

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
 Stella B. Werner Council Office Building
 Rockville, Maryland 20850
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IN THE MATTER OF:	*	
JOSÉ AND NELSY POLANCO	*	
D/B/A TREEMAN, INC.	*	
Applicant	*	Conditional Use Application
	*	No. CU 24-09
José Manuel Polanco	*	BOA Variance Application
For the Applicant	*	No. A-6834
	*	
Françoise M. Carrier, Esq.	*	
Attorney for the Applicant	*	

Before: Kathleen Byrne, Hearing Examiner		

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Jose Manuel “Manny” and Nelsy P. Polanco doing business as Treeman, Inc. (Applicant or Polanco) filed an application on October 30, 2023, seeking a conditional use to operate a landscape contractor business on the property known as 2230 Spencerville Road, Spencerville, Maryland 20868 (subject property or property). Exhibit 1. On September 11, 2023, the Applicant filed a petition for variance associated with the conditional use application with the Board of Appeals. Exhibit 8. On October 18, 2023, the Board of Appeals transmitted the variance petition to OZAH for the two matters to be consolidated and a joint public hearing be held. By order dated January 8, 2024, the Hearing Examiner consolidated both applications. Exhibit 22.

The property is described as a 2.10 acre lot located on the north side of Spencerville Road between Batson Road and Peach Orchard Road within the RE-1 zone identified as Parcel P319,

on tax account number 05-00263833 of the New Birmingham Manor Subdivision. Exhibit 24, pg. 6. The Applicant owns the property and maintains a mailing address of 16201 Batson Road, Spencerville, Maryland 20868. Exhibit 1.

Currently the Applicant uses the parcel for a landscaping contractor business primarily engaged in the work of site clearing and tree removal. Exhibit 7, pg. 1. The Applicant seeks to continue his current business operations. *Id.* On January 19, 2024, the staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the proposed conditional use subject to certain conditions. Exhibit 24. By letter dated February 13, 2024, the Planning Board conveyed to OZAH that it recommends, by unanimous vote, approval of the proposed conditional use subject to certain conditions. Exhibit 23.

The public hearing proceeded as schedule on Monday, February 26, 2024.¹ Ms. Carrier represented the Applicant during the hearing and Mr. Jose “Manny” Polanco testified on behalf of the Applicant. Mr. Mike Norton and Ms. Katie Wagner testified as the Applicant’s experts in support of the application. No witnesses in opposition testified at the hearing. After hearing evidence presented, the Hearing Officer held the record open for a period of 10 days to receive the transcript. OZAH received the transcript on March 7, 2024 and the Hearing Examiner closed the record on March 7, 2024. For the following reasons, the Hearing Examiner approves the conditional use application and related variances subject to the conditions listed in Part V of this Report and Decision.

II. FACTUAL BACKGROUND

¹ The public hearing was held in a hybrid format using Zoom. A link and phone number for the parties and/or public to join the hearing were published on OZAH's website. Hearing exhibits were also published on OZAH's website prior to the hearing to permit the public to participate.

A. Subject Property

The subject property consists of 2.10 acres identified as Parcel P319 with an address of 2230 Spencerville Road, Spencerville, Maryland. Exhibit 24, pg. 6. The Applicant proposes no changes to the property which is accessed via a driveway that fronts on Spencerville Road and contains a single-family detached house located on the front of the parcel facing Spencerville Road, with an existing shed associated with the residence. *Id.* The remainder of the property located behind the house is open and used for the existing landscape contractor business. *Id.* The site contains no streams, wetlands, flood plain, stream valley buffer or any specimen trees. *Id.* The Upper Paint Branch Special Protection Area (SPA) crosses the front of the property, and the entire site is in the Upper Paint Branch Overlay Zone. *Id.*

A single-family home used as a residence and tailor shop lies to the east of the subject property, while landscape contractor business, Arbor Landscaping, that occupies 17.2 acres abuts and wraps around the western and northern boarder of the property. Exhibit 3, pg. 2. Across Spencerville Road from the property is a vacant lot, part of a commercial parking lot, an auto repair shop and a small restaurant. *Id.* See aerial photos on next page.



Subject Property – Exhibit 24, pg. 7



Justification - Exhibit 7, pg. 10.

B. Surrounding Neighborhood

Staff identified the neighborhood for purposes of analyzing the application as being zoned RE-1, RC, NR and GR in the that properties to the east, west and south are zoned RE-1 consisting of single-family detached homes, religious assembly and a landscape contractor while the property to the north and west, a continuation of the abutting landscape contractor use parcel is zoned RC. Exhibit 24, pg. 5. Across the street to the southwest, the restaurant parcel is zoned GR and the U-Haul rental and auto repair business are zoned NR. *Id.* Staff identified four existing conditional use/special exceptions within the defined neighborhood on the abutting property at 2214 Spencerville Road that currently operates a landscape contractor business, but noted all prior approvals were previously voided or revoked due to the fact that the property operates under an approved non-conforming use certificated issued from DPS. Exhibit 24. Pg. 5. See images on next page.²

² Note Applicant and Staff identify slightly different neighborhood boundaries. Applicants identify a larger area as the neighborhood, but the variations between the two boundaries are slight.



Surrounding Neighborhood – Exhibit 27



Vicinity/Neighborhood Map
Exhibit 49, pg. 6

C. Proposed Use

The Applicants propose to use the rear portion of the property for a landscape contractor business focusing primarily on site clearing and tree removal. Exhibit 3, pg. 11. The existing house and associated shed will remain as a residence use, but a restroom located within the dwelling will be available for employees to use. Exhibit 24, pg. 7. The Applicant proposes using the rear of the property as a parking area for the employees, equipment, and trucks for the business. *Id.* The business will utilize 20 large commercial vehicle, 10 trailers carrying equipment, three pieces of motorized equipment and up to 20 employees. *Id.* and T. 21. Hours of operation proposed are 7:00 am to 6:30 pm Monday through Thursday, 7:00 am to 4:00 pm on Fridays, and no work on the weekend except for emergency tree cleanup. Exhibit 3, pg. 1 and T. 22. Employees will leave for jobsites after an hour or two onsite and then return around 4:00 p.m. for an hour or two. Exhibit 24, pg. 7. The Applicant intends to install a wood chip storage bin along the east side of the Property towards the rear. *Id.*

