

Conditional Use Application

Treeman Property

2230 Spencerville Road, Spencerville, Maryland

Applicants' Statement of Justification

September 8, 2023

I. Introduction

Jose Manual "Manny" Polanco and Nelsy Polanco (the "Applicants") seek approval for a conditional use to bring into compliance with the Zoning Code a landscape contractor use operating 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"). The business operates under the name Treeman, Inc ("Treeman"). The Subject Property is known as Parcel P319 in the New Birmingham Manor subdivision. The site as a whole is 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 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.

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 Applicants are submitting a variance application contemporaneously with the instant application and is requesting that the Board of Appeals refer the variance application to the Hearing Examiner for a consolidated hearing with the conditional use.

Exhibit 3
OZAH Case No: CU 24-09

II. Existing Conditions and Surrounding Neighborhood

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

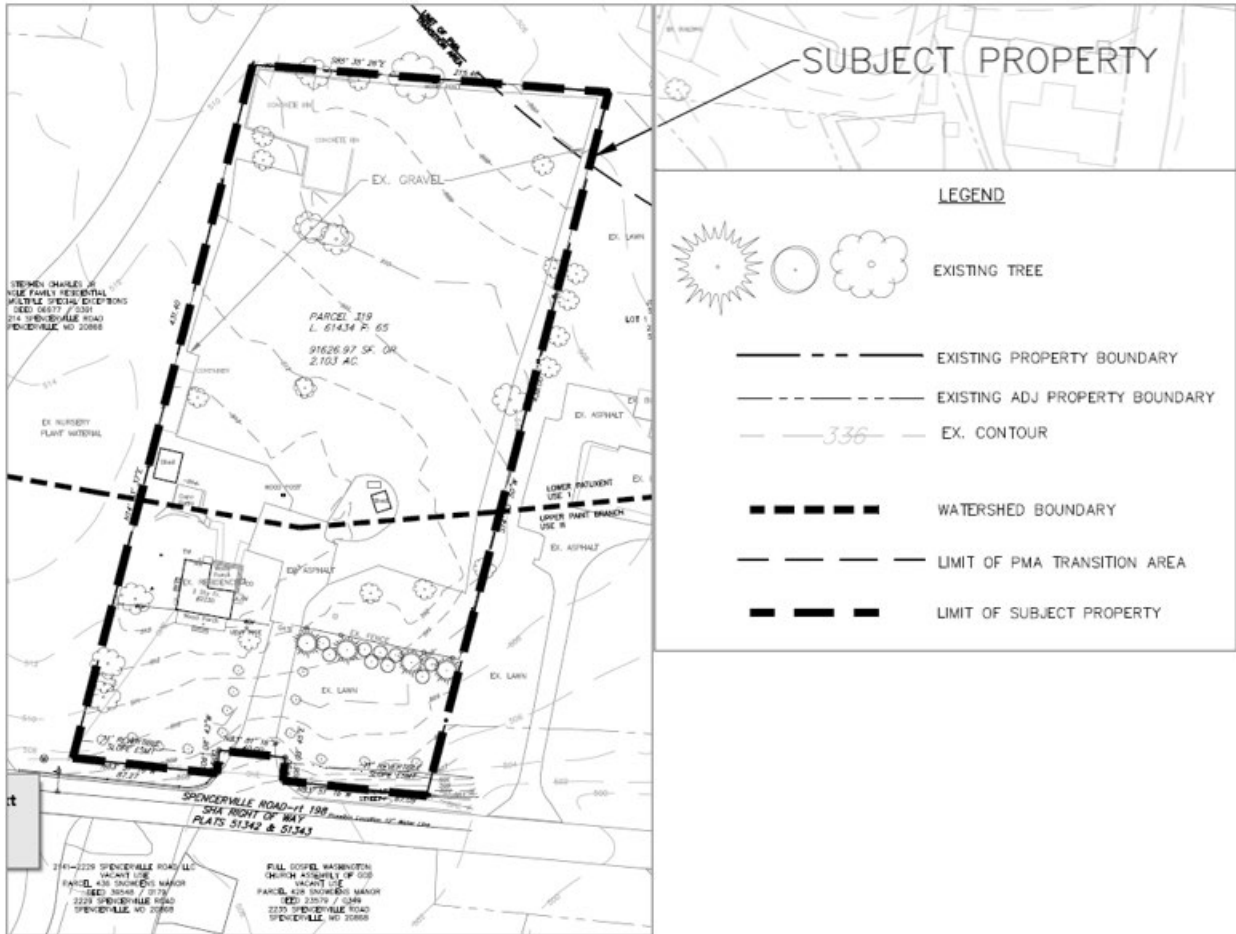


Roughly the front third of the Subject Property is located in the SPA and the Overlay Zone. The Applicants have beautified the front portion of the site with enhanced landscaping, as shown in the site photographs below. The attractive, well-maintained country-style residence, expansive lawn and extensive 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. Its

only connection to the landscape contractor business will be to allow workers to enter through a side door to use a ground-floor bathroom from time to time, as needed.

