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Transcript of Hearing

Date: December 11, 2025

Case: Torcato Romano (CU25-06)

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Transcript of Hearing
Conducted on December 11, 2025

1 (1 to 4)

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY
-----x
IN THE MATTER OF :
TORCATO ROMANO, : Case No.: CU25-06
Other. :
-----x
HEARING
BEFORE THE HONORABLE ANDREA LEWINTER
Rockville, Maryland
Thursday, December 11, 2025
9:30 a.m.
Job No.: 611547
Pages: 1 - 92
Transcribed by: Natasia Rana

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A P P E A R A N C E S
ON BEHALF OF THE OTHER:
MICHELE ROSENFELD, ESQUIRE
THE LAW OFFICE OF MICHELE ROSENFELD LLC
1 Research Court
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ALSO PRESENT:
ANDREA LEWINTER, Hearing Examiner
ANTHONY ROMANO, Agent for Applicant
DOUG TILLEY, Witness
MIKE NORTON, Witness, via videoconference
NICK DRIBAN, Witness, via videoconference
ANDREW ROUFF, Technician

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Hearing, held at the location of:

MONTGOMERY COUNTY
OFFICE OF ZONING AND ADMINISTRATIVE
HEARINGS
100 Maryland Avenue
Rockville, Maryland 20850

Pursuant to agreement, before Lee
Utterback-Pair, Notary Public in and for the State
of Maryland.

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E X H I B I T S
(Retained by the Court)
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E X H I B I T S C O N T I N U E D			5	1	P R O C E E D I N G S	7
2	HEARING EXHIBIT	DESCRIPTION	PAGE	2	HEARING EXAMINER: This is a public	
3	Exhibit 34	Revised Transportation	49	3	hearing in the matter of OZAH, Case No. CU 2025-06,	
4		Adequacy Form		4	the application of Torcato Romano, landscape	
5	Exhibit 35	Revised Existing	59	5	contractor, to permit the conditional use of	
6		Conditions Plan		6	landscape contractor at 1430 Comus Road, Clarksburg,	
7	Exhibit 38	Revised Proposed	16	7	Maryland in the Agricultural Reserve or AR zone. My	
8		Conditions Plan		8	name is Andrea LeWinter, and I am serving as the	
9	Exhibit 39	Revised Preliminary	32	9	hearing examiner today. It is my role to listen,	
10		Forest Conservation Plans		10	take evidence, and write a decision regarding this	
11	Exhibit 39A	L1.1	34	11	case.	
12	Exhibit 39B	L1.2	33	12	Ms. Rosenfeld, if you could identify	
13	Exhibit 39C	L1.3	33	13	yourself?	
14	Exhibit 39D	L1.4	33	14	MS. ROSENFELD: Certainly. Michele	
15	Exhibit 39E	L1.5	33	15	Rosenfeld with the law office of Michele Rosenfeld	
16	Exhibit 40	Revised Equipment	61	16	LLC, and I'm here on behalf of the applicant.	
17		Storage Exhibit		17	HEARING EXAMINER: Okay. I don't see	
18	Exhibit 41	Revised Site	60	18	anyone who's not with you in the room. Am I	
19		Distance Evaluation		19	incorrect in any way?	
20	Exhibit 42	Revised Circulation Plan	65	20	MS. ROSENFELD: You are correct. With me	
21				21	is the applicant representative, Anthony Romano; our	
22				22	civil engineer, Doug Tilley. And I believe, on the	
23				23	line, we have Nick Driban, who is our transportation	
24				24	engineer, and if he's not -- it's Mr. Norton?	
25	(continued on next page)			25	TECHNICIAN: He just joined.	
E X H I B I T S C O N T I N U E D			6	1	MS. ROSENFELD: Okay. And Mr. Norton is	8
2	HEARING EXHIBIT	DESCRIPTION	PAGE	2	our forest conservation expert.	
3	Exhibit 45	Revised Land Use and	67	3	HEARING EXAMINER: Okay. So seeing no one	
4		Zoning Report		4	in opposition, I will continue on. I saw the	
5	Exhibit 48A	Resume of Doug Tilley		5	affidavit of posting in the record. I believe it is	
6	Exhibit 48B	Resume of Nick Driban	41	6	Exhibit 27.	
7	Exhibit 48C	Resume of Mike Norton	31	7	(Exhibit 27, previously marked, was	
8	Exhibit 49	Staff Report	34	8	retained by the court.)	
9		Completed on 11/1/2025		9	MS. ROSENFELD: And I have the hard copy	
10	Exhibit 50	Planning Board Letter	92	10	here.	
11				11	HEARING EXAMINER: Okay. Great.	
12				12	MS. ROSENFELD: Do you want me to submit	
13				13	that?	
14				14	HEARING EXAMINER: Yeah. I'll give it to	
15				15	our office when we're done. Thank you.	
16				16	Okay. Now, I appreciate, Ms. Rosenfeld,	
17				17	that you are aware of all this. But just for the	
18				18	record, I'm going to just go through our little	
19				19	spiel.	
20				20	These proceedings are informal with	
21				21	certain formalities. Not that you guys will,	
22				22	because there shouldn't be anybody in opposition,	
23				23	but please do not interrupt while someone is	
24				24	speaking unless you have an objection.	
25				25	This is because the court reporter has	

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3 (9 to 12)

9	<p>1 difficulty understanding when people -- what people 2 are saying when there is crosstalk. This is 3 particularly important in the hybrid format we will 4 use today where some people will be physically 5 present, and some witnesses will be online. 6 This session is being transcribed and 7 recording -- recorded. The recording is used only 8 as a backup for the stenographer. What you say will 9 be under oath and recorded. You may be asked 10 questions about your testimony, if not by 11 Ms. Rosenfeld, then by me. 12 The proceedings will move in the following 13 order. I will address any preliminary motions 14 first. 15 Then, if you would like to make an opening 16 statement, Ms. Rosenfeld, you may. Then I will 17 allow you to present your case in chief. And if 18 anybody does appear before you conclude that, they 19 would have the opportunity to cross-examine your 20 witnesses. 21 Then again, if anybody does appear in 22 opposition, then they would have an opportunity to 23 present their case in chief. If there's any 24 presentation by any interested parties who may 25 appear, they would then go. And then, if you need a</p>	11	<p>1 is that I'd like to take our witnesses a little bit 2 out of order from the usual order. 3 I would like to bring Mr. Tilley, the 4 civil engineer, up just to generally orient you to 5 the site, then have Mr. Romano testify as to the 6 operations and the proposed conditions of approval. 7 Then have Mr. Norton talk about the forest 8 conservation plan, which has been approved by the 9 planning board, and Mr. Driban talk about the 10 transportation adequacy. 11 And then bring Mr. Tilley back up to go 12 through the zoning ordinance standards, just the 13 general development standards and the standards 14 governing the conditional use, only because his 15 testimony will be somewhat more lengthy. And we can 16 let the other witnesses be released. 17 HEARING EXAMINER: That makes sense to me, 18 and thank you for the roadmap to that. It's your 19 case to present, so I don't have any problem with 20 that. 21 I did want to say, for the benefit of the 22 witnesses -- I don't think Mr. Norton or Mr. Driban 23 can actually see, but I'm going to be taking notes. 24 I know we have a stenographer, but it really helps 25 to orient me.</p>
10	<p>1 rebuttal, it would be your opportunity for that. 2 And then we would have closing statements. 3 Approval of the petition is ultimately 4 based on the planning -- on the criteria set forth 5 in the zoning ordinance, which is included in the 6 planning staff report. And please address all 7 testimony to that criteria. 8 Is there -- are there any preliminary 9 motions or issues that we need to address? 10 MS. ROSENFELD: None. 11 HEARING EXAMINER: Okay. Given that, did 12 you want to make any kind of opening statement? 13 MS.ROSENFELD: Very briefly, just to let 14 you know that this application has been filed. We 15 have submitted all of the necessary documentary 16 information in support of the application. The 17 planning board has reviewed and recommended approval 18 of this application, as did planning staff. And we 19 think that all of the evidence in the record is 20 unrefuted. 21 There has been no opposition to date to 22 the evidence that we've entered into the record. 23 And for purposes of today, I would like to actually 24 just -- we believe that the application is ready 25 for approval. With that, what I'd like to suggest</p>	12	<p>1 So if I do stop you in your testimony just 2 so I can catch up, I appreciate the occasional 3 minute here or there. And if anybody needs any kind 4 of comfort break, just let us know. Let me know, 5 and we can certainly go off the record for a minute 6 or two. 7 Allright. Given that, Ms. Rosenfeld, if 8 you wanted to call Mr. Tilley up. 9 MS. ROSENFELD: Yes. Mr. Tilley? 10 And I would like to start with Exhibit 16, 11 the neighborhood map, please. 12 (Exhibit 16, previously marked, was 13 retained by the court.) 14 MS. ROSENFELD: Right here's fine. 15 HEARING EXAMINER: Yeah. And just make 16 sure, when you're speaking, you turn your microphone 17 on. You can just hit the little button when you're 18 ready. 19 (The witness was sworn.) 20 MS. ROSENFELD: Yes. Mr. Tilley, I'd like 21 to -- Mr. Tilley -- 22 HEARING EXAMINER: I'm so sorry. Did you 23 need to qualify him as an expert? 24 MS. ROSENFELD: Yes, I do. And Mr. -- 25 HEARING EXAMINER: Unless -- have you</p>

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4 (13 to 16)

<p>13</p> <p>1 appeared before this board before? 2 MR. TILLEY: Yes, I have. 3 HEARING EXAMINER: Okay. And have you 4 been qualified as an expert before? 5 MR. TILLEY: Yes, I have. 6 MS. ROSENFELD: And Mr. Tilley's CV is in 7 the record as well. 8 HEARING EXAMINER: I saw that. 9 MS. ROSENFELD: Yes. 10 HEARING EXAMINER: So given that 11 Mr. Tilley has been previously qualified as an 12 expert by OZAH, and we have his resume -- I reviewed 13 his resume, he seems extremely qualified to give 14 this type of testimony. Then we can move forward. 15 DOUG TILLEY, 16 having first been duly sworn, testified as follows: 17 EXAMINATION 18 BY MS. ROSENFELD: 19 Q Mr. Tilley, I first would like to draw 20 your attention to what's listed as Exhibit 16 in the 21 record. Are you familiar with this exhibit? 22 A Yes, I am. 23 Q And did you prepare this exhibit? 24 A Yes, I did. 25 Q Would you please just give a brief</p>	<p>15</p> <p>1 (Exhibit 38, previously marked, was 2 retained by the court.) 3 A Yes, I am. 4 Q And did you prepare this exhibit? 5 A Yes, I did. 6 Q And does it generally show the overall 7 layout of the proposed conditional use once 8 constructed? 9 A It does. 10 Q And could you just give the hearing 11 examiner a general overview of what the site layout 12 includes? 13 A Certainly. So the proposed site layout 14 has three separate individual buildings: a 15 warehouse building, a garage building, and an office 16 building that are sort of placed in a semi- 17 triangular shape. They surround a proposed parking 18 area, an asphalt -- a proposed asphalt parking area 19 with a small asphalt protrusion to page left, which 20 would be to the west, heading towards the office 21 building. 22 To the northwest of the parking area, 23 there is a lighter shade that is the proposed septic 24 reserve area with -- for the new structures 25 themselves. There is a proposed stormwater</p>
<p>14</p> <p>1 overview of what this exhibit represents? 2 A So this exhibit represents a neighborhood 3 map of the project site that we are dealing with 4 today. You can see the site is outlined in blue. 5 It's a roughly triangular-shaped piece of 6 property, generally at the intersection of Comus 7 Road and I-270 in the Clarksburg area. The areas 8 outlined in red is the limits of the surrounding 9 neighborhood as delineated, which identifies the 10 additional properties that would be -- we have 11 identified as the surrounding neighborhood to the 12 subject property at hand. 13 Q And could you just generally describe the 14 road network surrounding the property? 15 A The property is -- abuts two separate 16 individual roads. The first is I-270. The property 17 does not have immediate access to I-270. It simply 18 abuts it. 19 The property access is from Comus Road, 20 which is a Montgomery County-maintained road. There 21 is immediate access from Comus Road. Comus Road 22 actually flies I-270, so it goes over top of it. 23 Q Thank you. And I would like to draw your 24 attention to Exhibit 38 in the record, please. Are 25 you familiar with Exhibit 38?</p>	<p>16</p> <p>1 management facility to the immediate, I would say, 2 northeast of the parking area between the garage and 3 the warehouse building. 4 And the circular shape that you see on 5 page right, which would be to the east of the main 6 parking area, is the proposed well location. The 7 circle is a 100-foot well radius. 8 Adjacent to that, there -- if you look 9 page south or -- which would also be south, you can 10 see sort of a curvilinear, darkened hatch that sort 11 of heads down towards where Comus Road is located. 12 That is the main site entrance -- proposed site 13 entrance to the facility, which is immediately 14 across the street from the existing site entrance to 15 the facility to the south. 16 MS. ROSENFELD: Ms. Hearing Examiner, 17 would it be helpful if this exhibit were enlarged, 18 and are there any elements that you would like 19 Mr. Tilley to show you on the screen? Would it be 20 helpful for him to walk through any of those? 21 HEARING EXAMINER: No, I don't think so 22 necessarily. 23 But you're proposing a new entrance area 24 too. Is that what you're saying? 25 MR. TILLEY: That is correct. There's no</p>

