

**Natural Surroundings, Inc., Special Exception S-2715 and S-2716**

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**Staff Report Date: 6-13-14**

**Description**

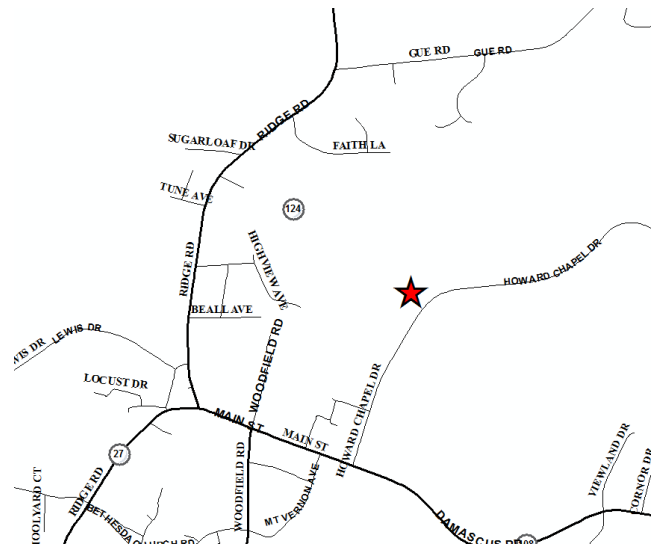
**Natural Surroundings, Inc.**

**Special Exception S-2715 and S-2716**

Request for a Special Exception to operate a Landscape Contractor business and Wholesale Nursery, on 11 acres, located, on the east side of the Howard Chapel Drive, approximately 1900 feet north of its intersection with Damascus Rd. (MD 108), RC Zone, Damascus Master Plan Area.

**Staff Recommendation: Approval with conditions**

- **Application Filed:** October 27, 2009
- **Public Hearing:** July 11, 2014
- **Applicant:** George Jay Roche and Natural Surroundings



**Summary**

- With the recommended conditions, the subject uses conform to all applicable requirements and regulations for approval of a landscape contractor business Special Exception (Section 59-G-2.30.00) and nursery, horticultural – wholesale Special Exception (Section 59-G-2.30.0) of Montgomery County Zoning Ordinance and the development standards under the Rural Cluster Zone.
- The subject uses are consistent with the recommendations of the Damascus Master Plan and compatible with the characteristic of the surrounding area.
- Approval of the continuation and the proposed gradual expansion over a 10-year period of the Special Exception uses will not inflict discernable adverse impact on the immediate neighborhood
- There are no notable traffic, circulation, noise or environmental issues associated with the Application provided that the recommended conditions are satisfied.
- This application is in compliance with the Montgomery County Environmental Guidelines and the Patuxent River PMA Guidelines. The plan proposes no imperviousness within the stream valley buffer and reduces overall imperviousness on the property from the current 16.88% to 9.71%.
- The proposal is exempt from submitting a Forest Conservation Plan.

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## **I. RECOMMENDATION**

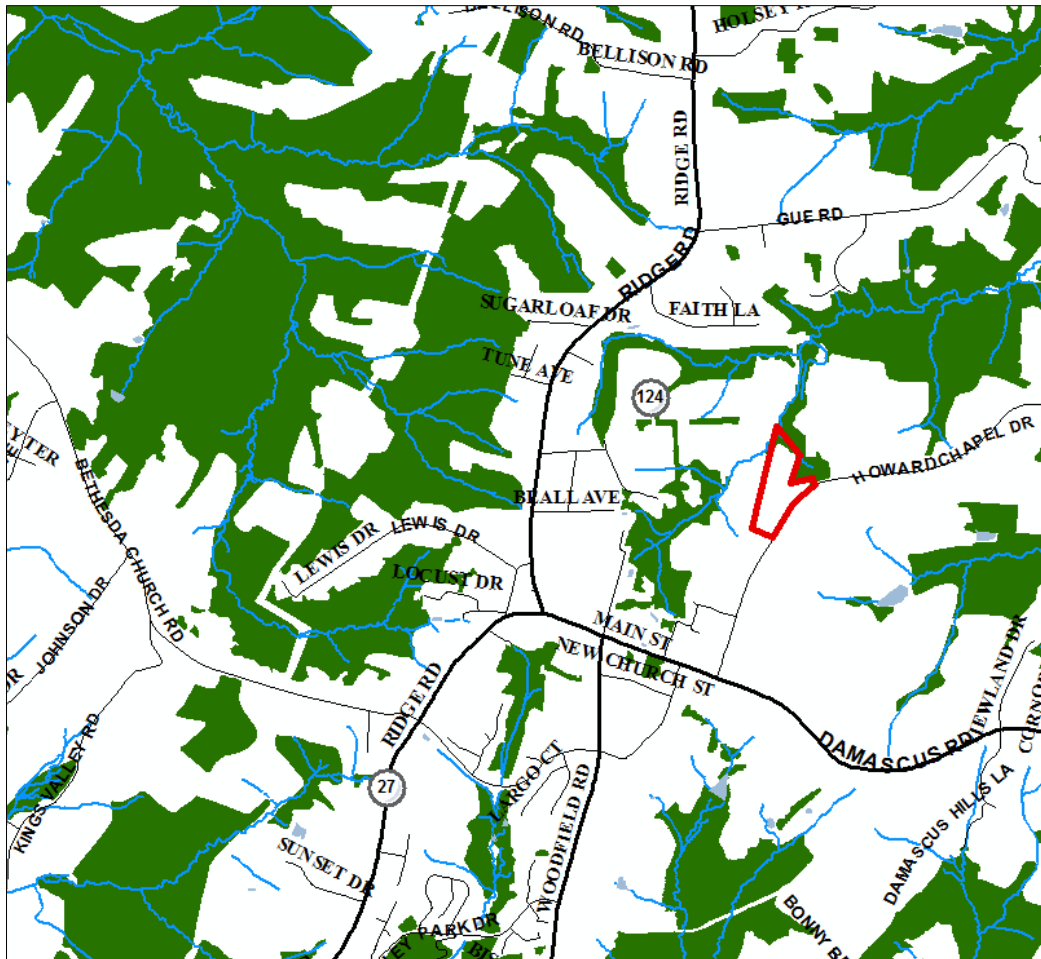
**Staff recommends APPROVAL of Special Exception S-2715 and S-2716 with the following conditions:**

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

## II. STATEMENT OF THE CASE

The special exception applicant, George J. Roche, operating under the name Natural Surroundings, Inc., (“Applicant”) seeks two Special Exceptions, identified as: S-2715 for the continuation and approval of a landscape contracting business and S-2716 for a wholesale nursery use on an 11.0 acre unplatted parcel (P 285, Tax Map FX 53) located at 26500 Howard Chapel Drive in Damascus (“Property” or “Subject Property”). (Figure 1)

**FIGURE 1: Vicinity Map**

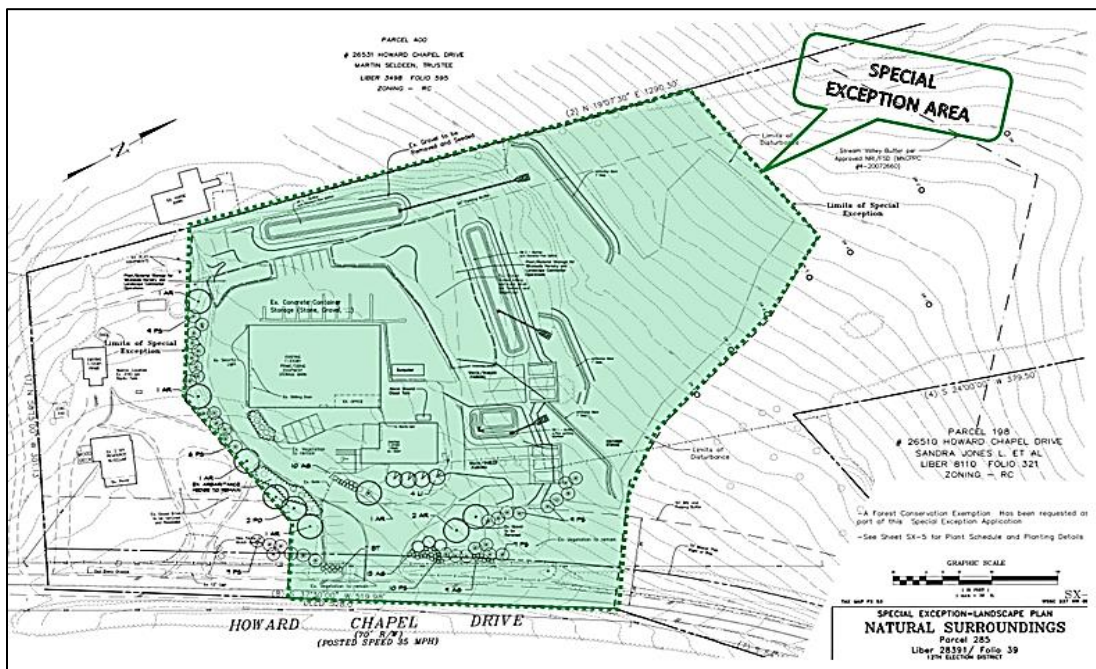


The Applicant has been operating a landscape contractor business and wholesale nursery business on the Property since 2004 without a Special Exception approval. A violation notice was issued by the Montgomery County Department of Permitting Services in February of 2005 and the Applicant was directed to file for Special Exception to seek approval of the two uses on the Property. The Special Exception applications were filed in September of 2007. The Applicant requested successive postponements of scheduled hearings to address issues raised during initial review of the cases. After an extended period of inactivity, the Applicant, once again, submitted a request to continue with the review of the Applications. The Board of Appeals issued a notice scheduling a public hearing of the Applications for June 27, 2014 before the Hearing Examiner.

During the past seven years, the Applicant has worked intermittently with Planning Department Staff to address issues including a reduction of impervious surface on the Property to meet the Patuxent Primary Management Area (PMA) requirements and to ensure compatibility with the surrounding area.

