

12120 PRICES DISTILLERY ROAD



Description

Chapingo LLC., (Chapingo Tree Care Specialists) seeks a Conditional Use approval to operate a Landscape Contractor pursuant to Montgomery County Zoning Ordinance Sections 59-7.3.1.E (General Conditions) and 59.3.5.5 (Specific Conditions) and Forest Conservation Plan Amendment

No. CU202207 & SC2009002A
Completed: 5-20-2022

MCPB
Item No. 1
6-02-2022

2425 Reddie Drive
Floor 14
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12120 Prices Distillery Road CU202207 & SC2009002A

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LOCATION

12120 Prices Distillery Road, Damascus 20872

MASTER PLAN

1985 Damascus Master Plan

1996 Rustic Roads Functional Master Plan

ZONE

Agricultural Reserve (AR)

PROPERTY SIZE

32.69 Acres

APPLICATION

Conditional Use & Final Forest Conservation Plan Amendment

SUBMISSION DATE

12-15-2021

REVIEW BASIS

Chapter 59 and Chapter 22A



Summary:

- The submittal of the Application is in response to a violation for operating a Landscape Contractor business in the AR zone without a Conditional Use.
- The Conditional Use application seeks to validate the existing use of the Property as a Landscape Contractor.
- Staff recommends Denial of the Conditional Use application and approval of the Forest Conservation Plan Amendment.
- The conditional use does not conform to the use standards in Sec. 59.7.3.1 (Conditional Use) of the Montgomery County Zoning Ordinance.
- The proposed use is inconsistent with the 1996 Rustic Roads Functional Master Plan.
- The Project complies with Guidelines for Environmental Management of Development in Montgomery County and Chapter 22A, as conditioned.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE

Staff recommends denial of Conditional Use No. 202207 to operate a Landscape Contractor business.

The denial is based on:

The general Conditional Use Findings Required Under Section 59.7.3.1.E.1.c requires that a proposed use substantially conforms with the recommendations of the applicable master plan. The Application is not in substantial conformance with the 1996 Rustic Roads Functional Master Plan.

The general Conditional Use Findings Required Under Section 59.7.3.1.E.1.f requires that a proposed use “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.”

The general Conditional Use Findings Required Under Section 59.7.3.1.E.1.g requires that a proposed use 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. Not being able to provide onsite sanitary facilities is a non-inherent adverse effect unique to this Property.

FOREST CONSERVATION PLAN

The previous approval SC2009002 had conditions 1 through 6 in the approval, and those conditions were previously satisfied. The conditions below are new conditions pertaining to the changes that are a result of this application.

Staff recommends Conditional Approval of the Final Forest Conservation Plan Amendment #SC2009002A with conditions.

7. The Applicant must secure an Approved Conditional Use Plan No. CU202207 for this Forest Conservation Plan to be in effect.
8. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
9. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

10. Within 90 days of the approval of the Conditional Use, 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.
11. Within 120 days of the approval of the Conditional Use, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 2.15 acres of new forest planting and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
12. Within 180 days of the approval of the Conditional Use, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
13. Within 120 days of the approval of the Conditional Use, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
14. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
15. The Applicant is limited to no more than 21 employees on site during peak AM and PM hours.

SECTION 2: PROJECT DESCRIPTION

BACKGROUND AND INTRODUCTION

The Application was accepted for filing on December 15, 2021, pursuant to Section 59.7.3.1 of the Zoning Ordinance. The Applicant, Chapingo, LLC, has requested approval of a conditional use to allow the operation of a landscape contractor business in the AR zone (Project). The subject property is located at 12120 Prices Distillery Road, Damascus, Maryland (Subject Property or Property).

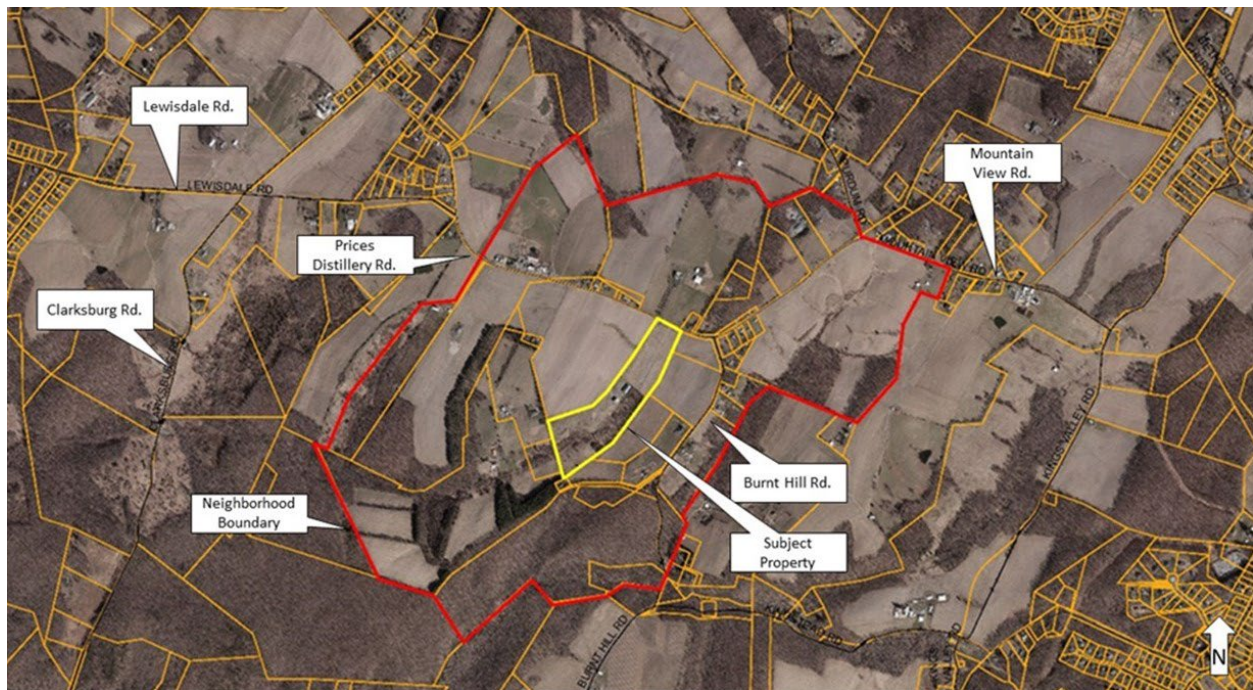


Figure 1: Aerial View of Subject Property and Surrounding Area

SITE DESCRIPTION

The Property consists of 32.69 acres and is a single unplatted parcel (parcel 595, Tax ID# 02-1-03674207). The land is improved with two barn structures; the first of which is a larger 7,200 sq. ft. newer structure, open on two sides with a roof and asphalt millings floor. The second and smaller structure (2,640 sq. ft.) is much older and is not part of the conditional use application; instead, it will remain part of the farming uses for the Property. There is no residence on the Property.

Access is from Prices Distillery Road via an approximate 1,200-foot-long gravel driveway which leads to a gravel parking area between the two agricultural structures. The gravel drive was expanded at some point after August of 2019.

The Property slopes significantly from the front to the rear, with a grade change of approximately 30 feet between the road and the existing structures. The Property is mostly open farm fields with approximately 7 acres of forest onsite, which is currently protected with a Category I Conservation easement. There is an existing stream and wetlands within the forested area. There are no known rare, threatened, or endangered species known to exist on this Property.



Figure 2: Aerial View of Subject Property

NEIGHBORHOOD DESCRIPTION

For the purpose of determining the compatibility of the Project, it is necessary to delineate and characterize the surrounding neighborhood. The Applicant has offered a proposed definition of the neighborhood to include the area most likely to be affected by the Project, which comprises of property generally located within 5,000 feet of the Property (Figure 3). Staff concurs and accepts this proposed definition of the neighborhood.

The surrounding area is predominantly unimproved farmland, parkland (Little Bennett Regional Park) and wooded parcels with some single-family residential dwellings, all in the AR zone. There are several residential dwellings across the street and to the west on Prices Distillery Road, as well as to the east near the intersection of Prices Distillery and Burnt Hill Roads.

The closest residence is estimated to be over 800 feet to the southeast. The parking lot for the Little Bennett Park is approximately 2,400 feet from the Subject Property's driveway entrance on Prices Distillery Road and about 1,200 feet from the Property's two existing agricultural buildings and proposed conditional use area.

There are no prior conditional use applications associated with the Property. There is one known conditional use applications within the defined neighborhood:

- S-2310 was approved on February 6, 1998, to permit a Landscape Contractor/Wholesale Nursery (Wheaton Tree Service) at 11701 Prices Distillery Road, Damascus.

Little Bennett Regional Park and the Purdum Trail is located approximately 1,500 feet south of the Property.

