

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF: *
TORCATO ROMANO LANDSCAPE CONTRACTOR *

Applicant *
 *
 Anthony Torcato Romano *
 *
 For the Petition *
 *
 Michele Rosenfeld, Esq. *
 Attorney for the Applicant *

OZAH Case No. CU 25-06

Before: Andrea LeWinter, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

The applicant, Mr. Anthony Romano, filed an application for a conditional use for a Landscape Contractor at 14301 Comus Road, Clarksburg, Maryland, pursuant to Section 59.3.5.5 of the Zoning Ordinance,¹ as well as for approval of a Forest Conservation Plan submitted in accord with Section 22A-3 of the Forest Conservation Law (“FCL”) and a variance of Section 22A-12(b)(3) of the FCL pertaining to high priority trees. Exhibits 1, 13 a-c, 14, 39 a-e, and 49. The Office of Zoning and Administrative Hearings (“OZAH”) held a public hearing on December 11, 2025. Exhibit 47. Mr. Romano testified, T. 18-26 and 87-88, as well as Mr. Douglas Tilley, an expert qualified in civil engineering, T. 13-17 and 51-87, Mr. Nicolas Driban, T. 37-50, an expert qualified in traffic engineering, and Mr. Michael Norton, an expert qualified in landscape architecture and environmental planning, T. 29-49. No one appeared in opposition or contacted the Montgomery County Planning Department with comments prior to the hearing. See Transcript of Hearing; Exhibit 49, p. 9.

On November 1, 2025, Planning Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report recommending granting the application for a conditional use, Forest Conservation Plan, and variance with conditions. Exhibit 49. On November 19, 2025, the Planning Board unanimously recommended approval of the conditional use and the Forest Conservation Plan. Exhibit 50.

Following the close of the hearing on December 11, 2025, the record was held open for ten days to receive the transcript. T. 90-91. The record closed on December 21, 2025.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

For the following reasons, the Hearing Examiner approves the conditional use application with conditions.

II. FACTUAL BACKGROUND

A. The Subject Property

As set out in the Staff Report, the Subject Property is 9.61² acres in the AR Zone and is currently an undeveloped (no improvements), vacant, wooded parcel, legally referred to as Pleasant Plain, Tax Map # EW12, Acct# 0023661. Exhibit 49, p. 1; Exhibit 35; T.16-17. It was created by deed in 1966. T. 68. The ariel photograph below, excerpted from the Staff Report, shows the location of the property. Exhibit 49, p. 8.



Ariel View of Subject Property with Subject Property outlined by dotted yellow line.

² On the Existing Conditions Plan submitted by the applicant as Exhibit 35, the acreage is listed as 9.45 acres±.

Access to the property is from Comus Road, although there is no existing driveway; presently, one must park on the side of Comus Road and walk onto the property area. Exhibit 49, p. 6; T. 17, 64-65. The property is mostly forested, containing 8.18 acres of forest, a stream and 2.46 acres of stream buffer area, and hydraulically-adjacent steep slopes, and it descends in elevation from south to north. Exhibit 49, p. 6. Interstate I-270 runs along the eastern property boundary. Id. The site drains to Little Bennett Creek watershed, a State Use Class I,P stream. Id. The site is not within a Special Protection Area, though the boundary of the 10 Mile Creek SPA is across the street. Id.

B. Surrounding Area

To determine the compatibility of the proposed conditional use, it is necessary to delineate and characterize the surrounding neighborhood. Staff proposed defining the neighborhood as the abutting, confronting and adjoining properties, which comprise a wide physical space in this region of the County. Exhibit 49, p. 5. These properties contain a mix of uses: to the east, across I-270, are commercial and industrial uses in the IM Zone; to the south are a single-family detached house and a landscape contractor use in the Rural Zone; to the west is the Garden of Remembrance Cemetery, approved as a Special Exception in the AR Zone. Id.

The applicant, through Mr. Tilley, concurred with the proposed definition. Exhibit 16; T.14. A map of the Staff defined neighborhood is excerpted on the following page. Exhibit 49, p. 5.



Staff Defined Neighborhood

The Hearing Examiner endorses the Staff definition of the neighborhood as it includes the adjacent commercial (IM Zone) as well as agricultural (AR Zone)/rural (Rural Zone) and residential (R-200) uses while generally adhering to the confines of the major roads bordering the property, I-270 and Comus Road, and specifically including the Garden of Remembrance and the Landscape Contractor use immediately adjacent, the two properties that will be most impacted by the proposed new use.

