



Bureau of Environmental Health

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Maura J. Rossman, M.D., Health Officer

MEMORANDUM

TO: Geoff Goins
Division of Zoning Administration and Public Service

FROM: Jeff Williams
Program Supervisor, Well & Septic Program
Bureau of Environmental Health

RE: **BA-17-012C**

DATE: September 11, 2017

The Health Department has reviewed the above referenced petition and has the following comments:

- In addition to the Health Department's original comments regarding the conditional use, the proposed residence on the property must conform to all Health Department requirements including perc testing and approval of the sewage disposal area via sign perc certification plan, construction and approval of a well, approval of a sewage disposal system design plan for the proposed dwelling. If a site development plan is required for the property, all well and sewage disposal areas and systems, both existing and proposed, must be shown in detail on the plan for both the commercial use and the dwelling.

JRL

Department of Planning and Zoning
Howard County, Maryland
Recommendations/Comments

Date: August 1, 2017

Hearing Examiner 09/19/17

Planning Board _____ Board of Appeals _____ Zoning Board _____

Petition No. BA-17-012C Map No. _____ Block _____ Parcel _____ Lot _____

Petitioner: _____ Chad Zirk _____

Petitioner's Address: _____

Address of Property: _____

Return Comments by August 28, 2017 to Public Service and Zoning Administration

Owner: (if other than applicant) _____

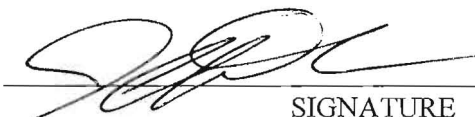
Owner's Address: _____

Petition: _____ SEE APPLICATION _____

- To:
- _____ MD Department of Education – Office of Child Care
 - _____ 3300 N. Ridge Road, Ste. 190, EC, MD 21043 (Louis Valenti)
 - _____ Bureau of Environmental Health
 - _____ Development Engineering Division
 - _____ Department of Inspections, Licenses and Permits
 - _____ Department of Recreation and Parks
 - _____ Department of Fire and Rescue Services
 - _____ State Highway Administration
 - _____ Sgt. Karen Shinham, Howard County Police Dept.
 - _____ James Irvin, Department of Public Works
 - _____ Office on Aging, Terri Hansen (senior assisted living)
 - _____ Police Dept., Animal Control, Deborah Baracco, (kennels)
 - _____ Susan Fitzpatrick, Health Dept. (Nursing & Res. Care)
 - _____ Land Development - (Religious Facility & Age-Restricted Adult Housing)
 - _____ Housing and Community Development
 - _____ Resource Conservation Division – Beth Burgess
 - _____ Route 1 Cases – DCCP – Kristen O'Connor
 - _____ Telecommunication Towers – (Comm. Dept.)
 - _____ Division of Transportation – Dave Cookson

COMMENTS:

see memo

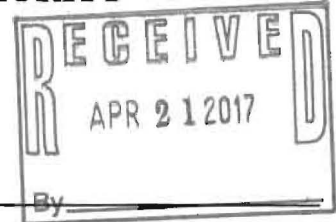


SIGNATURE



For DPZ Office use only:
 BA CASE NO. BA-17-012C
 Date Submitted 4/21/17

**PETITION TO MODIFY CONDITIONS OF APPROVAL
 TO THE HOWARD COUNTY HEARING AUTHORITY**



1. Request for Modification

Case Number BA 16-016C&V Petitioner Chad Zirk

Conditional Use Variance Date original petition was granted 12/23/16 (Reconsideration Order - 1/17/17)

a. Condition(s) sought to be modified Petitioner wishes to include a single-family detached residence that Petitioner intends to utilize as his personal residence.

2. Name of Petitioner Chad Zirk

Trading as (If applicable) _____

Mailing Address 2070 Woodbine Road, Woodbine, Maryland 21797

Phone Number(s) 410-916-4803

E-Mail Address czwv50@aol.com

Name of Principal Contact (If different) _____

3. Counsel for Petitioner Thomas G. Coale, Talkin & Oh, LLP

Mailing Address 5100 Dorsey Hall Drive, Ellicott City, Maryland 21042

Phone Number(s) 410-964-0300

E-Mail Address tcoale@talkin-oh.com

4. Site Description

Address/Street for Property 2060 Woodbine Road, Woodbine, Maryland 21797

Tax Map 7 Grid/Block 15 Parcel 362 Lot _____

Total Land Area of Property 10.000 (X Acres) (____ Square Feet) Check one.

