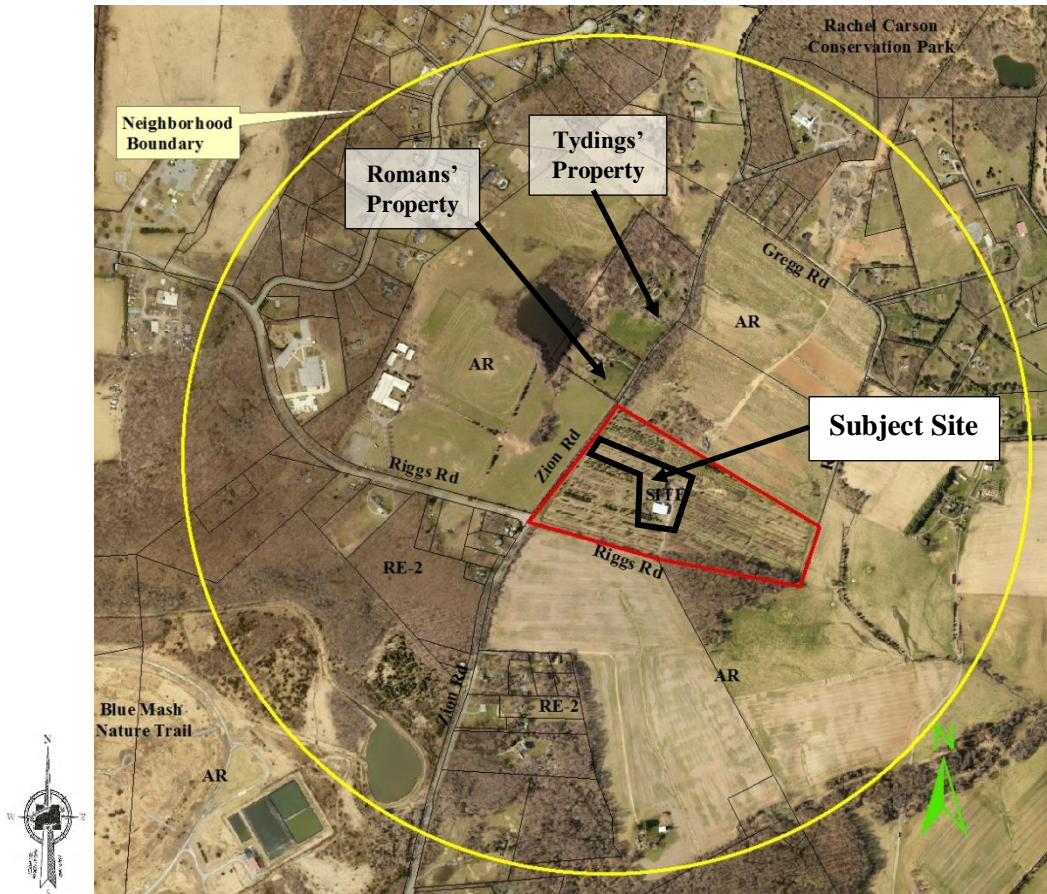


The 6,100 square-foot building, centrally located on the site, is depicted below (Exhibit 32, p. 25):



B. Surrounding Area

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding area” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff defined the surrounding area as properties within a 3,000 foot radius of the subject property, shown in an aerial photo from the Technical Staff Report (Ex. 32, p. 4):



Technical Staff notes that “its definition of the surrounding area attempts to include farm and residential properties directly or indirectly with common ties due to their close proximity or direct access to the two prominent rustic roads, Zion Road and Riggs Road.” Exhibit 32, p. 3. According to Staff (Exhibit 32, pp. 3-4),

The surrounding area is predominantly farmland and wooded parcels. Development in the area includes sheds and farm related buildings as well as single-family residential dwellings on large lots. The residential properties are generally concentrated to the north, northwest, and northeast of the neighborhood in the AR zone with a few residential properties in the southwestern and southern portion that are zoned RE-2. The subject property is surrounded by unimproved farm properties on the north, east and south. To the west, directly across Zion Road from the property, is also a large farm.

The Applicant agreed with Staff’s designation of the surrounding area. Tr. 8/3/18, 7. The Hearing Examiner also accepts Staff’s recommended definition of the surrounding area, as it fairly includes the properties that would be most directly impacted by the proposed use. As described by Staff, the surrounding area is predominantly farmland and wooded parcels, with some single-family residential dwellings on large lots in the northern areas of the neighborhood. There are three previously approved Conditional Uses/Special Exceptions within the defined neighborhood (Exhibit 32, pp. 25-26):

- S-2626 Located at 21515 Zion Road for a private educational institution, approved in 2005
- S-1368 Four Accessory Apartments located at 4300 Greg Road, approved in 1987
- S-1369 Two Accessory Apartments located at 4901 Brookville Road, approved in 1987

C. Proposed Use

The Applicant, Goshen Enterprises, Inc., intends to use the 5.74 acre site for a Landscape Contractor Business. As stated by Technical Staff (Exhibit 32, p. 5),

The proposed operation consists of two elements:

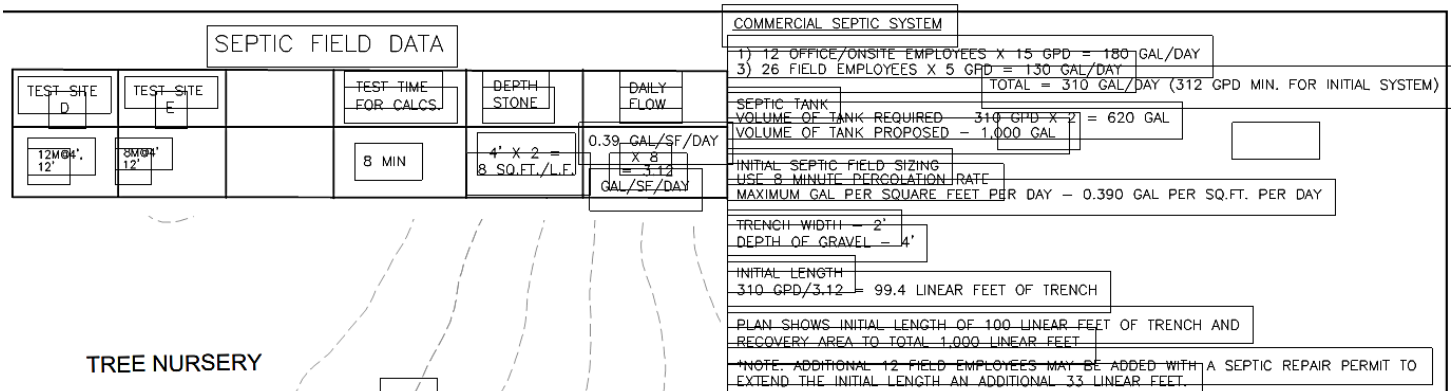
- Residential and commercial landscaping and property maintenance; and

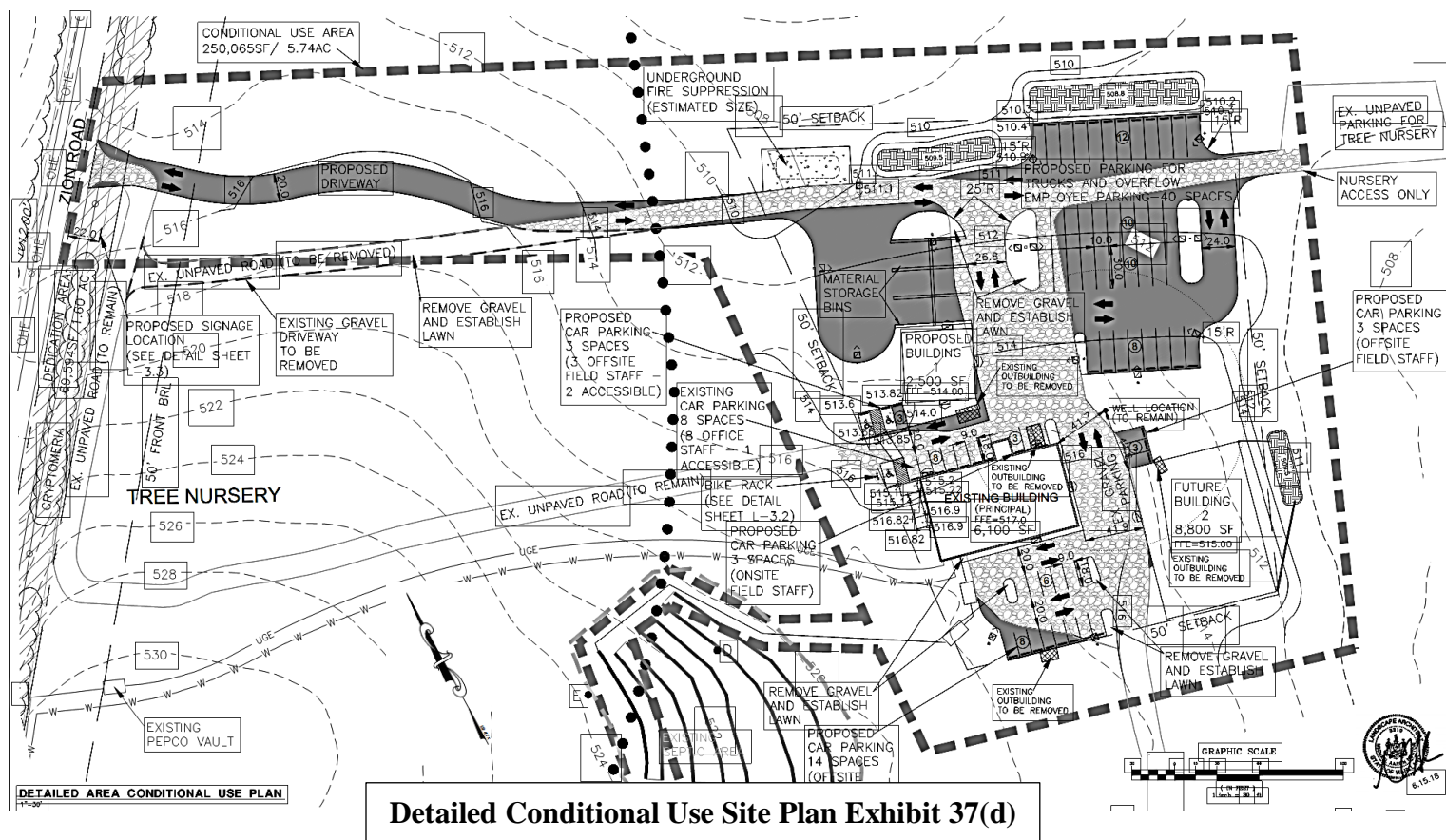
- Installation of trees, shrubs and plants on residential or commercial sites in accordance with landscaping planting plans prepared by Goshen Enterprises or others.

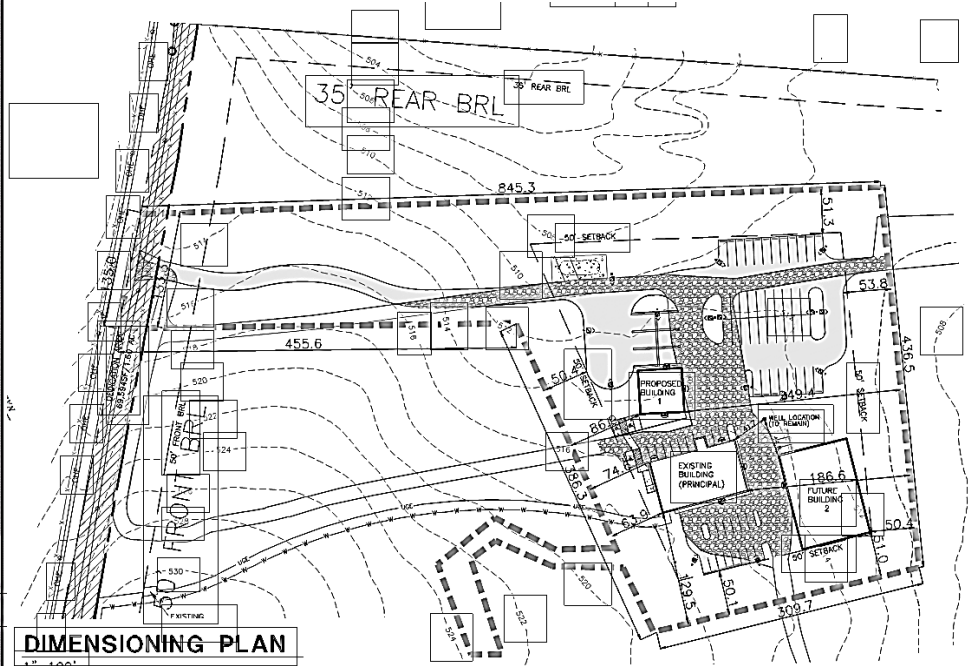
The Applicant is the contract purchaser of the 30.49-acre property that is currently used as a tree farm owned by Ace Nurseries. As stated in the Applicant's Statement of Justification (Exhibit 2, pp. 1-2), for the past 23 years, Goshen has had its base of operations at 5300 Riggs Road, in Laytonsville, Maryland (0.8 miles west of the subject site). Goshen would now like to relocate its operations to 21201 Zion Road and work cooperatively with Ace Tree Movers and Ace Nurseries, a tree nursery and installation contractor, presently situated at this location. Goshen and Ace have reached an agreement under which Goshen will acquire all of the land (30.49 acres) now owned by M&M Realty, LLC (Tax Account No. 08-01925313). A portion of that land (5.74 acres) will become the subject of this conditional use application by Goshen. The remainder of the land will be leased to Ace Tree Movers/Ace Nurseries to continue its tree farm and tree installation business, a permitted use in the AR zone, and to be a provider of nursery stock to Goshen for its use in landscape projects.

1. Site Plan, Access, On-Site Parking

The Applicant's conditional use site plan is shown below and on the following pages. The first plan shown below is the conditional use area plan (Exhibit 28) depicting the entire 30.49 acre property. The next plan shown is the Detailed Conditional Use Site Plan, showing the proposed 5.74 acre site (Exhibit 14).







