



DPZ office use only:

BA Case No.: BA-24-015C

Date Submitted: 1/17/2025

**PETITION OF APPEAL OF  
HEARING EXAMINER DECISION  
TO THE HOWARD COUNTY BOARD OF APPEALS**

A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.<sup>1</sup> The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

1. **Name of Case** In the Matter of Blythewood Landscape Management, LLC Conditional Use Petition  
**BA Case No.** BA-24-015C  
**Date Decision and Order Mailed** December 18, 2024 (Copy of Decision and Order attached)
  
2. **Reason for Appeal** See attached supplemental statement
  
3. **Name of Appellant** Bernard Granzow, President of Blythewood Landscape Management  
**Trading as (if applicable)** \_\_\_\_\_  
**Mailing address** 4110 Melwood Road Upper Marlboro, MD 20772  
**Phone number(s)** 301-501-5030  
**Email** Bgranzow@blythewoodlm.com  
**Name of principal contact (if different)** N/A
  
4. **Counsel for Appellant** \_\_\_\_\_  
**Mailing Address** \_\_\_\_\_  
**Phone number(s)** \_\_\_\_\_  
**Email** \_\_\_\_\_  
**Secondary contact for counsel (if any)** \_\_\_\_\_

<sup>1</sup> As a brief explanation of this concept: "Generally speaking, ... a person 'aggrieved' ... is one whose personal or property rights are adversely affected by the decision .... The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally." The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.

5. **Declaration of Interest**

- The Appellant is the original petitioner  
 The Appellant was a party to the original case

6. **Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)**

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

- I elect to proceed on the original petition  
 I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. **Copies:** The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10** complete sets must be submitted.

8. **Public Notice Requirements**

a. Posting: If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an Affidavit of Posting as required by Section 2.203(c).

If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.

b. Advertising: The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. Responsibility for Compliance: In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.

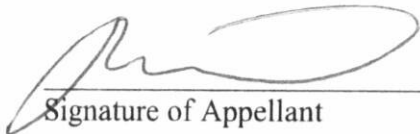
**9. On The Record Appeals**

The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an "on the record" appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a memorandum addressing the points of law upon which the appeal is based.

**10. Signatures**

By signing below, the Appellant hereby affirms that:

- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

 \_\_\_\_\_  
Signature of Appellant                      Date                      1/17/2025                      Bernard Granzow, President Blythewood Landscape Management, LLC  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Appellant                      Date                      \_\_\_\_\_  
\_\_\_\_\_

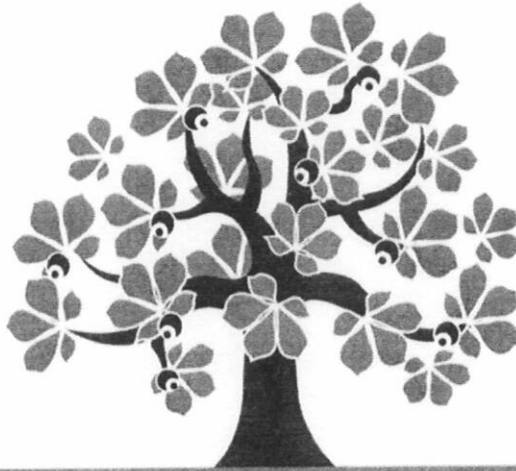
\_\_\_\_\_  
Signature of Attorney (If any)

**Make checks payable to "Director of Finance."**

<b>For DPZ use only: Filing Fee is \$2,050.00 plus \$50.00 per poster if required.</b>	
Hearing fee:	\$ _____
Poster fee:	\$ _____
TOTAL:	\$ _____
Receipt No.	_____

**PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION**

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BLYTHEWOOD LANDSCAPE  
MANAGEMENT, LLC

APPEAL FOR BA-24-015C

SUPPLIMENTAL STATEMENT

## **I. Points of Disagreement**

### **1. Alleged Plan Noncompliance**

- The Decision claims the petition and site plan submitted were noncompliant and lacked clarity regarding the area to be used for conditional use. However:
  - Any discrepancies in the plans were addressed during the hearing, with clear explanations provided about the proposed size of the pole barn and revised use areas.
  - The Examiner ignored that the petitioner expressed a willingness to submit updated plans to correct any perceived issues before approval. Denying the petition outright based on modifiable discrepancies was unnecessary and excessive.

