

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF NATURAL SURROUNDINGS, : Case Nos. S-2715/S-2716
INC. BY GEORGE J. ROCHE : OZAH Nos. 814 and 815
:
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A hearing in the above-entitled matter was held on July 11, 2014, commencing at 9:41 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

James L. Parsons, Junior, Esq.

Lynott, Lynott & Parsons

11 North Washington Street

Rockville, Maryland 20850

P R O C E E D I N G S

1 MS. ROBESON: Petition of Natural Surroundings,
2 Inc. and George J. Roche, BOA Case Numbers 2715 and 271, S-
3 2715 and 2716, OZAH Case Numbers 814 and 815, an application
4 for a special exception, two special exceptions to allow a
5 landscape contractor and wholesale nursery on property
6 located at 26500 Howard Chapel Drive in Damascus, Maryland
7 on land in the RC Zone, also described as Parcel 285, Tax
8 Map FX53 Owens conclusion.

10 This hearing is conducted on behalf of the Board
11 of Appeals. My name is Lynn Robeson. I am the hearing
12 examiner which means that I will be listening to the
13 testimony taking all the evidence and I'll write a written
14 recommendation to the Board who will make the final decision
15 in the case. Would the parties identify themselves for the
16 record?

17 MR. PARSONS: Thank you. James Parsons on behalf
18 of the applicant, Natural Surroundings and George J. Roche,
19 and seated with me at the table is the applicant George J.
20 Roche.

21 MS. ROBESON: Okay.

22 MR. PARSONS: We have Mr. Glenn Cook, our traffic
23 engineer.

24 MS. ROBESON: All right.

25 MR. PARSONS: And Brian Donnelly, our landscape

C O N T E N T S

Witnesses: Direct Cross Redirect Recross

George J. Roche
By Mr. Parsons: 12

Glenn Cook
By Mr. Parsons: 38

Brian Donnelly
By Mr. Parsons: 50

E X H I B I T S

Exhibit No. Marked/Received

Table with 3 columns: Exhibit No., Description, Marked/Received. Rows include: 1-58 Previously Identified Previously Marked/64, 59 Affidavit of Posting 6/64, 60 Revised Special Exception Plans 12/64, 60A CD of Revised Special Exception Plans 12/64, 61 Technical Staff PowerPoint 14/17, 62 Final Special Exception Site Plans 38/64, 63 Updated Resume for Glenn Cook 39/64

1 architect site planner.

2 MS. ROBESON: Okay.

3 MR. PARSONS: And Mr. Roche's wife and father-in-
4 law are also, but they won't be testifying though they're
5 here.

6 MS. ROBESON: Okay. So I wasn't sure. So there's
7 no one here in opposition, is that correct?

8 MR. PARSONS: As far we know. As far as we know,
9 that's correct.

10 MS. ROBESON: Okay. Well, I see none so we're
11 going to proceed. Do you have the Affidavit of Posting?

12 MR. PARSONS: It was submitted this morning.

13 UNIDENTIFIED SPEAKER: Ellen has it.

14 MS. ROBESON: Okay. All right. Well, I'm going
15 to make that, she probably added it, I'm going to make that
16 Exhibit 58, or 59. I'm sorry.

17 MR. PARSONS: Yes?

18 MS. ROBESON: Yes.

(Exhibit No. 59 was marked for
identification.)

21 MS. ROBESON: All right. Mr. Parsons, do you have
22 an opening statement?

23 MR. PARSONS: I do. Thank you. Just a brief
24 introduction. This property contains approximately 11 acres
25 and it's currently improved with one single-family dwelling

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1 and several out buildings including a barn. The property
2 was previously used as a farm and is currently being used by
3 the applicant to operate his landscaping business known as
4 Natural Surroundings, Inc. My client is of course proposing
5 two special exceptions. The first is a landscape
6 contracting business under Section 59-G-2.30.00, and a
7 related wholesale nursery which is 59-G-2.30.0.

8 I would like to, just at the outset, address an
9 issue related to the delay. We all acknowledge that this
10 application has been pending for quite some time. It's not
11 the way we wanted it to happen of course, but there were a
12 whole host of issues that created delay in the process and
13 I'd just like to put them into the record. We had a
14 rezoning of the property initially when this first came
15 around from RE-2C to RC; we had water table testing issues,
16 well and septic issues; there were forest conservation
17 issues, stormwater management issues; we had an issue which
18 you'll hear about, the 10 percent impervious cap that we had
19 to deal with; and throughout the process, we worked with the
20 county and kept them advised of what was going on with the
21 application.

22 Unfortunately, one of the main factors that
23 created the delay was the economic circumstances faced by my
24 client. That resulted in the withdrawal of my appearance in
25 this case in 2011, but Mr. Roche persevered. He continued

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1 to work with staff. During the process, his wife,
2 unfortunately, was diagnosed with a life-threatening
3 condition. They thought it was bone cancer. Fortunately,
4 she came through that. We worked with staff. We're very
5 appreciative of the fact that we received a favorable
6 recommendation from staff and then from the Planning Board
7 subject to the conditions specified which are acceptable.

8 I'd like to, a couple of clarifications which I'll
9 share with you about the conditions. The conditions are
10 spelled out in the Technical Staff Report which is Exhibit
11 55. They are, the first is the maximum number of employees
12 for the operations of both the landscape contractor and
13 wholesale nursery must not exceed 40 which not more than 24
14 can be on site at any one time. Second is the applicant is
15 bound by the Statement of Operations as depicted on the
16 special exception site plan submitted on June 13th, 2014.
17 The landscape contractor/wholesale nursery business must not
18 have more equipment than the machinery itemized in the
19 special exception site plan. The third is the overall
20 imperviousness on the property must not exceed 10 percent as
21 shown on the special exception site plan.

22 Fourth is all deliveries and pick up should occur
23 between the hours of 8:00 a.m. and 4:00 p.m. Monday through
24 Friday. The fifth is that there must be no sign identifying
25 the property as a landscape contractor or wholesale nursery.

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1 The clarification on that condition is my client would like
2 to have directional signage, not on the front of the
3 property but within the property, to show where the office
4 is, where deliveries go and things like that. Inside the
5 property. Not, not on the road. There's no --

6 MS. ROBESON: Not on Howard Chapel.

7 MR. PARSONS: No, no. And no pole or monument
8 signs are proposed. The sixth condition was that no mulch
9 or compost manufacturing operations shall be conducted on
10 the property, and the seventh is that landscaping must be
11 planted in accordance with the landscaping lighting plan
12 submitted to Maryland-National Park and Planning Commission
13 on June 13th, 2014. The clarification I have on that is
14 that we do have a revised landscape plan which had some
15 minor changes to some trees which I have here and I'd like
16 to submit into the record.

17 MS. ROBESON: Okay.

18 MR. PARSONS: It's, there's some -- and Mr.
19 Donnelly can give you the exact details but there was
20 basically some white pines were changed to spruce, black,
21 spruce, black pine and loblolly pine at the preference of
22 Mr. Roche in the area that faces the residence that's on the
23 property. And so he didn't want the white pines there so
24 we're asking that that be considered as a change to the --

25 MS. ROBESON: Okay.

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1 MR. PARSONS: And that's the only change.

2 MS. ROBESON: Now, I am required to send these
3 changes back to technical staff for comment so --

4 MR. PARSONS: That's fine.

5 MS. ROBESON: It's required. You know, under the
6 new Zoning Ordinance, they get 30 days to review these
7 changes but in any event, I will try to expedite, see if I
8 can expedite their review because the changes sound
9 relatively minor to me.

10 MR. PARSONS: Thank you. And then of course the
11 added condition no. 8 was that the total number of parking
12 spaces on the property must not exceed 46 including 11
13 regular, 6 oversize on site surface spaces and 29 regular
14 size garage spaces located within the barn.

15 Two other points I'd just like to make before we
16 call our first witness, and that is that in the transmittal
17 letter from the Planning Board, I noted that --

18 MS. ROBESON: Wait. I don't have the 8. Where is
19 the condition --

20 MR. PARSONS: That's in the transmittal letter
21 from --

22 MS. ROBESON: Oh, I see. Yes, yes, yes.

23 MR. PARSONS: -- the Planning Board. And in the
24 transmittal letter, it states that the hours of operation
25 for the landscape contracting business are 9:00 a.m. through

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1 4:00 p.m. Monday through Friday and 8:00 a.m. through 12:30
2 p.m. on Saturdays. The staff report, however, correctly
3 identifies the hours which were 6:00 a.m. through 7:00 p.m.
4 for the landscape contractor business and Saturday was, it's
5 in that staff report, I think it's 7:00 a.m. to 12:30, but
6 we'll put on testimony. I think what happened was they
7 just, they repeated the wholesale nursery hours for the
8 landscape --
9 MS. ROBESON: I see. I understand.
10 MR. PARSONS: I just wanted to point that out.
11 We'll put in the precise hours for each. And the other part
12 was that in the staff report, and Mr. Cook will address
13 this, there was, in terms of, there's a first shift that
14 comes in and it starts at 6:00 a.m. I believe staff
15 indicated that the first shift would be there and would be
16 leaving during the peak hour. It's our expectation that one
17 of the peak hours was 6:30 to 9:30 in the morning. Mr. Cook
18 will testify that the first shift would actually be arriving
19 earlier. You know, I think they arrive at 6:00 and it's
20 expected they would be out before 6:30. That's the only
21 clarification there. I don't think it makes a difference.
22 It's still below the peak hours.
23 MS. ROBESON: Right, right.
24 MR. PARSONS: But I think that we just want to
25 point that out, that that is expected, that that first shift