SECTION 59.4.2.1. AR ZONING STANDARDS

STANDARD	ZONING REQUIREMENT	PROPOSED SITE	EXISTING BUILDING	PROPOSED BUILDING 1	FUTURE BUILDING 2
LOT AREA (MIN.)	40,000 SF	250,065 SF	-	-	-
LOT WIDTH AT B.R.L. (MIN.)	125'	135.0'	-	-	-
LOT WIDTH AT R/W (MIN.)	25'	133.3'	-	-	-
BUILDING HEIGHT (MAX.)	50'	<50'	<50'	<50'	<50'
LOT COVERAGE (MAX.)	10%	7.0%	-	-	-

STANDARD	REQUIREMENT SPACES	PROPOSED EMPLOYEES	EXISTING SPACES	PROPOSED SPACES	TOTAL VEHICLE SPACES
OFFICE (MIN.)	2.80 / 1,000 GFA	9	9	-	9
LANDSCAPE CONTRACTOR - EMPLOYEE (ONSITE)	1.0 / EMPLOYEE	3	-	3	3
LANDSCAPE CONTRACTOR - EMPLOYEE (FIELD)	0.5 / EMPLOYEE	38	-	19	19
COMMERCIAL VEHICLES (MAX.)	1 / VEHICLE	-	-	40	40
BICYCLE	0.5/5,000 GFA			1	

STANDARD	REQUIREMENT	PROPOSED SITE	EXISTING PARKING	EXISTING BUILDING	PROPOSED BUILDING 1	FUTURE BUILDING 2
LOT AREA (MIN.)	2 ACRES	5.74 ACRES	-	-	-	-
BUILDING SETBACK (MIN.)	50'	-	-	63.9'	89.0'	51.7'
PARKING SETBACK (MIN.)	50'	50.9'	40.3'	-	-	-

Access to the conditional use site will be from a proposed 20-foot wide driveway off of Zion Road. The driveway runs about 600 feet till it reaches the central area between proposed material storage bins and the proposed parking lot.

The Applicant's expert site planner, Mr. Michael Norton, explained the proposed use at some length in his testimony (Tr. 8/3/18, 64-104), and the Applicant's plan for buildings, equipment and parking on the site is set forth in its Statement of Justification (Exhibit 2, pp. 6-8). That portion of the Statement is set forth below:

D. Buildings

Eventually, the Applicant will have three buildings, and some accessory structures, to support the operations of Goshen Enterprises:

1. Main Building

The large existing warehouse/storage/administration building (approximately 6100 SF) will be internally reorganized to provide office and work space separate and apart from the equipment storage and vehicle storage area. This building will be the only structure with water and sanitary sewer service. It will provide lavatory, showers and locker rooms for all employees. There will be space provided for offices and meeting rooms for employee education and training sessions.

2. Repair/Maintenance Building

This building will be located to the north of the main building and will measure 50' x 50' with a height of approximately 25 feet. The building will be a prefabricated "Morton" style building constructed of hi-rib painted metal.

This building (labeled "Building 1" on the plans) will have a concrete floor and will serve as the repair shop for the company's fleet of trucks. There will be a lift installed to facilitate maintenance of the trucks. No heavy duty repair work will occur in the building which will be devoted to general maintenance of the truck fleet including lubrication and tire rotation or replacement. This building will also accommodate storage of smaller equipment used in landscaping operations (e.g., mowers, hand tools, snow plow blades, etc.).

3. Storage Building

This building (labeled "Building 2" on the plans) will be added in the future. Its function is well understood but its design and materials are not known at this time. It will be a building measuring 80' x 110' and will be used for covered storage of the

company's out-of-season snow removal equipment and other trucks, equipment or materials that should not be left uncovered. This building will be relatively dormant except for periodic removal and return of a specialized piece of equipment. This building will be constructed of hi-rib painted metal and will be approximately 25 feet in height. Construction of this building is not contemplated until 5 to 7 years into the future when the Applicant's business has grown.

4. Bulk Storage Bins

To the north and close to the Repair/Maintenance building ("Building 1") will be concrete bins for storage of bulk materials used in the Applicant's landscape contracting operations. The bins will separately contain materials such as earth, sand, gravel, mulch, wood chips, stone and bagged materials, and flagstone.

5. Sheds

There are three sea containers that will be relocated to the site from their current Laytonsville location. They are found to be an efficient and inexpensive storage space for such items as seed, mortar and other supplies. The final location of these storage containers has not yet been determined and, indeed, the Applicant would like to keep the siting of these storage containers flexible so that they can be moved, individually or in concert, in order to best serve the efficient operation of the business.

E. Cars, Trucks and Equipment

Because of its size, Goshen has a fairly large fleet of vehicles including twenty (20) stake body, dump trucks/box trucks and smaller pickup trucks all under 25,000 lbs. in weight.

In addition, the Applicant will have up to ten (10) flat bed or box trailers that will be used to transport equipment and plant materials to job sites.

All of these vehicles and trailers will be stored overnight on site in parking areas designated on the Site Plan.

As mentioned previously, equipment associated with Goshen's winter snow plowing operations will generally be kept in the large storage building and will remain outside only during the snow removal season.

F. Parking

Parking will be provided in three locations:

- a. Employee parking will generally occur on both the north and south sides of the existing main building. These spaces do not equal the number of employees because Goshen experiences a high level of employee carpooling, particularly for the field crews, with two or more passengers arriving per vehicle. Any overflow employee parking will occur during the second shift when there will be vacant

spaces available in the overnight storage spaces for trucks and equipment after that equipment has departed for job sites.

- b. Truck, trailer and equipment storage will occur in the northeast corner of the conditional use area and will be adequate to accommodate up to 40 vehicles (or the equivalent with trailers attached).

Technical Staff reports (Corrected Staff Report, Exhibit 32, p. 7) that, upon approval of the application, at full capacity, the subject Conditional Use will have the following equipment and vehicles:

- 20 trucks
- 3 Skid steer stake-body trucks
- 1 large loader
- 12 trailers (non-dumping)
- 1 tractor

The Application proposes a total of 71 onsite surface parking spaces (including 3 van-accessible handicapped spaces) of which 40 are dedicated for trucks, equipment and overflow employee parking, and 31 are dedicated for employees and visitors (Corrected Staff Report, Exhibit 32, p. 7).

2. Site Landscaping, Lighting and Signage

a. Landscaping:

Technical Staff observed (Exhibit 32, p. 18):

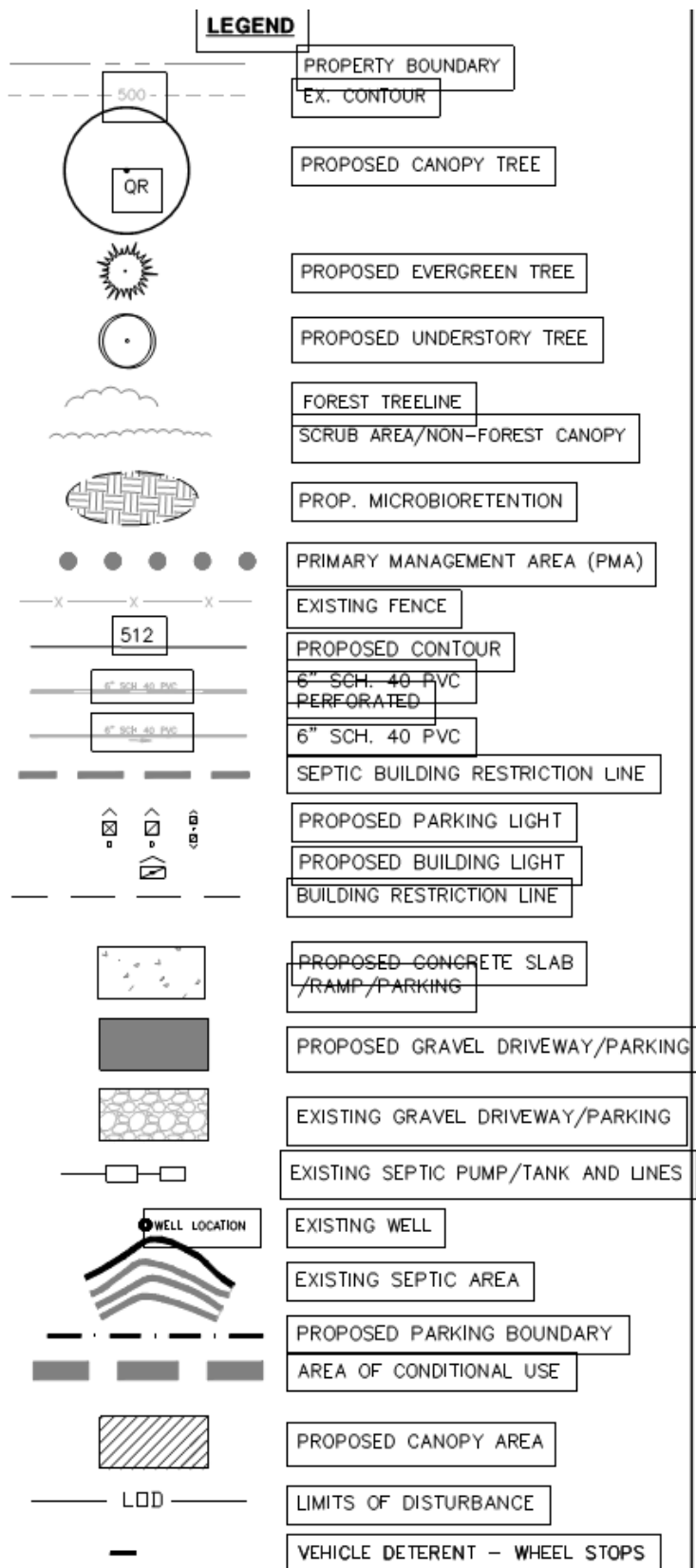
Because the subject conditional use site is on agricultural property and is surrounded by properties that are also within the Agricultural Reserve zone, the requirements of Section 6.5.3 Screening Requirements do not apply; . . . However, given the location of the driveway access on a rustic road, the RRAC has recommended that a mix of evergreen shrubs and deciduous trees be added along the driveway for screening in the area from about halfway down the driveway to the cistern—on both sides of the driveway. . . . The Applicant's revised landscape plan reflects the recommended plantings.

The Applicant's Landscape Plan also provides for perimeter screening, screening of the parking areas and tree canopies for the parking areas, as discussed in the Staff Report (Exhibit 32, pp. 15-17). The Detailed Landscape Plan (Exhibit 37(g)), is reproduced below:



STANDARD	ZONING REQUIREMENT
CANOPY TREE SPREAD (MIN.)	30'
CANOPY TREE MATURE HEIGHT (MIN.)	40-70'
CANOPY TREE SIZE AT TIME OF PLANTING (MIN.)	2" CAL. OR 14' HEIGHT

LANDSCAPE PLANTING PLAN SCHEDULE								
KEY	BOTANICAL NAME	COMMON NAME	SIZE	FORM	20-YR CANOPY DIAMETER	SPACING	QUANTITY	COMMENTS
CANOPY TREES:								
AR	<i>Acer rubrum</i>	Red Maple	2" cal.	B&B	48'	AS SHOWN	16	
QC	<i>Quercus coccinea</i>	Scarlet Oak	2" cal.	B&B	26'	AS SHOWN	11	
CP	<i>Quercus prinus</i>	Chestnut Oak	2" cal.	B&B	35'	AS SHOWN	12	
QA	<i>Quercus rubra</i>	Northern Red Oak	2" cal.	B&B	35'	AS SHOWN	17	
UNDERSTORY TREES:								
AL	<i>Amelanchier laevis</i> 'Cumulus'	Cornus Serviceberry	7-8' ht.	B&B		AS SHOWN	23	SINGLE STEM
CC	<i>Cercis canadensis</i>	Eastern Redbud	7-8' ht.	B&B		AS SHOWN	16	SINGLE STEM
EVERGREEN TREES:								
HO	<i>Ilex opaca</i>	American Holly	6-8'	B&B	12'	AS SHOWN	49	SINGLE STEM
JV	<i>Juniperus virginiana</i>	Eastern Red Cedar	6-7'	B&B	10'	AS SHOWN	41	
GRASSES, PERENNIALS AND GROUNDCOVERS:								
SOD	SOD - Tall Fescue/Kentucky Bluegrass		SOD	SOD		SOAURE YARD	-	STABILIZATION



6.2.9. CANOPY COVERAGE CALCULATION

TOTAL PROPOSED PARKING	32,706 S.F.
TOTAL PROPOSED CANOPY COVERAGE AREA WITHIN THE PARKING	9,738 S.F.
TOTAL PROPOSED CANOPY COVERAGE (%)	29.8%
TOTAL REQUIRED CANOPY COVERAGE (%)	25.0%
TOTAL EXISTING PARKING AREA E1	1,645 S.F.
TOTAL EXISTING CANOPY COVERAGE AREA WITHIN THE PARKING	416 S.F.
TOTAL EXISTING CANOPY COVERAGE (%)	25.3%
TOTAL REQUIRED CANOPY COVERAGE (%)	25.0%

