

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

PETITION OF NATURAL SURROUNDINGS, INC., AND GEORGE JAY ROCHE	*	
	*	
Petitioner	*	
	*	
George Jay Roche	*	
Glenn Cook	*	Board of Appeals Nos.: S-2715
Brian Donnelly	*	and S-2716
For the Petitioner	*	(OZAH Case Nos. 8-14 and 8-15)
	*	
James L. Parsons, Jr., Esquire	*	
Attorney for the Petitioner	*	

Lynn A. Robeson, Hearing Examiner		

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

On September 25, 2007, and September 28, 2007, Petitioners, Natural Surroundings, Inc., and George Jay Roche, filed two special exception petitions. The first seeks approval of a Landscape Contractor (BOA Case No. S-2715), under Section 59-G-2.30.00 of the Zoning Ordinance. The second seeks approval for a Wholesale Horticultural Nursery (BOA Case No. S-2716) under Zoning Ordinance §59-G-2.30.0.¹ The Board of Appeal granted Petitioner's request to consolidate the two petitions for public hearing by Resolution adopted October 31, 2007. Exhibit 18.

The Hearing Examiner initially scheduled the case for a public hearing on February 8, 2008. Exhibit 15. Between 2007 and 2011, the hearing date was rescheduled three times, to May 23, 2008, June 6, 2011 and July 29, 2011, at Petitioner's request. The Petitioner sought the postponements to address a number of environmental and other requirements for the use.² Exhibits 20-23, 31-34. As issues with the property were resolved, Petitioner amended the applications for Special Exception and Statement of Operations and submitted revised site plans in February 2009 (Exhibit 26(a)-(j)) and again in March 2011 (Exhibits 30(a)-(k)).³

In a letter dated July 1, 2011, Petitioner's attorney requested an indefinite postponement of the July 29, 2011, hearing to allow Petitioner time to continue to address issues with Planning Department Staff. Exhibit 35. The Hearing Examiner granted Petitioner's request and the July 29, 2011, hearing date was cancelled and removed from the OZAH hearing schedule. Exhibit 36.

¹ The property is owned by Donald D. Wilkes and Nichole J. Roche. George Jay Roche is the President of Natural Surroundings, Inc., which operates the landscape contractor business under commercial lease agreement with the owner. Exhibit 10.

² According to Petitioner's attorney, James Parsons, the Petitioner had to address numerous technical issues with the property, which included the 2006 rezoning of the property and issues with the water table testing, well and septic, forest conservation, storm water management and impervious area limitations. T. 5-7.

³ A Notice of Motion to Amend Petition was issued April 5, 2011. Exhibit 31.

Shortly thereafter, Petitioner's attorney filed a Notice of Withdrawal as counsel of record in a letter dated August 22, 2011.⁴ Exhibit 37.

In 2013, the Hearing Examiner advised the Petitioner that the case had been pending for over two years and requested a decision either to prosecute the application or have it dismissed. Exhibit 38. Petitioner elected to proceed with the case and the hearing was rescheduled for July 11, 2014. Exhibits 38, 39 and 49. The Petitioner submitted a revised Statement of Operations (current as of May 30, 2014) and revised site plans. Exhibit 52(a)-(g). On June 17, 2014, the Notice of Motion to Amend Petition was filed. Exhibit 54.

Technical Staff filed its report, dated June 13, 2014, recommending approval of the consolidated petitions with the following conditions (Exhibit 55):⁵

1. The maximum number of employees for the operations of both the landscape contractor and wholesale nursery must not exceed 40, of which not more than 24 can be on site at any one time.
2. The Applicant is bound by the statement of operations as depicted on the Special Exception Site Plan submitted on June 13, 2014. The landscape contractor and wholesale nursery business must not have more equipment and machinery [than what is] itemized in the Special Exception Site Plan.
3. Overall imperviousness on the property must not exceed 10 percent as shown on the Special Exception Site Plan.
4. All deliveries and pick-ups should occur between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday.
5. There must be no sign identifying the property as a landscape contractor or wholesale nursery.
6. No mulch/compost manufacturing shall be conducted on the property.
7. Landscaping must be planted in accordance with the Landscape & Lighting plans submitted to M-NCPPC on June 13, 2014.

⁴ Mr. Parsons subsequently re-entered his appearance as counsel of record on July 3, 2014. Exhibit 57. Mr. Parsons reported that the main reason for his withdrawal and the reason this case has been pending for so long was the difficult personal and economic circumstances of Petitioner. T. 6-7.

⁵ The Technical Staff Report, Exhibit 55, as amended in Exhibits 61 and 68, is frequently quoted and paraphrased herein.

At the meeting before the Planning Board, Technical Staff amended its report, recommending the following additional condition (Exhibit 56, p. 2):⁶

8. The total number of parking spaces on the property must not exceed 46, including 11 regular and 6 oversized on-site surface spaces, and 29 regular spaces in the garage.

The Planning Board recommended approval of the application, adopting Technical Staff's amended conditions of approval. The Board also suggested that the Hearing Examiner recommend "mitigating measures such as a limitation on the frequency of deliveries by the larger trucks to minimize potential adverse impacts as the businesses grows to its full potential over the coming ten year period." Exhibit 56.

The public hearing before the Hearing Examiner went forward as scheduled on July 11, 2014.⁷ Petitioner submitted an Affidavit of Posting (Exhibit 59) and revised site plans dated July 9, 2014, to reflect minor changes to the landscaping plan only. Exhibit 60 (a)-(g). During the hearing, Petitioner requested permission to install a directional sign (2 feet by 3 feet) set back from the entrance to the access drive and marked the location with an "x" on the site plan. Exhibit 62; T. 34. The revised landscape plan showed requested revisions to the plan recommended for approval by the Planning Board. No one other than the Petitioner appeared in support or opposition to the petition.

The record was held open until July 21, 2014, to give Technical Staff time to review and make recommendations on the proposed directional sign and revisions to the landscaping plan. T. 65-66. On July 24, 2014, Technical Staff requested additional information regarding the proposed directional sign, which Petitioner provided on July 25, 2014. Exhibits 66(a)-(e), 67(1)-(2). Technical Staff recommended approving the changes to the plans requested at the public hearing.

⁶ Technical Staff also amended its Development Standards Table, by adding the line "+/ 3.2% lot area" under "6.2% special exception area" under the last column of "Maximum Building Coverage." Exhibit 56, p. 2.

⁷ On July 3, 2014, Mr. Parsons filed a Notice to re-enter his appearance and submitted required pre-hearing documents. Exhibits 57 and 58(a). In his written pre-hearing summary, Mr. Parson noted that "Petitioners incorporate

Exhibits 68, 69. The Hearing Examiner reopened the record until August 11, 2014, to admit the evidence submitted after it had closed and to permit the Petitioner to respond to Technical Staff's recommendations. The Petitioner submitted an e-mail supporting Technical Staff's recommendations, and the record closed on August 11, 2014.

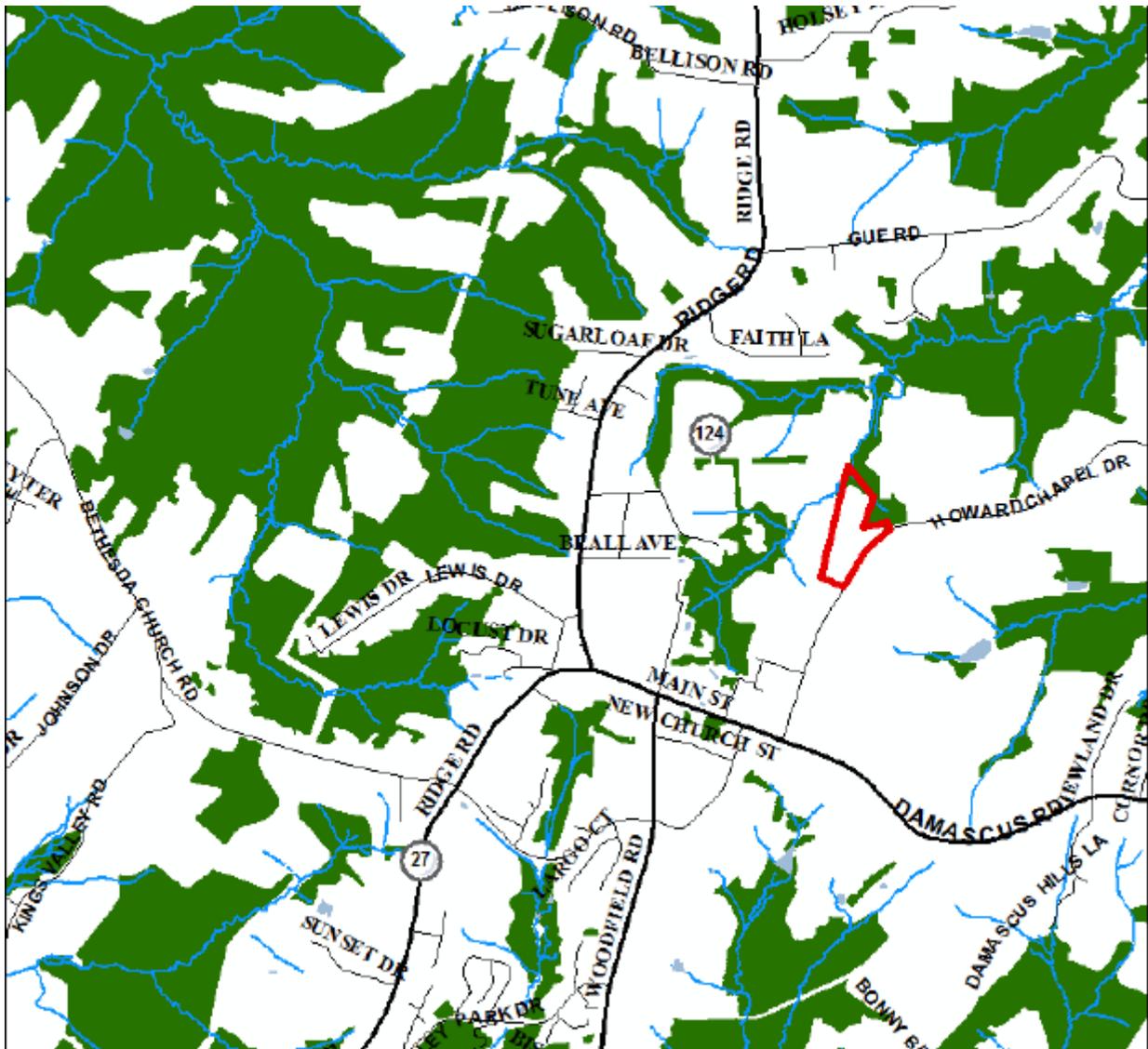
As will appear more fully below, the petition meets all of the requirements of a landscape contractor and wholesale nursery. The Hearing Examiner therefore recommends that both special exception applications be granted, with the recommended conditions of approval set out in Part V of this report.

II. FACTUAL BACKGROUND

A. The Subject Property

Located at 26500 Howard Chapel Drive, Damascus, Maryland, the special exception area consists of approximately 4.4 acres of an 11-acre property (Parcel 285) that is zoned RC (Rural Cluster). It is located within the Upper Patuxent River Watershed and is one of 260 properties (560 acres) designated as the "Patuxent Neighborhood Properties" in the "Rural Transition Area" in the 2006 Damascus Master Plan. As shown below on the Vicinity Map included in the Technical Staff Report, the property is irregular in shape and is located on the northwest side of Howard Chapel Drive, approximately 2,000 feet north of its intersection with Damascus Road (MD 108). A portion of the property extends across Howard Chapel Drive, creating a prescriptive right-of-way in favor of the County. Exhibit 55, p. 4; T. 49. The Vicinity Map included in the Technical Staff Report is shown on the next page.

Prior to 2004, the property was used for farming. Since then, the Petitioner has operated two businesses, a landscape contractor and wholesale nursery, on the central portion of the property without special exception approval. Exhibit 55, p. 4. In 2005, the Petitioner was cited with a



Vicinity Map
Exhibit 55

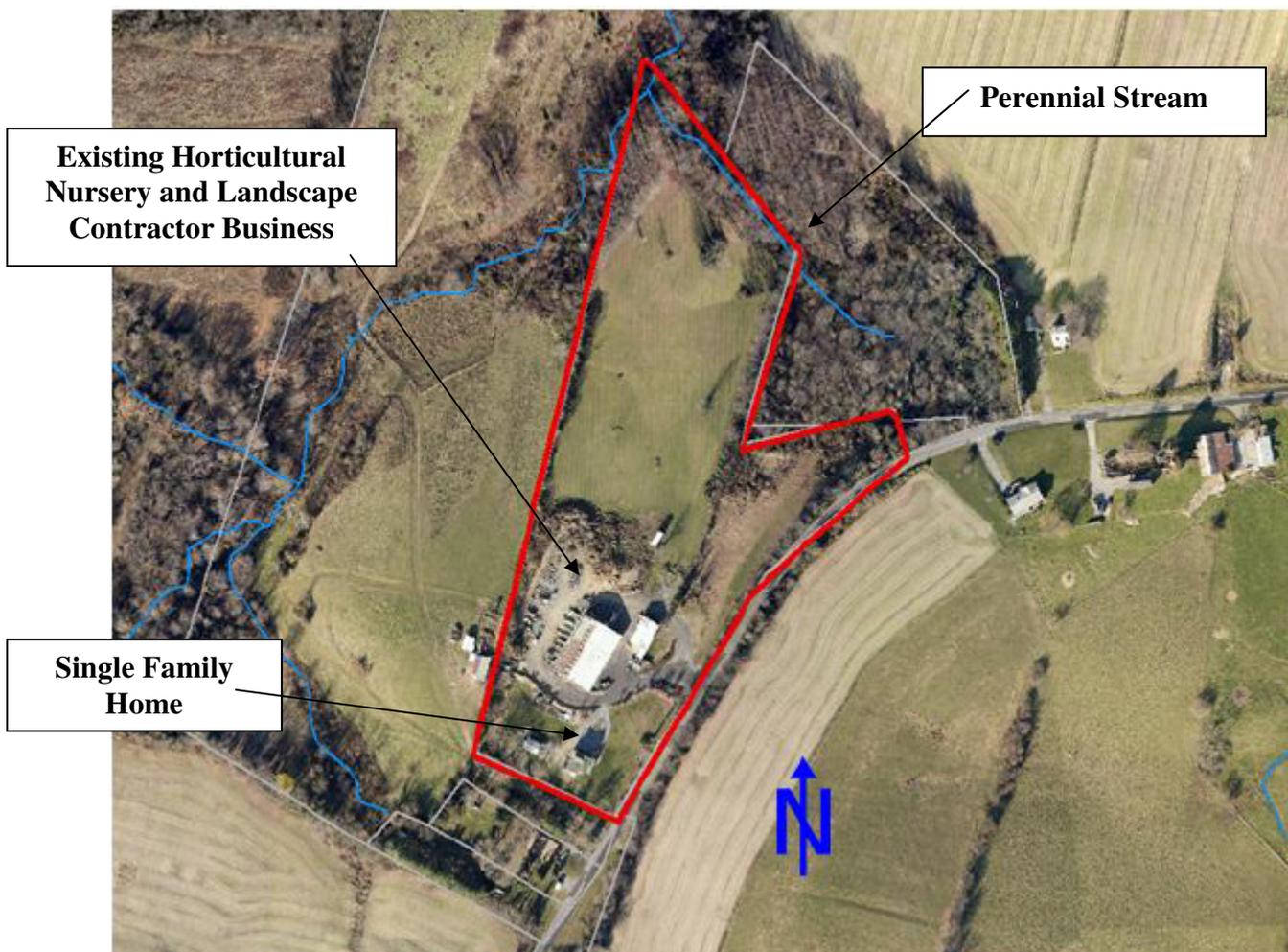
zoning violation, and has worked with Staff periodically since that time to achieve a special exception approval. The property is served by public water and a traditional septic system. The existing septic system (prior to the special exception petition) was failing. Petitioner and his family reside in the existing single-family dwelling located on the southern portion of the property. Technical Staff described the property as follows (Exhibit 55, pp. 6-7):

amended by the Revised Statement of Operations submitted on June 12, 2014 (Exhibit 52(a)).” Exhibit 58(a).