There is a Locational Atlas historic site (10/036-001A, John M. King Barn) located on site. The resource consists of a bank barn of a fieldstone foundation. The historic setting for the site is 135 acres which includes the Subject Property and several other parcels. There are no proposed improvements with this application and therefore no review from Historic Preservation. There are no additional known designated historic sites on or near the Property.

Prices Distillery Road, which runs along the northern boundary of the Property, is a Rustic Road, as designated in the 1996 *Rustic Roads Functional Master Plan*.

There are no known pending or proposed development applications within the defined neighborhood vicinity.

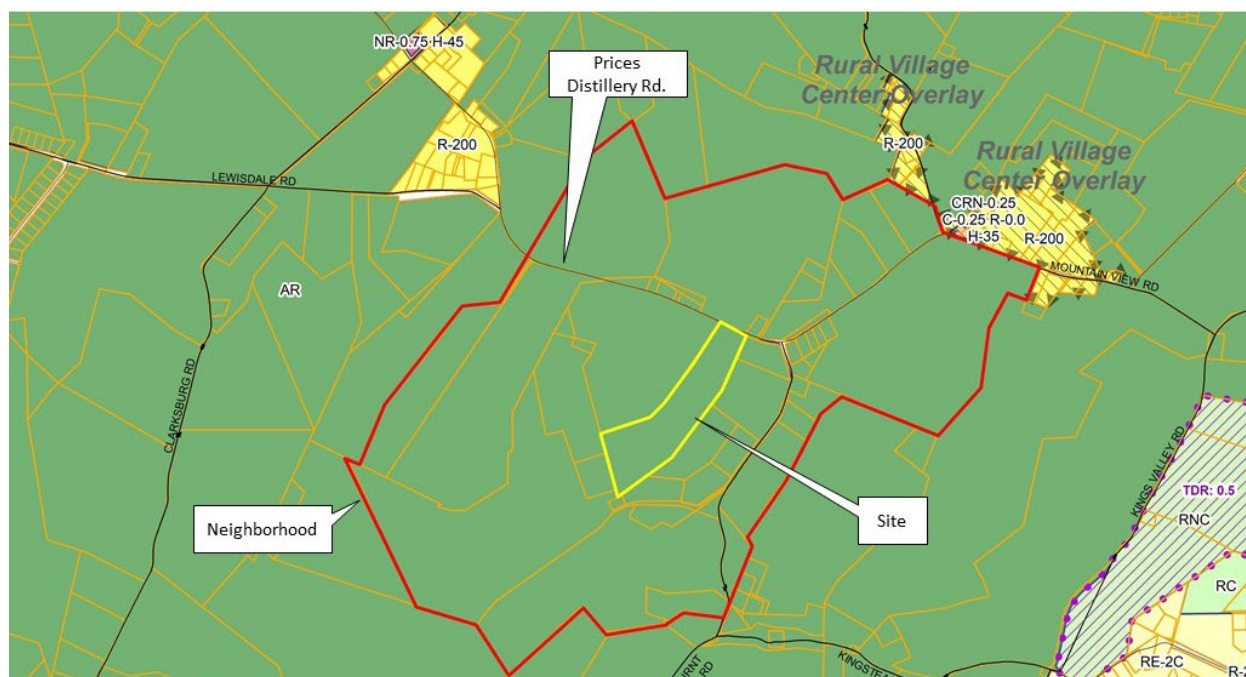


Figure 3: Zoning Map of Subject Property With Defined Neighborhood (red line)

ZONING AND LAND USE HISTORY

The Property is zoned AR, is improved with two agricultural structures, and is used for agriculture and the existing Landscape Contractor business. The *Damascus Master Plan* (Master Plan) was adopted in 1985 and is applicable to this Property. The Property lies within the Bennett and Little Bennett Planning Area (P.A. 10). There are no specific recommendations in the Master Plan for the Property.

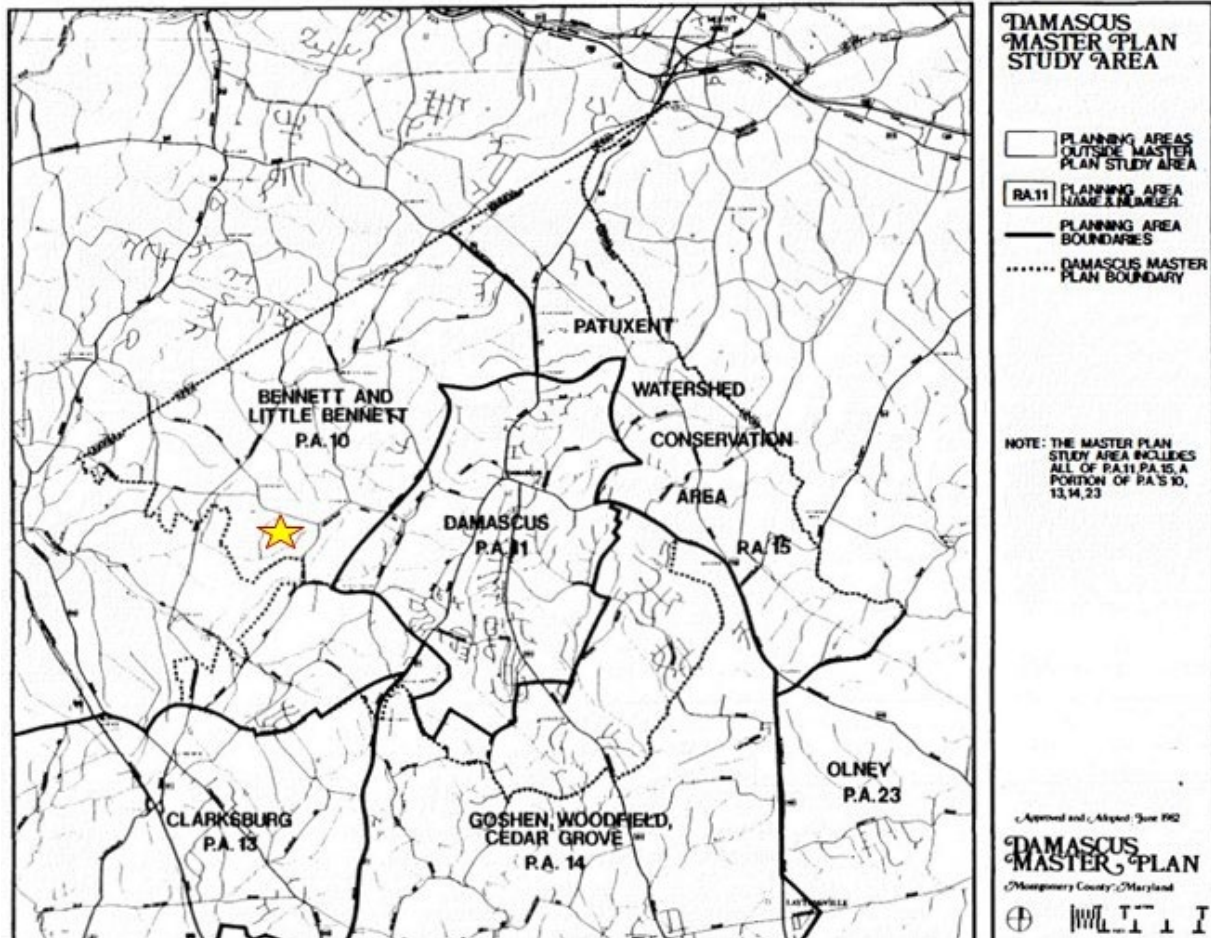


Figure 4: Map of Damascus Master Plan Area Boundary With The Subject Property

PROPOSED USE

Conditional Use Area

The Conditional Use area proposed for this Application is 3.84 acres of the overall 32.7 acre property. This includes the driveway and the large barn structure and the gravel area around the two barns.



Figure 5: Subject Property with Conditional Use Area Outlined in Red

Buildings

The Applicant seeks conditional use approval to validate the current use of the Property. There are two buildings on site that pre-dated Chapingo Investments purchase of the Property. The buildings are located in the center of the 32 - acre Property and allow for additional screening and setbacks from offsite properties to store equipment and vehicles. No new buildings are proposed. The Applicant is only requesting to use the newer, larger structure as part of the Conditional Use. The smaller building is not within the Conditional Use area and will continue to be utilized for farm operations that are not related to the landscape contractor use. Additionally, DPS has confirmed that the buildings are eligible for filing of an Alteration Permit for DPS review in order to use either or both structures.

The large barn building (7,200 sq. ft.) has a roof but is open on the sides and has asphalt milling flooring with a height of 30 feet, well below the maximum height limit for the zone of 50 feet. It will serve as cover to store equipment, material and for the daily morning safety and assignment meeting. It currently has electricity, but no restrooms. No changes are being requested to the structure.