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<p>17</p> <p>1 existing curb cut or driveway entrance to the site 2 as it stands right now. 3 HEARING EXAMINER: So how would somebody 4 access it right now? 5 MR. TILLEY: You basically have to pull 6 off to the side of the road and walk in that way. 7 HEARING EXAMINER: I got you. Okay. 8 MS. ROSENFELD: And this might help 9 clarify. 10 Q Mr. Taylor, are there any improvements 11 currently on the property? 12 A There are not. 13 MS. ROSENFELD: Okay. That -- Mr. Tilley, 14 those are all the questions that I have for you at 15 the moment. 16 I would like to call Mr. Romano, please. 17 HEARING EXAMINER: And you're not 18 anticipating -- Mr. Romano is here in his capacity 19 as the owner and the operator, not as an expert, 20 correct? 21 MS. ROSENFELD: Correct. 22 ANTHONY ROMANO, 23 having first been duly sworn, testified as follows: 24 EXAMINATION 25 BY MS. ROSENFELD:</p>	<p>19</p> <p>1 contractor use. We do not -- it will not include 2 lawn maintenance services. 3 Q Thank you. And would you please explain 4 the proposed hours of operation at the property? 5 A The hours of the property would be about 6 5:30 a.m. to 9:00 p.m., Monday through Saturday. 7 Generally, they -- we start about an hour before 8 sunrise and end an hour after dusk. It changes 9 seasonally. Most of the activity is in the morning. 10 And then again, in the afternoon, where 11 they're loading trucks, employees arrive in the 12 morning, load landscaping equipment supplies like 13 mulch onto the trucks. Then they go to the 14 worksites. They work all day. They come back in 15 the afternoon, unload, and load again for the next 16 day. 17 There'll be very few trips back from the 18 operation side of things. They just leave in the 19 morning and come back in the end of the day. 20 Q And when you said that the hours of 21 operation would adjust seasonally, does that mean, 22 for example, that your hours might be longer in the 23 summer and shorter in the winter? 24 A Typically, it's longer in the summer, 25 shorter in the winter, except for snow removal,</p>
<p>18</p> <p>1 Q Mr. Romano, you understand that the 2 application pending right now is for landscape 3 contractor conditional use; is that correct? 4 A That is correct. 5 Q Okay. And I'm going to read into the 6 record what the definition of a landscape contractor 7 conditional use is. It's the business of designing, 8 installing, planting, or maintaining lawns, gardens, 9 hardscapes, water features, outdoor structures, 10 decorative features, stormwater and drainage 11 features, or other activities intended to enhance 12 the appearance or usefulness of outdoor areas. 13 Landscape contractor also means providing 14 snow removal services with vehicles, equipment, and 15 supplies that are stored, parked, serviced, or 16 loaded at the business location. Landscape 17 contractor includes tree installation, maintenance, 18 or removal. Landscape contractor does not include 19 lawn maintenance service. 20 Would you please explain to the hearing 21 examiner what activities you intend to carry out in 22 connection with the proposed use? 23 A We intend to carry out landscaping 24 operations, snow removal, tree maintenance, and 25 removal activities as described under the landscape</p>	<p>20</p> <p>1 where it could be sporadic. 2 Q And for the typical hours of operation, 3 even in the summer, would the hours of operation be 4 limited between the 5:30 a.m. and 9:00 p.m. hours 5 identified? 6 A Yes. 7 Q Okay. How many employees will work at the 8 property? 9 A There will be a maximum of 25 employees. 10 The makeup is going to be three office staff, a 11 mechanic, and up to six landscape crews where three 12 or four people are on each crew. Four employees 13 would be on-site all the time. They will be, you 14 know, carrying out management duties, scheduling, 15 other administrative work. There'll be an on-site 16 mechanic where he's going to be repairing and 17 maintaining the crew equipment. 18 Q And will there be a maximum of 21 19 landscapers? 20 A Yes, there will be a maximum of 21 21 landscapers. Correct. 22 Q Okay. And would you please just describe 23 generally the full employee work schedule? 24 A The crews arrive about 5:30 to the 25 property. They typically arrive in their own</p>

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6 (21 to 24)

<p>21</p> <p>1 individual vehicles. Then they get into the company 2 vehicles, one for -- one vehicle for each three or 3 four people. Then the crews arrive back about 2:30 4 or so in the company vehicles. Then they depart -- 5 you know, they unload the stuff, and they depart 6 about 3:30.</p> <p>7 The mechanic arrives about 8:00 a.m., and 8 then they depart about 5:00 p.m. And then the 9 office staff usually arrives at 9:00 a.m., and they 10 depart about 5:00 p.m.</p> <p>11 Q And you had mentioned that there also 12 would be snow removal operations in connection with 13 this use. Would those operations occur outside of 14 the hours that you just described?</p> <p>15 A Yes. Snow removal typically occurs 16 unexpectedly, so the hours will be extended in the 17 nighttime. They'll arrive to the site, get the snow 18 removal trucks, and then they leave the property to 19 carry out the -- it's very unpredictable because 20 it's weather driven. But it's typically -- it's 21 only during the winter months that the -- our hours 22 of operation will kind of vary dramatically.</p> <p>23 Q And would that only include the employees 24 who are directly handling the snow removal 25 equipment?</p>	<p>23</p> <p>1 justification and statement of operations dated July 2 7.</p> <p>3 (Exhibit 32, previously marked, was 4 retained by the court.)</p> <p>5 Q Mr. Romano, in that Exhibit 32 -- 6 MS. ROSENFELD: If we could pull that up, 7 please.</p> <p>8 Q On Page 9 of that exhibit under Section 3, 9 there is a section called, Proposed Conditions of 10 Approval. Are you familiar with those proposed 11 conditions?</p> <p>12 A Yes.</p> <p>13 Q And are you -- do you accept those 14 proposed conditions of approval as governing the 15 operations of this use? Should it be approved?</p> <p>16 A Yes, we do.</p> <p>17 Q Thank you.</p> <p>18 MS. ROSENFELD: Ms. Hearing Examiner, I 19 have no more questions for this witness. You may.</p> <p>20 HEARING EXAMINER: Yeah, just a few. You 21 described -- I'm sorry. Sorry. I just have a few 22 questions.</p> <p>23 You described -- sorry, let me just back 24 up -- that the crews are usually of three to four 25 people, but the maximum that you're going to have is</p>
<p>22</p> <p>1 A Yes.</p> <p>2 Q Okay. So there wouldn't be the 3 administrative staff or the maintenance crew at that 4 time.</p> <p>5 A There won't be -- no. There won't be -- 6 that's not necessary, but they just need access to 7 the vehicles.</p> <p>8 Q If they're outside of the regular hours.</p> <p>9 A Yes.</p> <p>10 Q Okay. And could you generally describe 11 the kinds of equipment and vehicles that will be on- 12 site and where they will be stored?</p> <p>13 A Vehicles will be stored outside, outdoors 14 in the garages. And the equipment will typically be 15 landscaper-type equipment, which includes several 16 dump trucks, four medium-sized trucks, utility and 17 carry-out -- carry-on trailers, Bobcats, wood 18 chippers. It will also include equipment, including 19 lawn mowers, tractors, snow removal equipment, which 20 will typically be stored outdoors.</p> <p>21 Q Thank you.</p> <p>22 MS. ROSENFELD: And, Ms. Hearing Examiner, 23 I just would like to note for the record that these 24 operational parameters are generally described in 25 Exhibit 32, which is an amended statement of</p>	<p>24</p> <p>1 21. But there may be up to six crews. So could you 2 potentially have up to 24 if you had four crews of 3 six, or is it just 21 kind of configured in 4 different ways?</p> <p>5 MR. ROMANO: Twenty-one, kind of 6 configured in different ways. The crews vary 7 between three and four people, but it'll be a 8 maximum of 21.</p> <p>9 HEARING EXAMINER: Okay. And you feel 10 comfortable with that?</p> <p>11 MR. ROMANO: Yes.</p> <p>12 HEARING EXAMINER: Okay. You talked -- I 13 know your hours are going to fluctuate, and I'm 14 presuming you were providing me with kind of the 15 typical schedule. But you did want operations until 16 9:00 p.m.</p> <p>17 If -- like in the summer, would they 18 potentially have a second shift if they're coming 19 back at 2:30? Like it seemed like everybody was 20 leaving well before 9:00, so I didn't know if that 21 was just to cover winter or snow stuff or if there 22 is a different setup in the summer.</p> <p>23 MR. ROMANO: No. They typically work in 24 the morning from 5:30 to 2:30. There are situations 25 where equipment breaks down, and the mechanic needs</p>

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7 (25 to 28)