The proposed landscape contractor/wholesale nursery utilizes approximately 40 percent of the 11-acre Property which equates to approximately 4.4 acres ("Special Exception Area") (Figure 2). Historical aerial photos show that the Subject Property was used as a farm and is improved with a two story, single family dwelling, a large barn and two additional framed outbuildings. The existing dwelling and one of the outbuildings are located in the southern portion of the Property outside of the Special Exception Area boundaries. The Applicant intends to retain the existing 9,600-square foot frame and siding barn, which will continue to be used to park trucks, employee vehicles, to store equipment, and provide office space. A 1,129 square-foot frame outbuilding located in close proximity to the barn is also retained and will be utilized as a mechanic shop for the businesses. The Special Exceptions propose no new construction or expansion of buildings.

**FIGURE 2: Special Exception Area**



The Special Exception Area also contains three above ground storage tanks; two for diesel fuels and one for two-cycle fuel. The Applicant's statement indicates that the fuel tanks meet the necessary license and safety requirements. The two Special Exception uses will have equipment and vehicles shown in Table 1 below:

**Table-1**

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

The landscape contractor business operation consists of providing landscaping services to off-site locations designing and building retaining walls, waterfalls, walkways and patios, as well as providing tree planting and removal, lawn and garden care and maintenance services. The wholesale nursery portion of the operation sells, on a wholesale basis, mulch, stone, and plants to landscape contractors in the area and the landscape contractor business which is also the companion Application. Approximately 22,000 square feet of an outdoor storage for plant material and supplies is provided in an area northwest of the barn.

The Special Exception applications propose a seasonal maximum of 40 employees for the two uses. The Applications propose 40 onsite parking spaces of which 29 spaces will be located in the barn. The hours of operation for the landscape contractor business are recommended to be 6:00 a.m. through 7:00 p.m., Monday through Friday and 8:00 a.m. through 4:00 p.m. on Saturdays. The hours of operation for the wholesale nursery are limited to 9:00 a.m. through 4:00 p.m. Monday through Friday and 8:00 a.m. through 12:30 p.m. on Saturdays.

### III. APPLICATION

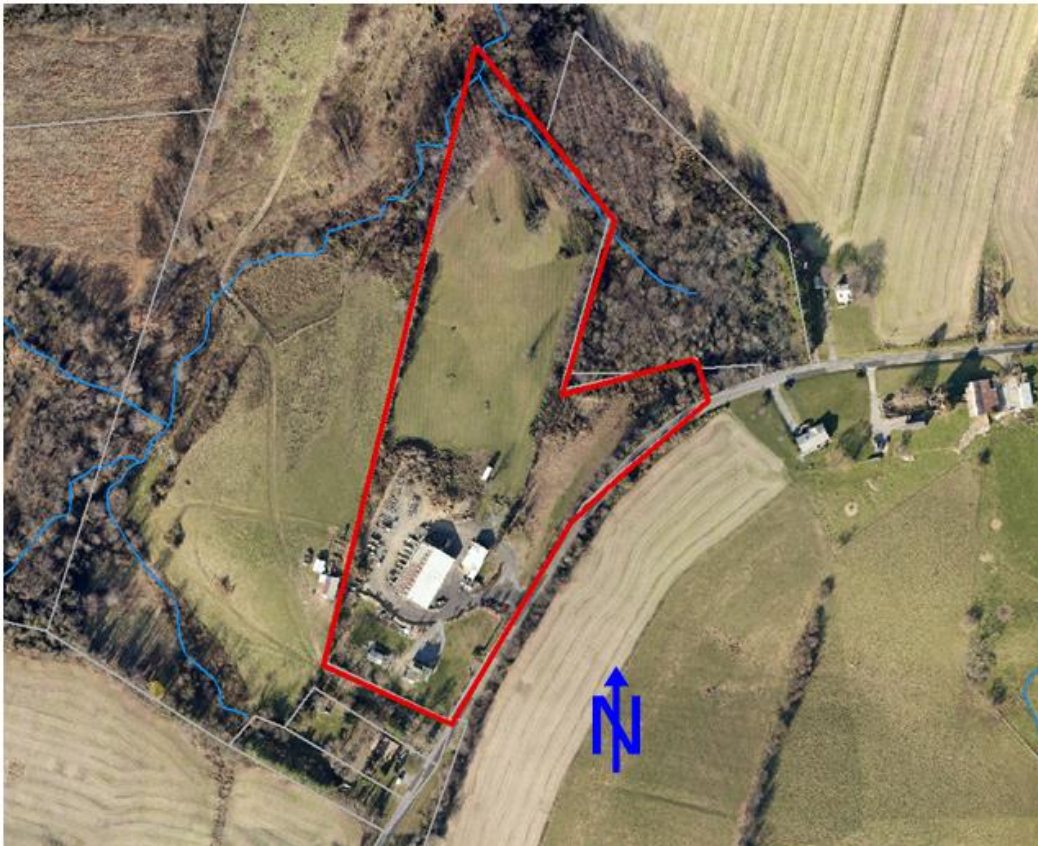
#### A. The Subject Property (Figure 3)

The Subject Property is located on the northwest side of Howard Chapel Drive approximately 2,000 feet north of its intersection with Damascus Road (MD 108) at 26500 Howard Chapel Drive in Damascus. The 2006 Damascus Master Plan recommended the Rural Cluster (RC) zone for the Property. The Property is irregularly shaped and consists of approximately 11 acres. For purposes of the requested Special Exceptions, approximately 4.4 acres is designated as the Special Exception Area will be the specific portion of the Property that is subject to any special exception approvals.

The Property is improved with a two-story, frame and stucco single-family dwelling with a cellar, a small shed, a large barn, two 1-story frame structures, and a gravel covered onsite circulation system connecting the various building on the Property. The Property also contains a septic field and three above ground fuel tanks each having a 500 gallon capacity. The single-family dwelling and one of the 1-story frame structures are not included within the special exception site boundaries, nor is a large open filed area that comprises the northern half of the

Property. The remaining structures, including the barn and outbuilding are to be used as part of the proposed landscape contractor and wholesale nursery operations.

**FIGURE 3: Subject Site**



The Property slopes downhill from southeast to the northwest. A perennial stream is located in the far northwest corner of the Property. The residence and the business portions of property are accessed by two separate driveways from Howard Chapel Drive. A site inspection by Staff reveals that the notification of the pending application is properly posted in the front yard.

**B. Neighborhood and Its Character (Figure 4)**

For the purposes of these Special Exception applications, the surrounding area in which the Subject Property is located is generally defined by 238-acre property owned by Martin Seldeen, trustee and 46-acre property owned by Walker Patricia B, trustee, to the north; Martin Seldeen, trustee property, to the east, Damascus Road to the south; and Woodfield Road (MD 124) to the west.

The surrounding area is predominantly farmland improved with single-family residential dwellings, sheds and farm related buildings in the RC, RE-2C and R-200 zones. The Subject Property is surrounded by agricultural properties

**FIGURE 4: Surrounding Neighborhood**



**C. Planning And Zoning History**

Records indicate that the Property was placed in the Rural-Residential (R-R) Zone prior to 1966, which was renamed R-200 in 1973. The 1982 Sectional Map Amendment (SMA) G-352 for the Damascus Planning Area rezoned the area in which the Property is located from R-200 to RE-2C. The 2006 SMA for Damascus Master Plan Area rezoned the Property from RE-2C to RC.

**IV. ANALYSIS AND FINDINGS**

**A. Consistency with the Master Plan**

The Property is within the 2006 Damascus Master Plan (Master Plan) area. The Master plan does not have a specific recommendation for landscape contractor and wholesale nursery uses, and there is no site specific recommendation regarding the Subject Property. However, the Property is located in an area identified in the Master Plan as “Rural Transition Area” and is amongst the group of properties that the Master Plan refers to as the *Patuxent Neighborhood Properties* (260 properties on approximately 560 acres). The Master Plan recommends rezoning of these properties from RE-2 to R-C.



Regarding Rural Transition Area, the Master Plan states:

“This area is located northeast of Ridge Road (MD 27) and west of Howard Chapel Drive within the Patuxent River watershed. Putting these properties in this agricultural zone will also increase their potential eligibility for conservation easements. The recommendation reflects the environmental considerations for the Functional Master Plan of the Patuxent River Watershed. Because several older subdivisions in the area face failing wells or septic systems, this area is also recommended for extension of public water. (p. 37)

The house on the Property had a failing septic system but the Applicant has upgraded and expanded the septic facility to accommodate the residence, the two Special Exception uses and the intended growth ten years into the future. The Applicant has submitted a letter of confirmation on the adequacy of the septic facility. The Property is served by public water.

The Damascus Master Plan (page 23) encourages limited development with limited imperviousness due to the high threshold for protection of lands draining to the Patuxent River drinking water reservoirs. The Subject Property is in the Upper Patuxent River watershed and subject to the Patuxent PMA guidelines to protect water quality. The PMA guidelines seek to restrict uses with high impervious levels in close proximity to all tributaries of the Patuxent. As a Property within the PMA and subject to a special exception review, the Applicant has worked to reduce existing impervious surfaces to meet the PMA requirements.

**Note:** See detailed discussion on the watershed and impervious areas under *B. Environment* below.

## **B. Environment**

### Environmental Guidelines

A simplified Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 42009208E was approved by Planning Department staff on August 31, 2010. The Upper Patuxent watershed is classified as a Use Class III watershed. The Countywide Stream Protection Strategy rates the water quality in the tributaries of this watershed as good.