The Property is improved with a two-story, frame and stucco single-family dwelling with a cellar, small shed, a large barn, two 1-story frame structures, and a gravel covered onsite circulation system connecting the various building[s] on the Property. The Property also contains a septic field and three above-ground fuel tanks each having a 500 gallon capacity. The single-family dwelling and one of the 1-story frame structures are not included in the special exception site boundaries, nor is a large open [field] area that comprises the northern half of the Property. The remaining structures, including the barn and outbuilding are to be used as part of the proposed landscape contractor and wholesale nursery operations.

The property slopes downhill from southeast to the northwest. A perennial stream is located in the far northwest corner of the Property. The residence and the business portions of the property are accessed by two separate driveways from Howard Chapel Drive.

An aerial photograph included in the Staff Report shows the location of existing structures and natural features on the entire 11-acre property (Exhibit 55, p. 7):



Technical Staff took photographs of the property's frontage along Howard Chapel Drive near the special exception area (Exhibit 61, on the following page):

View west from Howard Chapel Drive



View Northwest from Howard Chapel Drive



Howard Chapel Drive north



Exhibit 61

According to the Petitioner, the landscape contractor business provides "design and build" services such as retaining walls, waterfalls, walkways and patios, as well as traditional landscaping services. The wholesale nursery sells mulch, stone, and plants to landscape contractors in the area. Exhibits 52, 61. A gravel drive leading from Howard Chapel Drive provides the access to the business. The operation utilizes the large (i.e., 9,600 square feet) red barn for storage of equipment and vehicles and for office space. There is an additional 2,299 square-foot frame outbuilding, currently used for mechanical work that will remain as part of the special exception proposed; the second frame structure and single-family home on the property are not part of the special exception area.⁸ Exhibit 55, p. 5.

⁸ The Staff Report initially states that this building consists of 1,129 square feet, but later calculates parking based on 2,274 square feet. Exhibit 55, pp. 5, 15. A plan submitted by the Petitioner showing impervious surfaces on the property states the building is 2,299 square feet. Exhibit 62(f). After scaling the building on the Exhibit 62, the Hearing Examiner concludes that the latter size is correct. The differences in area do not change the parking requirements. See, Section II.4 of this Report.

The property also contains three above-ground storage tanks, two for diesel fuel and one holding fuel for two-cylinder machines. Currently, 16.9% of the property consists of impervious surface, primarily surrounding the area used for the landscape contractor and wholesale nursery businesses. The amount of impervious area will be reduced if this special exception is approved.

Two photographs of the property depicting the existing structures (Exhibit 61), are provided by Technical Staff and shown below:

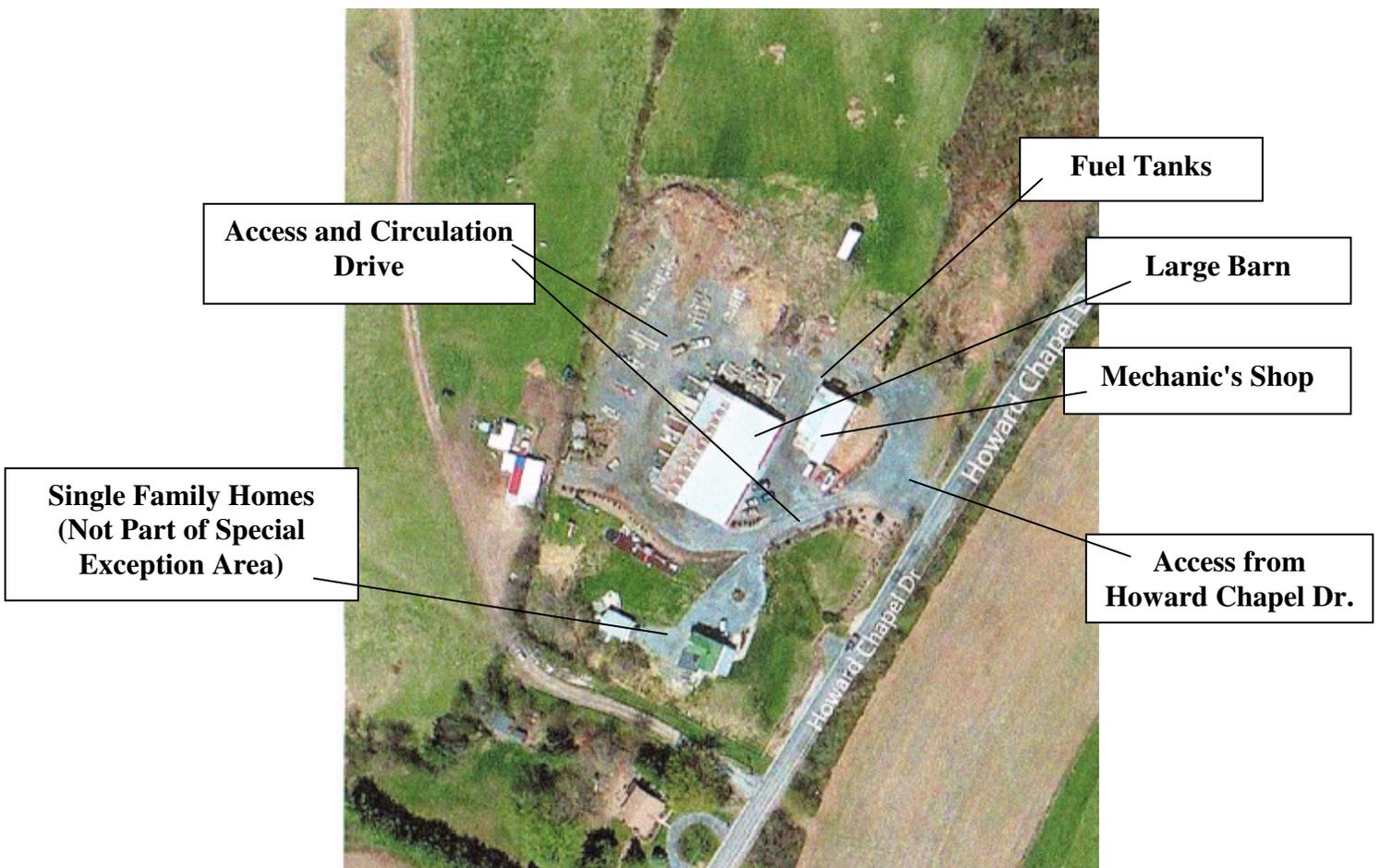




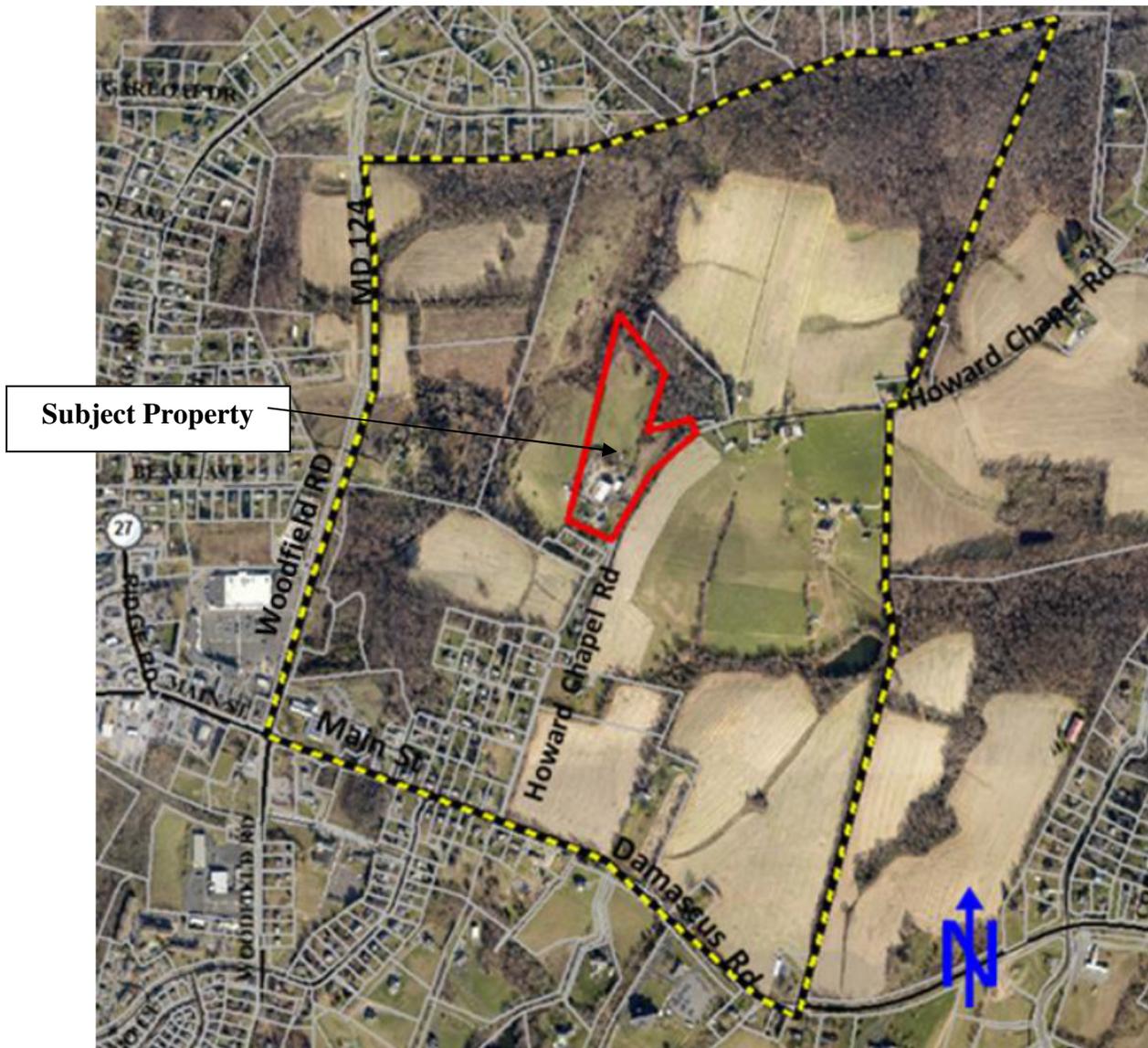
Exhibit 61

B. Surrounding Area

Technical Staff defined the general neighborhood surrounding the property as follows: a 238-acre property owned by Martin Seldeen, trustee to the east; 46-acre property owned by Patricia B. Walker, trustee to the north; Damascus Road to the south; and Woodsfield Road (MD 124) to the west. Exhibit 55, p. 7. An aerial photograph from the Technical Staff Report (Exhibit 55, p. 7) depicting these boundaries is reproduced on the following page.

Technical Staff characterized the surrounding area as "predominantly farmland improved with single-family residential dwellings, sheds and farm related building in the RC, RE-2C and R-200 zones." Exhibit 55, p. 7. The closest residential home is located 500 feet to the south of the property along Howard Chapel Drive. Exhibit 55, p. 12.

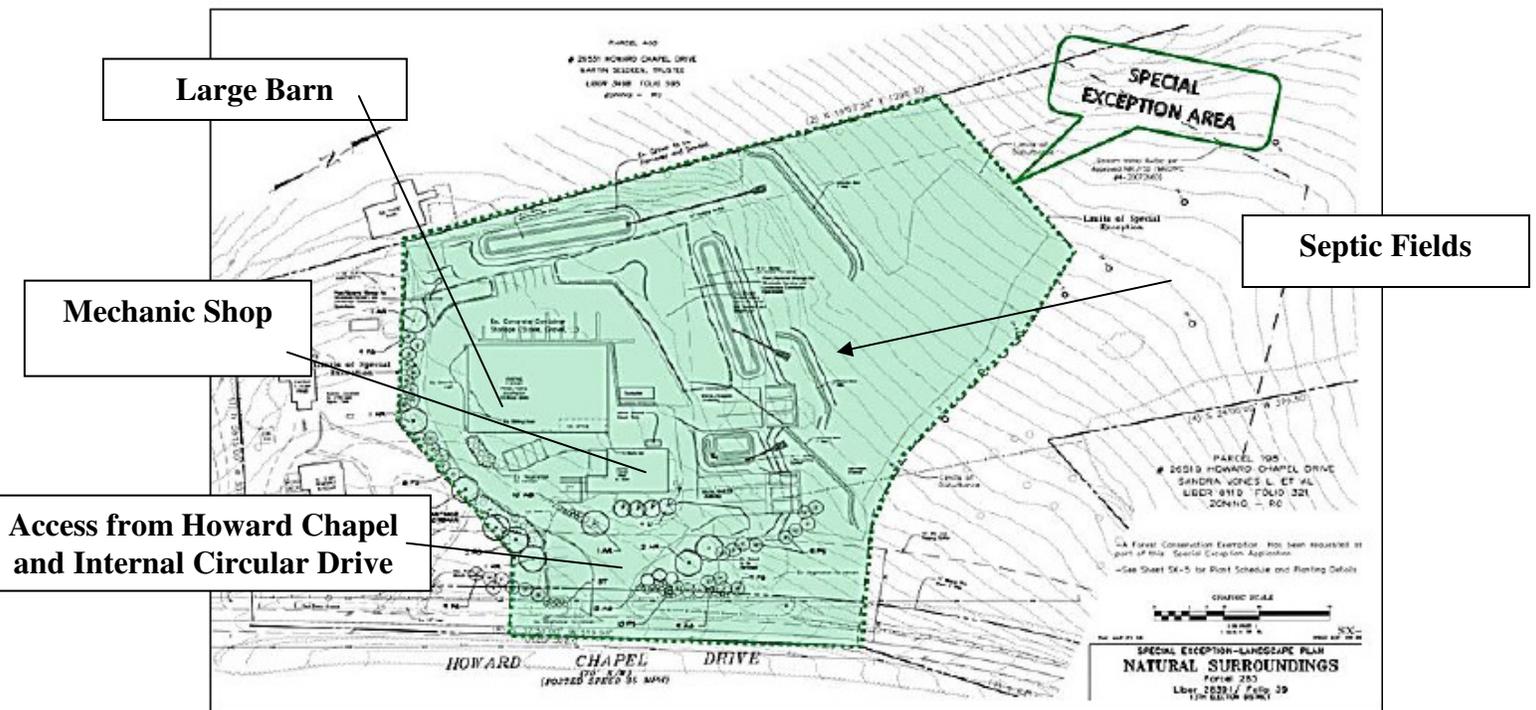
The Petitioner does not disagree with Technical Staff's findings regarding the neighborhood, and having no evidence to the contrary, the Hearing Examiner accepts Technical Staff's delineation and characterization of the neighborhood.



