

**TORCATO ROMANO LANDSCAPE CONTRACTOR
CONDITIONAL USE NO. CU202506 AND
PRELIMINARY FOREST CONSERVATION PLAN NO.
F20250450**

Exhibit 49
OZAH Case No: CU 25-06

Description

Request for Conditional Use approval for a Landscape Contractor (CU202506) and associated Preliminary Forest Conservation Plan (F20250450).

COMPLETED: 11/1/2025

PLANNING BOARD HEARING DATE: 11/13/2025

MCPB ITEM NO. 9

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LOCATION/ADDRESS

14301 Comus Road, Clarksburg 20871

MASTER PLAN

1994 Clarksburg Master Plan & Hyattstown Special
Study Area Master Plan

ZONE

Agricultural Reserve (AR)

PROPERTY SIZE

9.61 Acres

APPLICANT

Mr. Torcato Romano

ACCEPTANCE DATE

February 26, 2025

REVIEW BASIS

Chapter 59 & Chapter 22A

HEARING EXAMINER PUBLIC HEARING

December 11, 2025

Summary:

- Staff recommends approval of the Conditional Use (CU202506) with conditions and transmittal of comments to the Hearing Examiner for a hearing scheduled for December 11, 2025.
- Staff recommends approval of the associated Preliminary Forest Conservation Plan (F20250450) with conditions.
- The Subject Site is a vacant wooded parcel. The Proposal would allow for a Landscape Contractor use to include a new garage, equipment warehouse, office for clerical employees and associated parking lot, lighting and landscaping.
- Staff has not received any public correspondence as of the date of this Staff Report.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE NO. CU202506

Staff recommends approval of Torcato Romano Landscape Contractor, Conditional Use No. CU202506, for a Landscape Contractor use, subject to the following conditions:

1. The use is limited to a Landscape Contractor use.
2. The use will be limited to twenty-five (25) total employees (21 landscape crew members, four (4) onsite staff: three (3) office staff and one (1) mechanic).
3. Hours of operation will be limited to 5:30 A.M. to 9:00 P.M. Monday through Saturday with the exception stated in Condition 4 below regarding snow removal.
4. The use may operate up to seven (7) days a week for up to 24 hours a day during snow removal operations.
5. The use is limited to the following net new vehicle trips during the peak hours:
 - a. In the morning (7:30 A.M. to 8:30 P.M.), no more than 25 trips (in and out).
 - b. In the afternoon (4:30 P.M. to 5:30 P.M.), no more than 20 trips (in and out).
6. Maximum of eight (8) dump trucks, two (2) bucket trucks, eight (8) bobcats, two (2) skid steers, 19 zero-turn lawnmowers, six (6) trenching machines, four (4) mini excavators, and seven (7) pick-up trucks with trailers.
7. The Applicant must gain approval of a Preliminary Plan of Subdivision from the Planning Board to create a recorded lot before applying for any building permits.
8. The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Conditional Use Plan conformance and compliance. The pre-con must occur before any site development work commencement and before any work that is covered by the surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS Staff. A copy of the approved Conditional Use Plan along with any subsequent amendments is required to be on-site at all times during construction.

PRELIMINARY FOREST CONSERVATION PLAN F20250450

Staff recommends approval with conditions of the Preliminary Forest Conservation Plan No. F20250450 ("FCP") which is accompanying Conditional Use No. CU202506 ("Accompanying Plan") for operation and construction of a Landscape Contracting facility in the AR zone. All site development elements shown on the latest electronic version of the Preliminary Forest Conservation Plan No. F20250450, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:

1. The Applicant must submit a Final Forest Conservation Plan (“FFCP”) for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property.
2. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.
3. Before the start of any demolition, clearing, grading, or construction for this Forest Conservation Plan, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Little Bennett or Priority Area to satisfy the reforestation requirement of 1.55 acres of mitigation credit. If no off-site forest banks exist within the Little Bennett watershed or Priority Area, then the off-site requirement may be met by purchasing 3.25 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Little Bennett watershed or Priority Area, subject to Staff approval. If forest mitigation bank credits are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC Planning Department for the appropriate mitigation credits outside of the same watershed or Priority Area.
- a. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 69 inches. Planting locations to be shown on the FFCP.

SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

VICINITY/NEIGHBORHOOD

The Subject Property is located at 14301 Comus Road, Clarksburg. The Property is located in the 1994 *Clarksburg Master Plan & Hyattstown Special Area Master Plan*.

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood,” which is the area that will be most directly impacted by the proposed use. Once delineated, Staff must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the surrounding neighborhood as the abutting, confronting and adjoining properties (Figure 1). The surrounding neighborhood is a mix of uses. The properties to the east across I-270 are commercial and industrial uses in the IM zone. The Properties to the south are a single-family detached house and a landscape contractor use in the Rural zone. The Property to the west is the Garden of Remembrance which is a cemetery use in the AR zone which was approved as a Special Exception.