1. Site Plan and Landscape

The rear portion of the site used for the landscape contractor business proposes to have a gravel parking/work area surrounded by perimeter landscaping strips on three sides. Exhibit 3, pg. 11. The landscaping strip along the eastern edge of the rear of the property, bordering the abutting residence/tailoring business, will run from the front fence to the rear fence. *Id.* It will be 50 feet wide, in keeping with the standard building/parking/operations setback for a landscape contractor conditional use. *Id.* The Applicants propose limiting the landscaping strip to ten feet wide where the business operations abut Arbor Landscapers - along the western edge and rear property line from the northwest corner to a point 50 feet from the eastern property line. *Id.*



Conditional Use Site Plan – Exhibit 9b

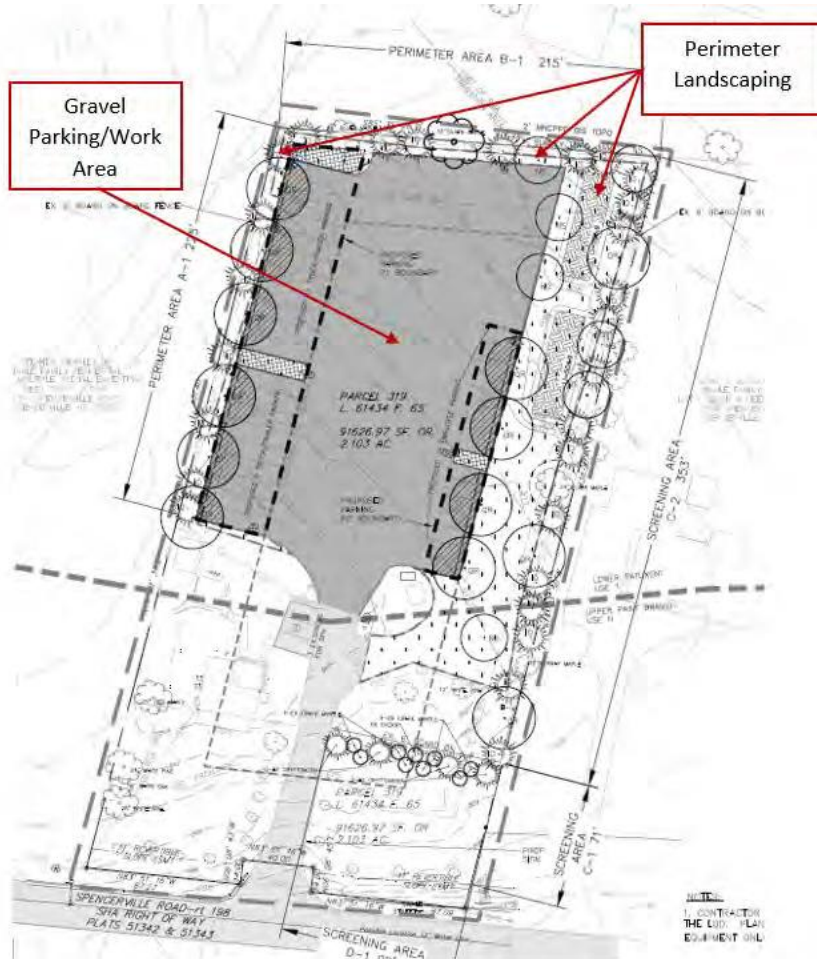
As shown on the site plan above, a wood chip bin and two existing sheds are located in the rear of the property and serve the landscape use. *Id.* The shed associated with the residential use is located 4.2 feet from the western property line and was existing when the Applicant purchased the property. *Id.* The Applicant seeks alternative compliance approval under Section 59.6.8.1 of the Zoning Code to allow for adjustments to perimeter landscaping. Exhibit 24, pg. 13. Specifically, Applicant seeks to retain the existing residential character along Spencerville

Road and in doing so will not bring the landscaping from the rear to the street, but instead terminate the landscaping behind the fence that screens the operation from the street. *Id.* & Exhibit 3, pg. 11. In addition, Applicant seeks to install trees that will rise above the fence so as to not take up space in the permitter with understory trees that will not be visible above the fence and that add no screening value. *Id.*

2. Parking, Lighting Plans and Signage

The site plan shown above identifies 35 parking spaces, 15 sized for passenger vehicles and small trucks and 20 sized to fit large commercial vehicles. Exhibit 3, pg. 12. Employees and the business's smaller pick-up trucks will park in the small spaces. *Id.* The larger 20 spaces will be used for 20 commercial vehicles including bucket trucks, cranes, chipper trucks, larger pick-up trucks, log trucks and a loader truck; 10 trailers to carry equipment associated with the tree removal use such as stump grinders, chippers, and lifts; and up to 3 pieces of motorized equipment will be used/stored in the central operations area. *Id.* at 13.

The Applicant proposes a 2 square foot sign for the business. Exhibit 24, pg. 14. Very little lighting is proposed and the lighting will be located in a few of the islands in the property lot and will be concentrated in the commercial area. T. 55. A fixture will be located on the northern property line, the northwest corner and one along the western property line. *Id.* Overall the lighting will have little impact on the residential property. *Id.* Lighting and landscape plan shown on next page.



Landscape & Lighting Plan – Exhibit 3, pg. 13

3. Operations

Mr. Polanco testified that he started his business focusing on tree trimming, tree removal, stump removal and some land/lot clearing in 2003. T. 9. He purchased the property in 2020 and began operating Treeman, Inc. from this location. *Id.* Mr. Polanco stated he believed he could legally operate his landscape contractor business at this location due to the fact that the prior owners were operating a landscaping and demolition business on the site. *Id.* Mr. Polanco and his wife cleaned up the property, planted trees and grass and completed the fence after taking

ownership. T. 11. Mr. Polanco testified to day-to-day operations stating that employees arrive around 7:00 am, followed by a morning meeting, and then they get in their trucks and leave the property around 8:00 am each day. T. 12. In the afternoon, employees come back to the property around 4:30 to 5:30, but usually not later than 6:30 pm and park the company vehicles. *Id.* If any wood chips are located in the vehicles none are dumped into the wood chip bin until the following morning after the staff meeting. *Id.* The wood chip bin is emptied every other week or once a week depending on need. *Id.* Treeman, Inc. crews work Monday through Friday and only on the weekends or in the evenings in the event of an emergency when a tree has come down and it must be removed immediately. T. 13. During the winter work slows and operations may be cut to 2 to 4 days a week and hours of the day would be limited due to daylight availability. *Id.*

D. Community Response

Mr. Norton, Applicant's expert, identified a letter/email of support from the from the Patuxent Watershed Association. T. 48-49. The Staff commented that they did receive the email from the Patuxent Watershed Association but did not mention receipt of any other letters or correspondence from the community. Exhibit 27, pg. 9.