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1 would be leaving --
2 MS. ROBESON: Because he's going to be bound by
3 his --
4 MR. PARSONS: Right.
5 MS. ROBESON: -- testimony so. Okay. All right.
6 MR. PARSONS: And that's all I have for an
7 introduction. We'll --
8 MS. ROBESON: Okay. And before you start, do you
9 have an electronic copy of --
10 MR. PARSONS: Yes.
11 MS. ROBESON: That's great.
12 MR. PARSONS: May I?
13 MS. ROBESON: Yes, you may. That will ease
14 getting it to staff. So I am going to mark this as Exhibit
15 60. Is this the revised landscape plan?
16 MR. PARSONS: Yes. Now, the only -- yes. Well,
17 it's all, it's all four plans but the only change is, it's
18 just an updated set but the only change is on the landscape
19 plan and detail and schedule.
20 MS. ROBESON: Okay. Okay. So I'll mark it as
21 revised special exception plans, and this will be 60. All
22 right. And then I'm going to mark the disc as 60A. I feel
23 like I'm wrestling with it. 60 is revised landscape plan, I
24 mean revised special exception plan, 60A is CD of revised
25 plan. All right.

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1 (Exhibit Nos. 60 and 60A were
2 marked for identification.)
3 MS. ROBESON: All right. Go ahead.
4 MR. PARSONS: Thank you. We call George J. Roche.
5 MS. ROBESON: All right. Please raise your right
6 hand.
7 (Witness sworn.)
8 MS. ROBESON: Okay.
9 DIRECT EXAMINATION
10 MR. PARSONS: These are not amplifying your, your
11 voice so you, they're just here to record so you don't need
12 to speak into them.
13 MR. ROCHE: Okay.
14 MR. PARSONS: Would you state your name, please?
15 MR. ROCHE: George J. Roche.
16 MR. PARSONS: Your address?
17 MR. ROCHE: 26500 Howard Chapel Drive, Damascus,
18 Maryland 20872.
19 MR. PARSONS: And what's your occupation?
20 MR. ROCHE: Landscape contractor.
21 MR. PARSONS: Are you the president of the
22 landscape contractor business known as Natural Surroundings,
23 Inc.?
24 MR. ROCHE: Yes, I am.
25 MR. PARSONS: And you and Natural Surroundings,

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1 Inc. are the applicant for the subject special exception
2 uses in this case?
3 MR. ROCHE: Yes.
4 MR. PARSONS: And would you give us a general
5 description of the business of Natural Surroundings?
6 MR. ROCHE: We do design/build landscaping.
7 Retaining walls, waterfalls, walkways, patios. We would do
8 -- that's considered kind of hardscape. We do typical
9 landscape services, tree planting, mulching, pruning, things
10 like that. Grounds management. And we also do snow
11 services and deicing services.
12 MR. PARSONS: Okay. There's also a request for a
13 wholesale nursery use. What would the wholesale nursery use
14 be for?
15 MR. ROCHE: Um, to sell to other contractors mulch
16 and stone and things that we use for a landscape contracting
17 business.
18 MR. PARSONS: Okay. Let's talk about the
19 property. And we have the site plan, the most recent site
20 plan which is Exhibit 60, on the easel there. Where is this
21 property located?
22 MR. ROCHE: It's on Howard Chapel Drive in
23 Damascus between Route 108 and Gue Road.
24 MR. PARSONS: And how many total acres is the
25 property?

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1 MR. ROCHE: Eleven.

2 MR. PARSONS: Okay. I'd also like to offer, I

3 guess this would be Exhibit 61. This is the PowerPoint

4 presentation staff provided to us. May I approach?

5 MS. ROBESON: Certainly.

6 MR. PARSONS: It has some photographs, the most

7 recent photographs of the property. Ms. Tesfaye's staff

8 provided this to us.

9 MS. ROBESON: Okay.

10 MR. PARSONS: It was shown at the Planning Board

11 hearing.

12 MS. ROBESON: So 61 will be technical staff

13 PowerPoint.

14 (Exhibit No. 61 was marked for

15 identification.)

16 MR. PARSONS: Okay. I'm showing you Exhibit 61,

17 which is the technical staff PowerPoint, and can you go

18 through these pages? I mean, the second page just describe

19 the corrections to the staff report. The third page shows

20 the surrounding area. Do you see that?

21 MR. ROCHE: Yes.

22 MR. PARSONS: Okay. And the fourth page shows the

23 subject property which of course is shown on the site plan

24 on the easel there. And the same thing on the next page,

25 some overhead views of the barn.

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1 MR. ROCHE: Uh-huh, yeah.

2 MR. PARSONS: Now, this next, the page that says

3 view west from Howard Chapel Drive, can you explain what

4 that is?

5 MR. ROCHE: That's a, a picture from the street.

6 MS. ROBESON: The street being Howard Chapel?

7 MR. ROCHE: Howard Chapel Drive looking into the

8 front of the property.

9 MR. PARSONS: And that's your personal residence

10 on the left there, the white house?

11 MR. ROCHE: Yes. That is.

12 MR. PARSONS: And the barn to the right, that's

13 where you would park vehicles for the special landscape

14 contractor special exception use?

15 MR. ROCHE: Yes.

16 MR. PARSONS: Okay. The next page says existing

17 barn. Is that a photo of the barn?

18 MR. ROCHE: It is. That's just a little bit

19 further down Howard Chapel Drive.

20 MR. PARSONS: The next page says existing driveway

21 on it. What is that showing us?

22 MR. ROCHE: That is showing the, the entrance to

23 the property.

24 MR. PARSONS: And then of course the next page

25 says existing proposed development. There's another -- see

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1 if there's any other photos in here we can use to describe

2 the property. I'm looking at the page that shows another

3 photograph, view northwest.

4 MR. ROCHE: That shows the -- starting at the

5 telephone pole there is the front left corner of our

6 property looking from Howard Chapel Drive.

7 MR. PARSONS: Same thing on the next page?

8 MR. ROCHE: Yes.

9 MR. PARSONS: Where it says view north Howard

10 Chapel Drive?

11 MR. ROCHE: Yes.

12 MR. PARSONS: The next page says Howard Chapel

13 Drive north.

14 MR. ROCHE: Yes. And that shows an angle shot of

15 the entranceway.

16 MR. PARSONS: As you're driving north on Howard

17 Chapel Drive?

18 MR. ROCHE: Correct.

19 MR. PARSONS: And then the next page says Howard

20 Chapel Drive south. I presume that's just coming the

21 opposite direction?

22 MR. ROCHE: That is at the end of the other

23 photograph looking south.

24 MS. ROBESON: And that's the red barn on the

25 right-hand side there?

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1 MR. ROCHE: There's, there's two. There's another

2 smaller building just prior to that, but most of what's

3 showing is the large red barn.

4 MS. ROBESON: Okay.

5 MR. PARSONS: Okay. We've already seen that

6 photograph on the last page.

7 MR. ROCHE: Okay.

8 MR. PARSONS: So we offer this Exhibit 61.

9 MS. ROBESON: All right. It's admitted.

10 (Exhibit No. 61 was received

11 into evidence.)

12 MR. PARSONS: Now of course, you've indicated

13 already that the sign was posted for the special exception.

14 MR. ROCHE: Yes.

15 MR. PARSONS: And you have the Affidavit of

16 Posting that's been submitted.

17 MR. ROCHE: Uh-huh.

18 MR. PARSONS: How is the property zoned?

19 MR. ROCHE: RC. Rural cluster.

20 MR. PARSONS: Okay. What improvements are on the

21 property now?

22 MR. ROCHE: Um, we have our, our home, a single-

23 family house.

24 MR. PARSONS: Now, looking at the site plan,

25 that's off to the left?

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1 MR. ROCHE: Yes.
2 MR. PARSONS: Do you want to show, if you don't
3 mind?
4 MR. ROCHE: Do you want me to show you?
5 MS. ROBESON: No, I don't. That would be fine.
6 MR. PARSONS: Yes.
7 MR. ROCHE: Okay.
8 MS. ROBESON: Thank you.
9 MR. ROCHE: So our home is here and --
10 MS. ROBESON: When you say here --
11 MR. ROCHE: Oh.
12 MS. ROBESON: It's a written transcript so --
13 MR. ROCHE: Right. The left corner.
14 MS. ROBESON: That --
15 MR. ROCHE: Left front corner of the property.
16 MS. ROBESON: Yes. That's fine.
17 MR. ROCHE: With a small building out back. Then
18 right behind the home to the right as you come in the
19 entrance to the property, we know it as the mechanic shop,
20 this is where we work on equipment, enclosed and everything,
21 the little building here behind that as you continue into
22 the property is the large red barn.
23 MS. ROBESON: Okay.
24 MR. ROCHE: And there is a little playhouse in the
25 corner but that's on personal property.