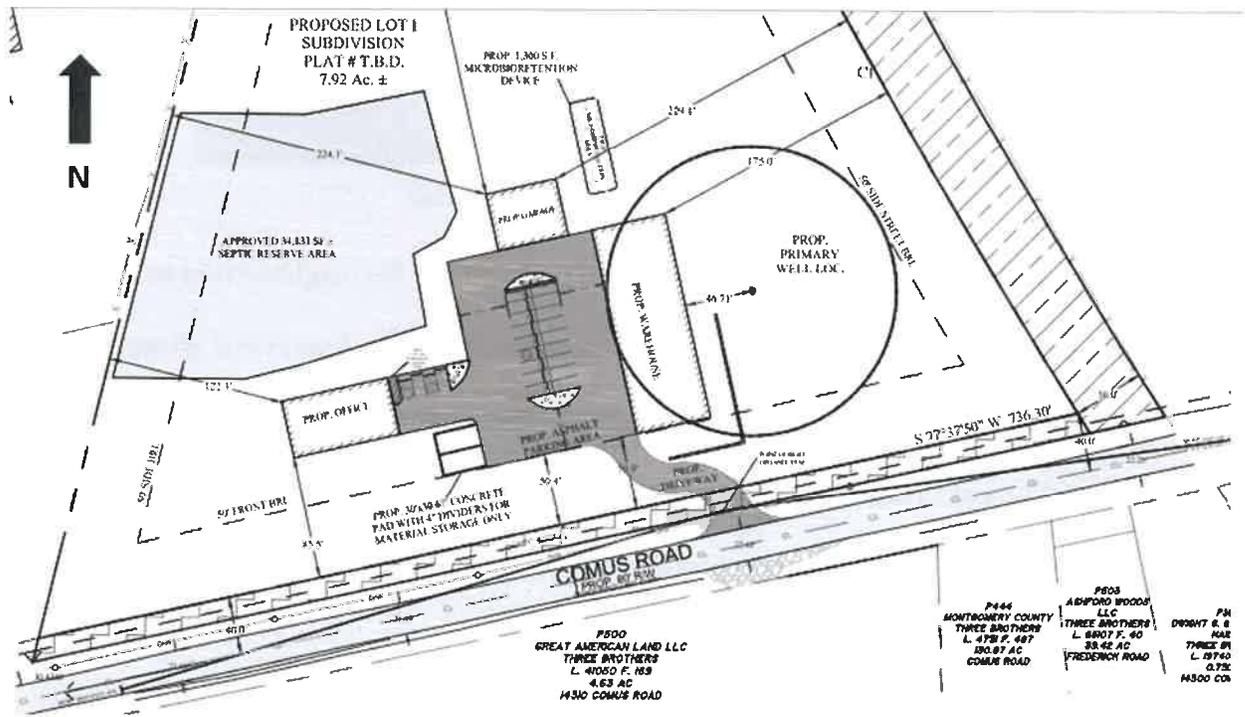
Staff identified one approved conditional use near the subject property, the cemetery used referenced previously: 14321 Comus Road (S-2509). Exhibit 49, p. 6. This conditional use is not landscape contractor or commercial.

The property lies within the *1994 Clarksburg Master Plan and Hyattstown Special Area Master Plan*. Exhibit 49, p. 5. These Plans set no specific recommendations for this property and do not provide specific requirements or recommendations for Special Exceptions/Conditional Uses; the only concern raised regarding the area is its unsuitability for high technology use due to lack of public water and sewer. Exhibit 49, p. 14. Staff concluded that the application substantially

conforms with these Master Plans as it will utilize well and septic and is not considered a high technology use. Id.

C. Proposed Use

The conditional use area proposed is comprised of 9.61 acres, pictured in the Area Detailed View below, excerpted from the Staff Report. Exhibit 49, p. 9.



Subject property with Conditional Use Area Detailed View

The area includes the proposed property improvements including a driveway, parking area, office, warehouse, storage, and septic reserve area. As stated, the property is currently unimproved and forested.

1. Site Plan, Access, On-Site Parking

a. Required Plans

The property must gain approval of a Preliminary Plan of Subdivision because new structures are proposed. Exhibit 49, p. 15; T. 47-48. The conditional use application is subject to

the Forest Conservation Law and Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420242830 which was approved for the property on September 23, 2024. Exhibit 49, p. 20.

With the conditional use application, the applicant submitted a Preliminary/Final Forest Conservation Plan (FFCP), #F20250450, which proposes to meet all forest conservation requirements onsite, and an application for a Forest Conservation Plan variance. Exhibit 49, p.22-28; T. 29-36. Staff recommended approval of the variance application. Exhibit 49, p. 28.

b. Buildings

As set out in Exhibit 35 and as testified to by Mr. Tilley, the property is currently unimproved. Exhibit 35; T. 17. As described on the previous page excerpted from the Staff report and detailed in Exhibit 38 as well as in Mr. Tilley's testimony, the applicant proposes to improve the property with a driveway, parking area, office, warehouse, storage, and septic reserve area and these improvements will require approval. Exhibit 49, p. 9, 15; Exhibit 38; T. 13-17, 47-48.

c. Access and Parking

The proposed conditional use area abuts 1-270 and Comus Road, but access is only proposed via Comus Road. See pictures pages 4, 5, and 7; T. 14, 58-59, 76-77, 86. Currently, to access the site, one has to pull over to the side of Comus Road and walk onto the property. T. 17. The applicant proposes to construct a new driveway off Comus Road as well as a parking area to allow the landscape contractor use on the property. See pictures pages 4, 5, and 7; Exhibit 49, p. 9; Exhibit 38; T. 13-17, 47-48. The proposed driveway will be directly across from the driveway entrance to Great American Landscaping Company. Exhibit 29, p. 12; T. 62.

