

IN THE MATTER OF : BEFORE THE
Mario A. Guzman and : HOWARD COUNTY
Victor Guzman Argueta : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : Case No. BA 23-002C

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DECISION AND ORDER

On May 10, 2023, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of Mario A. Guzman and Victor Guzman Argueta, Petitioner, for a Conditional Use for use of the property for the business of a Landscape Contractor under Howard County Zoning Regulations (“HCZR”) Section 131.0.N.32.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by William E. Erskine, Esq. The following testified in support of the Petition: Samer A. Alomer, P.E., Mildenberg, Boender & Assoc., Inc.; Mario Guzman; Victor Guzman; Al Riley; Philip Drieu; Terry Schwartzbeck; Julie Parsons; Brian Blackburn; Francisco Robbins; and Terri Robbins. Others appeared in support but did not testify.

Regina Haughton and Craig R. Haughton testified in opposition. Donna Dunmeyer appeared in opposition but did not testify.

FINDINGS OF FACT

Based upon the preponderance of the evidence presented at the hearing, I find the following facts:

A. **Property.** The subject property, known as 1242 Long Corner Road, located at Tax Map 6, Grid 10, Parcel 241 (the "Property"), comprises 6.46 acres and is located in the RC-DEO zoning district. The site descends from an elevation of 844 feet at the southern boundary line to 792 feet at the northern boundary line.

B. **Vicinal properties.** To the West, South and East lie RC-DEO zoned parcels used as single family residential. To the North are undeveloped RC-DEO parcels used for agricultural purposes.

C. **Roads.** Long Corner Road has two travel lanes within a 40-foot right-of-way. The speed limit is 30 miles per hour According to the State Highway Administration, the traffic volume on Long Corner Road in the general vicinity of the Property was 1,251 (AADT) Annual Average Daily Traffic in 2018.

D. **Water and Sewer Service.** The Property is not within the Planned Service Area for water and sewer and is served by private well and septic facilities.

E. **General Plan.** The Property is designated Rural Resource on the Designated Place Types Map of PlanHoward 2030. Long Corner Road is a Major Collector.

F. **Zoning History.** There is no record of prior Board of Appeals, Zoning Board, or any other Zoning cases for the Property.

G. **Current Use.** The Property consists of a residential dwelling and a brick parking garage with multiple bays.

H. **Proposal - Landscape Contractor.** Petitioner seeks approval for the business of a Landscape Contractor (Section 131.0.N.32) consisting of 13,206 square feet (to include vehicle, equipment, material, and supply storage; 11 employee parking spaces; and a 5,000

square foot pole barn).

The Petition indicates 11 employees will typically be on-site for 45 minutes in the morning to pick up equipment and 45 minutes in the afternoon/evening to return the equipment, and that one or two employees may remain on-site at times during the day. The hours of operation are proposed to be Monday through Friday from 6:00 a.m. to 7:00 p.m. and Saturday 7:00 a.m. to 5:00 p.m.

Petitioner submitted the following revised plans:

- CU Plan Sheet 1 Rev. Mar 8, 2023
- CU Plan Sheet 2 Rev. Mar 8, 2023
- CU Plan Sheet 3 Rev. Jan 23, 2023
- CU Plan Sheet 4 Rev. Mar 8, 2023
- CU Plan Sheet 5 Rev. Jan 23, 2023
- CU Plan Sheet 6 Rev. Jan 23, 2023

The above shall be referred to as the “Plans.”

I. **Technical Staff Report.** The Department of Planning and Zoning issued a Technical Staff Report dated April 24, 2023 (“Staff Report”), the findings of which, when stated, have been adopted herein.

J. **Testimony.**

1. Samer A. Alomer, P.E., Mildenberg, Boender & Assoc., Inc.

Mr. Alomer is a professional civil engineer and has significant experience – 27 years as a professional engineer and over 11 years handling land development matters in Howard County. He prepared the Conditional Use Plan and at the hearing testified that the Plan meets each of the

General Approval Criteria Under HCZR Sec. 131.0.B and specific criteria under HCZR Sec. 131.0.N.32.

