

AMERICAN LAWN AND LANDSCAPE, INC.
STATEMENT OF JUSTIFICATION

American Lawn and Landscape, Inc., through Jeffrey K Juneau, seeks approval of a Conditional Use as a landscape contractor. The subject property is located at 6412 Damascus Road, in the Agricultural Reserve (AR) area of Montgomery County, near Damascus. The subject property consists of 4.62 acres. American Lawn and Landscape, Inc. ("ALL") is a company formed by Jeffrey Juneau more than 30 years ago while he was in college. It builds on an earlier high school lawn mowing business of Mr. Juneau's. It has operated from the existing property for more than 25 years. Prior to that, the subject property was used for agricultural/tree nursery purposes.

For many years, including when Mr. Juneau initially started his business, landscape contractors did not require any special approvals for operating in what was then the Rural Density Transfer Zone (now AR Zone) where the subject property is. Any such uses existing as of 1985 were grandfathered. When Mr. Juneau 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 (formally a Special Exception).

Recently, Mr. Juneau 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 Mr. Juneau was informed of the change in the law and the need for a Conditional Use Permit, he filed an application to certify it as a Non-Conforming Use, believing that his operation would be grandfathered. Subsequently, he learned that it would require a more formal application for

Exhibit 3
OZAH Case No: CU 24-10

Conditional Use. The purpose of this Application is to correct this situation as quickly as possible so that Mr. Juneau can continue his business.

OPERATIONS

Mr. Juneau and his wife live in the house on the property and he operates the business from there. The use of the property is characteristic of properties nearby and throughout the Agricultural Reserve where farming operations occur through the use of barns and multiple out buildings, and include the use of various forms of machinery and other equipment. In the 25 years of operations there, Mr. Juneau has always been sensitive to the interests of his neighbors.

The subject property is roughly rectangular in shape totaling 4.62 acres in size. The house on the property is on the front half, facing Damascus Road, and there are two existing outbuildings towards the rear of the property along with parking and maneuvering areas for the operations. No additional buildings are planned at this time.

In the morning, employees arrive at the site between 6:45 and 7:10 am and then depart as crews and work vehicles within short order. On a typical day, there are approximately 20 employees to visit the site. Their work is done off-site with evening arrivals back to the site occurring at various times in the afternoon. The company has a total of 12 work vehicles however, on a typical day, 9 vehicles are utilized.

No physical changes are anticipated to the property, either with respect to the grounds or to the buildings. Rather, the facilities have been used in the past for the same operations, and this application is only seeking conditional use approval to continue those operations.

Applicant is attaching an existing Conditions Plan that shows both natural and physical conditions on the property. Given that no changes are proposed, Applicant is not required to provide more detailed NRI/FSD plans forest conservation plans, or stormwater management concepts under Chapter 22–A and Chapter 19 of the Montgomery County Code.

The Application meets the specific requirements for Landscape Contractor Conditional Uses in Section 3.5.5 of the Zoning Ordinance. The subject property is a minimum of two acres in size. The number of motor vehicles and trailers for equipment and supplies is consistent with the size of the property and avoids any adverse impact on abutting uses. There is adequate parking for the total number of vehicles.

The subject Application also meets the general requirements of Section 7.3.1 regarding Conditional Uses. The Application satisfies the development standards of the AR zone. Given the overall composition of the subject property and neighboring properties, and the substantial setback of the buildings from Damascus Road, the operation also is compatible, as further confirmed by more than 25 years of operations. In the same respect, it is harmonious with and will not adversely affect the character of the surrounding area. The area is agricultural with farming operations, barns and outbuildings. The operation has been there for 25 years and does not increase the number, intensity or scope of conditional uses sufficiently to affect the area or

alter its agricultural character. The Damascus Master Plan (2006) provides no specific recommendations for this property or those around it, allowing both agricultural activities and commercial activities such as landscape contractors that bear similarities to agricultural operations. The operation has been served adequately by roads, utilities and other services including fire and police protection for the past 25 years. The attached Traffic Statement demonstrated that the number of employees (maximum of 24), company work vehicles (12), and arrival departure patterns do not adversely affect traffic in the area. Confirming the permissibility of the long standing use through approval of a Conditional Use Application will not change these circumstances.

Finally, the operation will not cause undue harm to the neighborhood as a result of any non-inherent adverse effects or the combination of an inherent and a non-inherent adverse effect with respect to use, peaceful enjoyment, economic value, development potential, traffic, noise, odors, dust, illumination or the health, safety and welfare of neighboring residents and visitors. In this respect, Applicant notes that Section 59.7.3.1 allows a more flexible evaluation of compatibility of an agricultural type conditional use with surrounding agricultural or rural residential zoned land compared to strict single-family areas.