Figure 1: Vicinity Map with Staff-defined neighborhood

Staff identified one existing, approved conditional use/special exception within the defined neighborhood:

- 14321 Comus Road (S-2509) for a Cemetery use

PROPERTY DESCRIPTION

The Property located at 14301 Comus Road is an unrecorded, triangular parcel consisting of 9.61 acres (the “Property” or “Site”). The Property is zoned Agricultural Reserve (AR), is mostly forested and does not have an existing access to Comus Road. Interstate I-270 runs along the eastern property boundary. The Property descends in elevation from south to north.

The Property contains 8.18 acres of forest, a stream and 2.46 acres of stream buffer area, and hydraulically-adjacent steep slopes. The Site drains to Little Bennett Creek watershed, a State Use Class I,P stream. The Site is not within a Special Protection Area, though the boundary of the 10 Mile Creek SPA is across the street.

Currently there is no vehicular access to the Site from Comus Road, which runs east to west along the Property’s southern boundary. Comus Road is a two (2)-lane Country Connector with a minimum master planned right-of-way (ROW) of eighty (80) feet. Currently, there are no existing pedestrian and bicyclist facilities along the frontage of the Site. There is no access to nearby public transit.

While the Subject Property also has frontage along I-270, there is no direct access to this roadway. I-270 is a four (4)-lane Freeway with a median that runs north to south along the Site’s eastern boundary and has a minimum master planned ROW of 300 feet. There are no pedestrian and bicyclist facilities along I-270.



Figure 2- Subject Property

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant requests a Conditional Use to establish a Landscape Contractor use. The Applicant proposes an office building, a warehouse for equipment, and a garage with this Application. The Applicant is proposing to operate the Landscape Contractor use between 5:30 A.M. to 9 P.M. up to six days a week (Monday through Saturday). Hours may vary throughout the year due to the changes in the amount of daylight and the weather. Some operations may take place seven days a week and 24 hours a day during snow removal, inspection, and plowing operations. Most of the onsite work will take place in the mornings while employees are preparing for work for the day and in the afternoons when crews return to unload equipment. There will be a limited number of employees onsite all day, consisting solely of administrative and maintenance staff. The Applicant is proposing up to 21 landscape crew members, three office staff members and one mechanic. Three office staff and one mechanic will remain onsite throughout the day.

The Applicant will construct a parking lot for equipment and employees with associated lighting and landscaping. There will be no manufacturing, sale of goods, or growth of agricultural plants or crops onsite. The Applicant anticipates that minimal noise will be generated during the loading and unloading of equipment and materials. The Applicant is proposing screening along the frontage on Comus Road between the Landscape Contractor use and the front property line. The Applicant is not proposing any onsite shredding or grinding with this Application.

TRANSPORTATION

The Subject Property has frontage on two public roadways – Comus Road and I-270. Comus is a County-owned and maintained street classified as a Country Connector with a master-planned right-of-way of 80 feet under the *Master Plan of Highways and Transitways*. I-270 is a State-owned and maintained Freeway with a master-planned right-of-way of 300 feet under the *Master Plan of Highways and Transitways*. There are no existing pedestrian and bicyclist facilities. The 2018 *Bicycle Master Plan* does not include any master planned facilities for Comus Road or I-270.