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1 MS. ROBESON: Is that outside the special
2 exception area?
3 MR. ROCHE: Correct. Yes.
4 MR. PARSONS: Can you describe the topography of
5 the property? I don't need the exact numbers but from high
6 point to low point.
7 MR. ROCHE: It's, it's pretty flat through half of
8 the property, and then it has a graduating slope of
9 approximately four or five acres of turf going down into the
10 woods in some woods line.
11 MS. ROBESON: Okay. So the southern part of the
12 property, I see a north arrow on there, the southern part of
13 the property where the barn, approximately where, it looks
14 like those are, are those septic fields or, or stormwater
15 management facilities?
16 MR. PARSONS: The --
17 MR. ROCHE: Septic.
18 MR. PARSONS: -- septic are to the right where
19 he's pointing. Those are septic fields.
20 MS. ROBESON: Okay. So just to the south of the
21 septic fields, that's relatively flat.
22 MR. ROCHE: Correct.
23 MS. ROBESON: And the northern part of the
24 property, does that slope up or down? Is the slope
25 generally up?

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1 MR. ROCHE: From Howard Chapel Drive, it slopes
2 down.
3 MS. ROBESON: Down. Okay.
4 MR. PARSONS: And just so the record's clear, we
5 have approximately 710 feet in the northwest corner of the
6 property to a high of approximately 815 feet in the
7 southeast corner of the property.
8 MS. ROBESON: Okay.
9 MR. PARSONS: Overall gradient is estimated at
10 eight percent draining to the north and west from the
11 southeast corner. Okay. Would you describe the general
12 neighborhood?
13 MR. ROCHE: Mostly agricultural, open planted
14 fields. Some woods. A couple acres of woods nearby and
15 some, a few residences on Howard Chapel Drive. More so down
16 towards Gue Road.
17 MR. PARSONS: How close is the closest residence?
18 MR. ROCHE: One house is approximately 500 feet.
19 MR. PARSONS: Have you talked with any of your
20 neighbors about these proposed uses?
21 MR. ROCHE: I have.
22 MR. PARSONS: And are you aware of any objections
23 to the use?
24 MR. ROCHE: Um, not from anyone I spoke with.
25 Only the letters that I was made aware of that were turned

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1 into the county.
2 MR. PARSONS: All right. Into the Board of
3 Appeals.
4 MR. ROCHE: To the Board of Appeals.
5 MR. PARSONS: Right. How is the property served
6 by water and septic?
7 MR. ROCHE: We have public water from WSSC, and we
8 have a septic system.
9 MR. PARSONS: Could you, again using the site
10 plan, show us where the business activities of the landscape
11 contractor business and the wholesale nursery will be
12 located?
13 MR. ROCHE: It flows kind of in a, in a nice sort
14 of circular pattern here around the main barn, the large
15 barn, as you come through the property up through what we
16 have discussed as more of the flat area.
17 MR. PARSONS: So the total area of the property is
18 11 acres. How big is the special exception area?
19 MR. ROCHE: It's approximately four, maybe just
20 over four which is --
21 MR. PARSONS: You have it as 4.4 acres. Does that
22 sound right?
23 MR. ROCHE: That's correct.
24 MR. PARSONS: All right. And that's 40 percent of
25 the total area of the property?

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1 MR. ROCHE: That sound correct, yes.
2 MR. PARSONS: And the area of the special
3 exception is delineated by the dotted line there on the site
4 plan, is that right?
5 MR. ROCHE: Yes.
6 MR. PARSONS: Okay. What will you be using the
7 barn for?
8 MR. ROCHE: Um, for storage and parking of
9 vehicles and equipment and materials if, if necessary.
10 MR. PARSONS: Where's the office for the business
11 located?
12 MR. ROCHE: It's within the existing large barn.
13 MR. PARSONS: Is there any new construction of any
14 buildings or structures proposed?
15 MR. ROCHE: No.
16 MR. PARSONS: Is public parking provided?
17 MR. ROCHE: No.
18 MR. PARSONS: How many parking spaces are
19 proposed?
20 MR. ROCHE: Um, we have 40 spaces and 6 large
21 spaces.
22 MR. PARSONS: Can you show us where the large
23 spaces are?
24 MR. ROCHE: We have them split here as you come in
25 the entrance to the drive. To the right side of the smaller

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1 building, there are three and then a little further down,
2 there's three more.
3 MR. PARSONS: And the --
4 MS. ROBESON: A little further to the --
5 MR. ROCHE: To the rear of the property.
6 MS. ROBESON: Yes.
7 MR. ROCHE: Sorry.
8 MS. ROBESON: That's okay. It's hard.
9 MR. ROCHE: They can't see it when it's written.
10 MR. PARSONS: Okay. How many spaces are proposed
11 to be in the barn?
12 MR. ROCHE: Um --
13 MR. PARSONS: Twenty-nine? Does that sound right?
14 MR. ROCHE: That is correct.
15 MR. PARSONS: All right. And can you show us
16 where the 11 spaces outside the barn are?
17 MR. ROCHE: There's four up front here.
18 MS. ROBESON: Okay. So four to the east which is
19 -- Howard Chapel is to the east so you've got four to the
20 east.
21 MR. ROCHE: East front side of the barn.
22 MS. ROBESON: Okay.
23 MR. ROCHE: And two in front of the smaller
24 building on the east side of the barn.
25 MS. ROBESON: Okay.

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1 MR. ROCHE: And I believe it's six in the rear of
2 the barn.
3 MS. ROBESON: Okay.
4 MR. ROCHE: To the west side.
5 MR. PARSONS: Now, the large spaces, these are 12
6 feet by 35 feet spaces?
7 MR. ROCHE: That is correct.
8 MR. PARSONS: And what are those for?
9 MR. ROCHE: For storing smaller equipment in, in
10 trailers so it's out of the weather.
11 MR. PARSONS: And trucks?
12 MR. ROCHE: Yes.
13 MR. PARSONS: Now, what will the 40 spaces be used
14 for, not the large 6 ones?
15 MR. ROCHE: The, the 40 spaces within the barn are
16 for the equipment like skid steers, mini-ex, pickup trucks,
17 employee vehicles as necessary.
18 MR. PARSONS: Employee parking?
19 MR. ROCHE: Correct.
20 MR. PARSONS: Okay. Can you describe how the
21 process, using the site plan, how the process of arrival --
22 first shift arrives in the morning. Give us an idea how
23 it's going to work.
24 MR. ROCHE: The employees will come in and the
25 first employees will park behind the barn on the west side

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1 of the property and then come in and get the appropriate
2 vehicles and equipment and then leave the property behind
3 the barn leaving on the north side coming out to Howard
4 Chapel Drive.
5 MS. ROBESON: Okay.
6 MR. PARSONS: And so that would leave space inside
7 the barn for other employees to park?
8 MR. ROCHE: That is correct.
9 MR. PARSONS: And then at the end of the day, what
10 do we do?
11 MR. ROCHE: And then at the end of the day, it
12 rotates from the trucks on the one side where the employees
13 had then parked, the, the guys on the first crew come into
14 the empty trucks from the other side from the second crew,
15 and we just rotate every day from side to side so it keeps
16 everything organized and smooth.
17 MS. ROBESON: Okay.
18 MR. PARSONS: Okay. Let's talk about the
19 equipment and vehicles that you're proposing. First with
20 the landscape contractor operation, how many trucks do you
21 currently have?
22 MR. ROCHE: Three.
23 MR. PARSONS: And you propose to expand this
24 business over time?
25 MR. ROCHE: That is correct.

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1 MR. PARSONS: What time period?
2 MR. ROCHE: Approximately 10 years.
3 MR. PARSONS: All right. I'm going to show you
4 what is already in the record as Exhibit 55, which is the
5 staff report, and appended to the end of the staff report is
6 the most recent Statement of Operations that you filed, is
7 that right?
8 MR. ROCHE: That is correct, yes.
9 MR. PARSONS: Okay. So taking a look, just to
10 help you here, with the, at the staff report, for the
11 landscape contractor operation, what are you proposing to
12 have in terms of equipment and vehicles?
13 MR. ROCHE: We are proposing two large loaders,
14 four skid loaders --
15 MR. PARSONS: Skid steers?
16 MR. ROCHE: Skid steers, excuse me. Um, some
17 people call them Bobcats.
18 MR. PARSONS: Okay.
19 MS. ROBESON: Well, that helps. I know what
20 Bobcats are. I didn't know what skid steer was.
21 MR. ROCHE: It's like Kleenex.
22 MS. ROBESON: Yes.
23 MR. ROCHE: You can have a New Holland or Ford but
24 they're --
25 MS. ROBESON: Yes.

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1 MR. ROCHE: -- they're skid steers. Um, 21 trucks
2 which is, is revised from the original proposal of 25, 2
3 mini excavators, 8 trailers, 3 dump, 5 straight, and a
4 tractor.
5 MR. PARSONS: Okay. What other equipment is
6 proposed?
7 MR. ROCHE: Um, small, small equipment. Mowers.
8 Zero turn mowers, you know, to do the grounds management.
9 Weed wackers, blowers, aerators, chainsaws, compressors,
10 spreaders, small tools. Things associated with landscape
11 design/build.
12 MR. PARSONS: Side cutter?
13 MR. ROCHE: Yes.
14 MR. PARSONS: Okay. Are there any freight
15 containers?
16 MR. ROCHE: Yes. And that is on the six spaces,
17 the larger spaces that we had mentioned on the northeast
18 side of the barn.
19 MS. ROBESON: You're good. A lot of people take a
20 long time to get the hang of -- anyway. Go ahead.
21 MR. ROCHE: Nervous energy.
22 MS. ROBESON: Okay.
23 MR. ROCHE: Thank you.
24 MR. PARSONS: Where will you keep the equipment
25 and vehicles?

