

Variance Application

José and Nelsy Polanco

2230 Spencerville Road, Spencerville, Maryland

Petitioners' Statement of Justification

September 8, 2023

**Introduction**

Jose Manual “Manny” Polanco and Nelsy Polanco (the “Petitioners”) submit the present variance application as a companion to a contemporaneously filed Conditional Use application for a landscape contractor use on a two-acre property at 2230 Spencerville Road, Spencerville, Maryland, on the north side of Spencerville Road between Good Hope Road and Peach Tree Road (the “Subject Property”). Due to the long, thin rectangular shape of the Subject Property and environmental constraints that effectively prohibit commercial use on the front third of the property, the proposed site layout cannot fully satisfy the standard 50-foot building, parking and commercial operations setback for a landscape contractor use. Accordingly, the Petitioners request three variances from the 50-foot setback, all along property boundaries that abut an existing, much larger landscape contractor business: 40-foot variances from the parking setback along the western and northern property lines and a 45.8-foot variance from the western property line setback for a preexisting storage shed. The Petitioners respectfully request that the Board of Appeals refer the present variance application to the Office of Zoning and Administrative Hearings for a consolidated hearing with the Conditional Use application.

The Subject Property is known as Parcel P319 in the New Birmingham Manor subdivision and is classified in the RE-1 zone. The front portion of the site, developed with a house dating from 1916, a driveway and extensive landscaping, is in the Upper Paint Branch Special Protection Area (the “SPA”) and the Upper

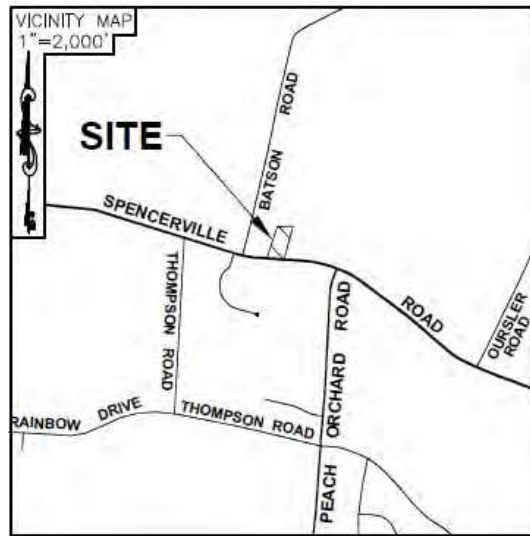
**Exhibit 2**  
**BOA Case No: A-6834**

Paint Branch Overlay Zone (the "Overlay Zone"). The landscaping business operates in the rear portion of the site, behind the house, landscaping and a six-foot opaque wooden fence.

**Existing Conditions**

The general location of the Subject Property is shown in Figure 1 below. The Subject Property borders Spencerville Road to the south. To the west and north, it abuts property in the RE-1 zone that is part of a landscape contractor business called Arbor Landscaping, which occupies approximately 17.2 acres and wraps around the western and northern borders of the Subject Property. To the east, the Subject Property abuts a single-family house that is used as a residence and for a tailoring business operating by special exception. Across Spencerville Road, the Subject Property confronts directly a vacant parcel and part of a commercial parking lot in the RE-1 zone, and diagonally an auto repair shop and small restaurant that are in the GR (General Retail) zone.