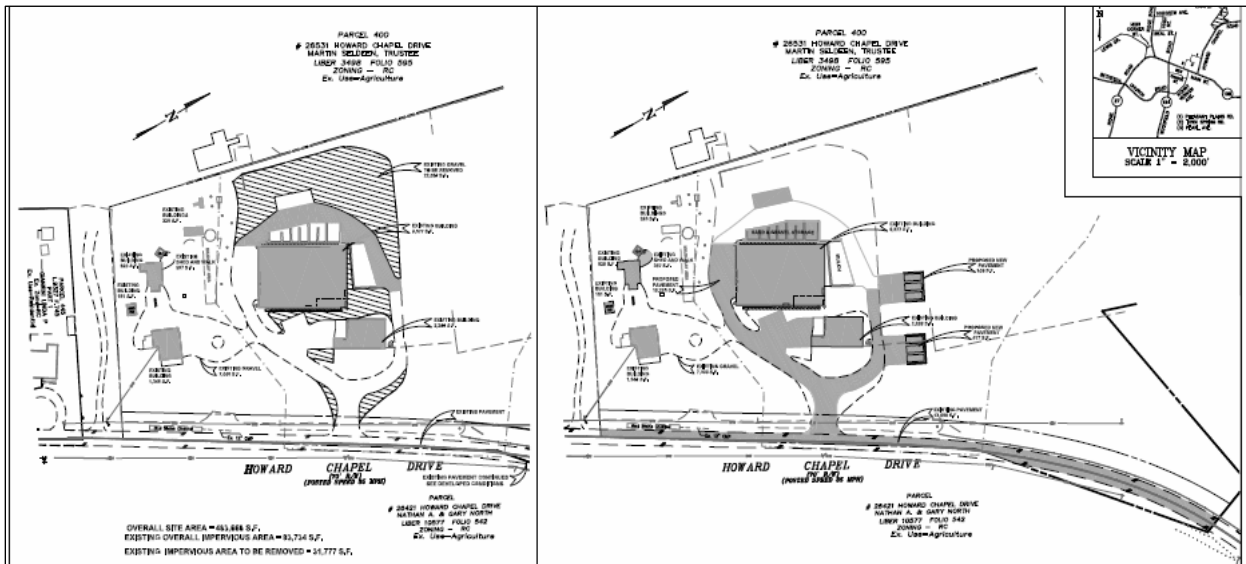
As mentioned, there is a stream in a remote northern corner of the Property with associated stream valley buffers, however; the Special Exception Area of the requested uses are far removed from the stream and there are no direct impacts of development to any existing streams or their associated environmental buffers. The Special Exception uses will adequately protect the stream and the buffers.

### Impervious Surface (Figures 5 and 6)

The *Environmental Guidelines* is the document that Staff and the Planning Board rely on to determine the appropriate protection measures for developing properties with sensitive environmental features throughout the County. The *Environmental Guidelines* establish the setbacks for streams, wetlands, floodplains and other protective measures for unsafe or

unsuitable land and also establish the Patuxent River PMA guidelines for the County. The PMA guidelines are found on Pages 45 through 54 of the *Environmental Guidelines*.

**FIGURE 5: Impervious Area Exhibit**



**FIGURE 6: Impervious Surface Data**

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

The PMA guidelines establish the protection measures for all tributaries of the Patuxent River watershed including those of the Hawlings River. For the mainstem of both the Patuxent River and Hawlings River, a one-quarter mile (1,320 ft.) area on each side of the stream is established as the PMA. For the tributaries to each of these streams, a one-eighth mile (660 ft.) area on each side of the stream is established as the PMA. The cross section of the PMA consists of two areas: 1) the normal stream valley buffers (typically 100 to 150 feet on each side of the stream), and 2) the remainder of the area outside the buffers but within the one-quarter mile (or one-eighth mile) distance; defined as the transition zone. The stream valley buffer is generally held to 0% imperviousness except for required infrastructure. However, in the PMA transition zone just outside of buffers, the protection measures in the *Environmental Guidelines*

recommend that imperviousness levels for new development should not exceed 10%.

“Overall imperviousness within the transition area of each new project development site should not exceed 10 percent.” (pg. 50 Sec. VII D. 1. c.)

The Special Exception uses propose no impervious within the stream valley buffer and the Applicant has shown the removal of over 33,284 square feet of existing gravel on the Subject Property to reduce imperviousness to 9.71% within the transition area. The Applications for Special Exception are in compliance with the Montgomery County *Environmental Guidelines* and the Patuxent River PMA guidelines.

#### Forest Conservation

A forest conservation plan exemption (42009208E) was confirmed for this site by Planning Department Staff on September 1, 2009 under Section 22A-5(q)(1) of the County Forest Conservation Law. The exemption was allowed for special exceptions where the existing structures are used and the uses will not result in clearing of existing forest or trees.

## V. SPECIAL EXCEPTION FINDINGS

### A Standard for Evaluation (59-G-1.2.1)

**A Special Exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a Special Exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a Special Exception.**

*As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment. What must be determined is whether these effects are acceptable or would create adverse impacts sufficient to result in denial. The inherent, generic physical and operational characteristics associated with landscape contractor business and a wholesale nursery businesses are (1) buildings, structures, outdoor areas for the storage of plants and gardening-related equipment (2) outdoor storage of plant stock, mulch, soil and landscaping materials in bulk and in containers (3) on-site storage of business vehicles and equipment including small trucks and landscaping trailers (4) traffic associated with the trips to the site by employees, suppliers and customers; trips to and from the site by employees engaged in off-site landscaping activities, (5) adequate parking areas to accommodate customers and Staff, (6) dust and noise*

*associated with the movement of landscaping products and the loading and unloading of equipment associated with landscaping and wholesale nursery businesses, and (7) long hours of operation.*

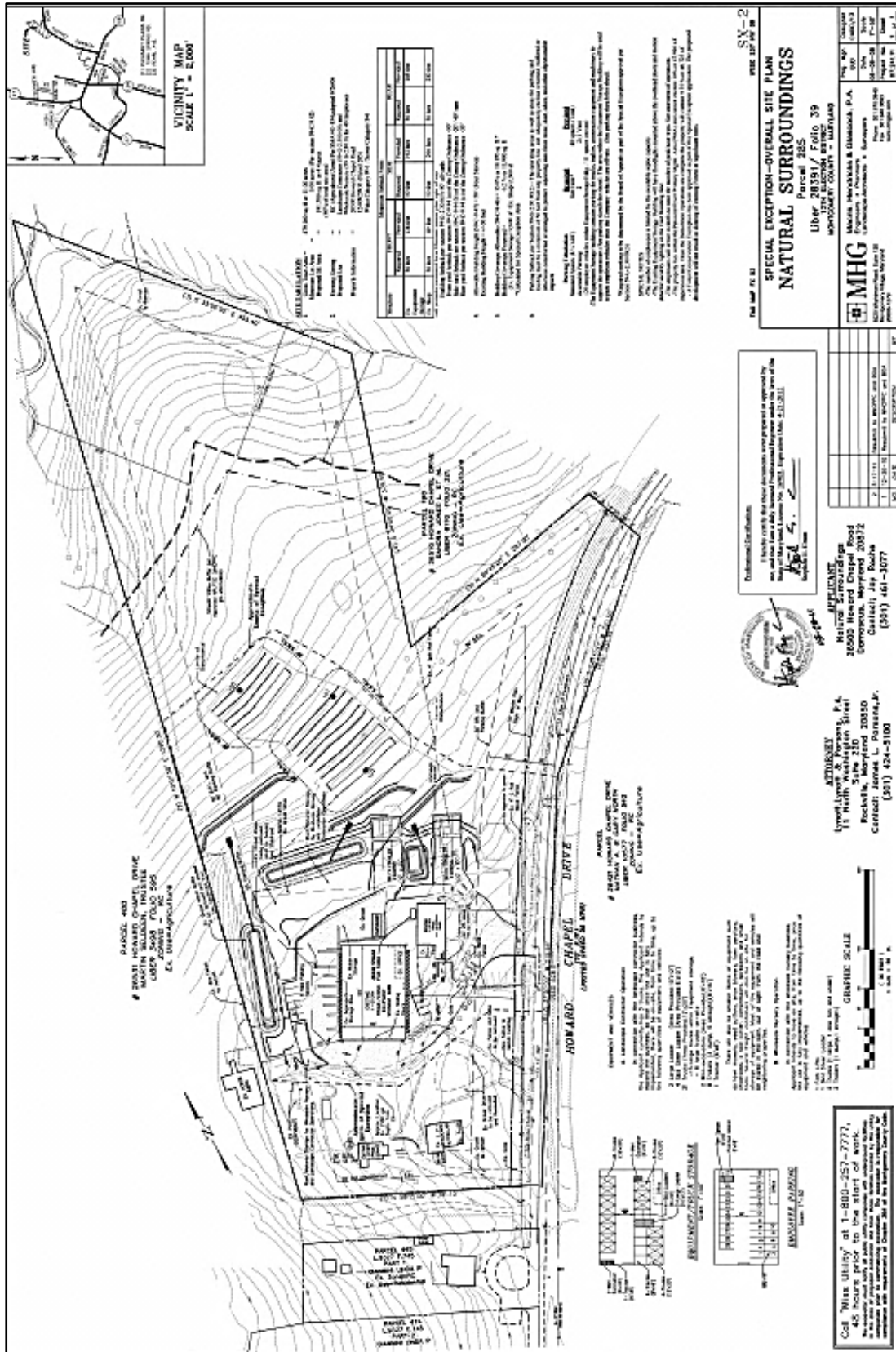
*The scale of existing buildings, the number of access points, the internal vehicular circulation system, onsite parking areas, large and medium size storage buildings, outdoor plant and material storage areas, loading and unloading of supplies and equipment for off-site operations are operational characteristics typically associated with landscape contractor and wholesale nursery operations. Staff, however, considers the fact that the Property is located within the Patuxent PMA and subject to the 10 percent impervious surface limit a non-inherent characteristic but one of a nature that does not rise to a level to warrant a denial. The landscape contractor and wholesale nursery uses are consistent with all applicable standards of the RC zone and satisfy all applicable requirements for special exception for such uses.*