25	<p>1 to stay late to repair it. So that's why we wanted</p> <p>2 the 9:00 p.m. to kind of cover any kind of unknown</p> <p>3 kind of variables that will happen. You know,</p> <p>4 they'll stay, and they'll sharpen the blades and</p> <p>5 stuff like that.</p> <p>6 HEARING EXAMINER: Okay. But on a typical</p> <p>7 day, most people will be gone by 5:00; the majority</p> <p>8 will be gone by 3:30.</p> <p>9 MR. ROMANO: Yes.</p> <p>10 HEARING EXAMINER: Okay. And in terms of</p> <p>11 snow removal, again, unpredictable. Are there times</p> <p>12 that trucks are loading up in the early hours of the</p> <p>13 morning to be out on the roads right at, you know,</p> <p>14 5:00, before rush hour?</p> <p>15 MR. ROMANO: Yes. In my experience, it's</p> <p>16 always at night; it's always on the weekend; it's</p> <p>17 always horrible timing. It's very much variable.</p> <p>18 You never know. You typically have to work -- when</p> <p>19 you do snow removal, you have to do it before people</p> <p>20 arrive at 7:00 o'clock. So it tends to be at night</p> <p>21 and very, very early.</p> <p>22 HEARING EXAMINER: So the hours of</p> <p>23 operations would -- the snow removal portion would</p> <p>24 be exempted from that 9:00 p.m. deadline you would</p> <p>25 want people. I just want to be clear about that.</p>	27	<p>1 -- hold on just one second, Mr. Norton.</p> <p>2 TECHNICIAN: It can take a minute.</p> <p>3 HEARING EXAMINER: Okay. Sorry,</p> <p>4 Mr. Norton. It looks like somebody joined our Zoom.</p> <p>5 We're just trying to figure out who it is.</p> <p>6 MR. NORTON: Will's iPhone.</p> <p>7 HEARING EXAMINER: And what is -- because</p> <p>8 we had -- who is Will's iPhone? That just --</p> <p>9 besides the citizen one? Do we know? Do you know?</p> <p>10 No?</p> <p>11 Whoever's on Will's iPhone, could you</p> <p>12 unmute?</p> <p>13 MR. NORTON: Profile comes up saying that</p> <p>14 participant's profile card -- because this person is</p> <p>15 either not logged in or not in our organization.</p> <p>16 But --</p> <p>17 HEARING EXAMINER: Because we also have</p> <p>18 somebody supposedly joining.</p> <p>19 TECHNICIAN: They're taking forever.</p> <p>20 HEARING EXAMINER: Yeah, they're really</p> <p>21 taking forever. Oh, now Will's iPhone is gone.</p> <p>22 Okay.</p> <p>23 TECHNICIAN: Now it's just us.</p> <p>24 HEARING EXAMINER: Now it's just us.</p> <p>25 Okay. I don't know. All right.</p>
26	<p>1 MR. ROMANO: Yes, it would be -- yes.</p> <p>2 HEARING EXAMINER: So that -- it would be</p> <p>3 rare, but it could be kind of a 24/7 type of thing.</p> <p>4 MR. ROMANO: Correct, yes.</p> <p>5 HEARING EXAMINER: Okay. And did you have</p> <p>6 a total number of vehicles on-site? You might have</p> <p>7 given it to me, and I missed it.</p> <p>8 MS. ROSENFELD: Ms. Hearing Examiner,</p> <p>9 there are very specific -- there's very specific</p> <p>10 information about the types of vehicles and how they</p> <p>11 will be parked, and Mr. Tilley will cover that.</p> <p>12 HEARING EXAMINER: Okay. Great. Trying</p> <p>13 to think if I had any more questions. I just wanted</p> <p>14 to make sure to get everything in the record. I do</p> <p>15 appreciate that the conditions described in this</p> <p>16 state of operations was pretty thorough.</p> <p>17 I think that's it. Thank you.</p> <p>18 MS. ROSENFELD: Thank you.</p> <p>19 MR. ROMANO: Thank you.</p> <p>20 MS. ROSENFELD: I next would like to call</p> <p>21 Mr. Mike Norton.</p> <p>22 HEARING EXAMINER: Hi. Mr. Norton, can</p> <p>23 you hear us all right?</p> <p>24 MR. NORTON: We're good.</p> <p>25 HEARING EXAMINER: Oh, we have a citizen</p>	28	<p>1 Sorry for that, Mr. Norton. Apparently,</p> <p>2 you can hear us okay.</p> <p>3 MR. NORTON: I'm good.</p> <p>4 HEARING EXAMINER: Mr. Norton, can I just</p> <p>5 swear you in?</p> <p>6 MR. NORTON: Yes.</p> <p>7 HEARING EXAMINER: I'm just looking for my</p> <p>8 little script because I always mess up the words.</p> <p>9 (The witness was sworn.)</p> <p>10 HEARING EXAMINER: Ms. Rosenfeld, did you</p> <p>11 also want to qualify Mr. Norton as an expert?</p> <p>12 MS. ROSENFELD: Yes, I would, please. And</p> <p>13 Mr. Norton's CV is at Exhibit 48C.</p> <p>14 (Exhibit 48C, previously marked, was</p> <p>15 retained by the court.)</p> <p>16 MS. ROSENFELD: And, Mr. Norton, have you</p> <p>17 qualified as an expert previously before OZAH or the</p> <p>18 board of appeals?</p> <p>19 MR. NORTON: Yes.</p> <p>20 HEARING EXAMINER: Okay. Given that</p> <p>21 Mr. Norton has previously been qualified by OZAH as</p> <p>22 an expert, and I have also reviewed his resume, I'm</p> <p>23 going to qualify him as an expert.</p> <p>24 And you can proceed with questioning him,</p> <p>25 Ms. Rosenfeld.</p>

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8 (29 to 32)

<p>29</p> <p>1 MS. ROSENFELD: Thank you very much. 2 I would like to first start by bringing up 3 Exhibit 39, please. 4 (Exhibit 39, previously marked, was 5 retained by the court.) 6 TECHNICIAN: 39? 7 MS. ROSENFELD: Yes, please. 8 HEARING EXAMINER: First page, probably, 9 right? 10 TECHNICIAN: Which one? A, B, C? 11 MS. ROSENFELD: Let's start with the first 12 page. 13 MR. NORTON: Sheet 1's probably the best. 14 MIKE NORTON, 15 having first been duly sworn, testified as follows: 16 EXAMINATION 17 BY MS. ROSENFELD: 18 Q Mr. Norton, are you familiar with Sheet 1 19 of Exhibit 39? 20 A Yes. 21 Q And would you please -- did you prepare 22 this exhibit? 23 A Yes. 24 Q And would you please explain to the 25 hearing examiner what this represents?</p>	<p>31</p> <p>1 A Yes. 2 Q Okay. And were there any other planning 3 staff or planning board actions in connection with 4 the forest conservation plan? 5 A Not at this point. 6 Q All right. Would you give -- just going 7 back to -- I'm sorry, Exhibit -- 8 A We can stick with 39A. 9 (Exhibit 39A, previously marked, was 10 retained by the court.) 11 Q 39A, yeah. 12 A I think so, yeah. 13 Q I just wanted to reference the right 14 exhibit number. 15 Would you just give a brief overview of 16 what the forest conservation plan entails? 17 A Sure. The forest conservation plan is 18 primarily -- well, the development portion, as 19 Mr. Tilley stated earlier, is primarily associated 20 with the portion of Comus Road. So it would be on 21 the front half of the exhibit that we're looking at 22 today. 23 And it's primarily with L-1.3 for the 24 landscape contractor. The rest of the site will go 25 into forest conservation easement in the rear to the</p>
<p>30</p> <p>1 A This is the overall site forest 2 conservation plan. 3 Q Okay. And there are three other sheets 4 associated with this plan, Exhibits 39 -- B, C, D, 5 and E, actually, four others. Are they also 6 associated with the forest conservation plan? 7 (Exhibits 39, B, C, D, E, previously 8 marked, was retained by the court.) 9 A Correct. 10 Q And what is the current status of the 11 forest conservation plan? 12 A Well, it was approved by the planning 13 board a few weeks ago. 14 Q Okay. And if there were to be any 15 revisions to the forest conservation plan, would we 16 need to return to the board for review and approval? 17 A I believe we would do it as a final forest 18 conservation plan or as certified. 19 Q Okay. And I also would like to draw your 20 attention to the planning board staff report, which 21 is Exhibit 49. Did the planning board staff 22 recommend approval of this preliminary forest 23 conservation plan? 24 (Exhibit 49, previously marked, was 25 retained by the court.)</p>	<p>32</p> <p>1 north. And also, a portion of the eastern side as 2 well will go into forest conservation easement. 3 Q And can you identify how much of the total 4 acreage of the property will be in forest 5 conservation easement? 6 A Oh, my gosh. Yes. I can, if we zoom into 7 the -- I can't zoom -- to the middle of the drawing 8 with the forest conservation worksheet. There is an 9 off-site balance that will be due on this site 10 because we're in that agricultural zone. So the 11 thresholds are extremely high for forest 12 conservation. We are -- 13 MR. NORTON: Right there is fine. 14 A We are currently looking at saving on the 15 site -- let's see. We have existing forest 16 coverage, 8.16 acres of the 9.45 acres. We are 17 going to be saving, on the plan, 4.77 acres. And 18 that's just not necessarily all being cleared, but 19 the way the worksheets work out with conservation 20 easements. 21 Q Okay. All right. And this plan was 22 prepared around the proposed improvements that are 23 going to be placed on -- that are being proposed 24 under the conditional use; is that correct? 25 A Correct.</p>

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33	1 MS. ROSENFELD: Okay. Ms. Hearing 2 Examiner, I have no further questions for this 3 witness. 4 HEARING EXAMINER: Mr. Norton, are there 5 any specimen trees or any other features that, in 6 particular, need to be protected on this site? 7 MR. NORTON: There's several. All the 8 trees are shown on the plan are either significant 9 or specimen that we're looking at on the exhibit 10 right now. There are specimen trees that we are 11 removing. That variance was approved, and we're 12 showing mitigation trees on the forest conservation 13 plan as well. 14 HEARING EXAMINER: And if you can just 15 detail for me how many you're removing and then what 16 the mitigation plan is. 17 MR. NORTON: Oh, boy. 18 HEARING EXAMINER: A rough estimate is 19 fine. It does look like there's a lot. 20 MR. NORTON: No. If we -- oh, shoot. Oh, 21 yeah. That might take me a second. I wasn't 22 expecting that question. One second here. Let me 23 think for a second. It might be on here. I've got 24 my exhibits. I can probably look on here a little 25 bit quicker. Sorry about that. Give me one second.	35	1 have -- just to switch topics. Do you have any 2 concerns about the level of impervious surface being 3 put in with the proposed parking lot and the three 4 buildings? 5 MR. NORTON: No, not -- I do not. We also 6 prepared the landscape plan, which shows the canopy 7 injury or green space and the canopy coverage over 8 the parking lot, that we comply with that as well. 9 HEARING EXAMINER: I have no other 10 questions. 11 Did you have any follow up, Ms. Rosenfeld? 12 MS. ROSENFELD: Just to go briefly to the 13 landscape plan. If we could just pull that up, I'd 14 like to have you verify that you prepared that plan. 15 MR. NORTON: Yes. 16 MS. ROSENFELD: And that it's consistent 17 with the zoning standards for tree coverage and for 18 the lighting requirements. 19 MR. NORTON: Yes. 20 HEARING EXAMINER: And is that Exhibit 19? 21 (Exhibit 19, previously marked, was 22 retained by the court.) 23 MS. ROSENFELD: That's Exhibit 19, which I 24 believe has -- also has three sheets. 25 MR. NORTON: Yeah. It's all combined and
34	1 Sheet -- Exhibit 39 -- I think 39E would 2 probably be the best to have that on there. We do 3 have a table that shows it. Right in the middle, 4 where we have the proposed specimen tree mitigation 5 plant schedule, we have -- we are removing 274 6 inches of trees, and we are putting back all of the 7 mitigation. That will be -- 23 3-inch caliper trees 8 will be planted to mitigate for that. 9 I don't know -- I can possibly look real 10 quick. I don't know if I have a total count off the 11 top of my head of how many specimen trees we are 12 removing on here. 13 MS. ROSENFELD: Your Honor, may I ask a 14 follow-up question that might help clarify? 15 On that 39E sheet, the proposed specimen 16 tree mitigation plan schedule, below that table, it 17 says, Specimen tree removals No. 7, No. 10, No. 12. 18 MR. NORTON: There you go. 19 BY MS. ROSENFELD: 20 Q Would those numbers correlate with the 21 tree numbers that are shown on the overall plan? 22 A Correct, yes. 23 Q And it looks like there are seven? 24 A Two, three -- correct, yes. Large trees. 25 HEARING EXAMINER: And, Mr. Norton, do you	36	1 not set for some reason. Sheet 1 is the overall -- 2 Sheet 2, the one that we just panned out for you. 3 If you scroll down, that is the plan that shows the 4 landscape requirements in the upper right corner of 5 the drawing. 6 Interior green space requires 5%; we have 7 7%. Canopy coverage is 25% within the parking area, 8 and we do meet the 25% as well. Sheet 3 is the 9 lighting coverage, and it shows 0.0s at the lot 10 lines. 11 MS. ROSENFELD: I have no further 12 questions for this witness. 13 HEARING EXAMINER: Okay. Thank you, 14 Mr. Norton. You may be excused. 15 MR. NORTON: Thank you. 16 MS. ROSENFELD: Okay. And I would like to 17 call my next witness, Mr. Driban. 18 (The witness was sworn.) 19 HEARING EXAMINER: Thank you. Your 20 witness, Ms. Rosenfeld. 21 MS. ROSENFELD: Thank you. Mr. Driban's 22 CV is in the record at Exhibit 48B. 23 (Exhibit 48B, previously marked, was 24 retained by the court.) 25 NICK DRIBAN,