He described the layout of the lot and the use of the lots. Mr. Alomer stated that the Property comprises 2 lots that were previously part of a minor subdivision. However, when the County and State passed the “Tier” legislation, the Property could not be divided into 2 lots. He also stated that only one access point for the subdivision was allowed. That access point has not been used, and the existing driveway remains the only driveway for the 2 lots. He further explained that if the planned single access point is required to be used, it would be impractical to use for the two remaining lots and that Petitioner plans to request alternative compliance from DPZ to allow them to use the existing access point for the Property.

Mr. Alomer stated that the Property is about 6.5 acres and includes an existing house and a few accessory structures. The existing house will remain and be occupied by Messrs. Guzman and their families. The Property also includes septic fields. He said that the Property gently slopes away from Long Corner Road. He said that the current setback for the RC district is 75 feet from the road and 30 feet from the side lot lines. However, the setbacks for this conditional use are much larger – 100 feet from all property lines.

Regarding sight lines and noise, Mr. Alomer then explained the Site Section A-A on the Plan. That section shows that from the house next door to the Property, with the installation of an earthen berm (6 feet high, 40 feet wide and approximately 300 feet long), a person standing on the first floor of that house would not be able to see the proposed pole barn because the pole barn will be located in an area that is approximately 40 feet lower in elevation than the property where the next door house is located. Mr. Alomer explained also that the earthen berm and foliage to be

planted on it will block much of the noise that emanates from the Property. He also said that the gravel driveway will be paved, which will reduce further the noise of trucks driving up and down the driveway. He stated further:

“All the parking that was or the cars were parked that were within the 100 foot setbacks will all be removed. . . . So we're proposing new paved parking here and new paved parking here. The driveway is going to be extended all the way to the back where we are proposing a 5000 square foot pole barn. The pole barn is 100ft by 50ft with an area around it for extra material storage. As I said, all structures that are within the setback, within the 100 foot setback, they are all going to be removed. *So there will be no structures or uses within that 100 foot setback.* After meeting with the neighbors in the community meeting, Bill, we listened about the noise and basically we did a few changes. And one major change is that we . . . ended up moving [the pole barn] all the way back. The other item or the other change that we did is we were relying heavily on the landscaping to shield the noise and the operation basically from the neighbors, even though we still have providing much more landscaping than required by the landscape manual. Additionally, we provided a noise berm, a six foot high noise berm that will help shield the noise and help shield the view from the operation.

. . .

“[Ms. Haughton – the next door neighbor] was concerned about the noise, especially the noise. So these are part of the solutions that we came up with to alleviate or try to address that concern. And the earth berm is the most effective method for addressing noise. It's used along roads, used along subdivisions. It's, in my opinion, more effective than noise walls. Also relocating the barn [farther back and down slope] . . . Most of the operation will be done in the back here. The material storage will also be done in the back. So that also helps alleviate the noise.”

. . .

“The noise berm as proposed is very effective. Extremely effective.

Mr. Alomer stated that the house includes an office that will be used for the landscape business by the residents of the home. No additional employees will work in the office located in the home. Mr. Alomer stated that the Petitioner plans to use part of the property for agricultural

purposes (“he will use it for a nursery where he plants trees and flowers”) that are not part of the conditional use.

Mr. Alomer explained that the access point is safe. He stated:

“ . . . we have safe access. And safe access starts with sight distance. So we analyze sight distance. We did a speed study. We analyzed sight distance, both intersection and stopping sight distance. And in both cases, we have more than adequate sight distance. And I visited the site three times and I am very comfortable with the sight distance. And the study here confirms my conclusion.

Mr. Alomer explained that the proposal includes not only additional landscaping and the noise berm, but “We have the additional landscaping. And if you're traveling from the road, in addition to the existing trees, the proposed trees, we are also proposing a 40 foot long, solid fence with an eight-foot gate that provides even more, more visual buffering from the road.” He stated that:

- the Petitioner is not requesting permission to do bodywork or engine rebuilding or reconditioning of engines.
- The total area of the lot that will be occupied by storage of equipment, materials and supplies and parking is 4.7%.
- Snow removal will be conducted from the Property, but the service will only be available generally to existing clients.

