

**BEFORE THE HEARING EXAMINDER FOR MONTGOMERY COUNTY, MARYLAND**

Office of Zoning and Administrative Hearings  
Stella Werner Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850

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IN THE MATTER OF:

**American Lawn and Landscape, Inc.**

**Submission of Oscar Lyles, in Opposition**

By: Elizabeth J. McInturff, Esq.

Counsel for Oscar Lyles

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**CU Application: 24-10**

**PRE-HEARING STATEMENT IN OPPOSITION**

In accordance with Rule 3.5 of the Rules of Procedure for Conditional Use Cases, Oscar Lyles, submits this Pre-Hearing Statement in connection with his request the Conditional Use Permit for the real property at 6412 Damascus Road, Gaithersburg Maryland, at Conditional Use Application 24-10, be denied or, alternatively, permitted but only provided that certain remedial steps as outlined herein and in testimony be mandated.

**I. Statement of Grounds in Opposition for Approving the Application**

This matter concerns the real property located at 6412 Damascus Road, Gaithersburg Maryland (the “Property”) and the direct negative impact that it is causing to the surrounding residential homes.

The Property was built in 1996 a single-family home with attached garage in a rural, residential neighborhood. See attached historical photo summary, at Attachment A, and as excerpted below, evidencing aerial photos from 1993 and 1998 respectively.



The Property is surrounded by single-family residential homes. The neighborhood, including the Property, is zoned AR. Generational family homes exist throughout this area. The neighborhood was designed in line with both the then and the current County Plan's to preserve residential, farmland and rural open space.

Mr. Lyles and his family have resided in one such generational family home since the 1970s at 6340 Damascus Road, Gaithersburg ("Impacted Property"). Mr. Lyles aunt has been living on Damascus Road since the 1960. Both these properties neighbor the Property.

The Applicant has significantly changed the character of his residential Property since obtaining ownership. By way of example, Applicant has created and extended a drive-way, created a parking lot for utility vehicles, constructed and extended several new commercial buildings on the Property, constructed a shed, constructed swells in front of the buildings to direct water from his buildings to the Impacted Property, among others, and begun using the Property was commercial, not residential use, which has increased traffic, noise, and other pollutants, and has done so in a property not zoned for commercial use and without all requisite permits or setbacks.



As shown, the constructions are large commercial constructions, with multiple bay doors, not a simple shed as it is likened to in the Report and as held out to be by Applicant. This is significantly different and alters the neighborhood. Mr. Lyles estimates that Applicant's construction includes incremental filling of approximately 11,000 square feet of hard surface and

4,000 square feet of new buildings. These buildings adjoin the Impacted Property. No storm water management was performed when these constructions occurred. See also photos attached as Attachment B.

The Applicant's commercial use of 6412 Damascus Road is causing undue harm as a result of inherent and non-inherent effects on the use, peaceful enjoyment, and value to the Impacted Property, among other neighboring properties, in addition to the increased traffic, noise, odors, dust, and health and safety concerns. By way of further example:

**A. Damaging Water Run-Off**

One of the more severe harms to the Impacted Property is water damage arising from the Property. At the time of construction, the Property was built on top of sloped land surrounded by sod fields with old growth trees. At the time, and because Applicant had not yet begun his construction and modifications to the Property, the environment was able to handle natural water runoff.

Applicant has since constructed concrete swells both in front and behind his commercial buildings. These man-made swells unnaturally divert the water to the adjacent properties, including the Impacted Property. The water drainage to the Impacted Property is magnified by drains that Applicant has dumping onto the swells.

This has caused the old growth trees to experience root rot and fall, in addition to forming extreme mosquito pools. The mosquito population has significantly increased such that Mr. Lyles is not able to use the Impacted Property. Draining fields and basements have flooded. This is affecting all neighbors within the vicinity. See e.g., Attachment B.