Applicant will demonstrate that the application meets the requirements of the zone for a Conditional Use as a landscape contractor. Applicant (Jeffrey Juneau) will testify as will his engineer surveyor (Jim Witmer of JNM Engineering, LLC). Other witnesses may be called as necessary. The estimated time required for the presentation will be two hours.

ATTACHMENTS

Attachment A	Supplement to Statement of Justification
Attachment B	Existing Conditions Plan (including natural features)
Attachment C	Vicinity Plan
Attachment D	Property Context
Attachment E	Aerial Photo
Attachment F	Proof of Ownership
Attachment G	Adjoining & Confronting Property Owner List
Attachment H	Forest Conservation Exemption Application
Attachment I	Certified Zoning Map
Attachment J	Record Plat
Attachment K	Traffic Statement

CONDITIONAL USE APPLICATION OZAH NO. CU-_____
AMERICAN LAWN AND LANDSCAPE, INC.
6412 DAMASCUS ROAD, GAITHERSBURG, MD
SUPPLEMENT TO STATEMENT OF JUSTIFICATION

This Supplement amends the Statement of Justification initially submitted with this Conditional Use application (the “Petition”), in response to a written request for supplemental information received from staff of the Montgomery County Planning Department (“Planning Department”) on May 3, 2023. In responding, we note that this Petition is a bit different than most Conditional Use applications because it seeks retroactive approval for a landscape contractor operation that has been in existence at the site for approximately 25 years. Significantly, it does not propose any operational changes to what already occurs on the property, nor does it propose any exterior physical changes. As such, an Existing Conditions Plan replaces some typical submission materials in accordance with Section 7.3.1.B.2.k. of the Montgomery County Zoning Ordinance (“Zoning Ordinance”), which otherwise requires such materials if exterior changes are proposed in connection with the subject land use.

I. Plan Submissions.

Per Planning Department staff’s request, the petitioner – American Lawn and Landscape, Inc., through Jeffrey K. Juneau (the “Petitioner,” or “ALL”) – is submitting a revised Existing Conditions Plan that has been re-captioned as a “Conditional Use Existing Conditions Plan” (Attachment B). This includes a graphic scale and north arrow, and shows the existing conditions that also are the proposed features for the subject Conditional Use with the Petition.

Staff also asked for a landscaping plan, planting schedule and a lighting plan. However, the Petition does not contemplate any exterior changes, such as additional plantings or additional lighting beyond the long-standing existing conditions on the site. Section 7.3.1.B.2.k only calls for landscaping and lighting plans “if exterior changes are proposed....” As such, the Petitioner does not believe additional plans for lighting and landscaping are required.

II. Justification.

The Petitioner will provide testimony at the public hearing with respect to each of the necessary findings under section 59.7.3.1.E and Section 3.5.5.B. The Petitioner’s initial statement of justification summarizes these findings and the factual justifications for each of them. However additional information is provided below, pursuant to Planning Department staff’s request. More specifically, the proposed Conditional Use will satisfy the required findings for approval specified in Zoning Ordinance Section 7.3.1.E as follows:

Section 7.3.1.E.1.a. [The conditional use] satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

The above-referenced Section is not applicable to the subject Petition, as there are no previous approvals for the Property.

Section 7.3.1.E.1.b. [The conditional use] satisfies the requirements of the zone, use standards under Article 59-3, and applicable general requirements under Article 59-6;

The Petition demonstrates that the proposed Conditional Use will comply with the applicable requirements for Landscape Contractor uses in the Agricultural Reserve (“AR”) Zone, including the conditional use standards set forth in Article 59-3, the development standards set forth in Article 59-4, and the general development requirements set forth in Article 59-6. The Petitioner's Civil Engineer will be available to discuss such compliance at the time of public hearing. However, regarding the specific conditional use standards for Landscape Contractors set forth in Section 3.5.5.B, we note that each applicable standard will be met as follows:

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.

As required, the subject property is a minimum of 2 acres in size. More specifically, the total lot area of the property is approximately 4.62 acres.

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

Within the boundaries of the subject property, the Petitioner proposes to delineate an area within which activities related to the Conditional Use may occur, and within which buildings and parking areas available for Conditional Use purposes may be located. This area, as shown on the Conditional Use Existing Conditions Plan, is a minimum of 50 feet from any lot line, as required. To the extent that one of the existing garage structures and a portion of an existing gravel parking area on the western side of the Property encroach beyond this 50 foot Conditional Use setback line, the Petitioner proposes to exclude those improvements for any Conditional Use purposes, and only to utilize them for functions related to the Petitioner’s residence on the property.

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.