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1 MR. ROCHE: Mostly in the barn and as necessary,
2 in the containers just mentioned.
3 MS. ROBESON: Okay.
4 MR. PARSONS: All right. Let's talk about --
5 MS. ROBESON: And you're not manufacturing mulch.
6 MR. ROCHE: No.
7 MS. ROBESON: You get it from someone else and
8 then store it and then either sell it or use it for the
9 landscape contractor business, is that correct?
10 MR. ROCHE: Yes.
11 MS. ROBESON: Okay.
12 MR. PARSONS: Okay. Let's talk about the
13 equipment and vehicles for the wholesale nursery. What do
14 you propose in terms of equipment and vehicles for that use?
15 MR. ROCHE: One forklift, one skid steer, two
16 trucks, one large, one one ton or smaller, two trailers, one
17 dump, one straight, and we thought about a tractor trailer
18 but that's not necessary.
19 MR. PARSONS: That's been deleted. All right.
20 MS. ROBESON: Okay.
21 MR. PARSONS: Okay. Are you going to have any
22 snowplows on the property?
23 MR. ROCHE: We will for the landscape contractor
24 in relation to our, our described business.
25 MS. ROBESON: Okay.

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1 MR. ROCHE: And snow blowers if I didn't mention
2 it.
3 MS. ROBESON: Okay.
4 MR. PARSONS: All right. Let's talk about
5 employees starting with the landscape contractor operation.
6 How many employees do you currently have?
7 MR. ROCHE: Approximately 12. It's somewhat
8 seasonal.
9 MR. PARSONS: All right. And you, we said before
10 you intend to expand business over time, so how many
11 employees are you proposing when the use is fully
12 implemented?
13 MR. ROCHE: Um, 38 for the landscape contractor.
14 MR. PARSONS: And that's reduced from the 41 that
15 was originally proposed in the plan?
16 MR. ROCHE: Correct, and I was even --
17 MR. PARSONS: Okay. How is that broken down in
18 terms of the types of employees?
19 MR. ROCHE: Four office, and we had reduced that
20 from five. Two mechanical, two yard, 30 laborers, truck
21 drivers. We've reduced that from 32.
22 MR. PARSONS: Okay.
23 MR. ROCHE: I think we even reduced it, it was
24 higher before that.
25 MR. PARSONS: Okay. Will the numbers of employees

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1 vary depending on the season?
2 MR. ROCHE: Yes.
3 MR. PARSONS: When are the greatest number of
4 employees needed?
5 MR. ROCHE: Spring, summer and fall. During the
6 growing season.
7 MR. PARSONS: Do any of the laborers carpool to
8 work?
9 MR. ROCHE: Yes. All of them.
10 MR. PARSONS: And do they often report directly to
11 the job site as opposed to this property?
12 MR. ROCHE: Absolutely. As often as we can.
13 MR. PARSONS: The wholesale nursery operation, how
14 many employees are you proposing for that use?
15 MR. ROCHE: Two, and we had reduced that from
16 eight.
17 MR. PARSONS: Okay. And how is that broken down?
18 MR. ROCHE: One equipment operator, which is
19 reduced from two, and one staff that was reduced from five.
20 And we, we eliminated the need for an office person.
21 MR. PARSONS: So it's a total of two, right?
22 MR. ROCHE: Correct.
23 MR. PARSONS: Okay. Let's talk about hours of
24 operations. What are the hours of operations for the
25 landscape contractor business?

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1 MR. ROCHE: Monday through Friday 6:00 a.m. to
2 7:00 p.m. and Saturday, 6:00 a.m. to 4:00 p.m.
3 MR. PARSONS: And the employees work in shifts?
4 MR. ROCHE: Yes.
5 MR. PARSONS: Can you describe the shifts for us?
6 MR. ROCHE: Yes. 6, 6:30 -- the first shift comes
7 in 6:30 to 3:30. Um, they're 20 laborers, truck drivers,
8 one mechanical to fix equipment, one yard to help set
9 trucks, get everybody out efficiently, two office.
10 MR. PARSONS: That's shift no. 1.
11 MR. ROCHE: In the --
12 MR. PARSONS: And that's 6:30 a.m. to 3:30 p.m.
13 MR. ROCHE: Yes.
14 MR. PARSONS: When do the 6:30 a.m. folks arrive?
15 MR. ROCHE: They arrive at 6:00 so that they're
16 prepped and gone before traffic picks up.
17 MR. PARSONS: Are they gone before 6:30?
18 MR. ROCHE: Yes.
19 MR. PARSONS: Okay. Shift no. 2.
20 MR. ROCHE: 9:00 a.m. to 5:00 which is two office,
21 one equipment operator and one staff.
22 MR. PARSONS: All right. And then shift 3?
23 MR. ROCHE: That's 9:30 a.m. to 6:30 p.m. It's 10
24 laborers, truck drivers, one yard person and one mechanic.
25 MR. PARSONS: And you agree with the recommended

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1 condition of staff from Park and Planning that the number of
2 employees will be capped at 24 at any given time?
3 MR. ROCHE: I do. Yes.
4 MR. PARSONS: So how will you enforce these hours
5 of operation?
6 MR. ROCHE: It really started by the nature of our
7 work. We have guys that are night people, we have guys that
8 are morning people and trying to make them what they're not
9 doesn't really work well so it actually just, it works by
10 the nature of our business and as a business owner, you want
11 to be efficient. You don't want guys sitting on 270 for
12 two-and-a-half hours before they clock in so going before
13 and after traffic only makes sense, and coming up from
14 Damascus, down county, things like that. And then keeping
15 the number at 24 just keeps easy flow and access around the
16 property.
17 MS. ROBESON: Okay.
18 MR. ROCHE: It just makes sense.
19 MR. PARSONS: All right. What are the hours of
20 operation for the wholesale nursery?
21 MR. ROCHE: Monday through Friday, 9:00 to 4:00
22 and Saturday, 8:00 to 12:30.
23 MR. PARSONS: Okay. How will vehicles access this
24 site? You can show on the site plan.
25 MR. ROCHE: We, we have the, as you enter the

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1 property from the east side --
2 MR. PARSONS: Howard Chapel Drive?
3 MR. ROCHE: From Howard Chapel Drive to come --
4 MS. ROBESON: You're good.
5 MR. ROCHE: -- come in the east side, come around
6 to the south side of the large barn and depending on whether
7 they come around the back or park inside, the traffic flow
8 will come that direction around to the west side up to the
9 north side and back out the east side.
10 MS. ROBESON: Yes.
11 MR. ROCHE: That's the easiest way to, to have
12 that run.
13 MR. PARSONS: Okay. I'm showing you Exhibit 55,
14 which is the staff report, and page 3 lists the conditions
15 of the staff report. Did you agree with these conditions
16 subject to some clarifications that we'll go over?
17 MR. ROCHE: Yes. That is correct.
18 MR. PARSONS: All right. Now, the clarifications
19 that I'd like to bring up here, number one, no. 6 says there
20 must be no sign identifying the property as a landscape
21 contractor or wholesale nursery. Do you plan, would you
22 like to have some directional signage on the property?
23 MR. ROCHE: I would like to, to have a small sign
24 identifying the property once you're in the property.
25 MS. ROBESON: Do you --

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1 MR. PARSONS: Not on the road.
2 MS. ROBESON: Do you have a location in mind?
3 MR. ROCHE: I do.
4 MS. ROBESON: Can you mark an X on that? Well,
5 wait a minute. Is that the old landscaping?
6 MR. PARSONS: That's the most recent one. That's
7 the one we just submitted today.
8 MS. ROBESON: Okay, great. Can you mark an X on
9 that where you want the directional sign?
10 MR. ROCHE: Starting right here as you come in the
11 east side, there is a existing planting area so it would be
12 very discreet and you would not see it from the road until
13 you came into the property.
14 MS. ROBESON: Okay.
15 MR. ROCHE: And then that would help traffic flow
16 and then once you're in, to show that the office is in the
17 barn so that nobody comes to my personal home.
18 MS. ROBESON: Ah.
19 MR. ROCHE: And I have five children and I'd like
20 to designate not to come past where they're not supposed to.
21 MS. ROBESON: Something like a private property
22 or --
23 MR. ROCHE: Correct. And just have an office sign
24 with an arrow but it would, that would be in here within the
25 planting that points down to where they could deliver if we

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1 have a printer delivered.
2 MS. ROBESON: Do you have a size in mind because
3 this is what staff is going to ask me.
4 MR. ROCHE: I would say no larger than two by
5 three, three by three.
6 MS. ROBESON: Okay.
7 MR. PARSONS: Max three by three.
8 MR. ROCHE: Two by three is fine.
9 MR. PARSONS: Two by three is fine.
10 MS. ROBESON: Okay. I'm just anticipating what
11 staff is going to want to know. Go ahead.
12 MR. PARSONS: Okay. And then we've talked, I
13 talked earlier about the landscaping, and Mr. Donnelly will
14 speak to this later, but you requested that some of the
15 plantings be changed from white pines along the part of the
16 property that's nearest your home, is that right?
17 MR. ROCHE: That is correct.
18 MR. PARSONS: And what did you request, that it
19 change from white pines to what?
20 MR. ROCHE: Um, to spruce.
21 MR. PARSONS: Okay.
22 MR. ROCHE: Because the children play and there's
23 lots of sap from white pines, and they, they die out in the
24 middle in our area in the hard soil so they're not
25 aesthetically pleasing.