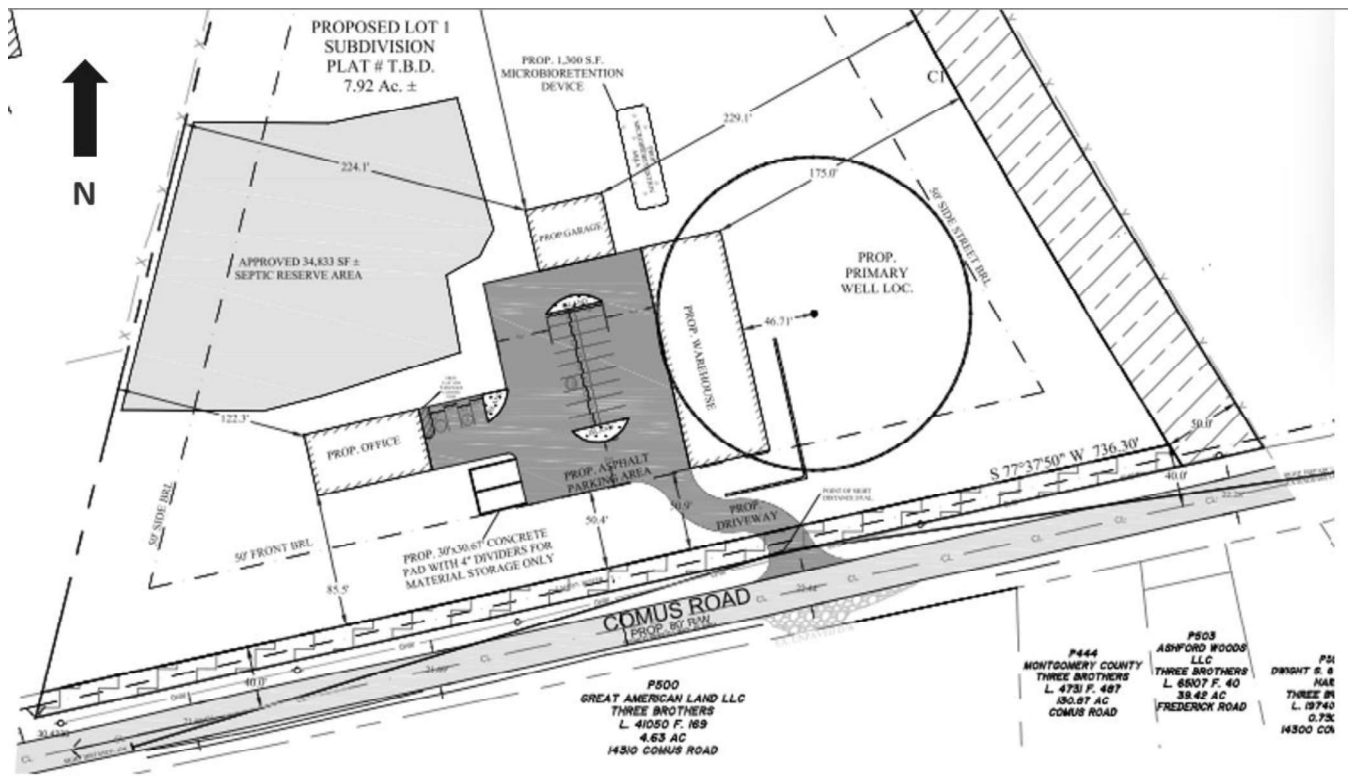


Figure 3– Propose Conditional Use Site Plan

ENVIRONMENT

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(b), a person required by law to obtain approval of a special exception or a conditional use, or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a).

The Property contains 8.18 acres of forest, a stream and 2.46 acres of stream buffer area, and hydraulically-adjacent steep slopes. The Site drains to Little Bennett Creek watershed, a State Use Class I, P stream. The Site is not within a Special Protection Area, though the boundary of the 10 Mile Creek SPA is across the street. The property is completely forested.

SECTION 4: COMMUNITY CORRESPONDENCE

All noticing requirements have been met. Signage has been posted onsite for the FCP application as well as for the Conditional Use for the Hearing Examiner's hearing. As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

SECTION 5: FINDINGS

CONDITIONAL USE NO. CU202506

- 1. Per Section 59-3.5.5.B.b, a Landscape Contractor may be allowed as a Conditional Use in the AR zone if permitted by the Hearing Examiner under Section 59.7.3.1, Conditional Use and the following standards:**

- a) 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.**

The Property is 9.61 acres in size and therefore exceeds the two acre minimum.

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

All buildings, parking and storage areas are more than 50 feet from any property line in any direction.

- c) 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.**

The Applicant is proposing to have eight dump trucks, two bucket trucks, eight bobcats, two skid steers, 19 zero-turn lawnmowers, six trenching machines, four mini excavators, and seven pick-up trucks with trailers. Most of the equipment will be stored in the proposed warehouse building. Only the seven pick-up trucks will be stored in the proposed parking lot.

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

The Applicant is not proposing to sell any plant material, garden supplies, or equipment onsite.

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

The Applicant is proposing hours of operation Monday through Saturday from 5:30 A.M. to 9:00 P.M. The Applicant is also proposing operational hours during snow removal up to seven days a week for 24 hours a day.

2. Per Section 59.7.3.1.E., 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.

The Site does not have any applicable previous approvals.

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;

i. Use Standards for a Landscape Contractor, Section 59.3.5.5.

The proposed Landscape Contractor use satisfies the use standards in Section 59.3.5.5.B.b as stated above.

ii. Development Standards

A Landscape Contractor is allowed as a conditional use in the AR zone. The proposed Landscape Contractor satisfies the standards for the Agricultural Reserve (AR) zone as demonstrated by Table 1.

iii. Development Standards

Table 1: Development and Parking Standards (Agricultural Reserve- AR)

Development Standard Section 59.2.1.F	Permitted/ Required	Proposed
Minimum Lot Area	40,000 sq. ft.	9.61 acre
Minimum Lot Width at Front Building Line	125 ft.	693 ft.
Minimum Lot Width at Front Lot Line	25 ft.	736 ft.
Maximum Density	1 dwelling unit/ 25 acres	n/a
Maximum Lot Coverage	10%	3.62%
Minimum Front Setback	50 ft. (50 ft.*)	50 ft.
Minimum Side Setback	20 ft. (50 ft.*)	122 ft.
Minimum Side Street Setback	50 ft. (50 ft.*)	175 ft.
Minimum Rear Setback	35 ft. (50 ft.*)	520 ft.
Maximum Height	50 ft.	Office- 20 ft. Garage- 25 ft.