### **2. Impact on Adjacent Properties**

- The Decision incorrectly concludes that the proposed use will "hinder or discourage" the development or use of adjacent properties more than elsewhere in the same zoning district.
  - Evidence presented during the hearing demonstrated that the petitioner had taken substantial steps to mitigate concerns, including reducing the barn size, ensuring operations remained within allowable setbacks, and scheduling operations to minimize disruption to neighbors.
  - The Decision failed to provide substantial evidence showing that the proposed use would uniquely harm adjacent properties.

### **3. Interpretation of the 5% Usage Limit**

- The Decision concludes that the proposed use exceeds the allowable 5% of the lot size for parking and storage. However:
  - The petitioner demonstrated that the area designated for storage and parking could be reduced to meet the 5% requirement and committed to updating the plan to reflect compliance.
  - The Examiner's reliance on speculative concerns rather than granting time for plan adjustments was arbitrary.

### **4. Noise, Dust, and Other Adverse Effects**

- The Decision overstates potential adverse effects, including noise, dust, fumes, and odors, without substantial evidence to support these claims.
  - The petitioner presented operational details, including limited activity on-site, off-site work by employees, and measures to store equipment indoors or in covered areas, minimizing impacts on neighboring properties.

- Neighbor testimony was largely speculative and uncorroborated by factual evidence or expert analysis.

#### **5. Hours of Operation and Snow Removal Concerns**

- The Decision suggests the proposed hours of operation (6:00 a.m. to 7:00 p.m. on weekdays) are unreasonable. However:
  - These hours align with typical work hours for landscape contractors and are necessary to ensure timely service to clients. The proposed schedule was reasonable and not excessive for the intended use.
  - Concerns about snow removal activities were exaggerated. The petitioner clarified that snow removal operations would primarily occur off-site, with minimal impact on the subject property or surrounding community.

#### **6. Community Opposition and Speculative Concerns**

- The Decision appears to give undue weight to neighbor opposition without balancing the petitioner's compliance efforts and the requirements of the HCZR.
  - Neighbor objections were speculative and failed to demonstrate measurable harm beyond generalized concerns. The Examiner improperly relied on anecdotal testimony to deny the petition without considering mitigating measures proposed by the petitioner.

#### **7. Conflict with the Howard County General Plan**

- The Decision claims the proposed use is not in harmony with the Howard County General Plan. However:
  - The property's location in a Rural Conservation zoning district is compatible with the limited-scale operation proposed.
  - The Examiner ignored evidence showing that the proposed use would not disrupt the rural character of the area, as operations were confined to less than 5% of the property and largely limited to morning and evening transitions.

## **II. Conclusion**

The Examiner's Decision and Order is unsupported by substantial evidence, relies on speculative concerns, and applies zoning regulations inconsistently. The petitioner made good-faith efforts to comply with applicable requirements, mitigate potential adverse impacts, and address community concerns. The outright denial of the petition was arbitrary and fails to consider the petitioner's willingness to revise the plans to address identified issues.

The Appellant respectfully requests that the Board of Appeals reverse the Hearing Examiner's Decision, approve the conditional use petition, or remand the matter for further proceedings to allow plan revisions to ensure compliance.

**Respectfully submitted,**

Bernard Granzow

President, Blythewood Landscape Management, LLC

IN THE MATTER OF	:	BEFORE THE
	:	
<b>Blythewood Landscape Management, LLC</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	Case No. BA -24-015C

JAN 17 2025  
 HEARD

**DECISION AND ORDER**

On November 19, 2024, 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 Blythewood Landscape Management, LLC, Petitioner, for Conditional Use approval for use of the property known as 2921 Terrapin Run, West Friendship, Maryland, 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 not represented by counsel. Bernard Granzow and Luis Rodriguez-Cortes testified in support of the Petition.

