

Montgomery Planning

TREEMAN, INC

CONDITIONAL USE NO. CU202409 AND PRELIMINARY/FINAL FOREST CONSERVATION PLAN NO. F20240190

Description:

Jose Manuel “Manny” Polanco and Nancy Polanco request Conditional Use approval for a Landscape Contractor under the business name Treeman, Inc. and accompanying Forest Conservation Plan.

No. CU202409 & F20240190

Completed: 1-19-2024

MCPB

Item No. 8

February 1, 2024

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

Montgomeryplanning.org

Treeman, Conditional Use No.CU202409

Planning Staff

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LOCATION/ADDRESS

2230 Spencerville Road, Spencerville 20868

MASTER PLAN

1997 *Cloverly Master Plan*

ZONE

RE-1

PROPERTY SIZE

2.10 Acres

APPLICANT

Jose Manuel “Manny” Polanco and Nelsy Polanco

ACCEPTANCE DATE

October 30, 2023

REVIEW BASIS

Chapter 59 and Chapter 22A

HEARING EXAMINER PUBLIC HEARING

February 26, 2024

Summary:

- Staff recommends approval of the Conditional Use with conditions and variance and alternative compliance transmittal of comments to the Hearing Examiner.
- Staff recommends approval of the associated Final Forest Conservation Plan with conditions.
- The Subject Site has an existing Landscape Contractor use without a Conditional Use approval and a single-family detached house. The Proposal would allow for a Landscape Contractor.
- Staff has not received any public correspondence as of the date of this Staff Report.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE NO. CU202409

Staff recommends approval of Treeman, Conditional Use No. CU202409, for a Landscape Contractor, subject to the following conditions:

1. The use is limited to a Landscape Contractor and a single-family dwelling.
2. The existing house must remain a residence with an associated shed.
3. The existing house must provide a restroom for the employees for the Landscape Contractor.
4. The Landscape Contractor must not have more than 20 employees.
5. The Applicant will have the following vehicles and equipment onsite at any given time.
 - a. The Landscape Contractor must not have more than 20 commercial trucks including bucket trucks, a crane, chipper trucks, large pick-up trucks, and a loader truck.
 - b. The Landscape Contractor must have no more than 10 trailers carrying equipment including stump grinders, spyder-lifts, and chippers onsite.
 - c. The Landscape Contractor will have no more than three (3) pieces of motorized equipment including front loaders.
6. Hours of operation must be limited to 7:00 a.m. through 6:30 p.m., Monday through Friday. No hours of operation on the weekends unless for emergency tree removed because of storms or other similar events. Recommend the Applicant keep a log of emergency events if complaints are filed with Department of Permitting Services.
7. As part of any future subdivision application, the Applicant must provide dedication along the frontage of the Subject Property for Spencerville Road to provide a minimum of 60 feet of dedication as measured from the centerline of the road.
8. As part of any future subdivision application, the Applicant must construct a minimum 11-foot-wide asphalt sidepath with a minimum 6-foot-wide tree buffer along the frontage of the Subject Property with Spencerville Road.

PRELIMINARY/FINAL FOREST CONSERVATION PLAN F20240190

Staff recommends Approval of the Preliminary/Final Forest Conservation Plan No. F20240190 with conditions:

1. 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.
2. 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.

3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before the start of any demolition, clearing, grading, or construction for the accompanying development Application, whichever comes first, the Applicant must:
 - a) 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 (FCP). 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.
 - b) 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.
 - c) Install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d) Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the 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.
 - e) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.42 acres of new forest planting and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
5. 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.

SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

VICINITY/NEIGHBORHOOD

The Subject Property outlined in Figure 1 in the red dashed line is located at 2230 Spencerville Road, Spencerville 20868. The Property is located in the 1997 *Cloverly Master Plan* area.

As delineated in a solid yellow line in Figure 1, Staff defined a neighborhood for purposes of analyzing this Conditional Use and its possible impacts on the character of the surrounding area. Staff determined the neighborhood based on properties that would be most impacted by the proposed Conditional Use.

The surrounding neighborhood is zoned RE-1, RC, NR, and GR. The Properties to the east, west and south are all zoned RE-1 and consist of single-family detached houses, religious assembly, and a landscape contractor. The property to the north is zoned RC and is the continuation of the previously mentioned neighboring landscape contractor. One of the properties to the southwest is zoned GR and is a restaurant (deli). Two other properties to the southwest are zoned NR and consist of a U-Haul rental and an auto repair business.