6.2.9. PARKING LOT REQUIREMENTS CALCULATION

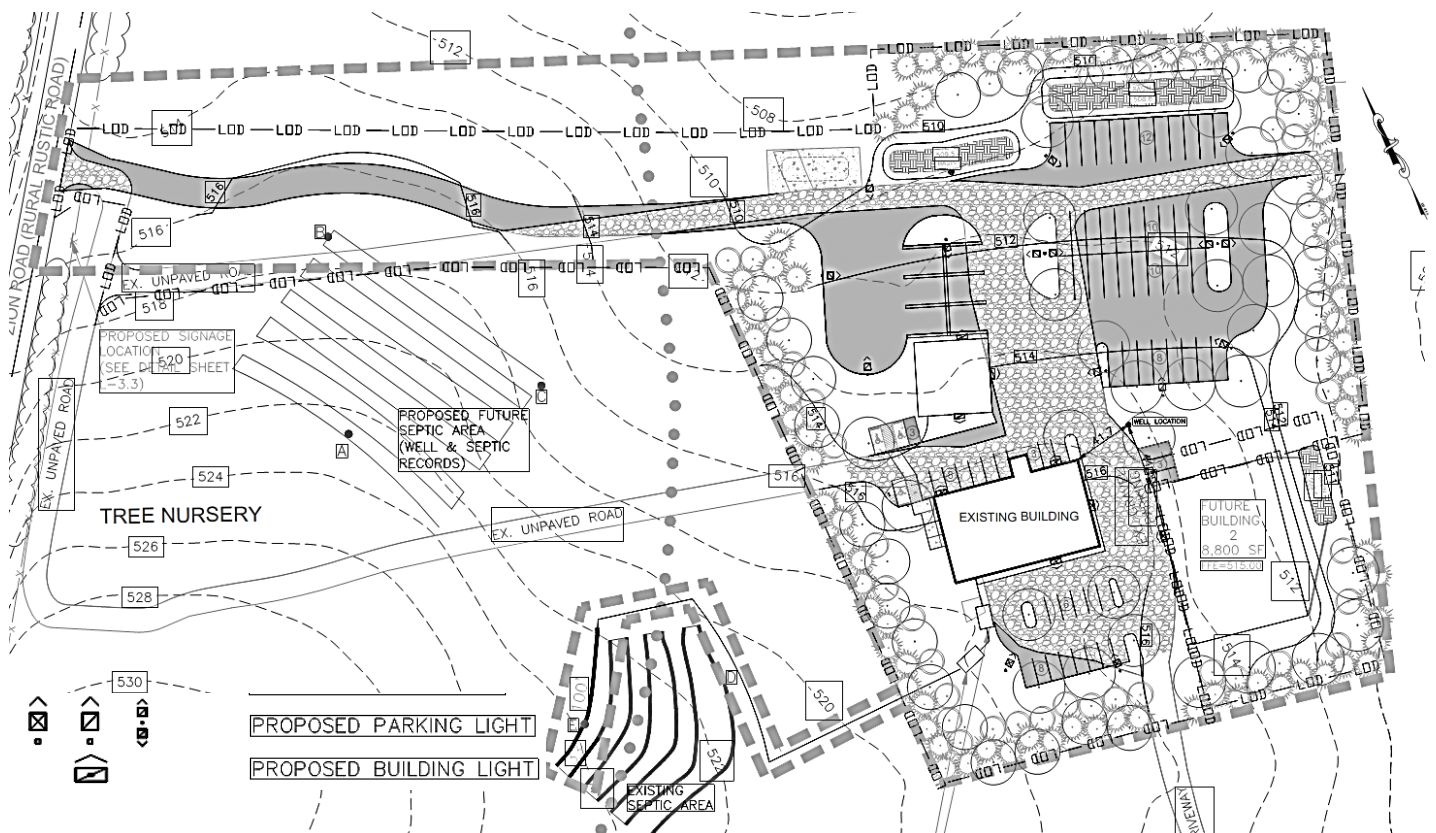
TOTAL PROPOSED PARKING AREA P1	24,568 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA P1	1,901 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA P1	7.7%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%
TOTAL PROPOSED PARKING AREA P2	6,447 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA P2	430 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA P2	6.6%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%
TOTAL PROPOSED PARKING AREA P3	656 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA P3	202 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA P3	30.8%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%
TOTAL PROPOSED PARKING AREA P4	631 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA P4	121 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA P4	19.2%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%
TOTAL PROPOSED PARKING AREA P5	659 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA P5	80 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA P5	12.1%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%
TOTAL EXISTING PARKING AREA E1	1,657 S.F.
TOTAL LANDSCAPED ISLANDS WITHIN PARKING AREA E1	328 S.F.
TOTAL LANDSCAPED ISLANDS COVERAGE WITHIN PARKING AREA E1	23.4%
TOTAL REQUIRED LANDSCAPED ISLANDS COVERAGE FOR PARKING	5.0%

The tree canopy requirements under Section 59-6.2.9.C.2. have been met by the installation of 56 canopy trees, 39 medium shrubs and 88 evergreen trees. The canopy trees are projected to cover 29.8 percent of the parking area at the 20-year time frame. Exhibit 32, p. 16. The Applicant meets the screening requirements by providing a minimum of at least a 10-foot wide planting area along the entire perimeter of the conditional use site. Exhibit 32, p. 17.

Technical Staff concluded that the Applicant's plans comply with the screening requirements of Zoning Ordinance §59. 6.2.9.C.1 – 3 regarding parking lots for 10 or more spaces (Exhibit 32, p. 15); the size requirements for landscaped islands in parking lots (Exhibit 32, p. 16; the tree canopy requirements for parking lots under Section 59.6.2.9.C.2.(Exhibit 32, p. 16); and the perimeter planting area for a property that abuts Agricultural, Rural Residential, or Residential Detached zoned property (Exhibit 32, p. 17).

b. Lighting:

Lighting for the site is shown on the Lighting Plan (Exhibit 37(i)), reproduced below:



The fixture details were provided on the Lighting Photometric Plan (Exhibit 37(j)), shown below:

Note						
1. Readings shown are based on a total LLF of as shown at grade. Data references the extrapolated performance projections in a 25c ambient based on 10,000 hrs of LED testing (per IESNA LM-80-08 and projected per IESNA TM-21-11).						
2. Please refer to the "Plan View" for mounting heights.						
3. Product information can be obtained at www.Holophane.com						

Statistics						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Lot Summary	×	3.0 ft	9.9 ft	0.3 ft	33.0:1	10.0:1
Property Line	◇	0.0 ft	0.0 ft	0.0 ft	N/A	N/A
Spill Light Summary	+	0.3 ft	9.9 ft	0.0 ft	N/A	N/A

PARKING LOT OUTDOOR LIGHTING

OUTDOOR LIGHTING FOR A CONDITIONAL USE MUST BE DIRECTED, SHIELDED, OR SCREENED TO ENSURE THAT THE ILLUMINATION IS 0.1 FOOTCANDLES OR LESS AT ANY LOT LINE THAT ADJUTS A LOT WITH A DETACHED HOUSE BUILDING TYPE, NOT LOCATED IN A COMMERCIAL/RESIDENTIAL OR EMPLOYMENT ZONE.



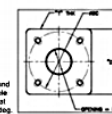
SPECIFICATIONS

POLE
Round Tapered Aluminum
Pole 20FT, 5.0 x 3.0 x .188 Wall
-188 Wall
-RTA2050G PL ND BK (AB)
Pole: RTA2050G
Pole Top Style: Plain
Top:
Pole Top Drill Pattern:
No Drill Pattern
Finish: Black Paint
Pole Mounting: Anchor
Bolt:
Festoon: None
Base Cover: None
Tension Resistant:
Fasteners: None
Dimension: None

FIXTURE
Autobahn LED Roadway - Small
-ATB0 30BLEDE85 MVOLT F R3 BK
Pole: ATB0
Performance
Package: 308 Chips, 850mA Driver
Voltage: Multi-Volt (120-277V)
Optic: Roadway Type III
Color Temperature: 4000K (Standard)
Finish: Black
Surge Protection: SPD-10k VISA
Terminal Block:
Terminal Block (Standard)
Bubble Level: None
House Side Shield:
None
NEMA Label: None
CSA Listing: CSA
Listed:
Anti: None
Photocontrol:
Receptacle: 3 Pin NEMA
Photocontrol: Photocell (Standard)
Field Adjustable
Output: None
Dimming: None
Photocontrol: None
Packaging: Standard
Pack



Anchor/Rotation Plan



Catalog Number: ATB0 30BLEDE85 MVOLT F R3 BK RTA2050G PL ND BK (AB)	
Type	Notes

RTA2050G - 20FT, 5.0 x 3.0 x .188 Wall
Autobahn LED Roadway - Small (ATB0)

Bolt Circle Dia.	Min. Base Size "D"	Base Thk. "T"	Bolt Projection	Anchor Bolt Set	Bolt Circle Template
8.50	9.25	0.56	3.00 - 3.50	AB-26-4	TMP-40



1 LIGHTING FIXTURE & ALUMINUM POLE DETAIL
4.2 NOT TO SCALE



RTA2050G - 20FT, 5.0 x 3.0 x .188 Wall
Autobahn LED Roadway - Small (ATB0)

POLE ATTRIBUTES:

RTA2050G - 20FT, 5.0 x 3.0 x .188 Wall

Intended Use: City Streets, Parking Lots, Campuses, Commercial Developments, Plazas, Historic Districts, Village Squares, Residential Areas, Parks, Walkways, Boulevards, Roadways

Features: Pole shaft is one piece, 6063 aluminum alloy, heat-treated to a T6 temper. Pole base shall be 356 or A356 aluminum alloy, heat-treated to a T6 temper after welding. Hand hole is 2" x 4" minimum, cover and fasteners are included. Nut covers shall be provided as standard. Finish shall match pole non-structural fasteners shall be stainless steel. The following are product attributes:

Anodized, painted, or satin brush finish. Painted poles shall be semi-gloss powder paint; Grounding provision shall be immediately accessible through hand hole, 3/8-16 threads; Steel anchor bolts shall be per AASHTO M314 or ASTM F 1554 - Grade 55, hot dip galvanized. Nuts and washers shall be per AASHTO M314-90 or ASTM F 1554 - hot dip galvanized

Listings: Round Tapered Aluminum poles shall be fabricated to meet AASHTO 1994 requirements. Welds conform to applicable AWS structural welding code.

When Festoon Box Is Ordered The Standard Location Is On The Same Side As Hand Hole, and is 36" Above Pole Base

FIXTURE ATTRIBUTES:

Quick Facts:

- Standard Color Gray
- 4000K Standard Color Temperature
- Class C Surge Protection
- Designed to operate at 40C ambient
- Reduce Energy costs by 60%
- Reduce Maintenance costs by 50%
- Reduce CO2 emission by 65%
- 20 to 30% more efficient than comparable LED luminaires
- Leading-edge optics improve visibility on roadways
- Sleek dayform with dimensions similar to a cobrahead
- Tool-less features and 0% uplift

Finish/Material: Rugged die-cast aluminum housing is polyester powder-coated for durability and corrosion resistance. Rigorous five stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 1000 hours exposure to salt fog chamber (operated ASTM B117) luminaire includes: 4 Bolt Internal Mounting, Terminal Block and NEMA Locking Style Photocontrol Receptacle.



Consistent with LED lighting goals & Green Building Initiative
No light pollution reduction

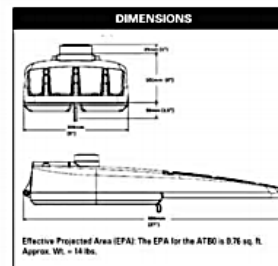
Autobahn Series ATB0
Roadway Lighting

PRODUCT OVERVIEW



Applications:

- Roadways
- Off ramps
- Residential streets
- Parking lots



Features:

OPTICAL

Same Light Performance is comparable to 70-200W HPS roadway luminaires. White Light: Correlated color temperature - 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

Unique IP66 rated LED light engines provided 0% uplift and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing. Available in Type II, III, IV, and V roadway distributions.

ELECTRICAL

Expected Life: LED light engines are rated >100,000 hours at 25°C, L70. Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Robust Surge Protection: Three different surge protection options provide a minimum of IEEE/ANSI C62.41 Category C (10kV/5kA) protection. 20kV/10kA protection is also available.

MECHANICAL

Includes standard AEL lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easily leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 1000 hours exposure to salt fog chamber (operated per ASTM B117). Optional Enhanced Corrosion Resistant finish (CR) increases the salt spray exposure over 5000 hours.

Most arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter. Provides a 3G vibration rating per ANSI C136.31

Wildlife shield is cast into the housing (not a separate piece).

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 5 pin and 7 pin receptacles optionally available.

Premium solid state locking style photocontrol - PCS (10 year rated life) Extreme long life solid state locking style photocontrol - PCL (20 year rated life).

Multi-level dimming available to provide scheduled dimming as specified by the customer.

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.

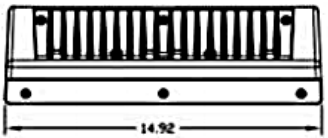
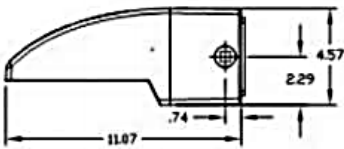
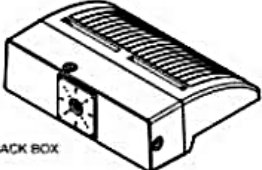
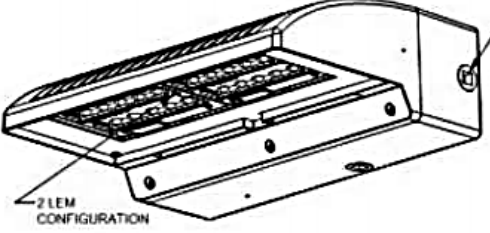
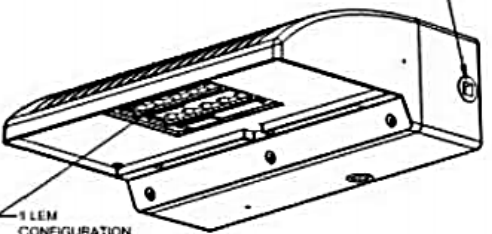
STANDARDS

DesignLights Consortium® (DLC) qualified product. Not all versions of this product may be DLC qualified. Please check the DLC Qualified Products List at www.designlights.org/DLC to confirm which versions are qualified.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.16, C136.14, C136.31, C136.15, C136.37