The following testified in opposition to the petition: Gene Gallaher, 12909 Vistaview Drive; Vitaly Gurvich, 12913 Vistaview Drive; Mohammad Roshan, 13011 Cedarview Court; Douglas Kruse, 2734 Terrapin Run; Jugnu Jee, 12912 Vistaview Drive; Arun Bagal, 13001 Cedarview Court; and Mark Tumminello, 13008 Cedarview Court. All of the addresses set forth above are in West Friendship, Maryland.

### 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 2921 Terrapin Run, located at Tax Map 15; Grid 23; Parcel 160 (the "Property"), comprises 5.48 acres and is located in the RC-DEO (Rural Conservation - Density Exchange Overlay) zoning district. The Property is located in Election (Voting) District 3 and Council District 5.

The Property is partially encumbered with a stream and buffer located in the northeast corner. The site rises from an elevation of 420 feet along the southern property line to 470 feet along the northwestern corner of the Property. The site is irregularly shaped and currently includes a residential dwelling which is on the Historic Sites Inventory as HO-645, aka Milton Shipley House. See *Staff Report*.

**B. Vicinal properties.** To the West and South lie RC-DEO zoned parcels used as single family residential. To the East is MD Route 32. To the North is land zoned RC-DEO and used for a Commercial Solar Facility. See *Staff Report*.

**C. Roads.** Terrapin Run has two travel lanes with varying right-of-way width and a pavement width of 28 feet. The speed limit is 25 miles per hour. There is no Average Annual Daily Trips data for Terrapin Run. See *Staff Report*.

**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. See *Staff Report*.

**E. General Plan.** The Property is designated Rural Conservation on the Future Land Use Map of HoCo By Design. Terrapin Run is a Local Road. See *Staff Report*.

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

**G. Current Use.** The Property consists of a residential dwelling and, until recently, an unpermitted landscape contractor's business. The house on the Property is currently being used for rentals without a rental license and is not occupied by the owner of the Property.

**H. Filings.** A Revised Petition ("Petition") was filed September 6, 2024, and the accompanying Feasibility Plan ("Plan") was filed September 6, 2024,

**I. Proposal - Landscape Contractor.** The Petition states that Petitioner seeks approval for the business of a Landscape Contractor (Section 131.0.N.32). The proposed use involves parking for employees, commercial vehicles and equipment, storage of materials and supplies, and a 6,000-square-foot pole barn.<sup>1</sup> The Petitioner proposes a maximum of 18 employees, who will arrive in the mornings and afternoons to pick up or drop off vehicles and equipment. Operating hours are proposed as Monday through Friday, 6:00 a.m. to 7:00 p.m., and Saturdays, 7:00 a.m. to 5:00 p.m., with no operations on Sundays. The Petition narrative, page 5 states: "a designated parking area is to be used as per attached site plan. The parking spaces will be located on the side of the Barn Building and beyond the 100-foot setback. The maximum number of offsite employees at any one time shall be eleven (15)."

**J. Technical Staff Report.** The Department of Planning and Zoning issued a Technical Staff Report dated October 21, 2024 ("Staff Report"), the findings of which, when stated, have been adopted herein.

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<sup>1</sup> The Revised Petition filed September 6, 2024, and the accompanying Feasibility Plan filed September 6, 2024, both state that the proposed pole barn will be 60' x 100', or 6,000 SF. The Petition also states that the "Total Land Area of Use" will be 23,065 SF. However, the narrative attached to the Petition, page 5, states that the "current calculated space of use would be 7,360 SF."

**K. Testimony.**

**1. Bernard Granzow.**

Mr. Granzow testified that he is an owner of Blythewood Landscape Management, LLC. He stated that the Petition is “for the creation and the design of a new landscape contractor yard on 2921 Terrapin Run.” He stated that the location will be a satellite location as the main location is located in Upper Marlboro, Maryland. He said that the barn was originally planned to be “60 by 100. We've reduced the size to 40 by 60 now, and we relocated it, to meet the offsets by the that were outlined by the, the site plan or the requirements of the boundaries for the steep slope and everything else on the property.”

