

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
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IN THE MATTER OF: *
DAVID MAMANA AND GREENSCKEEPER *
LANDSCAPING AND LAWN MGT., INC. *

David Mamana *
Michael Razavi *
Eric McWilliams *
Michael Lenhart *
Francis Silberholz *

OZAH Case No. CU 15-04

For the Application *

Brent Morse *
Opposing the Application *

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on January 26, 2015, the Applicant seeks a conditional use to operate a landscape contractor business under §59.3.5.5 of the *2014 Zoning Ordinance* (Zoning Ordinance) on property located at 3309 Damascus Road, Brookeville, Maryland, within the AR (Agricultural Reserve) Zone.

OZAH noticed a public hearing for June 8, 2015. Exhibit 18. On May 11, 2015, the Applicant requested a continuance of that hearing to permit time to address issues raised by staff of the Montgomery County Planning Department (Technical Staff or Staff). Exhibit 23. The Hearing Examiner re-scheduled the public hearing to September 25, 2015 (Exhibit 24), but this was rescheduled again to December 4, 2015, to permit the Applicant time to submit revised plans. The Applicant submitted revised plans along with a motion to amend the application. Exhibits 43, 44. OZAH issued a Notice of Motion to Amend on October 15, 2015 (Exhibit 45).

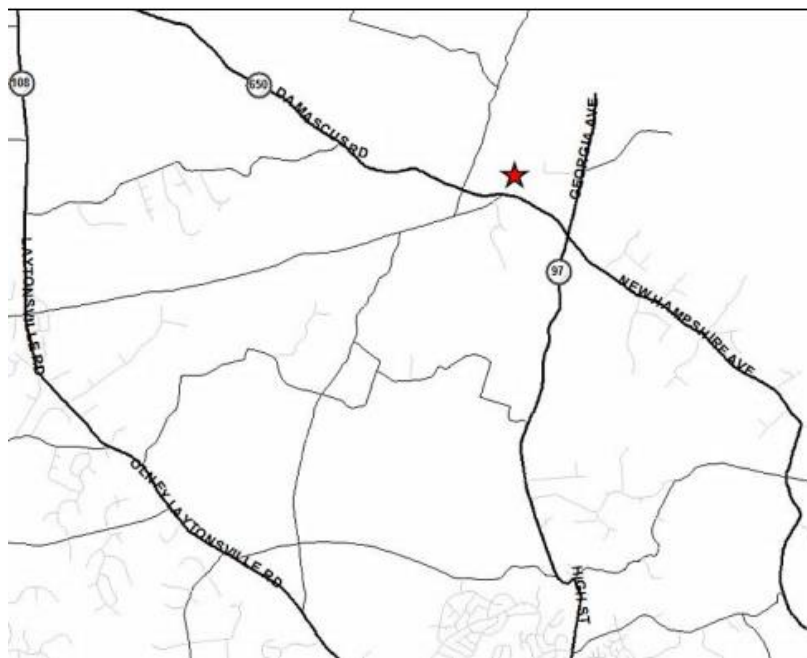
Technical Staff issued a report recommending approval of the application and a Final Forest Conservation Plan (FFCP) on October 29 and 30, 2015, respectively, and the Planning Board issued its recommendation to approve the application on November 18, 2015, as well as its approval of the FFCP. The Hearing Examiner convened the public hearing on December 4, 2015, but left the record open for an additional 10 days to permit the Applicant time to determine whether legislation adopted by the District Council, Zoning Text Amendment (ZTA) 15-09, would impact its application and to receive comments from Staff on several modifications to the conditions recommended by Staff (Exhibit 63(a)). Staff submitted its response that it had no further comments on the Applicant's proposed revisions to the conditions of approval. Exhibit 64. The Applicant submitted a statement that ZTA 15-09 would not affect the application, and the record

closed on December 14, 2015. Exhibit 62. The Hearing Examiner hereby approves the application, subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. Subject Property

Consisting of approximately 31.58 acres, the subject property is located on the north side of Damascus Road (MD 650), approximately 700 feet east of its intersection with Sundown Road. A vicinity map, included in the Technical Staff Report (Exhibit 51, p. 1) shows its general location:



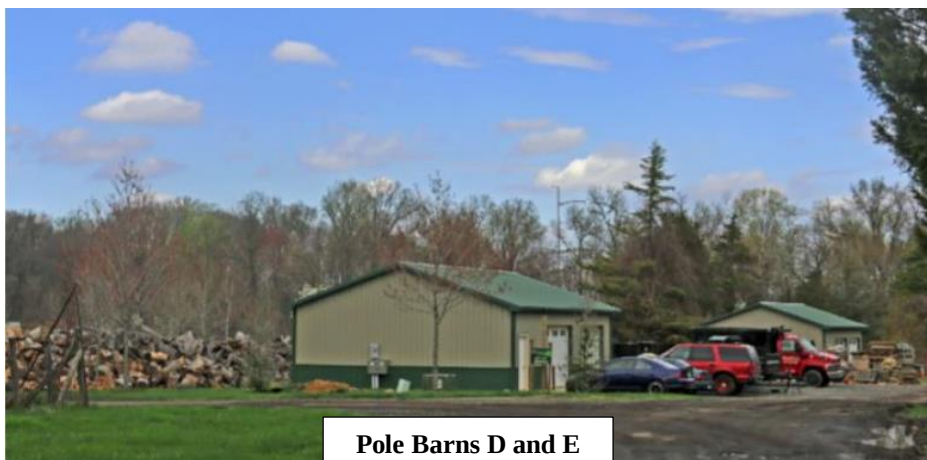
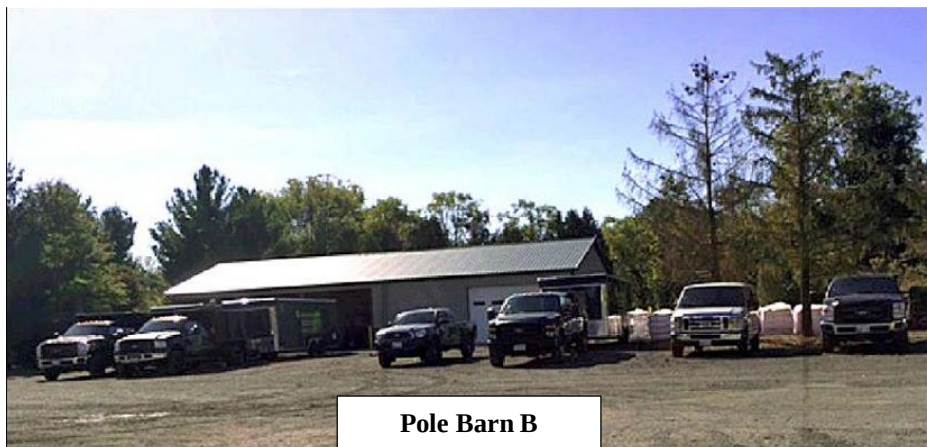
Staff reports that the Applicant had been operating a landscape contractor business on the property since 2003 without a conditional use approval. The Montgomery County Department of Permitting Services (DPS) issued a violation notice in July, 2014 and directed the Applicant to file for a conditional use approval. Exhibit 51, p. 3.