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



The proposed conditional use operates in the rear portion of the Subject Property, behind the house, landscaping and an existing six-foot, opaque wooden fence. The fence connects to the front corners of the house and stretches across the site on either side of the driveway, then follows the property lines to enclose the rear portion of the site. The fence varies from approximately 90 to 100 feet from the street and its base sits roughly six feet higher than the street. Distance and topography help the fence, together with the house and front landscaping, to create an effective visual barrier that makes the commercial portion of the site minimally visible from the street and supports the Subject Property's residential appearance.

Commercial parking and operations are limited to the portion of the Subject Property that is located outside the Special Protection Area line, which sits approximately 173 feet from the street at the western property line and 183 feet from the street at the eastern property line. The area behind that line currently consists of a small patio/Gazebo, 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



View up Driveway from Spencerville Road Towards Rear of Site



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



Inside Front Fence Line Looking West towards Abutting Property to West (Arbor Landscapers)



Gazebo, Larger Shed and Residential Parking Area



West Side of Rear Gravel Area Looking Towards House and 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



The surrounding neighborhood, depicted in Figure 3 below, can be defined to extend from Oursler Road on the east to Oak Hill Road on the west and from the terminus of Sondra Court on the north to Rainbow Drive on the south. Existing land uses are a mix of residential and non-residential uses including three houses of worship, several landscaping businesses, a private educational institution, a post office, two local parks, and large-lot single-family homes. As noted above, the Subject Property abuts 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, all of which are identified on the aerial image in Figure 4.

Figure 3 -- Surrounding Neighborhood Outlined in Yellow

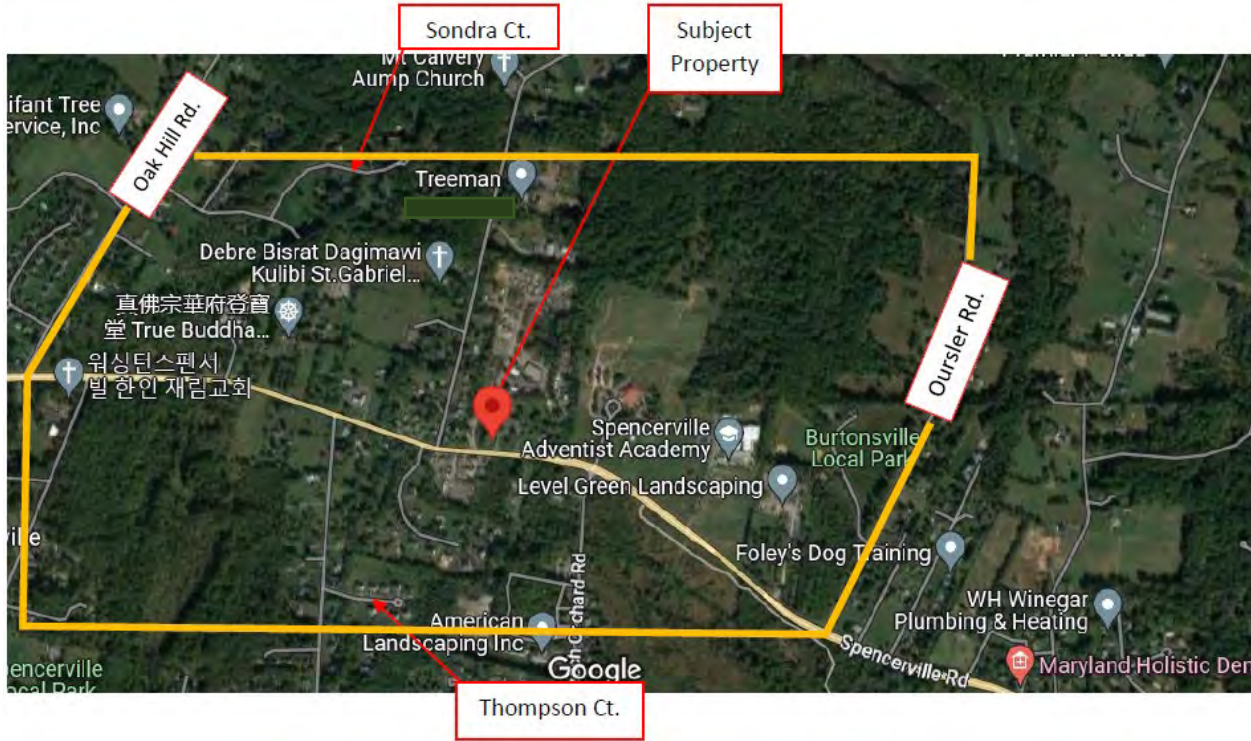


Figure 4 – Subject Property and Neighboring Properties



III. Proposed Project

A. Site Layout

The Applicants 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 Conditional Use Site Plan and Landscape & Lighting Plan, excerpted in Figures 5 and 6 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 landscaping strip along the eastern edge of the Commercial Area, bordering the abutting residence/tailoring business, will run from the front fence to the rear fence. It will be 50 feet wide, in keeping with the standard building/parking/operations setback for a landscape contractor conditional use.