E. Environmental Issues

The Application is subject to the County's Forest Conservation Law and the Applicant submitted a Preliminary Forest Conservation Plan that conforms with the Environmental Guidelines. *Id.*³ As stated above, the property does not contain any streams, wetlands, floodplains, stream valleys, buffers or any specimen trees. Exhibit 24, pg. 6. The entire parcel is

³ See Exhibit 31 – Applicant's Approved Forest Conservation Plan

located in the Upper Paint Branch Overlay Zone (overlay zone) and the existing house and driveway located on the front portion of the property within the SPA. Exhibit 3, pg. 15. The overlay zone restricts the amount of impervious surface proposed as connected with a development project to 8%. *Id.* The house and driveway are exempt from those impervious surface limits. *Id.* The Applicant does not propose any new impervious surface in the SPA. *Id.* pg. 16. SDAT records reflect the house was built in 1916 and the non-conforming use certificate as issued from the Department of Permitting Services (DPS) indicates the residential house and driveway to be non-conforming indicating the structure and driveway predate the 2007 impervious surface limitation requirement. *Id.* and T. 37-41.⁴

III. CONDITIONAL USE FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for a solar collection system are found in Section 59.3.7.2 of the Zoning Ordinance. The general standards (termed “Necessary Findings” in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that the Applicant has done so in this case, with conditions of approval included in Part V of this Report.

⁴ See Section 59.4.9.20.B

A. Necessary Findings (§59-7.3.1. E)

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.⁵ For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

E. Necessary Findings

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

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

Conclusion: No prior approvals were granted for the subject property. Exhibit 24, pg. 11.

Nothing in the testimony or the record disputes this fact. This section does not apply.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

Conclusion: This subsection requires review of the development standards of the RE-1 Zone contained in Article 59.4; the use standards for a Landscape Contractor contained in Article 59.3.5.5.B.b and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

1. Substantial Conformance with the Master Plan

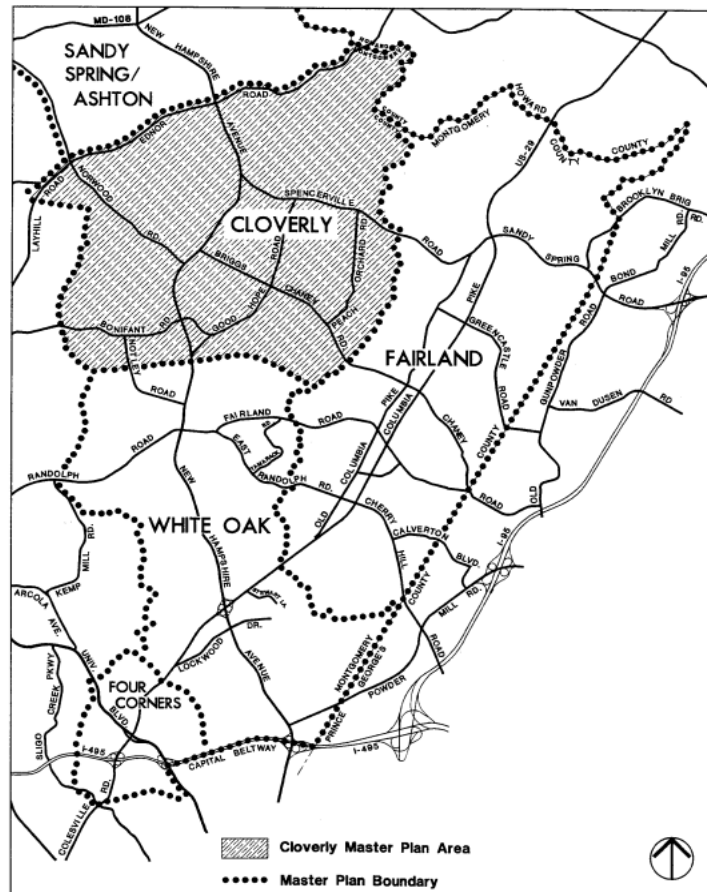
⁵ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2., E.3 and E.4. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

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

The property is located within the 1997 Cloverly Master Plan. Exhibit 24, pg. 14. The Plan identifies no specific land use recommendation for the property. *Id.* The Plan seeks to support and reinforce existing land patterns of Cloverly's communities and encourages development in the commercial center. 1997 CLOVERLY MASTER PLAN, MONTGOMERY COUNTY, MD, pg. xii.

RELATIONSHIP TO EASTERN MONTGOMERY COUNTY

FIGURE 5



1997 Cloverly Master Plan
Relationship to Eastern MOCO - Figure 5

The property is in the residential wedge portion of the Master Plan area, where the Plan recommends protecting existing homes from the effects of traffic and road improvements, including stormwater management, through careful design, minimal grading, tree preservation and landscaping. Exhibit 3, pg. 22. The Applicant proposes leaving the existing house on the property intact; providing all stormwater management to the rear of the site, away from the house; no road improvements or significant grading; and has enhanced the landscaping around the house. *Id.* In addition, the Applicant's landscaping and preservation of the house's existing architecture contribute the rural character feel embraced by the Master Plan. *Id.*

Staff determined that the proposed conditional use maintains the visual residential character from the road by keeping the landscape contractor use to the rear and screened from view with the fencing. Exhibit 24, pg. 14. Staff also determined the "development pattern associated with the proposed conditional use substantially conforms and is not in conflict with the master plan's general recommendations." *Id.* In addition, Mr. Norton opined that the project proposed complies with Cloverly Master Plan and the property fits within the neighborhood and community. T. 73-74.

Conclusion: Based on this record, the Hearing Examiner finds that the landscape contractor use will substantially conform to the recommendations of the 2005 1997 Cloverly Master Plan. The project as designed maintains the residential use and improves the visual attractiveness from the street and does not propose to improve the roads, increase grading or impact the residential use with planned stormwater management. The Hearing Examiner agrees with Mr. Norton that the proposed landscape use substantially conforms to the Master Plan. T. 74.

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

Conclusion: Staff found no active conditional uses or special exceptions in the defined area, but identified one nonconforming landscape contract use that abuts the property on 2 sides.

Exhibit 24, pg. 14. The Applicant identified the tailoring business abutting the property to the east, an accessory apartment, and an in-home professional photography studio. Exhibit 3, pg. 25. Clearly, there exists a large number of commercial uses located in the area including the restaurant, auto repair and U-Haul use across the street. The Hearing Examiner previously found that the project conforms to the Master Plan. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff and the Applicant and finds that the application will not adversely affect or alter the mix of residential and non-residential uses in the area.

2. Adequate Public Services and Facilities

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

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

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

No preliminary plan of subdivision is required, and Staff determined that there are adequate public services and facilities to serve the proposed use. Exhibit 24, pg. 15.

