



July 7, 2025

Ms. Kathleen Byrne, Director
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
ozah@montgomerycountymd.gov

RE: Amended Statement of Justification and Statement of Operations
In Support Of Conditional Use Application for
Landscape Contractor (AR Zone)
14301 Comus Road, Clarksburg, MD 20871 ("Property")
Parcel 420 – Pleasant Plain

Dear Director Byrne:

Please accept this combined Amended Statement of Justification and Statement of Operations ("Statement") in support of the concurrently-filed Amended Conditional Use Site Plan and Traffic Statement ("Application") for a Landscape Contractor on the above-referenced Property in the AR zone. This statement is filed on behalf of my client, Mr. Torcato Romano, also the applicant ("Applicant").

This Statement explains the Application's conformance with the general and specific Conditional Use standards governing the landscape contractor use, the scope of operations, and the requisite witness list and estimated time to present the Applicant's case.

I. Statement of Operations

A. Landscape Contractor Use:

The Applicant seeks approval for a "Landscape Contractor" conditional use, *i.e.*,

. . . 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).

Montgomery County Zoning Code § 3.5.5. Landscape Contractor.¹ The Applicant intends to carry out the "landscaping," snow removal and tree maintenance and removal activities described under the Landscape Contractor use. The scope of proposed use does not include Lawn Maintenance Services.

Exhibit 32

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¹ All subsequent references hereinafter to the Montgomery County Zoning Code will be simply noted as "Code."

B. Hours of operation and general description of activities:

The Applicant will operate as follows:

5:30 AM – 9:00 PM Monday through Saturday.

Generally, operations will begin an hour before sunrise and end an hour after dusk, and as a result the actual hours of operation will adjust seasonally, within the times listed above.

Most on-site activity will occur early morning, and again later in the afternoon and into the early evening. In the morning, employees will arrive, load landscaping equipment and supplies (e.g., mulch) onto trucks, and travel to assigned worksites where they will carry out various landscaping activities. In the afternoon/early evening hours, employees will return to the Property, unload equipment and supplies, and leave the Property for the day. There will be minimal, if any, vehicular trips to/from the site during the regular workday in the middle of the day.

The site will host a maximum of 25 employees based on information provided by the employer. The make-up of these employees includes 3 office staff, 1 mechanic, and a maximum of 6 landscaping crews with 3-4 people on each crew (21 landscapers total).

The four employees on-site employees, who will work within the hours of operation identified, will carry out management, scheduling and other administrative work (three employees), and one on-site mechanic whose responsibilities will be limited to maintenance and repair of the Applicant's equipment.

The full employee work schedule will be:

- 21 Landscapers arrive at the property at 5:30 AM, typically in individual vehicles and then depart to their respective sites in 6 vehicles, one for each crew of 3-4 people each.
- Crews arrive back at the property around 2:30 PM in their company vehicles, then depart individually around 3:30 PM.
- 1 mechanic arrives at the property at 8:00 AM and departs at 5:00 PM.
- 3 office staff arrive at the property at 9:00 AM and depart at 5:00 PM.

Planning staff requested a copy of the vehicles and equipment to be stored on site, and that list has been concurrently filed as Exhibit 11K.

The Applicant also carries out snow and ice removal during and after snow and ice events. As a result, hours of operation will be extended to include nighttime activity limited only to those employees arriving at the site to access snow removal trucks and other equipment and leave the Property to carry out snow and ice removal off-site. This is an unpredictable weather-drive activity, occurring only occasionally and only during winter months.

Vehicles and equipment will be stored outdoors and/or inside the garage area and will include equipment typical of a landscape contractor business including several dump trucks, four medium sized trucks, utility and carry-on trailers, bobcats and woodchippers. It also will include equipment including lawn mowers, tractors and snow removal equipment, which may be stored outdoors.

II. Compliance with Conditional Use Standards.

The scope of proposed operations falls within the Landscape Contractor use as defined in the Code, and satisfies the governing zoning and conditional use standards as explained herein.

A. Landscape Contractor 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).

As explained in Section I, the Applicant's proposed use falls within this scope of operations.