Operations

The Applicant (Chapingo, LLC) is a full-service Tree Care company. Operations occur throughout the year and include pruning, tree removal, mulching, consulting, replacements, cabling and bracing, lighting protection, and ornamental plantings.

The Applicant also proposes to utilize land on the Property (outside of the conditional use area) for agricultural uses permitted in the AR zone, no retail sales are proposed.

Chapingo's hours of operation will generally be from 6:00 AM until 6:30 PM. Monday through Saturday.

The Applicant will have no retail sales or retail nursery operation, so it would be rare that a customer would visit the site. Therefore, there will be little activity on-site during most of the day since team members will be off performing tree care/landscaping work at off-site locations. Management may remain and return at times during the day. There is no office proposed on site or with this application. The only exceptions to these hours/days of operations are as follows:

- Emergency tree services to address a road blockage or hazardous condition.

Staffing

The staff includes up to 25 on-site employees. The breakdown of the on-site employees includes: 4 Owner/Managers and 21 Field Crew Team Members for a total of 25 staff.

The operation has both a morning and afternoon peak activity when staff and management arrive and leave the landscape contracting yard, that time is typically less than two (2) hours in total a day.

No specific time frame was noted in the statement of justification and no binding elements were proposed to limit when an employee or others could be onsite.

Vehicles and Equipment

Chapingo Tree currently has a fleet of fifteen (15) vehicles for the size of its operations. This includes twelve (12) stake body, dump trucks/box trucks and smaller pickup trucks all under 26,000 lbs in weight. In addition, it has three (3) larger trucks, over 26,000 lbs in weight. In this application, Chapingo requests up to eighteen (18) trucks to plan for minor future growth.

In addition, the Applicant will have up to three (3) flat bed or box trailers that will be used to transport equipment and materials to job sites. In this application, the Applicant requests five (5) flat bed or box trailers also for potential future growth. Other equipment for the business to be on site, when not in

use, includes seven (7) chippers, and one (1) bobcat. The vehicles, equipment and trailers will be stored overnight on site in the large Ag building and parking areas designated on the Conditional Use Site Plan.

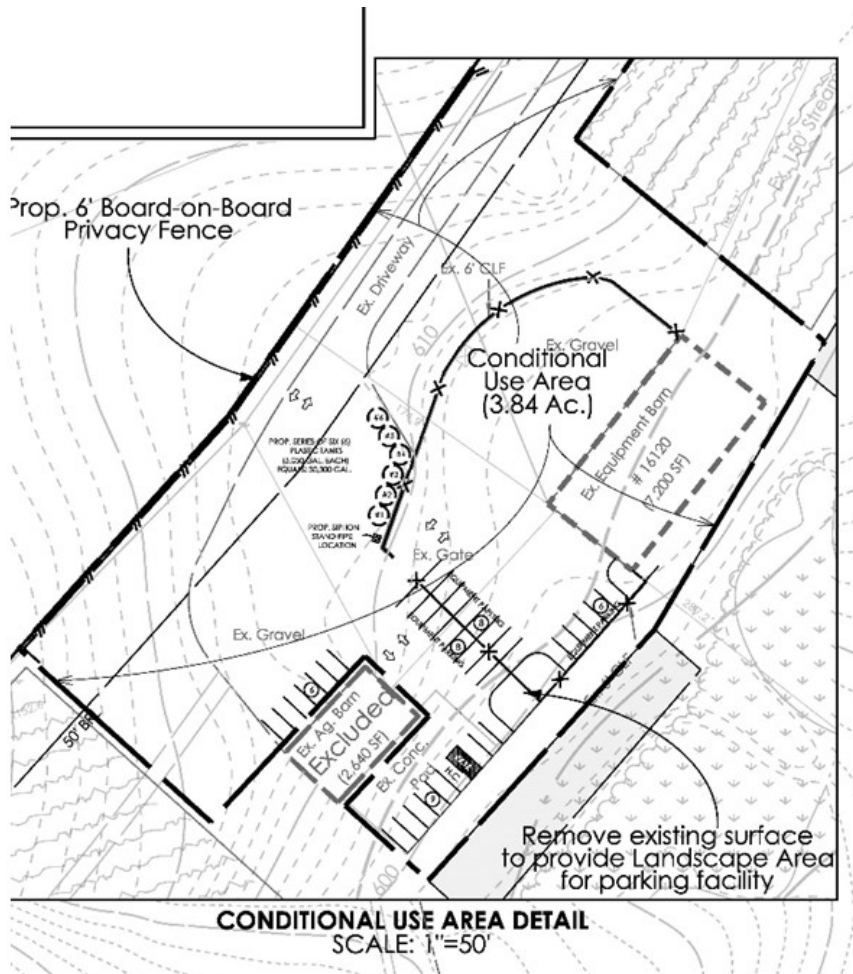


Figure 6: Conditional Use Area Detailed View

Access and Parking

The proposed area of conditional use has frontage only on Prices Distillery Road, a designated Rustic Road. The existing entrance to 12120 Prices Distillery Road will be retained. The Applicant has no need or plans to further modify the entrance. The driveway runs over 1,000 feet to the center of the Property to the designated Conditional Use area.

Parking will be provided in the large Ag building and in multiple exterior locations around the two existing Ag structures as shown on the Site Plan drawing.

Preliminary Plan

No Preliminary Plan of Subdivision is required for this Conditional Use because no new buildings are being constructed as part of this application.

Forest Conservation Plan

This Conditional Use application is subject to the Forest Conservation Law.

The Subject Property has a previously approved Final Forest Conservation Plan (FFCP) SC2009002, which was approved when the overall farm was originally subdivided, by Minor Subdivision # 720040400. The Applicant has submitted an amended FFCP. The details of the amended FFCP are discussed below in Section 3.

The Planning Board must take a separate action on the forest conservation plan before making a recommendation on the Conditional Use application.

SECTION 3: ANALYSIS

DEVELOPMENT STANDARDS

The following table displays the relevant AR development standards for the Property. The Conditional Use Application is applicable to 3.84 acres of the Property as shown on the site plan. The Project complies with the following development standards associated with the AR zone and a landscape contractor:

Table 1 – Development Standards

Development Standard	Permitted/Required	Provided
Minimum Net Lot Area ¹	2 acres	3.84 acres ²
Minimum Lot Width at Front Building Line	125 ft.	384 ft. (Prices Distillery Rd.)

¹ Per 59.3.5.5.B.b.1 in the AR zone, a minimum lot area of two acres is required for a landscape contractor.

² 3.84 Acres is the conditional use area and is part of the larger 32.69 Acre Parcel.

Minimum Lot with at Front Lot Line	25 ft.	365.8 ft. (Prices Distillery Rd.)
Maximum Density	1 dwelling unit per 25 acres	0 dwelling units
Maximum Coverage	10%	0.5%
Minimum Setback from all Lot Lines ³	50 ft.	174.9 ft.
Maximum Height, Principal Building	50 ft.	27 ft.
Maximum Height, Accessory Structure	50 ft.	21 ft.
Vehicle Parking Spaces Required	34.5 spaces ⁴ 0.5 per employee 1.0 per commercial vehicle	37 spaces (0.5 * 25 = 12.5) 14 (1.0 * 22 = 22) 23 14 + 23 = 37
Bicycle Parking Space Required	0 ⁵	0

MASTER PLAN

The Project is subject to the policies and recommendations contained in the 1985 *Damascus Master Plan* and the 1996 *Rustic Roads Functional Master Plan*.

³ 59.3.5.5.B.b.2 building, parking, operations setbacks for a landscape contractor are a minimum of 50 feet from any lot line.

⁴ Per 59.6.2.4.B required parking for a landscape contractor employees and commercial vehicles.

⁵ Per 59.6.2.4.C, bicycle parking spaces are not required for this use.

1985 Damascus Master Plan

This area has always been an agricultural area and the 1966 *Damascus Master Plan* placed it within the Agriculture Reserve land use category. The 1982 *Damascus Master Plan*, as amended in 1985, retained the area within the Agriculture Reserve and the subsequent Sectional Map Amendment placed it in the Rural Density Transfer Zone (now AR zone). The area remains agricultural in nature to the present day.

The 1982 *Damascus Master Plan*, as amended in 1985, does not have a specific recommendation for a landscape contractor use or any conditional uses in general. For 12120 Prices Distillery Road there is no site-specific recommendation.

However, the Master Plan does recognize the importance of farming to the character of Damascus (see Page 35) and placed the area within which the property is located in the Agriculture Reserve land use category (see page 33). Further, on page 79, under the Agricultural and Open Space Preservation Section, the Master Plan states that "Agricultural preservation in Damascus and the Master Plan Study Area as a whole is important not only in terms of maintaining the County's agricultural base, but in strengthening the role of Damascus as the rural commercial focal point of Upper Montgomery County."