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<p>37</p> <p>1 having first been duly sworn, testified as follows: 2 EXAMINATION 3 BY MS. ROSENFELD: 4 Q Mr. Driban, have you qualified as an 5 expert witness in cases before OZAH or the board of 6 appeals in the past? 7 A Good morning. Yes, I have, on numerous 8 occasions. 9 Q Okay. Can you give one or two examples? 10 Case names and numbers? 11 A Of course, yes. The most recent cases 12 were -- let me see if I can pull this up here. Most 13 recently, I testified as an expert in CU 23-10, 14 Community Housing Initiative. That case was August 15 6, 2025. Prior to that, LMA H-156, 7501 Standish 16 Place, February of 2025. There are other cases in 17 2024 prior I could name, but those are the two most 18 recent. 19 HEARING EXAMINER: That's fine. And I've 20 reviewed Mr. Driban's CV. I cannot talk today. My 21 apologies. Given that he's been qualified as an 22 expert before by OZAH and having reviewed his 23 resume, I will qualify him as an expert. And you 24 may proceed with your questioning. 25 MS. ROSENFELD: Thank you.</p>	<p>39</p> <p>1 And so when we look at trip generation, we 2 typically look at something called the Institute for 3 Transportation Engineers -- which is abbreviated ITE 4 -- trip generation manual. And that is a series of 5 empirical data for the vast majority of land uses, 6 which will correlate the number of employees or the 7 square footage of a given land use to the amount of 8 trips that will be generated by that land use. 9 In this case, for a landscaping 10 contractor, it's a bit unique in that it's not 11 covered well by the ITE trip generation manual. And 12 so if you would flip to, I believe, Page 4 of this 13 document, we actually looked at trip generation in 14 two different ways for this site. And this is 15 common for landscaping contractors, again, because 16 it's kind of unique with respect to the ITE trip 17 generation manual. 18 So the top half, this is our trip 19 generation exhibit. The top half of this exhibit 20 evaluates trip generation for the site based on 21 information directly provided by the owner-operator, 22 which is the best way to ascertain trip generation 23 when it's not covered in the ITE trip generation 24 manual. 25 As Mr. Romano discussed, you know, the</p>
<p>38</p> <p>1 Could we start with Exhibit 33, please? 2 (Exhibit 33, previously marked, was 3 retained by the court.) 4 Q Mr. Driban, do you recognize what's being 5 shown as Exhibit 33? 6 A Yes, I do. 7 Q And did you prepare this document? 8 A Yes. That's a traffic statement that I 9 prepared. 10 Q Would you please give the hearing examiner 11 a summary overview of what -- of your findings in 12 the traffic statement? 13 A Yes. So the traffic statement is a review 14 of the site's traffic impacts relative to Montgomery 15 County's Adequate Public Facilities Ordinance, or 16 what's called their growth and infrastructure 17 policy. And when we look at that policy and the 18 accompanying Local Area Transportation Review -- 19 which is the nuts and bolts of how the policy gets 20 implemented, LATR -- we look at something called 21 trip generation, which is the volume of traffic 22 entering and exiting a site. 23 So a trip would be either one vehicle 24 coming in or one vehicle going out. If you left and 25 came back, that is two trips: one in, one out.</p>	<p>40</p> <p>1 vast majority of his employees that will be coming 2 from -- coming to the site are his landscaping 3 employees. There's 21 landscaping employees, three 4 office staff, and one mechanic. And you see those 5 categories listed in the table at the top. 6 And when we look at trip generation in 7 accordance with the county's guidance, we look at 8 what is defined as the peak hours for the adjacent 9 roadways, which is typically, under county 10 standards, 6:30 in the morning to 9:30 in the 11 morning. That would be the a.m. peak period. And 12 we're looking for the one busiest hour during that 13 period in terms of trips to and from the site. 14 And then same thing for the evening. 15 We're looking at 4:00 p.m. to 7:00 p.m., again, 16 counting defined hours of the peak period for the 17 adjacent roads. And the busiest hour of traffic to 18 and from the site is what we're looking for during 19 that period. 20 As you heard Mr. Romano testify, and as 21 documented in our traffic statement, the vast 22 majority of his staff will not be arriving or 23 departing the site during those hours. 24 Specifically, his landscaping crew will typically be 25 arriving around 5:30 in the morning, which falls</p>

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<p>41</p> <p>1 outside of that a.m. peak, and then generally 2 departing the site around 3:30, which, again, falls 3 outside of the evening peak hours. 4 So when we're looking at trips from those 5 landscapers, really, what does fall within the 6 county's range that we're looking at is the 7 landscaping crews leaving together in their 8 individual vehicles in the morning, which would fall 9 between 6:30 and 9:30 on a typical day, as he 10 described, with typically crews of three to four 11 going out. And so that's about six vehicles that 12 would be leaving. 13 So if you look at the first set of three 14 columns under a.m. peak, we have a.m. peak trips in, 15 out, and then total. Again, the office staff and 16 mechanics, you know, are not generally during the 17 same hour as the -- as the landscapers. And really, 18 the only traffic that's coming to or leaving the 19 site during that 6:00 to 8:30 to 9:30 period is the 20 landscaping crews, which is the six vehicles leaving 21 the site for a total of six a.m. peak hour trips. 22 In the p.m., it's the same analysis. 23 Again, the landscaping crews have returned in their 24 crew vehicles and then left individually -- or in 25 carpooling or what have you -- prior to the 4:00 to</p>	<p>43</p> <p>1 surrounding roadway network. 2 If you -- if we go to the bottom half of 3 the table, this is sort of a secondary evaluation 4 related to, again, trip generation. This is looking 5 at sort of a related ITE trip generation manual of 6 use. Again, this is the ITE trip generation manual. 7 If this were a single-family housing development or 8 a hotel or a shopping center, you know, we would 9 just have ITE trip generation. 10 This nursery use is sort of a related use 11 in the IT trip generation manual, but it's not quite 12 the same as a specialty landscaping contractor in 13 terms of how it's defined. And so we kind of look 14 at this as a reality check for the employer-provided 15 data. In this case, the trip generation rates for 16 this nursery use from the ITE trip generation manual 17 are based on employees, so 25 employees to the site. 18 That's the three office staff, one mechanic, 21 19 landscapers. 20 And when we plug that into the ITE trip 21 generation equations -- which, again, are based on 22 empirical data collected at similar sites for a 23 nursery -- it comes out to eight total a.m. peak 24 hour trips and nine total p.m. peak hour trips. You 25 know, so slightly different numbers. I think I've</p>
<p>42</p> <p>1 7:00 p.m. hours that the county evaluates. And so 2 what's left is the office staff and potentially the 3 mechanic leaving during the busiest one hour for the 4 site between 4:00 and 7:00. And so that's a total 5 of four trips out of the site. 6 And so our total trip generation, based on 7 the employer-provided information, is six trips out 8 during the a.m., six total trips during the a.m. -- 9 excuse me. No, that's correct. And then four trips 10 out during the p.m. peak hour, again, for a total of 11 four p.m. peak hour trips. So six and four. 12 The county's threshold, under the LATR 13 guidelines and the growth and infrastructure policy, 14 for a full transportation impact study to be 15 required, is 30 trips. Anything less than 30 trips 16 is considered a de minimis impact. And again, when 17 I speak of trips, that 30-trip threshold, that's 18 during either the a.m. peak hour or the p.m. peak 19 hour. 20 So in this case, 6:00 a.m. peak hour 21 trips, 4:00 p.m. peak hour trips is well below the 22 county's 30-trip threshold. Nothing is required in 23 terms of a transportation impact study because this 24 volume of traffic is recognized as being de minimis 25 and not impactful in any meaningful way to the</p>	<p>44</p> <p>1 explained why and sort of the rationale for looking 2 at both, but in the same ballpark. And certainly 3 both well below that 30-trip threshold that the 4 county has for requiring full transportation impact 5 study versus a de minimis impact. 6 And so, whether you look at it based on 7 the employer information or the ITE trip generation 8 manual for a sort of related use, the results are 9 similar and very clear that this is a de minimis 10 impact on the surrounding railway network. 11 Q Thank you. And if I could ask for you to 12 take a look at what's been filed as Exhibit 34 in 13 the record, which is a document titled, A 14 Transportation Adequacy Form. 15 (Exhibit 34, previously marked, was 16 retained by the court.) 17 A Yes. 18 Q Mr. Driban, are you familiar with this 19 document? 20 A I am. 21 Q Did you complete this document? 22 A I did. 23 Q And could you explain to the hearing 24 examiner the significance of the information in this 25 exhibit?</p>

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<p>45</p> <p>1 A Yeah. So this is really the county's 2 scoping form for transportation evaluation 3 pertaining to the Local Area Transportation Review 4 and the growth and infrastructure policy that I 5 referenced, which are, essentially, implementation 6 of the county's Adequate Public Facilities 7 Ordinance.</p> <p>8 And really, what this form is is kind of 9 taking information that is in that traffic statement 10 that I just described in detail and putting it into 11 a format that's easily digestible for staff to 12 understand the amount of traffic that will be 13 generated by this site, and whether or not it's de 14 minimis versus requiring full traffic impacts -- 15 transportation impact studies.</p> <p>16 So if you scroll down just -- I think it's 17 -- I believe it's Page 3 of this form, there's some 18 kind of boilerplate information that goes in related 19 to access. And then this is really -- where it says 20 Part B, transportation adequacy screening, trip 21 generation estimates, you see that the proposed 22 motor vehicle trips -- 8:00 a.m. peak hour weekday 23 trips and 9:00 p.m. peak hour weekday trips -- match 24 the bottom half of that trip generation table that 25 we just went through in our traffic statement.</p>	<p>47</p> <p>1 in terms of the finding that this -- under LATR 2 transportation review guidelines, the site has a de 3 minimis impact and is not required to perform -- 4 therefore not required to perform a full 5 transportation impact study.</p> <p>6 Q Okay. And specifically, under the first 7 paragraph, Staff concludes that, as such, this 8 application falls under the 30 net new vehicle trips 9 threshold. And it is exempt from further 10 transportation adequacy analysis. Do you agree with 11 that?</p> <p>12 A Yes, I do. That matches our conclusion.</p> <p>13 Q And are you aware about whether this 14 application needs to go through preliminary plan 15 review?</p> <p>16 A Yes, it will. It does.</p> <p>17 Q And at the time of preliminary plan, will 18 there need to be a follow-up by adequacy -- 19 transportation adequacy analysis?</p> <p>20 A Yes. The formal finding of adequacy by 21 staff will occur at that time. It will be a very 22 similar methodology and requirements to what we're 23 discussing here, but that's when the formal finding 24 on their end happens.</p> <p>25 Q Okay. So at that time, that final</p>
<p>46</p> <p>1 And this is where the county looks at the 2 information from our statement, from this forum to 3 confirm that this is de minimis as opposed to 4 needing a full transportation impact study. So this 5 is really just the summary of what's provided in the 6 trafficking -- excuse me, the traffic statement that 7 we prepared.</p> <p>8 Q And do you know if staff accepted this 9 form?</p> <p>10 A Yes, they did.</p> <p>11 Q Okay. And then, finally, I also would 12 like to ask you about Exhibit 49, which is the staff 13 report prepared by planning staff. And I'd like to 14 direct your attention to Pages 16 and 17 of that 15 report. The top of Page 16 in this exhibit starts 16 with Local Area Transportation Review.</p> <p>17 Do you understand this to be the staff 18 analysis prepared in connection with this case 19 evaluating transportation adequacy?</p> <p>20 A Yes.</p> <p>21 Q And can you explain whether their 22 conclusions are generally consistent with yours?</p> <p>23 A Yes. Their conclusions are very -- are 24 completely consistent with ours. They've come to 25 the same conclusions regarding trip generation. And</p>	<p>48</p> <p>1 determination will be made by the planning board; is 2 that correct?</p> <p>3 A That's correct, yes.</p> <p>4 Q In your professional opinion, given the 5 application as it stands today and the limitations 6 on the hours of operation and the number of 7 employees, is this application served by adequate 8 public transportation facilities?</p> <p>9 A Yes, it is.</p> <p>10 MS. ROSENFELD: Ms. Hearing Examiner, I 11 have no further questions.</p> <p>12 HEARING EXAMINER: Thank you.</p> <p>13 Mr. Driban, I'm not sure if you're the 14 right person to ask or if Mr. Tilley will be. But I 15 know that landscaping vehicles, the ones that will 16 be owned by the employer and used by the crews, can 17 be quite heavy and have a lot of equipment. Do you 18 have any information about any impact on Comus Road 19 or other roads in the vicinity, if they're going to 20 be traveling those roads on a regular basis?</p> <p>21 MR. DRIBAN: That's not -- we didn't 22 specifically evaluate that as part of this site. 23 That's something that Mr. Tilley may be able to 24 testify to. I would say that, generally speaking, 25 you know, these roads are designed to handle, you</p>