Election District 4th Zoning of Property RC-DEO

Subdivision Name and Plat No. (If Applicable) _____

5. Petitioner's Interest in Subject Property

OWNER (Including joint ownership)

OTHER (Described and give name and address of owner)

Name of Owner _____

Mailing Address _____

If the Petitioner is not the owner, written authorization for this petition from the owner must be submitted.

6. Data to Accompany Petition

PLAN: No application for a modification shall be considered complete unless accompanied by a plan, drawn to scale and includes the items listed below. The submitted plan shall be folded to approximately 8½ x 14 inches.

- (a) Copy of the Decision and Order which the Petitioner seeks to be modified
- (b) Courses and distances of outline boundary lines and the size of the property
- (c) North arrow
- (d) Zoning of subject property and adjoining properties
- (e) Scale of plan
- (f) Existing and proposed uses, structures, natural features and landscaping
- (g) Location and surface material of existing and proposed parking spaces, driveways, and points of access; number of existing and proposed parking spaces
- (h) Same as (e) and (f) above, of adjoining properties as necessary for proper examination
- (i) Location of well and private sewerage easement area, if property is to be served by private water and sewer
- (j) Election District in which the subject property is located
- (k) Tax Map and Parcel Number(s) of the subject property
- (l) Name of local community in which the subject property is located or name of nearby community
- (m) Name, mailing address, telephone number (and e-mail address, if any) of the Petitioner
- (n) Name, mailing address, telephone number (and e-mail address, if any) of Counsel
- (o) Name, mailing address, telephone number of property owner
- (p) Floor area and height of structures, setback distances from property lines, and other numerical values necessary for the examination of the petition
- (q) Location of subject property in relation, by approximate dimension, to the center line of nearest intersection of two public roads
- (r) Ownership of abutting roads, right-of-way width, and existing pavement width
- (s) A detailed description of all exterior building materials for all proposed structures
- (t) Any other information as may be necessary for full and proper consideration of the petition

7. Summary of Request

The following items should be answered by summary statements. If additional space is needed, please attach a Supplement to this petition.

- a. The requested modification (s) Petitioner has submitted an Amended Conditional Use Plan

that includes a 4,500 square foot footprint for a potential residence.

b. Reason (s) for the requested modification Petitioner has been notified by the Department of Planning and Zoning that in order to reserve the right to build a residence on the Property, he will need to have the location of the residence identified on the Conditional Use plan. Petitioner has not yet designed the residence, but seeks to have the location of the house approved so that he may continue with the Site Development Plan process in accordance with the Decision & Order.

c. The intended use of the property, in the event the petition is granted Landscape Contractor business and single-family detached residence.

d. Any other factors which the Petitioner desires to have considered The proposed residence will not increase the intensity of the use or present any additional adverse impacts that were not considered as a part of the landscape contractor conditional use.

e. Were there protestants at the original hearing? Yes No

f. Describe in detail all existing improvements to the subject property The Property has been cleared, but there are no existing improvements.

g. Describe any changes to properties in the vicinity of the subject property since the original petition was granted None.

h. What will be the impact, if any, of your proposed modification upon the subject property? Please refer to Petitioner's response to Question 7.d.

i. What will be the impact, if any, of your proposed modification upon any adjacent properties? Please refer to Petitioner's response to Question 7.d.

8. Prior Petitions

Has any petition for modification of any conditions of approval been submitted within twenty four (24) months of the date of this petition? Yes No

9. Additional Materials, Fees, Posting and Advertising Requirements

a. Supplemental pages may be attached to the petition. You must submit one original petition with original signatures, and one original of any other signed documents. The following number of sets including petitions, plans and supplemental pages must be submitted:

- *If the subject property adjoins a State road- original and 20 copies (application & plans)*
- *If the subject property adjoins a County road- original and 18 copies (application & plans)*

b. The Petitioner signing below hereby agrees to furnish such additional plats, plans, reports or other material as may be required by the Department of Planning and Zoning and/or the Hearing Examiner in connection with this petition.

c. The Petitioner hereby agrees to pay all costs in accordance with the current schedule of fees.

d. The Petitioner hereby agrees to properly post the property at least thirty (30) days immediately prior to the Hearing Examiner public hearing; to maintain the public notice posters until the public hearing is concluded; and to submit an affidavit of posting at, or before the time of the initial public hearing. The Petitioner also hereby agrees to advertise the public hearing by

PETITIONER Chad Zirk

ADDRESS 2070 Woodbine Road, Woodbine, Maryland 21797

Affidavit made pursuant to the pertinent provisions of Title 22 of the Howard County Code as amended:

The person(s) signing below hereby declare(s) that no officer or employee of Howard County, whether elected or appointed, has received prior hereto or will receive subsequent hereto, any monetary or material consideration, any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally in connection with the submission, processing, issuance, grant or award of the attached petition to the Hearing Examiner for a conditional use as requested.