Development Standard Section 59.2.1.F	Permitted/ Required	Proposed
		Warehouse- 30 ft.
Vehicle Parking Requirement (Section 59.6.2.4.B)	0.5/employee= 13 1/Operation Vehicle= 7 Total= 20	21 spaces 1 ADA space

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

iv. General Requirements of Division 59-6

(1) Access- 59-6.1

The Subject Property will have vehicular access through a new entry point along Comus Road. This new access point will be aligned with the existing driveway along Comus Road on the property opposite the Site. In addition to vehicular access, pedestrian access will also be provided to the Site. The Applicant will be constructing a six (6)-foot-wide concrete sidewalk buffered by a ten (10)-foot-wide grass street buffer along the Comus Road Property frontage.

(2) Parking, Queuing and Loading-59-6.2

As summarized in Table 2, the Applicant satisfies all the parking and loading requirements necessary to support the Proposed Development under Chapter 59, Section 6.2.4 of the Montgomery County Code.

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

Table 2: Parking Requirements

The Proposed Development is not subject to loading design standards. Chapter 59, Section 6.2.8. of the Montgomery County Code specifies that developments under 25,000 Gross Floor Area (GFA) are not required to provide any loading spaces. The Project has a total GFA of 12,500 and, therefore, it is exempt from providing loading spaces.

The Applicant proposes a parking lot with 22 parking spaces and associated parking lot islands. The proposed parking lot meets the parking standards set forth in the Zoning Ordinance. The Applicant is required to provide 25% canopy coverage at 30 years growth, which is 3,379 sq. ft. The Applicant is proposing 3,533 square feet, which equates to 26.1% coverage at 30 years growth. The Applicant is proposing landscaping along the frontage even though Section 59.6.5 of the Zoning Ordinance does not require it.

(3) *Landscaping and Outdoor Lighting- 59-6.4*

As required by Section 59-6.4.4.E, the photometric plans indicate that illumination will not exceed 0.1 footcandles at any lot line that abuts a lot with a detached house.

(4) *Screening-59-6.5*

Per Section 59.5.2.B, screening is not required because the Property does not abut or confront a vacant property or a property with a residential use in a Agricultura, Rural Residential or Residential Detached zone. The north, east, and west portions of the property are screened using the existing forested areas. The southern portion of the Property will be screened with newly installed landscaping and trees.

(5) *Outdoor Display and Storage- 59-6.6*

The Applicant is not proposing any outdoor displays. The Applicant is proposing a material storage area with dividers to help screen the materials. The area will meet the required fifty (50) feet setback from the front property line. The Applicant is proposing additional landscape screening and trees between this storage area and the road to further screen the area.

(6) *Signage-59-6.7*

The Applicant is not proposing a sign with this Application. If the Applicant proposes a sign in the future, they will need Hearing Examiner approval and must obtain the required sign permits through the Department of Permitting Services (DPS).

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

The Site is located within the 1994 *Clarksburg Master Plan & Hyattstown Special Area*

Master Plan (“Master Plan”) area, which state that there is a lack of public water and sewer, and that the area would not be suitable for high technology uses. This use will utilize well and septic and is not considered a high technology use. There are no specific recommendations for the Property. The Master Plan does not provide specific requirements or recommendations for Special Exceptions/Conditional Uses throughout the Master Plan area.

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

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 that abuts the property in the Industrial Moderate (IM) zone including a moving/storage company, a construction company (“Digging and Rigging”) and Morton’s Towing. These uses all have extensive outdoor storage of large commercial and construction equipment and vehicles. Most of the activity associated with the Landscape Contractor will occur offsite. The Application will be harmonious with the other commercial/industrial neighborhood uses and will not alter the neighborhood’s character.

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;*

The two properties in the Staff-defined neighborhood that are in the R-200 zone do not have any existing Special Exceptions/Conditional uses. One property had two Special Exceptions at the same time, but both have since been abandoned. The proposed Conditional Use will not cause adverse impacts on the neighboring properties. The Master Plan describes the lack of public water and sewer and how the area would not be suitable for high technology uses. This use will utilize well and septic and it is not considered a high technology use.

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***

The Project will require submittal of a subsequent Preliminary Plan application and the Planning Board will determine the adequacy of the public facilities. Staff has conducted a preliminary analysis of public services and facilities as described below.

(1) Transportation

Master-Planned Roadways and Bikeway

The Proposed Development is bounded by Comus Road to the south and I-270 to the east. There are no master planned streets under the applicable master plan, the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*. Similarly, the 2018 *Bicycle Master Plan* has no recommendation for the Site.

As part of this Project, the Applicant is required to dedicate 40 feet of right-of-way for Comus Road and 150 feet of right-of-way for I-270 from the centerline of the pavement to the Property line.