The Property is located in an outlying area away from the center of Damascus. Viewed from Prices Distillery Road specifically and the overall area, the perception of the operation will be one of significant green space and landscaping, as well as storage of landscaping related vehicles and equipment (although they will be significantly, if not fully, screened), with buildings that are rural/agricultural in style. Therefore, while the use within the Conditional Use area itself is not one of farming or agriculture, maintaining agricultural land uses on 28.85 acres of the Property in the front and rear of the Conditional Use area, 3.84 acres, helps maintain the rural and agricultural nature of the Property.

This Application substantially conforms with the general recommendations of the 1985 *Damascus Master Plan*

1996 Rustic Roads Functional Master Plan

Chapingo LLC is located at 12120 Prices Distillery Road, a rustic road, and one property away from Burnt Hill Road, also a rustic road. All rustic and exceptional rustic roads are protected under the Rustic Roads Program. These roads are historic and scenic roadways that reflect the agricultural character and rural origins of the county. They are narrow, low-volume roads. The Rustic Roads Advisory Committee (RRAC) is the County Executive Branch committee assigned to review and make recommendations all projects impacting Rustic Roads.

While no new construction is proposed with this Application. Staff needs to consider the impact of the proposed use on the character and quality of the rustic road.

On pages 134 and 135, Prices Distillery Road is discussed as having outstanding wide-open farm and rural views, and historic value.

Significant Features:

- Broad vistas across open farm fields and rolling countryside
- View of Sugarloaf Mountain
- Beautiful country road on ridge with expansive views

The Rustic Roads Program is overseen by the Rustic Roads Advisory Committee (RRAC) and three agencies. The RRAC is comprised of seven citizen members who are appointed by the County Executive; they review and advise the County Executive, County Council, Planning Board, Department of Transportation, Department of Permitting Services and other county agencies on matters concerning rustic roads. Members review and comment upon roadway classifications, policies, regulations, and promote public awareness of the Rustic Roads Program. The RRAC is the County Executive Branch committee assigned to review and make recommendations for all projects impacting Rustic Roads (further discussed below in “Rustic Roads Advisory Committee” section of this report).

Sec. 49-76. Purpose. This Article authorizes the identification and classification of rustic roads in that part of the County located in the Maryland-Washington Regional District. This Article establishes a program to preserve as rustic roads those historic and scenic roadways that reflect the agricultural character and rural origins of the County. Preservation of rustic roads must be achieved by retaining certain physical features of rustic roads and by certain right-of-way maintenance procedures. (1993 L.M.C., ch. 9, § 1; 2007 L.M.C., ch. 8, § 1.)

The RRAC has not made an official recommendation on this application, but in an email from the RRAC MCDPS Staff coordinator, it was stated Chapingo has failed to provide all the documents required for their application and the committee has unanswered questions and multiple concerns about this application that have not been addressed. Therefore, an official vote from the RRAC has not taken place.

The RRAC has considered issues related to this Applicant four separate times. The committee first heard complaints from neighbors on June 12, 2017 regarding their previous location, 22930 Old Hundred Road (rustic). RRAC discussed this at a June 27, 2017 meeting. The complaints included the use of bright lights, equipment storage, stockpiling materials, dumping of large tree debris, flooding neighboring properties, multiple employees living in the residence, and on-site tree removal. Chapingo was conducting these activities at this site from 2013-2019. Complaints to DPS were closed, because the owner stated he was applying for a conditional use application, but no application was filed.

Chapingo came before the RRAC regarding the current location and proposed use on March 25, 2021. Surrounding and abutting property owners attended the RRAC meeting and raised several concerns regarding tree debris dumped on the property. The committee asked for additional information to be provided when the application was prepared.

Chapingo came before the committee again on January 22, 2022 and April 27, 2022. Additional but still incomplete information was provided.

The RRAC is still waiting on the applicant to provide the Applicant's Permission to apply for an Alteration Building Permit letter.

The RRAC has concerns that the alteration permit the Applicant has applied for would include the ability to make external changes to the historic barn which is not actually within the Conditional Use area but is immediately adjacent and fronting on the Conditional Use area. The RRAC believes any alterations to the exterior of the historic barn (Locational Atlas Site: 10/036-001A John M. King Barn) would impact the viewshed which is a protected characteristic of this Rustic Road. Furthermore, a Historic Area Work Permit would be required for any alterations to this structure, and potential alterations have not been coordinated with Historic Preservation staff or the Historic Preservation Commission during review of this application.

Additional concerns of the RRAC include:

- A. Chapingo has failed to respond fully to their multiple requests for information.
- B. Since there is no way to access this property without using rustic roads and no limitations on routes, the RRAC anticipates high levels of commercial vehicle traffic and damage to rustic roads for a commercial use. Specifically, the RRAC is concerned over this use on the following roads:
 - a. Prices Distillery Road (rustic) (Property frontage)
 - b. Burnt Hill Road (rustic) (weight limited bridges)
 - c. Mountain View Road (rustic, and part of a significant historic Black community).
 - d. Purdum Road (exceptional rustic).
 - e. Kingstead Road (rustic).
 - f. Kingsley Road (exceptional rustic).
 - g. Kings Valley Road (nominee exceptional rustic).
 - h. Lewisdale Road (nominee rustic).
- C. General unanswered questions and concerns about this application.

Without the requested information from the applicant, the committee has been unable to complete their review or make an official recommendation on this Application.

The Application could have impacts on Burnt Hill Road, due to increased traffic on the weight limited bridge. The weight-limited bridge is located at the intersection of Burnt Hill Road and Kingsley Road. According to the 1996 Rustic Roads Functional Master Plan, the bridge is restricted to a maximum weight of 15 tons (approximately 30,000 pounds). The applicant states they have twelve (12) stake body, dump trucks/box trucks and smaller pickup trucks all under 26,000 lbs. in weight. In addition, it has three (3) larger trucks, over 26,000 lbs. in weight. The trucks could reach the weight limitations if you add in occupants, equipment, and trailers. The Applicant's statement, "Chapingo will commit to having any trucks over the noted weight limits travel to and from the property via Prices Distillery

Road or north of the Burnt Hill Road bridge(s) to avoid said restricted weight limited bridges.” is insufficient to ensure adequacy of the public roads near the Property, and no Binding Elements were submitted regarding this issue, which is one of the concerns from the RRAC.

While Rustic Roads and weight limited bridges are not unique to this Property, without the additional information requested by the RRAC, this use at this location may prove the public roads are not adequate serve in the long-term for the proposed Conditional Use at this location.

For the complete correspondence and specific concerns from the RRAC please see Attachment 4. The current view of the RRAC is that Chapingo has failed to respond fully to multiple requests for information. Chapingo has failed to provide all the documents required for their application and the committee has unanswered questions and multiple concerns about this application that have not been addressed. Therefore, the RRAC has not made an official recommendation at this time.

Without a recommendation from the RRAC on the Application, and with several remaining concerns related to the proposed Conditional Use and potential impacts to Rustic Roads, Staff cannot make the finding that the proposal is in substantial conformance with the 1996 *Rustic Roads Master Plan*.

ADEQUATE PUBLIC FACILITIES

Under the general Conditional Use Findings Required Under Section 59-7.3.1.E.1.f the code requires that a finding be made to satisfy the Application “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.”

Two parts of this finding are problematic, sanitary sewer and public roads.

Sanitary Sewer

Sanitary sewer is a basic public facility to ensure that safe sanitation is provided. While this may not be a requirement of permitted uses in the zone, the Conditional Use application requires this finding under 59-7.3.1.E.1.f.

The Application states there are no on-site sanitary facilities and indicates there is no existing septic onsite. The Application is requesting a total of 25 on-site employees with operating hours from 6:00 AM until 6:30 PM, Monday through Saturday. The Applicant states that the maximum amount of employees will be on the property only in the early morning for approximately 30 plus minutes, when the management and field team members have arrived. The employees will also need to return to the site at the end of the workday. The Application also states management may remain and return at times during the day. Nothing in the Application prohibits employees from being onsite during the entirety of the operating hours and does not restrict employees to a maximum of any number of onsite hours. Furthermore, the Applicant states that they will have no retail sales or retail nursery operation, so it would be rare that a customer would visit the site; however, there is nothing in the Application that would prohibit non-employees from being onsite.

The Applicant's position is that there is no sanitary service, and no sanitary service is needed, and the finding can be made that is adequate.

The Applicant states that there is no need for sanitary services, as no bathroom exists at the property, and none is being requested. No office is on site, nor is one being requested. Further, no residence exists or can be requested as no development rights exist on the property. Thus, since no need exists and no bathroom or office are on site or being requested, the Applicant believes the Property has adequate services. Additionally, the Applicant states, "the Conditional Use code section for Landscape Contractors, Section 59.3.5.5. lists the definition of it in 3.5.5.A. Later in that section it also notes the requirements for a Conditional Use in the AR zone, like here, in 3.5.5.B.b. Neither section makes any reference to nor states a requirement of an onsite bathroom."