2. Mario Guzman.

Mr. Guzman lives on the Property and, with his father, Victor Guzman, operates the business. He testified in general about the operation. He stated that he plans to have about 11 employees, and that many of the employees carpool to the site, so that a total of 11 parking spaces is more than sufficient even in peak times. He stated that the business is a 2-crew

operation, meaning that they would typically be staffing 2 jobs at one time and the personnel and equipment for each job would be staged on the Site then head out each day. He did state that for some jobs, equipment is left at the jobsite for the time that equipment is needed.

3. Alfred D. Riley, Jr.

Mr. Riley knows the Guzman family from a time when they were neighbors at a different location. The Guzmans operated their landscape contractor business from the property adjacent to Mr. Riley's daughter's property for about 5 years. He stated that during said time, there were no noise problems. The business started smaller than it is today, but by about the 5th year, the business had grown to the size it is today. He stated that the Guzmans were good neighbors.

4. Brian Blackburn - 1241 Long Corner Rd, Mt. Airy, MD 21771.

Mr. Blackburn repeated other neighbors' comments about the Guzmans being good neighbors. He stated that he lives across the street from the Property and from Ms. Haughton and drives a diesel truck that must warm up in the mornings. He also said he has done snow removal for 20 years and that he leaves his home at 4AM in the morning on snow days.

5. Victor Guzman.

Mr. Guzman owns the business with his son. He stated that he has spent a lot to make sure the noise levels are at a minimum and that he respects his neighbors.

6. Philip Drieu - 1180 Long Corner Road, Mt. Airy, MD 21771.

Mr. Drieu testified that the Guzmans are good neighbors and take very good care of the property. He stated that the Guzmans have improved the Property considerably, as it was formerly in disrepair.

7. Terry Schwarzbeck - 1220 Florence Road, Mt. Airy, MD 21771.

Ms. Schwarzbeck testified that the Guzmans are good neighbors and have improved the property and that they are nice people, and she would like to see their business prosper.

8. Julianne Parsons - 1241 Long Corner Rd, Mt. Airy, MD 21771.

Ms. Parsons stated:

“So I live in the property directly across the street. Mine was the little semicircle driveway that you saw on the plot. Um, I just came here to support the Guzmans because they've done a fantastic job of renovating the property. It was very much a dump when they purchased it. There used to be a big, beautiful bank barn, and that's completely gone. Um, you know, just now the landscaping is gorgeous in support, especially being the driveway that's across the street from them. I'm not seeing tons of traffic go in and out. That was a concern if there's going to be lots of employees. Um, you know, I've never felt unsafe with, you know, because there's so much traffic going in and out. His employees are respectful. They're not blaring music. They're not squealing tires.

...

“I'm wondering how much of the noise level that is complained about was actually from [the improvements that have been made to the property and not the landscape operation.]. You know, usually when I if I heard noise during the day, I'd look and see and it was another improvement that was being done on the property including today even there was something there fixing the entrance, you know, for the putting of a pillar. Yes. So usually when I looked over it, I the noise that I heard was typically something that was to improve the property.

Ms. Parsons went further to state she lives across the street and does not hear much noise in the early mornings even though she keeps her windows open when she sleeps.

9. Francisco Robbins - 1189 Long Corner Rd, Mt. Airy, MD 21771.

“Just here to support the Guzman's. They're an asset to the neighborhood and. Looking forward to them being around.”

10. Terri Robbins - 1189 Long Corner Rd, Mt. Airy, MD 21771.

Ms. Robbins stated, “we hope we have them here for a long time because we plan on staying here for a long time.”

11. Samuel Munchiando - 1242 Long Corner Rd, Mt. Airy, MD 21771. (Signed as supporter but did not testify.)

12. Regina Haughton - 1230 Long Corner Rd, Mt. Airy, MD 21771.

Ms. Haughton lives directly adjacent to the Property. She has lived there for many years. She testified that the noise from the Property is bothersome and loud:

“I have a two-story house and the cars come in in the morning. It's really loud. When the cars come in, I see their headlights in my bedroom window.