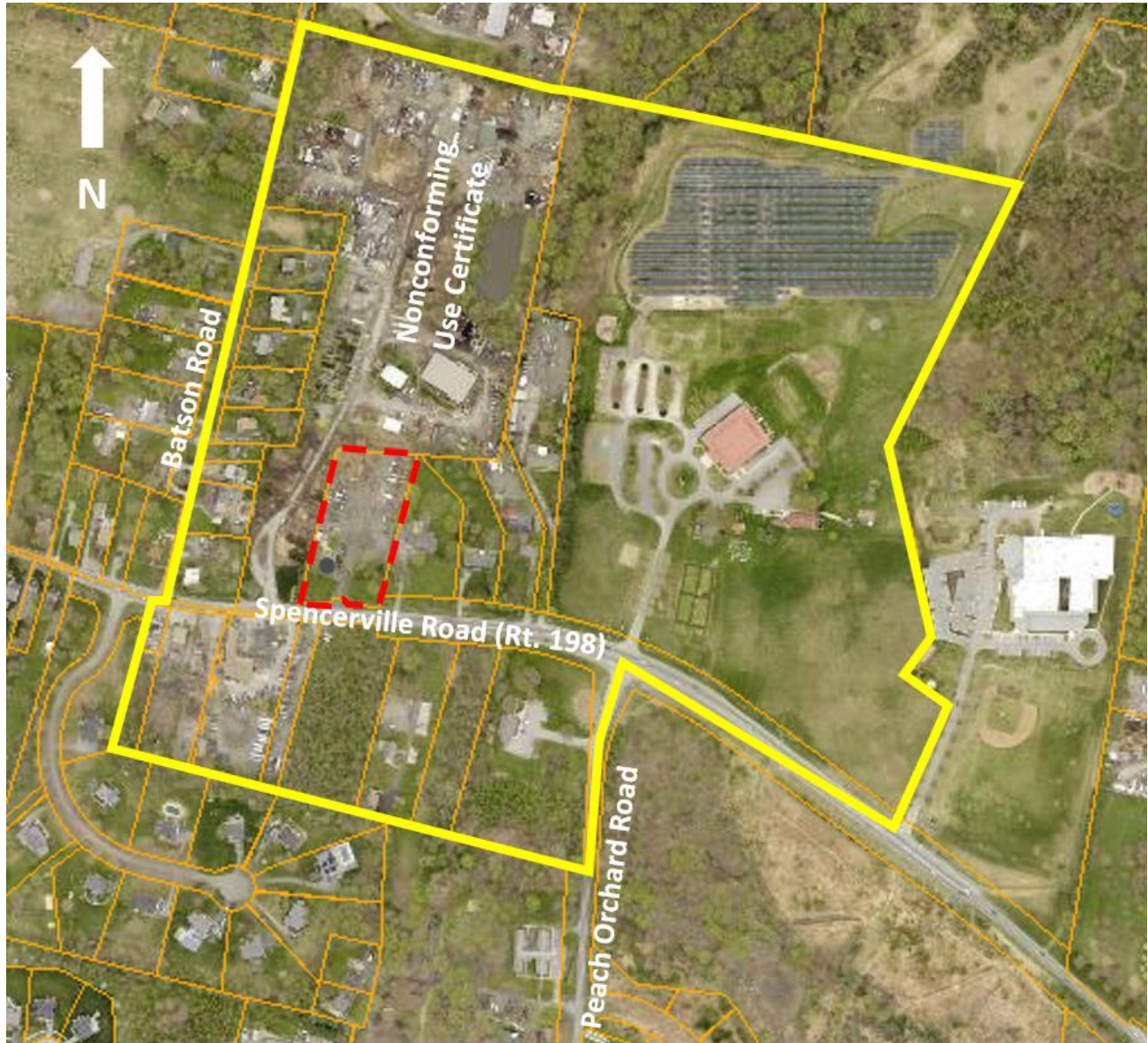


Figure 1: Vicinity Map with Staff-defined neighborhood highlighted in solid yellow.

Staff identified four existing, conditional use/special exceptions within the defined neighborhood on the abutting property at 2214 Spencerville Road. However, all of these approvals were voided or

revoked because the property has an approved Non-Conforming Use Certificate from the Department of Permitting Services.

PROPERTY DESCRIPTION

The Subject Property (outlined in red, dashed line) consists of 2.10 acres identified as Parcel P319. The Property will have access from the existing driveway for 2230 Spencerville Road. The Property is zoned RE-1 and is located on the north side of Spencerville Road between Batson Road and Peach Orchard Road.