The Applicants propose to limit the landscaping strip to ten feet wide where the Commercial Area abuts Arbor Landscapers - along the western edge of the Commercial Area and along the rear property line from the northwest corner to a point 50 feet from the eastern property line. The ten-foot wide landscaping strips will require 40-foot variances from the standard 50-foot setback.¹

As discussed in more detail in Part III below, the Applicants seek approval for Alternative Compliance under Section 59.6.8.1 of the Zoning Code to permit the following adjustments to perimeter landscaping:

1. Plantings focused on shade trees and tall evergreens that will be visible above the fence and therefore provide the most benefit to the abutting residence. This will avoid taking up space in the perimeter landscape areas with understory trees and shrubs that will not be readily visible above the fence, and therefore will not provide significant screening value to abutting properties.
2. Perimeter landscaping that extends from the rear property line to the front fence line, but not from the fence line to the street. This will keep the front portion of the site consistent and compatible with other front yards along this stretch of Spencerville Road.

¹ Variance justifications are set forth in detail in the Statement of Justification for the Applicant's variance petition and will not be repeated here.

Figure 5 – Conditional Use Site Plan



The site plan includes a bin towards the rear of the Commercial Area for wood chip storage, and two existing sheds for business-related storage. The wood chip bin and the smaller shed satisfy the 50-foot landscape contractor setback requirement. The shed located behind the house measures approximately 16 x 19 feet x 10 feet high and was in place when the Applicants purchased the Subject Property. It sits approximately 4.2 feet from the western property line. This will require a 45.8-foot variance from the 50-foot setback.

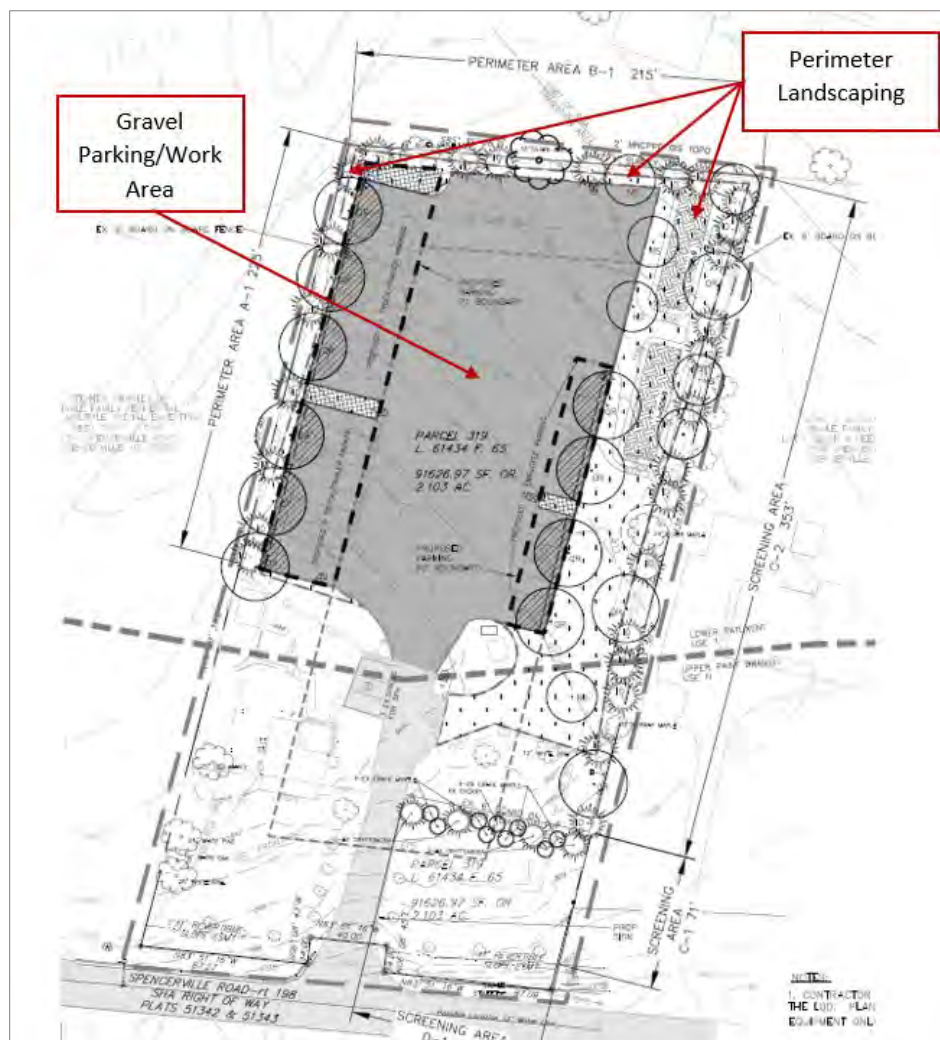
The submitted Conditional Use Site Plan includes a total of 35 parking spaces, 15 sized for passenger vehicles and small trucks and 20 sized for large commercial vehicles. The smaller spaces accommodate employee vehicles and may be used for small pickup trucks associated with the landscape contractor use. The larger spaces are used to park larger commercial vehicles, many of

which are stored as a “set-up” with a connected trailer carrying various equipment. The Applicants propose the following:

- A maximum of 20 commercial vehicles, including bucket trucks, a crane, chipper trucks, large pick-up trucks, log trucks and a loader truck.
- Ten trailers, each carrying equipment such as stump grinders, spyder-lifts and chippers, and parked as part of a set-up with a commercial truck.
- Up to three pieces of motorized equipment such as front loaders, to be used and stored in the central operations area, near the wood chip bin, or in the small vehicle parking spaces that exceed the required ten spaces for employees.
- A maximum of 20 employees.

