

November 27, 2021

Montgomery County Maryland Council
Council Office Building
100 Maryland Avenue
4th Floor
Rockville, Maryland 20850

Re: ZTA 21-08, Landscape Contractor - Use Standards

Dear Council Members,

Please review and accept the following opposition to Zoning Text Amendment (ZTA) 21-08, Landscape Contractor – Use Standards. The intent of the amendment to create a less cost-prohibitive process as well as relax limits at the expense of the safety, health, peace and enjoyment of county residents in residential zones is negligent.

While the intent of landscape contracting activity is to enhance the appearance or usefulness of outdoor areas, locating such businesses with residential communities largely detracts from their purpose. Further, many areas within the county must remain protected from the intrusion of development, including commercial landscaping businesses. Commercial landscaping operations are industrial enterprises that should be located in industrial zones.

Rather than creating pathways for landscape contractors to intrude on neighborhoods, the Council should strengthen the Conditional Use standards/necessary findings:

- No previous use approvals on applicable property
- Satisfies requirements on the zone to ensure compatibility
- Substantially conforms with recommendation of the applicable master plan
- Is harmonious with and will not alter the character of the surrounding neighborhood
- Use will be served by adequate public services and facilities
- Will not cause undue harm to the neighborhood as a result of non-inherent adverse effect alone, or the combination of an inherent and a non-inherent adverse effect

I urge the Council to particularly focus on the combination of inherent and non-inherent adverse effects landscape contractors in particular present to residential communities with respect to the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood, in addition to traffic, noise and odors. Most importantly, the health, safety and welfare of neighboring residents and visitors must receive extreme consideration in the decision making process.

Case In Point

CU-1904 and A-6575, FM Group, Inc., d/b/a Francisco Landscaping is a case that clearly supports opposition to Text Amendment ZTA 21-8. The applicant operated an illegal landscaping company without conditional use approval for several years. Business growth was insidious; the conditional use application finally submitted in September of 2018. Although FM Group, Inc., Francisco Landscaping had been in operation for 30 years, the applicants alleged lack of understanding land ownership/land use, as well as hearsay as reasons to ignore the law. In August 2004, the county responded to a complaint regarding an oversized commercial vehicle parked at the residence of the owner of Francisco Landscaping at 240 Randolph Road. The truck was promptly removed.

During the ensuing months and years, members of the community worked hard and spent considerable personal funding to present argument against CU-1904 before the County Park & Planning Board, OZAH, Board of Appeals as well as District Court (Case 3Z40953265).

CU-1904 brought to light unusual characteristics and in this case width and description of the road, as well as non-inherent physical and operational characteristics that should make any RE2(C) zone request impermissible for a landscape contracting operation.

The applicant (and subsequently the Park and Planning Board and Staff), provided false and misleading information. Factual documentation, video, testimony and over 100 pictures captured the inaccurate and downright spurious information presented by the applicant:

The focus of this case and subsequent denial of the conditional use centered on the following:

1. Description of the road. **Contrary to the application, including staff reports and google maps, residents provided legal plats confirming 14' width of the road. Photographs showed there was no clear site distance between the entrance of the applicant's property to the intersection of Norwood and Holly Grove Roads, that the road sharply declines at the intersection of Holly Grove Road and Awkard Lane and that there were no pull-off areas and shoulders. Interestingly, while the aerial photographs included in the CU application did not depict the steep hill at the intersection of Holly Grove and Awkard, the photographs shot through the years clearly showed how narrow the road in fact is.**
2. Technical staff noted repeated site visits noting very little, if any pedestrian movement along Holly Grove Road west of Norwood Road; there is only one middle school student taking a school bus stop west of the intersection of Norwood and Holly Grove Road. **The applicant's transportation expert, Shahriar Etemadi testified during OZAH that he visited the neighborhood twice – once in the summer and once in the fall. There is in fact significant traffic on Norwood Road. 2014 County traffic mobility assessment indicated the intersection of Ednor and Norwood Roads as one of the most congested in the county during peak hours. Traffic heading from New Hampshire Avenue to nearby Blake High School and beyond is equally significant. Video and**

photographs provided by opposing neighbors depicted significant pedestrian use of Holly Grove Road, including school children who board the school bus at the intersection of Holly Grove and Norwood Roads, and there is a school bus that enters Holly Grove Road to transport a special needs child. Staff failed to account for growing families in the Holly Grove Community. Currently there are several children in the neighborhood in addition to youth from nearby Stonegate community who walk to Blake High School via Holly Grove Road.