The property was formerly used as a tree farm. It is currently improved with four structures of different sizes, which Staff advises were built at various times between 2003 and 2014. There are two pole barns measuring 5,600 square feet (Pole Barn A) and 2,880 square feet (Pole Barn

B). Two smaller structures (Pole Barns C and D) are 1,200 square feet and 768 square feet, respectively. The largest pole barn, Pole Barn A, is used for a combination of business office and equipment storage. It is served with water from an existing agricultural well and contains a bathroom facility served by a 1,250-gallon sewage holding tank. Staff advises that the two smaller buildings are field offices. A 21,600 square-foot farm pond is located in the northeastern portion of the property. The property slopes downward from southwest to northeast (towards the pond) by approximately 400 feet. Access is from a 12-foot wide, 460-foot long pipestem driveway from Damascus Road. Exhibit 51, pp. 4-5. An aerial photograph of the property, included in the Staff Report, shows the existing improvements (Exhibit 51, p. 4):



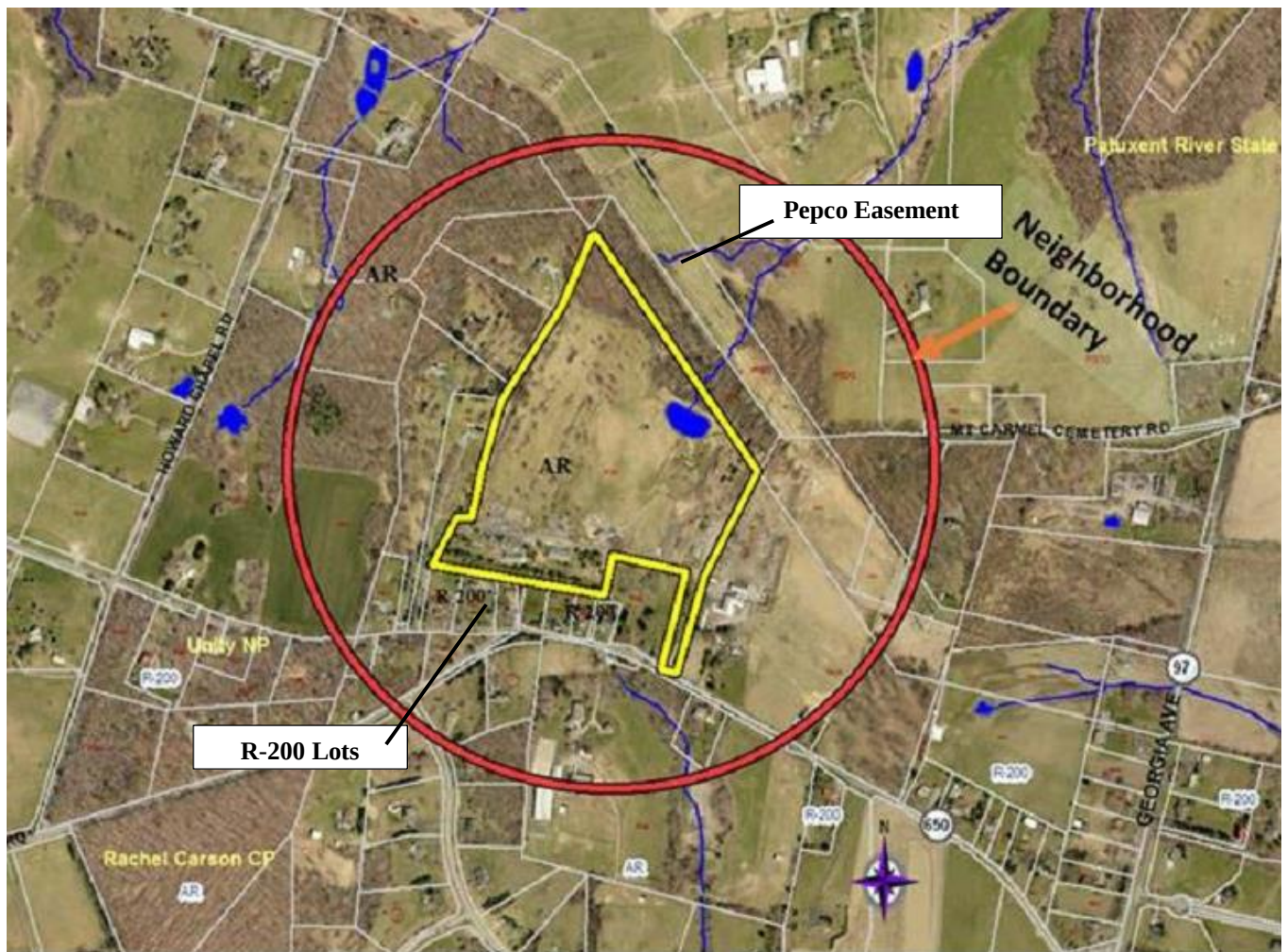
Photos of the existing structures on the property, included in the Technical Staff Report (Exhibit 51), are shown below:



Staff advises that the majority of the property lies within the Patuxent River Primary Management Area (PMA), which includes land within 1/8 miles (660 feet) of streams on or near the property. The PMA is further divided into a “stream valley buffer area” and a “transition area,” determined by the Planning Board’s Environmental Guidelines.

B. Surrounding Area

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding area” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff defined the surrounding area as properties within a 1,500 foot radius of the subject property, shown in a graphic from the Technical Staff Report (Exhibit 51, p. 6):



Staff described the neighborhood as predominantly agricultural with single-family detached residential homes on large estate lots, farms and unimproved parcels with the AR and R-200 Zones. Single-family detached homes on smaller, R-200-zoned, lots border the southern property boundary. A large farm is adjacent to the east and a 350-foot wide PEPCO powerline is adjacent on the north/northwest side, and there are four agricultural properties to the west. Properties further south of the smaller R-200 lots are zoned AR, and Unity Neighborhood Park and the Rachel Carson Conservation Park are located approximately 850 and 1,000 feet, respectively, from the southwest corner of the property, outside of the defined area.

The Applicant agreed with Staff's findings regarding the surrounding area. The Hearing Examiner accepts Staff's boundaries and characterizes the neighborhood as a mix of agricultural and residential uses, some of the latter of which are smaller lots in the R-200 Zone.

C. Proposed Use

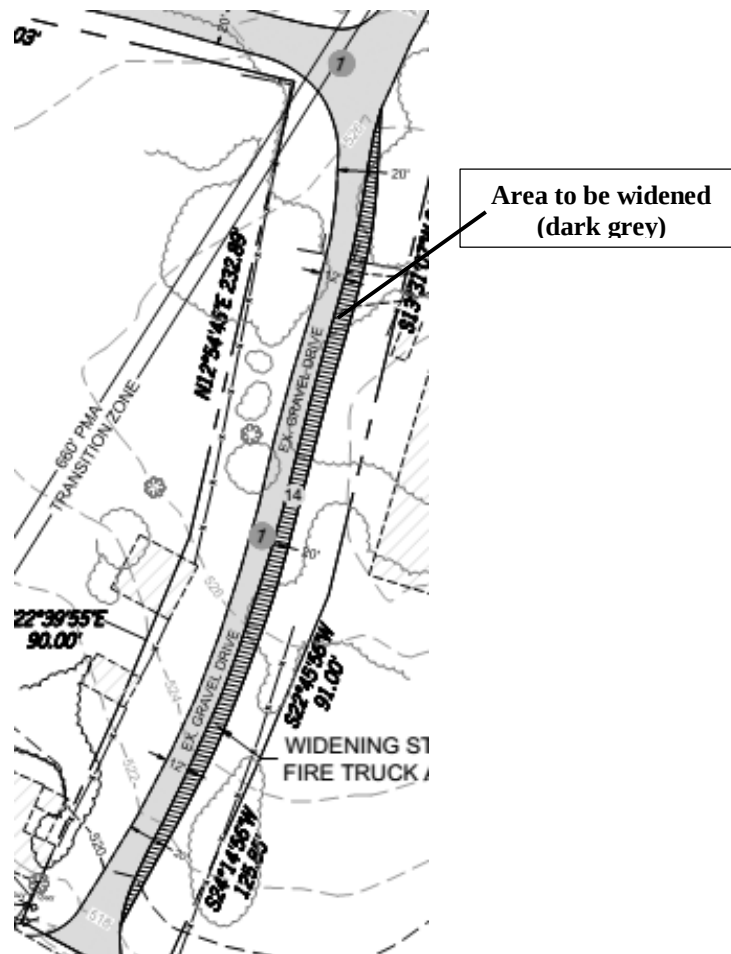
Mr. David Mamana, the president and owner of Greenskeeper Landscaping and Lawn Management, Incorporated, testified that his company provides services such as sediment and erosion control, tree work, stump grinding, installation of plants and trees, and snow removal. It has operated at the subject property for over 12 years. According to Mr. Mamana, he purchased the property because it was a working tree farm and he felt it suited the type of work performed by his company. It's a very large property and operations sit back from the road, which screens the use from almost all of the neighbors. Trees left from the tree farm provide screening and privacy around the perimeter of the property. T. 15.