DIMENSIONS		WALLPACK® FULL CUTOFF LED	
 <p style="text-align: center;">14.92</p>  <p style="text-align: center;">4.57 .74 11.07</p>  <p style="text-align: center;">BACK BOX</p>	 <p style="text-align: center;">2 LEM CONFIGURATION</p>  <p style="text-align: center;">1 LEM CONFIGURATION</p>	<p style="text-align: right;">1/2" THREADED KNOCK-OUT (1/2"-14 NPT)</p>	
<p>HLWPC2</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>HOUSING STYLE HLWPC2 = WALLPACK FULL CUTOFF LED</p> </div> <div style="width: 45%;"> <p>COLOR TEMPERATURE AM = TRUE AMBER 30K = 3000 K CCT 40K = 4000 K CCT 50K = 5000 K CCT</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>LED PERFORMANCE PACKAGE (SEE PERFORMANCE DATA TABLE FOR DETAILS, PAGE 2) P10 = LED PERFORMANCE PACKAGE P20 = LED PERFORMANCE PACKAGE P30 = LED PERFORMANCE PACKAGE P40 = LED PERFORMANCE PACKAGE P50 = LED PERFORMANCE PACKAGE</p> </div> <div style="width: 45%;"> <p>VOLTAGE AS = AUTO-SENSING (120-277) 50/60 HZ AH = AUTO-SENSING (347-480) 50/60 HZ 12 = 120V 20 = 208V 24 = 240V 27 = 277V 34 = 347V 48 = 480V</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>OPTICS T2S = TYPE 2 SHORT T2M = TYPE 2 MEDIUM T3S = TYPE 3 SHORT T3M = TYPE 3 MEDIUM T4M = TYPE 4 MEDIUM TFTM = FORWARD THROW MEDIUM ASYDF = ASYMMETRIC DIFFUSE SYMDF = SYMMETRIC DIFFUSE</p> </div> <div style="width: 45%;"> <p>CR BLANK = 70 CRI (STD) 80CRI = 80 CRI</p> </div> </div>		<p>SUPER DURABLE PAINT BKSDP = BLACK BZSDP = BRONZE GRSDP = GREY WHSDP = WHITE</p>	
<p>ORDERING INFORMATION:</p>		<p>INFRASTRUCTURE OUTDOOR</p>	
<p>OPTIONS</p> <div style="display: flex;"> <div style="width: 50%;"> <p>ADJUSTABLE / PROGRAMMABLE OPTIONS AO = Field Adjustable Output</p> <p>CIRCUIT OPTIONS 2CI = 2 Independent Circuits</p> <p>CONTROL - MOTION SENSOR OPTIONS MASL = Motion / Ambient Sensor, 8-15' Mounting Height Ambient Sensor Enabled at 1FC MASH = Motion / Ambient Sensor, 15-30' Mounting Height Ambient Sensor Enabled at 1FC</p> <p>CONTROL - PHOTOCONTROL OPTIONS PE = Button Style Photocontrol P3 = N.E.M.A. Twistlock Receptacle Mount - 3 PIN P7 = N.E.M.A. Twistlock Receptacle Mount - 7 PIN PCLL = DTL Long Life Twistlock Photocontrol for Solid State PND = 0-10V Part-night Dimming, Includes BLC2 & N.E.M.A. Twistlock Photocontrol Receptacle PSC = Shorting Cap</p> </div> <div style="width: 50%;"> <p>FUSE OPTION SF = Single Fuse DF = Double Fuse</p> <p>SAFETY OPTION EM = Integral Emergency Battery TP = Tamper Resistant Hardware</p> <p>SURGE PROTECTION OPTION - 20kV/10kA IS STANDARD 10kV = 10kV/5kA Surge Protection, in Place of Standard 20kV/10kA</p> </div> </div>		<p>HOLOPHANE® An Acuity Brands Company LEADER IN LIGHTING MANUFACTURING © 2009 Acuity Brands Lighting, Inc. All Rights Reserved</p>	
<p>NOTES: AMB Color Temperature is ONLY available in P10 & P30 Performance Package. All IES files available on product's web page. 20kV/10kA SPD is standard, 10kV/5kA SPD option available. DesignLights Consortium® (DLC) qualified product. Not all versions of this product may be DLC qualified. Please check the DLC Qualified Products List at www.designlights.org/DLP to confirm which versions are qualified.</p>		<p>FOR COMPATABLE OPTIONS, REFER TO THE OPTION MATRIX ON PAGE 3 OF 4</p>	
<p>ORDER #:</p> <p>TYPE:</p> <p>DRAWN: MRP</p> <p>DATE: 10/31/2017</p> <p>DWG #: LUM HLWPC2</p>		<p>1 of 4</p>	

The Applicant's owner, Kevin Bohrer, testified that lights on the site would be turned on only when operations were occurring, except for a couple of motion lights for security. Tr. 8/3/18, 46-47. Michael Norton, the Applicant's expert in landscape architecture and site design, also described the proposed lighting and testified that there would be no light spillage or glare into adjoining properties from the operations of the conditional use. As stated by Mr. Norton (Tr. 8/3/18, 86-89):

MR. NORTON: . . . We are showing standard wall packs so they'd be the wall fixtures on the future building, proposed building one and then the existing building in the center of the site right now for safety. Primarily associated with the parking areas itself. We do have pole mounted fixtures that are on the -- that are around the commercial vehicle parking area, if you will, they are on 20-foot poles. They have full cut offs, there will not be any light coming off vertically. We are shown the 20 foot because of the trucks out there. We don't want to go -- most cases you actually made a little bit higher. We are trying to be respectful to the community with the 20. I don't believe that we'd want to go lower because of the potential for a commercial vehicle or the loaders or something to just hit a pole or hit the fixture itself. So we try to strike the compromise for the fixtures themselves.

MR. KLINE: So both Mr. Tydings and Mr. Romans wrote in and used the phrase or indicated concern about evening light pollution and we are particularly -- (indiscernible) -- to have a dark skies policy. Do you feel that the lighting scheme you've come up with would basically not create any evening light pollution?

MR. NORTON: Like I said, it's all full shield that are being installed. The dark sky technology is, I believe, what everyone is trying to use in the county. I do not believe there's no spill over from this, again, from the conditional use area itself and really none from the larger property overall. The landscape -- also what's unique about this is the canopy and the Evergreen screening that we're installing will actually be taller than what these pole fixtures will be. The nursery itself -- a lot of the nursery stock actually is at 20 feet or higher right now, so you would not see those poles.

The screening trees that we are proposing is one of the other reasons why we did this even before we had the letter -- letters is that we looked at these Evergreen trees that would be year round, green, screening, that would go up to -- like I say holly is -- the cedars that we're proposing, I think are 30 feet to even taller around these areas. So a little bit background as to why we did not use smaller Evergreen.

MR. KLINE: And would you then factor in Mr. Bohrer's commitment to basically have motion activated lights?

MR. NORTON: Right. Lights would be on almost -- gosh, it seems like today's standard business hours a little bit beyond 9:00 to 5:00 with the 6 o'clock 6:30. But the lights would be shut off it would be dark out there. I do want to mention also the

wall packs are at 10 foot with the building fixtures are at 10 feet. So they'd be much lower. So those would possibly stay on then that would be much much lower screen. And again those are on the buildings really tucked in.

MR. GROSSMAN: So in your opinion would there be any glare or light spilled over into the surrounding neighborhood?

MR. NORTON: There would not be any spillover or glare.

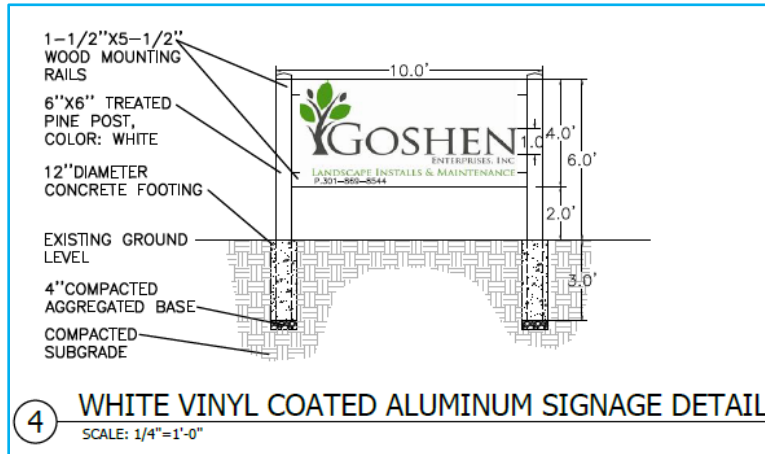
Technical Staff found the proposed lighting to be sufficient, non-intrusive and compliant with the Zoning Ordinance (Exhibit 32, p. 20):

The Lighting Plan is adequate and safe for vehicular and employee movement. The proposed lighting serves multiple purposes, including illumination of the site entrance, visibility lighting in the employee parking areas and area lighting near the structures. A photometric study submitted with the Application [Exhibit 37(j)] shows measured lighting intensity across the entire property in foot-candles, the locations of lighting fixtures and the manufacturer's specifications on the proposed lighting fixtures. The Photometric Plan shows that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. Moreover, the existing tree nursery and perimeter landscaping of the CU site will help eliminate the impact of glare. The lighting, with no direct light or light glare, will not have a negative impact on neighboring properties.

As indicated in the photometric Plan (Exhibit 37(j)) and in Mr. Norton's testimony, the Applicant had planned for its parking lot lights to be mounted on 20-foot poles. However, after meeting with the neighbors, Messrs. Tydings and Romans, following the September 7, 2018 hearing, the Applicant agreed to amend its plans, if the conditional use is approved, to provide 15-foot light poles. Exhibits 61, 62, 63 and 64. The Hearing Examiner has accounted for that change in the conditions listed in Part IV of this Report and Decision.

c. Signage

The Applicant proposed a 40-square foot, two-sided, freestanding identification sign located approximately 12 feet behind the right-of-way and 22 feet from the western property line. The sign would be mounted on two 6-foot high treated pine posts and suspended two feet above the ground. It would be constructed with wood and painted with a white vinyl-coated aluminum company logo. The proposed sign is depicted below:



Technical Staff recommended that the sign size be cut in half to a less intrusive 20-square foot sign, for the following reasons (Exhibit 32, pp. 20-21):

. . . to maintain consistency with the rural and agricultural nature of the property and the neighborhood as well as the unique characteristics of the adjoining Zion Road and Riggs Road as designated Rustic Road, staff recommends that the size of the proposed 40-square-foot freestanding sign to be reduced to 20 square-foot of area. . . Staff believes that since very few customers will be visiting the subject property and that the sign is needed merely to guide delivery trucks to the property, the reduced sign area would not create additional burden on the Applicant.

The Hearing Examiner agrees with Technical Staff that the sign size should be reduced from the 40 square feet suggested by the Applicant, but concludes that it should be reduced even further in size to reduce the appearance of a commercial enterprise. Nearby neighbors, Messrs. Tydings and Mr. Romans, testified at the hearing that they were concerned about the effect of a commercial enterprise on their property values, and Mr. Tydings asked that the sign be eliminated or the sign size be reduced. Tr. 9/3/18, 88.

The Hearing Examiner finds that reducing the size of the sign to 12 square feet would help to avoid a commercial appearance, while leaving it large enough to be seen from the road. Therefore, to improve compatibility, the Hearing Examiner will limit the sign size to 12 square feet. A condition limiting the size of the sign and requiring a permit is included in Part IV of this Report and Decision.

3. Operations

The Applicant described its proposed operations in its Statement of Justification (Exhibit 2, pp. 4-5):

A. Business Activities

Goshen Enterprises, Inc. is a vigorous and successful business with two main departments:

- Residential and commercial landscaping and property maintenance
- Installation of trees, shrubs and plants on residential or commercial sites in accordance with landscaping planting plans prepared by Goshen or others.

B. Staffing

Goshen's entire operations will be transferred to 21201 Zion Road. Thirty-seven employees will move from the current Laytonsville site to the new home base of operations. There could eventually be up to a total of 50 employees operating out of this facility during high season. The breakdown of those employees includes:

Owner and Administration	7 now – maximum of 9
Loading and On-Site Operations Crew	2 now – maximum of 3
Field Crew	28 now – maximum of 38
	(maximum during April and May)
Total	Present: 37 – Future: Up to 50

C. Hours of Operation

Goshen's hours of operation will generally be from 6:00 AM until 6:30 PM. Initially, Goshen expected to have all of its field employees report to work at the same time (6:30 AM) as it does now. But because of the way that "trips" are now calculated, Goshen is penalized because so many of its field employees carpool. Accordingly, it became necessary for Goshen to have two shift start times in order to reach a goal of less than 50 "peak hour person trips." Therefore, Goshen now intends to modify its current operations and to establish two shifts for field crews. This mode of operation will act in the following manner:

- Loading/on-site crew (up to 3 persons) will arrive before 6:30 AM
- Shift 1 (not more than 9 persons) arrive between 6:30 and 6:45 AM
- Shift 1 departs between 6:45 and 7:00 AM
- Shift 2 arrives between 7:30 and 7:45 AM (maximum of 9 persons)
- Shift 2 departs between 7:45 and 8:00 AM

This arrangement, which can be controlled by the Applicant since there is very heavy carpooling to the home site, is very advantageous because arrivals and departures to and from the site will be spread out over multiple hours.

- Office/administrative staff would then begin to arrive at or around 8:00 AM and will depart between 4:30 PM and 5:00 PM.

During the busiest times of the year, Spring (March-May) and Fall (September–December), Petitioner will also operate on Saturdays during the same hours (6:00 AM – 6:30 PM).

The Applicant will have no retail sales on site so it would be rare that a customer would visit the site. Therefore, there will be little activity on-site during most of the day since crews will be off performing landscaping work at off-site locations. The only exceptions to these hours/days of operations are as follows:

- a. Snow removal which must occur at all times as needed; and
- b. Emergency tree services to address a road blockage or hazardous condition.

Technical Staff recommends that the total number of employees on site not be permitted to exceed 38 until the Department of Permitting Services verifies the adequacy of the septic system to accommodate up to 50 employees (Staff recommended condition 1 and Exhibit 32, p. 6). When asked about this verification at the hearing, the Applicant's counsel indicated that the Applicant was not yet seeking authorization for up to 50 employees, but asked that the condition be written so that if and when the certification is received, it would not require a modification of the conditional use. Tr. 8/3/18, 103-104. The Hearing Examiner agreed that was reasonable.

The Applicant's owner, Kevin Bohrer, testified that the Applicant would not need extended hours at the site for snow removal because that equipment is mostly stored off site. Tr. 8/3/18, 31-32.

D. Environmental Issues

There are some environmental issues in this case since the subject property is in the Use IV P Hawlings River watershed, and subject to the Patuxent River Watershed Functional Master Plan Primary Management Area (PMA) guidelines to protect water quality. The PMA guidelines seek to restrict uses with high impervious levels. According to Applicant's site planner, Michael Norton, the site impervious levels will be about 7.7%, well under the 10% maximum set under the PMA. Tr. 8/3/18, 92. Technical Staff also found that the proposed impervious surfaces meet the PMA requirements (Exhibit 32, pp. 11).