Transportation

Staff noted that no transit service exists in the vicinity and in the event of a future subdivision application additional right-of-way will be required, a separate sidepath per the Bicycle Master Plan must be constructed, and a sidepath for pedestrian movement must also be installed. *Id.* at 15-16. Given the fact that no preliminary subdivision is required, the Applicant is not required to dedicate land nor install any of these “future” sidepaths. Staff using a maximum of 24 employees determined that 48 net new peak hour pers trips would be generated by the use. *Id.* As the use generates less than 50 peak hour trips, no traffic study is required. *Id.* In addition, the Applicant submitted a traffic statement also concluding the number of peak hour trips to be less than 50 asserting no traffic study need be conducted. Exhibit 5.

Water/Sewer/Stormwater

The site is served by a private septic system, recently repaired and upgraded by the Applicant in July of 2023. Exhibit 3, pg. 26 and Exhibit 24(a). DPS determined that the existing septic system is sufficient to support occasional bathroom use by the 20 employees. *Id.* Mr. Polanco testified to the installation of the new 1,500 gallon septic system and that his own home is three blocks away, approximately a 5 minute walk, and available for bathroom use by his

employees as well. T. 23-24. Mr. Norton testified to the septic upgrade moving from leach pit system to a deep trench system to support the facilities in the house T. 49-50.

Schools & Other Facilities

No impact on schools as the use will not increase the number of children in schools and other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy as of when the Application was submitted. Exhibit 24, pg. 16-17. The Applicant submitted a stormwater management concept plan to DPS which was accepted and approved. Exhibit 34. Currently no stormwater management exists on the property and with the new approved plan, stormwater will be treated through 2 landscape infiltration facilities in the northeast corner of the property. T. 69-71. Because this is an existing use the fire marshal did not review and State Highway had no comment on the application. T. 72-73.

Conclusion: Upon a thorough review of the documentation submitted and testimony from the Applicant's witnesses, the Hearing Examiner finds the evidence provided and testimony of Applicant's expert persuasive regarding adequate public facilities. Based on the information in the record, adequate public facilities do exist for the project, including police, fire, schools, healthcare, stormwater, sewer, water, and public roads.

3. No Undue Harm from Non-Inherent Adverse Effects

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

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to a landscape contractor use (Exhibit 24, p. 17):

- Vehicle trips
- Employee parking
- Noise or odors associated with truck and equipment
- Onsite lighting

Conclusion: The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use. Staff identified no noninherent adverse effects associated with the proposed use. *Id.* Staff determined that the proposed conditional use will not result in any harm or adverse effects alone or in combination to the neighborhood. *Id.* at 18. Mr. Norton testified to the impacts of the landscape contractor use and incorporated as part of his testimony the Applicant's statement

of justification. T. 75. Further he stated because the operation itself is not being conducted on site, he anticipates the noise generated could not be considered an impact. T. 75-76. The Applicant's statement of justification discussed at length the site characteristics, traffic, noise, parking and vehicle movement identifying that none of the identified inherent characteristics related to the proposed use will negatively affect the surrounding neighborhood nor create an adverse impact. Exhibit 3, pgs. 26-29.

As stated above non-inherent adverse effects may result from the "physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site". Staff did not identify any non-inherent adverse impacts from the proposed use or site. The Hearing Examiner agrees with Staff and the Applicant and finds that there are no non-inherent adverse effects from the proposed development and concludes that the use and proposed development will not cause undue harm to the surrounding neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

4. Compatibility with the Neighborhood

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

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

The Applicant noted that the neighborhood's character is primarily rural with a mix of residential and non-residential uses on large lots and asserts the proposed landscape contractor use is compatible with the existing mix of uses. Exhibit 3, pg. 24. As identified in the Staff Report, the property is surrounded on 2 sides by a larger and much more intense landscape contractor use, also front a restaurant and auto repair garage. In addition, the Applicant placed all operations more than 170 feet back off from the road, up an incline and behind a house screened by both landscaping and a fence. Exhibit 24, pg. 24. In addition, the Applicant points out that the limited hours and days of activity onsite and maintenance of the residential features at the front of the property all are in keeping with the character of the surrounding neighborhood consistent with the Master Plan. *Id.*

Conclusion: Section 59.7.3.1.E.1.d examines whether the Master Plan goals are achieved in a manner compatible with the area. The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as being a rural area with a mix of residential and non-residential uses. She already found that the use fulfills the goals of the Master Plan and further finds that it does so in a manner that is compatible with the surrounding area.

Section 59.7.3.1.E.2. Any structure to be constructed, reconstructed or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: The Applicant does not propose any new construction with the Application and this section is inapplicable.

Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

Section 59.7.3.1.E.4 In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

Conclusion: This section is inapplicable to this Application.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the RE-1 Zone for a landscape contractor use, contained in Article 59.4 of the Zoning Ordinance. Staff included a table (Exhibit 24, p.11-12, shown on the following page) in its Report comparing the minimum development standards of the RE-1 Zone to what is proposed in this application. Staff correctly note in the chart that “[t]here is no proposed development with this application.” *Id.*

Table 1: Conditional Use Development and Parking Standards (RE-1 Zone)

Development Standard Section 59.4.4.6.B	Permitted/ Required	Existing/Proposed*
Minimum Lot Area	40,000 sq. feet	
Minimum Lot Width at Front Building Line	125 ft.	214 ft. 2.10 acres
Minimum Lot Width at Front Lot Line	25 ft.	213 ft.
Maximum Density	1.09 units/acre	1 existing dwelling unit
Maximum Lot Coverage	15%	1.9%
Maximum Front Setback	50 ft.	79.4 ft.
Minimum Side Setback	17 ft.	35.4 ft. & 141.6 ft.
Minimum Sum of Side Setbacks	35 ft.	177 ft.
Minimum Rear Setback	35 ft.	300.8 ft.
Maximum Height	50 ft.	< 50 ft. (existing house)
Accessory Structure side setback**	15 ft.	4.2 ft.
Accessory Structure rear setback**	10 ft.	>200 ft.
Vehicle Parking Requirement (Section 59.6.2.4.B)	2 space/dwelling unit = 2 spaces 0.5 spaces/ employee=10 spaces 1 space/ resident employee=0 spaces 1 space/ commercial vehicle= 20 spaces Total required spaces= 32 spaces	38 spaces

* There is no proposed development with this Application

**Existing shed to remain

Staff neglected to document that where a landscape contractor use is allowed as conditional use

50-foot is the required minimum set back from any lot line for building and parking setbacks.