*Figure 1 – Site Location*

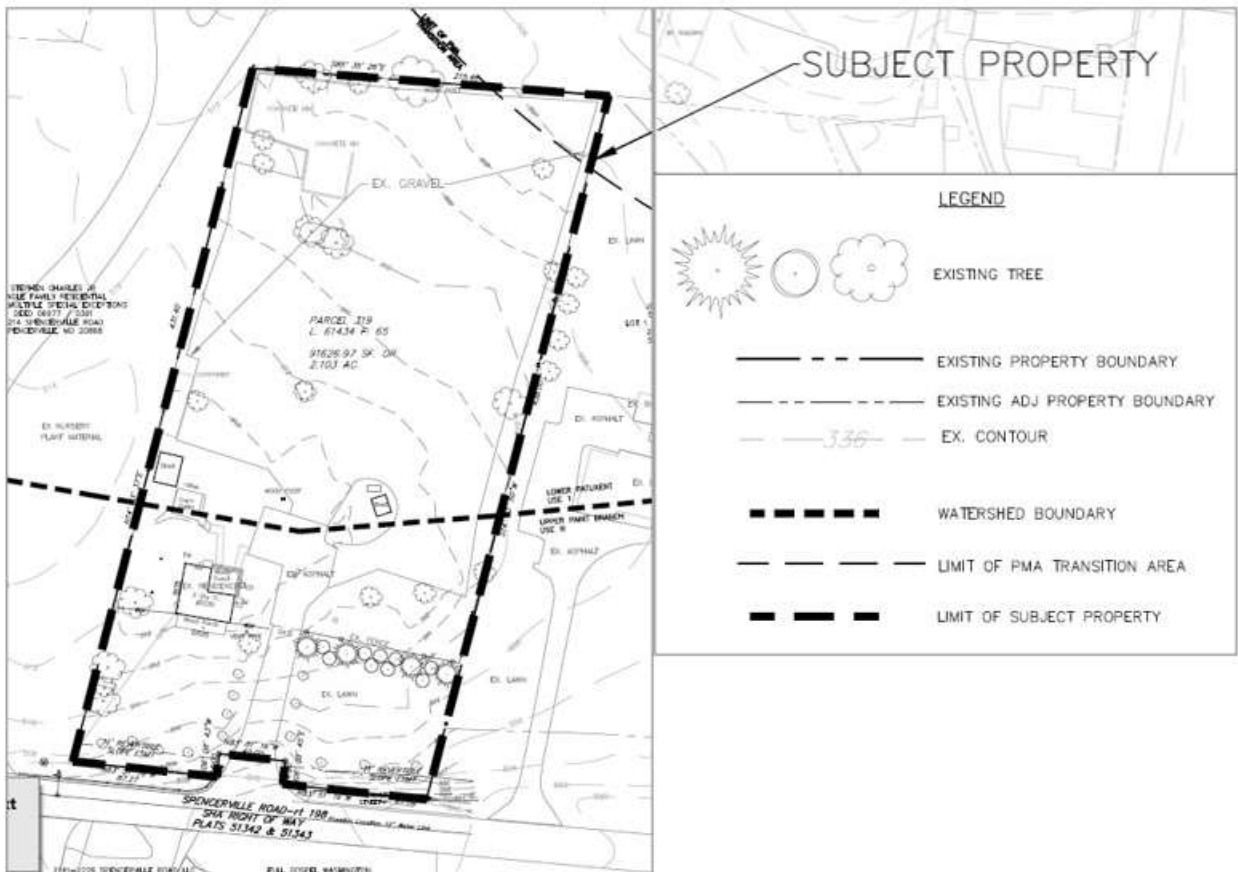


Roughly the front third of the Subject Property is located in the SPA and the Overlay Zone. The Petitioners have beautified the front portion of the site with enhanced landscaping, as shown in the site photographs below. The attractive, well-maintained country-style residence, expansive lawn and extensive landscaping preserve the residential appearance of the Subject Property as seen from Spencerville Road. The only non-residential element in the front part of the site will be a small,

unilluminated sign, no larger than 2 square feet, to be installed on the front lawn in approximately the location shown on the Conditional Use Site Plan. The existing house will remain in residential use.

Principal existing site features are shown in Figure 2, Existing Conditions and in the site photographs that start on the next page.

Figure 2 – Existing Conditions





Commercial parking and operations are limited to the portion of the Subject Property that is located outside the overlay zone, which sits approximately 173 feet from the street at the west property line and 183 feet from the street at the east property line. The area behind that line currently consists of a small patio, grassy area and shed located behind the house and an open area with gravel, scattered trees, a second, smaller shed and an above-ground gasoline tank.

**Site Photos**

*Front of Site Seen from Spencerville Road*



*House and West Side of Front Lawn*





*East Side of Front Lawn*



*Landscaping Along Front of Fence*





*Inside Front Fence Line Looking at Abutting Property to East. (Single-Family Home + Tailor (Single-Family Home on Subject Property Is Behind Photographer)*



*Edge of Gravel and Small Shed, Looking Towards Abutting Property to East*





*Behind Fence Looking West Towards Abutting Property to West (Arbor Landscapers)*



*Gazebo, Variance Shed and Residential Parking Area*





*Side View of Variance Shed and Gazebo, Arbor Landscapers Nursery Area to West*



*West Side of Rear Gravel Area Looking Towards On-Site House and Abutting Arbor Landscapers Property to West*





*East Side of Rear Gravel Area Looking Towards On-Site House and Small Shed*



*Rear Gravel Area Looking Towards Arbor Landscapers Property to North*



As noted above, the Subject Property abuts Arbor Landscaping, a large landscaping/nursery business, to the west and north and a residence/tailor shop to the east. It confronts a small restaurant, an automotive repair shop and a vacant parcel, shown on the aerial image in Figure 3 below.