The proposed parking satisfies Zoning Code requirements (under Section 59.6.2.4) to provide one parking space per vehicle and half a space for each employee.

Figure 6 – Landscaping and Lighting Plan



B. Operations, Noise and Transportation

Treeman operates full crews 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.

Noise associated with on-site activities consists of vehicular engines and human voices. The Commercial Area accommodates u-turns for most if not all of the Applicants' vehicles, minimizing the use of back-up alarms. Vehicle and heavy equipment maintenance takes place off-site, so there is no need for equipment testing or prolonged running of vehicular engines. Similarly, noisy equipment such as chippers and grinders is operated at job sites, not on the Subject Property. Because Treeman does not routinely engage in landscaping installation, there is no prolonged operation of equipment on-site to load plants onto trucks, as is common for many landscape contractors. The only routine material storage on site is wood chips, which are trucked to the Subject Property from job sites in varying quantities, then aggregated into larger truckloads on a weekly basis for disposal off-site.

As stated in the submitted LATR Transportation Study Exemption Statement (the "Transportation Statement"), the proposed use will generate fewer than 50 peak-hour person-trips, so a traffic study is not required.² The Transportation Statement concludes that the proposed use will generate a maximum of 48 person-trips during each of the morning and evening peak hours, and will

² The Transportation Statement took a conservative approach by measuring the impact of up to 24 employees, which exceeds the maximum requested by the Applicant. The Transportation Statement was also based on a slightly later start time in the morning and a slightly later end time in the evening than the Applicant proposes. These minor differences reflect the evolution of the Applicant's thinking about the appropriate parameters for the business. The parameters specified in this Statement supersede those described in the Transportation Statement.

generate a maximum of 36 vehicular trips during the morning peak hour and 21 vehicular trips during the evening peak hour. The Transportation Statement further observes that the peak hours of the landscaping business are not the same as the commuter peak hours on Spencerville Road, reducing the impact of this use on local traffic conditions. Finally, the Transportation Statement concludes that the proposed conditional use will have negligible impact on roadway conditions in the area.

C. Environmental Issues

As noted above, roughly the front third of the Subject Property lies within the SPA and the Overlay Zone. In Section 59.4.9.20.D, the Overlay Zone contains the following restriction on impervious surfaces proposed in connection with a development project:

Impervious surfaces are restricted to a maximum of 8% of the tract of any application for development.

The existing house and driveway on the Subject Property are exempt from this impervious surface limit pursuant to the following language from the Overlay Zone, in Section 59.4.9.20.B:

The following are exempt from Section [4.9.20](#):

1. Any impervious surface lawfully existing allowed by a building permit issued before July 1, 2007 may continue or be reconstructed under the development standards in effect when the building permit was issued.

The existing house was built in 1916, before the County required building permits. A driveway does not require a building permit, but evidence indicates that the existing driveway was first installed in the early 1960s and has been maintained and widened since then. The Montgomery County Department of Permitting Services (“DPS”) has certified the house and driveway as legal, nonconforming uses. See submitted Non-Conforming Use Certificate. This determination establishes that the impervious surfaces associated with the house and driveway have existing lawfully since before July 1, 2007, satisfying the purpose of the requirement that an impervious surface be allowed by building permit issued before July 1, 2007 to benefit from the exemption in Section 59.4.9.20.B. Accordingly, under Section 59.4.9.20.B, the impervious surfaces associated with the house and

driveway are exempt from the impervious surface cap; both may remain within the proposed conditional use site, and the driveway may continue to be used for access to/from the landscape contractor use.³

III. **Conditional Use Findings**

The proposed Conditional Use satisfies the findings required for approval in Montgomery County Code Chapter 59, Sections 3.5.5 and 7.3.1, quoted below in bold and italics.

Section 59.3.4.5. Landscape Contractor

- 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.***

The Subject Property measures 2.1 acres, satisfying the two-acre minimum lot size.

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

The Applicants are seeking three variances to permit a reduction of the 50-foot minimum setback to (i) 10 feet along approximately 154 feet of the 216-foot-long rear property line and 210 feet of the 431-foot western property line, abutting Arbor Landscapers; and (ii) 4.2 feet between the western property line and the larger shed at its closest point. The Applicants have requested consolidation of the variance and conditional use for hearing purposes. Justification for the required variances is provided in a separate Statement of Justification submitted with the variance application.