Parking will be provided on the property for both the commercial vehicles and personal employee vehicles. T. 72-74. The proposal is for 22 parking spots, although only 19 are statutorily required (per Section 59.6.2), and the available area and turning radii will be able to accommodate

even the largest commercial vehicles anticipated on site, including a dump truck and bucket truck. Exhibit 49, p. 12; Exhibit 31 and 42; T. 57-58. The intent is that commercial vehicles will park in the lot during non-use time, and while the vehicles are in use, employees will park their vehicles in the same spots; such “swapping” is common practice in the industry. T. 72-74. Mr. Romano testified that approximately 25 staff will be employed on site and Mr. Tilley explained that it is anticipated that some staff will carpool in their travel to the site. T. 39-40, 75. The site is not large enough to require the inclusion of loading spaces and none are proposed. Exhibit 49, p.12. Staff found and testimony established that the proposed parking will be adequate for the needs of the condition use. Exhibit 49, p. 12-13; T. 58-59, 75.

Mr. Tilley testified that that the proposed structures and parking will meet the applicable requirements for the AR Zone. T. 71-75.

The Planning Board unanimously recommended granting the conditional use and raised no objection related to access or parking. Exhibit 50.

2. Site Landscaping, Lighting and Signage

The landscape plan submitted by the applicant and discussed by Staff proposes alternative compliance based on the existing extensive tree canopy and screening. Exhibit 19; T. 69-70. For parking, the applicant’s plans include landscaped islands. Exhibit 49, p. 13. Under Section 59.6.2, the site also requires a canopy coverage of 25% at 30 years growth, which Staff calculate for this site is 3,379 sq. ft., and the applicant proposes 3,533 sq. ft of coverage, which equates to 26.1% at 30 years growth. Id. Additionally, the applicant proposes landscaping along the property frontage, which will provide extra, unrequired screening. Id. Mr. Tilley concurred with Staff that landscaping and canopy coverage are sufficient. Exhibit 49, p. 12-13; T. 71. Mr. Norton testified

that the landscape planning is tied to the Forest Conservation Plan and accounts for account mitigation planning and is compliant with all Zoning Code requirements. T. 29-34.

Staff stated and the testimony of Mr. Norton and Landscape and Lighting Plan submitted confirmed that the lighting at the lot line will not exceed 0.1 foot candles. Exhibit 19; Exhibit 49, p. 13; T. 36.

No signage for the property is proposed. Exhibit 49, p. 13.

3. Operations

a. General Operations

According to Staff, the applicant seeks to provide landscaping and snow removal services, Exhibit 49, p. 8, and this was confirmed by the testimony of the owner, Mr. Romano, T. 18. Operations will occur year-round, although snow removal will be confined to the winter. Exhibit 49, p. 8; T. 18-21. The applicant intends to carry out all of the activities included in the regulatory definition of landscaper: designing, installing, or planting lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage, features, or other activities intended to enhance the appearance or usefulness of outdoor areas as well as snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location, and tree installation, maintenance, or removal. T. 18-19. Mr. Romano acknowledged that the landscape contractor use does not permit lawn maintenance service and testified that he does not intend to provide such service. Id.

Proposed hours of operation are 5:30 a.m. until 9:00 p.m. Monday through Saturday to allow an hour of work prior to sunrise and an hour after sunset in the summer hours. Id. Mr. Romano acknowledged that hours will vary based on the season, with fewer work hours in the winter. T. 19-20.

No retail sales or retail nursery operations are proposed, so customers will not visit the site. Exhibit 49, p. 10. Staff reported and Mr. Romano testified that there will be little activity on-site during most of the day. Exhibit 49, p. 8; T. 20-21. Landscape team members will report to the site in the morning, park their personal vehicles on site, receive assignments and pick up equipment, and then leave in company vehicles to perform landscaping work at off-site locations. T. 20-21. Team members will return at the end of the day; likely different teams of workers will return at different times, store equipment, and retrieve personal vehicles. Id. A small office staff of three as well as a dedicated mechanic will stay on-site for the workday, which will be 9:00 am- 5:00pm for the office staff and 8:00 am- 5:00pm for the mechanic. T. 21. Mr. Romano does not anticipate many midday trips to the site by the landscaping crews and most crews should finish their assignments and return to the site by 2:30 pm. T. 19, 21. Snow removal is more unpredictable as it is contingent on the weather, and may occur at all hours, but will only involve snow removal equipment. T. 21-22, 24-25; Exhibit 32.

b. Staffing

Staff reported and Mr. Romano testified that the site will be used by up to 25 employees. Exhibit 49, p. 8; T. 20. Mr. Romano testified that the operation has two peak activity times: morning and afternoon when landscaping staff arrive and leave the site, each lasting about one hour. T. 19-21.

c. Vehicles and Equipment

Staff reported that the applicant intends to use and store the following equipment on site: eight (8) dump trucks, two (2) bucket trucks, eight (8) bobcats, two (2) skid steers, 19 zero-turn lawnmowers, six (6) trenching machines, four (4) mini excavators, and seven (7) pick-up trucks with trailers. Staff stated and Mr. Romano confirmed that most of the equipment will be stored in

the proposed warehouse building; only the seven (7) pick-up trucks will be stored in the proposed parking lot. Exhibit 49, p. 10; Exhibits 32 and 40, T. 22.

D. Community Response

Staff received no communications from the community regarding the application and no one appeared at the OZAH hearing in opposition or support. Exhibit 49, p. 9; T. 3, 8.

E. Adequate Public Facilities

Staff concluded that there are adequate public facilities to serve the site. Exhibit 49, p. 15-17.