*Based on the traffic analysis, the vehicular movement on the road would be safe, adequate, and efficient. The Property is surrounded with active agricultural uses on large agricultural lands. The closest residential home outside of the Property is located approximately 500 feet to the south of the Property. The landscape contractor and wholesale business currently operates at a small scale with three trucks and 12 employees including the Applicant. Within the coming ten years, the Applicant intends to gradually expand the two uses to reach the scale proposed in the subject Special Exception Applications. At full capacity, employees will work in shifts using a three-shift system designed so that majority of the trips associated with the businesses will occur before or after the peak periods. With recommended conditions, the Special Exception uses will not create undo traffic and will not adversely impact the environment. Adequate on-site parking is provided to satisfy the needs of both uses*

*The Applicant intends to use existing structures and barn to operate the landscape contractor and wholesale nursery business. There will be no new construction on the Property. The lighting concept as depicted on the landscape plan is appropriate for the proposed use at the subject location. The Special Exception Applications will not likely cause objectionable noise.*

*With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed uses do not rise to a level sufficient to warrant a denial of the Application.*

FIGURE 7: Special Exception Site Plan



**B. General Development Standards (59-G-1.23)**

**(a) Development Standards-59-G-1.23 (a): Special Exceptions are subject to the development standards of the applicable zone where the Special Exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.**

*The following table summarizes the relevant RC Zone development standards:*

<b>RC- (Rural zoning standards)</b>	<b>Required</b>	<b>Proposed/Existing</b>
<b>Minimum Lot Area</b> 59-C-9.42 59-G-2-30.0* 59-G-2-30.00	5 acres 87,120 SF (2ac)*	11 acres (479160 sf) 4.4 ac (for the special exception uses)
<b>Minimum Lot width: 59-C-9.43</b> ▪ at street line ▪ at building line	300 ft 300 ft	840 ±ft 840± ft
<b>Maximum Building Height: 59-C-9.47</b>	50 ft	30± ft
<b>Maximum Building Coverage: 59-C-9.42</b>	10%**	6.2% special exception area
<b>Minimum Building Setback: 59-C-9.44</b> a. From street  b. Minimum Side Yard (2 required: ▪ One side ▪ Sum of both sides ▪ Abutting side street c. Rear yard	50 ft  20 ft 40 ft 50 ft	89 ft (structure within SE boundaries)  192 ft 570± ft
<b>Minimum Setback for parking and loading</b> • 59-C-9.42 • 59-G-2-30.0* • 59-G-2-30.00	50 ft 50 ft	50 50
<b>Yard Requirement-Accessory building</b>  a. Front lot line b. From side lot line c. Rear lot line	80 ft 15ft 10 ft	89 ft-(mechanic shop) 192 ft min 105 ft min

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

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

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

In general, the Application meets the applicable requirements of Article 59-E, including 59-E-2-21: Arrangement and Marking, 59-E-2-22: Size of spaces, 59-E-2-23: Space for Handicapped, 59-E-2-4: Access and circulation, 59-E-2-6: Lighting and 59-E-2-7: landscaping.

Because the Subject Property is in an agricultural zone and surrounded with properties also within the agricultural zone, *Sections 59-E.2-8: Parking facilities within or adjoining zone Section 59-E-2-83: Parking and loading facilities for special exception uses in residential zones and screening from land in a residential zone or institutional property* do not apply to the subject Application. However, the specific special exception requirement of **Section 59-G-2.30.00 : Landscape Contractor** contains the following two requirements under which parking and loading, adequacy of parking, impacts on adjoining neighbors, and screening and buffering would be addressed.

**Section 59-G-2.30.00 (2)** Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

*See below.*

**Section 59-G-2.30.00 (3)** states that the number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

*Please see staff's findings for specific Special Exception requirement, page 23 and 24 of this report under **V-D (2) and (3)**—Standards and Requirements (59-G-2) where both of the above two subsections are addressed.*

*With regard to the Wholesale Nursery operation, the specific special exception requirement, **59-G-2.30.0 Nursery, horticultural—wholesale specifies the following***

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

**59-E-3.7: Industrial, manufacturing establishment or warehouse: One and one-half parking spaces for each 1,000 square feet of total floor area and sufficient area to provide for loading and unloading of trucks.**

*Existing Barn: 9,577sf + existing frame structure: 2,274 sf = 11851 sf=12,000 sf  
12,000 sf ÷ 1,000 sf X 1.5 sp= 18 spaces.*

*The Special Exception Plan provides a total of 40 spaces to serve the parking needs of the two Special Exception uses. Twenty-nine (29) of the parking spaces are located in the large barn.*

**(c) Minimum frontage (waiver)**

*The Subject Property has approximately 840 feet of frontage on Howard Chapel Drive and meets the minimum frontage requirement of 300 feet.*

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

*The project is exempt from submitting a Forest Conservation Plan for the Special Exception applications. The NRI/FSD Plan, 42009208E, submitted with the exemption request was found to be in compliance with chapter 22A-5 (q)(1) of the Forest Conservation Law and was approved on September 1, 2009 because the Special Exception uses will use existing structures and will not result in clearing of existing forest or trees. (See attached approval of exemption letter).*

**(e) Water Quality Plan**

*Not applicable*

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

No sign is depicted on the special exception site plan. Staff recommends that there must be no sign identifying the property as any one of the two proposed uses.

**C. General Conditions (59-G-1.21)**

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

**(1) Is a permissible Special Exception in the zone.**

*The proposed uses are permitted by Special Exception in the RC Zone.*

**(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a Special Exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a Special Exception to be granted.**

*With Staff's recommended conditions of approval, the proposal satisfies the specific Special Exception standards and requirements of 59.G-2.30.00 and for granting of a Special Exception for a landscape contractor business.*



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

*The requested Special Exceptions are consistent with the policies and recommendations contained in the Damascus Master Plan.*

*The Property is located in the Damascus Master Plan area and is located within the area identified as Rural Transitional Area. Because of the high threshold for protection of lands draining to the Patuxent River drinking water reservoirs, the Master Plan encourages limited development with limited imperviousness for properties in the Rural Transition Area (pp. 24 - 25).*

*The Property is also amongst the 560 acres of land area identified as the "Patuxent Neighborhood Properties" for which the Master Plan recommends rezoning from RE-2C to RC. The Master Plan stated that the placement of these properties in the Agricultural Zone will increase their potential eligibility for conservation easements. Because of concern of failing wells and septic systems, the Master Plan also recommended for extension of public water. The Applicant has upgraded the septic system and the upgraded Septic Plan was approved on July 10, 2011 (see attached plan and letter). The Property is connected to public water system.*

*The Master Plan states, in agricultural zones, the evaluation of compatibility of agricultural related Special Exception uses with surrounding land uses, their impacts do not necessarily need to be controlled as stringently as the impacts of similar Special Exceptions in a residential zone. However, as a landscape contractor which is not recognized as an agriculturally related use, both Subject Applications are reviewed under the stricter standards.*

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

*The proposed use will be in harmony with the general character of the neighborhood and satisfies this requirement.*

*The landscape contractor and wholesale nursery uses were established on the Property in 2004 without a Special Exception approval. The Applicant has indicated that the Property was previously used as a farm. Although the Applicant proposes to legitimize his businesses and gradually expand the businesses over the next 10 years to the level*

*that is being requested by the subject two Special Exceptions, the two uses have been operating for the past 10 years at a level that is about a third (1/3) of what is being proposed in the Applications. However, Staff's analysis of the Applicant's traffic statement is that the operation of the two Special Exception uses would not generate a level of traffic that exceeds 30 peak hour trips and is therefore, the property is exempt from Local Area Transportation Review. Further, with the conditions recommended by Staff, there should be minimal increase of congestion on the streets. However, as the two uses grew and expand, the operations of both the landscape contractor and the wholesale nursery uses must strictly adhere to the proposed three shifts of employee working hours with no more than 24 employees on the property at on site at any one time. to ensure that there is no negative impact from increased traffic to and from the Property.*

*The access point is adequate to accommodate the site-generated traffic. The proposal provides for safe, sufficient and orderly internal traffic. Adequate off-street parking spaces are provided to satisfy the needs of the use. The parking areas for the trucks and trailers are adequately distanced and well screened from the adjoining properties and the adjacent road.*

*The Applicant's transportation statement indicates that deliveries to the Property only occur a few times throughout the year and will not likely to occur during peak periods. Staff recommends that all deliveries and pick-ups should occur between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday.*

*No new construction or expansion of existing structures is proposed as part of the Special Exception Applications.*

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

*For the reasons stated in the previous section, the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood. Moreover, the subject Application does not propose to increase or expand the existing improvements on the Property. Rather, the Applications propose to remove existing impervious surface areas to bring the property in compliance with the PMA requirement of 10 percent maximum requirement and provide improved esthetics appearance and landscaping. Twenty-nine of the 40 vehicles will be parked in the existing barn. Large equipment and heavy machineries are stored in the barn away from views of visitors to the property and drivers on the road. Machines are repaired in side of a building minimizing noise impacts. The two uses are substantially distanced from the nearest residential uses the closest residence being approximately 500 feet from the property.*

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

*The proposed use is not expected to cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site.*

*The operational activities of the landscape contractor business and the wholesale nursery are concentrated within the central portion of the Property. The Special Exception boundaries encompass approximately 40 percent (4.4 acres) of the 11-acre property. The Applicant proposes to use the two existing structures for the operation of both the landscape contractor business and wholesale nursery. The existing 9,577 square-foot barn is used for office, equipment storage, and parking for 29 vehicles.*

*The landscape contractor business operation consists of providing landscaping services to off-site locations designing and building retaining walls, waterfalls, walkways and patios, as well as providing tree planting and removal, lawn and garden care and maintenance services.*

*The wholesale nursery portion of the operation sells, on a wholesale basis, mulch, stone, and plants to landscape contractors in the area and the landscape contractor business which is also the companion Application. No retail sale of plant material, garden supplies, or equipment's will be conducted on the Property.*

*A designated space for the storage of mulch, stones and topsoil will be located within the special exception boundaries on the north side of the large barn building. No mulch will be manufactured and no composting of debris will be conducted on site.*

*There will be no light spillage to the adjacent properties. Outdoor lighting is limited to three motion sensor security lights mounted on three corners of the barn building to provide lighting for the parking areas at the rear and front portion of the Special Exception area.*

*The Applicant's transportation statement indicates that deliveries to the Property only occur a few times throughout the year and will not likely to occur during peak periods. Staff recommends that all deliveries and pick-ups should occur between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday.*

**Noise**

*The proposed landscape contractor and wholesale nursery uses have associated machinery and small equipment needs. The Applicant has provided a list of machinery and small equipment which includes trucks, bobcats, skid loaders, chainsaws, mowers, blowers, and other small equipment.*

*Most of the small equipment is intended to be used offsite at job locations; the main onsite use will be conducting occasional tests on the equipment before sending it to job*

sites. All onsite testing of small equipment will occur within the existing metal barn. The barn is constructed of metal siding and helps ensure compliance with the noise ordinance (Section 31B-5 of the Montgomery County Code).