Pedestrian Facilities

There are no pedestrian facilities along the frontage of the Subject Property. As part of this Project, the Applicant will construct a six-foot-wide concrete sidewalk separated from vehicular traffic by a ten-foot-wide street buffer along Comus Road to accommodate the swale required per the MCDOT standards. The proposed frontage improvements are sufficient to fulfill the requirements for Country Connector streets under the 2024 *Complete Streets Design Guide*.

Transit Service

There is no adjacent or nearby transit service to serve the Subject Property. The closest bus stop is about 3.5 miles south of the Site.

Local Area Transportation Review

The Proposed Development falls under the Rural West Policy Area, a Green Policy Area under the 2024-2028 *Growth and Infrastructure Policy (GIP)*. Projects that generate fewer than 30 net new vehicle trips are exempt from providing a full Transportation Impact Study (TIS) that addresses the Local Area Transportation Review (LATR) Guidelines. The Proposed Development is expected to generate a maximum of 18 net new vehicle trips during the morning peak hours and 13 net new vehicle trips during the evening peak hours (Table 3). As such, this Application falls under the 30 net new vehicle trips threshold, and it is exempt from further transportation adequacy analysis.

The proposed trip generation is subject to the following assumptions regarding the hours of operation activities of the Proposed Development, which the Applicant agrees to follow to ensure the Applicant stays under the 30 net new vehicle trips threshold.

- The Site will operate Monday through Saturday between 5:30 A.M. and 9:00 P.M.
- During snow removal periods, the Site will operate up to seven days a week, 24 hours a day.
- Before the morning peak hours, at 5:30 A.M., 21 Landscapers will arrive at the Site in their own vehicles.
- During the morning peak hours, all landscapers will depart to their respective sites in groups (crews) of three to four people each, for a total maximum of six vehicles departing the Site.
- During the morning peak hours, one mechanic and three office staffers will arrive at the Site, for a total maximum of four vehicles entering the Site.
- Before the evening peak hours, at 2:30 P.M., all landscapers will arrive at the Site and depart individually before 3:30 P.M. No landscaper will depart the Site during evening peak hours.
- During the evening peak hours, the mechanic and the office staffers will depart the Site, for a total of four vehicles exiting the Site.

Land Use	Morning Peak Hour	Evening Peak Hour
Proposed		
Nursery (Wholesale) 25 employees	8	9
Off-Site Personnel 21 Landscapers (6 crews) (No ITE Rates)	6	0
On-Site Personnel	4	4

<i>1 Mechanic and 3 Office Staffers (No ITE Rates)</i>		
Net New Person Trips	18	13

Table 3: Trip Generation for the Proposed Use

(2) Schools

The proposed use is for a Landscape Contractor. The use will not impact schools.

(3) Other Public Facilities

The Property is located within water and sewer categories W-6 and S-6 and will be serviced by a private well and septic system. The Department of Permitting Services (DPS) Well & Septic Section has provided an approval letter for the proposed well and septic. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating in accordance with the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

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, residents, visitors, or employees.***

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “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.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “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.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in

combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, Staff examines the size, scale, scope, light, noise, traffic and environmental effects of the proposed use.

Staff identified the following physical and operational characteristics necessarily associated with (i.e., inherent to) a Landscape Contractor:

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

The Property is surrounded by forest on the north, east and west so the use will not impact neighboring properties along those boundaries. The Applicant is proposing landscaping and screening along Comus Road to help screen the use from Comus Road and the properties across the road from the Property. Most of the onsite activity will be limited to the morning and the afternoon so mid-day and from dusk till dawn will have little to no activity. The submitted lighting plan shows the light will produce 0.0 footcandles at the Property lines, so it will not impact the neighboring properties. There are no dwellings close to the Property to be impacted by lights.

Staff did not identify any non-inherent characteristics of the proposed use.

The proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

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

The Property is located in the AR zone and not a Residential Detached zone. However, the proposed Landscape Contractor is screened along the northern, eastern, and western boundaries by forest and the Applicant is proposing trees and landscaping along the southern frontage along Comus Road so operations should be screened from the public. The only residential property near the Property should be screened from the use of the forest along the eastern portion of the Property.

4. *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 is not*

sufficient to require conditional use approval.

The proposed Landscape Contractor meets the requirements of the Zoning Ordinance and the development standards for the AR zone. The proposed use is compatible with the surrounding properties as the immediate properties are commercial in nature including an existing Landscape Contractor across the street and a cemetery to the west of the Property.

- 5. 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.***

The Application is for a Landscape Contractor; therefore, this Section does not apply to this application.

- 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 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) the following Recreation and Entertainment Facility use: swimming pool, commercial.***

The Application is for a Landscape Contractor; therefore, this Section does not apply.

- 7. 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.***

The Application is for a Landscape Contractor; therefore, this Section does not apply.