- 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.***

The Applicants proposes to use a maximum of 20 vehicles and ten trailers in connection with the conditional use. These vehicles will be stored on site when not in use. As noted above, the proposed Conditional Use Site Plan provides 20 large parking spaces for commercial vehicles and set-

³ In the Applicants' view, supported by a written determination from the Department of Permitting Services, exemption under Sections 59.4.9.20.B.1 or 2, means that existing impervious surfaces are not included in the calculation of tract imperviousness for purposes of the cap. Accordingly, a development project may add up to 8% impervious surface *in addition to* existing, exempt imperviousness. This aspect of interpreting Section 59.4.9.20 need not be addressed in the present case because the Applicants are not proposing any new impervious surfaces within the SPA.

ups that include a commercial vehicle and a trailer holding equipment. Accordingly, on-site parking will be adequate for the total number of vehicles and trailers proposed.

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

No sale of plants materials, garden supplies or equipment is proposed.

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

As noted above, the Applicants propose to operate within the following parameters:

- a. Regular on-site operations no earlier than 7:00 a.m. and no later than 6:30 p.m., Monday through Friday. Operations may be conducted earlier, later or on weekends in the event of an emergency such as removal of fallen trees following a storm. During winter months, on-site operations will stop by 4:00 p.m.
- b. No more than 20 vehicles, 10 trailers and 20 pieces of heavy equipment associated with the landscape contractor use will be stored on the Subject Property. Heavy equipment will be stored primarily on trailers and chipper trucks. The remainder will be stored in the operations area, near the wood chip bin, or in excess employee parking spaces.
- c. No more than 20 employees will be on site per day.
- d. Maintenance and testing of vehicles and equipment will take place off-site.
- e. Only vehicles will be operated on-site. Equipment that generates significant noise, such as chippers and grinders, will not be operated on the Subject Property.

Section 59.7.3.1. Conditional Use

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;**

There are no applicable previous approvals on the subject site.

- 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](#);**

A landscape contractor use is allowed in the RE-1 zone as a conditional use. Section 59.3.1.6.

With the exception of the variances requested from the 50-foot setback requirement and the two elements of Alternative Compliance requested for perimeter landscaping, the proposed use will satisfy all applicable requirements of the RE-1 zone, all standards for the use under Article 59-3, and salient general standards under Article 59-6 such as parking, lighting and signage. This is demonstrated in

the Data Table below, excerpted from the Conditional Use Site Plan, and on the submitted Landscape and Lighting Plan.

| Development Standard | RE-1 Standard 59.4.4.7.B Required | Conditional Use Standard 59.3.5.5.B Required | General Standards 59.6.2.4.B Required | Proposed |
|--|---|--|--|--|
| Minimum Lot Area | 40,000 SF | 2 acres | | 2.10 AC |
| Minimum Lot Width: | | | | |
| · At street line | 25' | | | 214' |
| · At building line | 125' | | | 213' |
| Maximum Lot Coverage | 15% | | | 1.9% with house and sheds (house will not be used in connection with the Conditional Use) |
| Minimum Principal Building Setback | | | | |
| · Front | 50' | 50' | | 79.4' |
| · Side street | 20' | 50' | | N/A |
| · Side | 17' | 50' | | 35.4' / 141.6' |
| · Sum of Sides | 35' | | | 177' |
| · Rear | 35' | 50' | | 300.8' |
| Accessory Building Setback | | | | East Shed West Shed |
| · Front | 80' | 50' | | 166.5' 171.4' |
| · Side Street | 20' | 50' | | N/A N/A |
| · Side | 15' | 50' | | 64.1' 4.2' Note: variance req. |
| · Rear | 10' | 50' | | 249.6' 237.5' |
| Minimum Parking Set Back | | 50' | | 10' Note: variance requested |
| Height of Principal Building | 50' | | | <50' (The house is the principle building on the site but will not be used in connection with the Conditional Use) |
| Height of Accessory Building | 50' | | | |
| Minimum Parking Spaces | | | | Vehicle Spaces |
| · Existing House | | | 2.0/SF House | 3 |
| · Landscape Contractor - Employee (Onsite) | | | 1.0 / Employee | 0 Note: No onsite employees |
| · Landscape Contractor - Employee (Field) | | | 0.5 / Employee | 15 Note: Conditional Use will have no more than 20 employees |
| · Commercial Vehicles | | | 1 / Vehicle | 20 Note: Conditional Use will have no more than 20 commercial vehicles |
| Total | | | | 38 |
| Lighting | | | 59.6.4.4 | |
| Fixture Type | | | full or partial cutoff | partial |
| Fixture Height | | | 30', 15' if located within 35' of lot line with detached house | 16' Note: All fixtures are more than 35' from lot line with nearest detached house |
| Light Source | | | Incandescent, Fluorescent, LED, metal halide or color-corrected high-pressure sodium | LED |
| Illumination | | | 0.5 footcandles or less at lot line | 2.4 or less *Note: 2.4 at isolated spot adjacent to another conditional use |
| Conditional Use | | | 0.1 footcandles or less at lot line abutting detached house | 0.1 or less to be confirmed |
| Sign | | | 59.6.7.11 | |
| Area | | | 2 square feet | The applicant is permitted and proposes a 2 SF sign with no illumination. |