3. Applicants described Holly Grove Road as doglegging around the site and fronts the property both to the south and the west. County maintenance of the road ends before the road (private right of way) bends.
4. Applicant indicated hours of operation would be from 6:00 a.m. until 7:00 p.m. Monday through Friday, that field staff would depart at 7:00 a.m. and is off site until end of the work day. During busiest times of the year (March-early December) applicant would operate on Saturday's from 7:00 a.m. until 5:00 p.m.) Applicant noted there would be little activity on-site during most of the day (with the exception of snow removal). Fact is that Francisco Landscaping operated on site from 6:00 a.m. until well after 7:00 p.m. The day began with loading mulch before sunrise via loaders (Bobcats). Trucks returned to the site throughout the day. Applicants failed to note that mulch would be delivered multiple times per week via tractor trailer. Following the September 19,2019 District Court imposed abatement order, Francisco Landscaping continued to operate throughout the day through fall 2020 and has been operating since spring 2021. Applicants failed to acknowledge the working relationship with relative Teofilo Romero (Argueta) who owns Aldeberto Landscaping and was also operating illegally out of 15400 Holly Grove Road.
5. Applicant indicated they will deploy 10 trucks, 6 trailers, 1 chipper and 2 Bobcats. Applicant failed to note multi-week tractor trailer deliveries – the justification for 30 parking spaces implied intention to continue growing the business operation.
6. Application referenced site surrounded by undeveloped, unimproved wooded property to the north. The property drains into the Johnson Road stream watershed which is already above the impervious values recommended by the State. Photographs depict Francisco operations encroaching on the forested area. Video showed Francisco trucks dumping yard debris on the same wooded property.

Escalating Concern

Notwithstanding the fact the author could provide extensive additional details concerning CU 2019-04, the issues and implications related to ZTA 21-08 correlate to the problems the community encountered and continue to experience with respect to the operation of Francisco Landscaping in the residential neighborhood. How is the county equipped to monitor and control the proliferation of landscaping businesses concentrated in certain areas?

County checks and balances fail to address real time monitoring of conditional use approvals. While the county permitted Francisco Landscaping to continue to operate illegally through the OZAH, appeal and

District Court processes, the burden of accountability was left to members of the community. The county proposed no mechanism to address evidence of speeding landscaping vehicles and private vehicles of Francisco employees. The county proposed no mechanism to account for frequent daily operation (including Sunday) in and out of the neighborhood. The county proposed no mechanism to monitor size and weight of vehicles entering the residential neighborhood for the purposes of conducting a landscape contractor operation. The county proposed no mechanism to monitor the number of employee vehicles entering the neighborhood.

The county failed to address air quality concerns with respect to the increased number of vehicles/machines emitting gasoline and diesel fuel emissions. The county failed to address proximity of on site operations to neighboring homes. The subject site is a trapezoid quadrilateral; widest portion of the property is situated furthest from the majority of abutting properties. There was no discussion on the impact of combustible mulch storage or methane emission and impacts on the air residents breathe while enjoying outdoors or daring to open a window on a nice day.

Of particular concern in this case was the proximity to the Johnson Road sub watershed (Northwest Branch tributary), level of imperviousness impacts as well as air pollution impacts on the tree canopy. The applicant offered to widen Holly Grove Road, hence increase the imperviousness levels of a neighborhood increasingly impacted by flooding and forever alter the character of our historic neighborhood to mitigate the threat their operation posed with respect to safe use of the road. How does the county expect residents to reduce carbon emission, walk/bike-share more in our communities if commercial businesses are permitted to exist in residential neighborhoods?

The county offered no solution or method of monitoring the noise created by loading and unloading landscaping materials and equipment, not to mention the noise created by large trucks traversing in and out of neighborhoods throughout the day. How does operating a bobcat before dawn equate to peaceful enjoyment of a single family residential neighborhood? How does the noise and stench of warming up large diesel vehicles on a cold morning equate to the peaceful and healthful quality of life in a single family residential neighborhood?

Existing landscaping companies are located on dual lane roadways not narrow roads consistent with many residential communities in the county.