In addition to the small equipment testing occurring inside the barn, there is only one residence within 500 feet of the Property. That residence is approximately 85 feet from the closest Property line and over 250 feet from the barn. Staff finds that the noise levels from onsite activities related to the landscape contractor and the wholesale nursery should not reach an objectionable level.

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

*There are no other approved Special Exceptions within the immediate vicinity of the Property. Although there are very low density residential uses within the neighborhood boundaries (as defined by Staff), the Property is located within an agricultural zone, not residential zone, with notable presence of agricultural uses in the area. The subject Special Exceptions propose to continue using existing agricultural buildings. The continuing operations of the uses would have no visual impact on the surrounding neighborhood. The subject Special Exceptions are consistent with the recommendation of the Master Plan and do not alter the nature of the area.*

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

*The proposed Special Exception will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area. Analysis of the Applicant's traffic statement and the review of the two Applications with the proposed gradual growth, over a 10-year period, of the landscape contractor and wholesale nursery operations are not likely to adversely impact the adjacent properties and the general neighborhood.*

*The Applicant's statement indicates that the above ground storage tanks fuel tanks meet the necessary license and safety requirements. According to Maryland Department of the Environment above ground tanks of less than 10,000 gallons do not require a permit. The Applicant further stated that the only removable part of the tanks is the locking cap over the fill port. According to the Applicant, the tanks have a 2-hour fire rating that exceeds The National Fire Protection Association for "fire resistant" tanks and meet the requirements of the Uniform Fire Code for "protected" above ground tanks. The tanks are listed in accordance with the Underwriters Laboratories, contain steel inner and*

*outer tanks, are resistant to bullet penetration, and will have guard posts around the tanks for safety to prevent vehicles from colliding into them..*

**(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.**

**A. If the Special Exception use requires approval of a Preliminary Plan of Subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a Preliminary Plan of Subdivision must be a condition of granting the Special Exception.**

*The subject Special Exceptions are not subject to approval of a Preliminary Plan of Subdivision because no building permits are required for this Application or requested by the Applicant.*

**B. If the Special Exception:**

**(i) does not require approval of a new Preliminary Plan of Subdivision; and**

**(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the Special Exception's impact; Then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the Special Exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.**

*Because there are no building permits required for the operation, the Special Exceptions do not require approval of a Preliminary Plan of Subdivision. The Applications do not propose construction of any new structures. Existing public facilities—public roads, storm drainage, fire and police protection are adequate to serve the proposed use.*

**(i) Water and Sewer Service**

*The Property is currently served by septic system which was upgraded to accommodate the two special exception uses with their anticipated growth in the coming few years. The upgraded septic system plan was approved in, 2011 (see attached plan).*

**(ii) Transportation**

*The Local Area Transportation Review (LATR)*

*The landscape contractor and wholesale nursery operations has three shifts of employees that will arrive to the Property. The traffic analysis is based on the first shift (6:30 a.m. to 3:30 p.m.) as it has the most amount of employees (24)*

arriving and departing from the Property. The second shift (9:00 a.m. to 5:00 p.m.) has four employees and the third shift (9:30 a.m. to 6:30 p.m.) has 12 employees. The Local Area Transportation Review (LATR) guidelines require a traffic study to be performed if the development generates 30 or more peak-hour trips. The Applicant's traffic statement assumed that all 24 employees for the first shift arrive during the peak-hour in separate vehicles and 20 employees would depart in teams of fours (five trips) during the same hour. The Property will generate a maximum of twenty-nine morning peak-hour trips (6:30 a.m. to 9:30 a.m.) and no evening peak-hour trips (4:00 p.m. to 7 p.m.) as the shift ends prior to the beginning of the evening peak-hour, which is below the 30-trip threshold. Therefore, no LATR is required.

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

#### Site Access and Vehicular/Pedestrian Circulation

Access to the Property is via an existing 30-foot wide driveway from Howard Chapel Drive, which meets the MCDOT width requirements for a commercial driveway. Howard Chapel Drive is classified as a two-lane Country Arterial with a recommended minimum right-of-way width of 70 feet. Currently, Howard Chapel Drive is in a prescriptive right-of-way and not dedicated to the public. Per the 2006 Damascus Master Plan, retain "the existing two-lane roadway network outside the Town Center to protect the rural and agricultural character of the Damascus area. The limitation on through travel lanes is not intended to preclude the implementation of spot safety and operational improvements..." (p. 56). Internal circulation shown in the Application allows vehicles to operate in the Property without points of conflict. There is space between the designated parking spaces and the travel area. The majority of the vehicles will be parked inside the garage. Sidewalks are not proposed for this section of road due to the rural area.

#### **(iii) Other facilities**

There is adequate electric and telephone service.. The Damascus Volunteer Fire Department is located at 26334 Ridge Road in Damascus, approximately 1 mile west of the Subject Property. The closest police station, Montgomery County Police Department District 5 is located at 20000 Aircraft Road in Germantown approximately 10 miles south of the site. Due to the nature of the Special Exception uses, it does not generate any school aged children and a school facilities review is not necessary. The Subject Special Exceptions will continue to be served by adequate facilities.

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

*As indicated in the analysis of the previous section, the subject Special Exception uses are not likely to reduce the safety of vehicular or pedestrian traffic.*

- (b) Nothing in this Article relieves an Applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.**

*No finding is required.*

- (c) The Applicant for a Special Exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.**

*The Applications satisfy all applicable general and specific standards. The Applicant has met the burden of proof under the specific requirements of Section 59-G-2.30.0: nursery, horticultural - wholesale, Section 59-G-2.30.00: landscape contractor, and the general conditions under Section 59-G-1.21.*

#### **D. Standards and Requirements (59-G-2)**

##### **A. Section 59-G-2.30.00: Landscape contractor—Special Exception S-2615**

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

*The Applicant has indicated that the subject landscape contractor business provides a “design and build” services including designing and building retaining walls, waterfalls, walkways and patios, as well as providing more traditional types of landscaping services such as tree planting and removal, lawn and garden care and maintenance. The contracting business also provides snow plowing services on seasonal basis.*

*All business arrangements for the landscape contractor business are conducted off-site. The Special Exception for the landscape contractor (S-2715) is proposed in combination with a wholesale nursery operation (S-2716). Both uses currently exist on the Property. The two uses are operated by the same owner, the Applicant who resides on the*

*Property in the dwelling located outside of the area subject to any Special Exception conditions..*

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

*The proposal complies with this requirement. The Subject Property comprises approximately 11 acres of land of which, 4.4 acres is designated as the Special Exception Area and to be used for the two Special Exception uses.*

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

*Areas for parking and loading of trucks and equipment as well as other on-site operations are located a minimum of 50 feet from any property line. Activities including the parking areas are contained in the central portion of the Property substantially distanced from the views of passing motorists and adjoining properties.*

*The Property is surrounded by large active agricultural properties and sparse residential development. Adequate buffering and screening is provided in the form landscaping and substantial setbacks to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations. The combined operation of the uses will not result a nuisance because of traffic, parking, nose or type of physical activity. It is substantially distanced from adjacent properties and nearby residential uses.*

- (3) The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.**

*Adequate parking is provided for the proposed landscape contractor and wholesale nursery business. At the maximum allowed expansion, the business will have 40 employees, including the Applicant that will be working in three shifts. The businesses also use a total of 23 trucks and 10 trailers. The Special Exceptions propose a total of 40 parking spaces of which 29 spaces will be provided within the large barn. The landscape contractor and wholesale business operations are not open for general public. There is no public parking provided for either one of the Special Exception uses. See more findings under B. Section 59-G-2.30.0 (6) below)*

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



The contracting business is operated in conjunction with a wholesale nursery. The Applicant stated that materials or nursery stock, garden supplies or equipment will not be sold on the property on a retail basis. Fertilizers, plant foods and pesticides will not be produced but may be sold on a wholesale basis. The Applicant has indicated that only small quantities of these items are kept on the property and they are stored in a room within the barn. No equipment, other than the ones needed for the operation of the contractor and wholesale nursery uses will be sold or stored on the property.

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

The recommended hours of operation for the landscaping contractor business are from 6:00 am to 7:00 p.m., Monday through Friday and 8:00 a.m. to 4:00 p.m. on Saturdays. The recommended hours of operation for the wholesale nursery are from 9:00 am to 4:00 p.m., Monday through Friday and 8:00 a.m. to 12:30 p.m. on Saturdays. Vehicle trips will be spread out over several hours. The Applicant’s statement of operation states that many of the laborers car pool to work and often will report directly to the job site. The Applicant has also noted that the hours of operation and the number of employees will fluctuate depending upon the season of the year. The greatest number of employees will be needed during the spring, summer and fall. During a snowstorm in the winter, the operations for snow plowing and removal would be up to 24 hours.

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

**Table-2**

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

These operating hours are not likely to be disruptive to the adjacent properties or the general neighborhood.