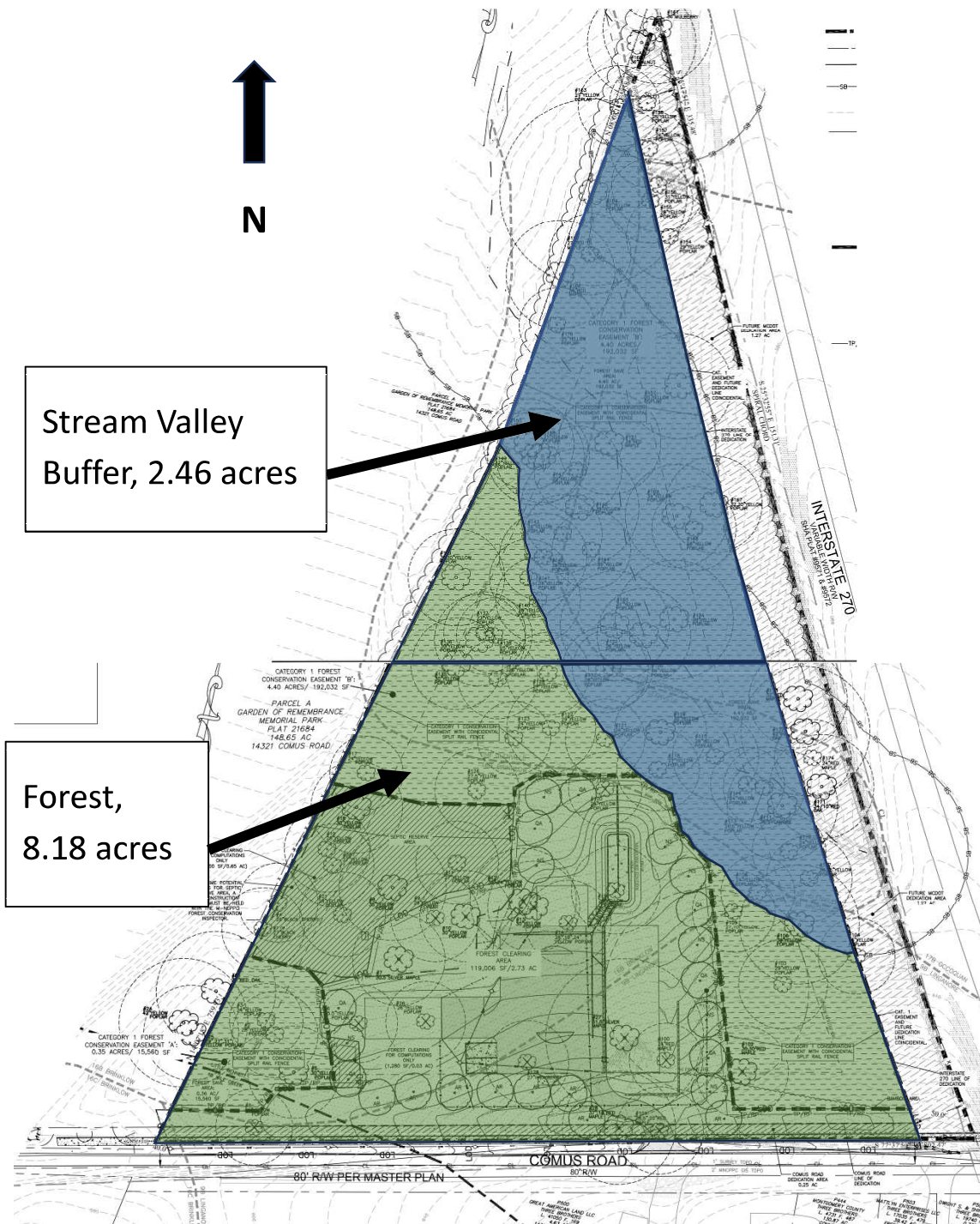
PRELIMINARY FOREST CONSERVATION PLAN NO. F20250450

All Forest Conservation Law, Chapter 22A requirements are satisfied.

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Forest Conservation Plan complies with the *Guidelines for Environmental Management of Development in Montgomery County* (“Environmental Guidelines”) and the Forest Conservation Law, as conditioned and described below.

ENVIRONMENTAL GUIDELINES

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No 420242830 was approved on September 23, 2024. The Site contains 8.18 acres of forest, a stream and 2.46 acres of associated stream valley buffer, and hydraulically adjacent to steep slopes. Large specimen trees distributed across the Property. The Property is primarily within the Little Bennett Creek watershed, a State Use Class I,P stream. The Property is not within a Special Protection Area. The FCP submitted with this Application conforms with the Environmental Guidelines by protecting the stream valley buffer.