B. Use-Specific Conditional Use Standards in Code § 3.5.5.B.

The specific Code standards governing review of a Landscape Contractor conditional use application are set forth in Code § 3.5.5.B. The O'Connell & Lawrence, Inc. Zoning Report dated December 20, 2023 and updated May 28, 2025 ("OC&L Report") at Section "Conditional Use Necessary Findings", incorporated herein by reference, details the Application's compliance with these requirements.

C. Necessary Findings Under Code § 7.3.1.E.

1. As a predicate to granting approval of the Application, the Hearing Examiner must find that the proposed development meets the following general standards:²

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

Response: N/A. There are no applicable prior approvals relating to the Property.

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

² The cited Code provisions are quoted verbatim and the Applicant's supporting evidence is summarized in italics.

Response: The Application satisfies the requirements of the AR zone and the use standards under Code § 59-6 as set forth fully on the Site Plan For Conditional Use dated December 13, 2023 ("Site Plan"), with a revision date of 7.2.2025 (signed and sealed July 2, 2025).

including the Site Plan Zoning Data Table on Sheet 1, and described more fully in the OC&L Report Section "Zoning Review."

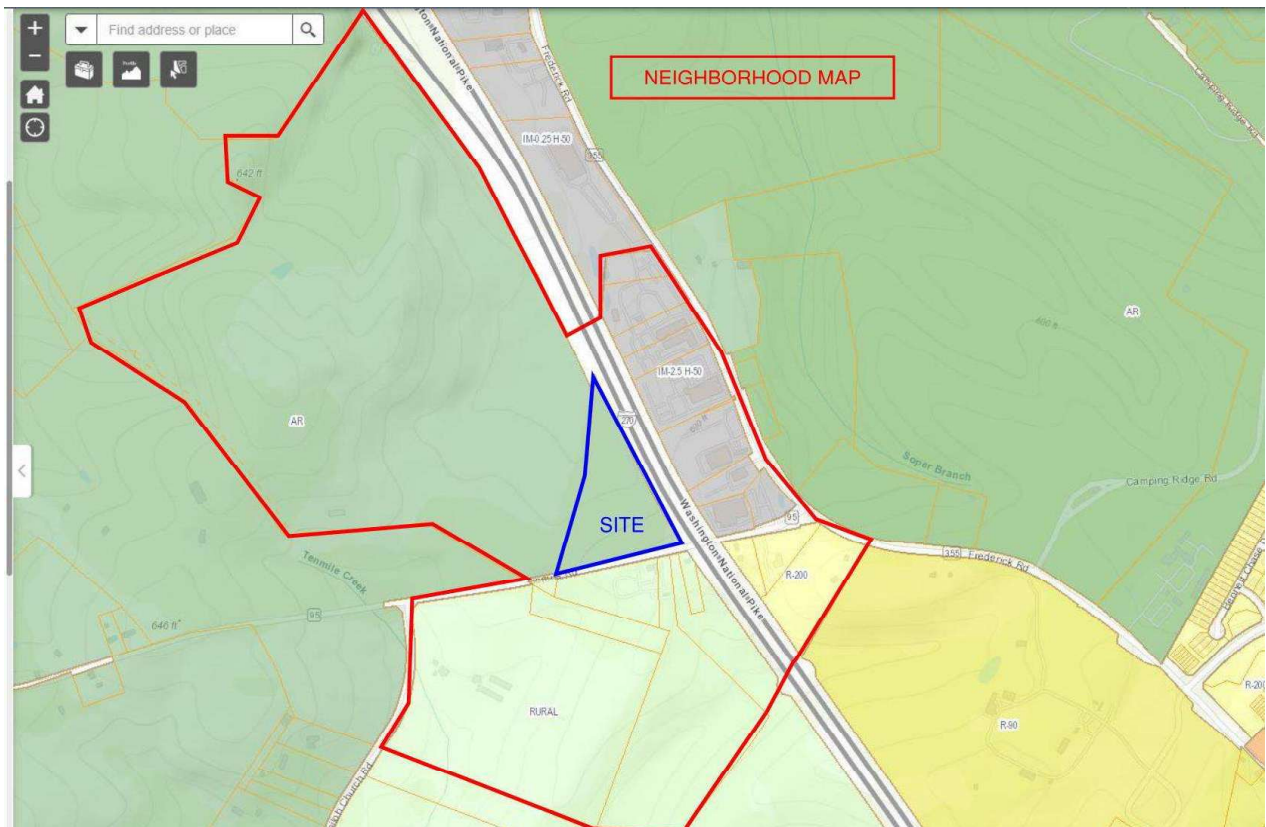
- c. substantially conforms with the recommendations of the applicable master plan;