C. Proposed Use

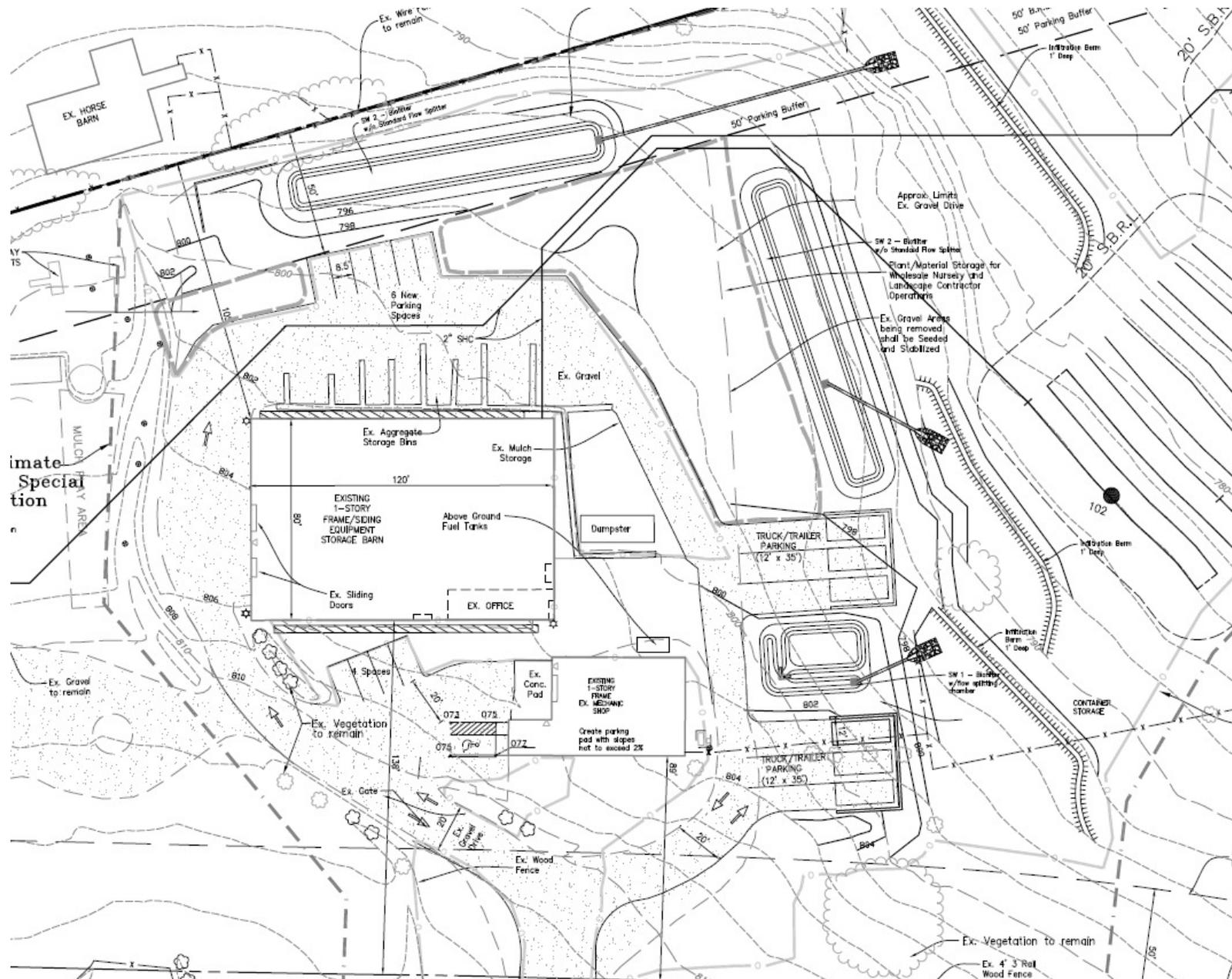
1. Special Exception Area and Site Plan

Petitioner seeks to continue the existing landscape contractor and wholesale nursery business within an area consisting of approximately 40%, or 4.4 acres, of the entire property. A plan highlighting the proposed special exception area is included in the Technical Staff Report (Exhibit 55, p. 5):

FIGURE 2: Special Exception Area

This special exception area is relatively flat. The septic fields are on the northern portion of the property. Petition proposes to retain the large barn and the smaller frame structure, but does not propose any expansion of those buildings. The existing large barn will be used to store vehicles and equipment, and will also house the office for both businesses. The barn will also house 29 parking spaces. The three existing above ground storage tanks will also remain. The Petitioner's Statement of Operations states that all three tanks meet current state licensing and safety requirements. Exhibit 55, p. 5.

At the public hearing before the Hearing Examiner, the Petitioner made some minor changes to the site plan presented to the Planning Board. These changes included revisions to the landscaping along the access road bordering the area containing the single family home. These changes are detailed below. The revised special exception site plan (Exhibit 62) is shown on the following page.



Special Exception Site Plan
Exhibit 62

2. Operations

a. Hours of Operations:

The landscape contractor special exception will operate Monday through Friday from 6:00 a.m. to 7:00 p.m., and on Saturdays from 8:00 a.m. to 4:00 p.m. The hours of operation for the wholesale nursery operation will be Monday through Friday from 9:00 a.m. to 4:00 p.m. and Saturday from 8:00 a.m. to 12:30 p.m.⁹

b. *Vehicles and Equipment:* Vehicles and equipment to be used for the two businesses are listed in a table included in the Technical Staff Report (Exhibit 55, p. 6), shown below:

Table-1

Landscape Contractor Operation	Wholesale Nursery
<ul style="list-style-type: none">• 2 large loaders• 4 skid steers• 21 trucks• 2 mini –excavators• 8 trailers (3-dump, 5 straight)• 1 tractor• smaller equipment such as lawn mowers, weed cutters, snow blowers, lawn aerators, chainsaws, a sod cutter, compressors, spreaders and small tools	<ul style="list-style-type: none">• 1 fork lift• 1 skid steer• 2 trucks (1 large, 1 one ton r)• 2 trailers (1 dump, 1 straight)

c. *Staffing:* The existing businesses have 12 employees, including the Petitioner. Exhibit 52(a). To accommodate gradual growth, this petition proposes up to 38 employees for the landscape contracting business and 2 employees for the wholesale nursery. According to the Petitioner, employees for the landscape contractor business will include (Exhibit 52(a), p. 3):

4 office (revised with prior 5)

⁹ The Planning Board in its transmittal letter stated that the hours of operation for the landscape contractor were Monday through Friday, 9:00 a.m. to 4:00 p.m., and Saturday, 8:30 a.m. through 12:00 pm. Exhibit 56. The Staff Report, however, stated that the hours of operation would be those proposed in Petitioner's Statement of Operations. Exhibit 55, p. 6. Petitioner's attorney surmised that the Planning Board mistakenly repeated the hours of operation for the wholesale nursery. T. 10. Whatever the reason, the Hearing Examiner agrees that Planning Board did not intend to modify the hours of operation proposed for the landscape contracting business because it did not mention this as an issue in its transmittal letter.

2 mechanical
 2 yard
 30 laborers/truck drivers (revised with prior 32)

Employees of the wholesale nursery business will include the following positions:

1 equipment operator (revised with prior 2)
 1 staff (revised with prior 5)
 (1 office deleted)

The Petitioner plans to add 3-5 employees per year until a "comfortable" level of growth occurs, (i.e., one without the need for mid-management employees.) Exhibit 52(a), pp. 3-4. Mr. Roche estimates that the full amount of growth anticipated will occur between 6 to 10 years. *Id.*

Employees for the two businesses will report in three shifts, described in Petitioner's Statement of Operations, an important aspect of the petition due to the impact on peak hour trips. The shifts are broken down as follows (Exhibit 52(a)):

<u>Shift time</u>	<u>Employees</u>
Shift 1: 6:30 a.m. to 3:30 p.m.:	20 laborers/truck drivers (Landscape Contractor Operation) 1 mechanical (Landscape Contractor Operation) 1 yard (Landscape Contractor Operation) 2 office (Landscape Contractor Operation)
Shift 2: 9:00 a.m. to 5:00 p.m.	2 office (Landscape Contractor Operation) 1 equipment operators (Wholesale Nursery Operation) 1 staff (Wholesale Nursery Operation)
Shift 3: 9:30 a.m. to 6:30 p.m.	10 laborers/truck drivers (Landscape Contractor Operation) 1 yard (Landscape Contractor Operation) 1 mechanical (Landscape Contractor Operation)

Petitioner also points out that the number of employees will fluctuate with the seasons, with the largest number from spring through fall. Snowplow operations may occur during winter for up to 24 hours as needed or requested. *Id.*

d. Other Operational Aspects: Petitioner also included the information regarding the above-ground fuel tanks and testing of the equipment to comply with noise ordinance as part of the Second Amended Statement of Operations Exhibit 30(h)). Specifically, Petitioner provided the following information on the safety features and operation of the fuel tanks (Exhibit 30(h), p. 3):

The property has a total of three above-ground fuel tanks as shown on the site plan. Two of the tanks are 500 gallons each, one of which is used for off road diesel fuel and the other is used for regular diesel fuel. A third tank of 100 gallons is used for two cycle fuel. Undersigned counsel contacted the Maryland Department of the Environment and was advised [] that above ground tanks of less than 10,000 gallons do not require a permit. As for the 500 gallon tanks, the only removable portion of the tanks is the locking cap over the fill port. After diesel fuel is dispensed into the tanks by the delivery drive, the cap will be locked to prohibit unauthorized access. The tanks have a 2 hour fire rating that exceeds all requirements of The National Fire Protection Association for “fire resistant” tanks and meet the requirements of The Uniform Fire Code for “protected” above ground tanks. The tanks are listed in accordance with Underwriters Laboratories, contain steel inner and outer tanks, are resistant to bullet penetration, and will have guard posts around the tanks for safety to prevent vehicles from colliding into the tanks.

Petitioner provided the following specifications and operational details for the use and repair of the smaller equipment on and off the property (Exhibit 30(h)):

Specifications on the smaller equipment (including decibel levels during normal operation) is being submitted. The operation of smaller equipment generally occurs off site at work sites. To ensure compliance with the noise ordinance (Section 31B-5 of the Montgomery County Code), testing of the equipment will occur inside the existing barn, which is constructed of ½ inch thick metal. Testing of the equipment on the subject property will occur only during daytime hours (7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays).

Petitioner’s Second Amended and Revised Statement of Operations (Exhibit 30(h)) as modified by its more recent Statement of Operations (Exhibit 52(a)) have been incorporated into the conditions of approval recommended in Part V of this report.

Petitioner estimates that initially there will be eight to ten truck deliveries a month to the business. Once the approved special exception uses are fully implemented, he estimates the same number of deliveries (8 to 10 with one large truck delivery) on a weekly basis. T. 36.

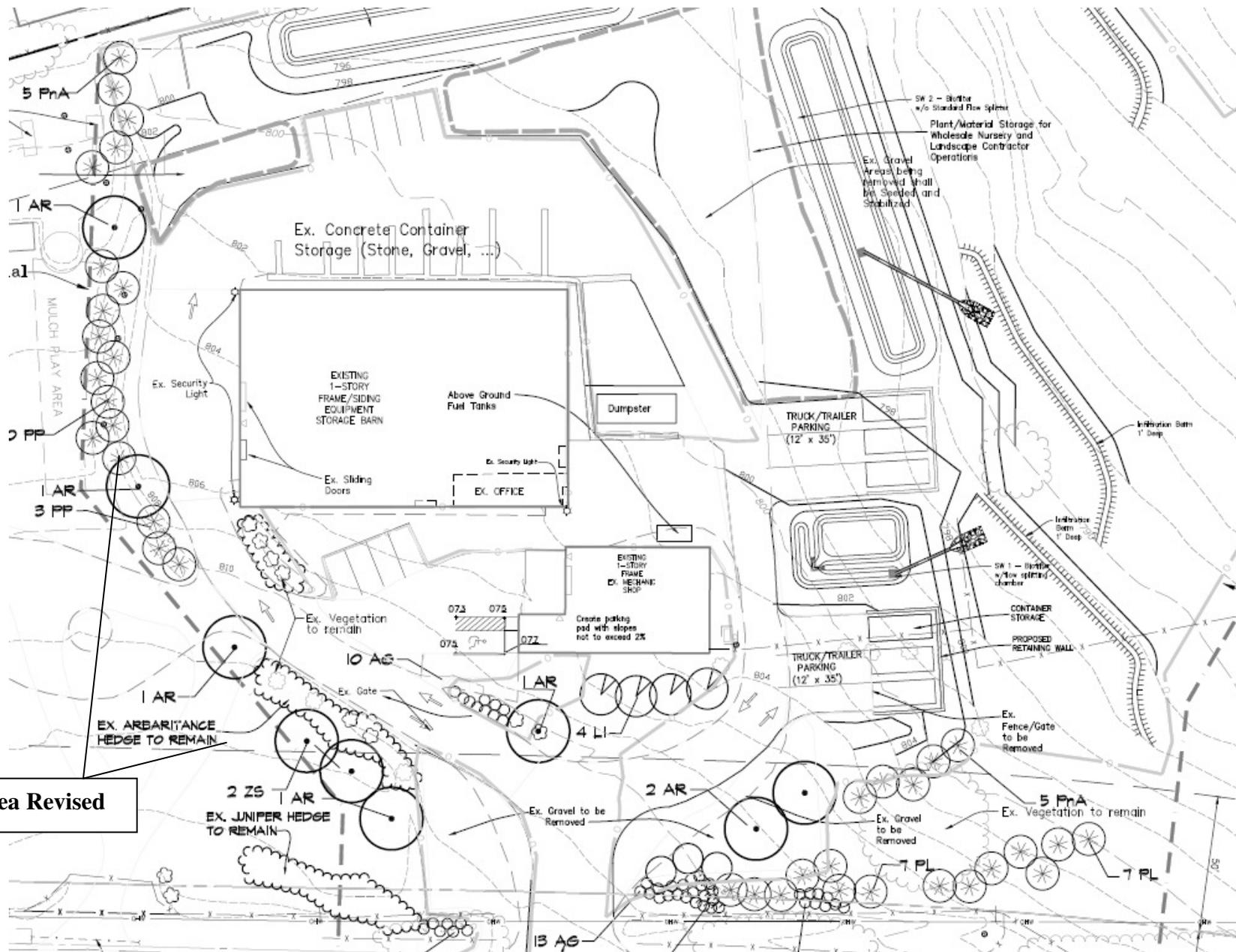
3. Landscape Plan

Technical Staff recommended approval of the landscape plan submitted to the Planning Board, finding that the landscaping helped to screen the on-site parking to promote compatibility with surrounding properties (Exhibit 55, p. 24):

The property is surrounded by large active agricultural properties. Adequate buffering and screening is provided in the form of landscaping and substantial setbacks to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations.