Figure 3 – Subject Property and Neighboring Properties

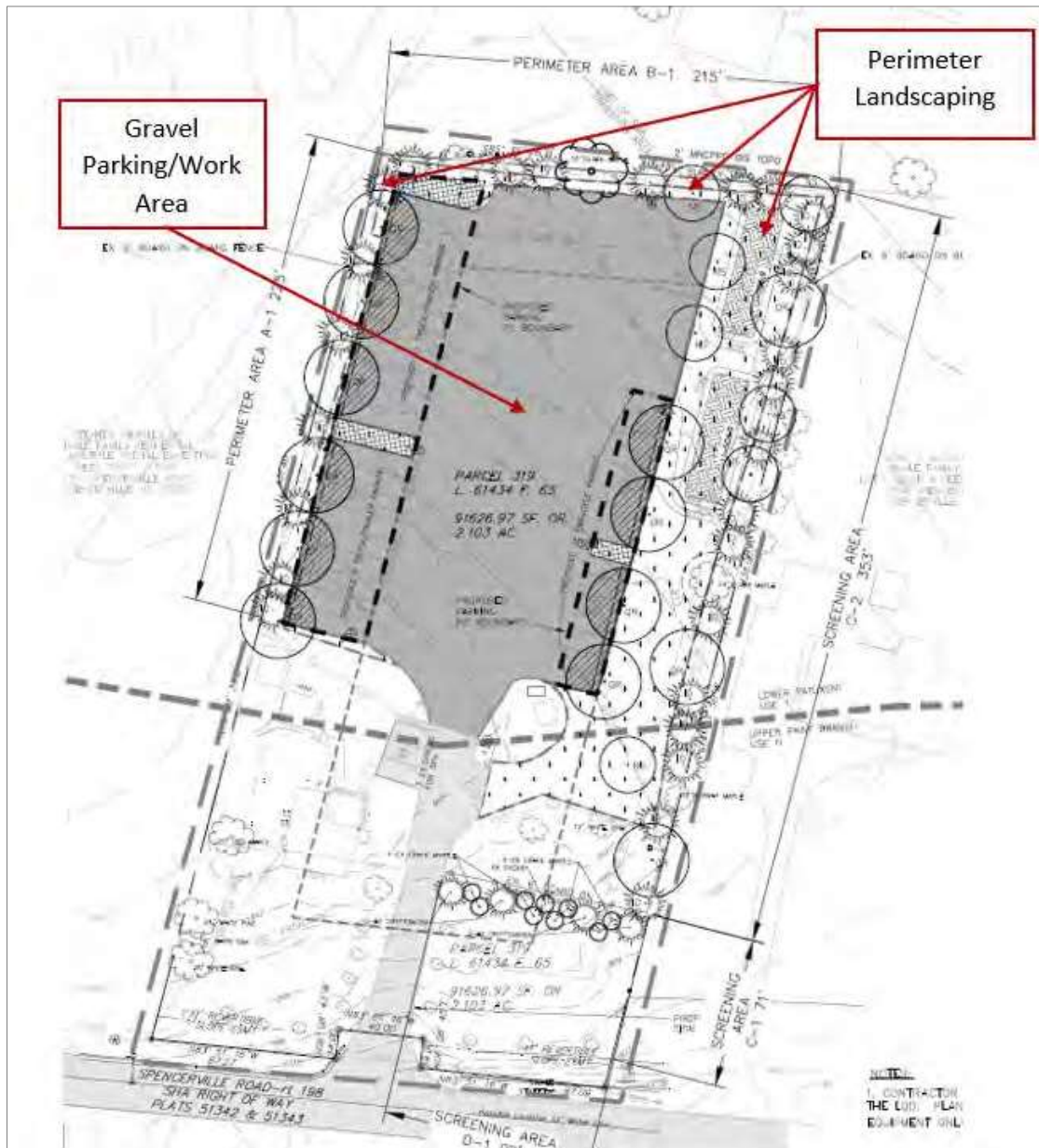


### **Proposed Project**

The Petitioners propose to use the rear portion of the Subject Property for a landscaping business that is engaged primarily in site clearing and tree removal. As shown on the submitted Landscaping and Lighting Plan, excerpted in Figure 4 below, the rear portion of the site (the “Commercial Area”) is proposed to have a gravel parking/work area surrounded by perimeter landscaping strips on three sides. The site layout also includes a bin towards the rear of the Commercial Area for wood chip storage, and two existing sheds for business-related storage.