Variance Requests

The Applicants have requested three variances from the 50-foot structure/parking/operations setback requirement under Section 59.3.5.5. Two parking setback variances are intended to allow sufficient space for on-site operations, including vehicular access to the wood chip bin and safe, efficient operation of large commercial vehicles. A building setback variance is requested to be able to use a pre-existing 16 x 19-foot shed for incidental storage. Specifically, the Applicants seek approval in a contemporaneously filed variance application for the following:

1. Reduction of the setback to ten feet along the western and northern edges of the Commercial Area, where Arbor Landscaping wraps around the Subject Property on two sides.
2. Reduction of the setback requirement to 4.2 feet for a small shed located behind the house on the Subject Property. This location also abuts Arbor Landscaping.

The Applicants have requested that the Board of Appeals consolidate their variance application with the present conditional use application for hearing purposes.

Alternative Compliance Requests

The Applicants request approval for Alternative Compliance under Section 59.6.8.1 of the Zoning Code to permit the following adjustments to perimeter landscaping:

1. As an alternative to full compliance with Section 59.6.5.3.C.7, allow plantings consisting of shade trees and tall evergreens that will be visible above the fence and therefore provide the most benefit to the abutting residence. This will avoid taking up space in the perimeter landscape areas with understory trees and shrubs that will not be readily visible above the fence, and therefore will not provide significant screening value to the abutting residence.
2. As an alternative to full compliance with Section 59.6.5.3.A.3, allow perimeter landscaping that extends from the rear property line to the front fence line, but not from the fence line to the street. This will keep the front portion of the site consistent and compatible with other front yards along this stretch of Spencerville Road.

The requested Alternative Compliance is appropriate under Section 59.6.8.1 because of a combination of unique site characteristics and existing structures. The Applicants are mindful of the need to avoid adverse impacts on the existing single-family home to the east, which is located quite close to the shared property line. See aerial close-up on the next page.

Aerial View of Front Area of Subject Property and Abutting Home



Baseline screening is provided by an existing fence that sits on the property line. Applicable screening requirements under Sections 59.6.5.3.A and 59.6.5.3.C.7 call for planting a combination of canopy trees, understory trees and shrubs. With the existing fence on the property line, understory trees and shrubs will provide little to no screening value for the abutting home. Accordingly, the Applicants propose to plant the screening area with canopy trees and evergreens that will be taller than the fence and therefore provide valuable screening and visual softening for the abutting home. The same approach is proposed on the west and north sides, although the adjoining use is much less sensitive.

In addition, the Subject Property is uniquely situated along a stretch of Spencerville Road where nearly every property has a large, open expanse of lawn along the street. See aerial image below.

Aerial View of North Side of Spencerville Road Near Subject Property



Applicable screening requirements under Sections 59.6.5.3.A and 59.6.5.3.C.7 call for perimeter plantings and a fence along the full length of the eastern property line, all the way from the rear property line to the front property line. Extending the fence and perimeter plantings in front of the east-to-west front fence line would be out of keeping with surrounding properties and would interrupt the open lawns characteristic of this stretch of Spencerville Road. The Applicants propose to stop the fence and perimeter plantings at the front fence line.

The proposed Alternative Compliance satisfies the findings required under Section 59.6.8.1:

The applicable deciding body may approve an alternative method of compliance with any requirement of Division [6.1](#) and Division [6.3](#) through Division [6.6](#) if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The applicable deciding body must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

- A. satisfy the intent of the applicable Division;***
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;***
- C. provide necessary mitigation alleviating any adverse impacts; and***
- D. be in the public interest.***

The proposed type and extent of screening would satisfy the intent of Division 59.6.5, Screening Requirements, to “ensure appropriate screening between different building types and uses.” The Applicants’ proposal would maximize the screening value of perimeter plantings while maintaining a view of open lawn in front of the house and fence that is consistent with the character of this stretch of Spencerville Road. The requested modifications are the minimum necessary to accommodate the unique site characteristics noted above. These modifications would not have any adverse impacts, but rather would provide better screening and compatibility than would be possible with strict adherence to applicable standards in Section 59.6.5. The ability to provide better screening and compatibility makes these modifications squarely in the public interest.

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

The Subject Property is within the area covered by the *Cloverly Master Plan*, approved and adopted in 1997 (the “Master Plan”).⁴ The proposed conditional use substantially conforms with the Master Plan’s recommendations, as discussed below.

The Master Plan’s overall goal is to support and reinforce existing land use patterns and encourage development in the commercial center at New Hampshire Avenue and Briggs Chaney Road. 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 site, away from the house; proposes no road improvements or significant grading; and has enhanced the already attractive landscaping around the house.