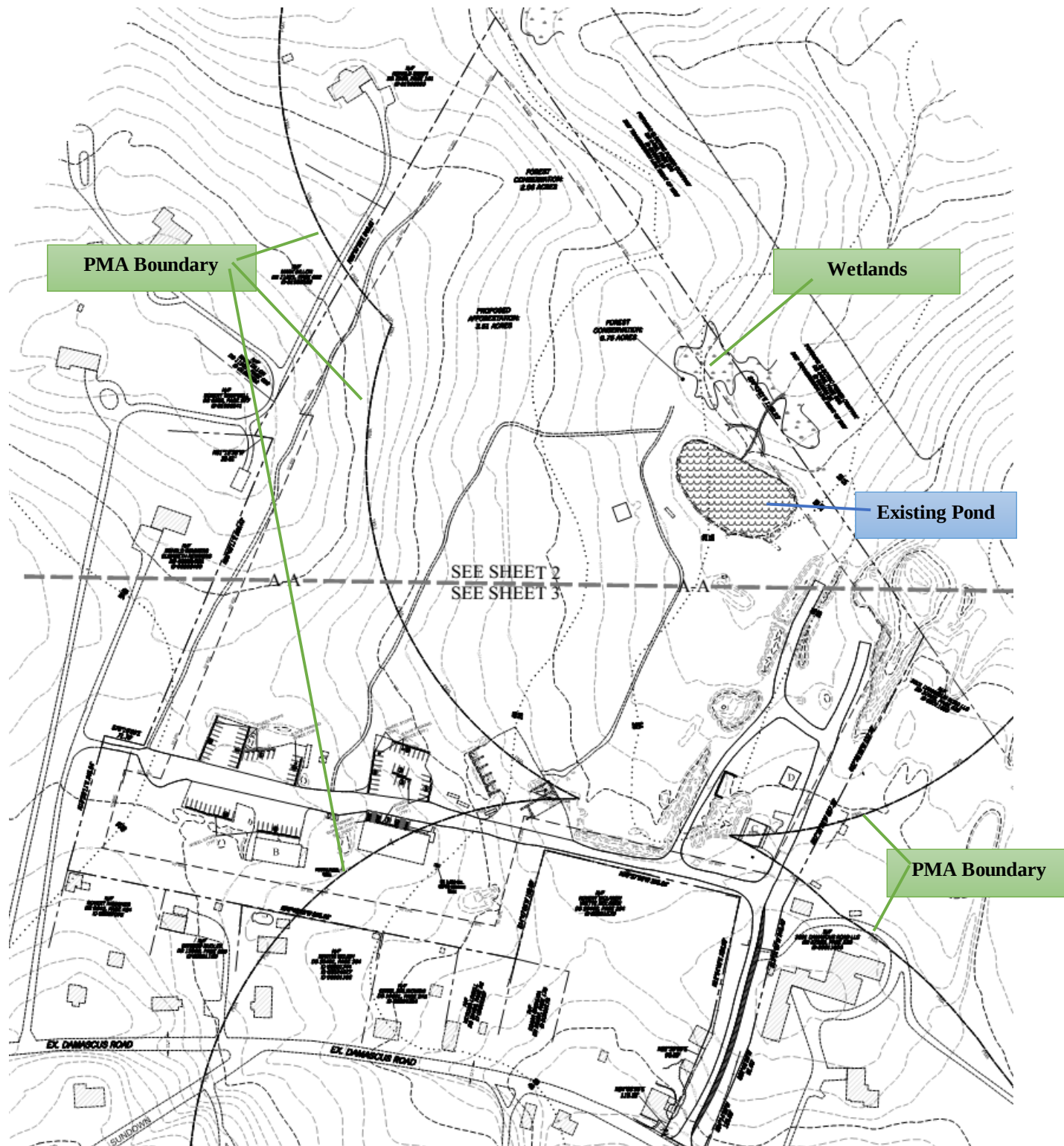
Mr. Mamana does not propose to change the existing improvements on the property, except that he must widen the existing 12-foot driveway to 20 feet, upgrade the septic system, and add

landscaping as shown in the Landscape Plan. Exhibit 51, p. 3. This application responds to a zoning violation notice issued in July, 2014. *Id.*

1. Site Plan, Access, On-Site Parking

The Applicant's site plan mirrors the existing improvements on the site. Excerpts of the plan are shown below and on the following pages. Access to the property is from the long driveway connecting to Damascus Road, which has a 75-foot wide gravel apron that narrows to 12 feet. One of the few modifications to the existing improvements will be to widen the driveway to 20 feet to meet fire regulations governing commercial driveways, as shown in the site plan (Exhibit 44(d)(ii)):