The Property has an existing single-family detached house position towards the front of the Property that will remain a residence. There is an existing shed onsite that is part of the residence and not the proposed Landscape Contractor which will also remain. The rest of the site behind the house is a cleared open area for the existing Landscape Contractor business consisting of a parking area for employees, parking for trucks and equipment and a storage bin for wood chips.

The Site does not contain any streams, wetlands, floodplain, or a stream valley buffer. The Site does contain one specimen tree. The front portion of the Property is in the Upper Paint Branch Special Protection Area (SPA) and the Upper Paint Branch Overlay Zone. The Applicant is not proposing any changes to this portion of the site.



Figure 2 – Subject Property

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant proposes to use the rear portion of the Property for a Landscape Contractor business. The existing house and shed will remain a residence and will not be used as an office for the Landscape Contractor, but a restroom within the house will be available for the employees to use. The Applicant proposes installation of a parking area for the employees, equipment and trucks for the Landscape Contractor. The Applicant will utilize 20 large commercial vehicle, 10 trailers carrying equipment, three pieces of motorized equipment and up to 20 employees. Employees will arrive at the Property in the morning starting at 7:00 a.m. and will leave for jobsites after an hour or two and then return around 4:00 p.m. for around an hour or two. The Applicant is proposing hours of operation onsite to be Monday through Thursday from 7:00 a.m. to 9:00 a.m. in the morning and 4:00 p.m.

through 6:30 p.m. in the afternoon. On Fridays the hours of operation will be from 7:00 a.m. through 9:00 a.m. in the morning and from 2:00 p.m. through 4:00 p.m. The Applicant is not proposing weekend hour except in the case of emergencies such as clearing fallen trees after a storm.

The Applicant will be installing a wood chip storage bin along the east side of the Property towards the rear. The Applicant is also proposing to retain the existing opaque fencing around the Property and adding additional screening and landscaping and additional lighting which does not impact the neighboring residential property to the east.



Figure 3: Existing Site Conditions



Figure 4: Conditional Use Plan

FOREST CONSERVATION

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

SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has received one email from the Patuxent Watershed Protection Association, stating they do not have any objection to the application as submitted.

SECTION 5: ANALYSIS AND FINDINGS

CONDITIONAL USE NO. CU202[XXX]

- 1. Per Section 59.3.5.5.B.b, where a 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.**

The Property is zoned RE-1 and consists of 2.10 acres.

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

The Applicant is proposing meeting the required setbacks in all locations except for an area long the north and west Property lines. The Applicant is seeking a variance (A-6834) from these setback requirements from the Hearing Examiner as described in the Variance Section of the Staff Report.

- 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.**

The Landscape Contractor operation will be utilizing no more than 20 commercial trucks including bucket trucks, a crane, chipper trucks, large pick-up trucks, and a loader truck, no more than 10 trailers carrying equipment including stump grinders, spyder-lifts, and chippers, and no more than three pieces of motorized equipment including front loaders. In addition, the employees may park up to 15 personal vehicles 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).**

The Applicant is not proposing the sale of any material of supplies on the Property.

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

The Applicant is proposing that employees will arrive at the Property in the morning starting at 7:00 a.m. and will leave for jobsites after an hour or two and then return around 4:00 p.m. and remain on the Property for around an hour or two. The Applicant

is proposing hours of operation onsite to be Monday through Thursday from 7:00 a.m. to 9:00 a.m. in the morning and 4:00 p.m. through 6:30 p.m. in the afternoon. On Fridays the hours of operation will be from 7:00 a.m. through 9:00 a.m. in the morning and from 2:00 p.m. through 4:00 p.m. The Applicant is not proposing weekend hour except in the case of emergencies such as clearing fallen trees after a storm. The residential home will remain as a residential use without restriction on its hours, except for the provision of a bathroom for the employees.

2. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:

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

There are no previous approvals on the Property.