I, we, do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my, our, knowledge, information and belief.

[Signature]
Witness

[Signature]
Signature

4/15/17
Date

Witness

Signature

Date

Witness

Signature

Date

Application Fee: \$250.00 Poster Fee: \$25.00 per sign/poster

Make check payable to: Director of Finance.

For DPZ use only:	
Hearing fee:	\$ _____
Poster fee:	\$ _____
Total:	\$ _____
Receipt No. _____	

IN THE MATTER OF : BEFORE THE
CHAD ZIRK : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 16-016C&V
Reconsideration Order

.....
RECONSIDERATION ORDER

On December 15, 2016, the Hearing Examiner in Board of Appeals Case No 16-016C&V granted Chad Zirk's (Petitioner) petition for Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, which decision was supported by findings and facts set forth in the decision and subject to 15 conditions of approval (Approval Conditions).

On December 29, 2016, Petitioner, through counsel Thomas Coale, Esq., submitted a timely request for reconsideration, wherein Petitioner asks the Hearing Examiner to remove the last sentence of Approval Condition #11, which states:

Petitioner shall submit a site development plan for review and approval. This requirement for site development plan approval may not be waived. No alternative compliance is permitted. The site development plan shall denote Areas 1 and 2 and their square footage, which shall be noted as the Conditional Use Site, the location of all parking areas, paving surface materials, and the location of all vehicle and equipment parking/storage areas. Seven employee parking spaces shall be noted on the site development plan. The site development plan shall also specify the type of materials/supplies to be stored within Area 1, their location and manner of storage and the location and size of contained storage areas for the wood chipping material brought back to the site for long-term storage. These storage areas shall comply with all state and county laws and regulations. *No open storage of chipped wood is permitted.* (Emphasis added.)

In support of the requested revision to this Approval Condition, Petitioner alleges a

mistake of fact, stating that the bar against open storage is contrary to prior Hearing Examiner landscaping contractor decisions and that wood chips are organic material that cannot be stored in closed structures. Petitioner requests that Approval Condition #11 be revised to remove the prohibition on the open storage of chipped wood.

Rules of Procedure & Standard of Review

Pursuant to Hearing Examiner Rule 11.2, a request for reconsideration must be made in writing and submitted within 15 days after the issuance of the decision. The request must state the reasons for the request, and may include a request for a hearing and a request to suspend the decision. The party making the request must send a copy of the request to each party and certify that a copy has been sent to each party.

In accordance with Hearing Examiner Rule 11.5, the Hearing Examiner will revise a decision only upon a finding of mistake of fact or mistake of law. Under this standard, then, the Hearing Examiner may only reconsider Petitioner's requests only upon a finding it was improperly decided as a matter of law or upon a finding of factual error.

Discussion

Upon review, the Hearing Examiner has determined the prohibition against the open storage of chipped wood is a mistake of fact.

Based on this information, the "Order" section of the decision and order is revised as follows.

ORDER

Based upon the foregoing, it is this **17th day of January 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Chad Zirk for a Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district are hereby **GRANTED**;

Provided, however, that:

1. The Conditional Use and Variance shall apply only to the uses and structures as described in the petition, the Amended Plan, and the Findings of Fact and not to any other activities, uses, structures, or additions on the Property and as subject to all conditions of approval.
2. The approved hours of operation are 6:30am to 6:00pm, Monday through Saturday.
3. A maximum of 15 employees, including the Petitioner, is approved.
4. The entire perimeter of Area 1 shall be fenced. The fence shall be comply with HCZR § 128.0.A.9 and shall be erected no later than 30 calendar days upon final inspection of the building in Area 1.
5. Equipment and vehicles to be used and/or stored on the site will include only the following, or similar machinery: two chip trucks, two chippers, a spare chipper, two trailers, and a mini-skid stored on the trailer attached to the truck, a log truck and a log trailer. When the work crew increases to 15, two additional trucks are approved.
6. Petitioner shall provide an appropriately sized dumpster within Area 1. The size and location of the dumpster shall be depicted on the site development plan.
7. Petitioner shall obtain all permits, including a building permit for the equipment repair structure in Area 1 and any required fence permit.
8. The Landscape Contractor operation shall comply with the Howard County Noise Ordinance.