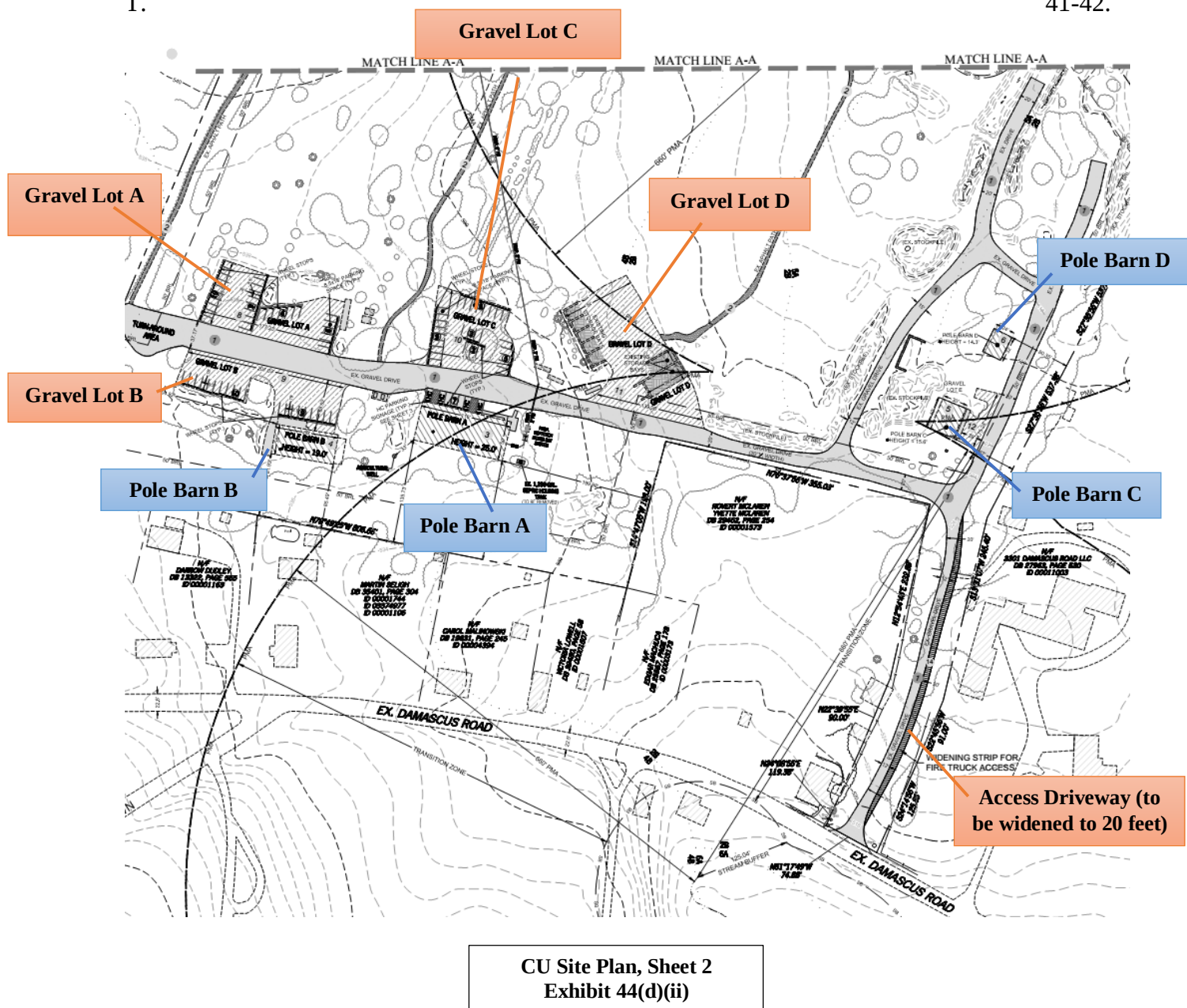




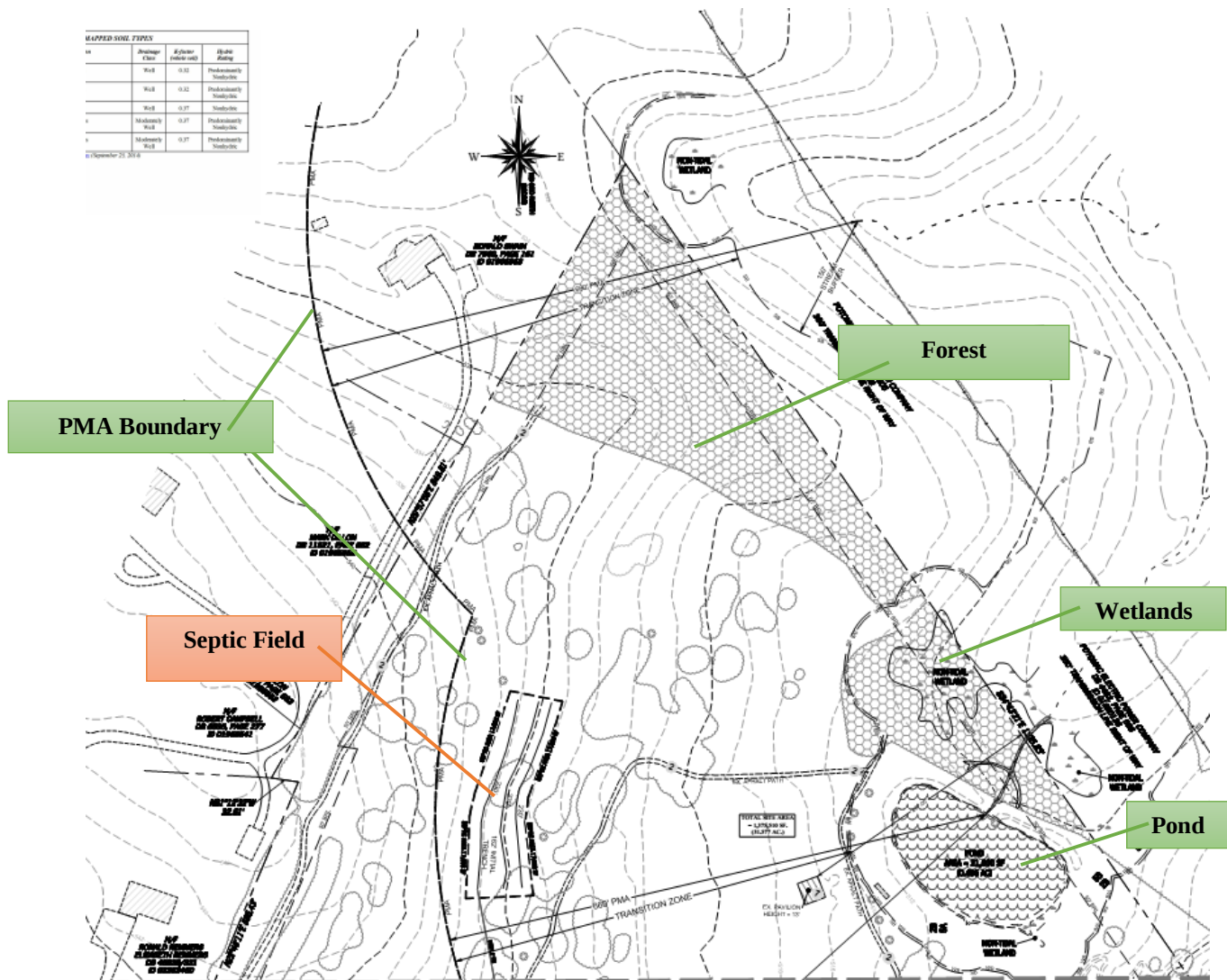
Site Plan Cover Sheet
Exhibit 44(d)(i)

The Applicant's expert civil engineer, Mr. Michael Razavi, testified that the high point of the driveway is approximately 2/3 of the distance from Damascus Road. He opined that the additional drainage caused by widening the drive would have an insignificant impact on existing conditions. T. 44. Mr. Razavi also testified that the site meets all limitations on impervious surfaces for properties within a PMA area. The total impervious area is limited to 10.9% of the entire site. The impervious area total within the PMA transition area is equivalent to 7.41%, both of which are within the maximums permitted by the Planning Board's environmental guidelines.

T. 41-42.



Sheet 3 of the Conditional Use site plan, covering the largely unimproved northern portion of the property, is shown below (Exhibit 44(d)(iii)):



The Applicant proposed to have a maximum of 85 parking spaces distributed between the four gravel parking areas, each with cement wheel stops at each space. Staff reports that the Applicant miscalculated the number of spaces required, and that the minimum required is 60 spaces. Staff recommended that the wheel stops for the excess spaces be removed and those areas used for storage of equipment. Exhibit 51, p. 2.