The landscape plan submitted during the public hearing before the Hearing Examiner differed slightly from the plan recommended for approval by the Planning Board. T. 8; Exhibit 60. At the public hearing, Petitioner proposed changing the landscaping separating the single-family home from the special exception area to achieve more privacy. Mr. Brian Donnelly, Petitioner's expert in landscape architecture, testified this could be accomplished by changing the shade trees originally shown as red maples to zelkova. Petitioner also proposes to replace the white pines in the original plan with black pines, loblolly pines and spruce. Mr. Donnelly testified that white pines tended to lose their lower limbs over time and excrete a lot of sap. T. 54-55. The revised landscape plan submitted at the public hearing (Exhibit 60) is shown on the following pages. The Hearing Examiner referred the revisions to the landscape plan submitted at the public hearing to Technical Staff, who found the revisions "acceptable." Exhibit 68.

Outdoor lighting is limited to three motion sensor security lights mounted on the existing corners of the barn building to provide lighting for the parking areas at the rear and front portion of the Special Exception area. Exhibit 55, p. 19.

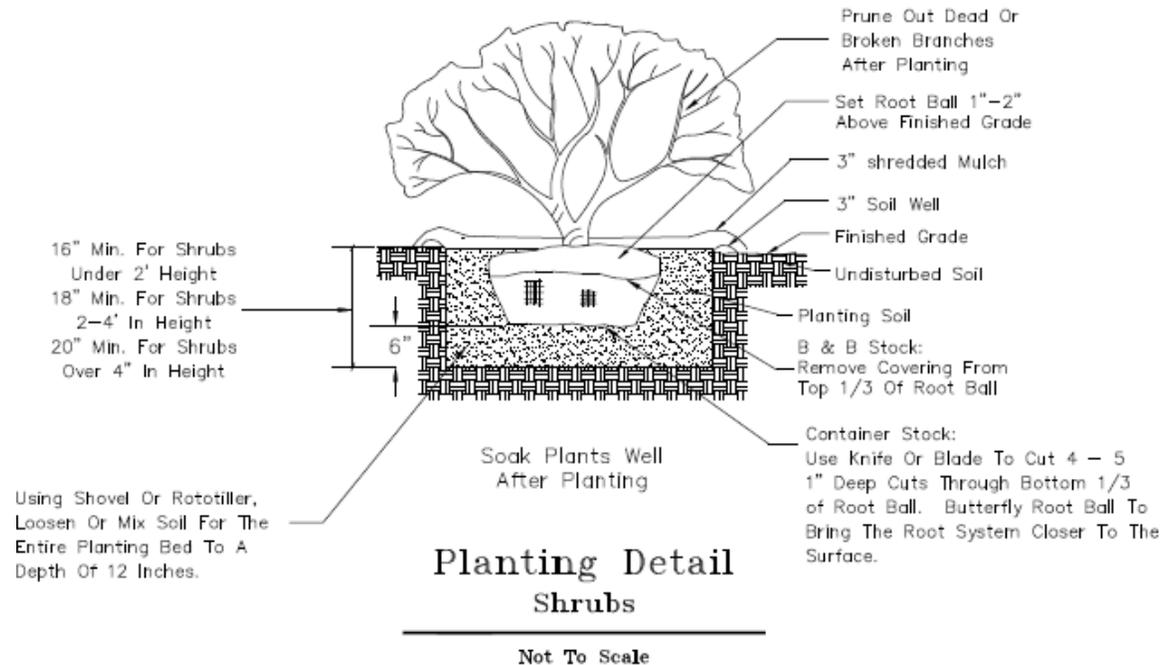


General Area Revised

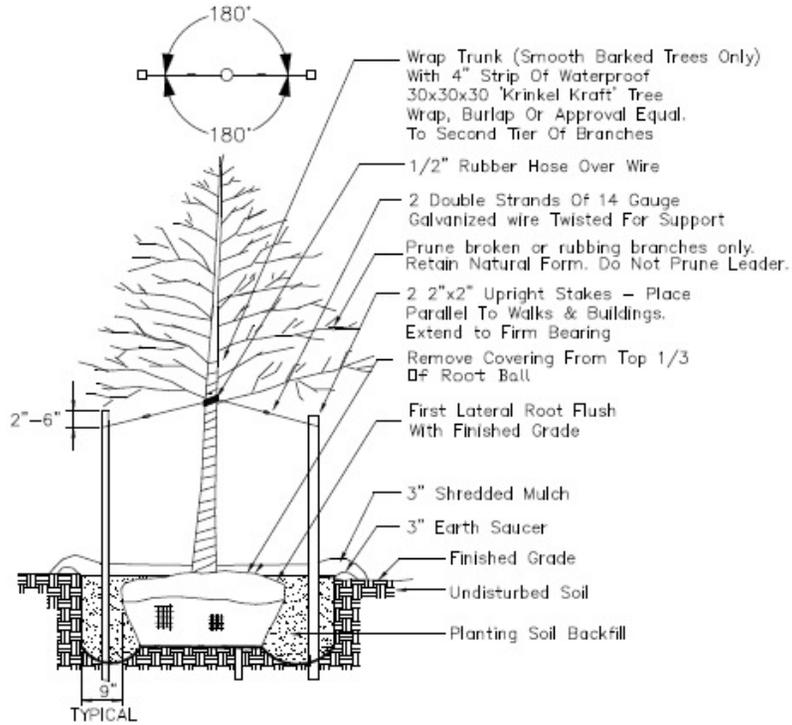
Landscape Plan Exhibit 62

PLANT LIST:

KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE & REMARKS	SPACING
DECIDUOUS TREES					
AR	6	<i>Acer rubrum</i> 'October Glory'	October Glory Red Maple	2 1/2"-3" Cal. - B+B	
ZS	2	<i>Zelkova serata</i> 'Green Vase'	Green Vase Zelkova	2 1/2"-3" Cal. - B+B - Thornless (See Plan)	
ORNAMENTAL FLOWERING TREES					
LI	4	<i>Lagerstromia indica</i>	Crape Myrtle	8'-12' Ht. - B+B	(See Plan)
SHRUBS					
AS	32	<i>Abelia grandiflora</i>	Abelia	18"-24" Ht., 3 Gal. Cont.	30" O.C.
BT	14	<i>Berberis thunbergii</i>	Japanese Barberry	18"-24" Ht., B+B	30" O.C.
EVERGREEN TREES					
PrA	5	<i>Pinus nigra</i> 'Austrian'	Black Pine	8'-10' Ht.	
PL	14	<i>Pinus taeda</i>	Loblolly Pine	8'-10' Ht.	
PP	13	<i>Picea pungens</i>	Colorado Blue Spruce	8'-10' Ht.	



Landscape Plan Details
Exhibit 62

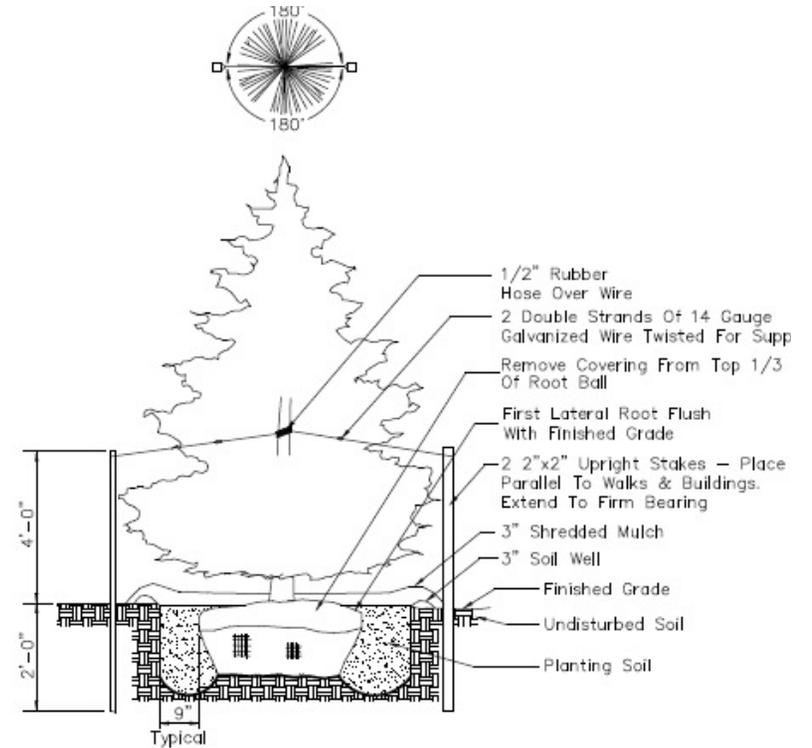


Planting Detail

Deciduous Tree

1 1/2 - 2 1/2" Cal.

Not To Scale



Planting Detail

Evergreen Tree

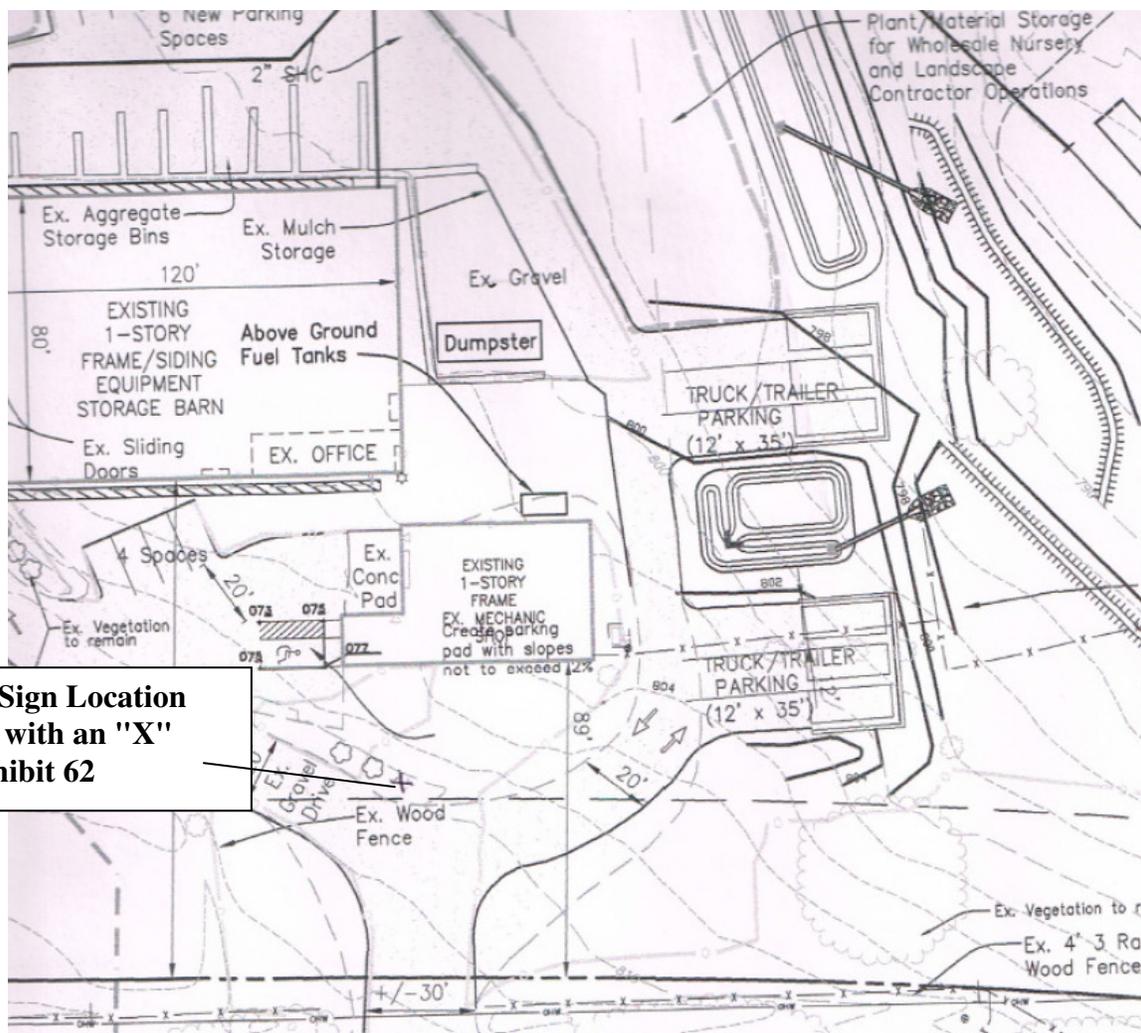
(10' Height And Smaller)

Not To Scale

**Landscape Plan Details
Exhibit 62**

4. Signage

Petitioner agreed with all the conditions of approval as shown on page 3 of the Technical Staff report. T. 7-12. Condition number 5 states: "There must be no sign identifying the property as a landscape contractor or wholesale nursery." Exhibit 55, p. 3. At the hearing, Petitioner requested permission to install a small (2 feet by 3 feet) interior directional sign. As proposed, the sign would be installed on the existing planted area just east of the large barn, set back from the entrance to the gravel driveway off Howard Chapel Drive. The location of the sign is noted with an "x" on the revised Site Plan (Exhibit 62(a)) shown below:



**Proposed Sign Location
(Marked with an "X"
Exhibit 62)**

Technical Staff initially expressed concern regarding the sign because of its potential impact on the rural character of Howard Chapel Drive, but noted that signs not visible from the roadway are exempt from permitting requirements pursuant to Section 59-F-8.1(c) of the Zoning Ordinance. Exhibit 66(a). At the Hearing Examiner's request, the Petitioner provided a design of the sign as well as a photograph simulating the appearance of the sign. Exhibit 66(a). Based on this evidence, Technical Staff concluded that the sign was not visible from the roadway, and recommended approval of the directional sign because it was exempt from the permitting requirements. The sign detail and photographic simulation are shown below (Exhibit 67):



**Sign Detail
Exhibit 67(1)**



**Photo Simulation of Sign
Exhibit 67(2)**

Based on the size and location of the interior directional sign, the Hearing Examiner finds that the sign is not significantly visible from the outside the property. While signs not visible from the roadway may be exempt from *permitting* requirements, the Hearing Examiner concludes that it *is* subject to special exception approval. The Hearing Examiner finds that the sign is unobtrusive, and therefore, will not impact the rural character of Howard Chapel Drive. Thus, it may be approved as part of this special exception with a condition limiting the size, location and design of the sign.