See Section 59.3.5.5.B.b.2. The Applicant requested the following variances:

1. 40-foot variance to allow a ten-foot parking setback along a portion of (approximately 50%) of the western property line, as shown on the attached variance drawing.
2. A 40-foot variance to allow a ten-foot setback along a portion of (approximately 75%) of the northern property line, as shown on the attached variance drawing.
3. A 45.2-foot variance to allow use as a pre-existing shed located approximately 4.2 feet from the western property line, as shown on the attached drawing.

See Exhibit 14.

compliance related to parking and perimeter landscaping the proposed use will satisfy all applicable requirements of the RE-1 Zone. The variance requested related to the setbacks are granted by the Hearing Examiner in Section IV. of this Report and Decision.

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

The specific use standards for approval of a Landscape Contractor use are set out in Section 59.3.5.5. of the Zoning Ordinance.

Zoning Ordinance §59.3.5.5.

A. *Landscape Contractor*

1. *Defined*

Landscape Contractor means the business of designing, installing, planting, or maintaining lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage features, or other activities intended to enhance the appearance or usefulness of outdoor areas. Landscape Contractor also means providing snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. Landscape Contractor includes tree installation, maintenance, or removal. Landscape Contractor does not include Lawn Maintenance Service (see Section [3.5.14.G](#), Lawn Maintenance Service)..

Conclusion: The Applicant proposes to operate a landscape contractor business focusing primarily on site clearing and tree removal. Exhibit 7, pg. 1. The use proposed meets this definition.

2. *Use Standards*⁶

b. Where Landscape Contractor is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section [7.3.1](#), Conditional Use, and the following standards:

⁶ 59.3.5.5.B.b

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

Conclusion: As identified in Staff's chart above on page 24 of this Report and Decision, the property measures 2.1 acres. The Hearing Examiner finds the Application meets the acreage requirement.

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

The Applicant seeks 3 variances to satisfy the 50-foot minimum lot line setbacks.

Exhibit 3, pg. 16. They are as follow: 1) a reduction to 10 feet from the rear property line abutting Arbor Landscaping running a measured a distance of 154 feet of the 216-foot long rear property; 2) reduction to 10 feet back from the western property line abutting Arbor Landscaping running a measured measuring a distance of 210 feet of the 413-foot western property line; and 3) a reduction to 4.2 feet between the western property line and the larger shed at its closest point.⁷ *Id.*

Conclusion: For reasons set forth below in Section IV. the Hearing Examiner grants the requested variances from the 50-foot requirement. With the grant of the requested variances, the Hearing Examiner finds the setback requirement to be satisfied.

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

⁷ See variance plan on page 25 for visual layout.

Conclusion: Applicant's expert opined that the number size and layout of the parking spaces on the conditional use plan would be adequate to accommodate the total number of vehicles and trailers proposed. T. 50. Upon the testimony presented, review of the Applicant's site plan, (Exhibit 9b) and Staff's determination that the parking allocated for the commercial vehicles meets the regulation requirements, the Hearing Examiner finds adequate parking exists onsite for the total number of vehicles and trailers permitted.

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

Conclusion: No plants, plant materials, garden supplies or equipment will be sold onsite.

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

Per the Applicant's statement of justification, the Applicant proposes the following operating parameters:

- a. Regular on-site operations no earlier than 7:00 a.m. and no later than 6:30 p.m., Monday through Friday. Operations may be conducted earlier, later or on weekends in the event of an emergency such as removal of fallen trees following a storm. During winter months, on-site operations will stop by 4:00 p.m.
- b. No more than 20 vehicles, 10 trailers and 20 pieces of heavy equipment associated with the landscape contractor use will be stored on the Subject Property. Heavy equipment will be stored primarily on trailers and chipper trucks. The remainder will be stored in the operations area, near the wood chip bin, or in excess employee parking spaces.
- c. No more than 20 employees will be on site per day.
- d. Maintenance and testing of vehicles and equipment will take place off-site.
- e. Only vehicles will be operated on-site. Equipment that generates significant noise, such as chippers and grinders, will not be operated on the Subject Property.

See Exhibit 3, pg. 17. Applicant's expert, Mr. Norton testified to the fact that no landscape contractor operations occur onsite minimizing the impact of such an operation on the neighbors.

T. 75-76. Mr. Polanco testified to existing operations and how the hours and days of operation

follow the seasons and the sunrising and setting as well as the number of employees, time onsite and duties while on site. T. 11-22. In addition, the traffic expert testified that the equipment parking was planned so that the larger trucks with back up alarms would only be operated in reverse on infrequent occasions. T. 93.

Conclusion: The Hearing Examiner finds the proposed hours of operation and onsite operations such that they will avoid adverse impacts on abutting uses. The operation takes place in the rear of the property closest to the abutting existing non-conforming landscape contractor use. The equipment used on site will not generate significant noise and the parking and hours of operation, location of equipment, wood chip bin, etc. were thought through and planned or placed in such a way as to minimize and avoid any adverse impacts.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b.

1. Site Access

Zoning Ordinance section 59.6.1 governs “Site Access”. Access to the site is proposed via the existing driveway that fronts Spencerville Road. Staff determined the existing driveway will be adequate for the proposed conditional use and noted that State Highway chose not to comment on the application. Exhibit 24, pg. 12 and Exhibit 24a. The Applicant provided an “Intersection Sight Distance Required AASHTO” document analyzing the property’s driveway access from Spencerville Road determining that the “proposed entrance ... and the conditions

presented in the field exceed the requirements of both intersection sight and stopping distance set forth..." Exhibit 17. The Applicant's traffic expert further testified to the site access. T. 94-95.

Conclusion: The Hearing Examiner finds based on the documentation submitted by Applicant and testimony from the Applicant's expert that the site access is adequate.

2. *Parking, Queuing and Loading*

Zoning Ordinance section 59.6.2 governs "Parking, Queuing and Loading." The Staff Report addressed parking, queuing and loading as follows:

The landscape contractor use will primarily take the form of a large gravel parking lot to store trucks, trailers, tree care machinery, as well as employee parking. 35 total spaces, including 20 large-vehicle spaces, are proposed serve these vehicles. Loading and unloading will primarily be of machinery from one vehicle to another and the transfer of wood waste between vehicles within the large gravel area. Queuing is not anticipated given the use and relatively infrequent arrival and departure of vehicles. Parking, Queuing, and loading will be adequate for the proposed use. Exhibit 24, pg. 12.

Applicant's transportation expert Ms. Wagner testified at length to the planning efforts for parking design and location of spaces based on size and type of vehicle. T. 88-94. She testified to several exhibits (Exhibits 37-38) explaining how vehicles would enter, exit and park on site. One such Exhibit 37 shown on the following page identifies those efforts regarding parking design for a bucket truck. The Applicant testified to the operations that occur when wood chips may be unloaded or loaded and determined that they may be loaded or unloaded once every two weeks in the winter and sometimes once a week in the busier seasons. T. 12. Other than wood chips, only trailers and equipment would be loaded or unloaded onsite. T. 13.