Mr. Eric McWilliams, the Applicant's expert in landscape architecture, testified that the existing vegetation around the site perimeter already provides a significant buffer on the property, screening approximately 70% of the property's perimeter. Perimeter screening includes a thick border of existing white pine and arborvitae almost 50 feet in depth in some areas, hedgerow screens the northern portion of the western property line and the southern property line, and there is a forested area along the rear property line. He opined that the landscaping is somewhat thinner along the southwestern corner, and they propose additional plantings in that area. T. 50-51. The Landscape Plan (Exhibit 44(e)) depicts the existing and proposed landscaping:



LANDSCAPE SCHEDULE						
	KEY	QTY.	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS
	SHADE TREE(S)					
	AR	20	ACER RUBRUM	RED MAPLE	2 1/2-3" CAL.	B+B
	ZS	2	ZELKOVA SERRATA	JAPANESE ZELKOVA	2 1/2-3" CAL.	B+B
	SUBTOTAL:	22				
	ORNAMENTAL TREE(S)					
	AC	9	AMELANCHIER CANADENSIS	MULTI STEM SHADBLOW SERVICEBERRY	8-10'	B+B
	CC	10	CERCIS CANADENSIS	EASTERN REDBUD	2-2 1/2" CAL.	B+B
	SUBTOTAL:	19				
	DECIDUOUS SHRUB(S)					
	EAC	38	EUONYMUS ALATUS 'COMPACTUS'	DWARF WINGED EUONYMUS	30-36"	B+B
	SNS	54	SPIRAEA NIPPONICA 'SNOWMOUND'	SNOWMOUND NIPPON SPIREA	15-18"	#3 CAN
	VRA	36	VIBURNUM X RHYTIDOPHYLLOIDES 'ALLEGHANY'	ALLEGHANY VIBURNUM	3-4'	B+B
	SUBTOTAL:	128				
	EVERGREEN SHRUB(S)					
	JDP	29	JUNIPERUS DAURICA 'PARSON'	PARSON JUNIPER	15-18" SPRD.	#3 CAN
	KL	36	KALMIA LATIFOLIA	MOUNTAIN LAUREL	30-36"	B+B
	SUBTOTAL:	65				

**Landscape Plan
Exhibit 44(e)**

Mr. McWilliams opined that the landscaping proposed meets the perimeter screening requirements of the Zoning Ordinance as well as the tree canopy requirements for the parking areas. T. 52. There is existing vegetation along Gravel Lot C, which includes a large oak in its center. He's estimated that the oak has a canopy of approximately 250 square feet. They have supplemented this with additional canopy trees along the edges. For Gravel Lot A, they propose to add additional canopy trees to meet the canopy coverage requirements. T. 53.

The Applicant does not propose any sign for the business on the property. Exhibit 51, p. 17. Nor does the Applicant propose to make any significant changes to lighting on the property. Outdoor lighting will consist of four mounted security lights, three of which are existing motion sensor lights mounted on the north side of Building A. The Staff report is somewhat unclear as to whether any of the lights are new. It refers to a “proposed” light to be mounted on Pole Barn B, but then states that “[n]o new light fixtures are proposed.” *Id.*

3. Operations

Mr. Mamana described the existing (and proposed) operations. Hours of operations are Monday through Friday, from 6:00 a.m. to 5:00 p.m. During busy seasons, they have Saturday hours from 8:00 a.m. to 4:00 p.m. except that snow removal is provided when needed on a 24-hour basis. T. 16.

The business currently has 53 employees that arrive at the site in different shifts. T. 20-22. Staff summarized these shifts in a table in the Staff Report (Exhibit 51, p. 21):

Shifts	Employees	Total
Shift 1 6:00 a.m. - 5:00 p.m.	6 managers	6
Shift 2 6:30 a.m. - 3:00 p.m.	23 laborers/truck drivers 1 yard staff	24
Shift 3 7:00 a.m. – 3:30 p.m.	19 laborers/truck drivers 1 yard staff	20
Shift 4 9:00 a.m. to 5:00 p.m.	1 yard staff 2 office	3

The business will utilize several pieces of equipment, summarized in the Technical Staff Report (Exhibit 44(d)):

- 1 large loader
- 4 skid steers
- 30 trucks
- 2 mini-excavators
- 15 trailers (non-dumping)

- 1 tractor

Mr. Mamana testified that the equipment is stored in designated parking spaces in front of the shop area, which is marked as Pole Barn B. T. 19.

D. Community Response

Mr. Mamana testified that he has excellent relations with all of his neighbors and has communicated with them regarding his application for the conditional use. He stated that the neighbors have been “overwhelmingly supportive” of the proposal. T. 24. He submitted letters of support from eleven neighbors adjacent to and nearby the property. Exhibits 55, 57.

Mr. Brent Morse testified at the public hearing. He lives directly across Damascus Road from the entrance to the subject property. T. 9. His sole concern is with the noise of heavy equipment, and specifically, large trucks that enter and leave the property on a regular basis. He is used to the existing level of traffic and traffic noise, but did not want an increase in truck traffic. If there is an increase, he would ask for some conditions prohibiting the trucks from using their airbrakes within a certain distance of the residence. T. 11-12.

Mr. Morse explained that an airbrake is used to slow heavy trucks with loads in a short period of time by downshifting and using the compression of the engine to slow the truck. They are also called jake brakes. According to him, they can increase the noise from a truck quite dramatically when they are carrying heavy loads and come to a quick stop. T. 12.

In response to Mr. Morse’s concerns, Mr. Mamana testified that the business itself does not use any trucks with airbrakes, but acknowledged that deliveries came from trucks large enough to have airbrakes. He is willing to instruct those third party vendors not to rely on their airbrake when making deliveries to the site. T. 18.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a landscape contractor business. *Zoning Ordinance* §59.3.5.5.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:¹

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: Staff advises that there is no previous conditional use approved for the property, therefore, this standard is inapplicable.

b. satisfies the requirements of the zone, use standards under Article 59-3, and applicable general requirements under Article 59-6;

¹ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: This subsection requires an analysis of the standards of the AR Zone contained in Article 59-4; the use standards for a Landscape Contractor in Article 59-3; and the applicable development standards in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6, with the conditions of approval set forth in Part IV of this Report and Decision.

c. substantially conforms with the recommendations of the applicable master plan;

Conclusion: The property lies within the geographic area covered by the *2005 Olney Master Plan* (Master Plan or Plan). It is within an area designated as “Unity Village,” which is within a larger area known as “Northern Olney.” Exhibit 51, p. 22. The Plan articulates the following land use goals applicable to this property (*Plan*, p. 15):

1. Reinforce the concept of Olney as a satellite community in the residential and agricultural wedge area.
2. Protect the Patuxent watershed including the drinking water reservoir, and agricultural and rural open space.

Because there are multiple watersheds in Northern Olney that drain to the Triadelphia Reservoir, part of the area’s water supply, the Plan reconfirmed the existing rural zoning in the area west of Georgia Avenue, including the subject property. It also focused on protecting forested areas, wetlands and other sensitive environmental features. *Plan*, pp. 18-19.

The Master Plan also contains specific guidelines for special exception uses (*Plan*, p. 42):

1. Discourage special exception uses along Georgia Avenue between Norbeck Road and Town Center to preserve its low-density residential character.

2. Minimize negative impacts of special exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting.
3. Discourage special exception uses with excessive imperviousness levels.

Conclusion: Staff found that the application substantially conformed to the Master Plan because of its low impervious surface levels. Staff stated that the use is “within the appropriate threshold of the impervious surface limitations for those portions of the Property within the PMA.” Exhibit 51, p. 22. After Staff revised the Plan’s impervious area calculations to include the additional impervious area from widening the driveway, it still found that the impervious limits of 10.9% of the total site and 7.5% of the PMA area were acceptable. Exhibit 64. Staff found that the upgraded septic system and approved Forest Conservation Plan also contributed to the Plan’s goals to maintain forested areas and protect the integrity of the drinking water supply. *Id.* at 22-23.

