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VIA ELECTRONIC AND U.S. MAIL DELIVERY

John Pentecost, Chair
Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850

Re: Petition for Variance – 6412 Damascus Road, Gaithersburg, Maryland (the "Property")

Dear Chair Pentecost and Members of the Board:

Our firm represents American Lawn and Landscape, Inc. through Jeffrey K. Juneau (the "Petitioner," or "ALL"), in connection with the above-referenced Property. Mr. Juneau and his spouse, Stephanie J. Juneau, own the Property in fee simple as tenants by the entirety. The Property is subject to a pending Conditional Use application for a landscape contractor use, Case No. CU 24-10, which is described in more detail in Section I below (the "Proposed Conditional Use").

On behalf of the Petitioner, we respectfully submit this request for approval of certain variances from the 50' setback that otherwise will apply to the landscape contractor use under Section 59-3.5.5.B of the Montgomery County Zoning Ordinance ("Zoning Ordinance"), should the Proposed Conditional Use be approved (the "Petition"). More specifically, the Petition seeks variance relief for an existing outbuilding and a portion of an existing gravel parking area on the western side of the Property (collectively, the "Improvements"). The Improvements have existed on-site for many years in their present location, within the potential conditional use setback.¹ However, the Montgomery County Department of Permitting Services ("MCDPS") will require approval of the variances described herein in order for the Petitioner to utilize the Improvements for landscape contractor purposes, should the Proposed Conditional Use be approved.

The Board of Appeals (the "Board") has jurisdiction to grant the variance relief requested herein pursuant to Section 59-7.3.2 of the Montgomery County Zoning Ordinance ("Zoning Ordinance"). However, because the Petition is being submitted for contemporaneous review with the Proposed Conditional Use, the Petitioner respectfully requests that the Board refer the subject Petition to the

¹ The Petitioner obtained a building permit for the existing outbuilding in 1998.

Office of Zoning and Administrative Hearings ("OZAH") for a consolidated hearing under Rule 1.6 of the Board's Rules of Procedure (the "Board Rules"), and to waive the otherwise applicable variance application filing fee.²

I. Background & Existing Conditions

The Property consists of approximately 4.62 acres of land in the Agricultural Reserve (AR) area of Montgomery County, near Damascus. Plat No. 19212 (Exhibit C) (the "Record Plat"), recorded among the Land Records of Montgomery County, identifies the Property as Lot 2, Etchison Acres Subdivision. The Property is zoned AR and is subject to a Preliminary Plan of Subdivision ("Preliminary Plan No. 119892530") that the Montgomery County Planning Board ("Planning Board") approved in 1989.

As described in the materials submitted with the Proposed Conditional Use, ALL is a company formed by the Petitioner more than 30 years ago while he was in college. ALL builds on an earlier high school lawn mowing business of the Petitioner's, and has operated from the Property for more than 25 years. Prior to that, the Property was used for agricultural/tree nursery purposes.

For many years, including when the Petitioner initially started his business, landscape contractors did not require any special approvals for operating in what was then the Rural Density Transfer (now, AR) Zone, where the subject property is located. Any such uses existing as of 1985 were grandfathered. When the Petitioner purchased the subject property, he was unaware that the law had changed, and that his plans to operate his landscape contractor business there required a Conditional Use (formerly, a Special Exception).

Recently, the Petitioner was informed that his business requires a conditional use permit, even though it has been operating at the current site for 25 years. Initially, when the Petitioner was informed of the change in the law and the need for a conditional use permit, he filed an application with the MCDPS to certify the business as a non-conforming use, believing that his operation would be grandfathered. Subsequently, he learned that it would require a more formal application for conditional use approval. The purpose of the Proposed Conditional Use, to which the variances requested with this Petition pertain, is to correct this situation as quickly as possible so that Mr. Juneau can continue his business activities on-site.³

The Petitioner and his spouse live in the existing residential dwelling on the Property. The Property otherwise is improved with two outbuildings located in the rear yard, gravel driveways and parking areas, and other related improvements. Existing mature trees and other plantings located both on- and off-site serve to provide screening to the west and south of the Property, in the vicinity of the existing Improvements within the western conditional use setback. This

² Section 1.6.b.1 of the Board Rules states that, "[i]f an applicant files a variance application involving property for which the applicant has also filed a conditional use application with [OZAH], the Board may, on written request: (1) refer the variance(s) to [OZAH] in accordance with Section 7.6.2.B.2 to conduct a hearing a write a report and recommendation; and (2) waive the variance fee."

³ Because the Proposed Conditional Use seeks retroactive approval for a landscape contractor operation that has been in existence at the site for approximately 25 years, we note that it does not propose any operational changes to what already occurs on the property, nor does it propose any exterior physical changes or any additional buildings.

vegetation helps shield views into the rear yard from the immediately abutting lots, providing privacy.