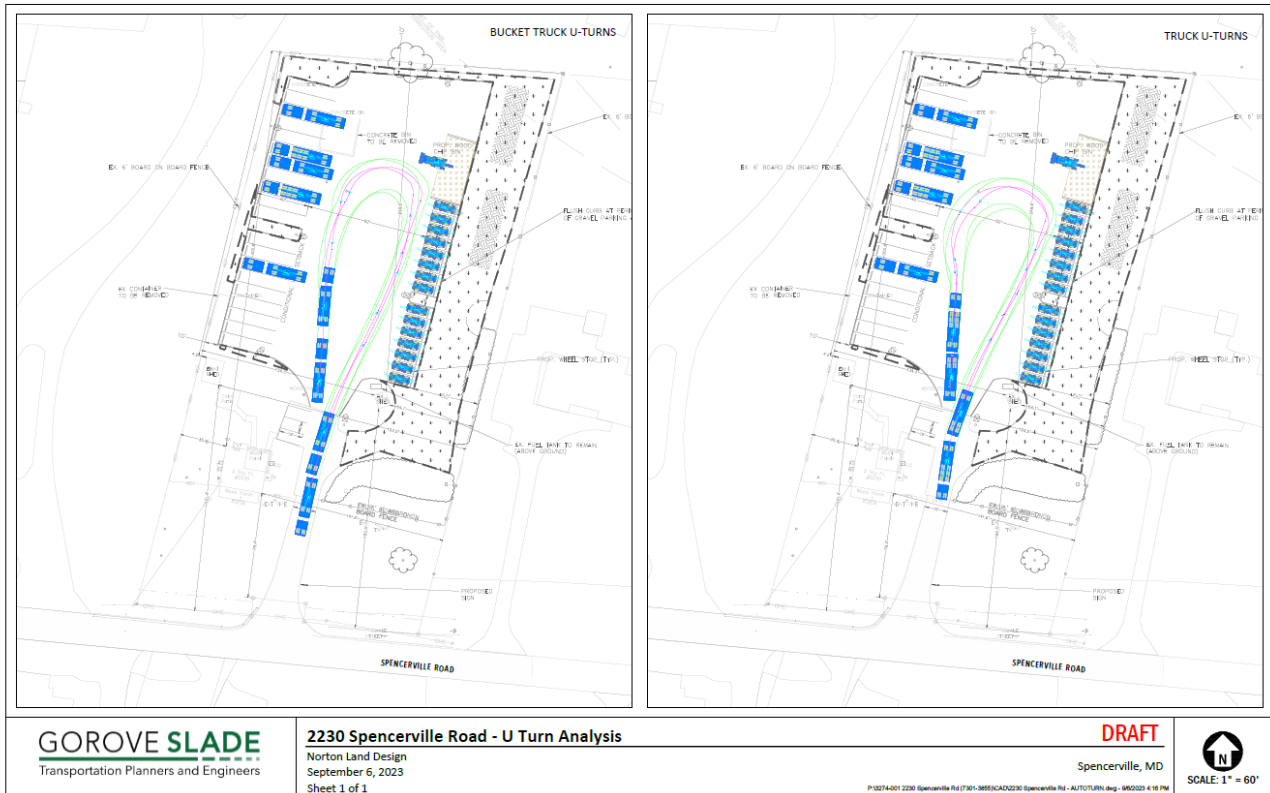


Exhibit 37 – U Turn Analysis

Conclusion: The Hearing Examiner agrees with Staff and finds that no queuing will take place on site and the loading and unloading will be minimal and that parking will be adequate. The additional information provided by the Applicant and the Applicant's experts also provide sufficient evidence that parking, loading and queuing will be adequate for the application submitted.

3. Lighting

Zoning Ordinance section 59.6.4 governs "General Landscaping and Outdoor Lighting". Specifically section 59.6.4.4.E states "[o]utdoor lighting for a conditional use must be directed,

shielded, screened to ensure that illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached housing building type, not located in a Commercial/Residential or Employment Zone.” The Applicant submitted a landscape and lighting plan. See Exhibits 13a and 13b. The landscape’s expert testified that very little lighting is on the site and concentrated in a few of the islands. T. 55. He further testified that the lighting complies with the applicable zoning code standard regarding the number of foot-candles. *Id.* The Hearing Examiner questioned the expert witness during the hearing regarding the lighting plan and the number of foot-candles along the property line to the east and reviewed the plan with the witness and was satisfied that the foot-candles as represented at the property line met the code requirement. T. 54. Foot-candles along eastern property boundary next to the single-family home measure 0.1 or less. Exhibit 13.b.

Conclusion: Based on the testimony and evidence presented, the Hearing Examiner finds the lighting proposed satisfies the requirements.

4. Screening & Landscaping

Section 59.6.4.3 of the Zoning Ordinance governs landscaping and 59.6.5 of the Zoning Ordinance governs “Screening”. The Applicant requested alternative compliance for the landscaping due to the six-foot board fence on the property that would make the use of large and small shrubs ineffective from the neighbors’ perspective. T. 56. Section 59.6.8.1. the Hearing Examiner sets forth the requirements for the alternate compliance method and states as follows:

The applicable deciding body may approve an alternative method of compliance with any requirement of Division 6.1 and Division 6.3 through Division 6.6 if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The applicable deciding body must also determine that the unique

site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

- A. satisfy the intent of the applicable Division;
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;
- C. provide necessary mitigation alleviating any adverse impacts; and
- D. be in the public interest.

The Applicant's expert opined that the Paint Branch Watershed factored in concentrating the commercial operation to the rear of the property. T. 57. In addition, he opined that the fence and proposed perimeter landscaping will do a better job of screening the use from the neighboring residents to the east. *Id.* Regarding the views to the north and west, he further opined that use by Arbor Landscaping abutting the property is an area they use for plant holding effectively screening on their own property to the north and along the entire property line to the west. T. 58.

Further The Applicant's expert opined, because the zoning code requires a specific amount of large and small shrubs as well as canopy trees, the Applicant proposed more canopy trees than shrubs and adding large evergreen screening trees along the property line as a more effective means of screening so as they grow they would extend above the board fence. T. 56. In other words, large evergreens will provide screening over and above the fence where large and small shrubs would only be hidden by the fence. The expert further explained that from a public impact perspective the use is not visible from Spencerville Road with the fence and proposed landscaping, and without the proposed landscaping the use would have more of an impact from a visual standpoint to the neighbors and public. T. 60. The Applicant proposes landscaping of a more residential characteristic along the frontage in keeping with the residential Zone. *Id.* & Exhibit 13a.