Staff note that there are no master planned streets under the applicable master plan implicated by the application, the *1994 Clarksburg Master Plan & Hyattstown Special Study Area* and that the applicable *2018 Bicycle Master Plan* has no recommendation for the site. Exhibit 49, p. 15. Staff report that for application approval, the applicant is required to dedicate 40 ft of right-of-way for Comus Road and 150 ft of right-of-way for I-270 from the centerline of the pavement to the property line. *Id.* Additionally, Staff explain that because there are currently no pedestrian facilities along the property's frontage, to comply with County Department of Transportation (MCDOT) standards, the applicant is required to construct a six-foot-wide concrete sidewalk separated from vehicular traffic by a ten-foot-wide street buffer along Comus Road to accommodate the swale. *Id.* Staff conclude that the proposed frontage improvements are sufficient to fulfill the requirements for Country Connector streets under the *2024 Complete Streets Design Guide*. *Id.*

The property is not served by public transit; there is no adjacent or nearby transit service and the closest bus stop is about 3.5 miles south of the site. *Id.*

Staff also reported and Mr. Driban testified that due to the small number of staff and the lack of retail operations, the site will generate less than 50 new person vehicle trips during morning and evening peak hours and so is not subject to a Transportation Impact Study. Id; T. 43-44. In testifying as to the Traffic Statement he prepared, Mr. Driban stated that the Landscape Contractor use is not well covered in the Institute for Transportation Engineers (ITE) Manual used to calculate traffic generation. Exhibit 33; T. 39. Therefore, he conducted two analyses, one based on the number of employees and the other based on nursery use, which, while not identical, is the closest use calculated in the ITE manual. Id. For the analysis based on number of employees, he calculated vehicle trips during peak hours at ten (10), T. 40-42, and for nursery use, he calculated vehicle trips during peak hours at a maximum of nine (9), T. 43-44. Since the County does not require a Local Area Transportation Review (LATR) for less than thirty (30) trips, he concluded that a LATR was not required for the site under either applicable analysis and provided his analysis in the Transportation Adequacy Form that he provided to the County. Exhibits 33 and 34; T. 45-46. Staff accepted his analysis, and both Mr. Driban and Staff concluded that the site is served by adequate transportation. Exhibit 49, p. 16-17; T. 46.

The site is located within water and sewer categories W-6 and S-6. It is served by private well and septic and the Department of Permitting Services (DPS) Well and Septic Section has provided an approval letter for the proposed well and septic. Exhibit 49, p. 17. All other utilities and public facilities are within the standards set by the Montgomery County Growth and Infrastructure Policy in effect at the time of application submission. Id. Mr. Tilley concurred that the conditional use proposal meets Adequate Public Facilities review standards, T. 80-81, and the Planning Board recommended approval of the application, Exhibit 50.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW³

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both general and specific. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a landscape contractor. *Id.*, §59.3.5.5.

Weighing all the testimony and evidence in the record under a “preponderance of the evidence” standard (*see Zoning Ordinance* §7.1.1), the Hearing Examiner concludes that the conditional use proposed in this application satisfies all of the general and specific requirements for the use.

A. Necessary Findings (Article 59.7)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the *Zoning Ordinance*. Standards pertinent to this approval, and the Hearing Examiner’s determination for each finding, are set forth below.⁴

- 1. *To approve a conditional use application, the Hearing Examiner must find that the proposed development:*
 - a) *satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

Conclusion: There are no prior conditional use applications or approvals associated with this property. Exhibit 49, p. 11. Therefore, the Hearing Examiner finds that this this standard does not apply.

- b) *satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

³ All findings of fact are based on a preponderance of the evidence. *Zoning Ordinance*, §7.1.1.

⁴Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: This subsection requires an analysis of the standards of the AR Zone contained in Article 59-4; the use standards for a Landscape Contractor in Article 59-3; and the applicable development standards in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively).

c) *substantially conforms with the recommendations of the applicable master plan;*

The property is located within the area subject to the *1994 Clarksburg Master Plan & Hyattstown Special Area Master Plan*, which advises only that covered areas are unsuitable for high technology uses due to the lack of public water and sewer, and provides no specific recommendations for this property. Exhibit 49, p. 13-14. Staff concluded that the proposed use substantially conforms with the master plan because it will utilize well and septic and is not considered a high technology use. Id. Mr. Tilley agreed with the conformance and the applicant submitted a detailed analysis of the conformance in the Revised Land Use and Zoning Report. Id; T. 64-65; Exhibit 45.

Conclusion: The Hearing Examiner agrees with Staff and Mr. Tilley that the Conditional Use Plan substantially conforms with the *1994 Clarksburg Master Plan & Hyattstown Special Area Master Plan* because it does not require public water and sewer and is not a high technology use.

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

Staff determined this finding to be satisfied based on the similarity or compatibility of uses sited on the adjacent properties, which include an active Landscape Contractor just across Comus Road to the south as well as actively used commercial – Industrial Moderate (IM) -- properties across 1-270 to the east including a moving/storage and construction company, and a non-conflicting use of a cemetery abutting the property to the west with more distant rural

properties to the south-west. Exhibit 49, p. 14. Staff noted that all of the uses in the defined surrounding neighborhood involve extensive storage of large commercial and construction equipment and vehicles, consistent with what the applicant proposes. Id. Staff highlight that most of the activity physically associated with the Landscape Contractor use will occur offsite, the primary specific use of the property being for commercial and employee vehicle storage. Id.