The Applicant also believes that OSHA section 1910.141(d)(2)(i) should be considered. This section of the OSHA code states that the sanitation requirements do not apply to mobile crews or to normally unattended work locations, if employees have transportation readily available to nearby facilities. See also (Ex. # 4) the attached OSHA Overview document that defines prompt access as 10 minutes with readily available transportation. Also, on this topic see the attached (Ex. # 5) titled, Standard Interpretation /Mobile crews must have prompt access to nearby toilet facilities- Standard Number 1926.51(c)(4); 1926.51(c); 1926.51. It is an Interpretation reply by OSHA to Mr. Mertz of Minnesota's inquiry of the construction sanitation standard, pertaining to mobile crews. The reply is dated June 7, 2002 and is currently on the OSHA website. The OSHA response is from Russell B. Swanson, Director, Directorate of Construction. The OSHA interpretation reply pertained to the question what does "nearby" mean. "The requirements of Section 1926.51(c) for sanitation facilities states that they do not apply to mobile crews "having transportation readily available to nearby toilet facilities." Mobile work crews, per OSHA, are ones that who continually or frequently move from jobsite to jobsite on a daily or hourly basis. Conversely, non-mobile workers, for sanitation standards, are ones who report to a conventional construction project, where they work for more extended periods of time (days, weeks or longer). The OSHA reply went on to define "prompt access" and "nearby" to toilets to mean "it would take less than 10 minutes to get to them."

The Applicant contends that prompt access to nearby toilet facilities exists throughout Montgomery County; for Chapingo in particular just a few specific examples of locations to use toilet facilities within ten minutes of its location on Prices Distillery Road in Damascus include the following: Dunkin and Carroll Fuel in Hyattstown, McDonalds, Safeway and Starbucks in Damascus and 7-11 and Harris Teeter in Clarksburg.

The Applicant has provided their justification for their interpretation of the code and their position that onsite sanitary facilities are not required in documents provided to Staff and can be found in Attachment 5.

It is clear there are Federal and State (not Maryland) regulations that address the requirement of onsite sanitary facilities; however, Montgomery County Code does not specifically dictate the

requirement of when an onsite sanitary facility is required. Instead, the Code provides the requirements to allow a sanitary facility when requested. Since this is a Conditional Use, the requirement of onsite sanitary facilities is a required finding under 59-7.3.1.E.1.f. of the Montgomery County Code.

Additionally, staff could not find any approved conditional uses that have not had some form of onsite sanitary facilities available. The Applicant provided staff with some cases with sanitary facility issues, but all approved cases did in fact have some form of onsite sanitary facilities available. One case, Francisco Landscaping, was recommended by the Planning Board for Approval, but was later denied by the Hearing Examiner on issues not related to onsite sanitary facilities. The Francisco Landscaping case had much bigger issues regarding safety than sanitary facilities. Since the Conditional Use was not ultimately approved, Staff did not use that case as precedent of not having onsite sanitary facilities.

Additionally, Staff considered alternative waste disposal means like portable toilets; however, under Section 9 of COMCOR 27A (see below), portable (chemical) toilets are not permissible for long term or permanent use on a site that would otherwise be served by an onsite sewage disposal system.

27A.00.01.09 Special Methods of Sewage Collection and Disposal

C. Chemical toilets must be constructed of impervious materials, vented to the outside air above the roof line of the structure housing them, and supplied with an adequate amount of the chemical agent used to reduce and deodorize the tank contents. Chemical toilets may be used only for special short-term events and in the abatement of problems.

The Applicant's position was considered in the analysis for this Application; however, the required finding of adequate public facilities cannot be made, since the applicant is not providing an onsite restroom for employees. This determination is based on no enforceable limitations of onsite staff/visitor presence and with concern for the health, safety, or welfare of visitors and employees, in addition to the nearby neighbors and residents of the surrounding properties.

Public Roads

The county's Master Plan of Highways and Transitways provides guidance on minimum right-of-way standards for different classifications of roads. Right-of-way requirements for Rustic Roads are subject to more stringent regulations to preserve physical and historical features, as outlined in the 1996 Rustic Roads Functional Master Plan. As part of the 1996 Master Plan, rural and semi-rural roads are further split into *Rustic* and *Exceptional Rustic roads*. Section 49-78 of the county code defines a road as "rustic" and "exceptional rustic" if it is in a predominantly agricultural or natural area, contains localized low-volume traffic uses, and contributes to the environmental and rural features of the county.

The Subject Property fronts on Prices Distillery Road, identified in the Rustic Roads Functional Plan as a Rustic Road with a 70 ft. ROW. Full ROW dedication must be provided as part of any subsequent subdivision plan.

See the Master Plan section above for discussion on Rustic Roads. In summary, the finding for adequate public facilities (roads) cannot be made, due to incomplete information provided regarding the potential use and impacts of vehicles on several nearby Rustic Roads, with most concern and proximity to Prices Distillery and Burnt Hill Road.

TRANSPORTATION

Adequate Public Facilities Review (APF) and Local Area Transportation Review (LATR)

The Montgomery County code specifies that projects with frontage on public roads must provide adequate sidewalks and bikeways outlined in the Bicycle Master Plan if the property is below 25,000 square feet. Roadways classified as Rustic or Exceptional Rustic are also exempt from installing sidewalks or master-planned bikeways. The proposed site is approximately 32.69 acres (1,423,976 square feet); the parcel dramatically exceeds the minimum threshold set forth by the county code. There are no Bicycle Master Plan recommended improvements along Price's Distillery Road and no additional bicycle infrastructure is required

The Application is exempt from additional 2022 LATR review as the proposal will not exceed 50 peak-hour person trips. As reported in the Statement of Justification, the operation will have at most 22 employees on site at any time and will not exceed the 50 person trip threshold.

However, as discussed in detail previously, the volume and weight of truck traffic generated from the site is a cause for concern. An increase frequency of heavy truck traffic could potentially damage the existing roadway network which in this area is composed primarily of identified Rustic Roads; of particular concern are local bridges that are weight restricted and not built to withstand heavy trucks.

PARKING

As shown on the Applicant's site plan the Project satisfied all applicable parking and vehicle storage (not including landscaping which is addressed below) requirements for the use and the zone. The Applicant has shown on the Conditional Use plan that an adequate number of parking spots have been provided (see Table 5 for specific calculations).

LANDSCAPING

The Applicant's Landscape Plan must demonstrate how the proposed development meets the requirements under Sections 6.2.9, 6.4.3 and 6.5.2 of the Montgomery County Zoning Ordinance for

parking lots, landscaping requirements and screening. The following paragraphs discuss the applicability of these sections.

Section 6.2.9.C. Parking Lot Requirements for 10 or More Spaces

There is one parking lot comprised of 37 parking stalls for employees' personal vehicles, work trucks, trailers and equipment. The parking area is located adjacent to and between the existing equipment barn and agricultural barn (Figure 10). The area currently consists of a packed gravel surface. The Applicant's Statement of Justification ("SOJ") is not proposing to reconstruct this existing gravel area to create a paved parking lot or to stripe the individual parking stalls. The Parking Facility Limit of 17,213 square feet as shown on the submitted Landscape Plan is inaccurate since parking of personal vehicles, work vehicles, trailers and equipment will most likely occur throughout the existing gravel parking area. However, a more accurate Parking Facility Limit of 35,890 square feet should encompass the entire existing gravel area including the area adjacent to the existing Equipment Barn and the existing Agricultural Barn.