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

The Property is located within the Agricultural Reserve and classified in the R-C Zone. The proposal meets all specific and general Special Exception requirements and is in

*conformance with the recommendations of the Master Plan. The Applicant has operated the subject Special Exception use on the Property, albeit without proper permit, for the past 10 years without any incident. With the recommended conditions of approval, the continuation and the proposed gradual expansion of the uses will not have discernable adverse impact on the immediate agricultural neighborhood.*

**B. Section 59-G-2.30.0: Nursery, horticultural - wholesale.-Special Exception S-2516**

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

*The wholesale nursery operation (S-2716) is proposed in combination with the Special Exception for the landscape contractor (S-2715). Both uses currently exist on the Property. The two uses are operated by the same owner, the Applicant, who resides on the Property. The Special Exception Site Plan delineates the area where the stock is stored for the wholesale nursery operation and landscape contractor business. The combined operation of the uses will not result a nuisance because of traffic, parking, noise or type of physical activity.*

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

*See under (2) below.*

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

*The wholesale nursery business is operated in conjunction with a landscape contracting business. The Applicant stated that materials or nursery stock, garden supplies or equipment will not be sold on the Property on a retail basis. Fertilizers, plant foods and pesticides will not be produced but may be sold on a wholesale basis. The mulch and landscaping stone associated with the wholesale nursery would already be on the site in connection with the landscape contractor use.*

**(3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 50-G-2.30 (1):**

- (i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.**
- (ii) The retail sale of plant materials or garden supplies or equipment.**

No equipment, other than the ones needed for the operation of the contractor and wholesale nursery uses will be sold or stored on the Property.

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

The proposal complies with this requirement. The Subject Property comprises approximately 11 acres of land and the Special Exception Area is 4.4 acres.

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

Areas for parking and loading of trucks and equipment as well as other on-site operations are located a minimum of 50 feet from any property line. Activities including the parking areas are contained in the central portion of the Property substantially distanced from the views of passing motorists and adjoining properties.

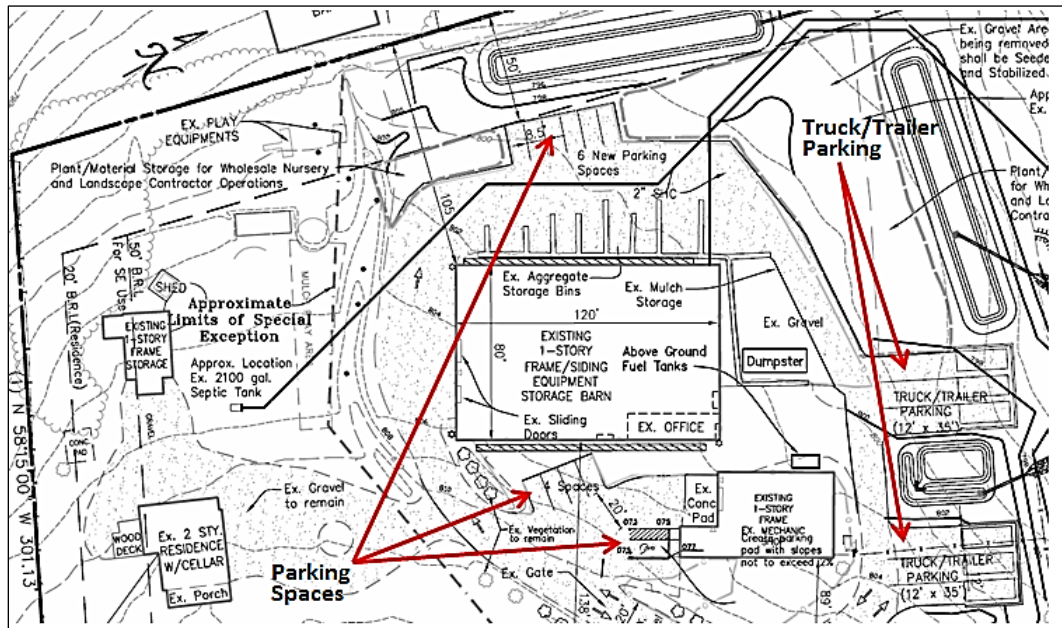
**(6) Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E. (Figures 8 and 9)**

Pursuant to section 59-E-3.7 the parking requirement for industrial, manufacturing establishment or warehouse is, one and one-half parking spaces for each 1,000 square feet of total floor area and sufficient area to provide for loading and unloading of trucks:

Eighteen (18) spaces are required for the subject wholesale nursery operation

$$\begin{aligned} &\text{existing barn: } 9,577\text{sf} + \text{existing frame structure: } 2,274\text{ sf} = 11,851\text{ sf} = 12000\text{ sf} \\ &12000\text{ sf} \div 1000\text{ sf} \times 1.5\text{ sp} = 18\text{ sp} \end{aligned}$$

**FIGURE 8: Surface parking spaces**



**FIGURE 9: Parking and storage in the Barn**



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

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

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

*The Property is surrounded by large active agricultural properties. Adequate buffering and screening is provided in the form of landscaping and substantial setbacks to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations. With the recommended conditions, the combined operation of the uses is not likely to have potential adverse impact on adjoining residential or agricultural uses.*

- (8) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not**

**necessarily need to be controlled as stringently as the impact of a special exception in the residential zone.**

*The Property is located within the Agricultural Reserve and classified in the RC Zone. The proposal meets all specific and general Special Exception requirements and is in conformance with the recommendations of the Master Plan. The Applicant has operated the subject Special Exception use on the Property, albeit without proper permit, for the past 10 years without any incident. With the recommended conditions of approval, the continuation and the proposed gradual expansion proposed uses will not have discernable adverse impact on the immediate agricultural neighborhood.*

## **VI COMMUNITY OUTREACH**

At the time of this writing, no communication has been received from the community either in support or in opposition of the proposed Special Exception since 2008 or since a notice has been sent on the continuation of the review of the Subject Applications. However the record contains five form letters in opposition to the Special Exceptions expressing concerns regarding traffic, noise and dust. The letters are signed by separate individuals but do not have legible address.

In a statement (e-mailed) submitted on June 3, 2014 as part of a pre hearing submission, the Applicant indicated that he attempted to contact the people to address their issues, however, was not able to find them because the address submitted with the letters proven to be “invalid and of significant distance from the property” The Applicant has also indicated that he has met with immediate neighbors who are supportive of the business operations and goals over the next 10 years.

## **VII CONCLUSION**

The proposed Special Exceptions satisfy all applicable requirements for approval of a Special Exception as specified in the Montgomery County Zoning Ordinance. Moreover, the proposed development is consistent with the recommendations of the 2006 Damascus Master Plan. There is no unacceptable traffic, circulation, noise or environmental impacts associated with the Application provided that the recommended conditions are satisfied.

Based on the foregoing analysis, Staff recommends Approval of Special Exception S-2715 and Special exception 2716, subject to the conditions found in Page 3 of this report.

## **VIII. ATTACHMENTS**

- A. Plans and drawings
- B. Supplemental information

# PLANS AND DRAWINGS

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**Attachment-A**

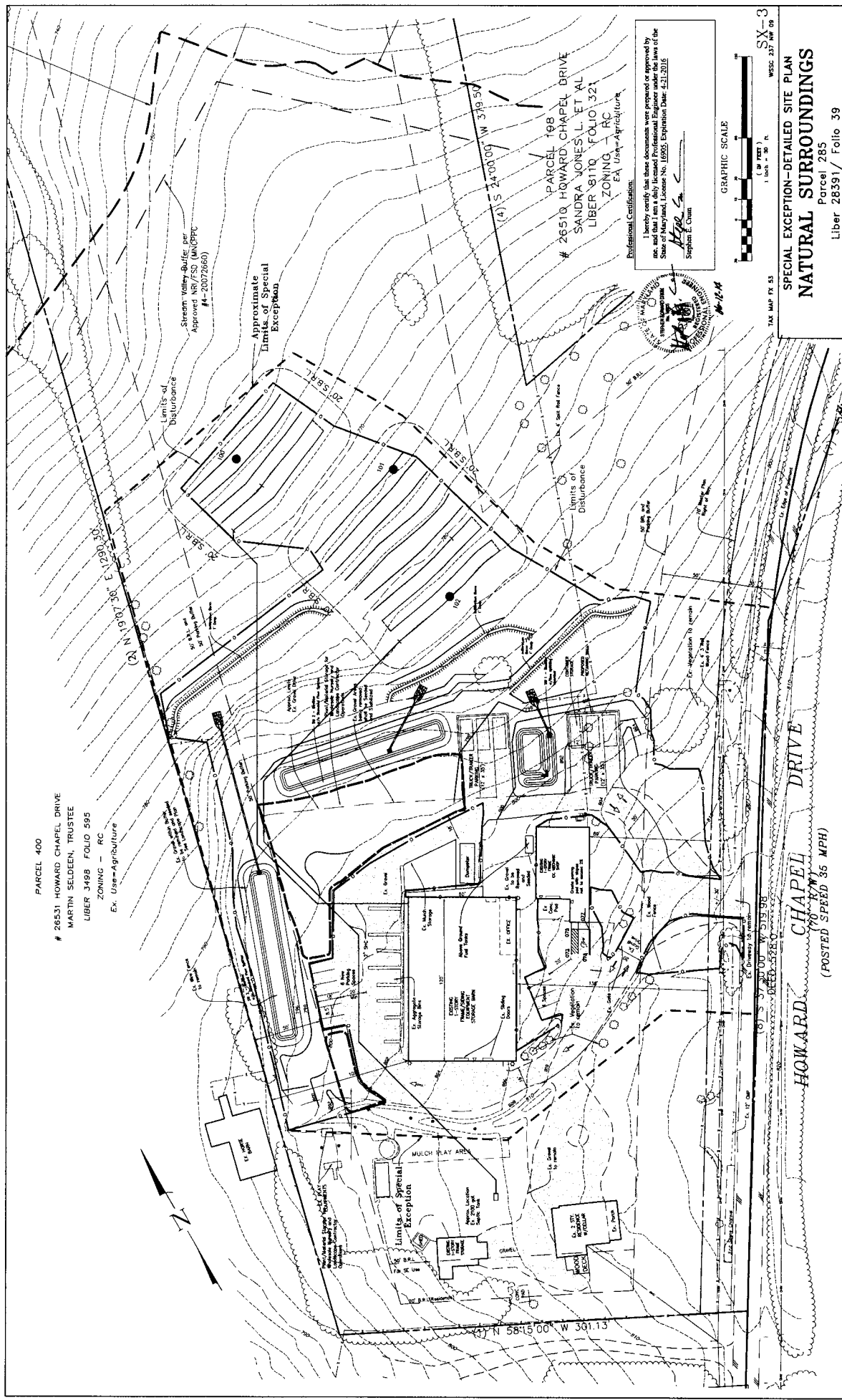










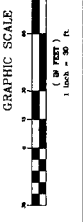


PARCEL 400  
 # 26531 HOWARD CHAPEL DRIVE  
 MARTIN SELDEN, TRUSTEE  
 LIBER 3498 FOLIO 595  
 ZONING - RC  
 Ex. Use-Agriculture