FOREST CONSERVATION

The Application is subject to Chapter 22A – Montgomery County Forest Conservation Law and a Preliminary Forest Conservation Plan has been submitted for approval with Conditional Use No. CU202506 (Attachment A). The total tract area is 9.35 acres. There are 0.21 acres of off-site work area that is added to the total tract area. There will be 1.27 acres of land dedication to MCDOT on the eastern portion of the property along I-270. This dedication to MCDOT is deducted from the total tract area, resulting in a net tract area of 8.39 acres, and 8.18 acres of forest for Forest Conservation calculations. The Preliminary Forest Conservation Plan proposes clearing 3.41 acres of forest. Based on the land use category and the forest conservation worksheet, the project requires 3.25 acres of afforestation. The Applicant will retain 4.77 acres of forest onsite and will protect the entirety of the retained forest and stream buffer area in a Category I Conservation Easement. Clearing within the forest area will be offset through the purchase of a forest bank at the rate required for afforestation planted outside of the same watershed as the Site. If there is no forest bank available for purchase, then a fee in lieu will be applied. The creation of the conservation easement on the Site is an effective long-term conservation method to maintaining water quality.

The proposed cleared forest area is along the Southern end of the Property. The Conservation Easement will primarily be in the Northern area where the forest is not being cleared, along with a smaller portion of the Easement area protected in the Southwest corner of the Site. The clearing occurring at the Southern portion of the Property, which abuts Comus Road, will be where the Landscape Contractor operations will occur. The LOD encompasses the area necessary to conduct the Landscape Contracting operations and storage. The area where the future septic reserve will be

located (0.65 ac.) is considered cleared forest for computations only at this time of application but may be cleared in the future if the primary septic field fails.