5. Public Facilities and Parking:

a. Public Facilities:

1. *Water and Septic, Stormwater:* The property is served by public water and a traditional septic system. Technical Staff reports that the septic system previously was failing, but Petitioner upgraded and expanded the septic to accommodate the single-family dwelling, the two special

exception uses, and the gradual expansion of those uses in approximately 10 years. Exhibit 55, p. 9. The septic facilities for the commercial uses are located on the north side of the special exception area and south of the stream valley buffer. The upgraded septic plan was approved in 2011 as part of this special exception approval and is reflected in the revised site plans. Exhibits 55 (Attachment B), 62. Mr. Donnelly testified that the septic fields are to the north of the special exception area and storm water management facilities to the west. The well and septic plans for the proposed expansion includes separate septic tanks for the residential and commercial uses on the property which were approved by DPS Health and Well and Septic Division. T. 58-59.

Mr. Donnelly testified that the special exception area has been designed to meet all stormwater management requirements. T. 58; Exhibit 62.

2. Transportation:

(i) Local Area Transportation Review: Technical Staff found that the special exception petitions satisfy Local Area Transportation Review (LATR) (Exhibit 55, pp. 21-22)

The landscape contractor and wholesale nursery operations has three shifts of employees that will arrive to the Property. The traffic analysis is based on the first shift (6:30 a.m. to 3:30 p.m.) as it has the most amount of employees (24) arriving and departing from the Property. The second shift (9:00 a.m. to 5:00 p.m.) has four employees and the third shift (9:30 a.m. to 6:30 p.m.) has 12 employees. The [LATR] guidelines require a traffic study to be performed if the development generates 30 or more peak-hour trips. The Applicants traffic statement assumed all 24 employees for the first shift arrive during the peak-hour in separate vehicles and 20 employees would depart in teams of four (five trips) during the same hour. The property will generate a maximum of twenty-nine morning peak-hour trips (6:30 a.m. to 9:30 a.m.) and no evening peak-hour trips (4:00 p.m. to 7 p.m.) as the shift ends prior to the beginning of the evening peak-hour, which is below the 30-trip threshold. Therefore, no LATR is required.

Petitioner's expert in traffic engineering and planning, Mr. Glenn Cook, agreed with Technical Staff's conclusion that a traffic report was not required because the use would not generate 30 or more peak hour trips. He opined, however, that the first shift (considered as having the largest impact by Technical Staff), would have the least impact on the peak hour because

laborers report to work between 6:00 a.m. and 6:15 a.m. to be there in time for the shift beginning at 6:30 a.m. In addition, because employees in Shift #1 leave the site within the same peak hour that they arrive, trips generated by Shift #1 and Shift #2 do not overlap. The second and third shifts begin at 9:00 a.m. and 9:30 a.m., respectively. Shift #2 consists of 4 office workers coming to the site and staying until 5:00 p.m. for a total of 4 trips. Shift #3 consists of 12 employees entering the property and three crews then leaving during the same hour, for a total of 15 trips. Even if the trips generated by Shifts #2 and #3 in the morning peak hour are combined, they would generate approximately 19 peak hour trips and well below the 30 trips threshold to trigger the need for a traffic study. T. 38-49.

Mr. Cook further testified that the assumptions in the Traffic Statement conservative. It assumes that laborers will arrive in a single vehicle and report to the subject property. Typically, employees of landscape contractor businesses car pool or report directly to the job site. T. 42-43.

(ii). *Policy Area Transportation Review:* Technical Staff Reports that the property is located in the Damascus Policy Area, which does not have a mitigation requirement (Exhibit 55, p. 22):

The Property is located in the Damascus Policy Area where there is no Policy Area Mobility Review (PAMR) trip mitigation review requirement. The Applicant submitted the Application before the 2012-2016 Subdivision Staging Policy was in effect. The Applicant submitted information for PAMR and is not subject to the new regulations of the Transportation Policy Area Review (TPAR) as the Application was submitted before January 1, 2013.

b. Parking and Circulation:

Technical Staff advises that, because the property has agricultural zoning, and the surrounding properties are also agriculturally zoned, the uses proposed need not meet the screening and buffering standards required for many special exceptions, (*Zoning Ordinance*, §§59-E.2-8, 59-E-2.83). Exhibit 55, p. 15.

Nevertheless, some screening requirements for the landscape contractor use are mandated by Sections 59-G-2.30.00 (2) and (3) of the Zoning Ordinance (Exhibit 55, p. 15):

- (2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.
- (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 Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted

Staff concluded that the petition meets the above standards because of the setbacks provided (located at least than 50 feet from the property line), the location of the proposed uses within the center of the property, and the landscaping shown on the landscape plan. In addition, Staff noted that the property's location in the middle of large, active agricultural properties and sparse residential development lessened its impact on the surrounding area.

Staff also determined the site plan includes an adequate number of spaces. Section 59-E-4 contains no minimum required number of spaces for a landscape contractor. The number of parking spaces required for a wholesale nursery is the same as those required for industrial uses, manufacturing establishments, and warehouses. *Zoning Ordinance*, §59-G-2.30.0. Those uses require one and one-half parking spaces for each 1,000 square feet of total floor area and sufficient space to provide for loading and unloading trucks. Staff calculated the requirement as follows: "Existing Barn: 9,577 sf + existing frame structure: 2,274 sf = 11,851 sf – 12,000 sf; 12,000 sf/1,000 sf x 1.5 – 18 spaces."¹⁰ Exhibit 55, p. 15. A graphic included in the Technical Staff Report

¹⁰ The difference of 25 square feet between the square footage of the smaller frame structure listed in Staff's calculation and the size of the structure shown in Petitioner's Impervious Area Exhibit (Exhibit 62(f)) would not change Staff's parking calculations because one parking space is added for every portion of square footage exceeding an amount divisible by 1,000. The additional 25 square feet does not raise the total square footage above the 12,000 square feet, which would have triggered the need for an additional parking space.

showing the arrangement of parking spaces on the property is shown below (Exhibit 55, p. 27):

FIGURE 8: Surface parking spaces

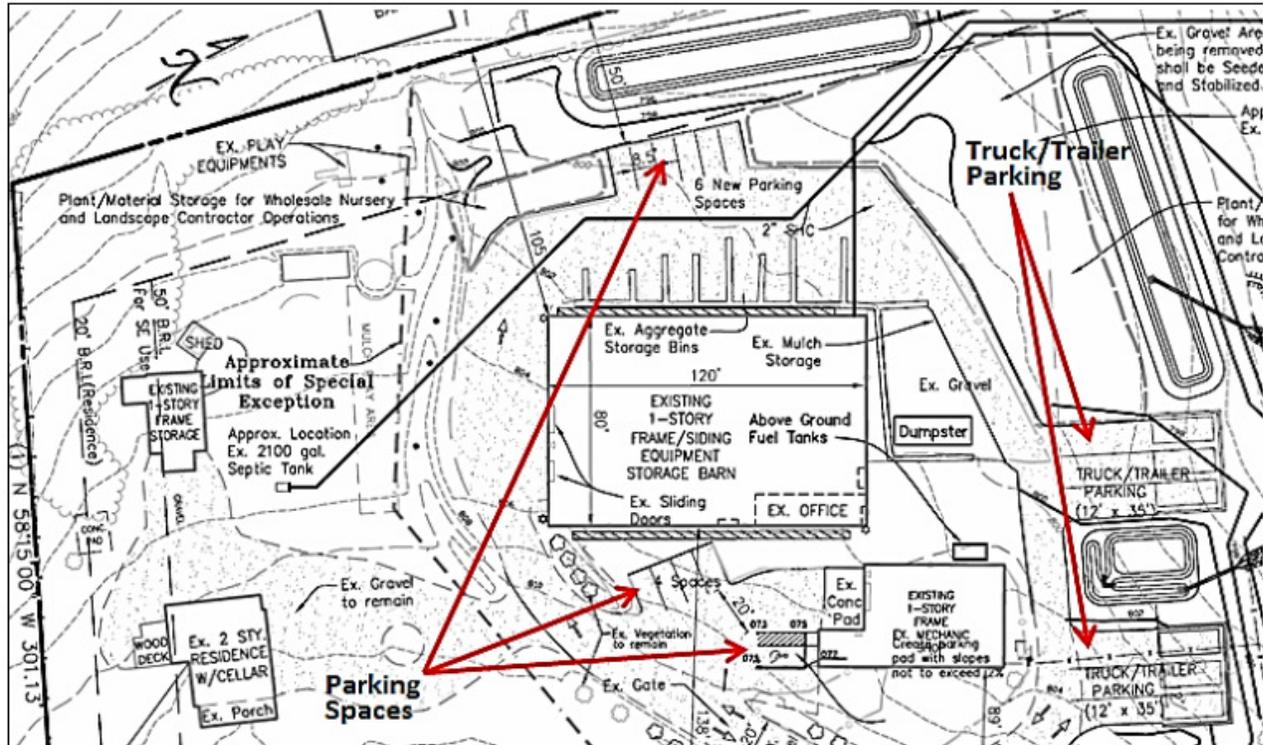


Exhibit 55

Technical Staff provided the following to explain the required number of parking spaces for both uses (Exhibit 55, p. 28):

Given the total 23 trucks that the two businesses would be using when the business reached full capacity, 43 spaces are needed for the two uses. The Special Exception Plan provides for 40 spaces, 11 surface spaces in the back and front yard and 29 spaces in the large barn. Two handicap spaces, one in the barn and another in the front parking area are provided. In view of the fact that the wholesale nursery operation utilized only three of the trucks and given the large size of the 9,000 square foot barn, staff finds that sufficient parking spaces are provided to serve the two uses.

The special exception site also provides for six large size parking spaces (12'X35') for trucks and trailers in the eastern portion of the special exception area.

Based on this evidence, the Hearing Examiner finds that there is adequate on-site parking to accommodate the number of vehicles proposed by Petitioner, and that the parking conforms to applicable regulations. The number of permitted vehicles is specified in the conditions proposed in Part V of this report.

At the public hearing, Mr. Donnelly testified that the driveway provided two-way circulation along the southern area of the property, which then became a one-way loop around the rest of the large barn. T. 55. Technical Staff also concluded that on-site circulation was adequate to serve the use (Exhibit 55, p. 18):

The access point is adequate to accommodate the site-generated traffic. The proposal provides for safe, sufficient and orderly internal traffic. Adequate off-street parking spaces are provided to satisfy the needs of the use.

D. The Environment

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the subject property on August 31, 2010. The subject property is located within the Upper Patuxent watershed and the water quality of tributaries in this watershed has been rated as good. Technical Staff advises that the proposed development will not impact the water quality of the small stream in the northwest corner of the property because of its distance from the special exception area and because no activities impact the streams or the environmental buffers. Exhibit 55, p. 9.

The subject property is located within the Patuxent River Planning Management Area (PMA). Exhibit 55, p. 9. According to Staff, the PMA encompasses typical stream valley buffers of 100-150 feet plus an additional buffer of approximately 660 feet for tributaries to the Patuxent and Hawlings Rivers. The area located between the traditional stream valley buffer and the additional PMA buffer is called the "transition zone." Generally, no impervious surfaces are permitted within the stream valley buffer. The Environmental Guidelines also recommend that,

"[O]verall imperviousness within the transition area of each new project development should not exceed 10 percent." Exhibit 55, p. 11.