The use of the Property, and the improvements located thereon, are characteristic of other properties located nearby and throughout the Agricultural Reserve, where farming operations occur through the use of barns and multiple outbuildings and include the use of various forms of machinery and other equipment.

II. Proposed Variances

As noted above, the specific Improvements that are subject to this Petition for variance relief include an existing outbuilding located in the southwestern portion of the Property, and a portion of the existing gravel parking area that is located to the rear of the residence. The gravel parking area extends along the western lot line for approximately 208' (*i.e.*, approximately 33% of the entire length of the lot line). The Improvements are located in the Property's rear yard.

Section 59-3.5.5.B of the Zoning Ordinance establishes the standards applicable to landscape contractor uses that are allowed as conditional uses. Among other things, Section 59-3.5.5.B requires "building and parking setbacks, including loading areas and other site operations" to be located "a minimum of 50' from any lot line." In this instance, as shown on the attached Variance Plan (Exhibit D), the existing Improvements are located within the 50' setback that will become applicable to the landscape contractor use upon approval of the Proposed Conditional Use. Thus, variance approval is needed to the extent that the Petitioner desires to utilize the Improvements for landscape contractor purposes.⁴ More specifically, the Improvements would require the following variances:

From the western lot line:

1. A maximum 47.3' variance from the minimum 50' conditional use setback requirement that otherwise would apply from the lot line to the existing outbuilding under Zoning Ordinance Section 59-3.5.5.B. The outbuilding is set back between 2.7' and 13.5' from the lot line.
2. A maximum 50' variance from the minimum 50' conditional use setback requirement that otherwise would apply from the lot line to the existing gravel parking area under Zoning Ordinance Section 59-3.5.5.B. The parking area is set back between 0' and 25.5' from the lot line.

From the southern lot line:

3. A maximum 16.3' variance from the minimum 50' conditional use setback requirement that otherwise would apply from the lot line to the existing outbuilding under Zoning

⁴ Because the Proposed Conditional Use utilizes existing conditions on the Property, the Petitioner has requested a letter from MCDPS to describe and confirm the required variances, in lieu of denied building permit (the "Confirmatory Letter"). However, the Confirmatory Letter remains in process at the time of this filing. The Petitioner will supplement the Petition with the Confirmatory Letter, after MCDPS has issued it.

Ordinance Section 59-3.5.5.B. The outbuilding is set back a minimum of 33.7' from the lot line.

4. A maximum 15.6' variance from the minimum 50' conditional use setback requirement that otherwise would apply from the lot line to the existing gravel parking area under Zoning Ordinance Section 59-3.5.5.B. The parking area is set back a minimum of 34.4' from the lot line.

Accordingly, the Petitioner is seeking variance relief from the above-described conditional use setback requirements to allow for utilization of the existing Improvements in connection with the Proposed Conditional Use. Should this Petition be denied, the Petitioner proposes to exclude those Improvements located within the 50' conditional use setback from any conditional use activities, and only to utilize them for functions related to the Petitioner's residence (given that the existing Improvements may be used for such purposes).

All other elements of the existing improvements on the Property satisfy the applicable setbacks for the Proposed Conditional Use.

III. Findings Required for Variance Approval

Section 59-7.3.2.E of the Zoning Ordinance provides that granting a variance may only authorize a use of land allowed by the underlying zone, and establishes the findings required for approval. Here, a landscape contractor use is permitted as a conditional use in the AR Zone, and the Petitioner has submitted the Proposed Conditional Use to OZAH for evaluation.

The Petition otherwise satisfies each of the applicable requirements for variance approval set forth below:

- A. *One or more of the following unusual or extraordinary situations or conditions exist (Section 59-7.3.2.E.2.a):*
- i. *Exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property (Section 59-7.3.2.E.2.a.i);*
 - ii. *The proposed development uses an existing legal nonconforming property or structure (Section 59-7.3.2.E.2.a.ii);*
 - iii. *The proposed development contains environmentally sensitive features or buffers (Section 59-7.3.2.E.2.a.iii);*
 - iv. *The proposed development contains a historically significant property or structure (Section 59-7.3.2.E.2.a.iv); or*
 - v. *The proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood (Section 59-7.3.2.E.2.a.v);*

The subject Petition satisfies at least two of the above criteria for existing unusual or extraordinary conditions on the Property. To the extent that the Petitioner desires to utilize the Improvements located within the 50' conditional use setback for landscape contractor purposes, the development proposes to use an existing legal nonconforming property or structure (Section 59-7.3.2.E.2.a.ii). More specifically, the Petitioner requests a variance to utilize the Improvements – including portions of an existing outbuilding for which MCDPS issued a building permit and a gravel parking area, which will become legally nonconforming with the conditional use setbacks upon approval of the Proposed Conditional Use – for landscape contractor purposes. The Improvements exist on the Property at the present time, and no changes are proposed in connection with the Proposed Conditional Use.