In testimony, Mr. Tilley concurred with Staff, stating that the use is in harmony because it immediately confronts a business providing the exact same service and there are numerous other industrial services that involve heavy equipment within the defined neighborhood. T. 65.

Additionally, the Hearing Examiner inquired at length about compatibility with the cemetery immediately to the west. Mr. Tilley testified that the hours of primary operation will not conflict, with the cemetery opening after 8 a.m. after the landscaping crews will depart, and any midday travel by landscaping crews to the site being minimal and, thus, unlikely to interfere with cemetery operations or funeral processions. T. 76-77. Further, counsel for the applicant, Ms. Michelle Rosenfeld, Esq, represented as a member of the Bar that she had consulted with counsel for the cemetery, Mr. Jody Kline, Esq., who had relayed that the cemetery had no concerns about the impact of the proposal. T. 78-79. Additionally, no concerns were noted about increased usage on Comus Road or the impact on the road of heavy vehicles. T. 48-50, 57.

No comments were received by Staff objecting to the proposal or any potential changes to the character of the neighborhood. Exhibit 49, p. 9.

Conclusion: For the reasons stated by Staff and Mr. Tilley and based on the assurances provided by Ms. Rosenfeld, the Hearing Examiner finds that the proposed landscape contractor use will not alter the character of the neighborhood in a manner inconsistent with the *1994 Clarksburg Master Plan & Hyattstown Special Area Master Plan*.

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

Staff found this standard to be satisfied as the two residential (R-200) properties in the defined neighborhood do not have any current special exceptions/conditional uses and are located at a considerable distance and across I-270 from the proposed conditional use, so the proposal is not likely to adversely affect the area. Exhibit 49, p. 14. (At one time, one of the residential properties had two simultaneous special exceptions, but both have been abandoned.) Id. The Staff also found no conflict with the applicable master plan, which describes concerns with high technology uses, not the Landscape Contractor use, conformance that Mr. Tilley endorsed. T. 64-65.

Conclusion: The Hearing Examiner agrees with Staff and finds that the proposed use satisfies this standard. As stated previously, the proposed project conforms with the recommendations of *1994 Clarksburg Master Plan & Hyattstown Special Area Master Plan* and is sufficiently removed from residential areas as to avoid adverse impacts. Therefore, this use will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- f) *will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
- i. *if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

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

The Project requires submittal of a subsequent Preliminary Subdivision Plan application, so (f)(i) is inapplicable and the Planning Board will determine the adequacy of the public facilities. However, Staff did conduct a preliminary analysis of public services and facilities and found no issue with schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage. Exhibit 49, p. 15-17.

There is no residential impact, so there is no issue with the adequate public facilities of schools. Exhibit 49, p. 17. In terms of police and fire protection, Staff confirm that these services are currently operating in accord with the standards set by the County's Growth and Infrastructure Policy and the applicant admitted into evidence a Fire Access Plan and Mr. Tilley testified as to the adequacy of fire and police services, with a fire station located approximately 2.8 miles and a police station located approximately 6.4 miles from the property. Exhibit 49, p. 17; Exhibit 31; T. 80.

In terms of water and sanitation, as discussed previously, the property is located within water and sewer categories W-6 and S-6 and will be serviced by a private well and septic system and the County Department of Permitting Services (DPS) Well & Septic Section has provided an approval letter for the utility plan. Exhibit 37; Exhibit 49, p. 17.

In terms of public roads, the site is bounded by Comus Road to the south and I-270 to the east and there are no master planned streets under the *1994 Clarksburg Master Plan & Hyattstown Special Study Area*. Exhibit 49, p. 15. Similarly, the 2018 *Bicycle Master Plan* has no recommendation for the site. Id. To facilitate vehicle access, as a condition of the application, the applicant is required to dedicate 40 feet of right-of-way for Comus Road and 150 feet of right-of-

way for I-270 from the centerline of the pavement to the property line. Id. To facilitate pedestrian access, as there are currently no pedestrian facilities along the frontage of the property, the applicant is required to construct a six-foot-wide concrete sidewalk separated from vehicular traffic by a ten-foot-wide street buffer along Comus Road to accommodate the swale required per the MCDOT standards and fulfill the requirements for Country Connector streets under the 2024 *Complete Streets Design Guide*. Id. There is no nearby transit service. Id.

Because of the limited number of vehicle trips generated by the proposed use, no traffic study was required. Exhibit 49, p. 16-17. See Section II (e).

Conclusion: A Preliminary Plan of Subdivision is required for this property; therefore, as a condition of conditional use approval, the Planning Board must ultimately determine public facilities to be adequate based on the submitted Preliminary Plan. Currently, however, the evidence in the record demonstrates no issues with public facilities related to schools, police, fire, and water/sanitation, and that the application does not require a traffic study.

- g) *will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
- i. *the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
 - ii. *traffic, noise, odors, dust, illumination, or a lack of parking; or*
 - iii. *the health, safety, or welfare of neighboring residents, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “adverse effects created by

physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects alone, or in conjunction with inherent effects, are a sufficient basis to deny a conditional use.