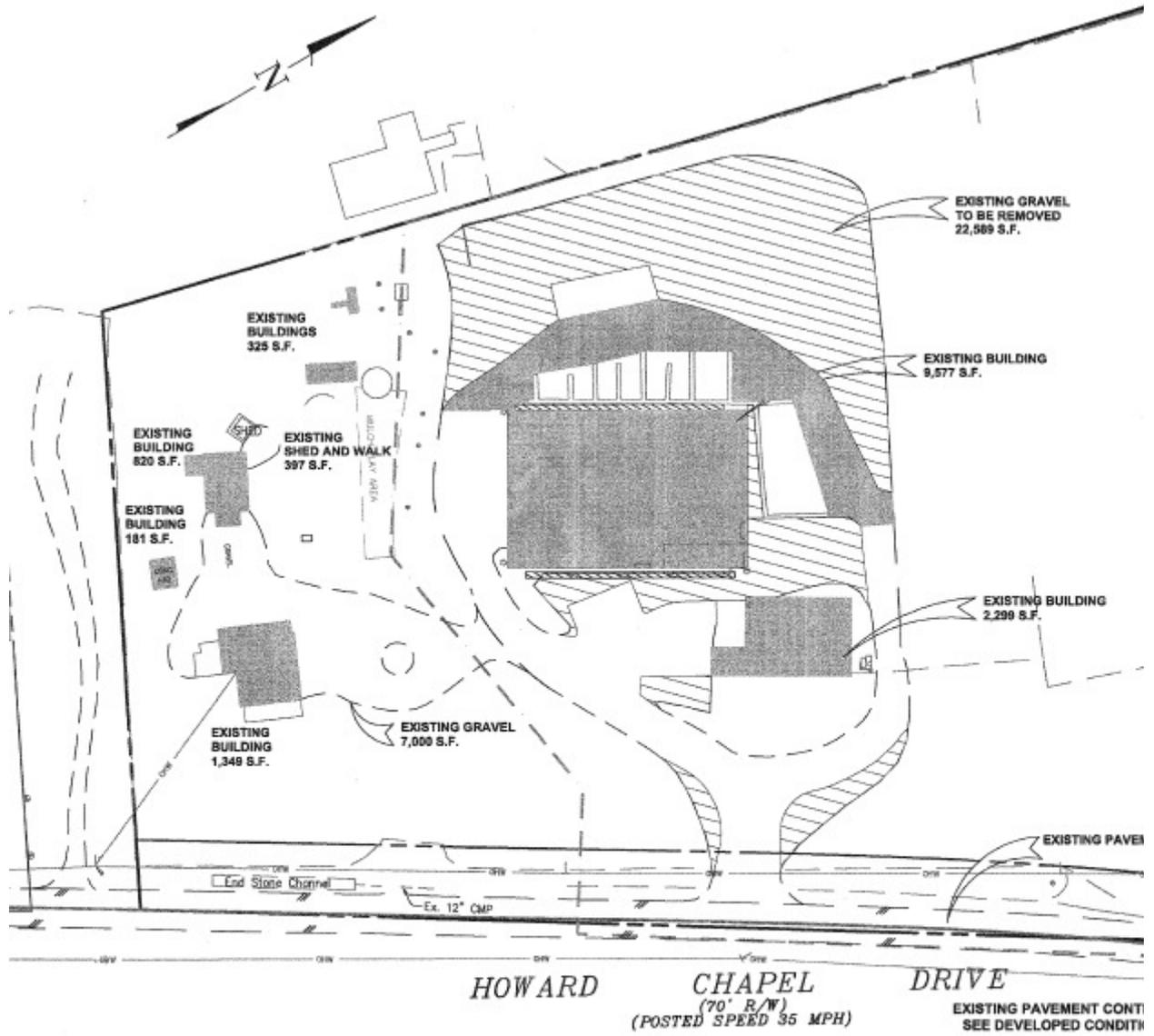
As noted, approximately 16.9% of the site currently (or at one point did) consist of impervious surface. The Petitioner proposes to reduce the amount of impervious surface on the site to 9.71%, thus meeting the Planning Board's Environmental Guidelines for the Patuxent PMA. The Petitioner submitted two plans demonstrating the reduction of the impervious area (Exhibit 67(f)), shown on pages 31 and 32).

Technical Staff advised that because the existing structures will be used and the uses will not result in the clearing of any forest or trees, "a forest conservation plan exemption (42009208E) was confirmed for this site by the Planning Department Staff on September 1, 2009, under Section 22A-5(q)(1) of the County Forest Conservation Law." Exhibit 55, p. 11.

E. The Master Plan

The property in question is subject to the Damascus Master Plan, approved and adopted in June 2006. The property is located within the Upper Patuxent River Watershed and is one of 260 properties (560 acres) referred to as the "Patuxent Neighborhood Properties" and identified as the "Rural Transition Area" in the Damascus Master Plan (Master Plan or Plan). As recommended in the 2006 Sectional Map Amendment for the Damascus Master Plan Area, the property was rezoned from RE-2C to RC. Exhibit 55, p. 8.

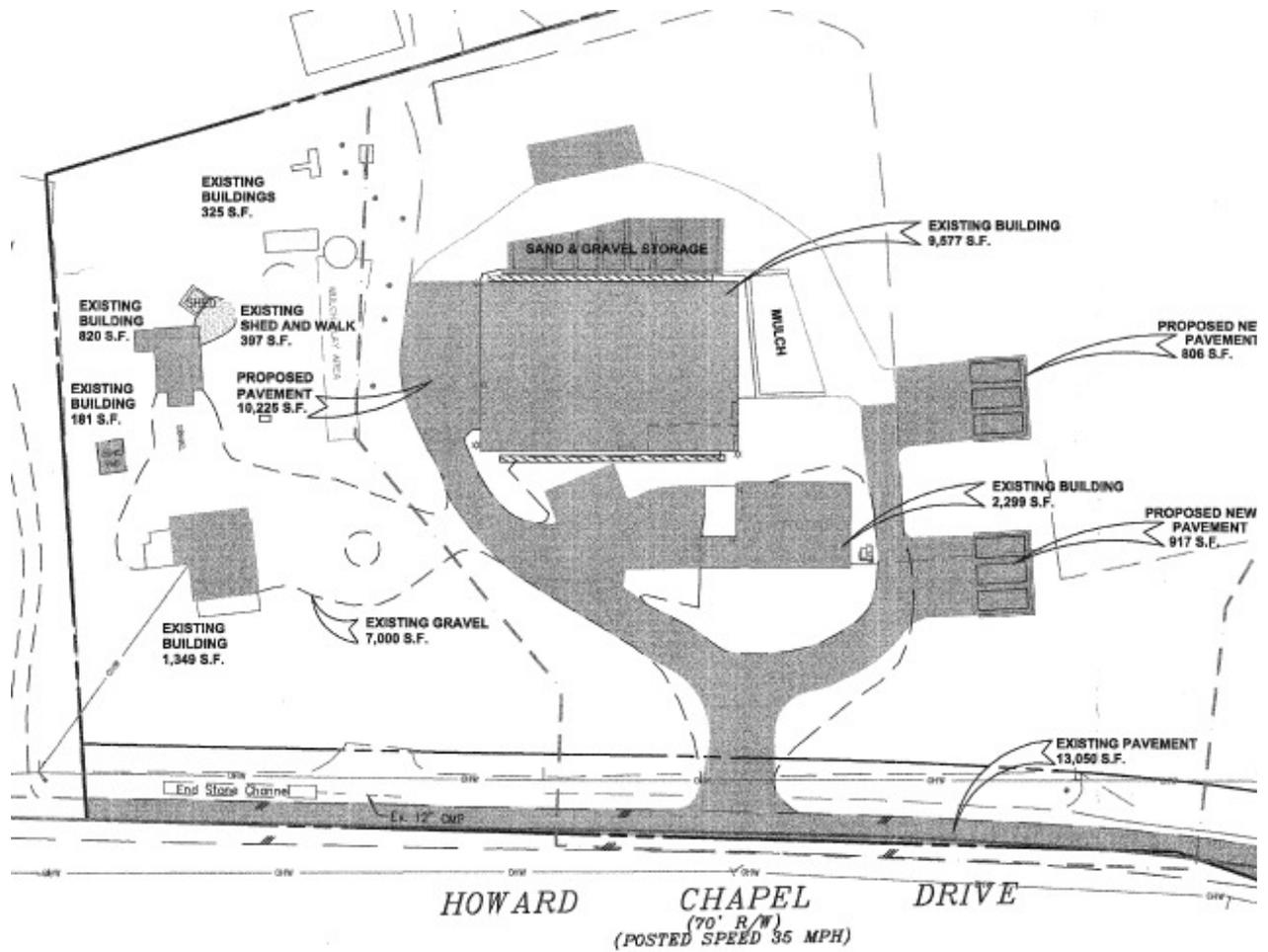
As noted by Technical Staff, the Master Plan does not have specific recommendations regarding special exceptions for landscape contractor or wholesale nursery uses. Technical Staff pointed out the Master Plan identified certain properties within the "Rural Transition Area," for the following reason (Exhibit 55, p. 9, *Plan*, p. 37):



OVERALL SITE AREA = 483,668 S.F.
EXISTING OVERALL IMPERVIOUS AREA = 93,734 S.F.
EXISTING IMPERVIOUS AREA TO BE REMOVED = 31,777 S.F.

PARCEL
26421 HOWARD CHAPEL DRI
NATHAN A. & GARY NORTH
LIBER 10577 FOLIO 542
ZONING - RC
Ex. Use=Agriculture

**Existing Impervious Area
Exhibit 62(f)**



PARCEL
26421 HOWARD CHAPEL DRIVE
NATHAN A. & GARY NORTH
LIBER 10577 FOLIO 542
ZONING - RC
Ex. Use=Agriculture

Net =440,210
Proposed Impervious Area
10225
820
...

DEVELOPED CONDITIONS

OVERALL IMPERVIOUS = 46,946 S.F.
PROPOSED POROUS PAVERS = 14,433 S.F.
(46,946- 32,513 =14,433 S.F.)

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**Impervious Area Proposed
Exhibit 62(f)**

Site Area =	483,668	
10 Percent Target	48366.8	
Property to be Conveyed	38,950	Net =440,210
10 Percent Target	44021	
	Existing	Proposed
Location	Impervious Area	Impervious Area
Ex Gravel	46653	10225
Ex. Building (820)	820	820
Ex. Building (181)	181	181
Ex. Building (1349)	1349	1349
Ex Shed and walk	397	397
Ex. Building (9577)	9577	9577
Ex. Building (325)	325	325
Ex. Building (2299)	2299	2299
Ex Gravel Drive-Residence	7000	7000
Ex R/W Pavement	13050	13050
New Pavement		1723
Sum	81651	46946
	19.50%	14.78%
Ex Gravel To be Removed		22589
Reduction required	33284.2	-1420.8
	16.88%	9.71%

**Calculations of Existing and Proposed
Impervious Area
Exhibit 62(f)**

This area is located northeast of Ridge Road (MD 27) and west of Howard Chapel Drive within the Patuxent River Watershed. Putting these properties in this agricultural zone will increase their potential eligibility for conservation easements. The recommendation reflects the environmental considerations for the Functional Master Plan of the Patuxent River Watershed. Because several older subdivisions in the area face failing wells or septic systems, this area is also recommended for extension of public water.

Technical Staff further noted that, “the Damascus Master Plan (page 23) encourages limited development with limited imperviousness due to the high threshold for protection of lands draining to the Patuxent River drinking water reservoirs.” Exhibit 55, p. 9. Thus, properties located within the Patuxent River Watershed are subject to the Patuxent PMA guidelines to protect water quality and “to restrict uses with high impervious levels in close proximity to all tributaries of the Patuxent.” *Id.*

Because the proposed uses meet the impervious area limitations for the Patuxent PMA, the Petitioner has upgraded the existing septic system, and because the RC Zone permits landscape contractors and wholesale nursery use as special exceptions (Zoning Ordinance §59-C-9.3(c)), the Hearing Examiner finds that the proposed special exception is consistent with the applicable Master Plan.

F. Community Concerns

Six form letters of opposition, expressing concerns regarding traffic, noise and dust, were received from the following individuals: Steve Parsons, Margaret Kelpicki, James McLean, Estelle Murphy, Carol Jenkins and E. Smith. Exhibits 24 and 25. An undated anonymous letter in opposition was received in April 2011. Exhibit 32. Technical Staff reported there has been no communication in support or opposition to the case since 2008. Technical Staff noted that in the Petitioner’s pre-hearing statement he indicated that he was unsuccessful in his attempt to contact the individuals who submitted letters of opposition because the addresses were “invalid and or

significant distance from the property.” Exhibit 55, p. 29. Further, Petitioner testified that he met with his immediate neighbors about the special exception applications with no objections. T. 21.

III. SUMMARY OF THE HEARING

1. George Jay Roche (T. 12-38):

Petitioner, George Jay Roche, testified in support of the two special exception applications to continue his landscape contractor business known as Natural Surroundings, Inc., and approval for a wholesale nursery use located at 26500 Howard Chapel Drive in Damascus. Mr. Roche is a landscape contractor and the President of Natural Surroundings, Inc. which provides a variety of landscape services from design, installation and grounds maintenance, including snow removal and deicing services. The wholesale nursery allows the Petitioner to sell landscaping products (i.e., mulch, stone, etc.) to other landscaping contractors. Petitioner identified the revised site plans (Exhibit 60(a)-(f)). The property is approximately 11 acres and is located between Route 108 and Gue Road. Mr. Roche identified and confirmed that the photographs in Exhibit 61 (e.g., Planning Staff’s power point presentation to the Planning Board) accurately represent the property as it currently exists. He submitted an Affidavit of Posting and noted the property is located in the Rural Cluster Zone. T. 12-17.

He testified that the property is relatively flat just south of the septic field and the northern part of the property from Howard Chapel Drive slopes down. (To ensure a clear record, Mr. Parsons clarified that “approximately 710 feet in the northwest corner of the property to a high of approximately 815 feet in the southeast corner of the property. . . [and] overall gradient is estimated at eight percent draining to the north and west from the southeast corner.”) T. 19-20. Mr. Roche described the neighborhood as mostly agricultural and estimated that the nearest residential dwelling is approximately 500 feet from the property. Mr. Roche testified that he has

spoken with his neighbors about the proposed special exception uses with no objections. He is aware of the several letters of opposition filed directly with the Board of Appeals. T. 21.

Mr. Roche identified the existing structures on the property as depicted on the site plan (Exhibit 60(a)). The single-family dwelling, a small building and playhouse are located on the south side of the property and not part of the “special exception area” which is delineated with dotted lines on the site plan. The special exception area is approximately 4.4 acres or 40 percent of the total area (11 acres) of the property and includes a large barn and mechanics shop. No new structures are proposed. The existing barn will be used for parking and storage of equipment and materials. There are a total of 40 regular parking spaces (29 spaces are inside the barn with 11 space on the east and west side of the barn) and six large truck/trailer parking spaces (12’ by 35’) located on the northeast side of the barn. He also confirmed that no public parking will be provided. T. 17-19; 21-24.

The first shift of employees will park to the rear of the barn on the west side and take the appropriate company vehicle and equipment from the barn. Additional employee parking will be provided inside the barn. There are currently three trucks for the landscape operation. As part of the landscape operation, Mr. Roche is proposing to add the following vehicles and equipment (as noted in the Statement of Operations): two large loaders, four skid steers, 21 trucks, 2 mini-excavators, 8 trailers (3 dump and 5 straight), a tractor, and other small equipment associated with landscape design, building and ground maintenance. Exhibit 55. There will be freight containers on the six large parking spaces located on the northeast side of the barn to house small equipment as necessary. He will store, but not manufacture, mulch to sell to other landscape contractors as part of the landscape operation. As part of the wholesale nursery use, Mr. Roche is proposing to add the following equipment and vehicles: one fork-lift, one skid steer, two trucks (one large and 1

one ton or smaller), and two trailers. He confirmed that he is no longer proposing to add a tractor trailer for this use. T. 24-28.

Mr. Roche proposes to expand the number of employees for the landscape contractor business from 12 to approximately 38 employees. This will include four office staff, two mechanics, two yard workers, and 30 laborers and truck drivers. The number of employees will vary because of the seasonal nature of the landscaping business which is busiest from spring through the fall. He testified that all the laborers car pool to work which in most cases is to the job site and not the property. He is proposing a total of two employees (one equipment operator and one staff) for the wholesale nursery operation. T. 29-30.