PARCEL 198  
 # 26510 HOWARD CHAPEL DRIVE  
 SANDRA JONES, L. ET AL  
 LIBER 8110 FOLIO 321  
 ZONING - RC  
 Ex. Use-Agriculture

PARCEL  
 # 26421 HOWARD CHAPEL DRIVE  
 NATHAN A. & GARY NORTH  
 LIBER 10577 FOLIO 542  
 ZONING - RC

Professional Certification  
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer under the laws of the State of Maryland, License No. 18665, Expiration Date: 12/31/2010.  
 Stephen E. Chum



SPECIAL EXCEPTION-DETAILED SITE PLAN  
 NATURAL SURROUNDINGS  
 Parcel 285  
 Liber 28591 / Folio 39  
 17th ELECTRA DRIVE  
 MONTGOMERY COUNTY - MARYLAND

Proj. No.	2008-0077
Design	07-241
Date	06-08-08
Scale	1"=20'
Sheet	2 of 2

NO.	DATE	DESCRIPTION
3	06-11-14	Revised to MDCPC and BOA
2	5-17-11	Revised to MDCPC and BOA
1	12-29-10	Revised to MDCPC and BOA

MIHG  
 Macris, Hendricks & Glascock, P.A.  
 Landscape Architects & Surveyors  
 4220 Highway Road, Suite 100  
 20886-0077

Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. The excavator must notify all public utility companies with underground facilities in the area prior to commencing any excavation. The excavator must comply with the requirements of Chapter 88A of the Montgomery County Code.

TAX MAP Pk 55  
 SX-3  
 WESC 237 MW 09





Wedge Trench (except Barked Trees Only) With 4" String Of Waterproofed Wire Mesh To Second Tier Of Branches. To Second Tier Of Branches.

1/2" Rubber Hose Over Wire

2 Double Strands Of 14 Gauge Galvanized wire Tied For Support

2" x 2" Upright Slat - Place Within Natural Form (Do Not Break) - Extend To Firm Bearing

Remove Covering From Top 1/3 Of Root System

First Lateral Root Flush With Finished Grade

Extend To Firm Bearing

3" Shredded Mulch

3" Earth Slicer

Finished Grade

Undisturbed Soil

Planting Soil Backfill

**Planting Detail**  
Deciduous Tree  
1 1/2" - 2 1/2" Cal.

Not To Scale



1/2" Rubber Hose

2 Double Strands Of 14 Gauge Galvanized Wire Tied For Support

2" x 2" Upright Slat - Place Within Natural Form (Do Not Break) - Extend To Firm Bearing

Remove Covering From Top 1/3 Of Root System

First Lateral Root Flush With Finished Grade

Extend To Firm Bearing

3" Shredded Mulch

3" Soil Well

Undisturbed Soil

Planting Soil

**Planting Detail**  
Evergreen Tree  
(10' Height And Smaller)

Not To Scale

**PLANTING NOTES**

Description:  
Noting all items of material, and including plant, necessary to complete the work, as specified shall be provided.

This Landscape Plan is to be used for planting purposes only.

1. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

2. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

3. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

4. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

5. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

6. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

7. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

8. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

9. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

10. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

11. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

12. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

13. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

14. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

15. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

16. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

17. All plants shall be of appropriate height, variety, and color to meet the design intent. The contractor shall be responsible for selecting the appropriate plant material.

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**Planting Detail**  
Shrubs

Using Shovel Or Rebar, Excavate To Depth Of 12 inches.

18" Min. For Shrubs Under 2' Height

18" Min. For Shrubs 2' - 4' Height

20" Min. For Shrubs Over 4' In Height

1/2" Rubber Hose

2 Double Strands Of 14 Gauge Galvanized Wire Tied For Support

2" x 2" Upright Slat - Place Within Natural Form (Do Not Break) - Extend To Firm Bearing

Remove Covering From Top 1/3 Of Root System

First Lateral Root Flush With Finished Grade

Extend To Firm Bearing

3" Shredded Mulch

3" Soil Well

Undisturbed Soil

Planting Soil

**Planting Detail**  
Shrubs

Not To Scale

**Planting Detail**  
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KEY	CITY	BOTANICAL NAME	COMMON NAME	SIZE & REMARKS	SPACING
<b>DECIDUOUS TREES</b>					
AK	6	Acer-nervum	October Glory Red Maple	2 1/2"-3" Cal. - B-B	
PO	2	Shanishia tridacantha	Thornless Honey Locust	2 1/2"-3" Cal. - B-B - Thornless (See Plan)	
<b>ORNAAMENTAL FLOWERING TREES</b>					
LI	4	Lagerstromia indica	Crape Myrtle	Ø-12" H. - B-B	(See Plan)
<b>SHRUBS</b>					
AG	52	Abelia grandiflora	Abelia	15"-24" H. - Ø 6" Cont.	ØØ' ØØ'
BT	1	Berberis thunbergii	Japanese Barberry	15"-24" H. - B-B	ØØ' ØØ'
<b>EVERGREEN TREES</b>					
PS	45	Pinus Spp.	White Pine	Ø-10" H.	

Call "Miss Utility" at 1-800-257-7777, 48 hours in advance of any excavation work. The excavator must notify all public utility companies with underground facilities in the area of proposed excavation and have those facilities located by the utility before any excavation begins. Excavation shall be in accordance with all applicable codes and regulations of the Montgomery County Department of Public Works and Engineering, and shall comply with requirements of Chapter 36A of the Montgomery County Code.

TM MAP FX 53

SX-5  
MSSC 237.1A 08

**SPECIAL EXCEPTION-DETAILED LANDSCAPE PLAN**  
**NATURAL SURROUNDINGS**

Parcel 285  
Liber 28391/ Folio 39  
MONTGOMERY COUNTY, MARYLAND

**MHG**  
Macris, Hendricks & Glascock, P.A.  
Landscape Architects • Surveyors  
5220 Virginia Road, Suite 100  
Montgomery Village, Maryland  
20894-0118  
Phone: 301/344-0000  
Fax: 301/344-0003  
www.mhgpa.com

Proj. No. 08-09-08  
Scale AS SHOWN  
Sheet No. 5 of 5  
Date 07-24-11

NO.	DATE	DESCRIPTION	BY
1	12-20-10	Result of MWDSPC and BIA	
2	08-11-14	Result of MWDSPC and BIA	



## SUPPORTING DOCUMENTS

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**Attachment-B**





**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

June 18, 2009

Ms. Lauren Wirth  
Macris, Hendricks, & Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886

Re: NRI/FSD Number: 42009208E  
Name of Plan: Natural Surroundings, Parcel 285

Dear Lauren:

On May 21, 2009, the Planning Department received a request for an exemption from submitting a forest conservation plan. The approved Natural Resource Inventory/Forest Stand Delineation Plan (NRI/FSD) and Special Exception – Overall Site Plan submitted in support of the exemption were reviewed by the Environmental Planning Division to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law). The request to be exempt from submitting a forest conservation plan cannot be confirmed.

The request to be exempt from submitting a forest conservation plan was under Section 22A-5(q) (1) of the county code. Activities that qualify for this exemption are special exception applications if the application is for an existing structure and the proposed use will not result in clearing of existing forest or trees. The submitted plans appear to meet the above criteria; however, the following information is required before this request can be confirmed:

1. The plan must be labeled Forest Conservation Exemption Plan.
2. The proposed limits of disturbance must be shown on the plan and in the legend.
3. The individual significant and specimen trees identified on the NRI/FSD and their critical root zones must be shown in relation to the limits of disturbance in order to determine if any tree protection measures are required. If greater than 30% of the critical root zone of any of these trees will be disturbed, appropriate tree protection measures must be shown on the plan.
4. Include our standard notes on the plan and any necessary details (tree protection details). The notes are available on our website.
5. Each sheet of the plan must have an original signature and date of signature of a qualified professional.
6. The notations on the Site Plan refer to the PMA as the “Potomac Management Area”. Revise this to the “Patuxent River Primary Management Area”.

If you have any questions regarding these actions, please feel free to contact me at (301) 495-4701.

Sincerely,

Mary Jo Kishter  
Senior Planner

Cc: NRI/FSD # 42009208E  
Jay Roche

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DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R Schwartz Jones  
Director

SEWAGE DISPOSAL SYSTEM PERMIT

Issue Date: 12/27/2012

Permit No: 578511  
Expires: 12/28/2013  
ID: AC1016325

This is to certify that:

DONALD D ET AL WILKES  
26500 HOWARD CHAPEL DR  
DAMASCUS, MD 20872

has permission to construct a sewage disposal (septic) system to serve a residential dwelling with 4 bedrooms. The conditions specified below are part of this permit. Any changes in the terms of the permit or in the use of the building shall be by written approval of the Approving Authority only.

Septic tank: 2,100 gallons. All tanks over 1000 gallons must have 2 compartments (leakage evaluation required if mid-seam tank). Maximum cover on septic tank with 6-inch standpipe is 18 inches. Maximum cover on septic tank with riser to grade is 36 inches.