9. No mulching or wood chipping or any type of chipping or processing of wood is permitted within any part of the Conditional Use Site. No mulching or chipping associated with the approved use shall be performed elsewhere on Parcels 362 or 504.

10. No Bulk Firewood Processing shall be conducted within the Conditional Use site or on Parcels 362 or 504.

11. Petitioner shall submit a site development plan for review and approval. This requirement for site development plan approval may not be waived. No alternative compliance is permitted. The site development plan shall denote Areas 1 and 2 and their square footage, which shall be noted as the Conditional Use Site, the location of all parking areas, paving surface materials, and the location of all vehicle and equipment parking/storage areas. Seven employee parking spaces shall be noted on the site development plan. The site development plan shall also specify the type of materials/supplies to be stored within Area 1, their location and manner of storage and the location of all chipped wood materials brought back to the site for long-term storage. All storage areas and the manner of all materials/supplies storage shall comply with state and county laws and regulations.

12. The Site Development Plan shall comply with the Bureau of Environmental Health's comment: "The proposed conditional use plan shows the vehicle and equipment storage area overlapping a large portion of the sewage disposal area. The sewage disposal area must remain free from buildings and any other permanent or physical objects, and may not be disturbed by earth moving, compaction, tree removal or grading."

13. The Site Development Plan shall contain a note stating a Landscape Contractor Conditional Use and Variances were granted in BA No. 16-016C&V, decided December 15, 2016, for Parcels 362 and 504. The note shall list all approval conditions.

14. Pursuant to Howard County Zoning Regulations § 131.0.1.2, the approved Conditional Use shall not commence until all required building permits are issued.

15. The use-in-common easement shall be recorded in the Land Records of Howard County prior to submission of the Site Development Plan. The Site Development plan shall reference the easement recording liber and folio.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

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.

IN THE MATTER OF : BEFORE THE
CHAD ZIRK : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 16-016C&V

.....
DECISION AND ORDER

On November 7, 2016, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Chad Zirk for a Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, filed pursuant to §§ 131.0.N.32 and 131.0.B.2 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Thomas Coale, Esq., represented the Petitioner. Robert Vogel and Chad Zirk testified in support of the petition. No one appeared in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, Petitioner introduced into evidence Exhibit 1, an amended conditional use and variance plan (the Amended Plan), depicting a second variance request to reduce the proposed use setback on a portion of the south side of the use-in-common pipestem driveway located on adjoining Parcel 504 from 30 feet to 7.36 feet. Robert Vogel testified this revision is intended to comply with the technical staff report (TSR) remark that the variance was required for the proposed use. The Hearing Examiner determined the hearing could proceed

because the amendment was not substantial pursuant to Hearing Examiner Rules of Procedure 9.4 and 9.5.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The primary subject property is located in the 4th Election District on the north side of Woodbine Road about 870 feet west of A.E. Mullinix Road. It is identified as Tax Map 0034, Grid 0015, Parcel 362. The primary subject property is known as 2060 Woodbine Road (the Property). A portion of the driveway access conditional use site is located on Parcel 504, which according to SDAT is identified as Tax Map 0007, Grid 0021, Parcel 504 and is known as 2070 Woodbine Road (Parcel 504) and which is the Petitioner's residence.

2. Primary Property Description. Parcel 504 is an irregular-shaped 10-acre lot with a pipestem section driveway extending about 1,280 feet from the main portion of the parcel to Woodbine Road. This pipestem driveway rises some 70 feet in elevation from the entrance on Woodbine Road to the main area of the parcel. From here, the elevation descends through a cleared area to a pond and then rises again to the highest elevation in the northwest corner, where there are two old structures. The northeastern half of the Property is wooded and slopes in an easterly direction toward a stream in the northeast corner.

3. Vicinal Properties. Parcels 508 and 126 to the north are farm properties subject to Howard County Agricultural Land Preservation Program (ALPP) easements. The land area near the primary Property is wooded. Parcel 361 to the east is a 10-acre unimproved parcel. The southwestern Parcel 504, a small portion of which is part of the Conditional Use Site is improved

with a single-family detached dwelling. Parcel 363, also to the southwest is unimproved. Parcel 342 to the northwest is improved with a single-family detached dwelling located about 280 feet from the Use.

4. Roads. Woodbine Road (MD 94) has two travel lanes and about 24 paving feet within a variable width right-of-way (ROW). The posted speed limit is 45MPH. According to the TSR, the estimated sight distance is about 550 feet to the northeast and more than 600 feet to the southwest. According to State Highway Administration data, the traffic volume on MD 94 south of MD 144 is 5,532 average daily trips as of 2015.