Figure 4 – Landscaping and Lighting Plan



The Petitioners' business, Treeman, Inc., operates full crews of up to 20 employees Monday through Thursday and half its employees on Fridays, working a shorter day. There are no weekend hours except in emergencies, such as clearing fallen trees after a storm. During the busy spring-to-fall season, operations typically consist of employees arriving at the Subject Property starting at 7:00 a.m. and leaving for job sites within an hour or two. Employees generally begin returning to the Subject Property around 4:00 p.m. Site operations generally finish by 5 pm, but on occasion may run until 6:00 or 6:30 p.m. Thus, on-site activity



associated with the landscape contractor use is limited to the hours of 7:00-9:00 a.m. and 4:00 to 6:30 p.m, Monday through Thursday, and on Fridays 7:00-9:00 a.m. and 2:00-4:00 p.m. During winter, the slow season, working hours end by 4:00 p.m. due to shorter hours of daylight and smaller workloads.

**Requested Variances**

Petitioners request three variances:

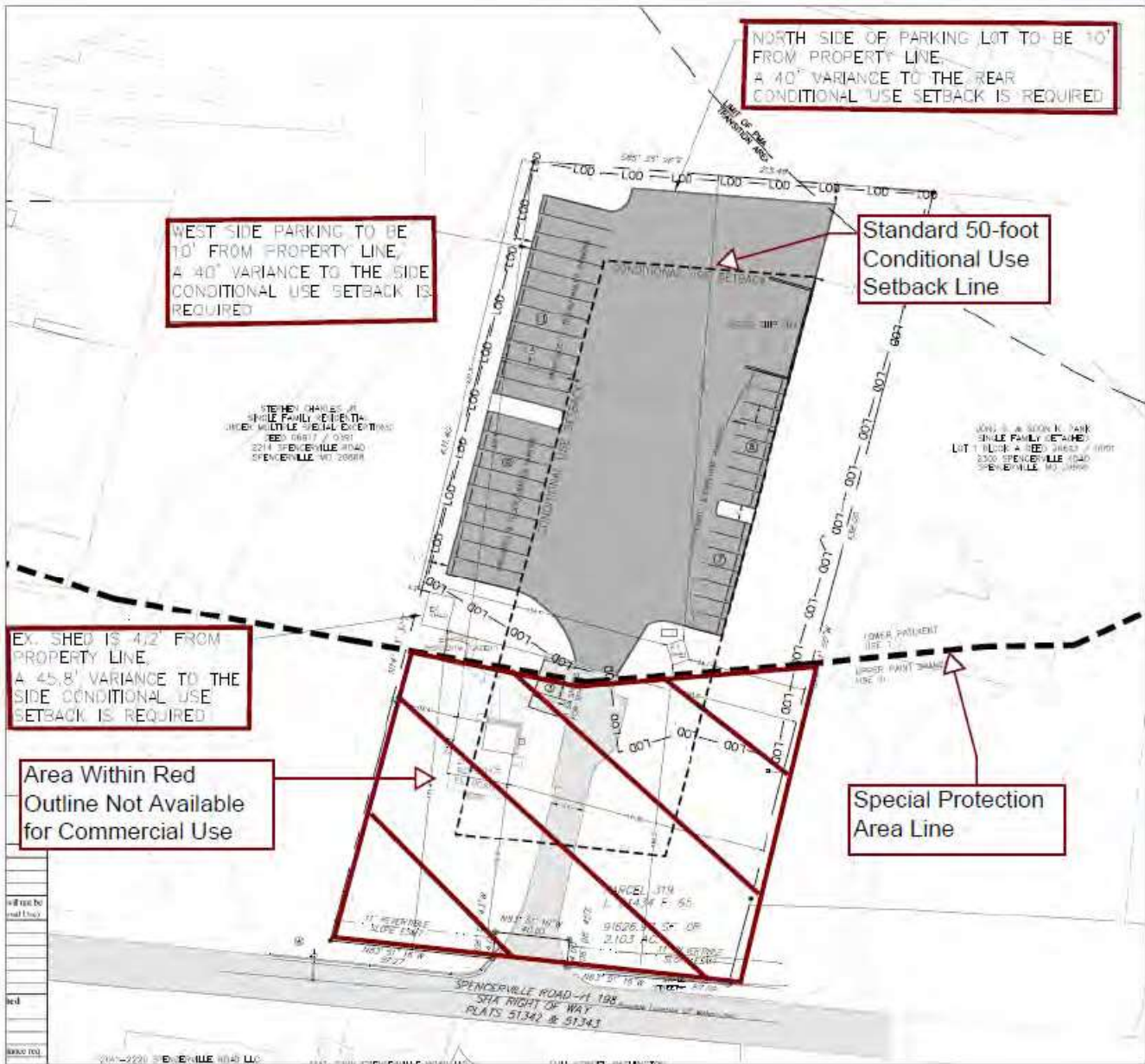
1. A 40-foot variance from the 50-foot side parking setback to allow a 10-foot perimeter planting area along the western edge of the Commercial Area, abutting Arbor Landscapers.
2. A 40-foot variance from the 50-foot side parking setback to allow a 10-foot perimeter planting area along the northern edge of the Subject Property, from the western property line to a point 50 feet from the eastern property line. The abutting property along this property line is also occupied by Arbor Landscapers.
3. A 45.8-foot variance from the 50-foot building setback to allow use of a pre-existing shed measuring 16 x 19 x 10 feet high that is located 4.2 feet from the western property line, abutting Arbor Landscapers.