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1 MR. PARSONS: Let's talk about deliveries. What's
2 the current number of, average number of deliveries to the
3 business per month?
4 MR. ROCHE: Eight to ten.
5 MR. PARSONS: Okay. And what is the number of
6 average deliveries you estimate after the use is fully
7 implemented?
8 MR. ROCHE: I would estimate eight to ten per
9 week.
10 MR. PARSONS: Okay. What is the current average
11 number of large truck deliveries to the business per month?
12 MR. ROCHE: Averaging one.
13 MR. PARSONS: All right.
14 MS. ROBESON: What --
15 MR. ROCHE: Per month.
16 MS. ROBESON: What do you mean by large truck? Is
17 that like a tractor trailer?
18 MR. ROCHE: Yes.
19 MS. ROBESON: Okay.
20 MR. ROCHE: A tractor trailer.
21 MR. PARSONS: And what's the number of average
22 deliveries you estimate after the use is fully implemented?
23 MR. ROCHE: One per week.
24 MR. PARSONS: Okay. We would offer the staff
25 report and their findings into evidence. It's already in, I

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1 guess it's already in the record.
2 MS. ROBESON: Yes.
3 MR. PARSONS: Okay.
4 MS. ROBESON: Yes.
5 MR. PARSONS: We do have a clarification, as I
6 mentioned earlier, that Mr. Cook will address.
7 MS. ROBESON: Okay.
8 MR. PARSONS: And that's all I have for Mr. Roche.
9 MR. ROCHE: May I clarify on the sign to you?
10 MS. ROBESON: Sure.
11 MR. ROCHE: That as he stated in the beginning, no
12 monument or other sign. Just a small, discreet sign within
13 the landscape.
14 MR. PARSONS: Monument or pole. No monument or
15 pole.
16 MR. ROCHE: And you would not see it from Howard
17 Chapel Drive.
18 MR. PARSONS: Okay.
19 MS. ROBESON: I'm just writing. Let me get that
20 down. All right. All right. I'm going to mark that as,
21 just that one sheet where he X'd the location of the sign as
22 another exhibit just so I have it. I want that in the
23 record so I can send it to the technical staff.
24 MR. PARSONS: Okay.
25 MS. ROBESON: So I'm just going to make that 62,

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1 special exception plan marked for signage.
2 (Exhibit No. 62 was marked for
3 identification.)
4 MR. PARSONS: Okay. We next call Glenn Cook.
5 MS. ROBESON: Thank you, Mr. Roche.
6 MR. ROCHE: Thank you.
7 MS. ROBESON: Mr. Cook, please raise your right
8 hand.
9 (Witness sworn.)
10 MS. ROBESON: Thank you.
11 DIRECT EXAMINATION
12 MR. PARSONS: Good morning, Mr. Cook. Would you
13 state your name, please?
14 MR. COOK: Sure. Glenn Cook.
15 MR. PARSONS: Your address? Your business
16 address.
17 MR. COOK: 9900 Franklin Square Drive, Suite H,
18 White Marsh, Maryland.
19 MR. PARSONS: And what's your occupation?
20 MR. COOK: Um, a traffic engineer and
21 transportation planner.
22 MR. PARSONS: Okay. I'm going to show you, we
23 have previously submitted in the record your resume but we
24 have an updated one which I'd like to offer into the record
25 here as well. Here's a copy here. May I?

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1 MS. ROBESON: Certainly. And this will be 63,
2 resume of Mr. Glenn Cook.
3 MR. COOK: I believe it was already --
4 MS. ROBESON: Updated resume.
5 (Exhibit No. 63 was marked for
6 identification.)
7 MS. ROBESON: Oh, the -- I thought I heard that
8 address. In a former life, I worked a lot with Mickey
9 Cornelius (phonetic sp.).
10 MR. COOK: Yes.
11 MR. PARSONS: This is 63?
12 MS. ROBESON: Yes.
13 MR. PARSONS: How long have you been engaged in
14 the field of traffic engineering and transportation
15 planning?
16 MR. COOK: I've been working in the traffic
17 engineering and transportation planning field for 42 years
18 now.
19 MR. PARSONS: And what is your professional
20 educational background?
21 MR. COOK: Um, I attended the Community College of
22 Baltimore for several years taking engineering courses. I
23 did not receive a degree. However, since that time, I've
24 attended classes at Northwestern University, University of
25 Maryland, Georgia Tech, different institutions that offer

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1 courses relating directly to traffic engineering.
2 MR. PARSONS: And describe your professional
3 experience in traffic engineering and transportation
4 planning.
5 MR. COOK: I've been, again, doing this for 42
6 years. I have testified before almost any municipal body in
7 the State of Maryland, as you can see by the resume,
8 including this particular body, and in New Jersey, Virginia
9 and Pennsylvania as well.
10 MR. PARSONS: All right. Are you a member of any
11 professional societies or organizations in the field of
12 traffic engineering and planning?
13 MR. COOK: I belong to the Maryland Association of
14 Engineers, the Institute of Transportation Engineers and the
15 County Engineers Association of Maryland.
16 MR. PARSONS: You mentioned previously that you've
17 testified before. Have you testified as an expert witness?
18 MR. COOK: Yes.
19 MR. PARSONS: And before the Board of Appeals in
20 Montgomery County?
21 MR. COOK: Yes.
22 MR. PARSONS: Before the Montgomery County
23 Planning Board?
24 MR. COOK: Yes.
25 MR. PARSONS: Before the Montgomery County

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1 Council?
2 MR. COOK: Yes.
3 MR. PARSONS: We would offer Mr. Cook as an expert
4 witness in traffic engineering and request that he be
5 allowed to testify as an expert in the field of traffic
6 engineering and transportation planning.
7 MS. ROBESON: Okay. You are qualified as an
8 expert.
9 MR. PARSONS: Thank you. Mr. Cook, did you
10 prepare a written statement in connection with this subject
11 application?
12 MR. COOK: Yes, I did.
13 MR. PARSONS: And I'm showing you the report which
14 I believe is Exhibit 30(i) in the record?
15 MS. ROBESON: Yes.
16 MR. PARSONS: I have an extra copy if it makes it
17 easier.
18 MS. ROBESON: No. I'm fine. I have it.
19 MR. PARSONS: Okay. This is the report dated
20 March 29th of 2011.
21 MR. COOK: That's correct.
22 MS. ROBESON: Yes. I don't need it.
23 MR. PARSONS: All right. Would you describe your
24 analysis of the subject application from a traffic
25 engineering standpoint?

1 MR. COOK: Sure. I'd be glad to. This particular
2 case is a little different than most cases that we work on
3 in that to determine how much traffic a particular use is
4 going to generate, normally, we refer to the Institute of
5 Transportation Engineers Trip Generation Report which I'm
6 sure you're familiar with, and they lay out trip rates or
7 how much traffic is going to be generated.

8 MS. ROBESON: Right.

9 MR. COOK: In this particular case, the ITE Trip
10 Generation Guide does not have any specific numbers for a
11 landscape contractor and it's, I'm sure it's the nature of
12 the business and going different places so it's very
13 difficult for them to do that. So in order for us to do our
14 assessment, because we were looking at the Local Area
15 Transportation Review Guidelines for Montgomery County to
16 determine whether a traffic study would be needed, in
17 Montgomery County, if you generate 30 or more trips during
18 the peak hour, you need to do a study, if it's less than 30,
19 you don't. So what we did was we, we met with Mr. Roche and
20 sat down and tried to find out what his operation was going
21 to consist of and how the employees get there, when they get
22 there and the fact that they work shift work because we had
23 to focus and find out how much the maximum number of trips
24 that may be generated in the peak hour which would be
25 between 6:30 and 9:30 a.m. in the morning or 4:00 to 7:00

1 p.m. in the evening.