...
All my bedrooms face his house. So it's really noisy in the morning. It's like a parking lot. All the trucks are lined up and some are loading, loading gravel. I can hear gravel going in. And I was a school bus driver for Howard County, so I know diesel engines have to be warmed up. And I can hear them warming up the engines. I can hear that in the afternoon when everybody's coming back. It starts around 2:30. . . They have a red dump truck . . . When they unload that, it sounds like a bomb. It literally shakes the windows. And I can't understand why nobody else hears that. . . And it's like that every day. And if you think about it, the times he's asking to do that, it's going to be 73 hours a week . . . So that means you have three hours in the afternoon to sit outside or to do anything. Being right beside him is really noisy.

Ms. Haughton also testified that the wind carries debris onto her lot and she has to clean it up. She also said she is concerned that “it's going to devalue my house having a huge business beside it.”

“I can't even sit outside between 2:30 and 7 because there's just so much noise. And today, for instance, you said that people go off the job site and don't come back [but at] 11:30 [there] was mowing the lawn and there's a truck loading . . . So there is activity during the day. It's just not like they go and then they come back or stay away.

They do come back. So it's like an all-day affair . . . some days it might be less noisy, but . . . there is activity out all the time. It's not like they come and go and that's it. It doesn't work like that. So, I mean, it's very nice. I mean, I've talked to him a lot of times. He's been very kind. But that doesn't keep away the noise.

The noise is still there. . . that's my main concern.”

Ms. Haughton also said she is worried about the potential for fertilizer to seep into the well water and that the wells could run dry because of the amount of water they use.

Asked further about the noise and activity, Ms. Haughton stated:

I hear the noise in the morning. Sometimes you can hear the backhoe going, they'll be putting gravel or something and a dump truck. You can hear the trucks leaving. You can hear equipment being moved around. You can hear the beeping of the trucks when they're backing up and pulling forward. And it's not like just one person, like they line up in a long line. All the lights are on. It looks like a parking lot, and they all leave. Now, they might all leave in different areas, but they all leave basically around the same time. But it looks like a small parking lot . . . and then his last two about it starts around 6:00. Sometimes it can go as late as 7:30, depending on how fast or what they're doing. And then some sometimes they come back at noontime and sometimes they come in and out. It's not like they just go away and stay away all day.

Asked whether the earthen berm and additional landscaping would buffer the noise and view, she stated that “I think I'll be able to see them from my upstairs. Probably not. I don't have windows on the downstairs of my house on his side, so I will not see them parked. If I'm on my first level, I might be able to see them on my second level. . . And I don't open the windows because of the noise. So on that side of the house. I don't open any of the bedroom windows.” She stated that she can see the activity from her kitchen and back sunroom because the trees are not that thick. She said that there are concrete barriers and a tarp about 10 to 15 feet off the Property line.

When asked whether the planned berm will buffer the view and sound, Ms. Haughton said that the berm only goes back part of the length of her property. Ms. Haughton also stated that noise travels easily in her area because their area sits high. She said she can hear traffic from I-70 and she can hear trains at night. She further stated that she can hear Mr. Blackburn's diesel truck in the mornings.

13. Craig R. Haughton.

Mr. Haughton is Regina Haughton's son. He grew up at the location of his mother's home but does not live there now. Ms. Haughton stated that his mother's parcel shares a property line with the Property, thus there are fundamental differences from what the other people are testifying about and what his mother has experienced. Regarding the berm, he stated that the berm only goes back about a quarter of the distance of the shared boundary. He said that when he and his kids visit, they sometimes play or ride bikes on an old tennis court at a location about halfway back on his mother's lot. He said that as you go farther back, the elevation goes down and that he does not believe that the berm as planned will effectively buffer the noise. He said that before the Guzmans started their operations she was able to use and enjoy all of her land. He doubts that the planned protections will protect her entire property from the noise. He said that the noise can be very disturbing and gave an example of workers playing loud music and excavator noise for about 30 minutes that prevented him and his kids from wanting to stay outside.

14. Donna Dunmeyer - 1227 Long Corner Rd, Mt. Airy, MD 21771. (Signed in opposition but did not testify.)

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).

- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

PlanHoward 2030 policies are not directly related to conditional use requests for Landscape Contractors but uses that are properly sited and appropriately scaled and/or screened, they can be generally compatible with rural residential areas. See Staff Report.