On page 18 of the Staff Report, Staff identified four inherent adverse effects necessarily associated with Landscape Contracting, including:

- Employee activity
- Truck and equipment movement onsite
- Vehicle trip
- Onsite lighting

Staff noted that these inherent effects will be ameliorated by the physical features of the property, which is substantially forested on three sides (north, east and west) insulating neighboring properties from any nuisance. Exhibit 49, p. 18. For the south entrance, the applicant proposes to landscape and screen along Comus Road, as laid out in the Landscape and Lighting Plan and testified to by Mr. Norton. *Id.*; Exhibit 19; T. 35-36. Thus, any visual or noise nuisance from employee activity or truck and equipment movement should be mitigated. Exhibit 49, p. 18. Further, most of the onsite employee activity will be limited, occurring only for an hour in the early morning and the mid-afternoon, so the majority of the day and from dusk till dawn will create little to no activity. *Id.*; T. 19-21. The vehicle trips were found to be *de minimus* and not to require a traffic study. Exhibit 49, p. 16-17; Exhibit 33; T. 38-47. The submitted lighting plan shows the light will produce 0.0 footcandles at the property lines, so it will not impact the neighboring properties and there are no dwellings close to the property to be impacted by lights. Exhibit 49, p. 18; Exhibit 19; T. 36.

Staff did not identify any non-inherent characteristics of the proposed site, operation, or size of the proposed use and none were raised in the applicant’s case presentation. Exhibit 49, p. 18.

Conclusion: The inherent characteristics are well-buffered and do not exacerbate any non-inherent characteristics, as no non-inherent characteristics are identified. Therefore, the Hearing Examiner finds that this standard is met as the proposed Landscape Contractor use will not cause undue harm to the neighborhood.

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

The proposed site is in the AR Zone.

Conclusion: This provision is inapplicable because the proposed site is not in a Residential Detached zone. Therefore, the Hearing Examiner finds that this standard is met.

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

Conclusion: The appropriateness of application approval is not reliant on whether the application satisfies all specific requirements for the conditional use, but on the substantial factual support for the proposed use having no known adverse impact on the surrounding area. As stated, the proposed use will not create any non-inherent adverse impacts on the surrounding area.

4. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.*

Conclusion: This finding is not applicable as the proposal is for a conditional use of a Landscape Contractor, not an agricultural conditional use, and the area of the property outside the proposed conditional use area, while agricultural in nature, is excluded from the proposed use.

5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:*
 - i. *Filling Station;*

- ii. *Light Vehicle Sales and Rental (Outdoor);*
- iii. *Swimming Pool (Community); and*
- iv. *the following Recreation and Entertainment Facility use: swimming pool, commercial.*

Conclusion: The finding is not applicable as the project is not in any of the categories listed.

6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*
- i. *Funeral Home; Undertaker;*
 - ii. *Hotel, Motel;*
 - iii. *Shooting Range (Outdoor);*
 - iv. *Drive-Thru*
 - v. *Landfill, Incinerator, or Transfer Station; and,*
 - vi. *a Public Use Helipad, Heliport or a Public Use Helistop.*

Conclusion: This finding is not applicable as the application does not include a request for the uses listed.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the AR Zone. Staff compared the minimum development standards of the AR Zone to those proposed in the application in the following table, included in the Staff Report (Exhibit 49, p. 11-12):

Development Standard (Section 59.2.1.F)	Permitted/ Required	Proposed
Minimum Lot Area	40,000 sq. ft.	419,476.5 sq.ft.
Minimum Lot Width at Front Building Line	125 ft.	693 ft.
Minimum Lot Width at Front Lot Line	25 ft.	736 ft.
Maximum Density	1 dwelling unit/ 25 acres	n/a
Maximum Lot Coverage	10%	3.62%
Minimum Front Setback	50 ft. (50 ft.*)	50 ft.
Minimum Side Setback	20 ft. (50 ft.*)	122 ft.
Minimum Side Street Setback	50 ft. (50 ft.*)	175 ft.
Minimum Rear Setback	35 ft. (50 ft.*)	520 ft.
Maximum Height	50 ft.	Office- 20 ft. Garage- 25 ft. Warehouse- 30 ft.
Vehicle Parking Requirement (Section 59.6.2.4.B)	0.5/employee= 13 1/Operation Vehicle= 7	21 spaces 1 ADA space

Development Standard (Section 59.2.1.F)	Permitted/ Required	Proposed
	Total= 20	

**Development Standards for Landscape Contractor per Section 59.3.5.5.B.b.2*

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

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

The specific use standards for approval of a Landscape Contractor business are set out in Section 59.3.5.5 of the Zoning Ordinance. Standards applicable to this application are set forth below, along with the Hearing Examiner’s findings of fact and conclusions of law on each standard.

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

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

Conclusion: The area accorded for the proposed conditional use is 9.61 acres, exceeding the minimum requirement by far. This standard has been met.

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

Conclusion: Staff concluded that building and parking areas are a minimum of 50 feet from any lot line, and this is evidenced on the Proposed Conditions Plan. Exhibit 49, p. 10, Exhibit 38. The Hearing Examiner finds that the application meets this standard.

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

Conclusion: Staff found that parking was adequate to accommodate both the equipment and the number of employees proposed and the anticipated parking needs and options were testified to at

length. Exhibit 49, p. 12; Exhibit 40; T. 55-58. The Hearing Examiner finds that this standard has been met.