⁴ 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 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 quote below in italics:

- *Maintenance of a residential appearance, where feasible.*
- *Compatibility with the scale and architecture of the adjoining neighborhood, consistent with the proposed use.*
- *The impact of signs, lighting, and other physical features on surrounding residential communities.*
- *Location of parking, loading, and other service areas to maintain residential appearances to the extent feasible.*
- *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.*
- *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.*
- *Any special exception application that exceeds the recommended imperviousness level for a particular watershed in a SPA must be reviewed to determine compliance with the appropriate laws.*

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. The house is a two-story wooden structure built in 1913. Its scale and architecture are consistent with a rural architectural vernacular and with the mix of residential dwellings in the surrounding area. Existing and proposed landscaping will contribute to the rural character of the area. No streetscape improvements are required and none are proposed.

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. Signage will be limited to a small, un-illuminated sign in the front yard, near the street. Lighting will be modest, in compliance with Zoning Code requirements for a conditional use.

The only structures associated with the conditional use will be two small backyard sheds that were in place when the Applicants purchased the property. The sheds are small, single-story

structures that sit behind the fence. They will not be visible from the street or from the ground level on adjoining properties. The sheds could be visible from a second-story window in the adjoining home to the east, but that house has a second story only on the far side of the property, away from the Subject Property. Any view of the sheds would be at least partially obscured by existing trees and proposed landscaping.

While there are special exceptions on both sides of this property, it would not be feasible to combine driveways or connect parking areas with either of them. Finally, as discussed in more detail above, impervious surfaces in the portion of the Subject Property located within the Special Protection Area exceed the 8% standard in the Zoning Code but are permitted under the exemption provided in Section 59.4.9.20.B.

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

The proposed conditional use will be harmonious with the surrounding neighborhood and will not alter its character as a rural area with a mix of residential and non-residential uses on large lots. The proposed landscape contractor will blend well with the existing mix of uses and will likely be barely noticeable, with all operations more than 170 feet back off from the road, up an incline and behind a house, landscaping and an opaque fence. In addition, the Subject Property is wrapped on two sides by a much larger landscape contractor, and sits across the street from active commercial uses. Site operations will be limited in scale by the small size of the site and the business, in duration by the limited hours and days of on-site activity, and in impact due to the lack of noisy or odiferous activity. Lighting will be modest and in compliance with conditional use lighting standards. Signage will be limited to one small, non-illuminated sign in compliance with RE-1 Zone standards. The residential appearance of the site from the road will be maintained by preserving the appearance and function of the existing home and its attractive landscaping.

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;

For all of the reasons described above in connection with the Master Plan, the proposed conditional use substantially conforms to the recommendations of the Master Plan and, therefore, will not alter the character of the surrounding area.

Existing and approved conditional uses in neighboring Residential Detached zones include several special exceptions associated with the large landscape contractor business that wraps around the Subject Property on two sides; the tailoring business operating from the single-family house immediately to the east; an accessory apartment; and an in-home professional photography studio. Additional case numbers observed on the zoning map belong to variances and to former special exceptions that have been revoked, abandoned or withdrawn. In light of the size of the surrounding neighborhood, the predominantly large parcel sizes, and substantial setbacks from Spencerville Road, the addition of a small landscaping contractor conditional use will blend in with the mix of uses in the area. It will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter its character.

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***

The Subject Property is currently and is expected to be served by adequate public facilities including police and fire protection, water, public roads and storm drainage. A traffic study is not required for this application because the use is expected to generate less than 50 person-trips in the peak hours. Per the submitted Traffic Statement, vehicular trips generated by the proposed conditional use will have a negligible impact on local traffic conditions. The property is served by a

private septic system for which the Applicant recently received a permit for and carried out needed repairs to bring the system up to applicable standards. The proposed Conditional Use will not generate any public school students and therefore will have no effect on the adequacy of local public schools. The Applicants have submitted a stormwater management concept plan that is under concurrent review with the present application.

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.***

Inherent adverse effects typically associated with a landscape contractor include:

1. Structures and outdoor areas for storing landscape materials and equipment.
2. On-site parking of commercial vehicles including trucks, trailers and loading equipment.
3. Parking spaces for employees.
4. Traffic generated by trips to and from the subject property.
5. Vehicular noise, including during loading and unloading of equipment and supplies.
6. Long hours of operation.
7. Supplies such as mulch that may produce odors or dust.

The proposed conditional use will have most of these characteristics, but none will be at a scale that makes them non-inherent adverse effects. The only characteristics of the proposed conditional use that may be considered non-inherent are the requested setback variances and the requested Alternative Compliance with regard to perimeter landscaping.

The present proposal includes two small storage sheds for equipment and one outdoor bin for wood chips, both modest features of the site and consistent with typical landscape contractor sites. The location of one shed 4.2 feet from the western property line may be considered a non-inherent characteristic. As explained in the submitted variance application, however, this feature will have no discernible adverse effects because the abutting property is occupied by a large, busy landscape contractor, and the area immediately abutting the shed in question serves as part of the neighboring business's plant nursery.

Up to 20 commercial vehicles, ten trailers and accompanying heavy equipment will be stored on-site. All commercial vehicles are types that are common for landscapers engaged in tree removal. The number of vehicles is consistent with a business of moderate size and inherent in the use. There is sufficient parking on site to accommodate all of the vehicles as well as employee parking, also an inherent feature of the use.