Technical Staff also discusses the rustic roads adjacent to the site (Exhibit 32, pp. 11-12) and issues relating to forest conservation (Exhibit 32, p. 21) and stormwater management (Exhibit 32, p. 27).

The property is bounded on three sides by Zion Road (west) and Riggs Road (east and south). Both roads are designated Rustic Roads in the 1996 Approved Rustic Roads Functional Master Plan. Staff discusses each Road (Exhibit 32, pp. 11-12):

Riggs Road

The Rustic Road Functional Master Plan notes the historic value, outstanding natural features, and farm views (p. 136) of this portion of Riggs Road, which was initially created as a farm access lane to connect Gregg Road and Zion Road. The Functional Master Plan identifies three significant features of Riggs Road:

- Road alignment and unpaved roadway surface;
- Locust hedgerows;
- Compatibility of road with adjacent farmland;

Zion Road:

The Rustic Road Functional Master Plan recommended Zion Road from Riggs Road to Sundown Road, 1.5 miles in length and 12 to 14 feet in width, for rustic road designation because it has historic value. The Functional Master Plan also identifies two significant features of this portion of Zion Road:

- Pleasant road blending into adjacent land;
- Forest canopy over northeastern section of road.

The road was established in around 1885 and named Mount Zion as a freed slave community that was settled in the area after the Civil War.

The applicant had submitted the proposal to the Rustic Road Advisory Committee (RRAC) on February 27, 2018. The committee reviewed the application and recommended certain site design changes, specifically related to the design of the proposed new driveway apron and the long internal driveway for accessing the parking areas and proposed buildings. To address the RRAC's concerns, the applicant revised the plans to reduce the width of the driveway from 22 feet to 20 feet, redesign an internal driveway, and add additional landscaping. The RRAC reviewed the revised plans on May 22, 2018.

Some of the RRAC concerns that have been identified are incorporated in the conditions of approval.

With regard to forest conservation (Exhibit 32, p. 21), Technical Staff found that “The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 30.49-acre Property on July 14, 2017. The Property currently has 1.25 acres of forest which is located along the southeastern Property boundary. The Planning Board unanimously approved Applicant’s Preliminary Forest Conservation Plan (PFCP), finding that the use on the property complies with Chapter 22A of the Montgomery County Code. A copy of the Planning Board’s Resolution approving the PFCP is included in the record as Exhibit 35.

As to stormwater management, Technical Staff noted that Applicant’s stormwater management concept plan proposes to meet required stormwater management goals using micro-bioretenention and an alternative surface. Exhibit 32, p. 27. The stormwater management concept plan was submitted to the MCDPS Water Resource Section. By a letter dated June 21, 2018, (Exhibit 50) DPS’s Water Resource Section indicated that the Applicant’s stormwater management concept is acceptable, provided conditions are addressed during the detailed Sediment Control/SWM plan stage. Stormwater management issues will be addressed by the Planning Board at preliminary plan.

In sum, Technical Staff found that “[t]here are no unacceptable . . . environmental impacts associated with the Application provided that the recommended conditions are satisfied.” Exhibit 32, p. 30.

E. Community Response

No communications from the community, either in support or opposition, were filed directly with the Planning Department. Exhibit 32, p. 21. However, on August 1 and 2, 2018, Emmet Tydings, the owner of property on Zion Road, wrote to express concerns about not receiving notice of the hearing, possible impacts on his property value, as well as possible effects from the use of well water, from noise and from lights at night (Exhibits 38 and 40). A similar

letter was filed on August 2, 2018, by Walter A. Romans, who owns nearly confronting¹ property on Zion Road (Exhibit 39). Neither neighbor appeared at the August 3 hearing due to previous vacation plans.

A second hearing date of September 7, 2018, was therefore set to give Messrs. Tydings and Romans the opportunity to testify and/or cross-examine the Applicant's witnesses. Both gentlemen and Mrs. Tydings testified at the September 7 hearing. They raised the following concerns:

Mr. Tydings testified that (Tr. 9/7/18, 87-91):

1. His property was in the water runoff area;
2. He wants to make sure that lighting will be shielded on the sides as well as the top;
3. He asked that the sign be eliminated or at least have its size minimized;
4. He stated his belief that property values will be adversely affected by the conditional use;
5. He asked that "defunct" trucks currently on the site from the tree farm be removed; and
6. He wants to meet with Applicant's Owner, Mr. Bohrer.

Mrs. Tydings raised questions about well-water issues and stormwater runoff (Tr. 9/7/18, 93-94).

Mr. Romans testified that (Tr. 9/7/18, 65-69; 71-72; 103-112):

1. He didn't receive the written hearing notice, nor see the notice signs posted on the site;
2. He worries that heavy snow removal equipment may be moved onto the site;
3. Cars speed on Zion Road in this area, making it unsafe for trucks to enter the road, and he asked that the access road be moved further south to minimize the danger;
4. The buildings planned for the site are too large and should not be approved;
5. He asked who polices compliance with the conditional use;
6. He noted that no one does background checks of the potential employees of the use; and
7. He believes property values will be adversely affected.

Although both Mr. Tydings and Mr. Romans withdrew their opposition after receiving assurances from the Applicant that the light poles would be reduced from 20 feet in height to 15

¹ The Hearing Examiner uses the term "nearly confronting" because Mr. Romans' property does not precisely meet the definition of "confronting" in Zoning Ordinance §59.1.4.2. Confronting is defined as "Properties that are directly across a right-of-way with a master plan width of less than 80 feet from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45 degree diagonal across an intersection are also confronting." Nevertheless, OZAH did send Mr. Romans written notice of the hearing, which he says he never received.

feet (Exhibits 61, 62, 63 and 64), the Hearing Examiner finds that the neighbors have raised other points which require amendments and supplementation of the conditions recommended by the Technical Staff. Nevertheless, for the reasons set forth in Part III of this Report and Decision, the Hearing Examiner finds that none of the points raised by Mr. Romans and Mr. and Mrs. Tydings require denial of the conditional use application.

Their concerns relate to possible adverse effects that are all inherent in the use, such as some truck traffic, limited lighting, minor noise and a well-screened commercial appearance. These concerns can be properly handled by effective means, such as Environmental Site Design to alleviate stormwater runoff and conditions imposed on the use by the Hearing Examiner. Inherent adverse effects alone are not a basis for denial of a conditional use application under Zoning Ordinance §59.7.3.1.E.1.g., as discussed in Part III.

In order to respond to the neighbors' concerns and to minimize any adverse effects, the Hearing Examiner has modified and supplemented the conditions proposed by Technical Staff in the following ways, as shown by the underlined conditions below:

5. The hours of operation are limited to Monday through Saturday, and must not occur before 6:00 a.m. or after 6:30 p.m. Snow removal and emergency tree services to address a road blockage or hazardous conditions may be provided when needed; however, heavy snow removal equipment may not be stored on the site.
6. The total number of trucks and trailers for the proposed use must not exceed 37. Equipment and machinery for the proposed use is limited to 20 trucks, 3 Skid steer stake-body trucks, 1 large loader, 12 trailers (non-dumping) and 1 tractor. Any additional trucks, loaders, tractors and/or trailers on the site must be removed from the site before the issuance of use and occupancy permits, whether or not they are in operational condition.
8. All improvements, landscaping and lighting on the property must comply with the Applicant's Conditional Use Site Plan (Exhibit (37(d)), and other approved plans in this case (Exhibits 37(a)-(o)), with the exception of the height of the lights poles, which may be reduced to 15 feet if the Applicant files an amended plan showing the change and Technical Staff approves it. All lighting fixtures on the site must be designed to avoid any light spillage or glare off of the site and must be turned off after hours, except for safety lights activated by motion sensors.

9. The Applicant must install and maintain stormwater controls sufficient to reduce the current levels of any stormwater runoff from the subject site and consistent with all state and County requirements for stormwater management.
11. The freestanding sign must not exceed 12 square feet (4 ft. by 3 ft.) in size. The Applicant must obtain a sign permit from MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
14. Prior to the construction of the storage building, labelled "Building 2" on the Applicant's Conditional Use Site Plan (Exhibit 37(d)), the Applicant must obtain additional approval for that building from the Hearing Examiner. To obtain such additional approval, the Applicant must file an additional plan showing the finally proposed design, dimensions, materials, use and date of planned construction of Building 2, which the Applicant has indicated is not contemplated for construction for 5 to 7 years and has not yet been fully planned (Applicant's Statement of Justification (Exhibit 2, pp. 6-7)). Copies of the additional plan and details must also be sent, by certified mail and email, to the other parties of record, who may file a response with the Hearing Examiner within 15 days of the Applicant's mailing. If the Applicant files such an additional plan, it will be treated as a minor amendment application, unless the Hearing Examiner determines that the proposed amendment would substantially change the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood.
15. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

These additional and modified conditions address the concerns raised by the neighbors and will effectively reduce potentially adverse effects on their properties.

The additional language in Condition 5 assures that even if snow removal and emergency tree services are needed to address a road blockage or hazardous conditions, heavy snow removal equipment will not be stored on the site.

The additional language in Condition 6 specifies the trucks, trailers and equipment allowed on the site, and responds to the neighbors' concern that some decaying equipment from the tree

nursery is currently on the subject site, by specifying that additional trucks, loaders, tractors and/or trailers on the site must be removed from the site before the issuance of use and occupancy permits, whether or not they are in operational condition.

The additional language in Condition 8 ensures that the Applicant will comply with its approved plans, with the exception of the height of the lights poles, which may be reduced to 15 feet if the Applicant files an amended plan showing the change and Technical Staff approves it. It further addresses the neighbors' concerns about possible light spillage by specifying that all lighting fixtures on the site must be designed to avoid any light spillage or glare off of the site and must be turned off after hours, except for safety lights activated by motion sensors.

The addition of Condition 9 ensures that any stormwater runoff from the site will actually be reduced by the Applicant's additional controls and that their stormwater management will be consistent with all state and County requirements for stormwater management.

The changes in Condition 11 will reduce the Applicant's sign to an even smaller size (12 square feet) than the reduction to 20 square feet recommended by the Technical Staff. It will be a great deal less intrusive than the 40-square-foot sign proposed originally by the Applicant.

The new Condition 14 responds to the concern of the neighbors about the proposed size of the additional buildings planned for the site. Building 2 is by far the largest of the planned buildings, and given the tentative nature of the Applicant's description (*i.e.*, that its construction is not contemplated for 5 to 7 years and its design and materials have not yet been determined),² the Hearing Examiner decided that it should not be finally approved as part of the current application, but rather should be considered as a possible amendment to the conditional use, with an opportunity for input by the neighbors, if and when the Applicant decides it wishes to move ahead with its construction.

² Applicant's Statement of Justification (Exhibit 2, pp. 6-7).

Finally, Condition 15 is similar to the final condition the OZAH Hearing Examiners add to all their conditional use grants to ensure compliance with all applicable licenses, permits, codes and regulations.

Mr. Romans' issue regarding notice was addressed by the Hearing Examiner holding an additional hearing date; making the hearing transcript from the August 3, 2018 hearing available for review by the neighbors three weeks before the second hearing date; and allowing the neighbors to testify on direct and to cross-examine the Applicant's witness. The Hearing Examiner took these steps even though the evidence adduced at the August 3 hearing and OZAH's records establish that all the notice requirements contained in Zoning Ordinance §59.7.5.2.E. were complied with prior to the August 3 hearing. Thus, the Hearing Examiner finds that even if he had not held a second hearing date, the statutorily required hearing notice was provided in the form of OZAH's written notices (Exhibit 31 and 36)³ and four signs posted on the property (Exhibits 41, 47-49). The second hearing date of September 7, 2018, assured that the neighbors suffered no deprivation for having been unable to attend the August 3 hearing. There just is no cognizable notice issue.

The stated concerns about stormwater runoff and the potential for light pollution have been amply addressed in this record. The proposed light fixtures and the extensive screening will eliminate any light spillage. Tr. 8/3/18, 86-89 and Tr. 9/7/18, 114-116 ; Staff report (Exhibit 32, p. 20). Mr. Norton also testified that the Applicant's stormwater management concept plan for

³ The Surrounding Area Map reproduced on page 6 of this Report and Decision demonstrates that Mr. Tydings property is neither abutting nor confronting the Applicant's property, and so he was not sent individual written notice. Mr. Romans was sent individual written notice even though his property does not precisely meet the definition of "confronting" in Zoning Ordinance §59.1.4.2. Confronting is defined as "Properties that are directly across a right-of-way with a master plan width of less than 80 feet from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45 degree diagonal across an intersection are also confronting." His property is not directly across the right-of-way, nor across an intersection. Mr. Romans testified that the notice letters never reached him (Tr. 9/7/18, 65-69), and apparently there is some kind of a glitch in his mail delivery because the Applicant produced evidence that even certified mail letters sent to his address the year before were returned to sender as unclaimed. Exhibit 43(a) and (b).

three micro-bioretenention facilities on site (Exhibits 37(m), (n) and (o)) was approved by the Department of Permitting Services (Exhibit 50), subject to final evaluation at Preliminary Plan review, when the adequacy of public facilities is determined.

Three additional concerns were raised by the neighbors – speeding cars on Zion Road, effects on property values and lack of employee background checks.

The fact that some individuals, unconnected with the Applicant, may speed illegally on Zion Road is not a basis for denying an otherwise compliant conditional use application, especially when the expert evidence is that the access will be safe and adequate.

Staff concluded that the driveway access proposed (with a width of 20 feet) and the internal circulation to be provided would be adequate to serve the site, provided the Applicant complies with its recommended conditions. Exhibit 32, p. 14. The Applicant's transportation planner, Michael Lenhart, testified that access and circulation on the site was safe and adequate. Tr. 8/3/18, 57-58. The Applicant's site planner, Michael Norton, also testified that sight distances from the access points are safe and adequate. Tr. 8/3/18, 80. Based on this record, the Hearing Examiner cannot find that speeding cars on Zion Road would constitute such a danger to trucks entering the road that the conditional use should be denied or that the location of the driveway should be moved south. It should be noted that the adequacy of Zion Road (a public facility) and the safe access thereto from the conditional use site are issues that will be further addressed by the Planning Board at Subdivision.