Mr. Granzow first stated that the plan does not include the storage of loose materials on the site. He explained that employees will arrive at the site in the morning in personal vehicles and will then leave the site in the company vehicles. They will arrive back in the late afternoon or early evening and use their personal vehicles to drive home. He stated that there will not be much activity at all during the day when employees are at job sites. The have hours proposed for 6 days per week, from early in the morning to late afternoon. He stated that the equipment used at the sites is loaded onto trailers or trucks and then those trucks leave the site for the jobs.

Mr. Granzow also stated that they wish to do snow removal, which would be for their existing clients, primarily. He stated: “We would leave during the evening and probably return back during the during the morning after working on the properties all night long is normally 90% of what how that occurs. We work at night. . . . So the employees will be again coming to the property, parking their cars, getting into the equipment, leaving and then coming back.” He said that the employees would come to the site during the stated hours and take the snow

equipment home with them so that they can leave from their homes to the snow removal site.

Mr. Granzow said that the barn will not be used for vehicles and equipment, but will be for “extra machines, you know, machines and stuff like that to keep those out of the weather. We're not going to store anything outside the barn.” When asked about where the equipment and vehicles will be stored, he said that those would be stored on the north side of the site which shares space with the parking spaces for employees. He also stated that the office and management activities of the business will be conducted in the barn.

When asked about the use of the historic house on the site, Mr. Granzow stated that “several employees” live there. He does not live there.

Gene Gallaher questioned Mr. Granzow about the number of people living in the house on the Property. Mr. Granzow said that there are probably 10 people living there. He also asked about the gas tanks on the Property. Mr. Granzow stated that they are for the trucks and equipment for business.

Amy Gallaher asked Mr. Granzow about whether they plan to house employees in the barn. He stated that they did not. He stated that when employees are working on the Site, there will be a bathroom in the barn for them to use. The septic system currently on the property is for the house only. He stated that there will not be employees there during the day and that the office in the barn is for him.

Jugnu Jee asked questions about the violation proceeding which I stated is not relevant to this proceeding.

Mark Tumminello asked questions about the intent of the purchase of the Property, and whether the persons residing at the Property are employees. He asked questions about which of

the residents are employees. Mr. Granzow said 3 of them are employees.

Douglas Kruse asked questions about the size of the gravel area on the Property. He also asked about whether materials will be stored on the Site. Mr. Granzow stated that there “will be no long term storage of anything.” Mr. Granzow then attempted to clarify that the storage will not be “long term” and stated:

“When we're saying storing material, we use mulch and grass, things like that. We may have a delivery come in, and we load it into our trucks and take it to our job sites. There's no permanent storage of any of these materials there. As part of the Conditional Use petition they asked in that petition “What materials we are using or have on the property.” So that's why those are listed there. If we have to go plant a tree, a nursery may come and deliver a tree for us, which will be taken to the properties. There's no long term, long term plan to have a storage facility there of mulch, or supplies or a storefront.”

After the opposition testified, Mr. Granzow clarified that there is no reason for vehicles to drive through the neighborhood, as Terrapin Run is a dead-end road, and the only two-lane road available for access is already part of the community. He also addressed several points regarding the commercial use of the property. He emphasized their intent to use no more than 5% of the total property, acknowledging a possible discrepancy in the square footage reported. He reassured that all vehicles associated with the business are insured, driven by legally licensed drivers, and GPS-tracked to ensure safety and compliance with speed limits. He also mentioned that their rental permit [for the house] is in progress, with an upcoming inspection, and highlighted that construction on the property requires further permits and inspections. He noted improvements made to the property, such as removing dilapidated buildings and filling in an abandoned pool for safety. He expressed concern for safety and emphasized the importance of

maintaining proper operating hours within the terms of the Conditional Use, offering his contact information for community concerns.

## **2. Luis Rodriguez-Cortes.**

Mr. Cortes stated that he is assisting the Petitioner with the process. He is a Maryland home improvement contractor. When asked what the area of the Conditional Use will be, he stated that the area is 11,900 SF. When asked about the number 7360 SF in the Petition, he stated that the area was reduced when they decided to reduce the size of the proposed pole barn. He stated that the only building to be used as part of the business will be the proposed barn. When asked about the discrepancy in the size of the proposed barn, he stated that the Morton Design drawings showed the 60 x 40 foot barn.<sup>2</sup> Mr. Cortes acknowledged that the plan needs to be updated.