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

Conclusion: The Hearing Examiner finds this standard satisfied as no retail or wholesale operations are proposed.

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

Staff recommended approval of the proposed operating hours, from 5:30 a.m. until 9:00 p.m. Monday through Saturday with snow removal operation as needed up to seven days a week, 24 hours per day, and Mr. Romano testified that the normal operations of landscape contracting require an early morning start-time and flexibility, although only rarely would the majority of employees be on site past mid-afternoon. Exhibit 49, p. 3; T. 20-21. Employees typically arrive and depart in the morning prior to peak traffic hours and have staggered return and exit times in the afternoon/evening. T. 20-21. In addition, the majority of landscape contractor operations occur off site, thus reducing the impact on abutting properties. Exhibit 49, p. 8; T. 20-21. The Hearing Examiner has imposed conditions 3 and 4 in Section V to limit the hours of operation accordingly.

Conclusion: The Hearing Examiner agrees with Staff and finds that the hours of operation proposed with the attached conditions will not have an adverse impact on abutting uses.

D. General Development Standards (Article 59.6)

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

1. Site Access Standards

Section 59.6.1 of the Zoning Ordinance imposes site access standards on conditional uses only in Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones, with the intent of “to ensure safe and convenient vehicular, bicycle, and pedestrian circulation within and between lots on the same block face and to reduce traffic congestion.” Because this property is within the AR zone, the site access standards do not apply.

Current access is via Comus Road, but no driveway onto the property exists, T. 17, so the applicant proposes to create ingress/egress for the property via a new entry point off Comus Road. Exhibits 38, 41, and 42. Mr. Tilley testified as to the acceptability of the driveway’s sight distances, as set out in the Sight Distance Evaluation. Exhibit 41, T. 54. Staff report that the applicant is also required to dedicate 40 ft of right-of-way for Comus Road and 150 ft of right-of-way for I-270 from the centerline of the pavement to the property line, as well as to create access for pedestrians by constructing a six-foot-wide concrete sidewalk separated from vehicular traffic by a ten-foot-wide street buffer along Comus Road to accommodate the swale. Exhibit 49, p. 12, 15.

Conclusion: The Hearing Examiner finds that conditions imposed on the granting of this application, which require the approval of a Preliminary Plan of Subdivision, will ensure that this standard is met. Given the size and location of Comus Road and the minimal traffic usage proposed, the proposed site access should be sufficient and meet safety standards.

2. Parking, Queuing, and Loading Standards

The standards for the number of parking spaces required, parking setbacks, and parking lot screening are governed by 59.6.2.9, 59.6.4.3, and 59.6.5.2 of the Zoning Ordinance.

a. Parking Lot Requirements of 10 or More Spaces under Section 59.6.2.9.C

The proposed use includes a parking lot of 22 spaces and three parking lot islands which will hold employees’ personal vehicles, work trucks, trailers, and equipment. Exhibit 49, p. 12-13; Exhibit 38. As set forth in the table from page 12 of the Staff Report excerpted below, the applicant satisfies the parking space requirements necessary to support the proposed use.

Parking Standards	Required	Proposed
Vehicle Parking Spaces		
Nursery (Wholesale)	1.50/1,000 GFA (1.50/1,000 GFA x 12,500) 19 spaces	22 spaces
Parking Breakdown (Spaces)		
Standard Spaces	19	21
Accessible Spaces	1	1

Parking Requirements

Staff also determined that the application is exempt from providing loading spaces because it has a Gross Floor Area (GFA) of 12,500 square feet and developments under 25,000 GFA are not subject to loading design standards. Exhibit 49, p. 13: §59.6.2.8

Conclusion: The Hearing Examiner finds that this standard is met as the application specifications exceed statutory parking spaces requirements and is too small to be subject to the GFA.

1. Landscaped Area

- a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5 percent of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.*
- b. A maximum of 20 parking spaces may be located between islands.*
- c. A landscaped area may be used for a stormwater management ESD facility.*

The current application provides for two parking areas within the paved area: a larger area with 18 parking spaces and two landscaped islands near the proposed warehouse; and a smaller

area with four (4) parking spaces and one landscaped island near the proposed office. Exhibit 49, p. 9; Exhibit 38. The size of the islands exceed the required square foot minimums and the 5% minimum of the total surface parking lot area. Id.

Conclusion: The Hearing Examiner finds that this standard is met as the proposed parking layout exceeds the regulated requirements.

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

Staff calculated that 25% tree canopy coverage is 3,379 sq. feet. Exhibit 49, p. 13. As the application proposes 3,533 square feet of canopy coverage, or 26.1% coverage, Staff concluded that this standard is met. Id. In his testimony, Mr. Norton concurred with Staff. T. 37. Staff noted that the application also proposes landscaping along the Comus Road frontage even though it is not required. Id.

Conclusion: The Hearing Examiner finds that this standard is met as the proposed tree canopy exceeds the 25% minimum required.

3. *Perimeter Planting*
 - a. *The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:*
 - i. *Be a minimum of 10 feet wide;*
 - ii. *Contain a hedge, fence, or wall a minimum of 6 feet high;*
 - iii. *Have a canopy tree planted every 30 feet on center; and*
 - iv. *Have a minimum of 2 understory trees planted for every canopy tree.*

The property does not abut or confront property in an Agricultural, Rural Residential or Residential Detached zone. Regardless, as detailed previously, the north, east, and west portions of the property are screened by the existing forested areas and the applicant proposes screening to the south with newly installed landscaping and trees.