The requested variances are identified on the submitted Variance Plan, excerpted on the next page. All three variances are along property abutting Arbor Landscapers. To the west, the Commercial Area abuts a portion of Arbor Landscapers' plant nursery. To the north, the Commercial Area abuts an area with outbuilding that appear to be in commercial use.

The landscaping strip along the eastern edge of the Commercial Area, bordering the abutting residence/tailoring business, will be 50 feet wide, in keeping with the standard building/parking/operations setback for a landscape contractor conditional use. It will run from the front fence to the rear fence.

All other elements of the proposed Conditional Use satisfy the standard 50-foot setback, including the wood chip bin and the smaller shed. The house and gazebo will remain in residential use.

Figure 5 – Variance Plan



**Variance Findings under Zoning Code Section 7.3.2.E**

The findings required to grant the requested variance are set forth below in bolded italics, followed by an analysis of the basis for each finding in the present case.

***Granting the variance may only authorize a use of land allowed by the underlying zone.***

A landscape contractor use is permitted as a conditional use in the RE-1 zone.



**To approve a variance, the Board of Appeals must find that:**

- 1. denying the variance would result in no reasonable use of the property; or**
- 2. each of the following apply:**
  - a. one or more of the following unusual or extraordinary situations or conditions exist:**
    - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;**

Approximately one third of the Subject Property is located in the SPA, which limits impervious surfaces to a maximum of 8% of the area within the SPA. See Zoning Code Section 59.4.9.20.D. That restriction compresses the area available for landscape contractor operations (the “Commercial Area”) to a narrow, shallow remainder portion of the site, outside the SPA. The impact of the SPA would make it impossible to maneuver large commercial vehicles and access the wood chip bin if the standard 50-foot setback were implemented on all three sides of the Commercial Area. The surrounding area includes a wide range of lot sizes and shapes, some partially or fully within the SPA and some entirely outside it. Larger tracts in the surrounding area include Arbor Landscapers and other landscaping businesses on Spencerville Road and Batson Road.

The Applicant’s business is primarily site clearing and tree removal, which utilize large bucket trucks, a chipper truck, a crane and other large commercial vehicles. Wood chips are brought to the site each day from work sites and stored in the bin at the rear of the Commercial Area. At the end of each week, a roll-off body truck collects the wood chips from the bin for transportation off-site. The narrow, shallow area available outside the SPA makes it impossible to provide 50-foot setbacks on all sides and still maneuver the commercial vehicles and deposit and collect wood chips safely. The Applicant requests 40-foot variances on two sides of the Commercial Area so that parking areas can be located along the sides of the site with adequate maneuvering space in the middle.

The space needed to maneuver large commercial trucks on site is depicted on the submitted auto-turn and U-turn exhibits, which are excerpted in part below. These exhibits, prepared by

Petitioners' traffic engineers, demonstrate that the requested variances are necessary to safely maneuver Treeman's commercial vehicles and allow access to the wood chip bin.

Figure 5 – Bucket Truck U-Turns







As noted in subparagraph (i) above, approximately one third of the Subject Property is located in the SPA and therefore is effectively not available for commercial use.

**iv. the proposed development contains a historically significant property or structure; or**

**v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;**

**b. the special circumstances or conditions are not the result of actions by the applicant;**

The special conditions caused by the Subject Property's location partially within the SPA, the narrow rectangular shape of the property, and the placement of the storage shed 4.2 feet from the property line by a previous owner were not the result of any action taken by the Applicant.