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49	<p>1 know, whatever traffic is placed on them. And that</p> <p>2 pavement design typically includes -- for any road,</p> <p>3 typically includes some degree of heavy vehicles or,</p> <p>4 you know, landscaping-type vehicles.</p> <p>5 And so my -- you know, based on that, I</p> <p>6 believe that this would be -- the roads surrounding</p> <p>7 the site would be adequate to handle whatever</p> <p>8 landscaping vehicles are on it. I know also that,</p> <p>9 you know, specifically, landscaping contractors are</p> <p>10 typically -- you know, a lot of them are in like</p> <p>11 pickup-type trucks. They may have trailers and</p> <p>12 things like that.</p> <p>13 But, you know, we're, in general, not</p> <p>14 talking about like giant construction dump trucks</p> <p>15 and things like that. So Mr. Tilley may be able to</p> <p>16 speak to that more fully, but I would believe that</p> <p>17 the roads would be adequate to handle that type of</p> <p>18 equipment.</p> <p>19 HEARING EXAMINER: Okay. It sounds like</p> <p>20 Mr. Tilley can address this, but you don't have any</p> <p>21 indication that Comus Road or any of the other</p> <p>22 nearby roads are somehow in poor repair or not up to</p> <p>23 standard.</p> <p>24 MR. DRIBAN: Not to my knowledge. Again,</p> <p>25 we did not evaluate that specifically as part of</p>	51	<p>1 RE-EXAMINATION</p> <p>2 BY MS. ROSENFELD:</p> <p>3 Q Mr. Tilley, are you familiar with Exhibit</p> <p>4 31?</p> <p>5 A I am.</p> <p>6 Q And if we could go to the second page of</p> <p>7 Exhibit 31. Would you please explain to the hearing</p> <p>8 examiner what that is and if you prepared this</p> <p>9 document?</p> <p>10 A Certainly. This is a fire access plan</p> <p>11 that identifies how emergency services apparatus</p> <p>12 would access the site. How they would, first of</p> <p>13 all, be able to get their equipment onto the site,</p> <p>14 but also how individual personnel would be able to</p> <p>15 access certain points on the site. It's designed in</p> <p>16 accordance with the fire code and reviewed by the</p> <p>17 fire marshal's office.</p> <p>18 In particular, we typically show a few</p> <p>19 things. We show turning radii and service paths for</p> <p>20 fire equipment. How they would get onto the site</p> <p>21 through a hardscape surface, where they would park,</p> <p>22 where they would have an operational bay, and how</p> <p>23 individual personnel can reach all points necessary,</p> <p>24 typically around the outside faces of the buildings.</p> <p>25 It also shows additional operational</p>
50	<p>1 this case, but not to my knowledge.</p> <p>2 HEARING EXAMINER: That was my only line</p> <p>3 of inquiry.</p> <p>4 Ms. Rosenfeld, do you have any other</p> <p>5 questions for him?</p> <p>6 MS. ROSENFELD: I do not. Mr. Tilley will</p> <p>7 be able to further address the question that you</p> <p>8 just raised. I do not.</p> <p>9 And unless there are further questions, or</p> <p>10 you think there's a reason for Mr. Driban or</p> <p>11 Mr. Norton, either one to remain, I'd like to excuse</p> <p>12 them both.</p> <p>13 HEARING EXAMINER: Certainly. They can</p> <p>14 both be excused.</p> <p>15 MS. ROSENFELD: Thank you.</p> <p>16 MR. DRIBAN: Thank you.</p> <p>17 MS. ROSENFELD: Okay. At this point, I</p> <p>18 would like to call Mr. Doug Tilley, please.</p> <p>19 HEARING EXAMINER: And, Mr. Tilley, I'll</p> <p>20 just remind you, you remain under oath.</p> <p>21 MS. ROSENFELD: Mr. Tilley, just some very</p> <p>22 preliminary types of review for this plan. If we</p> <p>23 could pull up Exhibit 31, please.</p> <p>24 (Exhibit 31, previously marked, was</p> <p>25 retained by the court.)</p>	52	<p>1 elements that would be required on the site in this</p> <p>2 case because there's no true water service out</p> <p>3 there. There's well service, but no hydrants</p> <p>4 available to them. This particular site would need</p> <p>5 to draw on the services of underground tanks, which</p> <p>6 are shown on this particular exhibit.</p> <p>7 This document is prepared -- was prepared</p> <p>8 by O'Connell & Lawrence under my supervision. So I</p> <p>9 did prepare this document, and it is submitted to</p> <p>10 the fire marshal's office for review and approval.</p> <p>11 Q And if we could go to the first page of</p> <p>12 this exhibit, which is a memorandum from Marie</p> <p>13 LaBaw. Could you please tell the hearing examiner</p> <p>14 who Marie LaBaw is and the significance of this memo</p> <p>15 dated October 24, 2025?</p> <p>16 A Dr. LaBaw is the fire marshal who</p> <p>17 performs, I believe, pretty much every review of</p> <p>18 fire access plans within Montgomery County. And the</p> <p>19 significance of this document is that it's been</p> <p>20 approved by Ms. LaBaw -- or Dr. LaBaw, excuse me.</p> <p>21 But we have filed this with her, identified a few --</p> <p>22 she identified a few corrections she wanted, which</p> <p>23 were addressed. And then she has issued approval on</p> <p>24 this document.</p> <p>25 Q So in your professional opinion, is this</p>

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14 (53 to 56)

<p>53</p> <p>1 property served by adequate fire rescue access and 2 facilities?</p> <p>3 A In my opinion, yes.</p> <p>4 Q Thank you. I'd like to take you to 5 Exhibit 35, please, which is the revised existing 6 conditions plan. Are you familiar with this 7 document?</p> <p>8 (Exhibit 35, previously marked, was 9 retained by the court.)</p> <p>10 A Yes, I am.</p> <p>11 Q And did you prepare this?</p> <p>12 A I did.</p> <p>13 Q And we talked very briefly about the fact 14 that the property is unimproved. Does this reflect 15 the existing conditions of the site as it stands 16 today?</p> <p>17 A It does.</p> <p>18 Q Okay. Thank you. I'd like to turn your 19 attention to Exhibit 41, which is the site distance 20 evaluation. Could you please explain the 21 significance of this document? It appears you 22 prepared it, but could you please clarify?</p> <p>23 (Exhibit 41, previously marked, was 24 retained by the court.)</p> <p>25 A So this is what's identified as a site</p>	<p>55</p> <p>1 revised equipment storage. Are you familiar with 2 Exhibit 40?</p> <p>3 (Exhibit 40, previously marked, was 4 retained by the court.)</p> <p>5 A I am.</p> <p>6 Q And did you prepare this exhibit?</p> <p>7 A Yes, I did.</p> <p>8 Q And could you walk the hearing examiner 9 through the types of equipment and vehicles that 10 will be stored on the property?</p> <p>11 A Certainly. So this particular exhibit 12 identifies specific types of vehicles based on 13 typical sizing associated with said vehicles. So we 14 identified a series of eight separate types of 15 vehicles that will be utilized by a typical 16 landscape contractor. The equipment types and sizes 17 are identified in the table that's on the upper 18 right portion of that page. We color-coded it so it 19 was a little bit easier to follow, of course.</p> <p>20 As Mr. Romano testified, a number of 21 vehicles will be stored outside, but a lot of 22 equipment will also be stored inside the facilities 23 -- excuse me, inside the buildings on-site. So 24 there are eight types of equipment: a dump truck, 25 bucket truck, a Bobcat, a skid steer, a zero-turn</p>
<p>54</p> <p>1 distance evaluation. Essentially, what this 2 document identifies is the ability of drivers 3 typically exiting and/or entering the site to be 4 able to see when they are stopped at a reasonable 5 location coming off of the site, so that there are 6 no issues with collisions for vehicles coming down 7 the road.</p> <p>8 It's prescribed -- the methodology is 9 prescribed by the county, and this document was 10 prepared in accordance with those methodologies and 11 signed and sealed by myself. So that's what this 12 document identifies, is the ability, the distance 13 that somebody can see on Comus Road, coming off of 14 this site. We didn't prepare anything for 270 15 because there's no proposed access to or from 270.</p> <p>16 Q So in your opinion, is there a safe and 17 adequate ingress and egress to the site?</p> <p>18 A There is. There will need to potentially 19 be a small amount of clearing in the front, which is 20 expected as part of the overall design. And that's 21 identified in the comments on that site distance 22 evaluation, that a little bit of extra clearing will 23 help with one of the site distance's looks.</p> <p>24 Q Thank you. And now I would like to turn 25 your attention to Exhibit 40, which is titled</p>	<p>56</p> <p>1 lawn mower, a trencher, a mini-excavator, and then a 2 pickup truck with a trailer with typical equipment 3 dimensions for those individual types of equipments.</p> <p>4 We also identified an offset from those 5 individual equipments. They can't be immediately 6 next to each other to provide a little bit -- to 7 provide some additional room. And then we're able 8 to place these individual pieces of equipment within 9 the -- either in the parking lot, in the case of the 10 pickup trucks with the trailers, and/or within the 11 two buildings that are on-site, where the mechanic 12 will be servicing them, and/or they'll be stored for 13 specific types of their operations.</p> <p>14 As you'll note, at the bottom -- or the 15 bottom is the wrong word. At the southern exit or 16 the southern portion of the warehouse structure, 17 there's a sort of an area of the facility that is 18 unidentified with any of these individual pieces of 19 equipment. But there is a note on the plan that 20 identifies that as a snow removal equipment storage 21 area for miscellaneous snow type removal, whether 22 it's plows, salt, or brine tanks, things of that 23 nature.</p> <p>24 Q And you were here when the hearing 25 examiner asked earlier about the capacity of Comus</p>

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15 (57 to 60)