Thus, the proposed use will be in harmony with the Howard County General Plan and PlanHoward 2030.

- 2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The 6.46-acre Property exceeds the five-acre lot size requirement. The indoor and outdoor storage of commercial vehicles, equipment, materials and supplies is 13,206 square feet which is approximately 4.7% of total acreage and does not exceed the 5% maximum allowed. Additionally, the buildings and use areas will with the 100-foot setback requirement. See Staff Report.

The proposed hours of operation are from 6:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturdays. The business will not operate on Sundays. According to the Petitioner, most of the activity is in the morning and late afternoon when employees are arriving at the site and then exiting for work offsite. See Staff Report. I find that with the *modified hours of operation approved herein*, such activity is compatible with rural residential

areas since these hours are similar to farming operations commonly found in similar areas. There was testimony about excavation work on the Property itself as well as testimony about noise from mowing and construction on the Property. All of this activity is compatible with rural residential areas. The activity from the business on the Property is compatible with farming operations throughout the day. The activity from the Property related to the improvements of the Property itself is compatible with virtually any residential area in which property owners are improving their lots and the structure thereon.

Long Corner Road is a Major Collector, which is an appropriate classification for the number and types of vehicles associated with the landscape contractor use.

Therefore, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use is appropriate for the site.

- 3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The Petition states that on-site activities will be limited to workday preparation for offsite jobs in the mornings and evenings, with limited trips otherwise during the day. There is existing and proposed vegetation and landscaping on the Property along with a proposed earthen berm 40 feet wide and approximately 300 feet long. There will be landscaping planted on top of the berm to further screen both sight and sound of the proposed use from adjacent properties.

The Property is in the RC-DEO zoning district. The properties located in that district are generally larger parcels with residential dwelling units along with accessory structures. The

entire area surrounding the Property includes many lots that appear to contain commercial uses, including farming uses. The entire area has rolling hilly topography and much of the land in the area is fields rather than woodlands, such that neighbors' properties and those structures and equipment thereon can be seen from neighboring properties, and the sound of equipment and vehicles would be able to be heard from neighboring properties more readily than in highly wooded areas. Thus, the character of the land of the Property and the residences adjacent to it are similar to the character of the land in the zoning district.

The Petitioner has proposed an earthen berm that would span the boundary between the Property and Ms. Haughton's lot from approximately 60 feet from Long Corner Road back to a point that is approximately one half the length of the property (about 300 feet long). The parking area for the employee cars will be relocated from the location that is now only about 20 feet from the lot line to a location outside of the 100-foot required setback. Further, additional landscaping is proposed on top of the berm and between the berm and the Haughton property line. The driveway is proposed to be paved, and the new pole barn is proposed to be located in the rear half of the Property which will be downgraded from the front of the Property and will be screened from view by the berm, landscaping and topography. While currently the landscaping materials are located in the area about halfway from the front of the Property, the storage of materials is proposed to be located behind and beside the proposed pole barn and within the rear half of the Property. The tennis court about which Craig Haughton spoke is located such that the rear edge of that court is approximately at the halfway point of the length of the Haughton property (from the road). Currently, that area is not screened from view of the Property. The proposal includes a berm that will extend almost to the rear of the proposed pole barn. *If that berm was extended to*

the edge of the proposed paved outdoor storage overflow area behind the proposed pole barn, the tennis court area would be better screened by the berm. Additional landscaping is proposed along the entire border of the Property with the Houghton lot as well as along the front of the Property and the boundary of the Property with the lot on the opposite (west) side from the Houghton lot. A fence with a gate is proposed at the entrance to the conditional use area that will screen the conditional use area from Long Corner Road.

Therefore, with the additional berm length, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the RC zoning district.

- 4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

The proposed buildings and structures comply with all setback and height requirements in Sec. 131.0.N.32 and the bulk requirements of the RC district. All internal paths, parking areas and proposed driveway expansions will be paved with dustless material. Due to the location, nature and height of structures, walls and fences, the proposed use will be screened from adjacent properties. See Staff Report.

Therefore, the location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

- 5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

Section 133.0 of the Zoning Regulations does not contain a specific parking number requirement for a Landscape Contractor use.