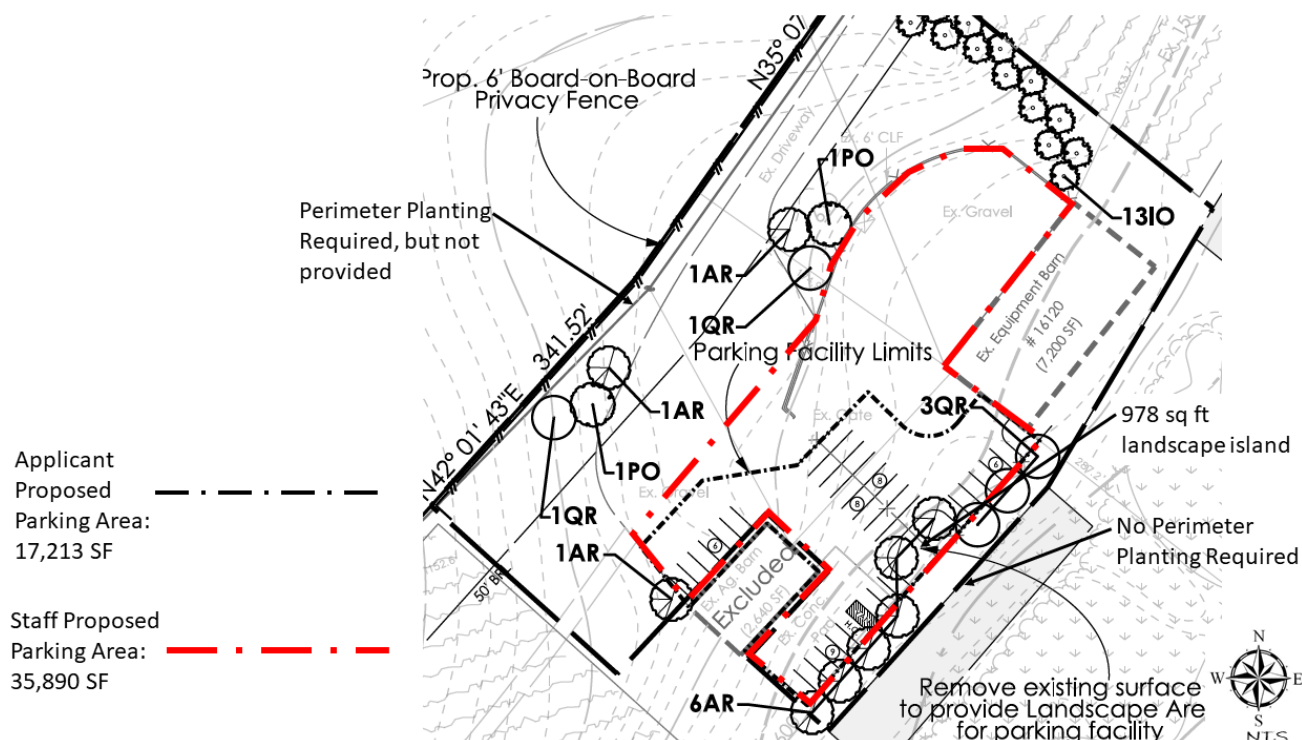


Figure 7: Parking Area

1. Landscaped Area

- a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5 percent of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.
- b. A maximum of 20 parking spaces may be located between islands.
- c. A landscaped area may be used for a stormwater management ESD facility.

The current Application shows one landscape island of approximately 978 square feet located adjacent to 31 of the 37 parking stalls. Based on the Applicant's proposed Parking Facility Limit of 17,213 square feet, this parking island meets the intent of Section 6.2.9.C.1. However, if the Staff proposed Parking Facility Limit of 35,890 square feet is used, then this proposal does not meet Section 6.2.9.C.1 because the percentage of square footage would only be 2.7% and not the required 5%.

2. Tree Canopy

Each parking lot must maintain a minimum tree canopy of 25 percent coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.

The current Application shows that the tree canopy coverage under Section 6.2.9.C.2 are being met if the Parking Facility Limit shown by the Applicant is correct (**Figure 11**). Under this scenario the Applicant is proposing a canopy coverage of 26% of the parking area. However, if the Parking Facility Limits proposed by Staff are used then only 12% canopy coverage is obtained and this proposal does not meet Section 6.2.9.C.2.

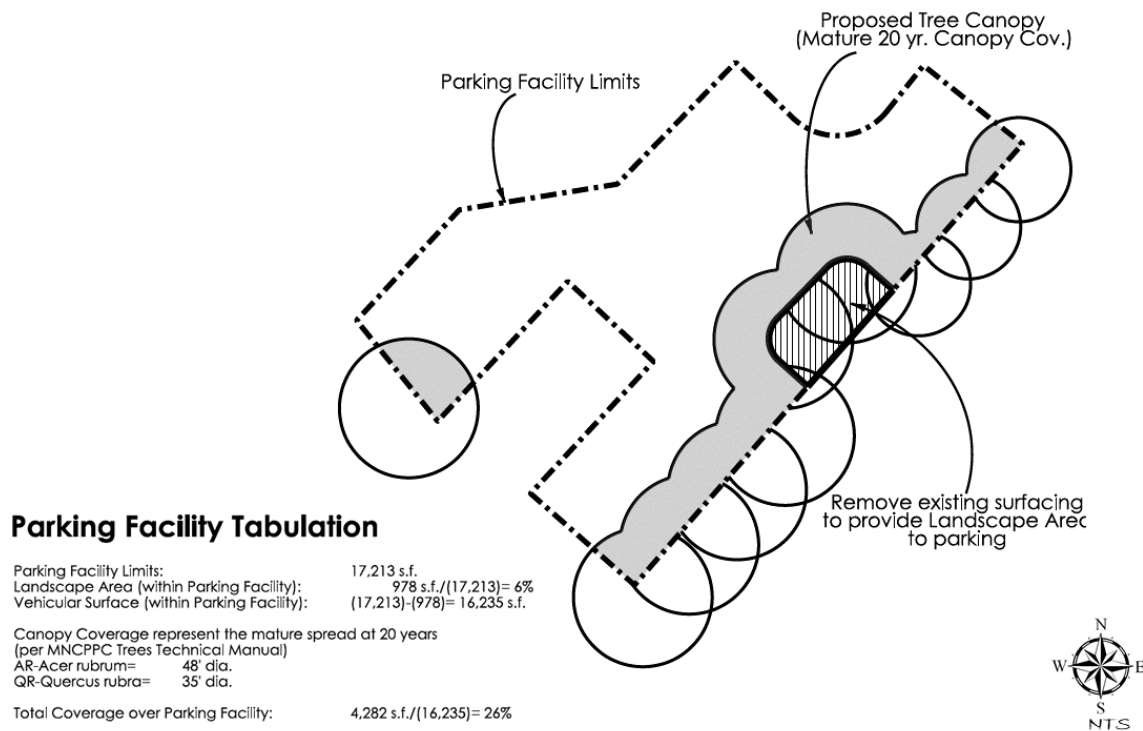


Figure 8: Tree Canopy Coverage

3. Perimeter Planting

- a. The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:
 - i. Be a minimum of 10 feet wide;
 - ii. Contain a hedge, fence, or wall a minimum of 6 feet high;
 - iii. Have a canopy tree planted every 30 feet on center; and
 - iv. Have a minimum of 2 understory trees planted for every canopy tree.

Perimeter planting along the eastern edge of the parking area is not required because the parking lot within the designated conditional use area does not abut a neighboring property that is zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use. There is no perimeter planting along the western property line and as a result this area does not meet the requirements under Section 6.2.9.C.3 (**Figure 10**).

F. General Landscaping Requirements

Section 6.4.3.B specifies and defines the types of plant materials, canopy trees, understory trees, and evergreen trees. In response to Staff's comments, the Applicant had submitted a revised Landscape

Plan. The revised landscaping material shown on the plan satisfies the General Landscape Requirements as defined and specified under Section 59-6.4.3.B. This section of the Code defines the types of landscape plant material that are allowed and specifying plant sizes at time of installation. The plant material shown on the Applicant's Landscape Plan meets these general requirements.

G. Screening

Section 6.5.2.B specifies, in the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

The Applicant has not provided landscape screening along the western property line. The landscape screening as shown on the submitted Landscape Plan does not meet the requirements under Section 6.5.3.C.7. The Applicant had been requested in previous reviews to provide landscape screening that met the requirements under this section of the County Code. The Applicant's most recent submittal is proposing to install a 6-foot Board-on-Board fence along the entire west property line, but no landscape screening (**Figure 13**). The Applicant is seeking approval of this alternative method of compliance under Section 6.8.1 to meet Section 6.5.3.C.7, however this does not satisfy the four necessary requirements under Section 6.8.1 to allow alternative compliance.