The neighbors also fear adverse impacts on their property values in the conditional use is granted, but they provided no expert evidence that such an effect would occur, especially given that the operational portion of the use will be set back from the road about 600 feet, will be heavily screened and will be practically invisible from the road. Tr. 9/7/18, 54-55.

The expressed feelings of some neighbors do not constitute a scientific analysis of likely impacts on property values. Generalized fear in the community is not evidence. *Rockville Fuel v. Board of Appeals*, 257 Md. 183, 192, 262 A.2d 499, 504 (1970). The Applicant's site planner, Michael Norton, testified that although he is not a property assessor, in his opinion surrounding properties would not be affected because the proposed conditional use would be practically invisible from the road due to the extensive screening. Tr. 9/7/18, 54-55. The expert opinion of the Planning Department's Technical Staff is that "It is not likely that the approval of the subject Conditional Use would adversely affect the predominantly rural/agricultural nature of the area. In fact, it is likely that the operation will not be visible from any adjacent property or road." Exhibit 32, p. 26. Staff also found that "...the proposed use will not cause undue harm to the neighborhood because of a non-inherent adverse effect alone or the combination of the inherent and non-inherent adverse effects..." Exhibit 32, p. 30. In recommending approval of the application, the Planning Board found that "The Applicant has also met the burden of proof by showing that operating the use at this location will not be a detriment to the neighborhood and will not adversely affect the public interest." Exhibit 34, p. 2

Thus, there is no evidence upon which the Hearing Examiner can conclude that the proposal to add the proposed conditional use in the middle of an existing tree farm will reduce property values in the defined neighborhood. It must also be remembered that the proposed conditional use and the properties of both of the protesting neighbors are sited in an agricultural zone, not a residential zone, and the Council has elected to permit landscape contractors in the AR Zone if they fulfill the requirements for a conditional use.

In response to the neighbors' concern about the water table, the evidence in this case indicates that the proposed conditional use will not use any well water. It is served by public water service according to the site designer, Michael Norton. The well on the larger property serves the

existing tree farm. The adequacy of all public services will be addressed by the Planning Board at subdivision. Tr. 8/3/18, 71-72.

Finally, Mr. Romans raised the question about whether the Applicant planned to do background checks of the employees at the site. Tr. 9/7/18, 107. There is no requirement in the Zoning Ordinance that a landscape contractor do such background checks of employees. It may be a licensing requirement for some occupations, but it is just not a land use issue. Moreover, Mr. Romans has not provided evidence that having employees across a rural road working for a landscape contractor increases the risk to anyone's personal safety or property security in the neighborhood. Thus, there is no basis for the Hearing Examiner to impose requirements on this conditional use for employee background checks.

The Hearing Examiner concludes that with the addition of the conditions discussed above to the ones proposed by the Technical Staff, the neighbors' concerns are appropriately addressed, and any adverse effects on the neighbors' properties will be minimized.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a landscape contractor business. *Zoning Ordinance* §59.3.5.5.

Weighing all the testimony and evidence of record under the "preponderance of the evidence" standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:⁴

E. Necessary Findings***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: Staff advises that there are no previous conditional use approvals for the property (Exhibit 32, p. 22), and therefore this standard is inapplicable.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

Conclusion: This subsection requires an analysis of the standards of the AR Zone contained in Article 59-4; the use standards for a Landscape Contractor in Article 59-3; and the applicable development standards in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6, with the conditions of approval set forth in Part IV of this Report and Decision.

c. substantially conforms with the recommendations of the applicable master plan;

Conclusion: The property lies within the geographic area covered by the 2005 Olney Master Plan (Master Plan or Plan). It is within an area designated as "Rural Communities," in "Northern

⁴ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Olney.” Technical Staff provided the following discussion of the Master Plan (Exhibit 32, p. 10-11):

The subject site is located north of Mount Zion, one of the rural communities in the area. The Master Plan identifies the Mount Zion Community along with the Town of Brookeville and Villages of Sunshine and Unity as integral part of the Rural Heritage of Northern Olney. On pages 18-19 of the Master Plan, the Land Use Recommendation calls for discouraging residential development by maintaining rural zoning designations and protection of forested areas and wetlands. The land use recommendation for rural communities (p 20) is to: “Maintain the character and existing scale of development in the rural communities in Northern Olney. Prohibit additional zoning for commercial uses or expansion of commercially zoned areas in these communities.”

The Applicant will maintain and renovate the existing 6,100 building and construct two equipment maintenance and storage buildings, 2,500 Square feet and 8,800 Square feet respectively. The existing building will be renovated to serve as an office and will also be fitted with employees’ showers and lockers. The proposal calls for removal of currently graveled patches and convert them to lawn islands, reducing the size of impervious areas. Due to the size of the overall property, the existing tree farm use, vegetation and proposed landscaping, the establishment of the subject Conditional Use would not affect the character of development in the rural communities. The Property that is currently being used as a tree farm is in an outlying area away from the centers of the nearby rural communities of Mount Zion, Villages of Sunshine and Unity, and the Town of Brookeville. A portion of the property is proposed for a landscape contractor use that is rural in nature and characteristics. The existing character and scale of development in the rural communities of Mount Zion, Villages of Sunshine and Unity, and town of Brookville would not be negatively impacted by the proposed use. The subject Conditional Use is compatible with the existing rural/agricultural character of the surrounding area.

Staff also noted that the Applicant had revised plans to address concerns raised by the Rustic Road Advisory Committee (RRAC) in order to meet recommendations of the 1996 Rustic Road Functional Master Plan, as discussed in the environmental section (Part II. D.) of this Report and Decision.

Conclusion: The *2005 Olney Master Plan* reconfirmed the existing rural zoning in the area west of Georgia Avenue, including the subject property. It also focused on protecting forested areas, wetlands and other sensitive environmental features. *Plan*, pp. 18-19.

In addition, the Master Plan contains specific guidelines for special exception uses (*Plan*, p. 42):

1. Discourage special exception uses along Georgia Avenue between Norbeck Road and Town Center to preserve its low-density residential character.
2. Minimize negative impacts of special exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting.
3. Discourage special exception uses with excessive imperviousness levels.

The Hearing Examiner agrees that the use complies with the Master Plan for the reasons given by Staff. The Hearing Examiner also finds that the combination of existing screening and new landscaping significantly minimizes the commercial aspects of the use, in accordance with the Plan's recommendations for special exceptions.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: Technical Staff noted that the Conditional Use Site, Landscape and Lighting Plans provide for extensive landscaping and, adequate setbacks, meeting code requirements. Staff concluded (Exhibit 32, p. 25):

With the recommended conditions, the proposed use will be in harmony with the general character of the neighborhood. . . . Given the location of the conditional use site within a 30.49-acre tree farm that is greatly removed from residential properties, it is unlikely that the proposed use will generate a level of traffic or noise that will adversely affect the residential neighborhood.

The Hearing Examiner agrees with Staff that, given the extensive screening around the site, the use will not alter the character of the surrounding neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff advises that there are three previously approved Conditional Uses/Special Exceptions within the defined neighborhood (Exhibit 32, pp. 25-26):

- S-2626 A private educational institution at 21515 Zion Road, approved in 2005
- S-1368 Four Accessory Apartments at 4300 Greg Road, approved in 1987
- S-1369 Two Accessory Apartments at 4901 Brookville Road approved in 1987

Staff found (Exhibit 32, p. 26):

Although there are very low density residential uses within the neighborhood boundaries, the property is located within an agricultural zone, not a residential zone, with a notable presence of agricultural uses in the area. The subject Conditional Use proposes to construct two agricultural buildings (maintenance, and storage), typically seen on farms and other agricultural and rural commercial type uses including Landscape Contractor businesses. The proposed buildings will blend well with the surrounding neighborhood and will have no visual impact on it. The subject Conditional Use is consistent with the recommendation of the Master Plan and does not alter the nature of the area.

Staff therefore concluded, “It is not likely that the approval of the subject Conditional Use would adversely affect the predominantly rural/agricultural nature of the area. In fact, it is likely that the operation will not be visible from any adjacent property or road.” Exhibit 32, p. 26.

Conclusion: The Hearing Examiner agrees with Staff. The proposed conditional use substantially conforms with the recommendations of the Olney Master Plan and will not affect the area adversely nor alter the nature of the area.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required; and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Technical Staff indicates that the application would require approval of a new preliminary plan of subdivision “because the existing building that is being renovated requires a building permit and the subject property is not a recorded lot.” Exhibit 32, p. 26. Therefore, the Planning Board, and not the Hearing Examiner, must determine whether the proposed development will be served by adequate public services and facilities.

Nevertheless, the Hearing Examiner observes that the Applicant’s traffic statement (Exhibit 11), prepared by Applicant’s Transportation Planner, Michael Lenhart, found that, by having workers arrive in two morning shifts, the proposed use will generate fewer than 50 peak-hour person trips and will not have an adverse impact on neighboring roads. As stated by Mr. Lenhart (Tr. 8/3/18, 57-58),

. . . I do not believe it would have any adverse impact. Even if you would have not implemented shifts because of the high carpool factor here I don't believe it would have had any sort of negative impact. . . .

. . . I believe it's safe and adequate.

Based on this plan and on the use of carpooling, Technical Staff concluded (Exhibit 32, pp. 28-29):

Since both the morning and evening peak hour person trips are reduced below 50, this project complies with the LATR Guidelines and further traffic analysis is not necessary. . . . Staff supports the transportation elements of the Application and finds the proposed access to the property to be adequate to serve the traffic generated by the development.

Staff also notes that the Applicant must provide written confirmation from MCDPS indicating approval of a Fire Protection and Fire Access Plan at the time of Preliminary Plan review.

In addition, Technical Staff reports that the Applicant's stormwater management concept plan proposes to meet required stormwater management goals using micro-bioretenment and an alternative surface. By a letter dated June 21, 2018, the Water Resource Section of the Department of Permitting Services (DPS) indicated that the Applicant's storm management concept is acceptable, provided certain conditions are addressed during subdivision. Exhibit 32, p. 27.

Finally, the Well & Septic Section of DPS determined that the proposed septic system cannot accommodate the proposed 50 employees, and, that as currently proposed, it can only accommodate 38 employees. Exhibit 32, p. 27. Technical Staff therefore recommended a condition limiting the on-site staff to 38 unless further approval is forthcoming from DPS. Exhibit 32, p. 27.

Based on this evidence, the Hearing Examiner finds no evidence at this stage that any lack of public facilities to serve the proposed use will adversely affect the neighborhood. Ultimately, it will be up to the Planning Board to determine the adequacy of public facilities.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. *Inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse

effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Id. As specified in §59.7.3.1.E.1.g, quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a landscape contractor business. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the those identified *or* adverse effects created by unusual site conditions will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a landscape contractor business (Ex. 32, p. 29):

- (1) buildings, structures, outdoor areas for the storage of plants and gardening-related equipment;
- (2) outdoor storage of plant stock, mulch, soil and landscaping materials in bulk and in containers;
- (3) on-site storage of business vehicles and equipment including small trucks and landscaping trailers;
- (4) traffic associated with the trips to the site by employees and suppliers; trips to and from the site by employees engaged in off-site landscaping activities;
- (5) adequate parking areas to accommodate employees;
- (6) dust and noise associated with the movement of landscaping products and the loading and unloading of equipment associated with landscaping businesses; and
- (7) hours of operation.

Staff found that the scale of the proposed two buildings, the proposed access points, the internal vehicular circulation system, onsite parking areas, storage buildings, material storage areas, loading and unloading of supplies and equipment for off-site operations are operational characteristics typically associated with a landscape contractor operation. Staff, however, considered the fact that the property fronts on and is accessed from a road that is classified as a Rustic Road in the 1996 Rustic Road Functional Master Plan, to be a non-inherent characteristic. Exhibit 32, pp. 29-30. The Hearing Examiner adds that Staff's conclusion that the rustic road environmental issues are non-inherent characteristics is further supported by the fact that the site is located in the Patuxent Primary Management Area.

Nevertheless, the Hearing Examiner agrees with Technical Staff's conclusion that, "With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed uses do not rise to a level sufficient to warrant a denial of the Application." Exhibit 32, p. 30. As stated by Staff:

Based on the traffic statements and staff's analysis, the vehicular movements on the road will not cause undue harm to the neighborhood. The property is surrounded by active agricultural uses. The closest residential homes southwest of the property are sufficiently buffered from the activities by the existing tree farm on the property, substantial setback from the property line, and ample landscaping, including perimeter landscaping around the conditional use area. The existing structure that will be renovated and the two proposed, one-story structures have been designed to be compatible with the surrounding area's rural and agricultural nature.

Staff finds that the proposed use will not cause undue harm to the neighborhood because of a non-inherent adverse effect alone or the combination of the inherent and non-inherent adverse effects listed above. Moreover, to ensure compatibility with the rural-residential nature of the neighborhood and the character of the adjoining Rustic Roads, Staff has recommended conditions:

- Before the Hearing Examiner's hearing in this matter, the Applicant must propose a sign-design that is no more than 20 square feet (5 ft. by 4 ft.). If the sign and the Conditional Use are approved, the Applicant must obtain a sign permit for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.

- To maintain the integrity of the adjoining Rustic Road, all vehicles with more than four wheels that are associated with the Applicant's business, including those belonging to employees, must not travel north on Zion Road.
- The total number of employees must not exceed the maximum number of 38 until the applicant provides the Hearing Examiner with sufficient evidence and a letter of approval from the DPS Well and Septic Section allowing an increased number that does not exceed a total of 50 employees.

Based on the entire record, the Hearing Examiner finds that, with the conditions imposed in Part IV of this Report and Decision, the proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone, or in combination with inherent adverse effects, in any of the categories listed in §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: The property is in an agricultural zone, and therefore this standard does not apply.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood under the conditions imposed by the Hearing Examiner.