5. Water and Sewer Service. The Property is served by private well and septic. The well is located near the northwest corner of the Property and the septic easement is location to the southwest of the proposed Landscape Contractor storage building.

6. General Plan. PlanHoward 2030 depicts the Property as Rural Resources on the Designated Place Types Map. MD 144 is depicted as Undeveloped Residential on DPZ's Land Use Map.

7. Zoning History. The Property has an open zoning violation issued to Petitioner for operating a landscape contracting business on the Property without Hearing Authority approval.

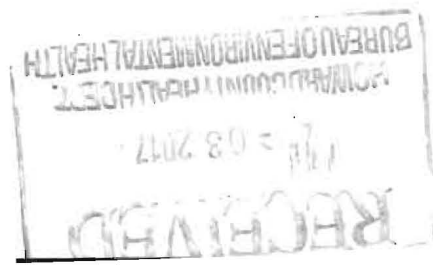
8. The Requested Landscape Contractor Conditional Use & Conditional Use Site.

A. The Conditional Use Site. As the TSR remarks, the entire Conditional Use Site (CUS) is not delineated on the proposed Conditional Use Plan submitted with the petition. Nor is the entire CUS shown on the Amended Conditional Use Plan (the Amended Plan). DPZ estimates that the CUS comprises two areas encompassing approximately 49,478 square feet, or 1.14 acres.

Area 1 is the 21,798sf area subject to the 5% maximum use area for the parking and storage of commercial vehicles, equipment, materials and supplies imposed by HCZR § 131.0.N.32.g, one of the specific standards for the Landscape Contractor conditional use category. The boundary of this area is actually depicted on the Amended Plan. This portion of the proposed land use area also denotes the location of a 30'x 50', 16'-high steel-frame building structure within this use area and which is to be used for equipment repair. The Amended Plan depicts the front and side elevations of this structure. To the south of this structure, and largely within Area 1, is a large, existing septic easement system.

Area 2 comprises what DPZ estimates to be the approximately 27,689sf area of the land use associated with two access drives serving Parcels 362, the Property, and Parcel 504, the Petitioner's residence, and is a 16-foot wide use-in-common driveway extending 1,280 feet from Woodbine Road to the main section of the Property. The conditional use petition includes a draft easement for ingress and egress and maintenance of the proposed use-in-common driveway. This easement will be recorded in the county land records if the conditional use is granted. Also part of Area 2 is a proposed internal 12-foot wide driveway extending from the terminus of the proposed 30-foot wide use-in-common driveway and running in a northerly and northeasterly direction to its terminus at Area 1 with a 6-inch compacted rock base and a tar and chip coating.

B. The Proposed Landscape Contractor Conditional Use Operation. According to the conditional use petition, Petitioner is proposing to operate a Landscape Contractor business within Area 1. Up to 8 employees will generally be on-site for 15 minutes in the morning to pick up equipment and 15 minutes in the evening to drop off this equipment. The proposed hours of



operation identified in the petition are 6:30am to 6:00pm. Activity on-site will be minimal. The building in Area 1 will be located more than 150 from the lot line in common with Parcel 342 and used only for minor equipment repair. The CUS will be located 100 feet from Parcels 342 and 504 and 236 feet from Parcel 508. The petition states Petitioner does not anticipate noise, dust, or fumes to emanate from the CUS onto neighboring properties. The proposed building structure will be screened from neighboring properties by existing landscaping and a 300-foot Type C Landscape buffer on the westerly lot line closest to Area 1. No snow removal services are proposed. A single residential style light shall be affixed on the building structure.

9. Requested Variances. The Petitioner is requesting two variances from HCZR § 104.0.E.5 to reduce the 30-foot use setback from a lot line to approximately 7.04 feet for the easterly portion of the proposed use-in-common driveway on Parcel 362 and running along adjoining Parcel 361 to the east and to approximately 7.35 feet for the pipestem driveway providing access from Woodbine Road to the internal driveway access to Area 1 on Parcel 504.

10. TSR Recommendation. The TSR recommends the petition be granted, subject to compliance with all agency comments and recommended conditions of approval, including an amended variance petition to accommodate the proposed 7.36 foot use setback for the proposed use-in-common driveway and an Amended Plan depicting the total Conditional Use Site.

11. Agency Comments. The Health Department's Bureau of Environmental Health (BEH) issued the following comment about the plan submitted with the petition. "The proposed conditional use plan shows the vehicle and equipment storage area overlapping a large portion of the sewage disposal area. The sewage disposal area must remain free from buildings and any

other permanent or physical objects, and may not be disturbed by earth moving, compaction, tree removal or grading."