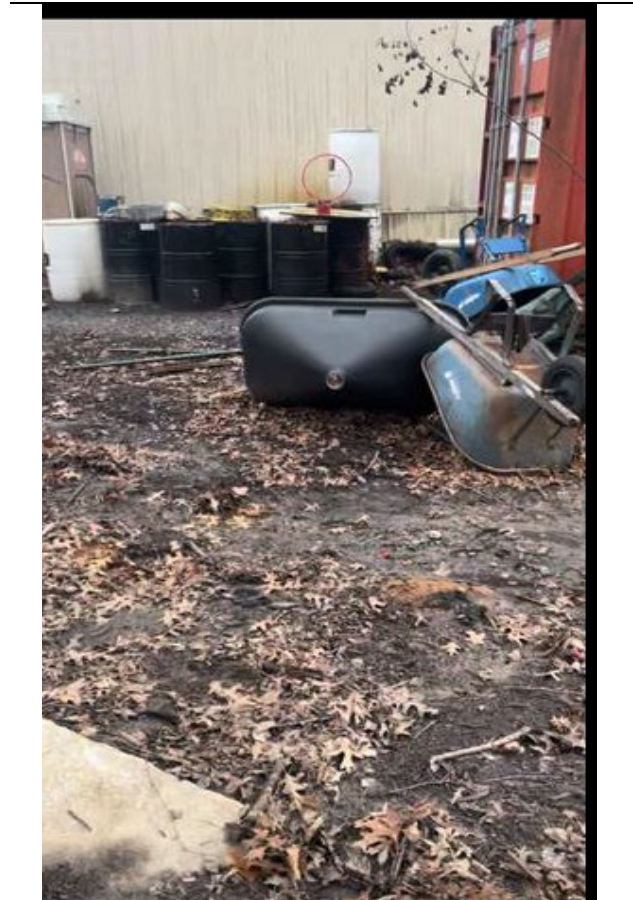


This never occurred until Applicant built the swells and constructed the commercial buildings on the Property.

Applicant is seeking a variance for his gravel setback. This is where he has a swell that is diverting the water 15 feet from the Property line. As shown in the photos and videos, this is unduly harming the neighbors.

Even if Applicant provides the pond system as noted in his supplemental filing, the water runoff issue will not be remedied because it does not capture the water from the manmade swells that is diverting the water to the Impacted Property and other adjoining properties.

Mr. Lyles is additionally concerned that pollutant discharge is in the runoff water and may also be affecting his well water. He has thus been unable to use it. For example, Applicant has had at least two fuel tanks sitting on the ground for upwards of 10+ years, and commercial vehicles and landscaping equipment are being washed off without a water containing system to contain the polluted/contaminated water.



See Attachment B.

## **B. Traffic and Noise Concerns**

While the site is zoned in the R-200 zone in which a landscape contractor is permitted by conditional use, Applicant uses the Property to operate a heavy-duty commercial operation, with space for at least 24 vehicles. There are multiple trucks and vehicles there throughout the day, dozens of trips generated, two-dozen people, staging heavy-duty supplies and equipment, pallets of salt, diesel fuel tanks, chemical tanks, trash storage, and oil barrels.

To access the Property, Applicant and his employees utilize a shared drive-way with immediate neighbors. Applicant's commercial use of the Property has significantly increased the traffic on the shared driveway.

The neighbors' peaceful enjoyment and property value have all been negatively impacted as a result, in addition to the increased traffic, noise, odors, dust, and health and safety concerns. Mr. Lyles has experienced the negative effects of the increased traffic and noise due to Applicant's commercial use of the property. He has multiple trucks going in and out all day, beginning from very early in the morning. He lets the trucks run when he's not using them, which causes noise and a smell of diesel permeating the properties.



See [Attachment B](#).

### C. Additional Concerns

Mr. Lyles has witnessed 20-30 people at the property at one time. While Applicant states that there is an indoor bathroom for employees to use, they're more often using a port-a-potty visible to the neighbors and often nothing – he has witnessed Applicant's employees urinating on the lawn throughout the day. The police have been notified and other neighbors have contacted the Applicant upset because his children were being exposed to this lewd and unsanitary conditions.



Moreover, as shown, there is no real barrier, natural or otherwise, to hide any of the commercial buildings or uses from view or reduce noise. This alters and adversely affects the residential character of the neighborhood.



In addition to Mr. Lyles' is gravely concerned that Applicant will use a Conditional Permit as a pushing off point to continue to expand his operation and force his large commercial business in a quiet country residential neighborhood.