2 MS. ROBESON: Uh-huh.

3 MR. COOK: And Mr. Roche testified to the, the
4 hours of the different shifts and what we, what we did was
5 we created a little schedule and the, the shift 1, which
6 consisted of 24 people basically, what we had to do was we
7 assumed that every one of those people were going to be
8 coming to this facility by themselves, not carpooling but by
9 themselves because we wanted to present a worst case so that
10 the staff would be able to feel comfortable with any
11 decision they needed to make. And you heard prior testimony
12 that they do carpool quite frequently and in many cases,
13 they go directly to the job site and don't even report to
14 this particular facility but for the purpose of what --

15 MS. ROBESON: Is 24, is that the full build out at
16 the end of the 10 years?

17 MR. COOK: No.

18 MS. ROBESON: I think it was a 10 year plan.

19 MR. COOK: I'll walk through the differences.

20 MS. ROBESON: Okay. I'll let you --

21 MR. COOK: Okay. That --

22 MS. ROBESON: I'll let you go through it.

23 MR. COOK: That 24 for shift 1 is at that 10 year
24 window.

25 MS. ROBESON: Okay.

1 MR. COOK: Okay? As I go through the three
2 shifts, it will be that's what we expect to have --

3 MS. ROBESON: Okay. That's what I wanted to know.

4 MR. COOK: -- ten years from now.

5 MS. ROBESON: Okay, thanks.

6 MR. COOK: So for shift 1, we have 20 laborers,
7 truck drivers, one mechanic, one yard worker and two office
8 workers that report to work usually between 6:00 or 6:15 and
9 then they're off the site by 6:30, So that's 24 people and
10 using the conservative assumptions that we did, that would
11 be 24 trips coming to the facility. Those people that, the
12 laborers, they leave and based on four people per crew, that
13 would be five trucks that would be leaving --

14 MS. ROBESON: Right.

15 MR. COOK: -- with them so that's how we come up
16 with 29 trips during that shift prior to 6:30 which is prior
17 to the peak hour.

18 MS. ROBESON: The peak hour.

19 MR. COOK: The fact that it's prior to the peak
20 hour, then therefore, isn't the number that we would use to
21 determine whether we trigger a local area review study or
22 not so in this particular case, shift 1 was not the driving
23 force behind that.

24 The next shift, shift 2, which is from 9:00 to
25 5:00, consisted of four workers coming. Two office workers,

1 one equipment operator and one yard staff. Those four
2 people, they would come and stay at the facility so they
3 would certainly impact one of the peak hours since the peak
4 hour extend until 9:30 in the morning, so there we have four
5 people, four vehicles coming.

6 Shift 3 comes on at 9:30 and that consists of 10
7 laborers, one yard staff and one mechanic and with the same
8 logic that we had before, the laborers not only will come
9 during that time period but will leave in three crews so
10 rather than just having 12 employees reporting to the site,
11 it would be 15, okay?

12 So in the peak hour window of 6:30 to 9:30, and it
13 works the same way in the evening, we would never have 29 or
14 30 people leaving the site. You know, the shift 2 people
15 and the shift 3 people, if you combine them, it would be a
16 total of 19. That would be the maximum that would be coming
17 and then some of them leaving during the same peak hour.

18 MS. ROBESON: Right.

19 MR. COOK: So we, we ran our conclusions past the
20 transportation planners and they concurred with our
21 conclusions as far as the trips were concerned because you
22 couldn't really do it any other way and we did it as
23 conservatively as we possibly could and therefore, we did
24 not fall into the requirement of needing to do a Local Area
25 Transportation Review study.

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1 MS. ROBESON: Okay.
2 MR. COOK: In addition to the Local Area
3 Transportation Review study, at the time, when the
4 application was filed, there was a Policy Area Mobility
5 Review test --
6 MS. ROBESON: Right.
7 MR. COOK: -- that was also required. In the
8 Damascus area, there was no requirement --
9 MS. ROBESON: Requirement.
10 MR. COOK: -- to participate in PAMR since, as a
11 reference, since that time, TPAR has now come on and in
12 Damascus, transportation and trans facilities are considered
13 to be adequate so there is no requirement there either if
14 that was --
15 MS. ROBESON: To pay a fee.
16 MR. COOK: Right. That we would be required to
17 do.
18 MS. ROBESON: Okay.
19 MR. COOK: So as far as PAMR or TPAR, whichever
20 one you choose, we really have no obligation under either
21 one of them.
22 MS. ROBESON: Okay.
23 MR. COOK: So what our report did, it spelled all
24 this out and the staff concurred that we will not be
25 generating more than 30 peak hour trips during any of the

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1 peak hours and based on the county standards, anything
2 generating less than 30 peak hour trips would not be
3 considered to have a significant impact to the adjacent
4 roadways.
5 MS. ROBESON: Okay.
6 MR. PARSONS: Okay. Mr. Cook, I alluded to this
7 earlier. There was a mention in the staff report that the
8 first shift could fall into first peak hour at 6:30. Did
9 you concur with that part of the finding?
10 MR. COOK: Could you repeat that again?
11 MR. PARSONS: There's a mention in the staff
12 report that the first shift would cut into the first peak
13 hour beginning after 6:30.
14 MR. COOK: On page 22 of the staff report in the,
15 I'm not sure what the exhibit number is --
16 MR. PARSONS: Fifty-five.
17 MS. ROBESON: Fifty-five.
18 MR. COOK: Fifty-five. Okay. At the top of page
19 22 in the first paragraph, it says the Local Area
20 Transportation Review Guidelines require a traffic study be
21 performed if the development generates 30 or more peak hour
22 trips. The applicant's traffic statement assumed that all
23 24 employees for the first shift during the peak hour --
24 MR. PARSONS: Arrived.
25 MR. COOK: Arrived during the peak hour in

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1 separate vehicles, and 20 employees would depart in teams of
2 four, five trips, during this same hour. The property will
3 generate a maximum of 29 morning peak hour trips 6:30 a.m.
4 to 9:30 a.m. That's not consistent with what our Statement
5 of Operation is. It's not consistent with what we had
6 submitted. The numbers are right but the time periods are,
7 those numbers would all occur prior to 6:30 or the morning
8 peak hour.
9 MS. ROBESON: All right.
10 MR. PARSONS: Okay. You heard Mr. Roche's
11 testimony about the --
12 MS. ROBESON: I see. Yes.
13 MR. PARSONS: -- average current deliveries and
14 the estimated deliveries upon full implementation of the
15 special exception. How does that affect your analysis?
16 MR. COOK: In my opinion, it really wouldn't have
17 much of a bearing on what we had in our report. Most
18 deliveries don't occur during the peak hours but they could,
19 but the maximum number of trips during any of the peak
20 hours, based on the analysis we just walked through, said
21 that we would generate 15 trips as a worst case. So if
22 there was a delivery or two that did come during the peak
23 hour, we're still well under that 30 threshold that would
24 trigger the need for more analysis.
25 MR. PARSONS: And did your findings take into

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1 consideration the trips associated with the wholesale
2 nursery operation?
3 MR. COOK: It would be the same situation, that
4 the wholesale's operation normally probably wouldn't start
5 until, the employees and all don't get there until 9:00
6 anyway so that deliveries and stuff for that probably
7 wouldn't occur until 9:00 or after that, during the normal
8 business hours, but even if they did, again, we're well
9 under that 30 threshold so I never -- I believe Mr. Roche
10 mentioned something about eight to ten deliveries a week if
11 I'm not mistaken so even if those 10 deliveries all came on
12 the same day, we only have 15 trips considered for our
13 employees so, it's a total of 25 and still well under the 30
14 for the peak hour.
15 MS. ROBESON: Okay.
16 MR. PARSONS: Okay. So is the proposed plan for
17 both the landscape contractor and wholesale nursery in
18 compliance with applicable government requirements with
19 regards to traffic engineering and transportation planning?
20 MR. COOK: In my opinion, it is, yes.
21 MR. PARSONS: I have no further questions.
22 MS. ROBESON: All right. Thank you, Mr. Cook.
23 MR. PARSONS: Thank you, Mr. Cook. We'd next call
24 Brian Donnelly. Did you need to take a break or are we
25 ready?

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1 MS. ROBESON: No. I'm fine.
2 MR. PARSONS: Okay.
3 MS. ROBESON: Mr. Donnelly, please raise your
4 right hand.
5 (Witness sworn.)
6 DIRECT EXAMINATION
7 MR. PARSONS: Good morning, Mr. Donnelly. Would
8 you state your name, please?
9 MR. DONNELLY: Yeah. Brian Donnelly. I work for
10 Marcris, Hendricks and Glasscock, a civil firm in Montgomery
11 Village, 9220 Wightman Road, Suite 120.
12 MR. PARSONS: What's your occupation?
13 MR. DONNELLY: A landscape architect. I
14 registered in 1983 and I'm registered both in Maryland and
15 Virginia. At the office, I perform project manager duties
16 running commercial project management jobs, been a
17 commercial project manager for an excess of 25 years.
18 MR. PARSONS: Okay. I'm showing you your resume
19 which is in the record as Exhibit 26(j). We had identified
20 it as 23 but it's in the Board of Appeals record as 26(j).
21 Is that a copy of your resume?
22 MR. DONNELLY: Yes, it is.
23 MR. PARSONS: And that describes your
24 qualifications and background?
25 MR. DONNELLY: Yes, it does.

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1 MR. PARSONS: What's your professional educational
2 background?
3 MR. DONNELLY: I got my bachelor's of science
4 degree from Texas A&M University in 1982 and then taken
5 subsequent continuing education classes along the way.
6 MR. PARSONS: And your professional experience?
7 MR. DONNELLY: Um, I've been in the industry for
8 over 30 years as a landscape architect, project manager and
9 site planner.
10 MR. PARSONS: Have you testified as an expert in
11 the field of landscape architecture and site planning
12 before?
13 MR. DONNELLY: I have. I've qualified before to
14 the Board of Appeals as well as before the Hearing Examiner,
15 Planning Commission in multiple jurisdictions.
16 MR. PARSONS: We'd offer Mr. Donnelly as an expert
17 witness in landscape architecture and site planning and
18 request that he be allowed to testify as an expert in those
19 fields.
20 MS. ROBESON: He is qualified.
21 MR. PARSONS: Thank you. Mr. Donnelly, if you
22 could start with a general description of the property, you
23 can use the site plan, how it's zoned and so forth.
24 MR. DONNELLY: And I'll be referring to Exhibit
25 62.