The Hearing Examiner agrees that the use complies with the Master Plan for the reasons given by Staff. The Hearing Examiner also finds that the combination of existing screening and new landscaping and the distance from Damascus Road significantly minimize the non-commercial aspects of the use, in accordance with the Plan’s recommendations for special exceptions.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: Staff concluded that, with the recommended conditions of approval, the proposed use would be in harmony with the agricultural and residential character of the neighborhood. Staff noted that extensive landscaping, adequate setbacks, and substantial green space will remain on the site. Staff found, “[t]here is extensive buffering, in the form of landscaping, afforestation, fencing and preservation of wooded areas, between the nearest residential properties and the proposed use.” Exhibit 51, p. 23.

While Staff felt that it was unlikely that the use would generate a significant level of noise, Mr. Morse testified that the airbrakes from vehicles making deliveries to the property were bothersome. Mr. Mamana agreed to a condition requiring him to instruct drivers making deliveries to the property not to use their airbrakes when making deliveries. With this condition, the Hearing Examiner finds that the use will not alter the character of the surrounding neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: Staff advises that a special exception for the PEPCO right-of-way abutting the northeastern property line was approved in 1972. Staff notes another landscape contractor special exception (S-1713, approved in 1983), but that is outside of the neighborhood. *Id.* at 23. Given the latter, and the fact that the PEPCO electric line does not generate a significant amount of activity, the Hearing Examiner finds that approval of this conditional use will not adversely affect the residential/agricultural character of the area.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required; and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Staff advises that, at present, the conditional use will not need a preliminary plan because no new buildings are proposed. Nevertheless, the violation notice served by the County lists the failure to obtain a building permit as a pending violation. Staff required the Applicant to submit information regarding adequate public facilities because the building permit would trigger the requirement for preliminary plan approval. *Id.* at 24. The Hearing Examiner notes that even without the building permit, adequate public facilities review is required because of the “new” conditional use on the property.

The adequacy of roadways are subject to two tests—Local Area Transportation Review (LATR) and Policy Area Transportation Review (TPAR). LATR tests the capacity of local roadways to handle the traffic generated by the use and is required when a proposed use generates 30 or more trips during the morning and evening peak hour. Based on the Applicant’s Traffic Statement, Staff concluded that the use is exempt from LATR because it generates only 26 total trips during the morning peak hour and 19 trips in the evening peak hours. *Id.*

Mr. Michael Lenhart, the Applicant’s expert in traffic engineering and transportation planning, testified that the Traffic Statement (Exhibit 59) is based on actual counts at the driveway on November 14, 2015, during peak periods, which are 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m. He observed that the managers arrive before the peak period, around 6:00 a.m. The first shift of workers arrive at 6:30 a.m., and he observed a number of these workers entering prior to 6:30 a.m. In his experience, this type of use also has a significant number of employees who carpool or come in vans. During the actual traffic count, his firm observed single vehicles carrying

multiple employees, such as vans and carpools. After arriving at the site, crews leave in work trucks with two to five people per truck. As a result, vehicles have a high number of occupancies, keeping the number of vehicles low. The office workers don't arrive until later in the peak period, which results in a relatively even distribution of traffic entering and existing the property. T. 57.

Mr. Lenhart also clarified why the Planning Board did not recommended against a condition of approval limiting the number of employees on-site at one time to 26. His study was based on the arrival and departure times of the employees; thus, there is no correlation between trips to and from the site and the number of people are on-site at any given time. In his opinion, Staff incorrectly correlated the number of people on-site with the number of trips. T. 64. The Applicant requested to revise the condition of approval to limit the maximum number of employees on-site to 53, in accordance with the Applicant's stated operations (Exhibit 61). The Hearing Examiner agrees with Mr. Lenhart that traffic generated will not exceed 30 trips in the morning and evening peak hours based on his counts, and the stated arrival and departure times of employees.

As for TPAR, the property is located within the Rural East Policy Area, which is exempt from the transit and roadway test; therefore, no TPAR impact tax is required.

Other public facilities, including schools, water and sewer service, and utilities must be adequate to serve the use. The Applicant provided a copy of the approved permit for an upgraded septic system at the public hearing. Exhibit 58. Staff advises that utilities (electric and telephone) are adequate to serve the use. The closest fire and police stations are 7 and 6 miles from the property, respectively. The use does not have any impact on schools. Staff concluded that, "[w]ith approval of pending applications for septic and building permits, the Conditional Use will continue to be served by adequate facilities."

Based on this evidence, the Hearing Examiner finds that there are sufficient public facilities to serve the proposed use.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. *Inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59.7.3.1.E.1.g, quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a landscape contractor business. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed

use that are not consistent with the those identified *or* adverse effects created by unusual site conditions will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff have identified seven characteristics to consider when analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a landscape contractor business: (1) buildings, structures, outdoor areas for the storage of plants and gardening-related equipment; (2) outdoor storage of plant stock, mulch, soil and landscaping materials in bulk and in containers, (3) on-site storage of business vehicles and equipment including small trucks and landscaping trailers, (4) traffic associated with trips to and from the site by employees, suppliers, and customers, (5) adequate parking areas to accommodate customers and Staff, (6) dust and noise associated with the movement of landscaping products and the loading and unloading of equipment associated with the landscaping business, and (7) hours of operation. Exhibit 51, p. 26.

Staff concluded that the scale of the structures, impervious areas, and operations were all typical of business of this type, but concluded that the location of the property within the Patuxent PMA was a non-inherent condition. Nevertheless, Staff concluded that this non-inherent condition did not warrant denial because the impervious areas were within the limits recommended for the PMA. Staff also concluded that vehicular movements on the road will not cause undue harm to the neighborhood because the property is surrounded by active agricultural uses and the closest residential homes are sufficiently buffered by landscaping. *Id.*

Staff concluded that the proposed use would not cause significant noise because the business operations are well within the site. Staff, however, did not have the benefit of Mr. Morse's testimony regarding the noise from air brakes on trucks making deliveries to the site. Mr. Mamana agreed to a condition requiring him to instruct drivers not to use their air brakes when making deliveries to the property. The Hearing Examiner finds that this adequately addresses the issues raised by Mr. Morse, and that the proposed use will not cause an inordinate amount of noise at the access point.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: The property is in an agricultural zone, therefore, this standard does not apply to the application.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood with the conditions proposed.

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the AR Zone. Staff compared the minimum development standards of the AR Zone to those provided by the application in a table included in the Staff Report (Exhibit 51, p. 11, on the following page.)

Development Standards AR Zone			
AR-Zone	Required		Proposed/Existing
	59-4.2.F	59-3.5.5 Landscape Contractor	
Minimum Site Area	25 ac	2 ac	31.58 ac
Minimum Lot Area	40,000 SF		
Minimum Lot width:			
▪ at street line	25ft		75 ft
▪ at building line	125 ft		960 ft±
Maximum Building Coverage	10percent		1.28 percent total
Minimum Building Setback			
Principal Building:			
• front	50 ft		800±ft
• side street	50 ft		----
• side	20 ft		200±
• rear yard	35 ft		1,040±
Maximum Building Height	50 ft		25± ft
Minimum Building Setback			
Accessory structure:			
• front	50 ft		80.35
• side street	50 ft		
• side	15ft		95±
• rear yard	15 ft		81.93±
Minimum Setback for parking and loading		50 ft	>50 ft
Parking			
Min Vehicle Parking spaces	60 sp.	60 sp	85 sp
59-6.2.4 (See Table 2 below under			
Maximum Building Height	50 ft		25± ft
Minimum Parking Setbacks			
• Front		50 ft	230± ft
• Side 6.2.5.k.2		100	>200 ft
• Sum of sides (6.2.5.k.2)		200	>200 ft
• Rear (4.4.9.B.2)			

Conclusion: Based upon the above table, the Hearing Examiner concludes that the application meets all of the development standards of the AR Zone.