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the AR Zone. Staff compared the minimum development standards of the AR Zone to those provided by the application in a table included in the Staff Report (Exhibit 32, p. 13). It is reproduced on the next page, with a correction noting that the actual minimum number of vehicle parking spaces is 62, not 80, as incorrectly indicated in Technical Staff's chart.

Development Standards AR Zone			
AR-Zone	Required		Proposed
	59-4.2.F	59-3.5.5 Landscape contractor	Within CU boundaries
Minimum Site Area	25 ac		
Minimum Lot Area	40,000 SF	2 ac	5.74 ac (250,065 SF)
Minimum Lot width:			
▪ at street line	25 ft		153.3 ft (CU site)
▪ at building line	125 ft.		±510 ft (CU site)
Maximum Building Coverage	10 percent		7± percent total
Minimum Building Setback			
Principal Building:			
• front	50 ft.	50 ft.	63.9 ft
• side	20 ft.	50	51.0 ft
• rear yard	35 ft.	50	186.6
Maximum Building Height	50 ft.		≤ 50 ft
Minimum Building Setback			
Accessory structure:			
• front	50 ft.	50 ft.	86.19 ft
• side	15ft	50 ft.	129.5 ft
• rear yard	15 ft.	50 ft.	50.4 ft
Minimum Setback for parking and loading		50 ft.	50.9 ft
Maximum Building Height	50 ft.		< 50 ft.
Parking			
Min Vehicle Parking spaces	62*		71
59-6.2.4	*[This is a corrected figure]		

Conclusion: Based upon the above table, the Hearing Examiner concludes that the application meets all of the development standards of the AR Zone.

C. Use Standards for a Landscape Contractor Business (59.3.5.5)

The specific use standards for approval of a Landscape Contractor business are set out in Section 59.3.5.5 of the Zoning Ordinance. Standards applicable to this application are set forth below, along with the Hearing Examiner's findings of fact and conclusions of law on each standard.

A. Defined⁵

Landscape Contractor means the business of designing, installing, planting, or maintaining lawns, gardens, or other landscaping and providing snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. Landscape Contractor includes tree installation, maintenance, or removal. Landscape Contractor does not include Lawn Maintenance Service (see Section 3.5.14.G, Lawn Maintenance Service).

Conclusion: The Applicant's operations, as discussed in Part II.C.3. of this Report and Decision, meet the definition of Landscape Contractor set forth in this section.

B. Use Standard

Where a Landscape Contractor is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- 1. In the Agricultural, Rural Residential, and Residential Detached zones the minimum lot area is 2 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory or operation.***

Conclusion: The conditional use site is approximately 5.74 acres, situated within a 30.49 acre tree farm. It thus exceeds the minimum requirement, and this standard has been met.

⁵ ZTA 18-09, as introduced 7-17-18, proposes to change the definition of Landscape Contractor to read: "Landscape Contractor means the business of designing, installing, planting, or maintaining lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage features, or other [landscaping] activities intended to enhance the appearance or usefulness of outdoor areas [and]. Landscape Contractor also means providing snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. Landscape Contractor includes tree installation, maintenance, or removal. Landscape Contractor does not include Lawn Maintenance Service (see Section 3.5.14.G, Lawn Maintenance Service). The ZTA has not yet been acted on by the Council, but even if enacted, it would not change the results in this case.

2. Building and parking setbacks, including loading areas and other site operations, are a minimum of 50 feet from any lot line.

Conclusion: Staff found that areas for parking and loading of trucks and equipment, as well as other on-site operations, are located a minimum of 50 feet from any property line. Staff also noted that “Adequate buffering and screening are provided in the form of a landscape strip, and substantial distances from the neighboring residential dwellings and a site design that takes advantage of the property’s existing use as a tree nursery.” Exhibit 32, p. 23.

Staff’s description of the setbacks is confirmed by reference to the Dimensions Plan included in the Detailed Site Plan (Exhibit 37(d)). The Hearing Examiner therefore finds that the requirements of this provision have been satisfied.

3. The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on-site must be limited by the Hearing Examiner to avoid an adverse impact on abutting uses. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.

Conclusion: The Applicant’s equipment permitted on site is specifically listed as a condition of approval in this application, to avoid an adverse impact on abutting uses. The condition specifies that “the total number of trucks and trailers for the proposed use must not exceed 37. Equipment and machinery for the proposed use is limited to 20 trucks, 3 Skid steer stake-body trucks, 1 large loader, 12 trailers (non-dumping) and 1 tractor.”

Staff found that parking will be adequate to accommodate both the equipment and the number of employees proposed (Exhibit 32, p. 23):

Adequate parking is provided for the proposed landscape contractor business. The parking areas are located in the interior of the larger property, a substantial distance from the adjoining residential properties. The closest residential property is located about 1,000 feet from the closest parking area. The parking areas are situated at five locations . . . with a total of 71 spaces. The equipment/truck parking/overflow employee parking, with 40 spaces, is located on the northeast side of the site at the end of the approximately 600-foot-long driveway. Two employee parking lots are in

the front and at the rear of the existing building, each with 14 spaces. As noted, the existing building will be modified to serve as an office, meeting room, employee lounge and shower area. Three additional spaces are located near the proposed future building.

Staff also observed that many of the employees carpool or report directly to the work site without coming to the property. Exhibit 32, p. 23. This finding was supported by the testimony of the Applicant's transportation planner, Michael Lenhart. Tr. 8/3/18, 49-58.

In sum, the Hearing Examiner concludes that the standards for vehicles, equipment and parking embodied in this provision have been satisfied.

4. Sale of plant materials, garden supplies, or equipment is prohibited unless the contracting business is associated with a Nursery (Retail) or Nursery (Wholesale).

Conclusion: Technical Staff reports (Exhibit 32, p. 24):

There is no Nursery (Retail) or Nursery (Wholesale) business operating on the property and there will be no sale of plant materials or garden supplies on the property. The applicant's justification statement indicates that customers may visit the site for design consultation, or to select from landscaping material from stock grown on the adjacent tree farm but there will be no retail sales conducted on the subject site.

The Applicant does not propose to have retail sales to the public or operate a wholesale nursery on the premises, and a condition of approval for the conditional use so provides. The Hearing Examiner therefore finds that this standard has been met.

5. The Hearing Examiner may regulate hours of operation and other on-site operations to avoid adverse impact on abutting uses.

Conclusion: The permitted hours of operation are specified in a condition:

The hours of operation are limited to Monday through Saturday, and must not occur before 6:00 a.m. or after 6:30 p.m. Snow removal and emergency tree services to address a road blockage or hazardous conditions may be provided when needed; however, heavy snow removal equipment may not be stored on the site.⁶

⁶ Snow removal equipment will generally be stored off site, so snow removal will generally not impact the subject site. Tr. 9/7/18, 71-72; Exhibit 32, p. 24.

Other operational features are limited, as well, in order to protect the neighbors. These include limits on the number of employees permitted on site (38);⁷ a requirement for two employee shifts to reduce traffic; limits on the numbers and kinds of equipment and vehicles, as previously described; limits on the use of Riggs Road; a prohibition against vehicles with more than four wheels travelling north on Zion Road from the property or entering the property from the north; and a prohibition against mulch manufacturing or composting on site.

With these conditions, the Hearing Examiner finds that the hours of operation and other proposed operational features will not have an adverse impact on abutting uses.

Conclusion: For the reasons discussed above, the Hearing Examiner finds that the proposed conditional use meets all the use standards for approval of a Landscape Contractor business on the subject site, as set forth in Section 59.3.5.5 of the Zoning Ordinance.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access Standards:

Section 59.6.1.1 of the Zoning Ordinance provides that the intent of the site access requirements specified in Division 59.6.1 of the Zoning Ordinance is “*to ensure safe and convenient vehicular, bicycle, and pedestrian circulation within and between lots on the same block face and to reduce traffic congestion.*” However, Section 59.6.1.2 of the Zoning Ordinance provides that the Site Access Division (59.6.1) imposes site access standards on conditional uses only “*in Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones.*”

⁷ This maximum number may increase to 50 if DPS certifies that the septic system can handle it.

Because this property is within an agricultural zone (the AR Zone), and not in any of the zones listed in Section 59.6.1.2, the site access standards do not apply. Nevertheless, Staff concluded that the driveway access proposed (with a width of 20 feet) and the internal circulation to be provided would be adequate to serve the site, provided the Applicant complies with its recommended conditions. Exhibit 32, p. 14. The Applicant's transportation planner, Michael Lenhart, also testified that access and circulation on the site was safe and adequate. Tr. 8/3/18, 57-58. The Applicant's site planner, Michael Norton, also testified that sight distances from the access points are safe and adequate. Tr. 8/3/18, 80.

It should also be mentioned in this context that, for historic and environmental reasons, limits have been placed on the access points to satisfy the concerns expressed by the Rustic Roads Advisory Committee. As previously mentioned (Exhibit 32, p. 18),

The applicant had submitted the proposal to the Rustic Road Advisory Committee (RRAC) on February 27, 2018. The committee reviewed the application and recommended certain site design changes, specifically related to the design of the proposed new driveway apron and the long internal driveway for accessing the parking areas and proposed buildings. To address the RRAC's concerns, the applicant revised the plans to reduce the width of the driveway from 22 feet to 20 feet, redesign an internal driveway, and add additional landscaping. . . .

To further satisfy these concerns, conditions imposed in Part IV of this Report and Decision prohibit the Applicant's use of Riggs Road for access to the site except in emergencies and prohibit vehicles with more than four wheels travelling north on Zion Road from the property or entering the property from the north.

Conclusion: Based on this record, the Hearing Examiner concludes that access to the site and internal circulation will be safe and adequate.

2. Parking Spaces Required, Parking Setbacks and Parking Lot Screening

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance.

a. Number of Parking Spaces Required by Section 59.6.2.4

Conclusion: Zoning Ordinance §59.6.2.4 requires a base minimum of .5 spaces per employee plus 1 space per each vehicle operated in connection with a Landscape Contractor use located within the Agricultural Zone. Thus, with an eventual maximum of 50 employees and 37 vehicles, the use requires a minimum of 62 parking spaces ($37 + (50 \times .5) = 62$). The Applicant will be providing 71 vehicle parking spaces, plus 1 bicycle space with an inverted “U” bike rack. Technical Staff concluded, as does the Hearing Examiner, that the application provides adequate parking for the proposed use. Exhibit 32, p. 15.

b. Parking Lot Screening

Section 59.6.2.9.C sets out the screening and lighting requirements for conditional use parking lots having 10 or more spaces:

C. *Parking Lot Requirements for 10 or More Spaces***1. *Landscaped Area***

- a. *A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5% of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.***
- b. *A maximum of 20 parking spaces may be located between islands.***
- c. *A landscaped area may be used for a stormwater management ESD facility.***

2. *Tree Canopy*

Each parking lot must maintain a minimum tree canopy of 25% coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.

3. *Perimeter Planting*

- a. *The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:***
 - i. be a minimum of 10 feet wide;***
 - ii. contain a hedge, fence, or wall a minimum of 6 feet high;***
 - iii. have a canopy tree planted every 30 feet on center; and***

iv. have a minimum of 2 understory trees planted for every canopy tree.

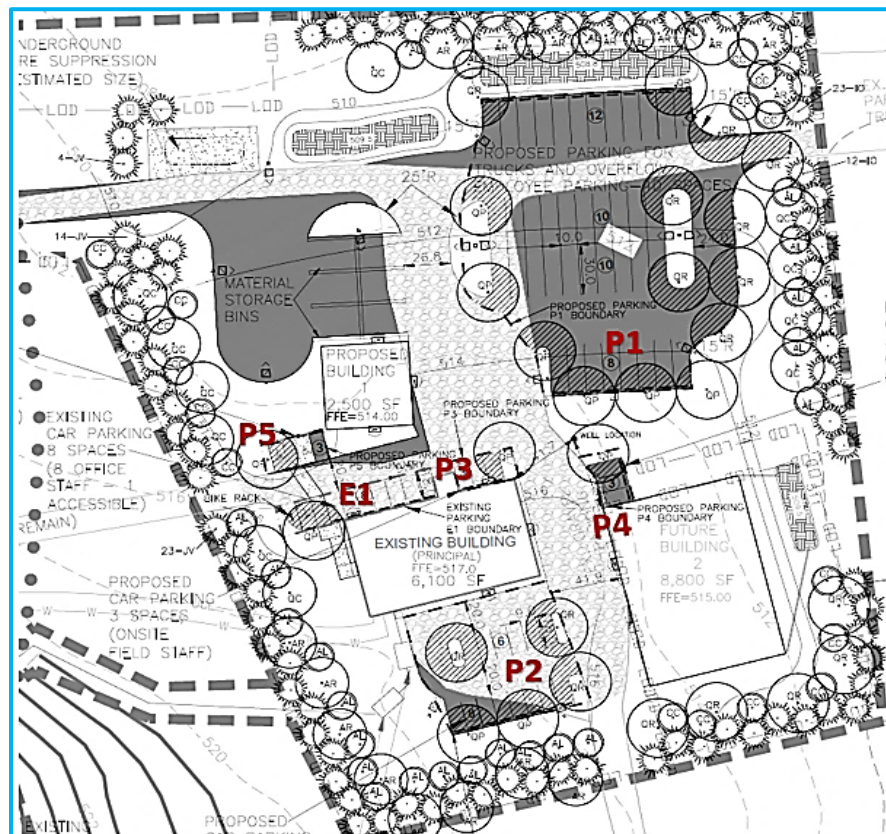
4. Lighting

Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements.

Conclusion: The Applicant set forth Tables on its Landscape Plan (Exhibit 37(g)) showing both Parking lot landscaping calculations and parking lot canopy coverage. These Tables are reproduced in Part II. C.2. of this Report and Decision and in the Staff Report (Exhibit 32, p. 16).

Staff found that the application complies with the 100-square-foot and five percent requirement for the size of landscaped islands. Also, “the tree canopy requirements under Section 59-6.2.9.C.2. have been met by the installation of 56 canopy trees, 39 medium shrubs and 88 evergreen trees. The canopy trees are projected to cover 29.8 percent of the parking area at the 20-year time frame.” Exhibit 32, p. 16.