## **3. Gene Gallaher, 12909 Vistaview Drive.**

Mr. Gallaher provided a history of the changing of the entrance to their community from Route 32 to Terrapin Run. He stated: "Now literally the entrance to the farmhouse . . . [is] at the entrance to our entire 12 home estates area. And then there's a common parking area in front of it that dead ends at the end of our road. Go right into our neighborhood, left into his farmhouse. But it's now all open to the entrance to our community." He expressed concerns about a proposed commercial use on a rural property with a history of pollution violations, including asphalt dumping. He highlighted the property's proximity to streams and wildlife sanctuaries and raised environmental concerns about diesel, oil, and gas storage for commercial vehicles. He also noted the potential impact on the neighborhood and increased traffic through the single entrance to a

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<sup>2</sup> The drawings, as I see them, show a barn that is 100 x 80 feet. *Exhibit A to Petition.*

12-house community. He also voiced multiple concerns about the proposed commercial use of the property, emphasizing risks to the neighborhood and its residents:

- Child Safety: Increased traffic from cars, trucks, and equipment poses a danger to children in the community, where many households have young kids.
- Noise, Dust, and Pollution: Vehicle activity generates noise, dust, and fumes that disrupt the neighborhood.
- Police Presence and Unknown Visitors: Past issues include police involvement and unknown individuals living on the property, raising safety concerns.
- Non-compliance with Operating Hours: Trucks have been observed operating outside stated hours, including early mornings and late nights, contradicting claims of controlled activity.
- Environmental and Aesthetic Impact: Large dumpsters and tracked dirt at the community entrance reduce property values and harm the area's appearance.
- Road Safety: Increased vehicle traffic damages roads, creates debris, and raises safety concerns for pedestrians and cyclists.
- Lack of Enforcement and Trust: He expressed doubts about the enforceability of Conditional Use terms and improvement.

#### **4. Vitaly Gurvich, 12913 Vistaview Drive.**

Mr. Gurvich's house is directly across from the property in question, and he expressed dissatisfaction with its commercial use. He noted that the property, originally described as non-commercial, has been repurposed for business activities, disrupting the residential community. Concerns included early morning truck activity as early as 4:30 a.m., noise, odors (such as

mulch), and the overall negative impact on their quality of life. They emphasized that the situation deviates from the residential environment they expected when moving in and expressed opposition to the property's continued or expanded commercial use in a residential area.

**5. Mohammad Roshan, 13011 Cedarview Court.**

Mr. Roshan raised concerns about the Property owner's commercial business being operated in a family-oriented residential community, despite the owner living elsewhere. They contrasted this with their own experience running a state-registered daycare in the same neighborhood, where county regulations required them to reside in the community to operate the business. They questioned the appropriateness of a business with 24-hour activity, involving constant comings and goings, in a residential area. He emphasized the risks and lack of assurance for the community's safety and integrity under such circumstances.

**6. Douglas Kruse, 2734 Terrapin Run.**

Mr. Kruse raised two key concerns about the proposed commercial use of the property:

- Size and Usage Control: He questioned how the property could meet the 5% usage limit, citing that the flattened area is approximately 25,000 square feet and indistinguishable from other areas. Without clear boundaries or controls, they doubted compliance could be maintained in the future.
- Community Involvement: He emphasized that the property owner lives far from the neighborhood and is not part of the community, contrasting this with the integration expected of residents. He argued that granting Conditional Use to a non-resident is inappropriate and grounds for rejecting the application.

**7. Jugnu Jee, 12912 Vistaview Drive.**

Mr. Jee expressed concerns about safety, particularly regarding the employment practices of the property owner. He argued that the business owner purportedly does not verify proper immigration documentation for employees, as required by federal I-9 verification rules. This raises security concerns, especially as a neighboring property owner with young children.

**8. Arun Bagal, 13001 Cedarview Court.**

Mr. Bagal stated he is a long-time resident and expressed concerns about the safety and integrity of the community. He highlighted the close-knit nature of the neighborhood, where everyone knows each other and looks out for one another. He noted the danger posed by drivers speeding at 50 miles per hour on the nearby road, particularly for seniors and pedestrians.