C. Use Standards for a Landscape Contractor Business (59.3.5.5)

The specific use standards for approval of a Landscape Contractor business are set out in Section 59.3.5.5 of the Zoning Ordinance. Standards applicable to this application are set forth

below, along with the Hearing Examiner's findings of fact and conclusions of law on each standard.

Section 59.3.5.5.B

Where a Landscape Contractor is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

1. In the Agricultural, Rural Residential, and Residential Detached zones the minimum lot area is 2 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory or operation.

Conclusion: The property is approximately 31.58 acres, exceeding the minimum requirement.

This standard has been met.

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

Conclusion: Staff concluded that building and parking areas are a minimum of 50 feet from any lot line, and this is evidenced on the site plan. Staff also noted that, "[a]dequate buffering and screening is provided in the form of a landscape strip, substantial distances from residential buildings, existing and mature trees and wooded areas, fencing, forest conservation easement and staff recommended additional plantings." Exhibit 51, p. 20. The Hearing Examiner agrees and finds that the application meets this standard.

3. The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on-site must be limited by the Hearing Examiner to avoid an adverse impact on abutting uses. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.

Conclusion: The Applicant's equipment is specifically listed as a condition of approval in this application. Staff found that parking was adequate to accommodate both the equipment and the number of employees proposed, particularly because many of the employees carpool or take vans

to work. Exhibit 51, p. 20. Gravel Lots A and B have a total of 50 spaces, with four handicapped spaces along Pole Barn A; Gravel Lot C has a total of 28 spaces for a total of 78 spaces, exceeding the number of required spaces. *Id.* Additional areas that may be used for storage, originally marked on the site plan as parking spaces, are also provided.

The testimony and evidence supports a finding that the application provides adequate parking for both business equipment and employees. The existing gravel lots have more than the minimum number of parking spaces required and the additional spaces may be used for equipment storage. The Hearing Examiner finds that this standard has been met.

4. Sale of plant materials, garden supplies, or equipment is prohibited unless the contracting business is associated with a Nursery (Retail) or Nursery (Wholesale).

Conclusion: The Applicant does not propose to have retail sales to the public or operate a wholesale nursery on the premises, and this will be a condition of approval on the conditional use. The Hearing Examiner finds that this standard has been met.

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

Conclusion: Staff concluded that the operating hours proposed are “not likely to be disruptive to the adjacent properties or the general neighborhood.” While Mr. Morse complained of the noise from jake brakes on vehicles delivering supplies to the site, the Applicant has agreed to a condition requiring him to instruct the operators of those vehicles not to use their airbrakes when approaching, entering, or leaving the site. With this condition, the Hearing Examiner finds that the hours of operation proposed will not have an adverse impact on abutting uses.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access Standards:

Section 59.6.1 of the Zoning Ordinance imposes site access standards on conditional uses only in Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones, with the intent of “to ensure safe and convenient vehicular, bicycle, and pedestrian circulation within and between lots on the same block face and to reduce traffic congestion.” Because this property is within an agricultural zone, the site access standards do not apply. Nevertheless, Staff concluded that the driveway access proposed (with the widening to 20 feet) was adequate to serve both traffic to and from the site and fire department equipment. Exhibit 51, p. 25.

2. Parking Spaces Required, Parking Setbacks and Parking Lot Screening

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance.

a. Number of Parking Spaces Required by Section 59.6.2.4

The applicable standards along with a comparison to what is provided are included in a table from the Staff Report, reproduced below (Exhibit 51, p. 13):

Section 59.6.2.4 Parking	Required	Provided
• Employee .50 sp/employee	53 X .50 = 26.5 = 27	32
• 1sp/each Vehicles associated with use	1x30=30	50
• Office 2.8 sp/1000 SF office	2.8 sp/1000 = 2.8 = 3	3
Total	60 spaces including 3 handicapped spaces	85 including 4 Handicapped spaces

Conclusion: As can be seen from the above table, the site plan shows more than the minimum number of required spaces. According to Staff, the large number of spaces resulted from the Applicant's initial mistake in calculating the number of required spaces at 1 space per employee rather than ½ space per employee. Exhibit 51, p. 13.

Staff recommends removing the wheel stops that currently exist for those spaces that exceed the minimum 60 spaces required, although it did not state the rational for this. *Id.* Staff found it appropriate to use the remaining gravel area for storage of equipment. *Id.* The Hearing Examiner notes that much of the property is within a PMA area. Because the gravel lots currently exist and the property meets impervious area requirements, there is no condition of approval requiring their removal. To the extent, however, the removal of the wheel stops discourages employees from parking in those spaces and avoids the additional impervious area created by the stops, the Hearing Examiner agrees with Staff that the wheel stops should be removed.

b. Parking Lot Screening

Section 59.6.2.9.C sets out the screening requirements for conditional use parking lots having 10 or more spaces:

C. Parking Lot Requirements for 10 or More Spaces

1. Landscaped Area

a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5% of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.

b. A maximum of 20 parking spaces may be located between islands.

c. A landscaped area may be used for a stormwater management ESD facility.

Conclusion: Staff concluded that the application meets these requirements even though none of the gravel parking areas contain landscaped islands. Noting that both Gravel Lots B and C have mature trees in the middle of the lot, Staff concluded that, “[g]iven the existing conditions of the parking lots, the vegetation within and at the perimeter of the lots, creation of landscaped islands would not be practical.” Exhibit 51, p. 15. Staff also advised that current and proposed landscaping comprised 30% of the total parking area, far in excess of the minimum 5% required. *Id.*

Staff provided no justification for an alternative method of compliance with the specific landscaping requirements under Section 59.6.8.1. As of December 21, 2015, however, this is not required because of the adoption of Zoning Text Amendment (ZTA) 15-09, effective on that date, permits the Hearing Examiner to approve deviations from the minimum screening standards “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b.

The Hearing Examiner finds that the proposed landscaping is more than sufficient to screen the parking areas for several reasons. The parking lots are in the interior of the site, well away from nearby houses, and are already screened by significant perimeter landscaping. In addition, the parking areas will both have additional canopy trees. Existing mature trees, which provide as much as 250 feet of canopy, would have to be removed to install landscaping island. Under §59.7.3.1.E.1.b, the Hearing Examiner finds that the screening proposed will be compatible with the surrounding area.

2. Tree Canopy

Each parking lot must maintain a minimum tree canopy of 25% coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.

Conclusion: Staff advised that 12 existing mature trees (most of which are over 20 years old) and proposed landscaping will meet these requirements. As noted, the mature trees have canopy coverage of 250 square feet. The new canopy trees will have the same coverage at 20 years old. Based on this evidence, the Hearing Examiner finds that this requirement has been met.

3. Perimeter Planting

a. The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:

- i. be a minimum of 10 feet wide;**
- ii. contain a hedge, fence, or wall a minimum of 6 feet high;**
- iii. have a canopy tree planted every 30 feet on center; and**
- iv. have a minimum of 2 understory trees planted for every canopy tree.**

Conclusion: Staff did not specifically address whether the Applicant met the perimeter planting requirements for the parking areas nor does the Applicant's Landscape Plan address this issue (the Landscape Plan addresses only perimeter landscaping for the site). Exhibit 44(e). Mr. McWilliams testified that the screening on the property meets the requirements of the Zoning Ordinance. T. 53. The Hearing Examiner notes that Gravel Lots A and B have a number of mature trees on one or multiple sides and Lots B and C have mature trees in the center. Even if the parking lot screening does not meet the specific requirements noted above, the Hearing Examiner finds that the combination of existing and proposed landscaping shown on the Landscape Plan sufficiently ensures the compatibility of the use with surrounding properties and the neighborhood under Section 59.7.3.1.E.1.b. Again, these reasons include the interior location of the parking areas, the distance from neighboring houses, and the significant perimeter landscaping existing and proposed for the use.

c. Parking Lot Lighting

4. Lighting

Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements.