The proposed hours of operation for the landscape contractor business are Monday through Friday 6:00 a.m. to 7:00 p.m. and Saturday, 6:00 a.m. to 4:00 p.m. Mr. Roche will have 40 employees scheduled over three shifts. The first shift, 6:30 a.m. to 3:30 p.m., will consist of 24 employees (20 laborers/truck drivers, one mechanic, one yard and two office workers). He noted that most of the laborers employees carpool to the property or report directly to the work site. They will report to the property between 6:00 and 6:15 a.m. and depart for the work site before their shift begins at 6:30 a.m. There will be four employees (two office workers, one staff and one equipment operator) scheduled for second shift from 9:00 a.m. to 5:00 p.m., and a total of twelve employees (10 laborers, one yard worker and one mechanic) scheduled for the third shift from 9:30 a.m. to 6:30 p.m. Mr. Roche accepted and agreed to Planning Staff's condition that the maximum number of employees allowed on the property at any one time is 24 employees. T. 30-32.

The proposed hours of operation for the wholesale nursery operation are Monday through Friday 9:00 a.m. to 4:00 p.m. and Saturday, 8:00 a.m. to 12:30 p.m. Vehicles enter the property from Howard Chapel Drive on the east side and follow the driveway to the south of the barn to parking in the rear on the west side. The driveway loops along the northern part of the property

connecting with the entrance on the east side and as depicted on the special exception site plan. T. 32-33.

Mr. Roche clarified that while he accepted and agreed to comply with the conditions of approval as stated on page three of the Technical Staff Report (Exhibit 55), he wanted clarification on whether he could install a directional sign on the property. Mr. Roche marked the site plan (Exhibit 62(a)) with an "x" to show the approximate location of the proposed directional sign on the east side of the property within an existing planted area. The small sign would be approximately 2' by 3' and not visible from the road. The purpose is to direct deliveries to the office in the barn and away from his family home which is not part of the special exception area. He also revised the landscaping plan to replace the white pine trees along property closest to the family home with spruce trees. He explained that the white pine and most of the employees (five crews of four) departed the property in company trucks and produce a lot of sap in an area where his five children play and are not "aesthetically pleasing." T. 33-35 and 37-38.

Currently, Mr. Roche estimates eight to ten deliveries, including one large truck (e.g., tractor trailer) delivery, a month to the business. With the approved special exception uses as proposed and fully implemented over the next ten years, he estimates the same number of deliveries (8 to 10 with one large truck delivery) on a weekly basis. T. 36.

2. Mr. Glenn Cook (T.38-50):

Mr. Glenn Cook testified as an expert in traffic engineering and transportation planning. Mr. Cook prepared a written report dated March 29, 2011 (Exhibit 30(i)) to assess the traffic impacts generated by the proposed special exception uses and to determine whether a traffic study was required in accordance with the Local Area Transportation Review for Montgomery County. Based on a review of the Statement of Operations and discussions with Mr. Roche, Mr. Cook testified that in his expert opinion the proposed uses together do not generate 30 or more trips

during the morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 6:30 p.m.) peak hours to trigger the need for a traffic study. To support his conclusion, he created a work schedule chart showing the number of employees scheduled to work during the three shifts as shown in Petitioner's Statement of Operations (Exhibit 55). T. 38-42.

For purposes of showing the worse-case scenario, Mr. Cook assumed that all employees reported to the property even though Petitioner indicated that many of the employees (e.g., laborers) carpooled and/or reported directly to the work site, thereby reducing the actual number of trips generated by the uses. He also noted that the employees on the first shift (24 employees from 6:30 a.m. to 9:30 a.m.) reported to work between 6:00 a.m. and 6:15 a.m. prior to the start of the 6:30 a.m. peak hour period and most of the employees (five crews of four) departed the property in company trucks within the same hour. Thus, Mr. Cook opined that the 29 trips assumed for the first shift is unlikely, and would not have the most impact during the morning peak period from 6:30 a.m. to 9:30 a.m. T. 43-44. He also pointed out that Technical Staff's statement on page 22 of the staff report that "[t]he property will generate a maximum of 29 morning peak hour trips 6:30 a.m. to 9:30 a.m." is inconsistent with the Statement of Operations because the first shift will actually be arriving at the site earlier than 6:30 a.m. Thus, the assumptions of the Traffic Statement are conservative. T. 47-48.

He estimated a total of 19 morning peak hour trips were generated between the second shift (four employees from the 9:00 a.m. to 5:00 p.m.) and third shift (twelve employees arriving and three trucks departing from 9:30 a.m. to 6:30 p.m.). Mr. Cook testified that Transportation Staff concurred with his analysis and conclusion that the proposed uses did not generate 30 or more trips during the peak-hour to trigger the need for a traffic study requirement for LAT. Thus, Mr. Cook concluded and staff concurred that the proposed uses will not significantly impact the adjacent roadways because the uses generate less than 30 peak-hour trips. He also noted that the anticipated

delivery schedule with full implementation of both uses does not change his analysis and conclusion that a traffic study is not required. T. 48-49.

3. Mr. Brian Donnelly (T. 50-64):

Mr. Brian Donnelly testified as an expert in landscape architect and site planning. Referring to the revised landscape plan (Exhibit 62 (d)), he testified that the 11-acre property is triangular in shape and relatively flat in the southern third of the property where the existing structures are located. The slope increases to the north towards the stream valley buffer which “takes about 20 percent of the property on the northern limits.” He stated that the parcel is deeded and a portion extends beyond Howard Chapel Drive “which creates a prescriptive right-of-way easement.” T. 50-53.

Referring to the revised landscape plan (Exhibit 62(d)) he identified the location and changes in the type of shade trees along the berm that separates the residential and business uses. He noted the shade tree species were changed to make the plantings more compatible with the residential use and to provide greater privacy between the uses. More specifically, the red maples were changed to green vase zelkova and the white pines were changed to a mixture of black pine, loblolly pines and Colorado blue spruce. He confirmed that the white pines tend to lose their limbs over time and excrete a lot of sap. T. 54-55 and 56.

He confirmed that a portion of the property lies within the Upper Patuxent Watershed. There is a circular driveway which is accessed from Howard Chapel Drive and loops around the existing barn. No new construction is proposed with the exception of interior renovations to the office space within the barn which will require a renovation permit and not a building permit. He stated that the wholesale nursery operation will be a minor part of the landscape business and noted there will be periodic large truck deliveries of mulch, stone, and sand for sale to other landscape contractors. Mr. Donnelly adopted the findings and conclusions of the Technical Staff

Report (Exhibit 55) as his own with the clarification that he agrees with Mr. Cook's testimony that the first shift of employees will arrive and depart the property before 6:30 a.m. However, he agreed with Staff's findings and conclusions that Petitioner's application as proposed satisfies the general and specific requirements for both uses under the Zoning Code. T. 55- 57; 59-61; 64.

Mr. Donnelly testified that the septic fields are to the north of the special exception area and storm water management facilities to the west. The site design meets the ESD requirements and the property is exempt from the Forest Conservation requirements (Exhibit 29). The well and septic plans for the proposed expansion includes separate septic tanks for the residential and commercial uses on the property which were approved by DPS Health and Well and Septic Division. T. 58-59.

He also confirmed Mr. Roche's testimony on the location and number of parking spaces that will serve the special exception uses. He pointed out that there is sufficient space within the barn for an additional ADA parking space if needed. The parking areas are adequately screened in compliance with the special exception requirements for a landscape contractor business use. Mr. Donnelly was not aware of the phasing schedule to remove the existing gravel and installation of the storm water management facilities. However, he believes a fair amount of the gravel has been removed over the past six years in an effort to clean up the property. T. 62-64.

The Hearing Examiner renumbered the full set of revised site plans as Exhibits 62(a)-(g) for consistency with the minor changes to the site plan (Exhibit 62(a)) to show the location of the directional sign. T. 34 and 65.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a

site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed uses will successfully avoid significant non-inherent adverse effects and will meet the general and specific requirements for the proposed uses, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Inherent and Non-Inherent Adverse Effects

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 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 “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a landscape contractor and wholesale nursery uses. Characteristics of the proposed use that are consistent with the characteristics thus identified will be

considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff describes the inherent, physical and operational characteristics of a landscape contractor and wholesale nursery business, as follows (Exhibit 55, pp. 11-12):

- (1) Buildings, structures, outdoor areas for the storage of plants and gardening-related equipment;
- (2) Outdoor storage of plant stock, mulch, soil and landscaping materials in bulk and in containers;
- (3) On-site storage of business vehicles and equipment including small trucks and landscaping trailers;
- (4) Traffic associated with the trips to the site by employees, suppliers and customers [and with] trips to and from the site by employees engaged in off-site landscaping activities;
- (5) Adequate parking areas to accommodate customers and Staff;
- (6) Dust and noise associated with the movement of landscaping products and the loading and unloading of landscaping equipment associated with landscaping and wholesale nursery businesses; and
- (7) Long hours of operation.

Technical Staff, “however, considers the fact that the Property is located within the Patuxent PMA and subject to the 10 percent impervious surface limits a non-inherent characteristic [and concluded that] with the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed uses do not rise to a level sufficient to warrant denial of the Application.” Exhibit 55, p. 12. Technical Staff reasoned that the landscape contractor and wholesale nursery uses are consistent with the standards of the RC Zone and the special exception standards. The property also meets all setbacks and is surrounded by large agricultural uses with the nearest residential uses more than 500 feet away. Staff also pointed out that the traffic impact would be minimal (as conditioned), even when the businesses reach full growth permitted. Staff

also considered that there would be no increase in building area and the lighting plan demonstrated that lighting for the use would not impact adjacent properties. (Exhibit 55, p. 12).

The Hearing Examiner agrees with Technical Staff's finding that the properties location within the Patuxent PMA and subject to the 10% impervious surface limitations is a non-inherent characteristic of the site. The proposed removal of a significant portion of the existing gravel will reduce the impervious surfaces from 16.9 % to 9.71% and bring the property into compliance with the PMA requirements. Petitioner will replace the existing impervious surfaces with new vegetation and landscaping which will improve the environmental and aesthetic condition of the property. Further, there will be no new construction as the existing buildings provide sufficient space for the office, parking, storage and to repair equipment.

The Hearing Examiner therefore concludes that the inherent and non-inherent adverse effects caused by the physical and operational characteristics of the proposed use on this site, as conditioned, will be compliant with the requirements of the Zoning Ordinance.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

Conclusion: A landscape contractor and wholesale nursery are permitted by special exception in the RC Zone, pursuant to Zoning Ordinance §59-C-9.3(c).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all

specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed special exception uses comply with the standards and requirements set forth for the special exception uses in Code §59-G-2.30.00 (Landscape contractor) and §59-G-2.30.0 (Wholesale Nursery) as detailed in Part IV.C of this Report.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The property in question is subject to the Damascus Master Plan, approved and adopted in June 2006. For the reasons set forth in Part II. D. of this report, the Hearing Examiner finds that the proposed special exception is consistent with the applicable Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: While the Damascus Master Plan recommends that review of the compatibility of agricultural uses be reviewed more leniently than other uses, Technical Staff concluded that the uses proposed here are not agricultural in nature, and applied a strict review standard. Under that standard, Staff found that the design, scale and intensity of the proposed special exception uses will conflict with the general character of the neighborhood. Staff points to the fact that the businesses have been operating at approximately one-third of the proposed long-term growth for 10 years. Staff also relies on the conditions of the special exception approval, which will reduce

the impervious area to the level recommended in the Planning Board's *Environmental Guidelines* and in the Master Plan, and control other potentially adverse impacts of the use, such as trips generated within the morning and evening peak hours. In addition, Staff notes that Petitioner has upgraded the previously failing septic system on the property. Exhibit 55, p. 17.

The Hearing Examiner concurs with Technical Staff's findings and conclusion that the proposed special exception uses operated in compliance with the recommended conditions "will be in harmony with the general character of the neighborhood and satisfies this requirement." Exhibit 55, p. 17. She agrees with Staff, however, that the importance of complying with the conditions of approval will increase as the business reaches its projected growth.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: No new structures are proposed as the existing structures will continue to provide sufficient office space, equipment and material storage and parking. A majority of the large equipment storage and parking areas will be inside the barn. Other on-site parking and equipment storage areas will be adequately screened. Equipment repairs will be performed inside the mechanics shop minimizing noise impacts to the nearest residential dwelling which approximately 500 feet away from the property. The most significant improvement that will result from the proposed uses is the reduction of the existing impervious surfaces from 16.9% to 9.71% which is below the 10% impervious surface cap as required under the PMA guidelines. New landscaping as proposed will improve the environmental and aesthetic conditions on the property. For the reasons stated herein and the previous section, the Hearing Examiner concurs with Technical Staff's finding that the proposed uses "will not be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood." Exhibit 55, p. 18.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: A certain amount of noise and other activities are inherent in the operation of a landscape contractor and wholesale nursery business; however, as noted by Technical Staff (Exhibit 55, pp. 19-20), those impacts will be minimized given the limited size and central location of the special exception area and the expansive interior space provided by the existing structures (e.g., barn and mechanic shop) that will be used for most of the office operations, storage, equipment repair and parking. Technical Staff reports that with the exception of repairs to the equipment, most of the landscape contractor services will be conducted off-site. The repairs and occasional testing of equipment to be used off-site will be conducted within the existing metal barn which Technical Staff reports, “helps ensure compliance with the noise ordinance (Section 31B-5 of the Montgomery County Code).” Exhibit 55, p. 20. The wholesale nursery operation will be limited to the storage of landscape materials, including plants, stone and mulch for the landscape contractor use and for wholesale sales of the same to other landscape contractors only. There will be “no retail sale of plant material, garden supplies, or [equipment] conducted on the Property.” Exhibit 55, p. 19. Technical Staff recommends as a condition of approval that all deliveries and pick-ups be limited to between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. Further, that “no mulch will be manufactured and no composting of debris will be conducted on site.” *Id.*

Technical Staff reports that proposed lighting, consisting of three motion sensor lights, will not cause glare on adjoining properties. Exhibit 55, p. 19. Given these circumstances, Technical Staff concluded that “[t]he proposed use is not expected to cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site.” Exhibit 55, p. 19. Based on this record, the Hearing Examiner finds that this provision has been satisfied.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.*

Conclusion: The site is located within an agricultural zone, not a residential zone, and the proposed special exception use is consistent with the recommendations of the Master Plan. The evidence thus supports the conclusion that the proposed special exception uses would not increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely. Exhibit 55, p. 20.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed special exception uses and gradual expansion over the next ten years would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Petitioner has operated the landscape contractor business at the property since 2004. Technical Staff noted the various safety features of the above-ground fuel tanks meet “the necessary license and safety requirements [and] do not require a permit.” Exhibit 55, p. 20. Further, the tanks are fire resistant, contain a “steel inner and outer tank [which] are resistant to bullet penetration, and will have guard posts around the tanks for safety to prevent vehicles from colliding into them.” Exhibit 55, p. 21.