**9. Mark Tumminello, 13008 Cedarview Court.**

He expressed concerns about safety and community integrity due to the Property owner's business activities. He highlighted issues with vetting employees and residents, noting that the owner admitted to a lack of proper vetting due to Howard County's sanctuary status. He also mentioned his own children, who feel unsafe in the neighborhood due to individuals associated with the business, and the increasing tension in the community. They emphasized that they moved to the area for its small, family-oriented environment, which is now disrupted by commercial use. He agreed with others that the property's size and activity are not accurately reflected in the plans.

**THE PETITION AND PLAN**

As stated above, the Revised Petition filed September 6, 2024, and the accompanying Feasibility Plan filed September 6, 2024, both state that the proposed pole barn will be 60' x 100', or 6000 SF. The Petition also states that the "Total Land Area of Use" will be 23,065 SF. However, the narrative attached to the Petition, page 5, states that the "current calculated space of use would be 7,360." Mr. Granzow stated, "We've reduced the size [of the barn] to 40 by 60 now, and we relocated it, to meet the offsets by the that were outlined by the, the site plan or the requirements of the boundaries for the steep slope and everything else on the property." Yet, the Plan clearly shows a 60 x 100 foot barn. Mr. Cortes acknowledged that the Plan needs to be revised. And, while he stated that the Morton Building drawings included the revised size, the drawings with the Petition show a barn sized at 100 x 80 feet.

The Plan and Petition do not clearly set forth the area to be used for the Conditional Use as required by the regulations.

Further, there was testimony that there is a there are gas tanks and fuel tanks that are going to be used as part of the Conditional Use that are not shown on the plan. They're not only not shown on the plan, but the area where those currently sit (according to testimony) is not included as part of the Conditional Use area. Thus the area shown on the plan submitted by the Petitioner (the cross-hatched area) does not show all of the area that will be used for the Conditional Use.

Moreover, Mr. Granzow and Mr. Cortes testified that there have been changes made to the plans, but that they are not on the current Plan. The Petitioner is required to ensure that any plan that comes before the Hearing Authority is clearly set forth in the written documents

submitted. Changes to a plan cannot be made on the fly during a hearing.

It is clear that the Plan and Petition submitted by the Petitioner differs from the testimony entered into the record at the hearing. The Petitioner has acknowledged that the Plan must be revised. The time to revise the plan is not at the hearing. The Petitioner, however, chose to go forward with a noncompliant plan. This noncompliance is reason enough to deny the Petition.

### **CONCLUSIONS OF LAW**

Not only was there conflicting evidence about the size of the barn, the location of the Conditional Use area and the size of the Conditional Use area, there was conflicting testimony about how the barn is going to be used, where equipment is going to be stored and placed, the hours of operation for snow removal, etc. Thus, even if the Plan showed accurate areas for the barn and the Conditional Use area, the Petitioner has not shown, by preponderance of the evidence, all of the criteria have been met.

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.**

While HoCo By Design policies are not directly related to the Landscape Contractor use, operations that are *properly sited and appropriately scaled* are generally compatible with rural residential areas. See *Staff Report*.

The use as described is not property sited and not appropriately scaled. See discussion above regarding the Petition and Plan.

*Thus, the proposed use will NOT be in harmony with the Howard County General Plan and HoCo By Design.*

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 5.48-acre Property exceeds the five-acre lot size requirement. The existing and proposed structures and areas that are shown on the Plan and that are used for material and equipment storage appear to comply with the 100-foot setback requirements, except that the fuel tanks that are to be used in the business are not included on the Plan.

The proposed hours of operation are 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. 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. Saturday hours are reasonable so long as the times are strictly adhered to.

The area slated for indoor and outdoor storage of commercial vehicles, equipment, materials and supplies is not clearly delineated or measured on the Plan, but the Petition states that the area is 23,065 square feet which is approximately 10% of total acreage and is twice the 5% maximum allowed.

Terrapin Run is a Local Road, which is an appropriate classification for the number and types of vehicles associated with the landscape contractor use. See *Staff Report*.