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1 MS. ROBESON: Sixty-two?
2 MR. DONNELLY: I think this is, this exhibit --
3 MR. PARSONS: That's the marked one.
4 MS. ROBESON: Oh, that. Yes. Okay, yes.
5 MR. DONNELLY: That's the mark-up.
6 MS. ROBESON: Yes, yes.
7 MR. DONNELLY: So Exhibit 62 is the special
8 exception site plan, sheet SX2, overall site plan that was
9 entered into the record. The property is zoned RC, rural
10 cluster. It's a total of 11.1 acres. It's kind of an odd
11 shape, generally the shape of kind of a triangle. The
12 central part of the site, the southern third of the property
13 is relatively flat where the existing structures are. As
14 you move north, the slopes begin to increase. As you go to
15 the north towards the stream valley buffer, the stream
16 valley buffer takes about 20 percent of the property on the
17 northern limits.
18 MR. PARSONS: Is there a recorded record plat for
19 this property?
20 MR. DONNELLY: No, there's not. There's -- right
21 now, it's just a deeded parcel. As you can see by the
22 exhibit, a portion of the property actually extends beyond
23 Howard Chapel Road which creates a prescriptive right-of-
24 way. Drive. Howard Chapel Drive.
25 MR. PARSONS: Right. Okay. Now the site plans

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1 that are, we submitted as Exhibit 60 and on the disc in 60A,
2 there was a slight change from these site plans from the
3 ones that were submitted in June, and can you explain what
4 those changes are? And if you want to refer to the
5 landscape plan --
6 MR. DONNELLY: Yeah.
7 MR. PARSONS: -- you can do that.
8 MS. ROBESON: That one, can you mark that one down
9 there as 62 --
10 MR. PARSONS: Do you want a sticker or can I just
11 write on it?
12 MS. ROBESON: You can just write on the bottom
13 right corner, please.
14 MR. PARSONS: Make it 62?
15 MS. ROBESON: Yes. Thank you. Thank you.
16 MR. PARSONS: I'm going to flip the page to go to
17 the landscape plan because it's only the landscape plan that
18 was changed from the one submitted in June, is that right?
19 MR. DONNELLY: That's correct.
20 MR. PARSONS: So can you explain for the Hearing
21 Examiner how this is different from the previous one?
22 MR. DONNELLY: Yeah. There's some plantings that
23 run east to west that separate the existing barn from the
24 existing residence. A number of those plants were changed
25 just to be a little more compatible with the residential use

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1 of the property.
2 MR. PARSONS: That's right in here?
3 MR. DONNELLY: That's correct. Just to the, just
4 to the south of the barn and to the north of the existing
5 residence that --
6 MS. ROBESON: Right.
7 MR. DONNELLY: -- separates the two. The changes
8 generally were there's a couple of shade trees. The species
9 were changed from red maple to zelkova, and then the white
10 pines were changed to a mixture of black pines, loblolly
11 pines and spruce.
12 MS. ROBESON: And why, again? Was that simply
13 because they, I think Mr. Roche testified that they do
14 better in that type of soil.
15 MR. DONNELLY: Well, the white pines tend to limb
16 up over time. They lose their lower limbs and they tend to
17 give off a lot of sap.
18 MS. ROBESON: Okay.
19 MR. DONNELLY: There's really no landscape buffer
20 requirements associated with --
21 MS. ROBESON: Right.
22 MR. DONNELLY: -- internal plantings but we felt
23 that we wanted to provide some internal separation between
24 the residential and the business use.
25 MS. ROBESON: Some privacy.

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1 MR. DONNELLY: It's sufficient privacy. There is
2 an existing berm that separates the two, the two uses but we
3 just wanted to beef it up a little bit, provide a clear
4 separation between the two.
5 MR. PARSONS: Now, Mr. Roche testified the
6 property is accessed off of Howard Chapel Drive, right?
7 MR. DONNELLY: Yeah. There's a central vehicular
8 access point about midway in the property. It's a two-way
9 circulation for a portion of the site and then it turns into
10 a one-way drive loop running clockwise around the barn.
11 There is a, the property does lie within the Upper Patuxent
12 Watershed which is mandated a special protection area which
13 then provides a, requires a 10 percent impervious threshold,
14 the cap.
15 MR. PARSONS: We'll get to that --
16 MR. DONNELLY: All right.
17 MR. PARSONS: -- shortly, but is there any new
18 construction proposed on this land?
19 MR. DONNELLY: No new construction. No new
20 increase in gross floor area.
21 MR. PARSONS: All right. What about renovations?
22 MR. DONNELLY: There will be some minor
23 renovations on the interior of the barn just to better
24 function the office space on the interior.
25 MR. PARSONS: Will those require a building

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1 permit?
2 MR. DONNELLY: There will be required a renovation
3 permit but not a building permit.
4 MR. PARSONS: Would you describe the wholesale
5 nursery operation?
6 MR. DONNELLY: The wholesale nursery operations
7 is, in the big scheme of things, that's somewhat a minor
8 part of the operations. There will be periodic large
9 vehicle deliveries that drop mulch, stone, bulk stone and
10 sand for other general contractors to come purchase that
11 material.
12 MR. PARSONS: Do the proposed uses satisfy the
13 general requirements for special exception under Section 59-
14 G-1.21(a) of the Zoning Ordinance?
15 MR. DONNELLY: Yes, they do.
16 MR. PARSONS: And at this point, we would offer
17 the findings in the staff report, Exhibit 55, that they do
18 meet the findings, the general findings --
19 MS. ROBESON: Do you want to adopt those are your
20 own findings?
21 MR. DONNELLY: Yes.
22 MS. ROBESON: Okay. That's fine.
23 MR. PARSONS: With the exception, of course, with
24 what Mr. Cook has alluded to in terms of the timing of the
25 first shift. That's his, his testimony is that the first

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1 shift arrives before and leaves before 6:30.
2 MS. ROBESON: Okay.
3 MR. PARSONS: That's the only change.
4 MS. ROBESON: All right. I have one question.
5 Can you go back to 62 I think it is? When I looked at the
6 plan --
7 MR. PARSONS: It's the next one.
8 MS. ROBESON: No. Not that one. The --
9 MR. PARSONS: The next one.
10 MS. ROBESON: Thank you. Yes. That one. When I
11 looked at the plan, I had a question about how you're going
12 to maintain that northern boundary because how do you know,
13 you know, how is somebody going to know you're not exceeding
14 it. But then I saw, are those septic fields in the, the
15 northern part of the special exception area?
16 MR. DONNELLY: Yes.
17 MS. ROBESON: So there won't be any activity on
18 those.
19 MR. DONNELLY: No.
20 MS. ROBESON: Is that correct?
21 MR. DONNELLY: That's correct.
22 MS. ROBESON: Okay. I just wanted to clarify that
23 for the record. And then there's some stormwater management
24 as well to the west. Is that, are those stormwater
25 management facilities, those long oval things?

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1 MR. DONNELLY: That's correct, yeah. And the site
2 has been designed to meet ESD requirements.
3 MS. ROBESON: Okay.
4 MR. DONNELLY: The last 2007 Maryland
5 requirements.
6 MS. ROBESON: Okay. That was my question. All
7 right. Thank you.
8 MR. PARSONS: And I'm prepared to have Mr.
9 Donnelly go through each one of the requirements, or we can
10 just go with the staff findings.
11 MS. ROBESON: The staff findings are fine. I just
12 wanted to make sure I was reading this plan correctly.
13 MR. PARSONS: All right. So let's skip then to is
14 a forest conservation plan required?
15 MR. DONNELLY: Forest conservation is exempt on
16 this property because it's a single lot of one property.
17 There will be no removal of existing forest, specimen trees
18 or champion trees and there will be no disturbance to the
19 wetlands, stream valley buffer or flood plane.
20 MR. PARSONS: Now, we have the copy of the letter
21 approving the exceptions in the file as Exhibit 29.
22 MS. ROBESON: Right.
23 MR. PARSONS: And if you would describe the well
24 and septic systems serving the property.
25 MR. DONNELLY: The property is being served by

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1 public water from Howard Chapel Drive. The site does not
2 have public water so it's, we do have a proposed septic
3 field for the expansion, future expansion of the office. It
4 will be two, two systems, one for the residential property
5 and one for the commercial property.
6 MS. ROBESON: Okay.
7 MR. DONNELLY: Two separate systems with two
8 separate independent tanks. Two separate systems.
9 MS. ROBESON: Okay.
10 MR. DONNELLY: The plan has been reviewed,
11 processed and approved by DPS Health and Well and Septic
12 Division.
13 MS. ROBESON: Okay.
14 MR. PARSONS: Now we turn to the specific
15 requirements for landscape contractor use which are under
16 Section 59-G-2.30.00. Does the proposed plan satisfy the
17 specific requirements of that section?
18 MR. DONNELLY: It does.
19 MR. PARSONS: And again, we would offer the
20 findings from the staff report, that it does meet those
21 requirements --
22 MS. ROBESON: That's fine.
23 MR. PARSONS: -- without requiring Mr. Donnelly to
24 go through --
25 MS. ROBESON: That's fine.