Staff agreed with the Applicant's proposal regarding landscaping/screening and recommended approval of the alternative compliance request.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant and grants the alternative compliance requested regarding landscaping and screening. She further finds given the location of the property's location in the Paint Branch Watershed, the neighboring landscape use, the tall fence surrounding the property and the residential nature of the front of the property and street frontage the alternative compliance satisfies the intent of the landscape/screening division, accommodates the property's constraints, alleviates any adverse impacts and is in the public interest.

5. *Signage*

Conclusion: Zoning Ordinance section 59.6.7 governs "Signage". The Applicant proposes a small unilluminated sign measuring two square feet. Exhibit 9b. Staff determined the proposed sign meets the minimum requirements under the Zoning Ordinance. Exhibit 24, pg. 14. The Applicants expert also opined that the proposed sign meets the minimum requirements under the Zoning Code. T. 46-47. Upon review of the evidence submitted and the appropriate code section, the Hearing Examiner finds the sign as proposed to be in compliance with the Zoning Code.

IV. VARIANCE FINDINGS OF FACT CONCLUSIONS OF LAW

The Conditional Use application was accompanied by an application for a Variance, pursuant to Section 59.7.3.2 of the Zoning Ordinance, and a Resolution from the Board of Appeals, effective October 18, 2023, referring Variance Application A-6834 to OZAH for a hearing and recommendation. Exhibit 20. The Variance application seeks three variances. The first (Variance

#1) a 40-foot variance, from the 50 foot setback required for a landscape contractor under Zoning Ordinance §59.3.5.5.B.2 to allow for a 10-foot setback along a portion of the western property line (approximately 50% of that line). The second (Variance #2) a 40-foot variance, from the 50-foot setback for a landscape contractor under Zoning Ordinance §59.3.5.5.B.2 to allow for a 10-foot setback along the northern property line (approximately 75% of that line). The third (Variance #3) a 45.2 foot variance from the 50-foot setback for a landscape contractor under Zoning Ordinance §59.3.5.5.B.2 to allow for the use of a pre-existing shed located approximately 4.2 feet from the western property line.

Pursuant to OZAH Zoning Rule 4.2(g), the Hearing Examiner, on January 8, 2024, ordered Conditional Use Application CU 24-09 and Variance Application A-6834 be consolidated for purposes of OZAH's public hearing. Exhibit 22.

A. Variance Necessary Findings (59.7.3.2.E)

Under Zoning Ordinance §59.7.1.1, "*The applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.*" To determine whether the Applicant should be granted a variance, we must turn to the Zoning Ordinance standards that control that issue –Zoning Ordinance Section 59.7.3.2.E:

E. Necessary Findings

Granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

- 1. denying the variance would result in no reasonable use of the property; or***
- 2. each of the following apply:***
 - a. one or more of the following unusual or extraordinary situations or conditions exist:***
 - i. exceptional narrowness, shallowness, shape, topographical***

- conditions, or other extraordinary conditions peculiar to a specific property;*
- ii. the proposed development uses an existing legal nonconforming property or structure;*
- iii. the proposed development contains environmentally sensitive features or buffers;*
- iv. the proposed development contains a historically significant property or structure; or*
- v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*
- b. the special circumstances or conditions are not the result of actions by the applicant;*
- c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Applying these standards to the case under consideration, Staff stated that the provisions of Section 59.7.3.2.E.2.a.v. justify the of granting all three variances and identified Section 59.3.2.E.2.a.ii as an additional justification for granting Variance #3 related to the existing shed. Exhibit 24, p. 20-22. Staff did not comment on subsection *ii.* for Variance #1 or Variance #2. *Id.* Staff did not provide comment under any of the remaining subsections of 59.7.3.2.E.2.a. *Id.* The Applicant's expert testified at length to the standards set forth below and submitted a variance plan identifying the site configuration and the issues presented on site related to the requested setbacks variances. Exhibit 15.

- a. one or more of the . . . [specified] unusual or extraordinary situations or conditions exist . . .:*

Regarding the Variance #1, Staff asserted under subsection *v.* as follows:

Most businesses in the surrounding neighborhood have their business operations up to their property lines which includes the parking areas for customers and equipment. Staff supports this variance because this condition substantially conforms to the character and development pattern of the surrounding neighborhood.

Exhibit 24, pg. 20.

Regarding Variance #2, Staff asserted under subsection v. as follows:

Most businesses in the surrounding neighborhood have their business operations up to their property lines which includes the parking areas for customers and equipment. Staff supports this variance because this condition substantially conforms to the character and development pattern of the surrounding neighborhood.

Exhibit 24, pg. 21

Regarding Variance #3, Staff asserted under subsection ii. as follows:

Staff supports this variance because this appears to be utilizing an existing nonconformity. The shed has existed for a number of years and has been nonconforming for years.

And under subsection v. as follows:

Most sheds and accessory structures in the neighborhood appear to not meet the required setbacks for the zone. Staff supports this variance because this condition substantially conforms to the character and development pattern of the surrounding neighborhood.

Exhibit 24, pg. 22

Staff failed to comment on the remaining prerequisites for a variance (*subsections lettered b through e*) as set forth below and in the Zoning Ordinance. Exhibit 24, pgs. 21-23.

The Applicant in its application for the variances requested identified the following as some of the factual basis for the relief from the 50-foot setback requirements: 1) the long and thin lot configuration, 2) the shed preexisted the current owner's purchase 3) 1/3 of the site is located in the SPA, and 4) an inability for the Applicant to safely run their business from the property due to lot configuration/environmental constraints. Exhibit 8.