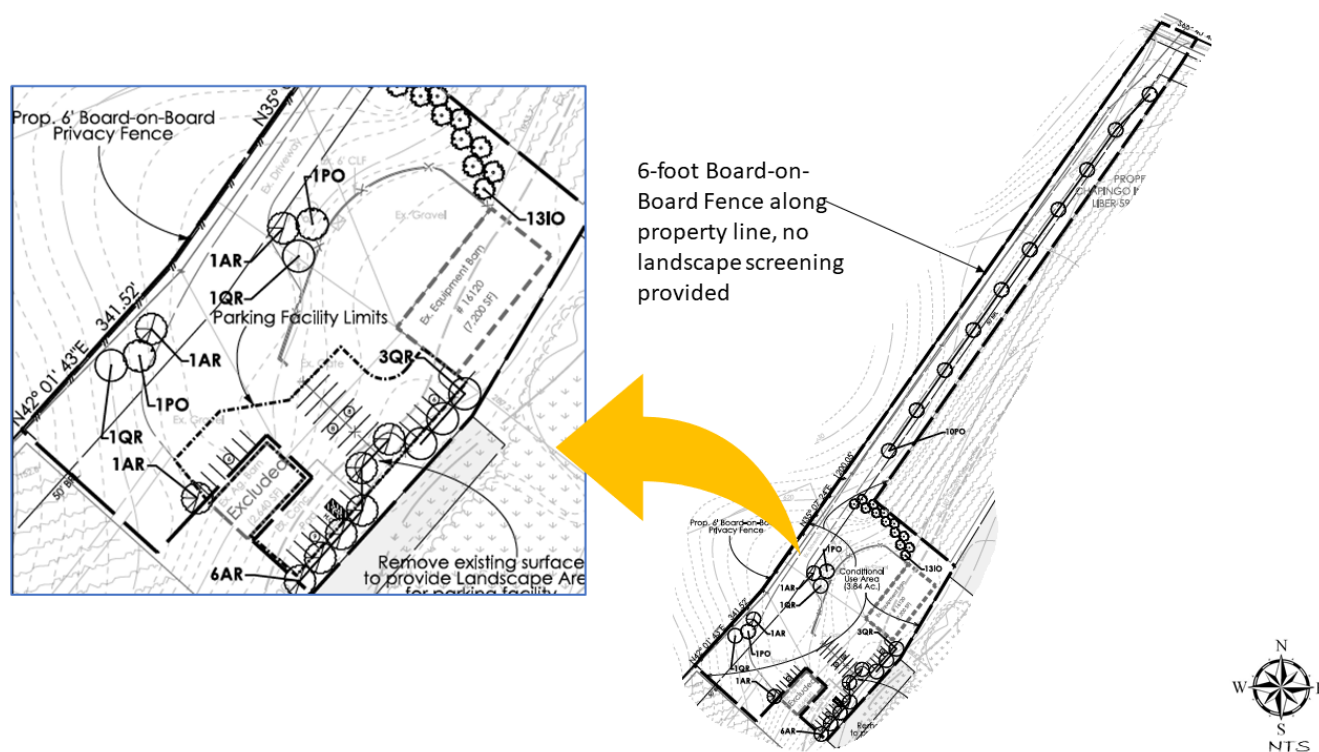


Figure 9: Perimeter Landscape Screening

LIGHTING

No new or replacement lighting is proposed. However, to demonstrate compatibility of the existing lighting, landscaping, and lighting are shown on respective plans that demonstrate how each feature complies with the requirements of the Zoning Ordinance. The illumination shown on the plans indicates the Application is 0.1 foot-candles or less at any lot line that abuts a lot with a detached house.

SIGNAGE

The Property does not currently include any signage identifying the use. The Applicant is not asking for any additional signage.

ENVIRONMENT AND FOREST CONSERVATION

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this Property on February 23, 2009. There are wetlands and an intermittent on the Property. The Property is located within the Little Bennet Creek Watershed Class III-P watershed. No rare, threatened, or endangered species were observed onsite.

A Final Forest Conservation Plan (FFCP) #SC2009002 was approved on May 14, 2015. The stream and wetlands were on the portion of the property which was agriculturally exempt from forest conservation. However, the previous plan met the forest conservation planting requirements on this parcel and establishing a Category I Conservation Easement on the Property, outside of the Conditional Use area, and protecting much of the stream and wetlands onsite.

With this Application, the Applicant submitted an amended FFCP #SC2009002A, which reduced the amount of agriculturally exempt area in the forest conservation worksheet and increasing the net tract area by 3.84 acres. The increase in the net tract area caused there to be an additional planting requirement of 0.77 acres. The applicant proposes to meet that requirement within the agriculturally exempt portion of the site which is normally at a 2:1 ratio or in this case a 1.54-acre requirement. The Applicant is proposing to plant 2.15 acres within the onsite wetlands buffer. The new forest planting will be protected by a Category I Conservation Easement, an addition of 2.5 acres of easement.

COMMUNITY CONCERNS

As of the date of this Staff Report Staff has received six letters of opposition to this Application and no letters of support. The letters of opposition are attached in Attachment 3 and are summarized here.

- Past practices of Chapingo Tree Service at 22930 Old Hundred Road (also in the AR) where the same company was cited by DPS and informed they needed a conditional use in the AR zone.

The property was subsequently sold and the business was reopened at 12120 Prices Distillery Road, and a conditional use was not filed until a new violation was issued by DPS.

Staff has confirmed with SDAT records that the property at 22930 Old Hundred Rd was owned by Chapingo Investments LLC from 2/11/2014 until 9/9/2019.

Staff has confirmed via MCDPS records that on 6/15/2016 a 30-day notice of violation to obtain a conditional use was issued. On 9/13/2017 a citation #0Z40953227 was issued for a use not permitted without conditional use. The violation was closed based upon the owner relocating their business and selling the property.

12120 Prices Distillery Road property purchased by Chapingo Investments LLC on 2/25/2020.

- The connection of the widened drive with Prices Distillery Road has been altered and expanded, taking it out of compliance with Rustic Road requirements.

MCDPS has no record of any permit for this activity. The letter from Jacqueline and Timothy Hunt includes photographs of the driveway and apron expansions in December 2021 and January 2022. These dates are consistent with historic Google Street View images.

Any expansion of a driveway apron would require a MCDOT access permit. There is no record of any permit being issued for this activity.

Any land disturbing activity over 5,000 SF would require a sediment control permit. The apron expansion and driveway expansion that occurred appears to be greater than 5,000 SF and there is no record of a sediment control permit being issued for this activity.

- Commercialization of the Agricultural Reserve.

The use is of a commercial nature according to the zoning code but is a permitted if the conditional use is approved.

- Increased local traffic on a Rustic Road.

Traffic increases associated with a Landscape Contractor would be considered an inherent characteristic of the use.

- Equipment and noise disturbances.

Equipment and vehicle noise associated with a landscape contractor would be considered an inherent characteristic of the use.

- Past history of Applicant dumping tree debris onsite.

A service request was directed to MCDPS about a tree cutting/landscape contractor and dumping of wood debris by the truckload at 12120 Prices Distillery Road.

MCDPS records indicate a complaint was filed on 10/7/2020 with a site visit and NOV issued on 10/9/2020 to cease operations or obtain a Conditional Use for the use with a 30-day compliance time. On 11/23/2020 attorney reached out to MCDPS to say they are working on the application and compliance date was extended to 12/23/2020. On 1/21/2021 a civil citation was issued to the owner's attorney by DPS. A status check by DPS on 7/29/2021 revealed Owner and Attorney still working on the conditional use application and waiting on court date for the citation that was issued. On 10/21/2021 attorney emailed DPS saying the conditional use was applied for on 10/2/2021 and waiting on acceptance by staff. The Owner is still waiting on a court date for civil citation.

- Possible spread of tree diseases being brought onsite from other locations and spreading into the area.

Staff is not an expert in the field.

- Large company trucks driving on Prices Distillery and Burnt Hill Road endangering other travelers. On Burnt Hill Road there is a weight-restricted narrow bridge that Chapingo's trucks use on a daily basis.

The letter from Jacqueline and Timothy Hunt includes photographs of trucks with the Chapingo Tree Service logo on weight restricted roads. Staff could not identify the specific road and location in the pictures.

The Applicant has addressed this in the Statement of Justification (SOJ) "Chapingo will commit to having any trucks over the noted weight limits travel to and from the property via Prices Distillery Road or north of the Burnt Hill Road bridge(s) to avoid said restricted weight limited bridges."

- Company employees have had loud, after-hour parties at the site, late into evenings disrupting our normally quiet neighborhood.

Staff was unable to confirm this issue. The Applicant has stated there have been some parties in the area, but that they were not on the Subject Property. Employees should not be onsite after 6:30 P.M., the stated hours of operation in the SOJ.

Hours of operation would need to be enforced by MCDPS.

- A fuel shed is located on the property and a spill could make its way into the connecting creek of Little Bennett and affect well water.

There are fuel tanks associated with the tree service or agricultural activities onsite.

Agricultural storage tanks do not require permits:

(c) Agricultural storage. On farms portable tanks not exceeding six hundred sixty (660) gallons of class I liquid are hereby permitted, if stored fifty (50) feet or more away from buildings and adjoining property lines.

Any non-exempt storage tanks would require a permit from MCDPS. Staff could not find any permits on file.

A leak or a spill could lead to contamination of the stream or ground water.

A complaint was filed on 5/2/2022 stating that the site needed a Fuel Tank Storage Permit through MCDPS. The complaint was inspected by MCDPS-Fire Marshal's Office on 5/3/2022, and a case was opened with an NOV issued to obtain a Tank Permit with a 30-day compliance deadline. Compliance must be demonstrated by 6/3/2022.