As noted in the Statement of Justification, there will be adequate parking for the twelve (12) work vehicles associated with the proposed Conditional Use within the designated Conditional Use setback line on the property, as well as for the personal vehicles of those employees who may drive to the location (rather than utilizing shuttle services). While the Petitioner acknowledges that

the Hearing Examiner may limit the number of motor vehicles and trailers operated in connection with the use or parked on site, the Petitioner respectfully submits that the longstanding use of the subject property for the Petitioner's business activities evidences that the use has been acceptable at this location in practice. Motor vehicles and equipment associated with the Petitioner's business have generally operated from the property without adverse impacts that would require a reduction in the number of permitted vehicles. (Notably, these vehicles access the property's driveway from Damascus Road (MD 650), which is a State road that is classified as a County arterial.)

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 sales of plant materials, garden supplies, or equipment are proposed with the subject Petition.

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

The Petitioner acknowledges that the Hearing Examiner may regulate the hours of operation and other on-site operations associated with the proposed use. However, the Petitioner submits that the longstanding use of the subject property demonstrates that the Petitioner's hours and other operational characteristics have been acceptable and not adverse to other uses.

Section 7.3.1.E.1.c. [The conditional use] substantially conforms with the recommendations of the applicable master plan;

The Statement of Justification explains that the Damascus Master Plan (2006) provides no specific recommendations for the subject property or for those around it, but allows agricultural activities and commercial activities that bear similarities to agricultural activities, such as landscape contractor uses. In this way, the Petition substantially conforms with the Master Plan. The Petitioner's civil engineer will be available at the hearing to present testimony regarding Master Plan compliance, and other witnesses may be called as necessary.

Section 7.3.1.E.1.d. [The conditional use] is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

As noted in the Statement of Justification, the area surrounding the property is agricultural in character, with farming operations, barns, and outbuildings being typical features in the vicinity. The proposed Conditional Use will be harmonious with, and not alter the character of, these features. Due to the circumstances described in the Statement, the existing landscape contractor operation has been located on the site for approximately 25 years and, therefore, is already part

of the character of the surrounding area. No changes are proposed with the Petition that would further affect the area or alter its agricultural character. At hearing, the Petitioner's civil engineer will address the compatibility of the Conditional Use for the location, and the Petitioner will testify as to its operational characteristics.

Section 7.3.1.E.1.e. [The conditional use] 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;

As noted above, the proposed Conditional Use substantially conforms with the Master Plan and does not propose any changes that would increase the number, intensity, or scope of operations to affect the area adversely. No neighboring Residential Detached zones are located in proximity to the subject property, and the area is characterized by a mixture of agricultural and residential uses rather than being predominantly residential.

Section 7.3.1.E.1.f. [The conditional use] 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.

The Statement of Justification notes that the existing operations have been served adequately by roads, utilities, and other services including fire protection for the past 25 years. A Traffic Statement has been submitted for the record with the Petition, for the purpose of demonstrating that traffic resulting from the Conditional Use will generate less than 50 peak hour person trips and thus does not require a full Local Area Transportation Review transportation impact study. The Traffic Statement notes that the number of vehicular trips generated by the site during the AM and PM peak hours is negligible. The Petitioner's Traffic Engineer and Civil Engineer will be available at the time of hearing to address any preliminary questions concerning the adequacy of public facilities for the Conditional Use.

With respect to water and sanitary sewer facilities, the subject property is served by a well and septic disposal system. The Montgomery County Department of Permitting Services ("MCDPS") approved revisions to the septic reserve area for this system on March 23, 2023, pursuant to Sewage Disposal Permit No. 1022601. The well and septic system serves both the

existing residential dwelling and the landscape contractor business, which will remain with the proposed Conditional Use.

Section 7.3.1.E.1.g. [The conditional use] 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.

Zoning Ordinance Section 7.3.E.1.g requires OZAH, in connection with approval of a Conditional Use, to evaluate the inherent and non-inherent adverse effects of the proposed use. Inherent adverse effects are defined as adverse effects created by the physical or operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. OZAH has previously confirmed that inherent adverse effects alone are not a sufficient basis for denial of a Conditional Use. Non-inherent adverse effects are adverse effects that arise from the physical and operational characteristics not necessarily associated with the particular use, or adverse effects that are created by unusual characteristics of the site.

OZAH has previously identified the inherent effects of a landscape contractor business in prior conditional use cases as follows:

- (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 supplies; 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 business; and
- (7) Hours of operation.

The Petitioner respectfully submits that the proposed Conditional Use will not result in adverse effects over and above these inherent impacts, as evidenced by the longstanding, approximately 25-year operation of the use. Furthermore, the Petitioner does not believe there are any non-

inherent effects associated with its proposed operations. Rather, the proposal is typical for a landscape contractor business in an area like this. The Petitioner and its experts will be prepared to discuss this position in more detail at the time of hearing.

Attachment B