Response: The Application substantially conforms with the recommendations of the applicable master plan as described more fully in the OC&L Report Section "Master Plan Recommendations and Conformance with Local Uses."

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

Response: The Applicant's delineation of the surrounding neighborhood is shown in Figure 1 (p. 4).

Figure 1: Defined neighborhood.



The neighborhood includes an abutting cemetery on property in the AR zone to the west (Garden of Remembrance); an active landscaping business in the Rural Zone across Comus Road immediately to the south (Great American Landscapes), with extensive outdoor storage of landscape materials, vehicles and equipment; other more distant properties in the Rural Zone to the south-west; and several actively used properties across I-270 to the east (which abuts the property) in the Moderate Industrial zone including a moving/storage company, a construction company (“Digging and Rigging”) and Morton’s Towing, all with extensive outdoor storage of large commercial and construction equipment and vehicles.

See also Figure 2.

Figure 2: Surrounding neighborhood uses.



Almost all activity associated with the proposed use will occur off-site; vehicle traffic associated with the use is sufficiently de minimus that a traffic study is not warranted, as confirmed by the updated May 21, 2025 Lenhart Traffic Consulting, Inc., traffic statement and filed along with the Resubmission materials submitted on July 8, 2025 (“Lenhart Traffic Statement”); all improvements meet or exceed zoning standards as shown on the concurrently-filed proposed preliminary plan and OC&L Report.

The Application is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan as described more fully in the OC&L Report Section “Master Plan Recommendations and Conformance with Local Uses.”

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;

Response: *N/A. There is no neighboring Residential Detached zone, and there is no “predominantly residential” area within the defined neighborhood.*

f. will be served by adequate public services and facilities including schools, police and fireprotection, 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:

Response: *The Property will be served by adequate public facilities as explained in the OC&L Report Section “Conditional Use Necessary Findings: and the concurrently filed Lenhart Traffic Statement dated May 21, 2025.*

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;

Response: *A previously-filed preliminary plan (#120210100) and Development Review Committee comments for this filing are included with this submission as supplemental information for the Hearing Examiner, and an updated version of this plan will be filed subsequent to Conditional Use approval if granted. The Applicant’s proposed conditions address the comments received from Planning Staff.*

There have been indications from Planning Department staff during its preliminary review that they will seek dedication of road frontage along I-270; the Applicant opposes this request on the grounds that this requested exaction fails to satisfy certain nexus requirements under federal and state constitutional standards. The Applicant has proposed a condition of Conditional Use approval that requires dedication at the time of preliminary plan only if made a condition of

preliminary plan approval and following exhaustion of any subsequent judicial appeal period.

Planning Department staff comments dated March 2025 included a request for dedication along Comus Road – on the southern property line – to provide a total right of way width of 40' from the centerline of Comus Road. The Applicant intends to provide this dedication. The proposed improvements within this final Comus Road right of way have been proposed in accordance with the Complete Streets Design Guide, and include a street buffer, sidepath, and maintenance buffer. The proposed driveway to the side will be directly across from the driveway to the Great American Landscapes site confronting the Subject Property.

The Site Plan is designed to meet all zoning standards even if dedication is required, avoiding the need for any Conditional Use amendment should dedication be conveyed.

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.

Response: Inherent characteristics include employee activity on the Property while loading and unloading equipment with any attendant noise typical of landscape contractor activities; employee and landscape truck/equipment vehicular movements into and out of the site consistent with the Statement of Operations; and loading and unloading of landscaping materials including mulch and other ground cover into storage bins.

There are no anticipated non-inherent adverse effects.