12. Robert Vogel testified to the two pipestem access driveways for the adjoining Zirk properties for which variances are sought being combined and reconstructed as a use-in-common driveway to serve the two adjoining Zirk properties. He also testified to the petition including a proposed use-in-common driveway easement to be recorded in the county land records if the conditional use is approved.

13. Mr. Vogel described the Property. There is existing vegetation and a proposed Type C landscape buffer along the northwesterly lot line to the west of Area 1 will screen the use. No business will be conducted on-site, except for minor equipment maintenance within the Area 1 building. In his opinion, there would be no atypical adverse impacts from noise, dust or fumes.

14. Concerning stormwater management, Mr. Vogel testified he does not yet know what will be required and that the total area of the CUS may need to be enlarged to accommodate any SWM.

15. Chad Zirk testified that his landscape operation, Cutting Edge Tree Expert, is a specialty tree service business. Six employees travel in one company vehicle to the proposed conditional use site. A seventh employee drives another company truck to the proposed site. Generally, two employee vehicles would be parked in Area 1 during the day. His foreman has a company truck, which he parks at his house after hours. The operation would be conducted six days a week, Monday through Saturday from 6:30am to 6:00pm at the latest.

16. Mr. Zirk further testified to these vehicles and equipment being stored within Area

1: two chip trucks, two chippers, a spare chipper, two trailers, and a mini-skid stored on a third trailer, which stays attached to the truck. He also has a log truck and a log trailer. He is not treating any mulch or doing any wood chipping on-site. If the crew increases to 15, the equipment would include two more trucks.

17. His work crew shows up and leaves after about 15 minutes, usually around 7:00am. They generally come back in the late afternoon, seldom after 5:00. He has been operating his business for 12 years, apparently on Parcel 504. A zoning complaint was filed when he was clearing the Property and chipping wood from downed trees. The Property was overgrown when he bought it.

18. The Hearing Examiner described her site visit, explaining that the "cleared area" in front and to the east of the pond appeared to have clear-cut from an existing wood stand and that the wood appeared to have been processed for firewood, having observed large log piles and firewood on Parcel 362. She questioned Mr. Zirk as to whether he was running a Bulk Firewood Processing operation on of the Property, which may only operate upon the grant of a conditional use pursuant to HCZR § 131.0.N.46. Mr. Zirk explained he had been processing firewood on the Property and would sell the excess. When questioned, he testified to having a tree expert license from the state. Mr. Zirk then stated that no firewood will be processed, no wood would be brought into the Property or sold and there will be no mulching or wood chipping on-site, but he may want to operate a Bulk Firewood Processing operation in the future. After consultation with counsel, Mr. Zirk testified that he does not intend to be engaged in a Bulk Firewood Processing operation on the Property, including the CUS.

19. The Hearing Examiner questioned Mr. Zirk about any use of a tractor trailer, which Mr. Zirk identified as a 48-footer. It would enter the CUS once annually and only to pick up wood chips hauled back from a project site and accumulating.

20. On rebuttal, Mr. Vogel testified to there being enough room for additional equipment and parking to accommodate 15 employees.

CONCLUSIONS OF LAW

I. Background issue: On the Nature of a Landscape Contractor Operation and What Information About the Proposed Land Use Must be Identified in the Petition and Shown on the Plan

During the proceeding, the Hearing Examiner observed that the petition, the plan submitted for the requested conditional use and variances and the Amended Plan did not denote the type of paving surfaces for Area 1 and the internal driveway, did not identify parking areas for employees or how employees commuted to/from the proposed CUS, did not detail the equipment and vehicles used in the operation, and did not identify a specific area for outdoor storage and what supplies and materials would be stored in these areas and how. (Nor does the Amended Plan depict Areas 1 and 2, as counseled by the TSR.) Counsel for Petitioner vigorously argued such information is not within the Hearing Examiner's authority to command because these details would be reviewed and determined at the Site Development Plan (SDP) phase. The Hearing Examiner referenced multiple Landscape Contractor conditional use decision and orders where petitioners submitted specific evidence about the nature of the proposed operation in the petition and denoted the various components and locations of the use on the conditional use plan. Counsel argued he should not be required to review years of decisions and orders to know

petition/plan requirements for the proposed land use, and that the specific criteria for the use does not require such information to be submitted. The Hearing Examiner stated the Department of Planning and Zoning should not have forwarded the petitions for scheduling without this information, a breach of HCZR § 131.0.F.2.f, the 2013 zoning text amendment enacted during the 2013 Comprehensive Rezoning Plan, and which imposes on DPZ the regulatory policy obligation to seek from a petitioner "the best petition" during the initial processing of a conditional use petition and before the preparation of technical staff reports.