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

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

The proposed Landscape Contractor use satisfies the use standard in Section 59.3.5.5.B.b as stated above. In addition, the residential use is permitted by right for the single-family home.

ii. Development Standards

The Property is in the RE-1 zone, which allows Landscape Contractor as a Conditional Use. The project complies with all the standard method development standards of the RE-1 zone, as shown on the Development Standards Table below.

iii. Development Standards

Table 1: Development and Parking Standards (RE-1)

Development Standard Section 59.4.4.6.B	Permitted/ Required	Existing/Proposed*
Minimum Lot Area	40,000 sq. ft.	2.10 acres
Minimum Lot Width at Front Building Line	125 ft.	214 ft.
Minimum Lot Width at Front Lot Line	25 ft.	213 ft.
Maximum Density	1.09 units/acre	1 existing dwelling unit
Maximum Lot Coverage	15%	1.9%
Minimum Front Setback	50 ft.	79.4 ft.
Minimum Side Setback	17 ft.	35.4 ft. & 141.6 ft.

Development Standard Section 59.4.4.6.B	Permitted/ Required	Existing/Proposed*
Minimum Sum of Side Setbacks	35 ft.	177 ft.
Minimum Rear Setback	35 ft.	300.8 ft.
Maximum Height	50 ft.	< 50 ft. (existing house)
Accessory Structure side setback**	15 ft.	4.2 ft.
Accessory Structure rear setback**	10 ft.	>200 ft.
Vehicle Parking Requirement (Section 59.6.2.4.B)	2 space/ dwelling unit= 2 spaces 0.5 spaces/ employee= 10 spaces 1 space/ resident employee= 0 spaces 1 space/ commercial vehicle= 20 spaces Total required spaces= 32 spaces	38 spaces

*There is no proposed development with this Application.

** Existing shed to remain

iv. **General Requirements –**

(1) Access

The proposed use fronts Spencerville Road (MD 198). A single existing driveway access will continue to serve the property. Access will be adequate for the proposed use.

(2) Parking, Queuing and Loading

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

(3) Lighting

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

The Applicant is proposing new lighting throughout the Property. The lighting will be 16 feet in height will be 0.1 footcandles at the property line or less abutting the single-family detached house to the east. Along the shared property line with the neighboring Landscape Contractor the lighting will exceed the 0.1 footcandle.

(4) Screening

Alternative Compliance Requests:

The Applicants request approval for Alternative Compliance under Section 59.6.8.1 of the Zoning Code to permit the following adjustments to perimeter landscaping:

- 1) For alternative compliance of Section 59.6.5.3.A.3, allow perimeter landscaping that extends from the rear property line to the front fence line, but not from the fence line to the street. This will keep the front portion of the site consistent and compatible with other front yards along this stretch of Spencerville Road. The requested Alternative Compliance is appropriate under Section 59.6.8.1 because of a combination of unique site characteristics and existing fence because of the surrounding residential character of the neighborhood.
 - a. The Applicant is seeking Alternative Compliance for this to retain the existing character along Spencerville Road with the existing neighboring properties. Also, this will ensure compliance with the Master Plan which states it is important to maintain the existing character along Spencerville Road. Staff agrees with the Applicant and recommends approval for this Alternative Compliance.
- 2) As an alternative to full compliance with Section 59.6.5.3.C.7, allow plantings consisting of shade trees and tall evergreens that will be visible above the fence and therefore provide the most benefit to the abutting residence. This will avoid taking up space in the perimeter landscape areas with understory trees and shrubs that will not be readily visible above the fence, and therefore will not provide significant screening value to the abutting residence.
 - a. The Applicant has an existing 6 feet high opaque fence along the eastern border which is higher than the 4 feet high fence required for screening in Section 59.6.5.3.C.7. With this additional height, some of the understory plantings and shrubs

are not going to reduce the visibility any more than the existing fence. Staff agrees with the Applicant and recommends approval for this Alternative Compliance.

(5) Outdoor Display and Storage

The Applicant is not proposing an outdoor display area. The Applicant is proposing a small storage area for wood chips onsite towards the rear of the Property.

(6) Signage

The Applicant is proposing a 2 square foot sign for the business. This sign meets the requirements of the Zoning Ordinance. The Applicant must obtain a sign permit from the Department of Permitting Services if required.

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

The Site is located within the 1997 *Clovery Master Plan* area, which does not have specific recommendations for the Subject Property. However, the proposed Conditional Use maintains the visual residential character from the road by keeping the Landscape Contractor use to the rear of the property behind the existing single-family house along with the fencing and landscaping along the front of the property. Thus, this development pattern associated with the proposed conditional use substantially conforms and is not in conflict with the Master Plan's general recommendations.