<p>57</p> <p>1 Road to handle the nature and size of the vehicles 2 associated with this use. Did you hear that 3 question? 4 A Yes, I did. 5 Q And are you familiar with Comus Road? 6 A I am. 7 Q And do you have any opinion as to whether 8 or not Comus Road is adequate to handle the volume 9 and -- the volume of traffic and the size of the 10 equipment and vehicles that will be used on this 11 property? 12 A I do. In my opinion, Comus Road is 13 certainly adequate, both from a structural and from 14 a sizing standpoint, to handle any specific type of 15 piece of equipment that would be road legal. So in 16 this case, any of these equipment pieces on here, on 17 a trailer or if they're self-driving, would be -- 18 the road would be able to handle that. 19 Q And looking at the dimensions here for the 20 dump truck and the bucket truck, do you see those? 21 A I do. 22 Q And what are those dimensions? 23 A Both of them are 26 foot by 8 foot. 24 Q And do you know how the size of these 25 vehicles compare with, for example, a semi-trailer?</p>	<p>59</p> <p>1 access point proposed on the site as identified, 2 where it's tying into Comus Road. For the most 3 part, vehicles will come onto the site through the 4 circuitous driveway and can go wrap around the 5 parking area -- which is set in the middle of the 6 property -- in either direction. 7 The drive aisles are wide enough to 8 accommodate movements in either direction, and 9 they'll leave by the same sort of path right there. 10 There is the little offshoot of parking to the 11 office side of the property where individual -- you 12 know, the office -- the three office workers can -- 13 would nominally likely be parking their cars in that 14 location. That's also the location of the ADA space 15 on-site. 16 Q And on this exhibit, we see the double 17 tracks, and it looks like -- what looks like a sort 18 of a vehicle image. Does that show the turning 19 radii and the travel pattern for those vehicles? 20 A Yes, it does. And this exhibit is 21 developed using AutoCAD software and the tracking 22 software associated with specific vehicle types. So 23 it clearly shows sort of the wheel-based motions 24 associated with that to make sure that these 25 individual types of vehicles will have adequate</p>
<p>58</p> <p>1 A Off the top of my head, I couldn't 2 explicitly state that, but my expectation is that 3 they would be probably a little bit less in size. 4 Q Okay. Thank you. And in your 5 professional opinion, then, does the site adequately 6 accommodate parking for the vehicles that will be 7 associated with the landscaping and snow removal and 8 equipment -- snow removal operations? 9 A In my professional opinion, yes. 10 Q Okay. Thank you. And if we could also 11 take a look now at Exhibit 42, which is the revised 12 circulation plan. Did you prepare this document? 13 (Exhibit 42, previously marked, was 14 retained by the court.) 15 A Yes, I did. 16 Q And could you generally -- 17 HEARING EXAMINER: Sorry. Mr. Tilley, is 18 your microphone going on and off sometimes? 19 MR. TILLEY: Sorry. 20 A Yes, I did. 21 Q And could you generally explain the 22 circulation pattern on-site? 23 A Certainly. 24 MR. TILLEY: Could we rotate the document? 25 A So at a very high level, there's one</p>	<p>60</p> <p>1 access around the curvature, around areas of 2 landscaping, and/or around parked vehicles that may 3 be on-site. 4 The assumption is that every space of a 5 park -- every parking space is filled when you're 6 running these types of things, so you're not 7 overtopping those types of things. 8 Q And would this include the largest 9 vehicles proposed for the site? 10 A It would. 11 MS. ROSENFELD: Thank you. Okay. If we 12 could turn to Exhibit 45, please, the revised land 13 use and zoning report. And if we could start with 14 Page 2. 15 (Exhibit 45, previously marked, was 16 retained by the court.) 17 Q Mr. Tilley, I'd like to orient your 18 attention to Figure 1, the zoning map on Page 2 of 19 this exhibit. Would you please orient the hearing 20 examiner to both the location of the subject 21 property and the uses that currently exist 22 surrounding the property? 23 A So on Figure 1, as shown on the report, 24 the subject property is identified with the red dot 25 that's centered in that particular exhibit. That's</p>

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16 (61 to 64)

<p>61</p> <p>1 the property we're dealing with here from a 2 additional use standpoint. The Garden of 3 Remembrance cemetery is immediately -- is in the 4 property that is immediately to the west of that. 5 So on the left-hand side of the image, you 6 can see 270, which has kind of a white backdrop 7 immediately to the east of the property. And then 8 there are certain properties on the opposite side of 9 270 -- generally, you know, sort of due east -- that 10 are zoned for industrial uses. 11 So there's a number of different types of 12 ongoing uses over there that serve the construction 13 industry, heavy industrial, that sort of thing. 14 There is a property immediately south of the subject 15 property that contains the Great American 16 landscaping company, so a similar type of use. And 17 there are some small residential properties to the 18 south as well. 19 And to the -- excuse me. And to the 20 southeast, Comus Road is direct south from the 21 property identified with the red dot, which is the 22 subject property of this case. 23 Q And the zoning of the properties to the 24 immediate south are what? 25 A They're also AR.</p>	<p>63</p> <p>1 boundaries are identified with the red, the thick 2 red line within Figure 2. The site is identified 3 with the thicker blue line identified in Figure 2. 4 From a use standpoint, we see, across 270, the 5 industrial uses as described, sort of in a gray kind 6 of hatch right there. 7 Immediately to the east -- excuse me. 8 Immediately to the west is the Garden of Remembrance 9 cemetery in the green area. That's -- it's a large 10 piece. I think it's about a 147-acre piece of 11 property, so that's a very large property. 12 And immediately to the south, you see the 13 uses of the Great American Landscapes, and there's 14 one particular residential unit over there. There 15 are certain residential units in the R200 area, 16 which is to the southwest -- southeast of the site 17 across 270 and across Comus Road. 18 Q Thank you. 19 HEARING EXAMINER: Can I just ask you real 20 quickly, Mr. Tilley, how is the cemetery site 21 accessed? Like where -- how do -- you know, if 22 somebody wanted to visit the cemetery, how do they 23 get there? 24 MR. TILLEY: The access point is to the 25 north of Comus Road. It's a little bit further</p>
<p>62</p> <p>1 Q And what is the significance of the cross- 2 hatching across those properties, as well as the 3 ones across I-270? 4 A I believe that's an overlay district that 5 this property is not a part of. 6 Q Okay. And have you had -- do you have any 7 firsthand knowledge of what the type of operation 8 for the landscaping company immediately to the south 9 is like? Have you seen any of those vehicles or any 10 of that use? 11 A I have not seen the vehicles. I have 12 identified, you know, on their website that they do 13 a lot of the same type of tasks that a landscape 14 contractor would perform. 15 Q And the entrance to the subject property 16 is located directly across from the entrance to that 17 use? 18 A In the proposed condition, it will be 19 directly across. Yes. 20 Q I would like to draw your attention to 21 Figure 2, the neighborhood map. Could you just 22 delineate for the hearing examiner the boundaries of 23 the neighborhood map and the general uses contained 24 within that neighborhood? 25 A Certainly. So the neighborhood map</p>	<p>64</p> <p>1 beyond where the proposed access point of this 2 particular property will be. 3 HEARING EXAMINER: So it is on Comus, 4 though? 5 MR. TILLEY: It is on Comus. That's 6 correct. 7 Q Mr. Tilley, turning your attention to Page 8 5 of this exhibit. Making sure that's the actual 9 page, not the PDF page. To PDF Page 5 of the 10 report. There is a discussion here about master 11 plan conformance -- master plan recommendations of 12 conformance with local uses. 13 Would you please summarize this section 14 for the hearing examiner? 15 A Certainly. So we have reviewed this 16 property in depth in relation to the master plan 17 associated with this. It's located within the 18 bounds of the Clarksburg Master Plan and Hyattstown 19 Special Study Area, which was adopted in 1994 back 20 in June. The subject property was originally zoned 21 light industrial, but was rezoned in 1994 because 22 there were some -- basically, some facility-type 23 improvements that would have been required. 24 So it was rezoned to a -- more of a 25 agricultural use: no planned road access, no</p>

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17 (65 to 68)

<p>65</p> <p>1 planned water and sewer service, no planned access 2 to I-270. And it's -- you know, this sort of 3 business is -- they had identified that this 4 particular property was not suitable for like a 5 high-tech-type office. And so it got rezoned at 6 that time.</p> <p>7 As previously -- as I previously testified 8 to, there's no direct access proposed to I-270 and 9 really no impacts to I-270 beyond sort of potential 10 right-of-way discussion, which may come up at a 11 later time. But ultimately, the proposed use is in 12 harmony with the adjoining uses. It's immediately 13 adjacent to a -- or excuse me, immediately 14 confronting to an existing business that provides 15 the exact same services.</p> <p>16 There are a number of other industrial 17 services within the general neighborhood. There's 18 an earthwork contractor, heavy equipment rental 19 supply company, towing businesses, moving storage 20 businesses, crane operator, hauling contractors that 21 operates out of some of the industrial services 22 facilities. And this particular, you know, business 23 is generally in harmony with that type of service, 24 in my opinion.</p> <p>25 MS. ROSENFELD: Ms. Hearing Examiner,</p>	<p>67</p> <p>1 MR. TILLEY: I think there's two things 2 that I think I would like to bring up. The first 3 is, under typical circumstances, there is a minimum 4 site area within the AR zone of 25 acres.</p> <p>5 HEARING EXAMINER: Mr. Tilley, just for a 6 moment, please, if I could interrupt you. If you 7 could orient the hearing examiner to what part of 8 your report you referenced.</p> <p>9 MR. TILLEY: Sorry about that. It's going 10 to be on PDF Page 6, under the -- that section right 11 there, under site area. So, in particular, this 12 site is not 25 acres as it stands right now. 13 However, there are specific permissibilities within 14 the zoning ordinance, specifically Section 15 59.7.7.1.D.9, to determine whether a property would 16 qualify for an exemption from site area 17 requirements.</p> <p>18 In this particular case, A lot or -- and 19 I'm going to read this from the bottom of my report, 20 that italicized section right there -- A lot or 21 parcel in the Agricultural Reserve AR zone, in 22 addition to other exemptions in this subsection, is 23 exempt from the minimum lot area requirements and 24 lot width requirements of the AR zone, but must 25 satisfy the requirements of the zone applicable to</p>
<p>66</p> <p>1 there are a number of pages of this report that go 2 through the very specific zoning standards 3 themselves. Not the conditional use findings, but, 4 you know, setbacks and lot coverage and all those 5 dimensional requirements. I'm happy to have 6 Mr. Tilley walk through them, if that would be 7 helpful to you.</p> <p>8 Given that there's no opposition, you 9 know, they speak for themselves. I leave it to you. 10 If you would like, I'm happy to walk him through 11 those. If you think that the record is adequate and 12 you have enough to rely on for purposes of that 13 piece, then I will just rest on his report for those 14 dimensional elements.</p> <p>15 HEARING EXAMINER: I think that would be 16 fine. I mean, the only thing I would ask is if -- 17 Mr. Tilley, if there's anything 18 particularly unique about the site that you want to 19 make sure that I don't miss. And if we're accepting 20 your report as evidence, is there anything you would 21 particularly highlight in that report? You don't 22 have to if everything's pretty standard, but --</p> <p>23 MS. ROSENFELD: If he could have a moment 24 just to flip through the report and let you know.</p> <p>25 HEARING EXAMINER: Of course.</p>	<p>68</p> <p>1 it before its classification to the AR zone if, A, 2 the latter parcel was created before January 6, 3 1981.</p> <p>4 One of the things that we did as part of 5 this analysis was evaluate whether this particular 6 property was created before that date, and it was. 7 We have identified that this property was created by 8 deed on June 3rd of 1966. The attachment to our -- 9 excuse me, the Exhibit A to our report is the 10 property deed tract that I personally -- that, you 11 know, I worked on and pulled that -- all the 12 information myself to kind of make that proof moving 13 forward.</p> <p>14 So that's one thing I would like to 15 highlight is that, you know, this particular -- some 16 of the zoning analysis on this site was evaluated 17 based on the original RTD zone, which had a lot area 18 -- a minimum lot area of 40,000 square foot. So 19 that's how this particular site, from a site area 20 standpoint, meets the requirements of the zoning 21 code.</p> <p>22 That's one thing I'd wanted to identify 23 because that's a little bit unique to this piece of 24 property. There's no issues with the lot width or 25 any of that kind of thing.</p>

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18 (69 to 72)