Petitioner's obligation to submit a landscape contractor "best petition" is not contingent on an extensive reading of decisions and orders for precedent. Rather, the general precedent is the law of conditional uses/special exceptions grafted onto or overlaying and informing a local jurisdiction's general criteria for conditional uses/special exceptions, beginning with the bellwether case *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), and refined through its considerable progeny. *Schultz* established, with later refinements, that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are *facts and circumstances* that show that the particular use proposed at the particular location proposed would have any adverse effects *above and beyond those inherently associated* with such a special exception use irrespective of its location within the zone." *Schultz*, 291 Md. at 22-23, 432 A.2d at 1331. (Emphasis added.) *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008), is in part an exegesis and legal history of the case law informing the

Schultz decision and the subsequent and significant case law weighing in on the interpretation of the *Schultz* test.

In Howard County, the critical general criteria impelling Petitioner's obligation to adduce evidence of the specific operational characteristics of his Landscape Contractor business is, primarily, the six-part adverse impact test in HCZR § 131.0.B.3, which legislatively incorporates the law of *Schultz* to require proof that "[t]he proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses." This impact can be gauged only through the specific "facts and circumstances" of the proposed use, a factual analysis of its specific operational characteristics and storage/parking locations for compliance with HCZR § 131.0.B.3. The information Petitioner must provide in the petition and plan and adduced through evidence at the hearing is core to Petitioner's burden of proof and persuasion on compliance with this standard. It cannot be punted to the SDP stage.

Furthermore, all conditional use categories contain specific standards which must be met. The general intent of these standards is to ensure compatibility with vicinal uses. They also embody a legislative determination that these particular standards are needed to safeguard against atypical adverse impacts. For Landscape Contractor conditional uses, § 131.0.N.32.b requires the Conditional Use Plan to show all buildings and outdoor areas to be used for parking, loading and storage of vehicles, equipment and tools and supplies. The Amended Plan, Area 1, with the exception of the proposed equipment repair building, does not delineate this information, only its square footage, nor does it delineate the full area of the proposed Conditional Use Site. By comparison, the Landscape Contractor Conditional Use for BA 16-

028C&V for expansion of an Landscape Contractor Conditional Use granted in 1992, forwarded to the Hearing Examiner during the drafting of this decision and order, identifies the proposed operation as including almost 50 pieces of equipment and vehicles, describes and locates the paving surface where this inventory would be parked and stored on the Conditional Use Plan, and shows the specific location of materials and storage areas on the Plan, including specific square foot percentage areas to be used for parking and storage.

II. General Criteria for Conditional Uses (§ 131.0.B)

HCZR §§ 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards: harmony with the General Plan, intensity of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

§ 131.0.B.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.

The TSR concludes there are no specific policies in the Plan related to the proposed use.

§ 131.0.B.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 proposed Landscape Contractor use includes 8 employees who would share vehicles to and from the site. Their vehicles and the following work vehicles and equipment would be stored/parked in Area 1: two chip trucks, two chippers, a spare chipper, two trailers, a mini-skid stored on the trailer, a log truck and a log trailer. When the crew reaches 15 employees, two

more trucks would be added to the operation. These items and all supplies will be stored in Area 1. No post-tree service processing, including the processing or chipping of wood waste refuse like tree stumps, brush and limbs, root mats, logs, and similar natural vegetative would be conducted within the Conditional Use Site or on the Property. There will be no Bulk Firewood Processing for sale. The total area of the proposed use is about 47,478sf (1.14) acres, of which Area 1, the main operational site, comprises about 21,798sf of the 10 acre-Property.

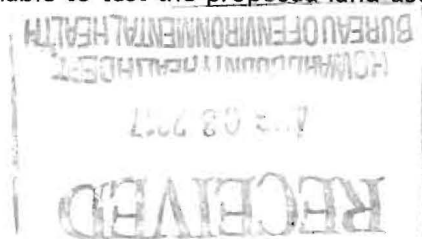
Given the relatively small percentage of the Conditional Use Site relative to the Property, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use is appropriate for the site, given the ultimate access to Woodbine Road.

B. Adverse Impacts

Unlike HCZR §§ 131.0.B.1 and B.2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six tests: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

a. 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 be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

Taking into consideration of the law of conditional uses outlined in Part I of these Conclusions of Law, the Hearing Examiner would be unable to test the proposed land use for



compliance with this standard without sufficient evidence about the operational characteristics adduced by the Petitioner at the hearing, there being limited information in the petition and Amended Plan and a conclusory opinion in testimony that the use would not generate atypical adverse impacts from noise, dust or fumes.