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

The proposed conditional use will be harmonious with the surrounding neighborhood and will not alter its character as a rural area with a mix of residential and non-residential uses on large lots. The proposed landscape contractor will blend in with the existing mix of uses and, with all operations more than 170 feet back off from the road, up an incline and behind a house, landscaping, and an opaque fence. In addition, the Subject Property is wrapped on two sides by a much larger landscape contractor and sits across the street from active commercial uses.

e) ***will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly***

residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff could not find any active Conditional Use or Special Exception in the Staff defined neighborhood. There is one nonconforming use abutting the Property which is a landscape contractor.

- f) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:***
- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or***
 - ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and***

A Preliminary Plan of Subdivision is not required, and Staff has determined that there are adequate public services and facilities to serve the proposed use as described below.

(1) Transportation

Master-Planned Roadways and Bikeway

The Subject Property is located on Spencerville Road, classified in the 2021 Complete Streets Design Guide as a boulevard with a 120-foot-wide right-of-way. As part of any future subdivision application, additional right-of-way dedication will be required.

The 2018 Bicycle Master Plan recommends a separated sidepath along the north side of the road. As part of any subdivision application, the Applicant must construct this section of sidepath.

Pedestrian Facilities

There are no pedestrian facilities in the vicinity. The Applicant will be required to install a sidepath as part of any subdivision application, which will also serve pedestrian movement.

Transit Service

There is no transit service in the vicinity of the Subject Property.

Local Area Transportation Review

The use is proposed to have a maximum of 24 employees. Additionally, the Subject Property contains no retail sales operations, negating customer visits to the Site. Additionally, most operations occur at offsite locations. While the Applicant currently is staffed by 19 employees, these trips cannot be credited as existing trips as they had not been previously reviewed or approved.

Nevertheless, the proposed 24 employees will result in 48 net new peak hour person trips. The Application generates fewer than 50 new person trips in the morning and evening peak hours. As a result, the Application is not subject to completing a Transportation Impact Study (“TIS”).

Table 2: Trip Generation for the Proposed Conditional Use

Trip Generation						
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
19 Staff* (existing, not approved / credited)	19	19	38	19	19	38
5 Proposed new Staff	5	5	10	5	5	10
Total Trips			48			48

*Based on the current number of employees operating from the Site

(2) Schools

The Landscape Contractor Conditional Use will not increase the number of kids therefore there is no effect on schools.

(3) Other Public Facilities

The Property is located within water and sewer categories W-6 and S-6. Department of Permitting Services Well & Septic Section has no objections to this application and confirmed one bathroom in the house may be used for the employees without major impact on the existing well or septic. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the

standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

- g) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:**
- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;**
 - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or**
 - iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees.**

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, Staff examines the size, scale, scope, light, noise, traffic and environmental effects of the proposed use. Staff identified the following physical and operational characteristics necessarily associated with a Landscape Contractor use.

- vehicle trips
- employee parking
- noise or odors associated with truck and equipment
- onsite lighting

The Landscape Contractor will not be detrimental to surrounding properties and staff has not identified any non-inherent adverse effects associated with the proposed use.

The Project includes new landscaping and screening to limit the visual impact of the proposed surface parking lot as well as help mitigate noise, and will not cause any

objectionable noise, fumes or illumination or decrease the economic value of surrounding properties. The proposed new lighting will have automatic shutoff and shield so as not to effect the residential property to the east as shown on the submitted lighting plan that shows 0.1 footcandles or less at the east lot line.

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

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

The Applicant is not proposing any new construction with this Application.

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

The Applicant understands just because the proposed use meets all the requirements of the Conditional Use, there is not a presumption this use is compatible and is not sufficient to require a conditional use approval. Staff finds the use is compatible with the surrounding neighborhood.

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

This Section is not applicable to this Application.

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

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

This Section is not applicable to this Application.

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

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

This Section is not applicable to this Application.

VARIANCE REQUESTS

The Applicant is requesting a variance as part of the Conditional Use application. The Zoning Ordinance allows an applicant to apply for a variance for anything within Chapter 59 which may include development standards or standards with a use. The Board of Appeals will typically hear and decide on variances in the county; however, the Board of Appeals may defer the variance hearing to the Hearing Examiner if they choose to do so when also considering a Conditional Use. In this case, the Board of Appeals has deferred the variance hearing and decision to the Hearing Examiner.

1. Per Section 59.3.5.5.B.b, a Landscape Contractor use requires a 50-foot setback on all side for buildings, parking, loading and other site operations. The proposed Landscape Contractor requires the following variances:
 - a. A 40-foot variance to allow a ten-foot parking setback along a portion (approximately 50%) of the western property line, as shown on the Variance Plan.