*The nature and intensity of the use as proposed, 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 **NOT 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.

The Property is in the RC-DEO zoning district. The properties located in that district are generally larger parcels with residential dwelling units. The closest to the Property include residences and no commercial uses. The entire area has rolling hilly topography and much of the land in the area beyond the Site is fields rather than woodlands, such that properties and those structures and equipment thereon can be more readily 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.

*Therefore, the impact of adverse effects **will 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 barn appears to comply with all setback and height requirements in Sec. 131.0.N.32 and the bulk requirements of the RC district. However, there are parking areas that

are unpaved currently and the Site is in clear view of the closest adjacent residential properties.

*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 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 18 employees on-site with 4 company pickup trucks, 4 (6'x14') enclosed equipment trailers, 1 (6'x14') open equipment trailer and a tracked Bobcat. Testimony from Mr. Granzow and Mr. Cortes differed from the Petition. The Plan shows that a total of 24 parking spaces will be provided. The Petition stated that the Property will not be open to the public and company vehicles will be used to go to jobsites, not the vehicles belonging to employees. Because the Conditional Use area is not clearly delineated on the Plan, it is difficult to ascertain if parking and loading areas will be properly screened from public roads and residential uses. The Petition does not indicate whether there will be refuse areas located on the site. See *Staff Report*.

*While the number of parking spaces will be appropriate to serve the particular use, parking areas, loading areas, driveways and refuse areas **may not 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 Terrapin Run. The Property does not share a driveway with other residential uses. 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 Property is partially encumbered in the northeast corner by a stream buffer; however, all environmentally sensitive areas are outside the limit of disturbance associated with the proposed use of the Property as set forth on the Plan. 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 residential structure at the Property is on the Historic Sites Inventory as HO-645, aka Milton Shipley House, dating to 1875. Since this property is outside of a historic district, and the planned service area, it does not require Historic Preservation Commission approval based on

those location criteria. If a Site Development Plan (SDP) is required, then it would trigger County Code Section 16.603A - Review of Development Plans. In that case, Historic Preservation Commission would need to provide Advisory Comments.

The proposed Landscape Contractor use of the Property as proposed will include outdoor storage of vehicles and large equipment and also materials. These uses may alter the character of any historic structures located at the Property.

*Therefore, the proposed use **may 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 5.48 acres.

*This criterion is met.*

**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 building, outdoors storage areas, and parking and loading areas as currently shown on the Plan, *except for the tank storage*, are located at least 100 feet from lot lines and public roads.

*This criterion is not met.*

**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.**

There was conflicting evidence about the storage of materials, such as mulch, which

could create smells and be a nuisance to the closely situated homes. While the Petition narrative seemed to state that materials and equipment would be indoors, the testimony was that there would at least be temporary storage of materials outdoors.

*This criterion is not met.*

- 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.**

The Petition stated that the drawings of the proposed barn were included, but the structure included with the Petition did not appear to be the barn proposed, as the drawing submitted appears to show a barn that is 100 x 80 feet. Even a 27-foot high barn that is 6,000 SF is not compatible with the primarily residential area, as there are no residential properties in the vicinity with such large accessory structures.

*This criterion is not met.*

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

The existing landscaping does not adequately screen the parking and storage areas from adjacent properties.

*This criterion is not met.*

- 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.

*This criterion is met.*

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 that will be used for parking and storage of commercial vehicles, equipment, materials and supplies is 24,060 square feet or 10% of the 5.48-acre site which far exceeds the maximum 5% limit.

*This criterion is not met.*

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

The Petition is being denied, so there is no need to set limits.

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.**

The Petition is being denied, so there is no need to address snow removal services.

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 18th day of December 2024, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Blythewood Landscape Management, LLC, Petitioner, for Conditional Use approval for use of the property known as 2921 Terrapin Run, West Friendship, Maryland, for the business of a Landscape Contractor under Howard County Zoning Regulations, Section 131.0.N.32., is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS**  
**HEARING EXAMINER**

**Katherine** Digitally signed  
**L. Taylor** by Katherine L.  
Taylor

\_\_\_\_\_  
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.