Percolation test: one inch in 16.00 minutes at 3.50 feet and 12.00 feet

Disposal trenches: 323.00 linear feet / 2.00 feet wide / 2.50 feet of stone / trench depth below natural grade: 6.00 feet

First trench ...see site plan..... feet from 0.00 property line and 0 feet from 0.00 property line for a length of 0 feet. Second trench 0 feet from first trench for a length of 0 feet. Third trench 0 from second trench for a length of 0 feet. Fourth trench 0 feet from third trench for a length of 0 feet. All trenches shall be installed on contour. Trenches to be at least 100 feet from any well. See approved site plan.

\* Landscape Septic: 100-600 mm

Special Conditions: 16' trench, stone 4.5' to 7.0'

This permit to construct a septic system to serve a commercial landscape business with no more than 40 employees; and an existing 4-bedroom dwelling. Use of this system subject to the terms and limitations of a septic covenant recorded with the Land Records of Mont. County on November 10, 2011.

Trenches to be constructed on contour. Place a clean-out every 75 feet in 4-in pvc sch. 40 pipe.

Starting point of initial absorption system to be surveyed by a registered land surveyor. This property is in category S-6 where there is no planned community service and an individual system may be installed on an indefinite basis without firm obligation to connect to community system when and if it becomes available. Trenches to be connected in series. Septic tank access port to be installed as per well and septic standards and specifications.

No building shall be occupied and no excavation shall be covered until the Owner has obtained written approval from the Approving Authority or a duly authorized representative. The Department of Permitting Services must be notified 48 hours before excavations are backfilled.

Premise address: 26500 HOWARD CHAPEL DR  
DAMASCUS, MD 20872-1241





26500 Howard Chapel Drive  
Damascus, MD 20872

Phone: 301.461.3077  
Fax: 301.482.0257

## STATEMENT OF OPERATIONS

### I. SUMMARY OF OPERATIONS

This Statement of Operations is being submitted to reflect our current plan as of May 30, 2014:

1. The total number of employees proposed once the use has been fully implemented has been revised from 49 to 40 (as further detailed herein), based upon the capacity of the proposed septic system and surrounding impact. In addition, more employees would need to add a level of mid management that is not a goal for this small business
2. The 1 tractor trailer previously listed under the wholesale nursery operation was deleted;
3. The area of the special exception was increased from 4.31 acres to 4.4 acres, as shown on the revised site plans;
4. The revised site plans show the proposed septic fields;
5. The applicant's request for exemption from submitting a forest conservation plan has been approved;
6. A trailer previously located on the property was removed; and
7. The number of parking spaces shown on the plans was decreased from 41 to 38, with 36 standard spaces and 2 accessible spaces.

### II. INTRODUCTION

Donald D. Wilkes and Nicole J. Roche own the property known as 26500 Howard Chapel Drive, Damascus, Maryland 20872-1241, located in the RC Zone (the "Property"), as shown on the updated certified copy of the Zoning Vicinity Map. (**Exhibit 15**). The Property contains approximately 11 acres and is currently improved with one single family dwelling and several out-buildings, including a barn. The property was previously used as a farm, and is currently being used by the Applicant to operate his landscaping business known as Natural Surroundings, Inc. The Applicant has been issued a notice of violation and a citation by Montgomery County, Maryland for operating the business without a special exception (**Exhibit 13**), and the Applicant desires to obtain a special exception to bring the use into compliance with the Zoning Ordinance.

The Applicant proposes two separate agricultural Special Exception uses on the Property. First, the Applicant proposes use the Property for a landscape contracting business (§59-G-2.30.00). Second, the Applicant also proposes to use the Property for a related wholesale nursery (Nursery, horticultural – wholesale; §59-G-2.30.0).

The Applicant George J. Roche is the president of the landscape contractor business known as Natural Surroundings, Inc. The company engages in "design and build" landscaping, performing such services as designing and building retaining walls, waterfalls, walkways and patios, as well as providing more traditional types of landscaping services including tree planting and removal, lawn and garden care and maintenance. The company also performs snow plowing and removal services on a seasonal basis. The Applicant also proposes to use the property as a wholesale nursery, to sell at wholesale to other landscape contractors the mulch and stone that is used in connection with the Applicant's landscape contractor business.

### III. PROPERTY DESCRIPTION AND SITE IMPROVEMENTS

The Property consists of approximately 11 acres with frontage along the north west side of Howard Chapel Drive in between Route 108 and Gue Road. As noted above, the Property is classified in the RC Zone (Rural Cluster), and is currently improved with a single family building, several outbuildings (including a barn), an internal gravel road and a driveway. The topography ranges from a low of approximately 710 feet in the north west corner of the Property to a high



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of approximately 815 feet in the south east corner of the property. The overall gradient of the property is estimated at 8%, draining to the north and west from the south east corner. The Applicant submitted an approved Natural Resource Inventory/Forest Stand Delineation with its original application (**Exhibit 8**), and received an exemption from the requirements of Section 22A (Forest Conservation). A copy of the letter approving the exemption from submitting a forest conservation plan was submitted with undersigned counsel's letter of December 23, 2010.

### Neighbors

Mr. Roche has met with the immediate neighbors who are supportive of the business operations and goals over the next 10 years. The general neighborhood is composed of a mix of agricultural lands, wooded areas and residences. Mr. Roche has tried to contact the people of opposition to no success. The addresses submitted with the letters of opposition have proven to be invalid and of significant distance from the property.

The property has access to Public (WSSC) water, and a traditional septic system. The business activities of the landscape contractor business and the wholesale nursery will be concentrated around the middle portion of the property, north of the single family building, where the barn and outbuildings are currently located. The special exception area encompasses 4.4 acres of the total 11.00 acres of the property. The existing barn will be used to store equipment, vehicles and materials, and also for employee parking. The Applicant intends to use the existing outbuildings and barn to operate the landscaping contractor business and wholesale nursery operation. The office for the business will be located in the existing barn. **No new construction of any buildings or structures is proposed.**

There will be no public parking provided, as both operations will not be open to the general public. The 38 (40) spaces provided are for use by the employees of the landscape contractor business, for the parking of vehicles associated with that business, and for the wholesale nursery operation. 32 of those spaces are proposed to be located in the existing barn.

## IV. EQUIPMENT AND VEHICLES

### A. Landscape Contractor Operation

In connection with the landscape contractor business, the Applicant currently has 3 trucks. The Applicant intends to expand the business, so that once the use is fully implemented, there will be on site, from time to time, up to the following quantities of equipment and vehicles:

- 2 Large Loader
- 4 Skid Steers
- 21 trucks (revised with prior 25)
- 2 mini-excavators
- 8 trailers (3 dump, 5 straight)
- 1 tractor

There will also be smaller items of equipment such as lawn mowers, weed cutters, snow blowers, lawn aerators, chainsaws, a sod cutter, compressors, spreaders and small tools. Several freight containers will also be on site for storage of equipment. Most of the equipment and vehicles will be stored in the barn, out of site from the road and neighboring properties.



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## B. Wholesale Nursery Operation

In connection with the wholesale nursery business, Applicant intends to have on site, from time to time, once the use is fully implemented, up to the following quantities of equipment and vehicles:

- 1 Fork lift
  - 1 skid steer
  - 2 trucks (1 large, 1 one ton and under)
  - 2 trailers (1 dump, 1 straight)
- Note: 1 tractor trailer requested has been removed.

## V. EMPLOYEES

### A. Landscape Contractor Operation

Currently, the business has 12 employees, consisting of the Applicant and 11 other laborers/truck drivers. The Applicant intends to expand his business, so that when the use is fully implemented, there will be up to 38 (reduced from 41) employees for the landscape contractor business, broken down as follows:

- 4 office (revised with prior 5)
- 2 mechanical
- 2 yard
- 30 laborers/truck drivers (revised with prior 32)

The number of employees will vary, depending upon the season. The greatest number of employees will be needed during the spring, summer and fall. Many of the laborers car pool to work, and often will report directly to the job site.

### B. Wholesale Nursery Operation

Once this use is fully implemented, there will be up to 2 (reduced from 8) employees for the wholesale nursery operation, broken down as follows:

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

### Expected Growth

Over the next years, growth is expected approximately 3-5 workers per year until a comfortable level of growth is achieved. It should take somewhere between 6-10 years to fulfill the Special Exception. The growth requested for Special Exception is at a level that would not require a level of mid-management and significant increase in employees, overhead, etc.



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## VI. DESCRIPTION OF USES AND HOURS OF OPERATIONS

### A. Landscape Contractor

The Applicant proposes to use the property to maintain a base of operations for the landscape contractor business known as Natural Surroundings, Inc. The lease for the property is **Exhibit 6** to the original application. The business activities of the landscape contractor business and the wholesale nursery will be concentrated around the middle portion of the property, north of the single family building, where the barn and outbuildings are currently located. The existing barn will be used to store vehicles and materials, and will also contain the office for the landscaping contractor and wholesale nursery business. The area within the Equipment Storage Building (i.e., the barn) will be used to park employee vehicles once the Company vehicles are off site.

Hours of operations will be as follows:

Monday-Friday: 6:00 a.m. to 7:00 p.m.  
Saturday: 8:00 a.m. to 4:00 p.m.

The trips associated with this use will occur primarily before and after the peak periods. The Applicant's business will have 2 shifts, which are broken down as follows:

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

Employees on shift 1 will arrive at the property between 6:00 a.m. and 6:15 a.m. As noted above, many of these employees will report directly to the job site instead of the property, depending upon the particular job. The 20 laborers/truck drivers on that shift will depart by 6:30 a.m., and return to the property at 3:30 p.m. The employees on shift 2 and 3 will arrive at 9:00 a.m. The 10 laborers/truck drivers on shift 3 will depart the property by 9:30 a.m., and return to the property after 6:30 p.m. As a result, trips would be spread out over several hours. The entire operation will bring a negligible number of peak hour trips to the Property. The trips that do occur will not have any significant impact on the normal agricultural activities that occur in the immediate vicinity.