- (9) *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.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a*

preliminary plan of subdivision must be a condition of the special exception.

- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision at the present time, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception uses. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards.

Petitioner's Traffic Statement (Exhibit 30(i)), which was accepted by Staff, indicates that the proposed uses will generate fewer than 30 peak hour trips. Testimony from Petitioner's traffic engineer demonstrates that the 29 trips estimated in Petitioner's traffic statement is unlikely to occur due to conservative assumptions of the Traffic Statement, and because most of the workers in Shift #1 (with the most employees) will occur prior to the peak period. There are no PAMR or TPAR mitigation requirements in the Damascus Policy Area. The Hearing Examiner finds from the testimony and evidence that the proposed uses meet the standards for LATR and TPAR approval. In addition, the evidence shows that the septic system on the property will be sufficient to serve both the residential and business uses on the entire property and that it is served by public water.

The Hearing Examiner concludes that public facilities are adequate to serve the uses proposed, provided the Petitioner implements the conditions recommended in Section V of this Report.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]he subject Special Exception uses are not likely to reduce the safety of vehicular or pedestrian traffic.” Exhibit 55, p. 21. While the Planning Board suggested that the Hearing Examiner considered potential truck traffic on Howard Chapel Drive, the Hearing Examiner has no evidence before her to justify doing so. Based on the evidence of record, the Hearing Examiner finds that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards: Landscape Contractor and Wholesale Horticultural Nursery

The specific standards for a landscape contractor and wholesale horticultural nursery are found in Code §§ 59-G-2.30.00 and 59-G-2.30.0, respectively. The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the proposed landscape contractor and wholesale horticultural nursery uses would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.30.00 Landscape Contractor.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

Conclusion: The landscape contractor use is proposed in combination with a wholesale horticultural nursery. There will be no retail sales or a mulch/compost manufacturing operation on the property. The landscape contractor and wholesale nursery uses will be centrally located and

utilize 4.4 acres (40% of 11 acres) of the property that is designated on the site plans as the “special exception area”. To minimize traffic, noise and other on-site activities, the maximum number of employees for both operations will not exceed 40 employees with the condition that no more than 24 employees will be allowed on the property at any one time. The employees will work in three shifts. For reasons noted in previous sections of this report, this use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. The design, scale and the intensity of the use, as conditioned, will not conflict with the agricultural character of the neighborhood. Petitioner will also reduce the amount of imperviousness on the site which will be replaced with new vegetation and landscaping. The existing facilities, including parking, will be used, and Petitioner will not be adding any significant traffic to the roadways.

(1) The minimum area of the lot must be 2 acres if there are any on-site operations, including the parking or loading of trucks or equipment.

Conclusion: The lot size is approximately 11 acres and the special exception area consists of approximately 4.4 acres. Thus, this minimum area requirement has been met.

(2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

Conclusion: Technical Staff reports that all parking and loading areas for trucks and equipment, as well as other on-site operations and mechanic shop as shown on the revised site plans, are all located more than 50 feet from all property lines. Most of the on-site parking is located in the barn. The evidence supports the conclusion that setbacks, topography, and the proposed additional landscaping are adequate to protect adjoining uses from noise, dust, odors and other objectionable effects of these operations, given that some amount of noise, dust and odors is inherent in the use.

(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 Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

Conclusion: Recommended conditions in Part V of this report and the Final Statement of Operations (Exhibit 46(a)) specify the vehicles and equipment which may be on the subject property – 5 trucks; 3 trailers (one sixteen foot enclosed trailer and two fourteen foot open trailers); 6 mowers (including three tractors and three walk behind lawn mowers); one snow plow (which attaches to one of the trucks); and an assortment of trimmers, blowers, spreaders, aerators, shovels, chain saws, hoses and various landscaping tools. All of the equipment will be parked inside the barn. The special exception proposes a total of 14 parking spaces. Eight parking spaces are provided in the gravel area on the north side of the barn, and four parallel parking spaces are located in the gravel area along the edge of the pond, west of the barn. In addition, the existing two parking spaces in front of the dwelling are retained for the exclusive use of the office. Technical Staff found that there is adequate parking for employee vehicles and equipment. Exhibit 34, p. 23. The Hearing Examiner finds that this requirement has been met.

(4) No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse.

Conclusion: The landscape contractor use is proposed in combination with a wholesale horticultural nursery use. The wholesale nursery operation will be limited to the storage of small quantities of landscape materials, including plants, stone, mulch, fertilizers, plant foods, pesticides and equipment as necessary for the landscape contractor use and for wholesale sales of the same to other landscape contractors. There will be no retail sale of plant materials, garden supplies, or equipment conducted on the Property. The Hearing Examiner finds that this standard has been met.

(5) The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses.

Conclusion: The hours of operation relied on by Technical Staff and agreed to by the Petitioner are set forth in the following table, included in the Staff Report (Exhibit 55, p. 25):

The 40 employees work in three shifts. The Applicant has provided the following shift-schedule:

Table-2

No Employees- Shift 1 6:30 a.m. - 3:30 p.m.	No Employees Shift 2 9:00 a.m. - 5:00 p.m	No Employees Shift 3 9:30 a.m. - 6:30 p.m
20 Laborers/truck drivers LC	2 office LC	10 Laborers/truck drivers LC
1 mechanic LC	1 equipment operator WN	1 yard staff LC
1 yard staff LC	1 yard staff WN	1 Mechanic LC
2 office staff LC		

The Hearing Examiner agrees with the Petitioner that the Planning Board incorrectly stated the hours for the landscape contractor special exception in its transmittal letter. Thus, the Hearing Examiner recommends a condition restricting the hours as specified above.

(6) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

Conclusion: Technical Staff concluded that the landscape contractor special exception proposed here, while permitted in an agricultural zone, is not agricultural in nature and thus does not come within the ambit of this paragraph. Exhibit 55, p. 17. Nevertheless, Staff also concluded that, as conditioned, the proposed special exceptions will be compatible with the surrounding area given the setbacks, agricultural nature of surrounding uses, and limitations imposed on operations recommended. The Hearing Examiner agrees and finds that both special exception uses will be compatible with the surrounding area with the conditions of approval set forth in Section V of this Report.

Sec. 59-G-2.30.0 Wholesale Horticultural Nursery.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

Conclusion: The landscape contractor use is proposed in combination with a wholesale horticultural nursery operation which is specifically designated on the site plan. Exhibit 62. As is documented elsewhere in this report, this use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. The design, scale and the intensity of the use, as conditioned, will not conflict with the neighborhood. Petitioner will also reduce the amount of imperviousness on the site and add significant reforestation. The existing facilities, including parking, will be used, and Petitioner will not be adding any significant traffic to the roadways.

(1) Plants, trees, shrubs, seed, and bulbs may be grown or produced but may be stocked and sold on a wholesale basis.

Conclusion: Petitioner does not propose any retail sales on the premises. The Hearing Examiner finds this standard has been met.

(2) Fertilizers, plant foods, and pesticides must not be produced but may be stocked and sold on a wholesale basis.

Conclusion: Petitioner does not propose to produce the items listed above, but will stock and sell them on a wholesale basis. The Hearing Examiner finds that this standard has been met.

(3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 59-G-2.30 (1):

(i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.

- (ii) *The retail sale of plant materials or garden supplies or equipment.*

Conclusion: Neither special exception petition seeks approval of a retail nursery or garden center, therefore, the activities listed above are not permitted on the site. Petitioner does not propose any retail sales, and Technical Staff advises that, "[N]o equipment, other than the ones needed for the operation of the contractor and wholesale nursery uses will be sold or stored on the property." Exhibit 55, p. 27. The Hearing Examiner finds that this standard has been met.

- (4) *The minimum area of the lot is 2 acres.*

Conclusion: The special exception area is 4.4 acres and the entire lot is 11 acres. This requirement has been met.

- (5) *The minimum building setback from any property line is 50 feet.*

Conclusion: Parking and loading areas are set back at least 50 feet from the nearest property lines. Buildings are located on the interior of the special exception area and also meet this setback requirement.

- (6) *Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E.*

Conclusion: Technical Staff concluded that parking meets all requirements of Article 59-E, as set forth in Section II.C.2 of this Report. The Hearing Examiner agrees and so finds.

- (7) *Adequate screening and buffering must be provided for all parking areas and other on-site operations having a potentially adverse impact on adjoining residential or agricultural uses.*

Conclusion: As set forth earlier, the property is surrounded by large, active agricultural properties and far from residential uses. It also meets all minimum setbacks. The special exception area is centrally located on the property and will be landscaped to screen parking and other outdoor activities of the two businesses. The Hearing Examiner finds that this requirement has been met.

(8) *In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.*

Conclusion: Because Technical Staff did not consider a landscape contractor an agricultural special exception, it reviewed the compatibility of the wholesale nursery under the normal, stricter standards. The Hearing Examiner finds that the use, as conditioned, will be compatible with the surrounding area, as did the Planning Board and Technical Staff.

D. General Development Standards

Sec. 59-G-1.23. General development standards.

(a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: Zoning Ordinance §59-G-2.30.00 specifies some development standards, but others are dictated by the RC zone. Before the Planning Board, Technical Staff amended its Development Standards Table, by adding the line "+/ 3.2% lot area" under the line "6.2% special exception area" in the last column of "Maximum Building Coverage." Exhibit 56, p. 2. The proposed use meets all those standards, as shown in a table included in the Technical Staff report (Exhibit 34, p. 14, on the following page).

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed in Part II.B.4.b of this report, parking provided on the site will be adequate to meet the requirements of Zoning Ordinance §59-G-2.30.00.

(c) *Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

* * *

RC- (Rural zoning standards)	Required	Proposed/Existing
Minimum Lot Area 59-C-9.42 59-G-2-30.0* 59-G-2-30.00	5 acres 87,120 SF (2ac)*	11 acres (479160 sf) 4.4 ac (for the special exception uses)
Minimum Lot width: 59-C-9.43 <ul style="list-style-type: none"> ▪ at street line ▪ at building line 	300 ft 300 ft	840 <u>+</u> ft 840 <u>+</u> ft
Maximum Building Height: 59-C-9.47	50 ft	30 <u>+</u> ft
Maximum Building Coverage: 59-C-9.42	10%**	6.2% special exception area
Minimum Building Setback: 59-C-9.44 a. From street b. Minimum Side Yard (2 required: <ul style="list-style-type: none"> ▪ One side ▪ Sum of both sides ▪ Abutting side street c. Rear yard	50 ft 20 ft 40 ft 50 ft	89 ft (structure within SE boundaries) 192 ft 570 <u>+</u> ft
Minimum Setback for parking and loading <ul style="list-style-type: none"> • 59-C-9.42 • 59-G-2-30.0* • 59-G-2-30.00 	50 ft 50 ft	50 50
Yard Requirement-Accessory building a. Front lot line b. From side lot line c. Rear lot line	80 ft 15ft 10 ft	89 ft-(mechanic shop) 192 ft min 105 ft min

* It is not uncommon for this use to be proposed in combination with a retail horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location (59-G-2.30.0).

**The total impervious surface area of any proposed preliminary plan must not exceed any impervious surface area limits recommended by the approved and adopted master or sector plan. (Foot note #8)

Chart Summarizing Compliance of the Special Exceptions with the General Development Standards of the RC Zone (Exhibit 55, p. 14)

Conclusion: This section is not applicable, and in any event, the property meets the zone's frontage requirements.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: Technical Staff confirmed that the property is exempt from the requirements of Chapter 22A. Exhibit 29.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: This site is not in a special protection area (SPA), and thus a water quality plan is not required. Exhibit 55, p. 16.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: After review by the Planning Board, the Petitioner requested a 2 by 3-foot directional sign set back from the property's entrance along Howard Chapel Drive. He submitted a proposed design and simulation of the visibility of the sign from the roadway. Technical Staff concluded that the sign is exempt from permitting requirements because it is not visible from the roadway, and the Hearing Examiner has no contradictory evidence. Nevertheless, the Hearing Examiner finds the sign is subject to review under the special exception standards and the location, design and size of the sign may be a condition of approval of the special exception.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a

residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: The subject site is not in a residential zone, so this section is not applicable.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: The subject site is not in a residential zone, and as stated above, Technical Staff found that there will be no light spillage to the adjacent properties. Exhibit 55.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the uses proposed by Petitioner meets the specific and general requirements for a landscape contractor special exception, and that the Petition should be granted, with the conditions recommended in the next section.

V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition Nos. S-2715 and 2716, which seeks a special exception to operate a landscape contractor business and wholesale horticultural nursery on property located at 26500 Howard Chapel Drive, Damascus, Maryland, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The maximum number of employees for the operations of both the landscape contractor and wholesale nursery must not exceed forty (40) of which not more than twenty-four (24) can be on site at any one time.

3. The Petitioner is bound by the Statement of Operations (Exhibit 30(h) as modified by Exhibit 52(a)). The landscape contractor and wholesale nursery business must not have more equipment and machinery than itemized in Petitioner's Statement of Operations).
4. All development on the property must comply with the all plans included in Exhibit 62.
5. Overall imperviousness on the property must not exceed 10 percent as shown on the Impervious Area Exhibit (Exhibit 62(f)).
6. All repairs and testing of equipment will be conducted within the existing buildings on the property.
7. All deliveries and pick-ups should occur between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.
8. Petitioner may install a directional sign measuring no more than 2 feet by 3 feet, in the design submitted into the record (Exhibit 67(1)) and at the location shown on the special exception site plan (Exhibit 62).
9. No mulch/compost manufacturing operation shall be conducted on the property.
10. The total number of parking spaces on the property must not exceed forty-six (46), including eleven (11) regular and six (6) over-size on-site surface spaces, and twenty-nine (29) regular garage spaces located within the barn.
11. Hours of operation for the landscape contractor business are limited to 6:00 a.m. through 7:00 p.m., and 6:00 a.m. through 4:00 p.m. on Saturdays. Hours of operations for the wholesale nursery are 9:00 a.m. through 4:00 p.m. Monday through Friday, and 8:00 a.m. through 12:30 p.m. on Saturdays.
12. Petitioner 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 special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception 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.

Dated: September 9, 2014

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line extending to the right.

Lynn A. Robeson
Hearing Examiner