Conclusion: Regarding Section 59.7.3.2.E.a.2, the Hearing Examiner agrees with Staff and Applicant and finds that unusual conditions exist as it relates to Variance #1 and Variance #2, specifically the long thin north south shape of the lot and the SPA being located over one third of the property creates unique problems on the site. In addition, the Hearing Examiner agrees with Staff and finds that the proposed development substantially conforms with the established development pattern on this stretch of Spencerville Road in that most businesses in the surrounding properties have their business operations up to their property lines including parking and equipment placement. Regarding Variance #3, the Hearing Examiner agrees with Staff and the Applicant and finds that shed has been in existence for many years and other sheds in the surrounding neighborhood are also located near the property lines and do not meet the required setbacks. The location and masonry construction of structure are in keeping with the pattern of development in the neighborhood.

b. The special circumstances or conditions are not the result of actions by the applicant;

The Applicant testified to the site conditions when he purchased the property including the location of the shed and the landscape contractor/demolition construction business that had been operating at this location for many years. T. 9. He also testified to the extensive efforts he and his wife put into cleaning and clearing the property of old cars, steel beams, rocks, trash and rats. T. 10. He testified to the existence of the masonry shed on site when he purchased the property. T. 19. Applicant's expert testified to the linear nature of the property from north to south, the watershed limiting the impervious surface and limitations on how the property can be organized. T. 63. The expert also testified that the existing shed appeared to have a foundation and block

walls, something not easily moved. *Id.* He opined that due to the site configuration and the watershed limitations that only two-thirds of the property can be used for commercial purposes and without the requested variances from the north and western property lines, the operation could not operate efficiently or safely. T. 64. Further he asserted that the owners did nothing to create the constraints that exist on the property. *Id.*

Conclusion: Regarding Section 59.7.3.2.E.2.b the Hearing Examiner agrees with the Applicant's expert and finds that for Variance #1, Variance #2 and Variance #3 special circumstances present on the property were not a creation of or the results of actions taken by the Applicant.

c. The requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;

Mr. Norton opined that the variance for the shed to be the minimum necessary for preservation of the existing structure, which serves the residential use. *Id.* Applicant's traffic expert, Ms. Wagner testified at length to the safety concerns related to the movement of trucks and equipment safely on the property given the constraints of the lot and the 50-foot set back requirements. T. 88-94. She relied on the analysis she documented and demonstrated on Exhibits 37 and 38 a-f identifying the various pieces of equipment, sizes, turning radiuses, parking locations and noise impact. *Id.* and Exhibits 37 – 38a-f. She opined that in her expert opinion if the variances were denied the applicant's large trucks could not maneuver within the site safely and efficiently and would create a source of irritation for county residents because of the back-up alarms. T. 94.

Conclusion: Regarding Section 59.7.3.2.E.2.c. based on the evidence presented and testimony given, the Hearing Examiner finds that the requested variances (Variance #1, Variance #2 and Variance #3) are the minimum necessary to overcome the practical difficulties that full compliance

with the specific setback requirement would impose due to the unusual or extraordinary situations or conditions on the property. Denial of the variances requested would create unusual and practical difficulties on the Applicant and create safety issues onsite.

d. The variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and

Mr. Norton testified to his experience and work with landscape contractors in Montgomery County and analyzing local Master Plans in relation to the use. T. 29. Specifically, he stated that the SPA heavily influenced the site design. *Id.* He opined that the proposed use with the variances will be compatible with the surrounding neighborhood and will cause no undue harm. T. 76.

Conclusion: Regarding Section 59.7.3.2.E.2.d., based on the testimony of the Applicant's expert, the Hearing Examiner finds the variances (Variance #1, Variance #2, and Variance #3) can be granted without substantial impairment to the intent and integrity of the 1997 Cloverly Master Plan or the SPA. In addition, the variances granted will be in harmony with the general purpose, intent and spirit of the Zoning Ordinance.

e. Granting the variance will not be averse to the use and enjoyment of abutting or confronting properties.

The Applicant testified, he is currently operating the landscaping contractor business from the property and has had no complaints from the neighbors. T.11-17. The Applicant's testified to the efforts he and his wife put into improving the front of the property to improve the view from the street and bring back a clean residential look and along with the grass and 30 trees planted. *Id.*

Conclusion: Granting Variance #1, Variance #2 and Variance #3 will not result in any change in the current conditions or appearance of existing developments on the property. Regarding Section 59.7.3.2.E.2.e., the Hearing Examiner finds that granting Variance #1, Variance #2, and Variance

#3 will not be adverse to the use and enjoyment of abutting or confronting properties. Specifically, the Hearing Examiner agrees with the Applicant that his efforts to clean up the site and lessen the impact of the prior use on the property created a positive impact on the abutting and confronting neighbors and finds that Variance #1 and Variance #2 to be necessary to lessen any impact of the use on the residential/tailor use to the east of the property.

V. CONCLUSIONS AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Jose "Manny" and Neily Polanco D/B/A Treeman, Inc. (CU 24-09) for a conditional use under Section 59.3.7.1. of the Zoning Ordinance to operate a landscape contractor business on property described as 2230 Spencerville Road, Spencerville, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The use is limited to a Landscape Contractor and a single-family dwelling.
2. The existing house must remain a residence with an associated shed.
3. The existing house must provide a restroom for the employees for the Landscape Contractor.
4. The Landscape Contractor must not have more than 20 employees.
5. The Applicant will have the following vehicles and equipment onsite at any given time.
 - a. The Landscape Contractor must not have more than 20 large sized commercial vehicles including bucket trucks, a crane, chipper trucks, large pick-up trucks, and a loader truck.
 - b. The Landscape Contractor must have no more than 10 trailers carrying equipment including stump grinders, spyder-lifts, and chippers onsite.
 - c. The Landscape Contractor will have no more than three (3) pieces of motorized equipment including front loaders.
6. Hours of operation must be limited to 7:00 a.m. through 6:30 p.m., Monday through Friday. No hours after hours operation or operation on the weekends unless for

emergency tree removed because of storms or other similar events. In the event that the Applicant must work after hours or weekends, they must keep a log of emergency events should complaints be filed with Department of Permitting Services.

7. As part of any future subdivision application, the Applicant must provide dedication along the frontage of the Subject Property for Spencerville Road to provide a minimum of 60 feet of dedication as measured from the centerline of the road.
8. As part of any future subdivision application, the Applicant must construct a minimum 11-foot-wide asphalt sidepath with a minimum 6-foot-wide tree buffer along the frontage of the Subject Property with Spencerville Road.
9. The Applicant must comply with the approved Forest Conservation Plan for the property.
10. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to a sign permit and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein.

FURTHER the variance application (A-6834) is **GRANTED** as shown on Exhibit 15 and set forth below:

1. Variance #1 – A 40-foot variance to allow a ten-foot parking setback along a portion of (approximately 50%) of the western property line.
2. Variance #2 - A 40-foot variance to allow a ten-foot setback along a portion of (approximately 75%) of the northern property line.
3. Variance #3 - A 45.2-foot variance to allow use as a pre-existing shed located approximately 4.2 feet from the western property line.

Issued this April 4, 2024.



Kathleen E. Byrne
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

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

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

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

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

evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

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

NOTIFICATION OF DECISION TO BE SENT TO:

Françoise M. Carrier, Esq.

Attorney for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Mark Beall, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Elana Robison, Esquire, Associate County Attorney