<p>69</p> <p>1 You know, flipping through the next 2 several pages on the report, there's nothing really 3 unique about the lot area, the density, the width, 4 or the coverage. There's nothing specifically 5 unique about the building or feature placement 6 beyond the fact that this particular conditional use 7 is a little more stringent than what's actually in 8 the setback requirements for the zoning ordinance. 9 And that gets talked about a little bit 10 later, in particular, on -- if you could go to Page 11 -- PDF Page 8 of the report. I think that's right. 12 Yep. There's a bolded section of the report that 13 identifies -- per the conditional use requirements 14 for a landscape contractor -- all on-site buildings 15 must be set back for a minimum of 50 foot from any 16 property line, which is more stringent than any of 17 the typical zoning requirements for this site. 18 There's no issues with building -- there's 19 nothing unconventional about the building heights 20 proposed. We did -- there's nothing unconventional 21 about the parking, and we've already discussed the 22 on-site equipment elements associated with that. 23 The applicant has requested alternative 24 compliance for certain sections of the parking lot, 25 landscape, and screening on this site. And that's</p>	<p>71</p> <p>1 taken up about a page and a quarter on that specific 2 request. I think those are the two kind of main 3 things I wanted to highlight as maybe perhaps a bit 4 unique about this individual property. 5 HEARING EXAMINER: Thank you. 6 BY MS. ROSENFELD: 7 Q Thank you. Mr. Tilley, I'd like to draw 8 your attention to Page 11 of this exhibit, the 9 conditional use necessary findings. And I'd like to 10 go through those more specifically, starting with 11 the first, which provides that in this particular 12 zone, the minimum lot area is two acres. Do we meet 13 that standard? 14 A We do. 15 Q And you just touched on this briefly. The 16 minimum setback is 50 feet from any final lot line. 17 Do we meet that standard? 18 A Yes, we do. 19 Q Okay. The number of motor vehicles and 20 trailers for equipment and supplies operated in 21 connection with contracting business or parked on- 22 site must be limited by the hearing examiner to 23 avoid an adverse impact on abutting uses. Adequate 24 parking must be provided on-site for the total 25 number of vehicles and trailers permitted.</p>
<p>70</p> <p>1 identified on Page -- I think it's on PDF Page 9 in 2 Section 6 of this. And there is significant 3 discussion in this report about the rationale for 4 those individual requests hereon. 5 In particular, just a high-level 6 description of that. There are typically parking 7 lots, screening requirements associated with parking 8 areas greater than 10 foot for certain types of 9 conditional uses. In this case, the listed 10 specificity of the parking lot landscaping 11 requirements is dwarfed by what's out there and what 12 will be out there in perpetuity because of either 13 septic reserve area that will not be touched, 14 significant specimen trees that are proposed to be 15 remained, and/or forest conservation area that's 16 proposed on the site. 17 So the parking lot will be screened in on 18 the 270 side and on the Garden of Remembrance side, 19 just by the nature of the overall site development. 20 And that was the specific -- that was why we 21 provided that request for alternative compliance. 22 It's written -- there is significant 23 discussion about that in this report. If you start 24 -- if you go to PDF Page 10, there it is right 25 there. We discussed that in depth. I think we've</p>	<p>72</p> <p>1 We did go through the exhibit that shows 2 the parking on-site. In your opinion, is there 3 adequate parking for the total number of proposed 4 vehicles? 5 A In my opinion, there is. 6 Q And does that exhibit limit the maximum 7 number of vehicles and types of equipment on the 8 property? 9 A Yes, it does. 10 Q And so, in your opinion, would there be 11 any adverse impact on abutting uses for this use as 12 proposed as it relates to motor vehicles and 13 trailers for equipment and supplies? 14 A In my opinion, no. There would be no 15 adverse impact on the abutting uses. 16 HEARING EXAMINER: If I could just 17 interrupt for one second, Mrs. Rosenfeld. 18 One thing you didn't talk to -- and I was 19 just going to ask you on in a minute. But since 20 we're right on this is you talked about where the 21 four employees that will be outside all the time are 22 going to park. 23 But, as was described in Mr. Romano's 24 testimony, that there's going to be 21 individuals 25 arriving and parking. Just so we have it really</p>

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19 (73 to 76)

<p>73</p> <p>1 clear on the record, where are those individuals 2 going to park their own use cars before they hop 3 into their landscape vehicles? 4 MR. TILLEY: So my expectation is there's 5 going to be some movement of vehicles when they get 6 there. So they're going to have to get there. And 7 since -- it's going to be kind of a little bit of a 8 rolling operation. 9 You know, people are going to park. 10 People are going to get out, have to move -- you 11 know, move the trailers and load up. Because 12 they're going to have to move trailers to get 13 equipment, get equipment for -- there are material 14 storage bins. So load up on material, that kind of 15 thing. 16 So there's going to be a little bit of get 17 there, kind of get yourself situated, get in the 18 trucks, move around a little bit if necessary. 19 HEARING EXAMINER: So if I can rephrase 20 that so I just make sure I understand. So if I 21 drive to work in my own vehicle, my expectation 22 would be that -- after I've gotten my work vehicle 23 and trailer set for the day, and that's kind of 24 moved around -- then I can put my personal vehicle 25 in that space, potentially?</p>	<p>75</p> <p>1 A Absolutely. 2 Q And as per the zoning code standards, in 3 your opinion, does the parking as provided meet the 4 zoning ordinance requirements? 5 A It does. 6 Q No. 4: Sale of plant materials, garden 7 supplies, or equipment is prohibited unless the 8 contracting business is associated with a nursery 9 retail or nursery wholesale use. Is the applicant 10 proposing to sell plant materials, garden supplies, 11 or equipment? 12 A He is not. 13 Q No. 5: The hearing examiner may regulate 14 hours of operation and other on-site operations to 15 avoid adverse impact on abutting uses. Are you 16 familiar with the operational limitations with 17 respect to the hours of operation and the number of 18 employees and the type of equipment that's been 19 proffered with this application? 20 A Yes, I am familiar with that. 21 Q And in your -- if you would please walk 22 through the recommended finding that is put forward 23 under No. 5. 24 A Certainly. So Mr. Romano testified about 25 -- the operational association is that, you know,</p>
<p>74</p> <p>1 MR. TILLEY: That is correct, yes. And 2 potentially also utilize the office spaces 3 temporarily while they get loaded up and then move 4 over so that the office folks who are coming a 5 little bit later will have a place to park when they 6 arrive. 7 HEARING EXAMINER: Do you anticipate any 8 problem if multiple teams are arriving at the same 9 time? 10 MR. TILLEY: So I do not because it's a -- 11 the parking area itself is fairly open, and there 12 will be ability to kind of move in and around the 13 spaces. So it'll be a little bit of coordination 14 with the teams as needed. But since everybody 15 should be getting there right around the same time, 16 I don't anticipate that as being an issue. And I 17 further expect there will be some carpooling to this 18 site. 19 HEARING EXAMINER: Thank you. 20 BY MS. ROSENFELD: 21 Q And, Mr. Tilley, by using a sort of shared 22 parking approach as the operation gets underway 23 during the day, does that limit the amount of 24 impervious surface by reducing the amount of parking 25 needed on-site?</p>	<p>76</p> <p>1 there are some changes seasonally, both within the 2 summer and the winter, and that the business is 3 expected to be busiest in the morning when employees 4 are arriving and forming the crews and then leaving 5 to their site. So, you know, as identified in the 6 statement of operations, that's been proffered 7 previously. 8 You know, the employees are expected to 9 arrive early in the morning and depart for their 10 various sites prior to sort of the typical traffic 11 periods on some of the local roads. The maintenance 12 staff and administrative staff will be on-site for 13 the entire day, but are expected to arrive a little 14 bit later. The crews will arrive back from their 15 sites in sort of the 2:30 to 3:00 p.m. window and 16 then, you know, go home. 17 And that's obviously, on a typical day, as 18 Mr. Romano testified. You know, there could be some 19 off-hours stuff in the event that equipment breaks 20 down. Or, you know, in the event that there is snow 21 inspection services going on, that there will be 22 some 24/7 -- potentially 24/7. 23 But then the hours are specifically -- 24 have been, you know, well-described in the statement 25 of operations and that the applicant has not</p>

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20 (77 to 80)

<p>77</p> <p>1 proposed or requested direct access to 270, and that 2 Comus Road -- all access shall be coming through 3 Comus Road. 4 As part of this analysis, we also sort of 5 evaluated how certain other properties in the 6 vicinity, particularly those that were immediately 7 adjacent to this property, would use Comus Road. We 8 identified from -- that the Garden of Remembrance 9 grounds typically open at 8:00 a.m., and the offices 10 open no earlier than 9:00 a.m. So the -- any sort 11 of rush to get to the cemetery will not coincide 12 with the typical busiest period in the morning when 13 the crews are coming, when the crews are loading up, 14 and when the crews are leaving. 15 So in OCL's opinion, in my opinion, that 16 proposed use with the Garden of Remembrance, the 17 proposed use assessed here with the landscape 18 contractor, you know, because of the way the timing 19 structure works, will not have any significant 20 impact on the Garden of Remembrance. We would also 21 anticipate that Great American Landscapes to the 22 south would operate sort of in a similar manner. 23 And, you know, neither use is going to 24 preclude the other one from operating effectively. 25 The expectation would be that they're doing the same</p>	<p>79</p> <p>1 of Remembrance, Jody Kline. And I have talked to 2 him several times over the years, both when this was 3 initially filed and subsequently. They are familiar 4 with this application. They have reviewed it, and 5 they have no concerns about it. 6 So I will let Mr. Tilley answer your 7 question, but I did want to assure you that they 8 have advised us that they don't have any concerns 9 about the application. 10 HEARING EXAMINER: I thank you for 11 confirming that. I mean, I certainly appreciate it. 12 They're not here. They were given notice, and they 13 didn't come. So I just -- 14 MS. ROSENFELD: Correct. 15 HEARING EXAMINER: But if Mr. Tilley could 16 just alleviate any concern. 17 MR. TILLEY: In my opinion, no. The 18 timing is such that there will not be any impacts 19 between the two elements. And further, I mean, my 20 expect -- this timing was structured in that way. I 21 mean, I would expect funerals generally to be taking 22 place in the middle of the day when there should not 23 be -- there should be very, very little traffic, if 24 any, coming in and out of this site. 25 So -- and further, I mean, Comus is a</p>
<p>78</p> <p>1 type of thing. 2 HEARING EXAMINER: If I could interrupt 3 again. 4 And I apologize, Ms. Rosenfeld, if I'm 5 jumping. 6 MS. ROSENFELD: No, please. 7 HEARING EXAMINER: Because that is one 8 area of inquiry that I just want some more 9 information about is the coordination with the 10 cemetery. I appreciate what you're stating, that in 11 the morning, when most of the people are arriving, 12 the cemetery will be open. 13 But is there -- in your professional 14 opinion, does there need to be any kind of protocol 15 or procedure in place? Say, if a funeral is taking 16 place in the afternoon, and you're trying to get 17 cars into the cemetery while potentially large 18 landscaping vehicles are coming in, particularly if 19 there's another landscaping company across the 20 street that's also doing the same thing. 21 MS. ROSENFELD: Ms. Hearing Examiner, if I 22 might address that. 23 HEARING EXAMINER: Sure. 24 MS. ROSENFELD: I have been in 25 communication with the zoning counsel for the Garden</p>	<p>80</p> <p>1 standard-size road. And, you know, as Mr. Driban 2 testified, you know, the actual amount of traffic 3 coming in is a de minimis. So I have no concerns 4 about that at all. 5 BY MS. ROSENFELD: 6 Q Had you finished with your testimony in 7 connection with regulating the hours of operations, 8 No. 5 in your report? 9 A Yes, I believe I had, unless the zoning 10 hearing examiner has further questions. 11 Q Okay. With respect to adequate public 12 facilities, we've already had Mr. Driban testify 13 about roads. Do you have any opinions as to whether 14 or not fire and police are adequate? 15 A In my opinion, fire and police are 16 adequate. We have an approved fire access plan. 17 There is a fire station that is approximately 2.8 18 miles from the property. There's a police station 19 approximately 6.4 miles from the property, and 20 coverage is adequate. 21 Q And will the proposed use have any impact 22 on schools? 23 A It will not. 24 Q And I believe you testified that this is 25 going to rely on public well and -- I'm sorry, on</p>

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21 (81 to 84)