Conclusion: The Hearing Examiner finds that this standard is inapplicable because the site does not abut or confront property in an Agricultural, Rural Residential or Residential Detached zone.

b. Parking Lot Screening under Section 59.6.5.2.B

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Conclusion: As the property does not abut or confront property that is vacant or improved with an agricultural or residential use, the Hearing Examiner finds that this Section does not apply to this application.

c. Signage

The applicant is not requesting any signage, so no Zoning requirements are applicable.

d. Parking Lot Lighting

Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements. Section 59.6.4.4.C.5 requires new lighting to be 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type. In reviewing the Landscape and Lighting Plan submitted by the applicant, Mr. Norton testified that the proposed new lighting meets this standard and Staff concurred. T. 66; Exhibit 19; Exhibit 49, p. 13.

Conclusion: The Hearing Examiner agrees with Staff and finds that the proposed use meets the lighting standard.

3. Site Landscaping, Screening and Lighting

Standards for perimeter site landscaping and site lighting are set forth in 59.6.4 and 59.6.5 of the Zoning Ordinance. The stated intent of 59.6.4 is “to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. The stated

intent of 59.6.5 is “to ensure appropriate screening between different building types and uses.” Zoning Ordinance §59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

a. Lighting

This issue is discussed above in the context of parking lot lighting.

Conclusion: The Hearing Examiner finds that the applicant meets the standard of §69.6.4.4.E requiring illumination from the proposed use not to exceed 0.1 foot-candles at the property lines.

b. Site Screening and Landscaping

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

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

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

Conclusion: As stated on page 27, the subject property does not abut or confront property that is vacant or improved with an agricultural or residential use; thus, the Hearing Examiner finds that this Section does not apply to this application.

c. Signage

Signage for the use is governed by Division 6.7. Zoning Ordinance §59.6.7.10.

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in the Agri- cultural and Rural Residential zones is 200 square feet, excluding the additional area allowed by other provisions of Division 6.7.

1. Freestanding Sign

- a. *One freestanding sign may be erected at each building or driveway entrance.*
- b. *The maximum sign area is 40 square feet.*
- c. *The minimum setback for a sign is 10 feet from the property line.*
- d. *The maximum height of a sign is 10 feet.*
- e. *Illumination is prohibited.*

2. Wall Sign

- a. *One wall sign is allowed.*
- b. *The maximum sign area is 40 square feet.*
- c. *The sign may be placed up to 26 feet above the ground.*
- d. *Illumination is prohibited.*

Conclusion: The Hearing Examiner finds that this standard is inapplicable as the applicant is not proposing any signage.

V. Conclusion and Decision

Based on the foregoing findings and conclusions and a thorough review of the record, the application of Torcato Romano for the conditional use of a Landscape Contractor, on property located at 14301 Comus Road, Clarksburg, Maryland, is APPROVED subject to the following conditions:

1. The use is limited to the regulatory-defined Landscape Contractor use.
2. The use is limited to twenty-five (25) total employees, including 21 landscape crew members, four (4) onsite staff, three (3) office staff, and one (1) mechanic.
3. The hours of operation are limited to 5:30 A.M. to 9:00 P.M. Monday through Saturday with the exception of snow removal services set out in Condition 4.
4. Snow removal services may operate up to seven (7) days a week for up to 24 hours a day.
5. The use is limited to the following net new vehicle trips during peak hours:
 - i. From 7:30 A.M. to 8:30 P.M., no more than 25 trips.
 - ii. From 4:30 P.M. to 5:30 P.M., no more than 20 trips.
6. The use is limited to storage and employment of eight (8) dump trucks, two (2) bucket trucks, eight (8) bobcats, two (2) skid steers, 19 zero-turn lawnmowers, six (6) trenching machines, four (4) mini excavators, and seven (7) pick-up trucks with trailers.

7. The applicant must gain approval of a Preliminary Plan of Subdivision from the Planning Board to create a recorded lot before applying for any building permits.
8. The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Conditional Use Plan conformance and compliance. The pre-con must occur before any site development work commencement and before any work that is covered by the surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS Staff. A copy of the approved Conditional Use Plan along with any subsequent amendments is required to be on-site at all times during construction.
9. Physical improvements to the subject property are limited to those shown on the applicant's Proposed Conditions Plan and Landscaping and Lighting Plan, as admitted during the hearing as Exhibits 38 and 19.
10. The applicant must comply with the approved Forest Conservation Plan for the subject property.
11. The applicant must comply with and satisfy all applicable State and County requirements for operating a Landscape Contractor.
12. The applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.



Andrea LeWinter
Hearing Examiner

Issued this 20th day of January 2026.

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If

the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

Any party wishing to appeal this decision should visit the [Board of Appeals'](#) website, review the [Notice of Re-Opening](#) or contact Board of Appeals Staff for office hours and filing instructions, as these may change.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website.

NOTIFICATIONS SENT TO:

Michele Rosenfeld, Esquire
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Patrick Butler, Planning Department
Nkosi Yearwood, Planning Department
Mark Beall, Planning Department
Elana Robinson, Esq., Office of the County Attorney
Greg Nichols, Department of Permitting Services
Michael Coveyou, Director of Finance