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Mr. Lyles reserves the right to timely supplement if he deems it appropriate and necessary.

## **II. Copies of Reports**

Mr. Lyles reserves the right to call any of the expert witnesses identified in the Applicant's Pre-Hearing Statement and supplement thereto, and/or previously submitted into the record. He further reserves the right to introduce any additional reports if he deems it appropriate and necessary and will timely supplement the same.

## **III. Experts who will testify**

Mr. Lyles reserves the right to call any of the expert witnesses identified in the Applicant's Pre-Hearing Statement and supplement thereto, and further reserves the right to call any additional expert witnesses if he deems it appropriate and necessary and he will timely supplement the same.

## **IV. Others who will testify**

In addition to Mr. Lyles, he anticipates that Tracy Horn will testify in opposition. He may also call Kelley Schools.

Mr. Lyles reserves the right to call any witness identified in the Applicant's Pre-Hearing Statement and supplement thereto, any other person who appears at the Hearing to testify, and further reserves the right to call any additional witnesses if he deems it appropriate and necessary and he will timely supplement the same.

## **V. Estimated Time Required for Presentation**

Mr. Lyles estimates that his opposition will take approximately 1.5 – 2 hours.

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This Pre-Hearing Statement is intended to satisfy the requirements of the Rules of Procedures for Conditional Use Cases. If Mr. Lyles subsequently determines that new or supplemental information is necessary, he will make a timely supplemental and/or amended submission.

[Signature Follows]

Respectfully Submitted,

**Selzer Gurvitch Rabin Wertheimer  
& Polott, P.C.**



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Elizabeth J. McInturff, Esquire

*Counsel for Oscar Lyles*


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of April 2024, a copy of the foregoing was emailed and mailed to:

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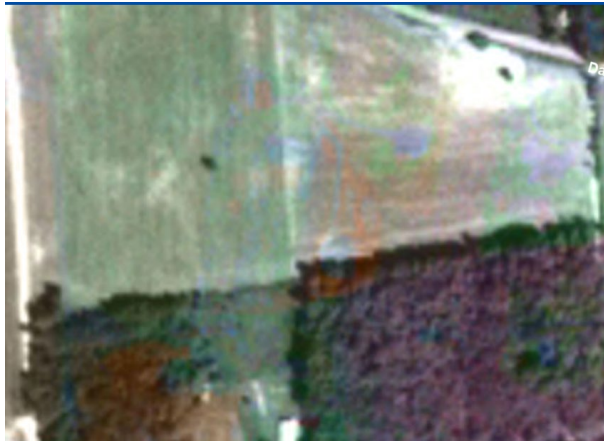
Elizabeth J. McInturff, Esquire



# EXHIBIT A

6340, 6404, 6412 Damascus Rd, Gaithersburg

1970



1979



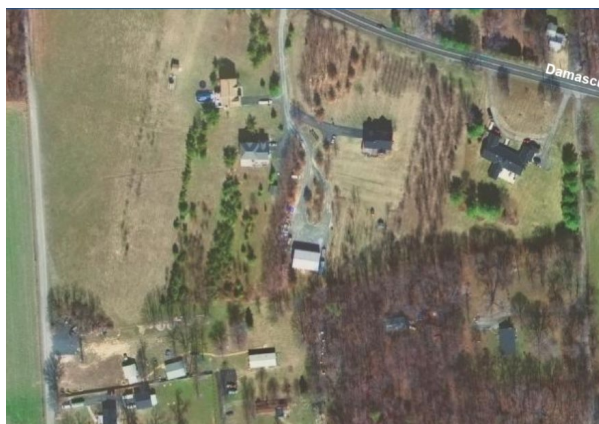
1993



1998



2002



2004



# EXHIBIT A

2008



2012



2012



2014



2015



2017



# EXHIBIT A

2019



2020



2021



Current



# EXHIBIT A

Current with property and contour lines



# EXHIBIT B



# EXHIBIT B



# EXHIBIT B



# EXHIBIT B





# EXHIBIT B



# EXHIBIT B



# EXHIBIT B



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