The Petition indicates that there will be a maximum of 11 employees on-site and 12 parking spaces will be provided. The use will not be open to the public and company trucks will be used to go to jobsites, not the vehicles belonging to employees. As shown in the Conditional Use Plans, all parking areas and loading areas are properly located and screened from public roads and residential uses. The Petition does not indicate whether there will be refuse areas located on the site. Parking areas, loading areas, and driveways are or will be appropriately located and screened from Long Corner Road and adjacent properties. Any refuse areas located on site must be within the 4.7% Conditional Use area. See Staff Report.

Thus, the number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

- 6. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

Precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. The ingress and

egress for the Property is achieved via an existing driveway connecting to Long Corner Road. In its review of the petition, the Division of Land Development indicated that an existing “access restriction” along the site’s frontage would need to be addressed which could change the location of the proposed ingress and egress. A sight distance analysis was conducted and indicates that location of the driveway intersecting with Long Corner Road provides adequate intersection sight distance. Long Corner Road is a County owned Major Collector. See Staff Report.

Thus, I find that this criterion has been met.

7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive areas are a stream and floodplain located over 250 feet away. No environmentally sensitive areas are located on the Property. See Staff Report.

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

8. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The closest historic site (HO-939) is located approximately 0.25-mile northwest of the Property. The structure was demolished in 2007 and a single-family dwelling was constructed in its place. The Resource Conservation Division reviewed the proposal and had no objection to the proposed use. See Staff Report.

Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Evaluation of the petition according to Section 131.0.N.32 (Specific Criteria for a Conditional Use for a Landscape Contractor).

1. The site is at least 5 acres in area.

The Property is 6.46 acres.

2. Buildings and outdoor areas to be used for *parking*, loading and storage of vehicles, equipment and tools and supplies shall be delineated on the Conditional Use plan and *located at least 100 feet from lot lines and public roads*.

The current and future location of the buildings, outdoors storage areas, and parking and loading areas are delineated on the Conditional Use plan. All of the areas to be used for the Conditional Use are located at least 100 feet from lot lines and public roads.

3. The location and design of the operation shall be such that the use will not be a nuisance to neighboring properties due to noise, dust or fumes.

The buildings and outdoor storage areas are located within the interior of the site and are greater than 100 feet from adjacent properties. The property to the east is the Haughton lot. The property to the west is currently unimproved. To the north is a large parcel with a heavily wooded area closest to the Property. The properties to the south are across Long Corner Road and are residential, screened by distance and existing and proposed vegetation. The closest residence is over 200 feet from the interior conditional use area.

4. Buildings used for storage or offices will be screened or compatible in scale and character with other residential or agricultural structures in the vicinity. If new structures or additions to structures are proposed, architectural elevations or renderings must be submitted with the petition.

A proposed 25-foot tall, 5,000 square foot pole barn will be constructed on the Property and is compatible in scale and character with other structures in the vicinity. All other existing

structures related to the proposed use are screened from neighboring properties by existing and proposed fencing, landscaping vegetation and a proposed earthen berm.

5. Outdoor parking and storage areas shall be screened from neighboring properties and roads.

Existing and proposed landscaping and vegetation and the proposed berm on the Property will screen the parking and storage areas from adjacent properties and Long Corner Road.

6. Minor repairs to vehicles or equipment are permitted, provided such activities take place inside a building. Bodywork, engine rebuilding, engine reconditioning, painting and similar activities are not permitted.

The Petitioner proposes to perform only minor repairs to equipment in the proposed pole barn. The business does not include any bodywork, engine rebuilding, engine reconditioning or vehicle repair on site.

7. The area used for parking and storage of commercial vehicles, equipment, materials and supplies, whether exterior or interior, shall be limited to no more than 5% of the area of the lot.

The total area used for parking and storage of commercial vehicles, equipment, materials, and supplies is 13,206 square feet which is approximately 4.7% of the 6.46-acre Property. See Staff Report.

8. The Hearing Authority shall set limits on the maximum number of employees and shall set the days and hours of operation.