Technical Staff also examined the five parking areas planned for the site, as shown in the following diagram (Exhibit 32, p. 17):



Staff noted that although the number of the understory trees does not meet the requirement of two understory trees for every canopy tree, the Applicant complied with the planting and screening recommended by the RRAC, and these recommended plantings adequately compensate for the shortage in the understory trees. Staff also found that the Applicant meets the perimeter planting requirements by providing at least a 10-foot wide planting area along the entire perimeter of the conditional use site. Exhibit 32, p. 17.

Subsection 59.6.2.9.C.4 provides only that “Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements.” We will therefore address that issue in the context of general site landscaping, screening and lighting, below.

Technical Staff concluded that “The revised Landscape Plan [Exhibit 37(g)] . . . satisfies the requirements of Section 6.2.9.C.1 through 3: Parking Lot Requirements for 10 or more Spaces.” The Hearing Examiner agrees, finding that the proposed landscaping is more than sufficient to screen the parking areas, especially since the conditional use site is surrounded by a tree farm and is distant from the nearest residential areas. As called for under §59.7.3.1.E.1.b, the Hearing Examiner finds that the screening proposed will be compatible with the surrounding area.

3. Site Landscaping, Screening and Lighting

Standards for perimeter site landscaping and site lighting are set forth in Divisions 6.4 and 6.5 of the Zoning Ordinance. The stated intent of Division 6.4 is “*to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.*” §59.6.4.1. The stated intent of Division 6.5 is “*to ensure appropriate screening between different building types and uses.*” Zoning Ordinance §59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

a. Site Screening and Landscaping

Zoning Ordinance §59.6.5.2.B contains the standards for perimeter site screening of a conditional use in the AR Zone:

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Section 6.5.3., referenced in the above-quoted section, provides details for screening that would generally apply to a conditional use in the AR Zone; however, Technical Staff opined that that this provision does not apply to this case (Exhibit 32, p. 18):

Because the subject conditional use site is on agricultural property and is surrounded by properties that are also within the Agricultural Reserve zone, the requirements of Section 6.5.3 Screening Requirements do not apply; specifically, Section 6.5.3.A: Location and 6.5.3.C.7 Screening Requirements by Building Types do not apply to the subject Application.

Conclusion: The Hearing Examiner does not agree with Staff's legal conclusion because the language of the section, by its terms, does apply to a conditional use in the AR zone abutting property in the AR zone. That is the case here.

On the other hand, Section 59.7.3.1.E.1.b. provides that the applicable general requirements under Article 59-6 need be satisfied only "to the extent the Hearing Examiner finds necessary to ensure compatibility." In this case, the Hearing Examiner agrees with Technical Staff that compatibility will be achieved by the landscaping and screening to be provided in accordance with the Applicant's revised landscape plan (Exhibit 37(g)). As stated by Staff (Exhibit 32, pp. 17-18):

The revised landscaping meets the General Landscape Requirements as defined and specified under Section 59-6.4.3. . . . [G]iven the location of the driveway access on a rustic road, the RRAC has recommended that a mix of evergreen shrubs and deciduous trees be added along the driveway for screening in the area from about

halfway down the driveway to the cistern—on both sides of the driveway. The above-ground fixtures associated with the cistern must also be screened. Staff supports the RRAC's recommendation for screening. The Applicant's revised landscape plan reflects the recommended plantings.

Michael Norton, the Applicant's expert in landscape architecture and site design, also testified that the extensive existing screening and proposed plantings would meet the requirements of the Zoning Ordinance. As stated by Mr. Norton (Tr. 8/3/18, 73 and 84):

I believe in my professional opinion the way that the property is set -- the way that the conditional use is set back within the 30-and-a-half acres . . . we went above and beyond that required necessarily from . . . the zoning code from landscape when you look at the screening requirements. I do not believe it's going to have a negative impact based on that visual from the surrounding properties.

* * *

Really robust landscape screening for this property recognizing the rustic roads around on primarily on three sides.

Also, the canopy trees to keep the idea that this is really tucked back in with the nursery that you should really not see this facility operating back there.

The Hearing Examiner finds that the operational portion of this conditional use is set back far from the road, is well screened on the perimeter and is surrounded by a tree farm which provides additional screening. In sum, the application fulfills the screening requirements of the Zoning Ordinance.

b. Lighting

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

The Applicant's owner, Kevin Bohrer, testified that lights on the site would be turned on only when operations were occurring, except for a couple of motion lights for security. Tr. 8/3/18, 46-47. Michael Norton, the Applicant's expert in landscape architecture and site design, also

testified that there would be no light spillage or glare into adjoining properties from the operations of the conditional use. As stated by Mr. Norton (Tr. 8/3/18, 87-89):

MR. NORTON: Like I said, it's all full shield that are being installed. The dark sky technology is, I believe, what everyone is trying to use in the county. I do not believe there's no spill over from this, again, from the conditional use area itself and really none from the larger property overall. The landscape -- also what's unique about this is the canopy and the Evergreen screening that we're installing will actually be taller than what these pole fixtures will be. The nursery itself -- a lot of the nursery stock actually is at 20 feet or higher right now, so you would not see those poles.

The screening trees that we are proposing is one of the other reasons why we did this even before we had the letter -- letters is that we looked at these Evergreen trees that would be year round, green, screening, that would go up to -- like I say holly is -- the cedars that we're proposing, I think are 30 feet to even taller around these areas. So a little bit background as to why we did not use smaller Evergreen.

* * *

MR. GROSSMAN: So in your opinion would there be any glare or light spilled over into the surrounding neighborhood?

MR. NORTON: There would not be any spillover or glare.

Technical Staff found the proposed lighting to be sufficient, non-intrusive and compliant with the Zoning Ordinance (Exhibit 32, p. 20):

Pursuant to Division 6.4.4.E, outdoor lighting for Conditional Uses must be directed, shielded or screened to ensure that the illumination is 0.1 foot-candles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or employment zone.

The Lighting Plan is adequate and safe for vehicular and employee movement. The proposed lighting serves multiple purposes, including illumination of the site entrance, visibility lighting in the employee parking areas and area lighting near the structures. A photometric study submitted with the Application [Exhibit 37(j)] shows measured lighting intensity across the entire property in foot-candles, the locations of lighting fixtures and the manufacturer's specifications on the proposed lighting fixtures. The Photometric Plan shows that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. Moreover, the existing tree nursery and perimeter landscaping of the CU site will help eliminate the impact of glare. The lighting, with no direct light or light glare, will not have a negative impact on neighboring properties.

As indicated in the photometric Plan (Exhibit 37(j)) and in Mr. Norton's testimony, the Applicant had planned for its parking lot lights to be mounted on 20-foot poles. However, after meeting with the neighbors, Messrs. Tydings and Romans, following the September 7, 2018 hearing, the Applicant agreed to amend its plans, if the conditional use is approved, to provide 15-foot light poles. Exhibits 61, 62, 63 and 64. The Hearing Examiner has accounted for that change in the conditions listed in Part IV of this Report and Decision.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed lighting will be safe and sufficient and that it will be compliant with the standards of §69.6.4.4.E, requiring that illumination from the proposed use not exceed 0.1 foot-candles at the property lines. Not only will the use be well screened on the conditional use site itself, but it will also be surrounded by the tree farm on the larger property, which will provide additional screening for the neighbors.

4. Signage

Signage for the use is governed by Division 6.7. Zoning Ordinance §59.6.7.7 sets the standards for signs in Agricultural Zones:

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in the Agricultural Reserve and Rural Residential zones is 200 square feet, excluding the additional area allowed by other provisions of Division 6.7.

1. Freestanding Sign

- a. One freestanding sign may be erected at each building or driveway entrance.***
- b. The maximum sign area is 40 square feet.***
- c. The minimum setback for a sign is 10 feet from the property line.***
- d. The maximum height of a sign is 10 feet.***
- e. Illumination is prohibited.***

2. Wall Sign

- a. One wall sign is allowed.***
- b. The maximum sign area is 40 square feet.***
- c. The sign may be placed up to 26 feet above the ground.***
- d. Illumination is prohibited.***

B. Additional Sign Area

In addition to the 200 square feet of total sign area, an additional location sign is allowed for a lot or parcel larger than 5 acres, if it meets the following requirements:

- 1. One entrance sign is allowed at each entrance to the lot or parcel.***
- 2. The maximum sign area is 40 square feet.***
- 3. The minimum setback for a sign is 10 feet from the property line***
- 4. The maximum height of a sign is 26 feet.***
- 5. The sign may be illuminated (see Section 6.7.6.E)***

The sign initially proposed by the Applicant is depicted in Part II.C.2.c. of this Report and Decision. Technical Staff recommended that the proposed sign size be cut in half to a less intrusive 20-square foot sign, for the following reasons (Exhibit 32, pp. 20-21):

. . . to maintain consistency with the rural and agricultural nature of the property and the neighborhood as well as the unique characteristics of the adjoining Zion Road and Riggs Road as designated Rustic Road, staff recommends that the size of the proposed 40-square-foot freestanding sign to be reduced to 20 square-foot of area. . . . Staff believes that since very few customers will be visiting the subject property and that the sign is needed merely to guide delivery trucks to the property, the reduced sign area would not create additional burden on the Applicant.

Conclusion: The Hearing Examiner agrees with Technical Staff that the sign size should be reduced from the 40 square feet suggested by the Applicant, but concludes that it should be reduced even further in size to reduce the appearance of a commercial enterprise. Nearby neighbors, Messrs. Tydings and Mr. Romans, testified at the hearing that they were concerned about the effect of a commercial enterprise on their property values, and Mr. Tydings asked that the sign be eliminated or the sign size be reduced. Tr. 9/3/18, 88.

The Hearing Examiner finds that reducing the size of the sign to 12 square feet would help to avoid a commercial appearance, while leaving it large enough to be seen from the road. Therefore, to improve compatibility, the Hearing Examiner will limit the sign size to 12 square feet. A condition limiting the size of the sign and requiring a permit is included in Part IV of this Report and Decision. The Hearing Examiner finds that the proposed sign, in its reduced size, will be compliant with Section 59.6.7 and compatible with the surrounding area.

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Goshen Enterprises, Inc., for a conditional use under Section 59.3.5.5 of the Zoning Ordinance, to operate a landscape contractor business at 21201 Zion Road, Brookeville, Maryland, is hereby **GRANTED**, subject to the following conditions:

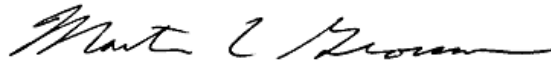
1. The total number of employees on site must not exceed a maximum of 38; however, that maximum will increase to 50 if and when the Applicant provides the Hearing Examiner a letter from the Montgomery County Department of Permitting Services (DPS) Well and Septic Section certifying that the septic system can lawfully accommodate up to that number of employees on site.
2. Applicant must implement two shifts for field crews, such that the two shifts of field crew staff arrive to the site and depart for fieldwork during separate hours.
3. The conditional use must not use Riggs Road for access except in emergencies.
4. All vehicles with more than four wheels that are associated with the Applicant's business, including those belonging to employees, must not travel north on Zion Road from the property. All trucks must enter the property from the south.
5. The hours of operation are limited to Monday through Saturday, and must not occur before 6:00 a.m. or after 6:30 p.m. Snow removal and emergency tree services to address a road blockage or hazardous conditions may be provided when needed; however, heavy snow removal equipment may not be stored on the site.
6. The total number of trucks and trailers for the proposed use must not exceed 37. Equipment and machinery for the proposed use is limited to 20 trucks, 3 Skid steer stake-body trucks, 1 large loader, 12 trailers (non-dumping) and 1 tractor. Any additional trucks, loaders, tractors and/or trailers on the site must be removed from the site before the issuance of use and occupancy permits, whether or not they are in operational condition.
7. No mulch manufacturing, composting or retail sales of plant materials, garden supplies, or equipment may be conducted on the conditional use site.
8. All improvements, landscaping and lighting on the property must comply with the Applicant's Conditional Use Site Plan (Exhibit (37(d))), and other approved plans in this case (Exhibits 37(a)-(o)), with the exception of the height of the lights poles,

which may be reduced to 15 feet if the Applicant files an amended plan showing the change and Technical Staff approves it. All lighting fixtures on the site must be designed to avoid any light spillage or glare off of the site and must be turned off after hours, except for safety lights activated by motion sensors.

9. The Applicant must install and maintain stormwater controls sufficient to reduce the current levels of any stormwater runoff from the subject site and consistent with all state and County requirements for stormwater management.
10. The conditional use must comply with the conditions approved by the Planning Board in the Preliminary and Final Forest Conservation Plan.
11. The freestanding sign must not exceed 12 square feet (*e.g.*, 4 feet by 3 feet) in size. The Applicant must obtain a sign permit from MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
12. The Applicant must provide written confirmation from MCDPS indicating approval of a fire protection system and Fire Access Plan at the time of Preliminary Plan review.
13. Prior to issuance of any building permit, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat per Chapter 50 of the Montgomery County Code. Any resulting changes in the Conditional Use or other approved Plans must be filed with the Hearing Examiner with a request for modification of the Approved Conditional Use.
14. Prior to the construction of the storage building, labelled “Building 2” on the Applicant’s Conditional Use Site Plan (Exhibit 37(d)), the Applicant must obtain additional approval for that building from the Hearing Examiner. To obtain such additional approval, the Applicant must file an additional plan showing the finally proposed design, dimensions, materials, use and date of planned construction of Building 2, which the Applicant has indicated is not contemplated for construction for 5 to 7 years and has not yet been fully planned (Applicant’s Statement of Justification (Exhibit 2, pp. 6-7)). Copies of the additional plan and details must also be sent, by certified mail and email, to the other parties of record, who may file a response with the Hearing Examiner within 15 days of the Applicant’s mailing. If the Applicant files such an additional plan, it will be treated as a minor amendment application, unless the Hearing Examiner determines that the proposed amendment would substantially change the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood.
15. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 20th day of September, 2018.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any

questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

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Barbara Jay, Executive Director
Montgomery County Board of Appeals
Elasabett Tesfaye, Planning Department
Mr. and Mrs. Emmet Tydings
Mr. Walter Romans
All parties of record
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Charles Frederick, Esquire, Associate County Attorney
Gwen Wright, Director, Planning Department