81	<p>1 private well and septic; is that correct?</p> <p>2 A That is correct.</p> <p>3 Q So there's no impact on public water and</p> <p>4 sewer facilities; is that correct?</p> <p>5 A That is correct.</p> <p>6 Q Are you familiar with Exhibit 49, which is</p> <p>7 the planning department staff report in connection</p> <p>8 with this case?</p> <p>9 A Yes, I am.</p> <p>10 Q Have you reviewed this report?</p> <p>11 A I have.</p> <p>12 Q And does it recommend approval of this</p> <p>13 use?</p> <p>14 A It does.</p> <p>15 Q Is there any analysis or information in</p> <p>16 this report that you dispute?</p> <p>17 A None.</p> <p>18 Q And are you familiar with Exhibit 50,</p> <p>19 which is the planning board's letter recommending</p> <p>20 approval?</p> <p>21 (Exhibit 50, previously marked, was</p> <p>22 retained by the court.)</p> <p>23 A I am familiar with that letter.</p> <p>24 Q And is there anything in this letter that</p> <p>25 you would dispute?</p>	83	<p>1 Q And does the landscape and lighting plan</p> <p>2 show a driveway entrance into the site?</p> <p>3 A It does.</p> <p>4 Q And it shows it on all three sheets; is</p> <p>5 that correct?</p> <p>6 MR. TILLEY: Could you scroll down through</p> <p>7 all three sheets just to make sure? There's one,</p> <p>8 two, and three.</p> <p>9 A Yes, it does.</p> <p>10 Q Okay. Then I would like to now turn your</p> <p>11 attention to Exhibit 38, which is the revised site</p> <p>12 plan. Mr. Tilley, looking at the driveway access on</p> <p>13 Exhibit 38, is it consistent with what's shown on</p> <p>14 the landscape and lighting plan?</p> <p>15 A No. They're in two separate locations.</p> <p>16 Q And which one governs for purposes of the</p> <p>17 final plan layout?</p> <p>18 A The one that is on Exhibit 38 that we are</p> <p>19 seeing right now.</p> <p>20 Q So the -- that layout supersedes what's</p> <p>21 shown in Exhibit 19?</p> <p>22 A Yes, that is correct.</p> <p>23 Q And could you explain to the hearing</p> <p>24 examiner why this change was made?</p> <p>25 A Certainly. The original entrance location</p>
82	<p>1 A There is nothing in this letter that I</p> <p>2 would dispute.</p> <p>3 MS. ROSENFELD: Ms. Hearing Examiner,</p> <p>4 could I just take a couple of minutes off the record</p> <p>5 to confer with Mr. Tilley?</p> <p>6 HEARING EXAMINER: Of course.</p> <p>7 MS. ROSENFELD: Thank you.</p> <p>8 (Record suspended.)</p> <p>9 HEARING EXAMINER: Thank you. All right.</p> <p>10 Ms. Rosenfeld.</p> <p>11 MS. ROSENFELD: Yes. Thank you.</p> <p>12 To start with, I'd like to pull up Exhibit</p> <p>13 19 again, please. And we would -- this would be</p> <p>14 Sheet 1. Correct.</p> <p>15 BY MS. ROSENFELD:</p> <p>16 Q Mr. Tilley, are you familiar with Sheet 1</p> <p>17 of Exhibit 19?</p> <p>18 A Yes, I am.</p> <p>19 Q And what is this document?</p> <p>20 A This is the first page of the landscape</p> <p>21 and lighting plan that was prepared by Mr. Norton</p> <p>22 and his firm.</p> <p>23 Q And he already described this document,</p> <p>24 correct?</p> <p>25 A That is correct.</p>	84	<p>1 was proposed, as was shown on the landscape and</p> <p>2 lighting plan. And through some of the comments</p> <p>3 received from planning staff, we altered that</p> <p>4 location to be immediately, directly across from the</p> <p>5 Great American Landscapes's entrance location. So</p> <p>6 the entrance was changed to accommodate that</p> <p>7 particular comment from planning staff.</p> <p>8 Q Thank you. And if we also could take a</p> <p>9 quick look at Exhibit 9, the zoning map.</p> <p>10 (Exhibit 9, previously marked, was</p> <p>11 retained by the court.)</p> <p>12 HEARING EXAMINER: Can I just ask why they</p> <p>13 wanted that change, if you remember?</p> <p>14 MR. TILLEY: In my recollection, they</p> <p>15 didn't particularly give an exact reason. However,</p> <p>16 it was a change we could accommodate. And we went</p> <p>17 ahead and were able to make some revisions</p> <p>18 associated with that because it didn't have any</p> <p>19 overall significant impact on the site.</p> <p>20 MS. ROSENFELD: And if I may indulge,</p> <p>21 perhaps I can refresh Mr. Tilley's memory.</p> <p>22 Q And correct me if I'm wrong. My memory is</p> <p>23 that planning staff wanted the entrance to be</p> <p>24 directly across from the entrance to the landscaping</p> <p>25 company across the street. Would that be correct?</p>

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22 (85 to 88)

<p>85</p> <p>1 A That is correct. They just didn't really 2 explain exactly why. Yeah. 3 HEARING EXAMINER: And he had stated that 4 they just -- like why they wanted them right across 5 from each other, I wasn't sure. But as long as 6 there's no significant impact, that's the important 7 part. 8 A From an engineering standpoint, it may 9 assist with site distance or with just making sure 10 that, you know, you're not pulling out into 11 somebody. So from a technical standpoint, that is a 12 reason why I think they could have done that. And 13 since there was no other significant technical 14 impact to the site, we went ahead and made those 15 changes accordingly. 16 Q And looking still at Exhibit 9, would you 17 -- if you could go to the screen. Would you be able 18 to show the hearing examiner the entrance to where 19 the location -- the entrance location for the 20 proposed use, the entrance to the Garden of 21 Remembrance, and the distance between the two drive 22 entrances? 23 A Certainly. So based on, you know, what we 24 just described, that the entrance is now proposed 25 immediately across the street from the Great</p>	<p>87</p> <p>1 does the pending application meet all of the 2 development standards governing this -- the proposed 3 conditional use application? 4 A In my opinion, yes, it does. 5 Q And in your professional opinion, does it 6 meet all of the governing standards for this 7 particular conditional use, specifically as it 8 relates to a landscape contractor? 9 A In my professional opinion, yes, it does. 10 MS. ROSENFELD: Ms. Hearing Examiner, I 11 have no further questions. 12 HEARING EXAMINER: Thank you. I just -- I 13 was just curious, just not being that familiar with 14 the area. I appreciate you said that Comus Road is 15 a flyover over 270. Where would you get onto 270 16 relative to Comus Road? Like how far down do you 17 have to drive, if you know? 18 MR. TILLEY: Off the top of my head, I 19 can't tell you that information. I'm sorry. 20 MS. ROSENFELD: Mr. Romano can answer that 21 question. 22 MR. ROMANO: If you go south, you get on 23 121. And if you go north, you get on 109. And 24 south is two miles, and north is about two and a 25 half miles to get onto 270. I might have that</p>
<p>86</p> <p>1 American landscaping facility. And based on the 2 location here, the site entrance to the new 3 landscaping contractor facility is going to be 4 roughly at the same spot across -- on the north side 5 of Comus Road. 6 And what you can see on Exhibit 9 is the 7 entrance to -- the main entrance to the cemetery 8 proper, to the Garden of Remembrance, which you can 9 see right there. It's a -- they have a separated 10 entrance. They have a sign in the middle of it 11 there. 12 There is a scale bar on the bottom of this 13 page, so if we could just go a little bit to page 14 bottom there. You can see the scale bar. That's 15 right there. This is a zoning map that was acquired 16 from staff. 17 And if you -- it's a little bit of a ratio 18 in the scaling purposes here, but we checked this. 19 And if you scale this out from that location, it's 20 approximately 750 feet between where the newly- 21 proposed entrance will be located and where the 22 Garden of Remembrance has their existing entrance. 23 Go up here? 24 Q We're good up there. Thank you. 25 Mr. Tilley, in your professional opinion,</p>	<p>88</p> <p>1 backwards, but that's what it is. You have to go up 2 355 both ways. 3 HEARING EXAMINER: And, Mr. Romano -- and 4 I'm assuming that the stenographer can keep up with 5 us, but just to recall you for a second. Is -- so 6 it's about approximately two, two and a half miles 7 to get on north and south of 270. 8 Is there any reason, besides utilizing the 9 particular uses in this area, that someone would get 10 off 270? Like is there a particular -- you know, 11 sometimes there's like a truck stop or a truck area 12 where, you know, interstate traffic would 13 necessarily utilize the area for any particular 14 reason? 15 MR. ROMANO: Between the two and between 16 -- no. 17 HEARING EXAMINER: No. Okay. 18 MR. ROMANO: No. There's -- 19 HEARING EXAMINER: That would accord with 20 how you've laid out the geography. I just wanted to 21 confirm. Okay. Thank you. 22 I think -- because I interrupted before; 23 Mr. Tilley answered my other questions during his 24 testimony -- I didn't have any additional questions. 25 MS. ROSENFELD: Okay. I would like to</p>

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23 (89 to 92)

89	1 move admission of all of the exhibits that we've 2 presented. There are several that we have not 3 specifically discussed. I think they're really 4 minor in nature. 5 If you need me to authenticate any of 6 them, I can. But they're all either stamped or 7 signed by the expert or who prepared it or by 8 myself, if it's any of the documents that I filed. 9 HEARING EXAMINER: Thank you. Yeah. I 10 have looked through all the exhibits, and I didn't 11 see anything of note. Obviously, there were a 12 number of revisions and updates, which I appreciate. 13 That's, you know, pretty standard as you 14 move through a case. I didn't know if there was 15 anything in terms of something that was replaced or 16 -- and then a revision placed in, if there was 17 anything notable that you wanted to highlight for 18 me. 19 MS. ROSENFELD: I did go through the 20 exhibit list. And frankly, your staff did a 21 terrific job of sort of deleting the exhibits that 22 had been superseded by new ones. So I think that 23 the current list reflects the latest submissions. 24 So, for example, No. 8, which was the 25 statement of justification operations, has been	91	1 So today is the 11th, so that would mean 2 the record should close on December 21. And then my 3 office has 30 days -- I have 30 days to issue a 4 decision. 5 MS. ROSENFELD: I think my only question 6 would be if you think it's necessary to update the 7 landscape and lighting plan. It's not provided for 8 purposes of access. Of course, it's provided for 9 purposes of the landscape and the lighting 10 standards. That's the only exhibit I can think of 11 that we might want to update, but I don't think it's 12 necessary unless you think it's important that we do 13 that. 14 HEARING EXAMINER: I don't think it's 15 necessary either. Again, that you have adequate -- 16 certainly more than sufficient number of exhibits to 17 show the accurate ingress and egress. And like you 18 said, that exhibit is for landscape and lighting, so 19 I think we're fine. 20 MS. ROSENFELD: Thank you. 21 HEARING EXAMINER: And obviously, there's 22 still final site development that has to be gone 23 through, regardless. 24 MS. ROSENFELD: Right. 25 HEARING EXAMINER: So this is really about
90	1 stricken and says, Replaced by Exhibit 32. So 2 Exhibit 32 is the current statement of 3 justification. So, based on my review, I think this 4 list is -- I don't think there are any superseded 5 documents except for the landscape driveway entrance 6 that we talked about. 7 HEARING EXAMINER: Thank you for pointing 8 that out. Okay. I have no issue in terms of 9 authenticity of the exhibits, so I will deem them 10 admitted at this point. 11 MS. ROSENFELD: Thank you. Okay. I think 12 that closes our case. 13 HEARING EXAMINER: Okay. Did you have any 14 desire to make any closing statement? 15 MS. ROSENFELD: We ask for your approval 16 with the conditions as proposed. 17 HEARING EXAMINER: All right. Thank you 18 very much. That will conclude this case. The -- 19 sorry. The record will stay open for ten days to 20 allow for preparation of the transcript. And in the 21 off chance -- I'm going to close testimony for 22 today. But in the off chance there's some 23 documentary exhibit that you need to add, we can 24 typically make it -- accommodate that within those 25 ten days.	92	1 the use itself. 2 MS. ROSENFELD: And it's the site plan 3 that really governs the layout, and that's accurate. 4 Okay. Thank you. 5 HEARING EXAMINER: All right. So thank 6 you. That will conclude the case. And thank you, 7 everyone. 8 MS. ROSENFELD: Thank you very much. 9 (Off the record at 11:14 a.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, Lee Utterback-Pair, the officer before
whom the foregoing proceedings were taken, do
hereby certify that any witness(es) in the
foregoing proceedings were fully sworn; that the
proceedings were recorded by me and thereafter
reduced to typewriting by a qualified
transcriptionist; that said digital audio
recording of said proceedings are a true and
accurate record to the best of my knowledge,
skills, and ability; and that I am neither
counsel for, related to, nor employed by any of
the parties to this case and have no interest,
financial or otherwise, in its outcome.



LEE UTTERBACK-PAIR,
NOTARY PUBLIC FOR THE STATE OF MARYLAND

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I, Natasia Rana, do hereby certify that
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ability from the audio recording and supporting
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