The proposed hours of operation are Monday through Friday, 6:00 a.m. to 7:00 p.m. and Saturdays 7:00 a.m. to 5:00 p.m. Eleven (11) employees are proposed, and twelve (12) employee parking spaces are proposed. The parking spaces will be located on the side of the driveway opposite the Haughton property line, and beyond the 100-foot setback.

The maximum number of offsite employees at any one time shall be eleven (11).

I find that the hours from 6:00 a.m. to 7:00 p.m. Monday through Friday are beyond normal work hours and that business activities on the site should start winding down by 5:30 and cease by 6:00 p.m. Monday through Friday. These hours are still reasonable, as they allow for a workday of 12 hours long. Saturday hours may remain as proposed – 7:00 a.m. to 5:00 p.m., with a strict cessation at 5:00 p.m. Thus, the following hours of operation are hereby approved:

6:00 AM to 6:00 PM - Monday -- Friday

7:00 AM to 5:00 PM - Saturday

No approved hours on Sunday.

- 9. A snow removal service shall not be conducted as an accessory use unless specifically authorized by the Hearing Authority, upon a finding that the noise and level of activity of such a service will not be a nuisance to the neighborhood.**

Snow removal service was requested as part of the Conditional Use Petition. Such service may be conducted so long as the hours of operation stated above are adhered to.

- 10. On an ALPP purchased or dedicated easement property the following additional criteria are required:**

- The use shall not interfere with farming operations or limit future farming production.**
- Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.**

Because there are no ALPP purchased or dedicated easements on the Property, this section does not apply. See Staff Report.

ORDER

Based upon the foregoing, it is this 6th day of June 2023, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Mario A. Guzman and Victor Guzman Argueta for a Conditional Use to continue an existing business of a Landscape Contractor under HCZR Section 131.0.N.32 is hereby **GRANTED**;

Provided, however, that:

1. The Landscape Contractor use shall be conducted in conformance with, and the conditional use for a Landscape Contractor shall apply only to the uses and structures as described in, the Petition submitted January 25, 2023, and the Plans supporting the Conditional Use Petition cited above, and not to any other activities, uses, structures or additions on the Property;

2. All uses that are part of the Landscape Contractor business including parking and storage of commercial vehicles, equipment, materials and supplies and parking of vehicles of employees who work within the Landscape Contractor business shall be in areas that are located at least 100 feet from lot lines and public roads, which, on the Conditional Use Plan is the area designated in the Area Tabulation Chart and shown on the Plans as “Barn – 5,000 SF; Parking Pads – 1,944 SF; Material Storage – 4,440 SF; Brick Garages – 1,822 SF – Total 13,206SF” (“Approved Conditional Use Area”);

3. All outdoor storage of materials shall be in the proposed Material Storage area and nowhere else, and all loading and unloading of such materials to or from trucks or trailers shall be in the proposed Material Storage area as shown in the Plans.

4. The earthen berm described in the testimony and shown on the Plans shall be increased in length such that the berm will extend from the current proposed location closest to Long Corner Road north to the point which is at the northernmost edge of the Conditional Use Area (shown on **Attachment 1** to this Decision and Order – the red arrow shows the direction of the extension of the berm and the blue line shows the location of the northern end of the berm);

5. All landscape materials, parking, and uses related to the landscape contractor business currently located on the Property that are not yet in the Approved Conditional Use Area shall be relocated to the Approved Conditional Use Area;

6. The maximum number of employees coming to the site at any one time shall be eleven (11);

7. All employees must park in designated employee parking areas;

8. Landscape equipment repairs are permitted, provided such activities take place inside the Barn within the Approved Conditional Use Area. Vehicle body work, vehicle repairs, vehicle engine rebuilding, vehicle engine reconditioning, vehicle painting and similar activities are not permitted;

9. Petitioner shall ensure that safeguards are in place to prevent debris from blowing beyond the Property onto adjacent lots;

10. Snow removal services or parking and storage of snow removal vehicles or equipment are permitted but must comply with all other requirements of this Decision and Order;

11. The hours of operation for the Landscape Contractor uses shall be limited to:

6:00 AM to 6:00 PM - Monday -- Friday

7:00 AM to 5:00 PM - Saturday

No approved hours on Sunday;