Allowing the existing Improvements in the conditional use setback to be utilized for landscape contractor purposes also substantially conforms with the established historic or traditional development pattern of the street or neighborhood (Section 59-7.3.2.E.2.a.v). Numerous properties within the immediate neighborhood and the general vicinity of the Property have accessory structures located in proximity to side and rear lot lines that are used for agricultural or similar purposes, as shown on the attached aerial photographs (Exhibit E). The existing Improvements are consistent with these properties and, with the requested variance, would be in keeping with the neighborhood's character and existing development pattern if utilized for the Petitioner's landscape contractor business in connection with the Proposed Conditional Use.

- B. *The special circumstances or conditions are not the result of actions by the applicant (Section 59-7.3.2.E.2.b);*

The unique circumstances and conditions on the Property that require variance relief are not the result of the Petitioner's actions. Rather, these circumstances result from applying the Zoning

Ordinance's standards for landscape contractor uses to the existing conditions on the Property, and only to the extent that the Petitioner seeks to utilize the Improvements for landscape contractor activities associated with the Proposed Conditional Use. The Improvements – which already exist on the Property and pre-date the Petitioner's application for the Proposed Conditional Use – otherwise are permitted to be utilized for residential purposes irrespective of the disposition of the Proposed Conditional Use application.

C. The requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on the Property (Section 59-7.3.2.E.2.c);

The requested variances are the minimum necessary to overcome the unique circumstances and conditions on the Property that full compliance with the conditional use setback would impose. The variances are based solely on the location of the Improvements (which are existing at this time), and no external changes are proposed. Without the requested variances, or with lesser variances, the Petitioner would not be able to utilize these existing Improvements for landscape contractor purposes associated with the Proposed Conditional Use. The variances, therefore, provide the minimum relief necessary to overcome the practical difficulties that arise from compliance with the Zoning Ordinance.

D. The variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan (Section 59-7.3.2.E.2.d); and

The Olney Master Plan (2005) provides no specific recommendations for the Property or for those around it, but allows agricultural activities and commercial activities that bear similarities to agricultural activities, such as landscape contractor uses. As noted above, the Improvements on the Property that are the subject of this Petition are characteristic of those found on other surrounding properties in the Agricultural Reserve. The Petition proposes to allow these Improvements to be utilized in connection with the Proposed Conditional Use, which will be in keeping with the character of the area as envisioned by the Master Plan and with the surrounding properties.

E. Granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties (Section 59-7.3.2.E.2.e).

The proposed construction will not adversely affect the use and enjoyment of abutting or confronting properties. The Improvements – which have existed for many years on the Property – are consistent with the character of the community, including the immediately abutting properties. The existing on- and off-site vegetation in the vicinity of the Improvements provides screening of views from the confronting properties. Thus, the utilization of the Improvements for conditional use purposes will not adversely affect the use and enjoyment of abutting or confronting properties.

IV. Conclusion

In addition to the materials referenced in the Letter, the following materials are also enclosed in support of this Petition:

1. Application form and sign fees (Exhibit A);
2. Certified copy of the official zoning vicinity map showing the area within a least 1,000 feet surrounding the Property (Exhibit B);
3. Record Plat (Exhibit C);
4. Variance Plan (Exhibit D);
5. Aerial photos of property and surrounding neighborhood (Exhibit E); and
6. A list of adjoining and confronting property owners within ½ mile of the Property, and civic and homeowner associations within ½ mile (Exhibit F).

As noted above, the Petitioner respectfully requests a waiver of the variance filing fee pursuant to Rule 1.6 of the Board's Rules of Procedure. The Petitioner already has paid the applicable filing for the pending Proposed Conditional Use.

In addition, as noted above, the Petitioner has requested a Confirmatory Letter from MCDPS to describe and confirm the required variances, which remains in process at this time. The Petitioner will supplement the Petition with the Confirmatory Letter, when it is available.

* * * *

For the reasons set forth above, we respectfully request that the Board refer the subject Petition to OZAH for consideration of the requested variance relief, in connection with consideration of the Proposed Conditional Use. We appreciate your attention to this request, and we look forward to reviewing the matter with OZAH at the time of hearing.

Very truly yours,



Christopher M. Ruhlen

Enclosures

cc: Mr. Jeffrey Juneau
Mr. Jim Witmer, P.E., P.S.
Mr. Mark Beall
Robert R. Harris, Esq.