Section 59.6.4.1 exempts existing lighting from the specific standards, leaving only the possibly new mounted light on Pole Barn B. Section 59.6.4.4.C.5 exempts new lighting for commercial businesses except for the following requirement:

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Conclusion: Staff concluded that:

There will be no light spillage to the adjacent properties. Outdoor lighting is limited to four (4) building mounted security lights: three (3) existing motion sensor lights are mounted on the north side of Building 'A' and one (1) proposed light mounted on the north side of Building 'B'. The wall mounted fixtures (types A and C) as shown on the Revised Landscape and Lighting Plan will provide adequate illumination directly adjacent to the existing Pole Barns. The wall mounted light fixtures have a minimum distance of 80-feet from the property boundary. Given the placement and type of light fixtures, Staff is able to conclude that the photometrics at the property line are less than 0.1 foot-candles. No new light fixtures are proposed.

The Hearing Examiner agrees with Staff's analysis, particularly because the fixtures will be mounted on the side of the barns interior to the lots, they are at a significant distance from adjoining properties, and there is significant screening around the site perimeter. The application meets the standards required.

3. Site Landscaping, Screening and Lighting

Standards for perimeter site landscaping and site lighting are set forth in Divisions 6.4 and 6.5 of the Zoning Ordinance. The stated intent of Division 6.4 is "*to preserve property values,*

preserve and strengthen the character of communities, and improve water and air quality.”

§59.6.4.1. The stated intent of Division 6.5 is “*to ensure appropriate screening between different building types and uses.*” Zoning Ordinance §59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

a. Lighting

This issue has already been discussed in the context of parking lot lighting above. The Hearing Examiner finds that the Applicant meets the standards of §69.6.4.4.E, requiring that illumination from the proposed use not exceed 0.1 foot-candles at the property lines.

b. Site Screening and Landscaping

Zoning Ordinance §59.6.5.2.B and 59.6.5.2.C contain the standards for perimeter site screening and landscaping:

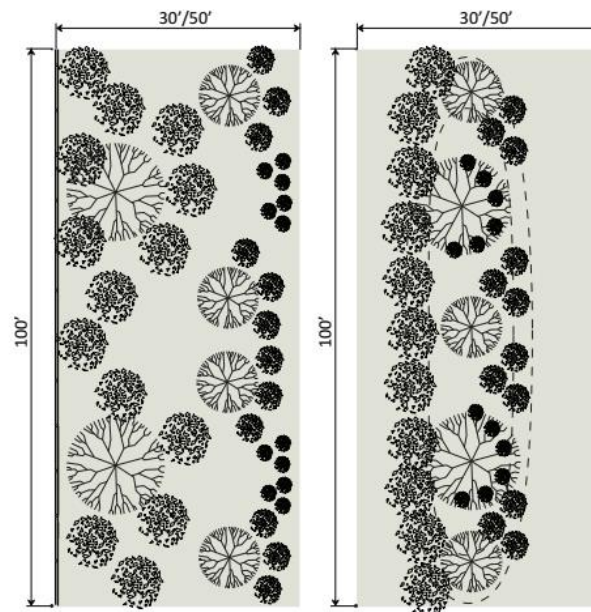
In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use.

- 1. The conditional use standards under Article 59-3 may exempt the development from this requirement.***
- 2. The Hearing Examiner may increase the amount of screening required for conditional use approval under Section 7.3.1.***

Turning to the requirements of Section 6.5.3., referenced in the above-quoted section, the subject site is covered by Subsection 6.5.3.C.7., which provides:

7. General Building with a Non-Industrial Use; Conditional Use in the Agricultural, Rural Residential, or Residential Detached Zones; and Conditional Use in a Detached House or Duplex in Any Other Zone

	Option A	Option B
Dimensions (min)		
Depth	8'	12'
Planting and Screening Requirements		
Trees (minimum per 100')		
Canopy	2	2
Understory or Evergreen	2	4
Shrubs (minimum per 100')		
Large	6	8
Medium	8	12
Small	8	--
Wall, Fence or Berm (min)	4' fence or wall	--



As is apparent, Section 6.5.3.C.7 gives two options, but within those options, the minimums are strictly prescribed by numbers and sizes of trees and shrubs.

Conclusion: Staff advises that the above requirements have been met through existing vegetation, additional plantings, and a 6-foot high board on board fence. The Applicant's expert in landscape architecture also testified that the extensive existing screening and proposed plantings met the requirements of the Zoning Ordinance. The Hearing Examiner finds that the application fulfills the screening requirements of the Zoning Ordinance.

4. Signage

Signage for the use is governed by Division 6.7. Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones:

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in a Residential zone is 2 square feet, unless additional area is permitted under Division 6.7.

1. Freestanding Sign

- a. One freestanding sign is allowed.*
- b. The minimum setback for a sign is 5 feet from the property line.*
- c. The maximum height of the sign is 5 feet.*
- d. Illumination is prohibited.*

Conclusion: No signage for the property is proposed.

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of David Mamana, Greenskeeper Landscaping and Lawn Management, Inc., for a conditional use under Section 59.3.5.5 of the Zoning Ordinance, to operate a landscape contractor business at 3309 Damascus Road, Brookeville, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The Applicant shall be bound by all of testimony and exhibits of record, and by the testimony of its witnesses and the representations of counsel identified in this Report and Decision.
2. All improvements on the property must comply with the Applicant's Conditional Use Site Plan (Exhibit (44(d)) and Landscape and Lighting Plan (Exhibit 44(e)).
3. The landscape contractor business may have no more than 53 employees.
4. Equipment and machinery for the proposed use is limited to 1 large loader, 4 skid steers, 30 trucks, 2 mini-excavators, and 15 trailers (non-dumping).

5. Hours of operation shall be Monday through Friday from 6:00 a.m. to 5:00 p.m. and Saturday from 8:00 a.m. to 4:00 p.m. Snow removal may be provided when needed seven days a week, 24 hours a day.
6. The Applicant must limit impervious surfaces to no more than 10.9 percent of the net tract area and no more than 7.5 percent within the transition area of the Primary Management Area.
7. The conditional use must comply with the conditions of the Final Forest Conservation Plan.
8. At least one of the four handicap spaces must be a van-accessible space.
9. The existing dead-end gravel driveway extensions, located on the eastern side of the property (near Pole Barns C and D) must be eliminated.
10. The Applicant may have no more than 60 wheel stops in the gravel parking areas and the remaining gravel areas must be reserved storage or parking of equipment.
11. Prior to issuance of a Use and Occupancy Permit, the Applicant must submit a final Fire Access Plan approved by the Montgomery County Department of Fire and Rescue Services to the Office of Zoning and Administrative Hearings.
12. Prior to issuance of a Use and Occupancy Permit, the Applicant must record a septic covenant with the Department of Permitting Services. A copy of the approved covenant must be submitted to the Office of Zoning and Administrative Hearings.
13. The Applicant shall instruct all drivers of vehicles making deliveries to the site not to use their air brakes when approaching, entering or exiting the facility.
14. Sale of plant materials, garden supplies, or equipment is prohibited
15. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Issued this 11th day of January, 2016.



Lynn A. Robeson
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

COPIES TO:

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