12. The Site Development Plan, or its equivalent, shall include a note containing all conditions of approval; and

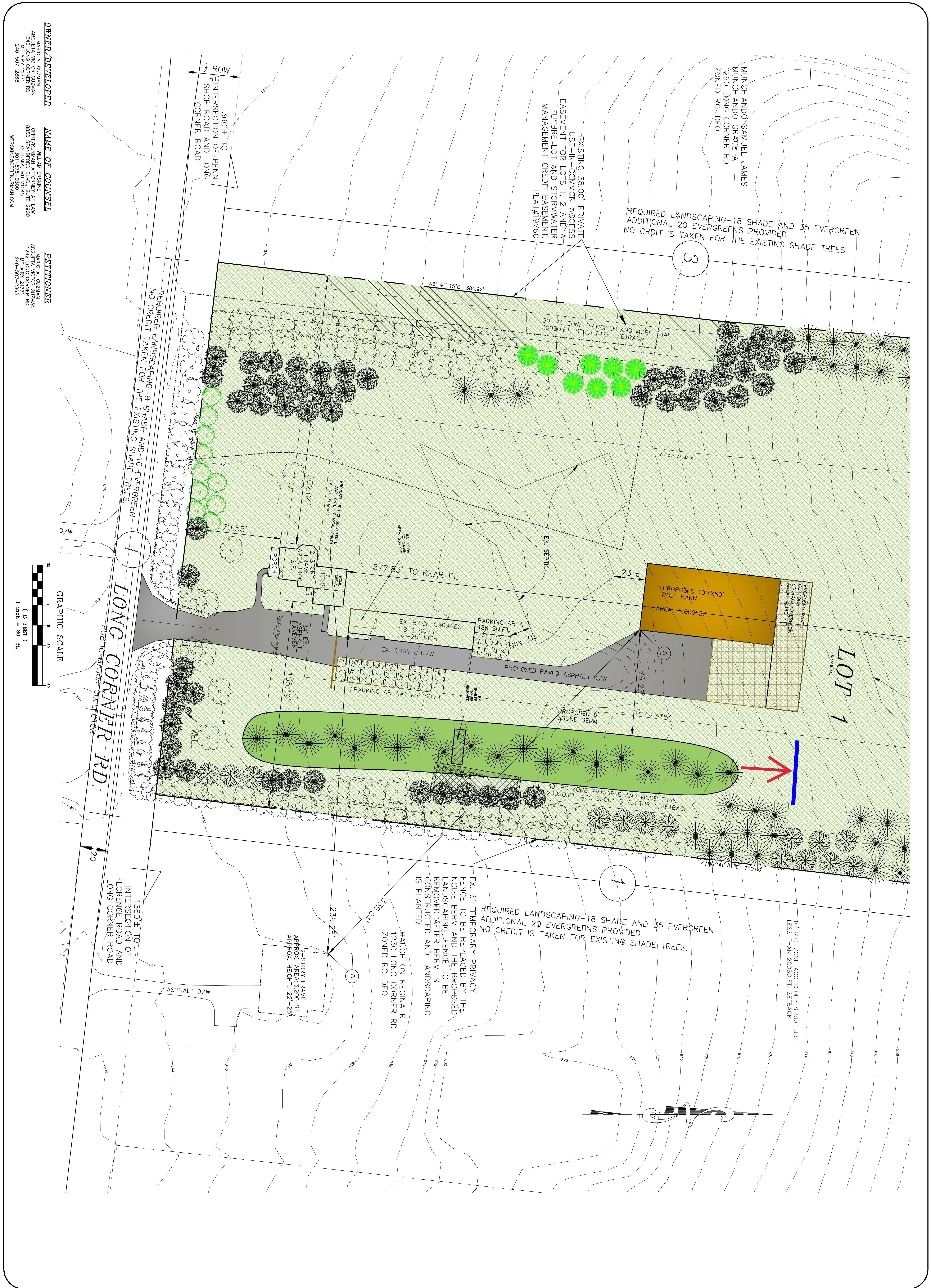
13. Petitioner shall comply with all federal, state, and local laws and regulations.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Katherine L. Taylor

Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.



no.	description revisions	date

project	date
22-010	03.08.2023
illustration	engineering
TNB	SAA
scale	approval