**c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;**

The variances requested are the minimum necessary to overcome the practical difficulties that full compliance with the side and rear setback requirements would impose. The variance for the shed is based on its location. As the Petitioners and the project site designer will testify, the parking variances requested along the western and northern sides of the Commercial Area are the minimum possible to allow adequate space for the Applicant's large commercial vehicles to maneuver on-site and access the wood chip bin safely. Without the requested parking variances, or with smaller variances, Petitioners would not be able to use the Subject Property for their business activities.

**d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and**

The Subject Property is within the area covered by the *Cloverly Master Plan*, approved and adopted in 1997 (the "Master Plan").<sup>1</sup> The proposed conditional use substantially conforms with the Master Plan's recommendations, as discussed below.

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<sup>1</sup> As a threshold matter, the first guidance on application of the Master Plan comes from the Notice to Readers in the introductory section, which explains that master plans generally look ahead about 20 years, that circumstances at the time of plan adoption will change over time, and that the specifics of a master plan may become less relevant as time goes on. Here, the Master Plan is 26 years old, well beyond its anticipated lifetime, suggesting that its most relevant guidance will be found in its general objectives and recommendations, rather than in specifics.



The Master Plan's overall goal is to support and reinforce existing land use patterns. The Subject Property is in the Residential Wedge portion of the Master Plan area, where the Master Plan recommends protecting existing homes from the effects of traffic and road improvements, including stormwater management, through careful design, minimal grading, tree preservation and landscaping. The proposed Conditional Use leaves the existing house on the property intact; provides all stormwater management to the rear of the property, away from the house; proposes no road improvements or significant grading; and enhances the already attractive landscaping around the house.

The Master Plan recommends a number of factors for the decision-maker to consider in reviewing a conditional use to maintain, to the greatest extent feasible, the residential character of the area. They are quoted below in italics with analysis of each following.

- *Maintenance of a residential appearance, where feasible.*

The proposed Conditional Use will maintain the residential appearance of the Subject Property from the street by preserving the appearance and function of the existing single-family house and its residential-style landscaping.

- *Compatibility with the scale and architecture of the adjoining neighborhood, consistent with the proposed use.*

The house is a two-story wooden structure built in 1916. Its scale and architecture are consistent with a rural architectural vernacular and with the mix of residential dwellings in the surrounding area. Extensive landscaping in the front part of the site will contribute to the area's rural character.

- *The impact of signs, lighting, and other physical features on surrounding residential communities.*

Signage for the conditional use will be limited to one small, non-illuminated sign, no more than two square feet. All parking, loading, and other business activities will take place behind a house, landscaping, and a six-foot, opaque wooden fence that sits 90-100 feet back from the street and six feet above it, providing an effective visual buffer. Views of the site from the abutting residential property

to the east will be softened and buffered by tall canopy trees and evergreens planted along the fence. Lighting will consist of full-cutoff fixtures located only in the Commercial Area, with illumination dropping to 0 to 0.1 foot-candles along the eastern property line, abutting a single-family home. No lighting is proposed along the driveway. Truck traffic will be briefly visible and audible on the driveway twice a day, as workers leave for job sites and return, causing a very modest impact on surrounding properties.

- *Location of parking, loading, and other service areas to maintain residential appearances to the extent feasible.*

All parking and commercial operations will take place at the rear of the site, maintaining its residential appearance from the street.

- *Options for landscaping that minimizes the non-residential appearance of the site and the view from surrounding properties and roads. It is preferable for landscaping to reinforce Cloverly's rural character and be consistent with the streetscape standards (see page 49 in Transportation Chapter) of the Master Plan and the landscaping standards for special exceptions.*

The front part of the Subject Property has extensive, residential-style landscaping that contributes to the rural character of the area. Landscaping along the perimeter of the Commercial Area is designed to provide maximum screening and softening benefit to adjoining neighbors by planting canopy trees and evergreens throughout the perimeter planting areas. This design departs from standard Conditional Use landscaping standards by excluding the normally required shrubs, which would not be visible to neighbors, and using that space for additional canopy and evergreen trees. This approach requires approval of Alternative Compliance under Code Section 59.6.8.1, which will be reviewed in connection with the Conditional Use Application.

- *When special exceptions are adjacent to each other or to commercial properties, review whether it is feasible and reasonable to consolidate driveways and connect parking areas.*

It is not possible to consolidate driveways or parking areas with either of the adjoining special exception uses.