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1 MR. PARSONS: -- each one of those. I would also
2 just like to point out that Section 59-G-2.3.006 provides
3 that in evaluating the compatibility of the landscaping
4 contractor special exception, I put landscape, it's under
5 the landscaping contractor section, that's my words,
6 landscaping contractor, but it says this use, in evaluating
7 the compatibility of the use with the special exception with
8 surrounding land uses, the Board must consider that the
9 impact of an agricultural special exception on surrounding
10 land uses in the agricultural zones does not necessarily
11 need to be controlled as stringently as the impact of a
12 special exception in the residential zones. Now, this is an
13 agricultural zone as --
14 MS. ROBESON: Is RC, RC is an agricultural zone?
15 MR. PARSONS: RC is an agricultural zone.
16 MS. ROBESON: Okay. I should have mister --
17 MR. DONNELLY: Yes.
18 MS. ROBESON: Yes, it is. Okay.
19 MR. DONNELLY: Yes, it is.
20 MR. PARSONS: Okay. Now we turn to the specific
21 requirements under the Zoning Ordinance for the wholesale
22 nursery, horticultural wholesale use, and that's under
23 Section 59-G-2.30.0. Does the proposed application satisfy
24 the requirements of that section?
25 MR. DONNELLY: It does. It either meets or

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1 exceeds it.
2 MR. PARSONS: Okay. And so once again, we would
3 offer the findings of staff for --
4 MS. ROBESON: Well, let me do it this way. In
5 your expert opinion, do you agree with the findings of
6 staff, as far as the special conditions, that the special
7 conditions meet the requirements of the special exception?
8 MR. DONNELLY: Yeah. I mean, I've read the staff
9 report and it's consistent with my beliefs.
10 MS. ROBESON: Okay. All right.
11 MR. PARSONS: As to both uses.
12 MR. DONNELLY: As to both uses.
13 MS. ROBESON: Okay. That's fine.
14 MR. PARSONS: Let's talk a little bit about the
15 parking. How much parking's being provided?
16 MR. DONNELLY: A total of 40 parking spaces on the
17 site for vehicles.
18 MR. PARSONS: All right. And where are those
19 spaces located? Mr. Roche testified about this but if you
20 wouldn't mind clarifying a little bit.
21 MR. DONNELLY: Yeah. There's 40 spaces total.
22 Twenty-nine will be within the existing barn and there will
23 be, as Mr. Roche described, there will be a shifting of the
24 vehicles between the equipment storage and the employee
25 parking. On the west side of the property, there's six

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1 spaces that are running along the, north-south along the
2 western property line. There's four spaces in the center of
3 the site between the mechanical shed and the barn, and
4 there's one ADA space up by the office and mechanic storage.
5 MS. ROBESON: Okay. Within the barn?
6 MR. DONNELLY: There's -- actually, let me look at
7 something real quick. The reason I wanted to bring back
8 Exhibit --
9 MR. PARSONS: Sixty-two.
10 MR. DONNELLY: -- 62 is that on the lower left-
11 hand corner of this exhibit, there's a proposed parking
12 configuration for both the trucks and the, and the
13 employees, and there is adequate space for a van space
14 within the, within the barn.
15 MS. ROBESON: Okay. All right.
16 MR. DONNELLY: Another ADA space if required.
17 MS. ROBESON: All right.
18 MR. PARSONS: Is there adequate screening and
19 buffering provided for all parking areas and other on site
20 operations having potential impact on adjoining residential
21 or agricultural uses?
22 MR. DONNELLY: There are. The special
23 requirements for landscape contractors require a 50-foot
24 buffer between all adjoining uses and exterior property
25 lines so as you look along the west boundary, that's kind of

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1 that angled line that forms the western limits of the six
2 parking spaces along that --
3 MS. ROBESON: Okay.
4 MR. DONNELLY: -- that edge. There's a portion of
5 the stormwater management that's --
6 MS. ROBESON: I saw that
7 MR. DONNELLY: -- that's included in the buffer.
8 MS. ROBESON: Right.
9 MR. DONNELLY: But there are some supplemental
10 plantings.
11 MS. ROBESON: Can I ask you a question about
12 phasing as far as removal of the, the gravel and
13 installation of the stormwater? Is that going to be done
14 immediately to your knowledge, or if you don't know --
15 MR. DONNELLY: I mean, I don't know the specific
16 timing of the, of the removal.
17 MS. ROBESON: Okay. All right.
18 MR. DONNELLY: Some of the removal already has
19 been done over the last six years while the plan's been
20 denting to try to clean the property up.
21 MS. ROBESON: Okay.
22 MR. DONNELLY: So a lot of the gravel's already
23 been removed and --
24 MS. ROBESON: All right. All right. Go ahead,
25 Mr. Parsons.

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1 MR. PARSONS: Well, just to summarize, will the
2 proposed uses comply with the standards and requirements set
3 forth in Section 59-G-1.21(a) of the Montgomery County
4 Zoning Ordinance?
5 MR. DONNELLY: Yeah. The two proposed uses either
6 meet or exceed the requirements of 59-G.
7 MR. PARSONS: And what about the proposed
8 wholesale nursery use, does that comply with Section 59-G-
9 2.30.0 of the Zoning Ordinance?
10 MR. DONNELLY: It does.
11 MR. PARSONS: And the landscape contractor use,
12 does that comply with Section 59-G-2.30.00 of the Zoning
13 Ordinance?
14 MR. DONNELLY: It does, yes.
15 MR. PARSONS: Okay. At this time, we would just
16 offer all exhibits if they're not in the record already to
17 the extent they're --
18 MS. ROBESON: Yes.
19 MR. PARSONS: We're offering them in.
20 MS. ROBESON: To be admitted.
21 MR. PARSONS: Right.
22 MS. ROBESON: And they are admitted.
23 (Exhibit Nos. 1 through 60A
24 and 62 through 63 were
25 received into evidence.)

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1 MS. ROBESON: I was just thinking. I'm going to
2 make that full set of plans, Exhibit 62, the final plans
3 because otherwise, he's going to have to come back and mark,
4 you know, the sign location on Exhibit 60 so and when he
5 goes, if he, if he ever needs it, there will just be one set
6 of plans that are the official site plans. So I'm going to
7 make that full packet of Exhibit 62, all the sheets, the
8 final site plan.
9 MR. PARSONS: And just to summarize, if I may --
10 MS. ROBESON: Certainly.
11 MR. PARSONS: -- as everyone has testified and as
12 staff found, the two proposed uses meet or exceed all the
13 criteria and standards for each special exception as set
14 forth in the Zoning Ordinance, the uses are common in
15 agricultural areas and are separated from other residences
16 by a significant distance, natural forest areas and
17 installed landscape screening or berms so as to prevent any
18 adverse affects on adjoining properties and the surrounding
19 area and because these proposed uses are appropriate for the
20 location and compatible with the community, we would request
21 approval.
22 MS. ROBESON: Thank you. Okay. With that, I
23 will, I'm going to keep the record open for 10 days so that
24 I can get this back to staff.
25 MR. PARSONS: Okay.

1 MS. ROBESON: Give them time for, to review it and
 2 get back to me and to get the transcript into the record. I
 3 then have 30 days to write a decision or a recommendation.
 4 Sometimes we write decisions but this is a recommendation to
 5 the Board of Appeals. And if you don't like the
 6 recommendation, you can request oral argument before the
 7 Board of Appeals and I'm sure, Mr. Parsons, I don't have to
 8 say this for your benefit.

9 But so with that, I'm going to keep the record
 10 open until, for 10 days and then, from today. Let me just
 11 make sure that isn't a holiday, doesn't land on a holiday.
 12 No. It's the 21st. So the record will be open until July
 13 21st only, only, we're not going to accept any letters or
 14 anything like that, only to get technical staff's
 15 recommendation on the modifications and to receive the
 16 transcript. So the 30 days would then be August 20th so
 17 hopefully, I'll get it, be able to get it out sooner.

18 MR. PARSONS: Okay.

19 MS. ROBESON: I am having, I am going to be out
 20 for 10 days for surgery but I'm hoping that you'll get this
 21 done well before the 30 days, all right?

22 MR. PARSONS: Thank you very much.

23 MS. ROBESON: Thank you. And with that, this
 24 hearing is adjourned.

25 (Whereupon, at 11:00 a.m., the hearing was

1 concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
 the attached pages represent an accurate transcript of the
 electronic sound recording of the proceedings before the
 Office of Zoning and Administrative Hearings for Montgomery
 County in the matter of:

Petition of Natural Surroundings, Inc. by George J. Roche
 Special Exception Nos. S-2715/S-2716
 OZAH Nos. 814/815

By:

Josephine Hayes, Transcriber

<p style="text-align: center;">A</p>	<p>65:18 Affidavit (2) 5:11;17:15</p>	<p>59:11 approving (1) 58:21</p>	<p>57:5;62:7;65:3,24;66:2 background (3) 39:20;50:24;51:2</p>	<p>Bobcats (2) 26:17,20</p>
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