- If salt and chemicals are stored for snow removal, concerns it could make its way into a tributary of Little Bennett Creek and affect our well.

Salt and chemicals if stored improperly could affect the stream or ground water. Snow removal was removed from the application in the amended Statement of Justification.

- With many employees the Property has no well or septic or sanitary facilities, and a spill would make its way into a tributary of Little Bennett Creek and affect our well.

Staff acknowledges the property does not have well or septic or sanitary facilities and is basing in part the denial on not having onsite sanitary facilities.

- Negative impact on property values.

Staff cannot confirm whether or not the conditional use would affect the property values. However, a Landscape Contractor is a conditional use in the AR zone.

SECTION 4: COMPLIANCE WITH NECESSARY FINDINGS

NECESSARY FINDINGS

Section 59.7.3.1.E Conditional Use

E. Necessary Findings

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

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

Staff Response: This finding is satisfied. With the approval of the amended Final Forest Conservation Plan (see section 3 for details), the Project complies with all previous approvals and Chapter 22A.

- b. Satisfies the requirements of the zone, use standards under Article 59.3 (Uses and Use Standards), and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6 (General Development Requirements);*

Staff Response: This finding is satisfied if the Alternative Compliance for landscaping is approved. The Project satisfies applicable provisions under Article 59.3 (Uses and Use Standards) as shown in Section III of this report. The Project satisfies applicable provisions under Article 59.6 (General Development Requirements) as shown in Section III of this report. Therefore, with the approved conditional use, this finding is satisfied.

- c. Substantially conforms with the recommendations of the applicable master plan.*

Staff Response: As discussed in Section III of this report, this finding is satisfied for the 1985 *Damascus Master Plan*, without additional information needed to determine impacts to Rustic Roads, conformance with the 1996 *Rustic Roads Functional Master Plan* cannot be satisfied. Please see the RRAC section under Master Plan Conformance for the complete analysis.

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

Staff response: This finding is satisfied. This finding includes both the Damascus Master Plan analysis and other compatibility considerations. The Master Plan issues have been discussed in the preceding section. The character of the surrounding area is predominantly rural residential and agricultural uses. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan because the use is sufficiently located away from any sensitive land uses or dwelling units. Only 3.84 acres of the total 32.69-acre property will be used for the landscape contractor business. As shown on the forest conservation plan, approximately 28 acres, the area of the Property outside the Conditional Use area, will remain in agricultural use. This would amount to nearly 85 percent of the property reserved for agriculture use or forest conservation.

- 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.*

Staff Response: This finding is satisfied. As discussed in Section III of this report, the Project substantially conforms to the policies and recommendations contained in the Master Plan. There are no residential areas that would be adversely affected or altered by the Project because the Project is sufficiently buffered and located away from existing residential uses and nearly 85 percent of the

property area will remain in agriculture use or forest conservation. Furthermore, as discussed above in Section II, only two active conditional use/special exceptions currently exist in the vicinity. As such, there would not be an overconcentration of conditional uses in the area.

- 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 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 facilities, including schools, police and fire protection, water, sanitary sewer, public roads, or storm drainage; or*
 - ii. If a preliminary plan of subdivision 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.*

Staff Response: This finding is not satisfied as discussed in Section III above, with respect to adequate sanitary accommodations on the site.

- 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 lack of parking; or*
 - iii. The health, safety or welfare of neighboring residents, visitors or employees.*

Staff Response: This finding is not satisfied. Without adequate public facilities, onsite sanitary facilities, as discussed in Section III above the health, safety or welfare of visitors and employees cannot be met.

The inherent characteristics include:

- Vehicle and pedestrian trips to and from the Property;

- Parking for employees;
- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors associated with trucks and equipment;
- Work yard area; and
- Lighting.

These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected. Surrounding residential uses are well-buffered from the area intended for the Conditional Use in distance, by existing and proposed landscape, and by forest conservation.

Non-inherent characteristics are unique to the physical location, operation, or size of a proposed use.

Topography

The Property and surrounding property have varied topographic change that helps to reduce the visual impact of the Project from adjoining residential uses to the north and west. Additionally, a substantial portion of the Property's land area will remain in agricultural use and a portion within a protected conservation easement.

Lack of Onsite Facilities

The Project and Property has no ability to provide sanitary facilities for the proposed use. There is no sanitary sewer or septic onsite or available. This is a unique characteristic for this Property and will not allow Staff to make the Adequate Public Facilities findings for this project. As discussed in Section III under Adequate Public Facilities Staff could not find any approved Landscape Contractor conditional uses without some form of onsite sanitary facilities making this a unique characteristic of this Property.

The Project's non-inherent characteristic of lack of onsite facilities for the use would cause an adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees. Specifically, the effects on peaceful enjoyment, odors, the health, safety or welfare of neighboring residents, visitors or employees.

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

Staff Response: This finding is not applicable. The Property is not located in a Residential Detached zone. It is located in the AR (Agriculture Reserve) zone and no buildings are to be constructed.

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

Staff Response: Acknowledged by the Applicant.

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

Staff Response: This finding is not applicable. The Applicant does not propose an agricultural conditional use. The Project is a conditional use approval for a landscape contractor. The area of the Property outside the Conditional Use area is agricultural in nature but is not subject to a Conditional Use.

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

- i. *Filling Station;*
- ii. *Light Vehicle Sales and Rental (Outdoor);*
- iii. *Swimming Pool (Community); and*
- iv. *the following Recreation and Entertainment Facility use: swimming pool, commercial.*

Staff Response: The finding is not applicable. The Project is a not a filling station, light vehicle sales and rental (outdoor), swimming pool (community); or a swimming pool, commercial. The use is for a landscape contractor.

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

- i. *Funeral Home; Undertaker;*
- ii. *Hotel, Motel;*

- iii. *Shooting Range (Outdoor);*
- iv. *Drive-Thru*
- v. *Landfill, Incinerator, or Transfer Station; and*
- vi. *a Public Use Helipad, Heliport or a Public Use Helistop.*

Staff Response: This finding is not applicable. The Application is not for a funeral home, undertaker, hotel, motel, shooting range (outdoor), drive-thru, landfill, incinerator, transfer station, public use helipad, heliport or a public use helistop. The use is for a landscape contractor.

Section 59.3.5.5 Conditions for Approval of Landscape Contractor

B. Use Standard:

- a. *Where Landscape Contractor is allowed as a limited use and the lot or parcel on which the use is located abuts a residential detached zone, screening under Section 6.5.3.C.7, Option B is required, without regard to applicability under Section 6.5.2.B.*

Staff Response: The finding is not applicable. The Property is not located in a residential detached zone. It is located in the AR zone. A landscape contractor is allowed only as a conditional use in the AR zone.

- b. *Where Landscape Contractor is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*
 - 1. *In the Agricultural, Rural Residential, and Residential Detached zones the minimum lot area is 2 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory or operation.*

Staff Response: The finding is satisfied. The Project is located in the AR zone and is located on a lot of more than two acres. The Project is located on 3.84 acres of a 32.69-acre Parcel.

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

Staff Response: The finding is satisfied. As show on the Applicant's site plan and discussed above in Section II of this report, all building, and parking setbacks are a minimum of 50 feet away from any lot line.

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

Staff Response: This finding is satisfied. As shown on the Applicant's site plan, and discussed in Section III above, the Project satisfied all applicable parking and vehicle storage requirements for the use and the zone. The Applicant has shown on the Conditional Use plan that an adequate number of parking spots has been provided. Staff concludes that adequate parking has been provided onsite.

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

Staff Response: This finding is satisfied. No retail or wholesale operations are proposed.

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

Staff Response: Acknowledged by the Applicant. As discussed in Section II above, proposed operations are Monday through Saturday from 6:00 a.m. to 6:30 p.m. The hours during which Chapingo Tree Care will be active are consistent with the agricultural activities conducted on farms surrounding the subject property and typical Landscape Contractor operations and are designed to avoid adverse impact on users abutting the property. Employees typically arrive and depart in the morning prior to peak traffic hours and have staggered return and exit times in the afternoon/evening. In addition, Chapingo's tree operations occur off site thus reducing impact on abutting properties.

SECTION 5: CONCLUSION

The proposed landscape contractor, as recommended in Section I of this report, does not satisfy all applicable requirements for the approval of a conditional use as specified in the Montgomery County Zoning Ordinance. Planning staff recommends denial of Conditional Use No. 202207.

The FFCP amendment meets all requirements of Chapter 22A (Forest Conservation Law) and as conditioned Staff recommends approval if a Conditional Use is ultimately approved.

ATTACHMENTS

1. *Proposed site plan and landscape plan*
2. *Forest Conservation Plan*
3. *Community Correspondence*
4. *RRAC Emails and Attachments*
5. *Applicant Memorandum and Exhibits*