Park and Planning staff cited lack of serious vehicular accidents on Holly Grove Road as support for CU 19-04. Does someone have to suffer a catastrophic injury or die before officials recognize the dangers increased traffic poses in residential communities? Ironically, on March 17, 2020 someone drove into the telephone pole adjacent to my driveway, knocking it and power lines attached to my home down. There were three fires in the Holly Grove community in 2020 as well.

No evidence that CU 19-04 was consistent with the applicable Master Plan or was harmonious with nor altered the character of the surrounding community was ever presented by the Applicant or Park and Planning Staff.

Where We Live

The December 9, 2006 *Washington Post* “Where We Live” article featured historic Holly Grove Road, home to many descendants of seven freed slaves who settled there in the 1880’s. The article describes land lovers in Cloverly breathing free, environmental protections that derailed the northern alignment of the ICC. Holly Grove, like Cloverly has become ethnically and economically diverse where an infusion of culture is appreciated.

April 13, 2009 “Where We Live” featured the “pastoral setting” of Quaint Acres, a nearby residential community located off New Hampshire Avenue that extends to the Northwest Branch trail. Residents described enjoyment of the surroundings while walking their dogs and noticing fawn running with sheet abandonment.

“Where We Live” May 15, 2021 features Whetstone Montgomery Village, a community described by abundant green space, winding streets shaded by oaks and dogwoods – a neighborhood haven for kids where children play on private roads, free from heavy traffic. Imagine a landscaping company acquiring two acres in Whetstone?

June 26, 2021 “Where We Live” featured the tutors that reign off Woodhaven Boulevard in Bethesda. The article describes the intentional integration of the landscape and homes by the developer. When a homeowner tried to plan a McMansion, the community appealed to the Planning Board and won the case.

Single family residential communities exist throughout Montgomery County. The welfare, health and safety of the county’s residents should be of paramount importance as opposed to the interests of commercial businesses. While the width of the road became the predominant decision factor concerning conditional use case 19-04, the safety of pedestrians including school children walking to the school bus stop, air quality, noise impacts, environmental impacts, increased vehicular traffic warrant the same level of consideration. Text Amendment ZTA 21-08 completely invalidates the needs of tax paying citizens, dramatically alters the character of detached residential zones,

ZTA 21-08 offers environmental impact clause or protection of precious natural resources such as forests, wetlands, watershed protected areas. ZTA 21-08 does not address acceptable impervious limits and resulting flooding in residential communities. ZTA 21-08 does not reflect future development in communities that responds to the unique character of communities such as those described in the “Where We Live” *Washington Post* feature articles.

ZTA 21-08 offers no remedy in such cases as a Landscape Contractor operates as surreptitiously as Francisco Landscaping operates in the Holly Grove Community in Cloverly. Screening standards do not effectively control dust, noise and other impacts on neighboring residents. The 2 acre minimum lot area that would accommodate 6 commercial and 20 motor vehicles, equipment and storage units exacerbates noise and pollution concerns.

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Mirror to mirror width of standard and large trucks Francisco Landscaping reported was 9 feet in most cases. The width of those vehicles combined with attached 8' to 8 1/2' trailers are too large for any residential community. Narrow residential roads and streets often have incline/decline areas and bends. Such roads and streets are not designed to accommodate constant and frequent commercial traffic consistent with landscape contractors.

The owners of Francisco Landscaping do not live nor have they ever resided in the community where they illegally conducted their business operations. ZTA 21-08 encourages the use of communities as industrial parking lots rather than as intended as places where families live and play.

ZTA 21-08 does not address hours of operation, number of trips, traffic impacts in residential communities. ZTA 21-08 does not address storage of combustible materials that also release methane such as mulch. The provision of 50' set backs alters the character of residential neighborhoods. ZTA 21-08 does not effectively address fire protection, or septic system to accommodate employees.

ZTA 21-08 negatively impacts property values in residential communities.

In a letter I wrote to Park and Planning Board Chair, Mr. Casey Anderson, in opposition to CU 19-04, I reminded him of his response to a 2018 accident at Kennedy High School where he said, "county residents deserve to be safe on our roads, sidewalks and trails. Park and Planning is committed to prioritizing human lives."

In closing, I ask the County Council to prioritize its residents as we deserve to be safe in our neighborhoods. Please deny ZTA 21-08 and strengthen the Conditional Use process in Montgomery County.

Attached is a video of Francisco Landscaping vehicles featuring how they frequently traversed my neighborhood. Who deserves that level of intrusion?

Thank you for your consideration.

Patricia Thomas

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cc: April 2020 video