The inherent adverse effects will not cause undue harm to the neighborhood and, in fact, any inherent traffic, noise, dust or illumination will be mitigated by existing traffic, noise, dust and illumination emanating from the high speed and volume of traffic associated with abutting I-270. Any site lighting during pre-dawn or post-dusk hours also will be offset by the automatic highway lighting system attendant with the operation of I-270. Moreover, aside from the abutting cemetery, all

immediate confronting and abutting (i.e., across I-270) uses are either highly intensive commercial or industrial uses,

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.

Response: N/A. The property is bounded by Interstate 270 to the east; by the Garden of Remembrance Memorial Park to the north and west; and by Comus Road to the south, extending across an I-270 overpass to the south-east.

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.

Response: Noted.

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.

Response: N/A.

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

- a. Filling Station;
- b. Light Vehicle Sales and Rental (Outdoor);
- c. Swimming Pool (Community); and
- d. Recreation and Entertainment Facility use: swimming pool, commercial.

Response: N/A.

6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- a. Funeral Home; Undertaker;
- b. Hotel, Motel;
- c. Shooting Range (Outdoor);
- d. Drive-Thru
- e. Landfill, Incinerator, or Transfer Station; and
- f. a Public Use Helipad, Heliport or a Public Use Helistop.

Response: N/A.

D. Alternative Compliance from Sections 59.6.2.9.C.3

In accordance with Section 59.6.8.1 of the Zoning Ordinance, the Applicant herein requests *Alternative Compliance* from Sections 59.6.2.9.C.3 (Perimeter Parking for surface parking with more than 10 spaces) for the eastern property line and western property line only.

As more fully explained in the Zoning Review section of the updated OC&L Report (.pdf pages 10-11) the applicant seeks alternative compliance in satisfaction of the landscaping requirements because these eastern and western portions of the property will not be developed as part of this special exception and are heavily forested, thus meeting the screening goals of the landscaping requirements which otherwise would be required.

III. Proposed Conditions of Approval:

The Applicant proposes the following conditions of approval:

1. Hours of operation will be limited to 5:30 AM through 9:00 PM Monday through Saturday with the exception of operations carried out in response to a snow and/or ice event when the Applicant will be undertaking snow and/or ice removal activities off-site.
2. The Applicant will be limited to 25 employees.
3. The Applicant must file a preliminary plan of subdivision with the Montgomery County Planning Board, with any road dedication requirements to be addressed at that time. Conditional use approval is subject to any road dedication requirement imposed by preliminary plan approval following expiration of any final judicial review appeal period.

IV. Witness Testimony

The Applicant intends to call the following witnesses:

1. Applicant witness: Tony Romano.

Mr. Romano will testify about the proposed use and operations in connection with the Application.

2. Mr. Douglas Tilley, P.E., R.P.L.S. (Expert Witness).

Douglas G. Tilley, P.E., R.P.L.S of O'Connell & Lawrence, Inc. will testify that the Application satisfies the requirements of the R-200 zone and the use standards under Article 59-3 asset forth fully on the Site Plan including the Site Plan Zoning Data Table on Sheet 1, and as described more fully in the OC&L Report and filed concurrently with this Application.

Mr. Tilley also will testify that the application satisfies the general requirements under Article 59-6 as set forth in the Parking and Loading Requirements section of the OC&L Report and detailed more fully on the Site Plan.

Mr. Tilley will testify about any additional zoning code and/or site plan issues raised during the course of these proceedings in connection with this application, the Site Plan, and/or the OC&L Report.

Mr. Tilley's CV is enclosed with this Statement.

3. Mr. C. Nick Driban, P.E., PTOE (expert witness).

Mr. Driban of Lenhart Traffic Consulting, Inc., will testify in support of the Traffic Statement dated January 17, 2024 and submitted concurrently with this Application confirming that the Application project is exempt from LATR traffic study requirements and that site ingress/egress is safe and efficient.

Mr. Driban will testify about any additional traffic and/or ingress/egress issues raised during the course of these proceedings in connection with this application and/or the Traffic Statement.

V. Estimated Time

The Applicant estimates that its opening statement, case-in-chief and closing argument will take 2 hours.

Respectfully Submitted,

Michele McDaniel Rosenfeld

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