Per Section 59.7.3.2.E, Necessary Findings, granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

- 1. denying the variance would result in no reasonable use of the property; or***
- 2. each of the following apply:***

a. one or more of the following unusual or extraordinary situations or conditions exist:

i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

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

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

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

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

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

b. A 40-foot variance to allow a ten-foot setback along a portion (approximately 75%) of the northern property line, as shown on the Variance Plan.

Per Section 59.7.3.2.E, Necessary Findings, granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

1. denying the variance would result in no reasonable use of the property; or

2. each of the following apply:

a. one or more of the following unusual or extraordinary situations or conditions exist:

i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

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

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

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

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

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

- c. A 45.2-foot variance to allow use of a pre-existing shed located approximately 4.2 feet from the western property line, as shown on the Variance Plan.

Per Section 59.7.3.2.E, Necessary Findings, granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

1. denying the variance would result in no reasonable use of the property; or

2. each of the following apply:

a. one or more of the following unusual or extraordinary situations or conditions exist:

i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

ii. the proposed development uses an existing legal nonconforming property or structure;

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

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

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

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

- c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

FOREST CONSERVATION

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of variance trees. The Forest Conservation Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

Natural Resource Inventory/Forest Stand Delineation Plan

The Property has two Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420232180 was approved on August 24, 2023. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Lower Patuxent watershed, classified as a Use Class I-P by the State of Maryland and the Upper Paint Branch Watershed, classified as a Use Class III-P by the State of Maryland.

The Subject Property contains no forest. There is one specimen tree on-site that has a diameter breast height (“DHB”) of 30 inches or more. The Subject Property does not contain any streams, wetlands, floodplain, or stream valley buffer.

Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan No. F20240190 (“FFCP”) (Attachment A) for concurrent review with the development plan application for Conditional Use Plan No. CU202409. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned RE-1 and is assigned a Land Use Category of Medium Density Residential (“MDR”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law

("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 20% and a conservation threshold of 35% of the Net Tract Area.

The Net Tract Area for forest conservation purposes is the 2.10 acres. There is no existing forest on the Subject Property. This results in a total afforestation requirement of 0.42 acres within the same watershed/Priority Area or 0.42 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement offsite within the same watershed at 16201 Batson Road.

Forest Conservation Variance

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

Variance Request

The Applicant submitted a variance request in a letter dated August 30, 2023 (Attachment B). The Applicant proposes to impact one (1) tree that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 3).

In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Staff agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Applicant has demonstrated that not allowing a Variance request would cause an unwarranted hardship because, the property is constrained by the Special Protection Area (SPA) covering about a third of the site, which has a strict limit on imperviousness, along with a portion of the Patuxent Management Area (PMA) in the northeast corner of the property. The property is a long, thin rectangular parcel that will require impervious surface close to property lines to allow for efficient truck circulation and daily operation of unloading woodchips with a backhoe. With the constraints of the PMA and the SPA not allowing impacts to tree #7 would preclude the site from being used as a landscape contractor which is an allowed use in the zone and therefore deny a reasonable use of the property.

Staff has reviewed this Application and based on the existing conditions on the Subject Property and has determined that there is an unwarranted hardship.

Variance Findings

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

1. ***Will not confer on the applicant a special privilege that would be denied to other applicants.***
Granting the Variance will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site. These impacts cannot be avoided. Therefore, the granting of this Variance is not a special privilege that would be denied to other applicants.
2. ***Is not based on conditions or circumstances which are the result of the actions by the applicant.***
The requested Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based on existing site conditions and the requirements to meet development standards.
3. ***Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***
The requested Variance is a result of the existing conditions and proposed improvements, not as a result of land or building use on a neighboring property.
4. ***Will not violate State water quality standards or cause measurable degradation in water quality.***
The Variance will not violate State water quality standards or cause measurable degradation in water quality.

Recommendation on the Variance Request

Staff recommends approval of the Variance Request

SECTION 6: CONCLUSION

The proposed conditional use complies with the findings require for approval of a Landscape Contractor, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 1997 *Cloverly Master Plan*, will not alter the existing character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use

with conditions and transmittal of comments to the Hearing Examiner approval of the associated Forest Conservation Plan.

ATTACHMENTS

Attachment A: Forest Conservation Plan

Attachment B: Conditional Use Plan

Attachment C: BOA Variance Letter, DPS Variance Letter and Variance Plan

Attachment D: Emails from County and State Agencies