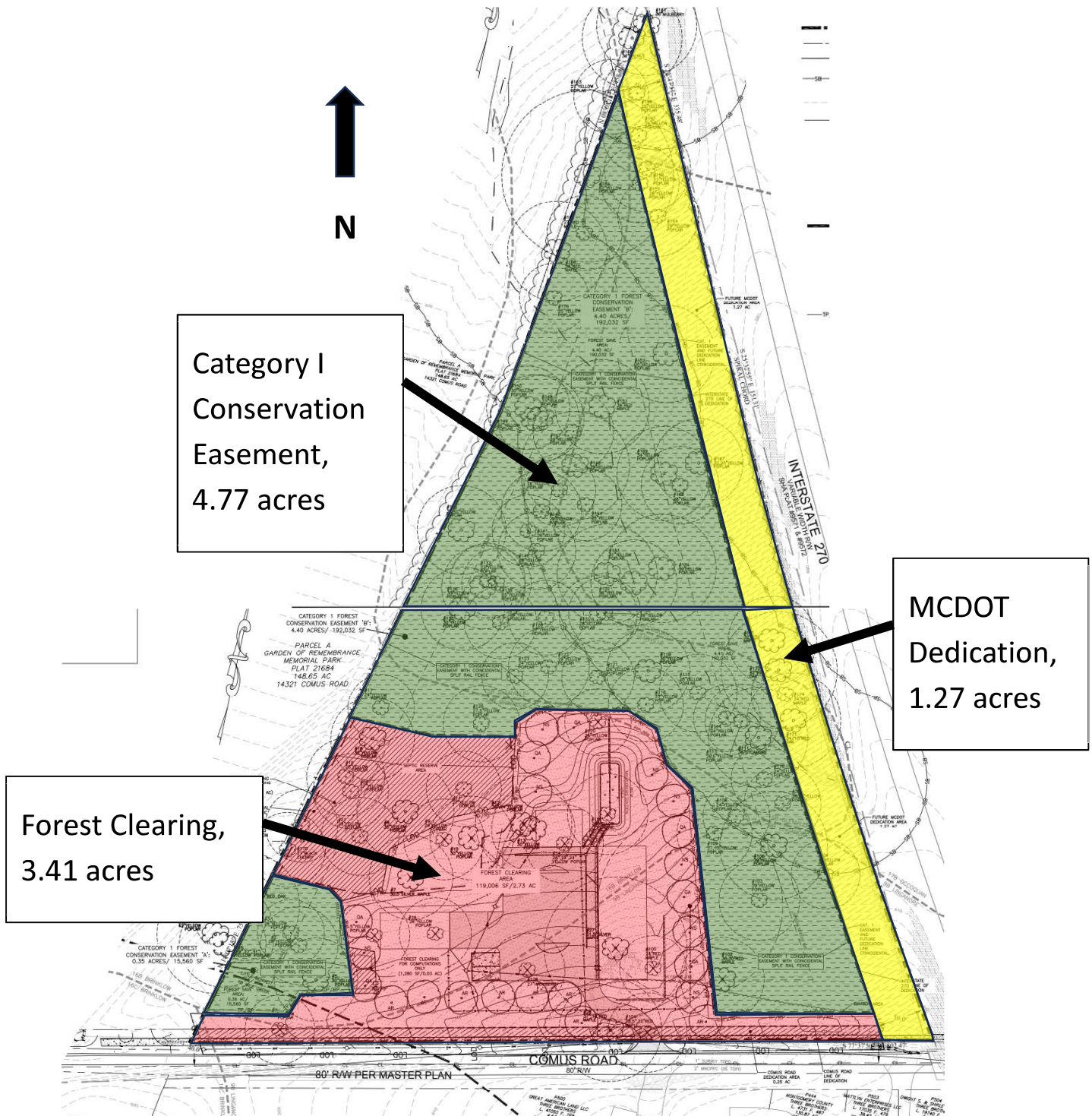


Figure 5: Preliminary Forest Conservation Plan

Minimum Retention Requirement

Section 22A-12(f)(2)(A) of the Forest Conservation Law states that in an agricultural and resource area, on-site forest retention must equal 25% of the net tract area. The total 8.39 acres net tract area is in an agricultural and resource area, requiring the retention of 2.10 acres of forest. This site will meet and exceed the minimum retention on site, as 4.77 acres of forest will be retained in a Category I Forest Conservation Easement.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact on these trees, including removal of the subject tree of disturbance within the tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left undisturbed. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of a historic site or designated with an historic structure; are designated as a national, State, or County Champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request

This Forest Conservation Plan variance request is for the removal of seven on-site Protected trees due to necessary construction activities. The trees identified in this variance request for removal or CRZ impacts are shown on the Forest Conservation Plan (Table 4). The trees to be removed are located within the LOD.

Table 4: Variance Trees to be Removed

Tree #	Common Name	Latin Name	DBH	Condition
7	Silver Maple	<i>Acer saccharinum</i>	30.5	Fair
10	Yellow Poplar	<i>Liriodendron tulipifera</i>	30	Good
12	Yellow Poplar	<i>Liriodendron tulipifera</i>	35, 24	Good
13	Yellow Poplar	<i>Liriodendron tulipifera</i>	30	Good
27	Silver Maple	<i>Acer saccharinum</i>	51.5	Poor
28	Red Maple	<i>Acer rubrum</i>	37, 18	Fair
102	Red Maple	<i>Acer rubrum</i>	30, 30	Good

Unwarranted Hardship Basis

Per Section 22A-21 of the Montgomery County Code, a variance may only be granted if the Planning Board finds that leaving the requested trees in their undisturbed state would result in unwarranted hardship, thereby denying the Applicant a reasonable and significant use of their Property. In this case, there are special conditions specific to the Property which would cause an unwarranted hardship for the Applicant without a variance for the removal of specimen trees.

The Landscape Contracting operations are proposed to occur at the front of the Property which abuts Comus Road. The location of the operations close to the existing road limits the extent of forest being cleared on the Site. The northern portion of the site will be largely protected through a conservation easement, and the proposed development will minimize the impact on the specimen trees on site to the fullest extent possible. Some specimen trees are located at the front of the Property and are unavoidable if the landscape contractor's operations are to be built on the property. Further, there is a stream valley buffer (SVB) to the north on the Property, and the proposed LOD avoids any intrusion or encroachment onto the buffer. The proposed development avoids encroachment into environmentally sensitive buffers, limits impacts on specimen trees, and reduces onsite forest disturbance. Staff has reviewed this Application and based on the existing conditions on the Subject Property; staff finds that there is an unwarranted hardship.

Variance Findings

The following determinations are based on the required findings for granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant, as the removal and impacts of the specimen trees are due to the entire property being scattered with specimen trees, and a site design for the Landscape Contractor that limits clearing of the forest on-site. Therefore, granting this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested variance is based on the existing site conditions and the necessary design requirements for this specific use.

- 3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

The requested variance is a result of existing conditions and not due to land or building use on a neighboring property.

- 4. *Will not violate State water quality standards or cause measurable degradation in water quality.***

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to provide mitigation for the removal of specimen trees in the form of tree planting on the Property. These new trees will replace any water quality functions that may have been lost due to the removal of existing trees.

Mitigation for Trees Subject to the Variance Provisions

There are seven trees proposed for removal in this variance request, resulting in 274 inches of DBH removed. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed, using trees that are a minimum of three inches caliper in size. This results in a total mitigation of 69 inches with the installation of twenty-three 3-inch caliper trees. Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost due to the removal of these specimen trees. These mitigation trees must be overstory trees native to the region.



Figure 6: Locations of Variance Trees and Mitigation Trees

Variance Recommendation

Staff recommends that the Planning Board approve the variance request.

SECTION 6: CONCLUSION

The proposed conditional use complies with the findings require for approval of a Landscape Contractor, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 1994 *Clarksburg Master Plan & Hyattstown Special Area Master Plan* will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner and approval of the associated Forest Conservation Plan.

ATTACHMENTS

Attachment A: Forest Conservation Plan F20250450

Attachment B: Conditional Use Plan

Attachment C: Agency Letters and Approval