The business will generate vehicular trips to and from the Subject Property, including both employees arriving in the morning and leaving in the early evening in personal vehicles, and employees leaving the site in the morning and returning in the late afternoon in commercial vehicles. As noted in the submitted traffic statement, vehicular traffic will have a negligible effect on the surrounding road network. The noise from vehicular motors and movements may be noticeable to nearby neighbors, but with typical landscape contractor hours and enough room on site for vehicles to make u-turns, these impacts are consistent with and inherent in the use.

The Applicants are seeking variances to move the parking closer to the fence line on two sides to have enough room to access the wood chip bin and allow large trucks to turn around on site and head down the driveway in forward gear, rather having to back out onto Spencerville Road with reverse warning beeps activated. The driveway is in the middle of the site, a good distance from both abutting neighbors, providing the best form of noise reduction - distance. The total distance vehicles will traverse between the parking area and the street is approximately 170 feet, making each vehicle's trip along the driveway so brief that it will be over in less than 30 seconds.⁵ This combination of features is not only inherent in the use, but will have reduced adverse impacts compared to many landscape contractor sites where vehicles travel longer distances, sometimes while in reverse gear with warning beeps activated.

Treeman does not routinely install landscaping, nor does it store plants on site, so the amount of unloading and loading activity is likely more limited than at many landscaper sites. Treeman and its employees work long hours, but the amount of time they spend at the Subject Property is limited to an

⁵ The Applicants' transportation planner calculated that a large commercial vehicle traveling at 5 miles per hour would travers the 170-foot distance from parking to street in approximately 23 seconds.

hour or two in the morning and another two to three hours in the late afternoon/early evening. The site is quiet for much of the day. The proposed conditional use operates at full strength Monday through Thursday, half strength on Fridays and not at all on weekends (except for tree removal emergencies), another aspect of the business that is less intrusive than many landscapers, who often work at full strength six days a week. Treeman does not store products on site that tend to cause significant dust or odors, such as mulch. A single outdoor bin for wood chips is well within the scope of typical landscape contractor operations.

The proposed use will not cause undue harm to the neighborhood in any of the categories cited in Section 59.7.3.1.E.g. Residential and non-residential uses have co-existed in the surrounding neighborhood for many years. Arbor Landscapers, a much larger landscape contractor business generating more truck trips and with a vastly longer driveway for trucks to travel, has been at its current location since 1984. The 1997 Master Plan refers to the auto repair shops and restaurant across the street from the Subject Property as the Spencerville Commercial Area, which dates back to a general store from the late 19th century. While the appearance of the auto repair shop and small restaurant building is somewhat haphazard and run-down, the surrounding area more broadly has a well-kept, attractive appearance that suggests this rural, large-lot area is not affected adversely by the variety of non-residential uses dotting the neighborhood. The proposed conditional use will blend in well with the current mix of uses. Moreover, all parking and business operations will take place in the Commercial Area at the rear of the site, surrounded by a fence and landscaping designed for maximum screening and not readily visible from the road.

On two sides, the Commercial Area will be visible only from the portions of Arbor Landscaping that abut the Subject Property: to the west, Arbor Landscaping's entrance drive and some of its nursery plantings, and to the north, a small greenhouse and outbuildings housing commercial activities. As a similar use conducted on a much larger scale, Arbor Landscaping is unlikely to be affected by the Applicant's modest operations.

As noted earlier, any view of the Applicant's business operations from the neighboring home to the east will be distant and obscured by landscaping and a fence. Noise impacts will be limited to the

sound of passenger vehicles and larger commercial vehicles making trips to and from the site in the morning and in the late afternoon/early evening, as well as human voices. Vehicular activity on site during loading and unloading will be more modest than is typical for a landscape contractor due to the nature of Treeman's work. With the Alternative Compliance requested, perimeter screening will maximize benefit to the abutting home while preserving an open expanse of lawn in front, consistent with other properties along this stretch of Spencerville Road. Parking will be contained in the Commercial Area, and vehicular traffic will have a negligible effect on the surrounding road network. No noticeable odor, dust or illumination is anticipated, nor will the limited activity on-site create any undue risks to the health, safety and welfare of neighbors, visitors or employees.

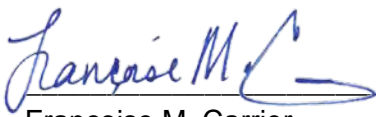
Conclusion

The combination of inherent and non-inherent characteristics associated with the proposed landscape contractor will not have adverse effects sufficient to justify denial of the conditional use. The proposed use satisfies all findings required under the Zoning Code with the exception of the requested variances and Alternative Compliance, all of which are fully justified. The Applicant will maintain the site's residential appearance and generous landscaping, and will keep all business operations in the rear portion of the site, fenced and screened by the house, canopy trees and evergreens. On-site activity will be limited in scale, duration, and neighborhood impact.

This submission is intended to satisfy Code requirements and the Hearing Examiner's submission standards for conditional use applications. If amended or supplemental information becomes necessary to support the present application, the Applicant will make a supplemental submission in a timely fashion.

Respectfully submitted,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: 
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