The evidence generally supports the conclusion that the physical location of Area 1, the base of operations for the use, and Area 2, the access use area, would generate no atypical adverse physical conditions. The use-in-common driveway will be paved and the internal access on the Property is sufficiently far away from neighboring residences.

The Hearing Examiner is not wholly persuaded about the lack of atypical adverse impacts generated by Petitioner's plan to store wood chips in Area 1 for a year or so, given the dearth of evidence going to this component of the operation. In Board of Appeals Case No. 07-009C, (granted December 3, 2007), Finding of Fact # 5 detailed how landscape contractor materials would be stored within the CUS. "Materials will be stored to the east of the paved circulation area and pole barn in 4, 50-foot by 20-foot, six feet high, block storage bins (the "holding area") an area shown on the Conditional Use Plan dated May 10, 2007. The storage area will be landscaped to screen the view from area properties. Materials proposed to be stored there include trees and other natural landscaping, 30-50 cubic yards of block wood chip/mulch from tree operations to be hauled away or used as firewood, 20-30 cubic yards of miscellaneous debris such as mulch, leaves, and small brush to be temporarily stored on-site for reuse, 10-15 pallets of salt to be stored within the pole barn, and 15-20 pallets of stone, flagstone, and pavers. Most landscaping materials will be sent directly to the site. Some equipment will be stored in the front

section of the pole barn." In Board of Appeals Case No. 07-018C (decided June 22, 2009), the landscape contractor Petitioner agreed to using asphalt paving on the driveway and parking areas for 19 vehicles and that no material would be brought to the CUS for chipping. In Board of Appeals Case No. 07-018C, the Landscape Contractor conditional use plan depicted the location of three groups of storage bins for topsoil and mulch storage.

In this case, Petitioner has not adduced evidence about the manner in which materials and supplies will be stored outside, especially the storage of chipped wood brought back to the site for storage and later removal and any potential atypical adverse impact generated by the accumulation of a year's worth of chipped wood. (The evidence indicates that the building to be erected in Area 1 is for equipment repair only.) Therefore, to ensure the requested Landscape Contractor operation does not generate atypical dust, fumes, odors, hazards or other physical conditions, the Hearing Examiner is requiring as a condition of approval that Petitioner submit a Site Development Plan (SDP) for review and approval, as necessitated by Howard County Subdivision and Development Regulations § 16.155.(a)(1)(ii).¹ This requirement for SDP approval may not be waived. No alternative compliance is permitted. The SDP shall denote the location of all parking areas, paving surface material, and the location of all vehicle and equipment

¹ § 16.155.(a)(1)(ii). Any establishment of a use or change in use, unless the Department of Planning and Zoning determines that the establishment or change in use will cause less than 5,000 square feet of site disturbance, that no significant alteration to access, parking, circulation, drainage, landscaping, structures, or other site features is required, and that the proposed use does not qualify as redevelopment that requires stormwater management in accordance with the design manual.

See also HCZR § 131.0.1.1, Establishment of Conditional Use: If required by the Department of Planning and Zoning, a Site Development Plan must be approved subsequent to the approval of a Conditional Use. The Site Development Plan must conform substantially to the Conditional Use plan.

parking/storage areas and shall specify all materials to be stored on-site. The SDP shall also specify the type of materials to be stored within Area 1, the location and manner of storage and the location and size of contained storage areas for the wood chipping material brought back to the site for long-term storage. These storage areas shall comply with all state and county laws and regulations. No open storage of chipped wood is permitted. Subject to this condition of approval, the Hearing Examiner concludes the proposed land use, given the configuration of the Site, would not generate atypical (greater) noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions than it would generally be elsewhere in the same zoning district or other similar zoning districts, in compliance with § 131.0.B.3.a.

b. 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.

No walls are proposed. Petitioner is proposing to erect a 30'x 50', 16'-high steel-frame building within Area 1 to be used for equipment repair. It will be located more than 150 feet from the lot line in common with Parcel 342. Additionally, to ensure compliance with HCZR § 131.0.N.32.g's 5% limitation on the use area for parking and storage, and the absence of evidence about the internal organization of this space, the Hearing Examiner is requiring Petitioner to fence all four perimeters of Area 1. This fence shall be compliant with HCZR § 128.0.A.9, which regulates such structures. Subject to these conditions of approval, the location of these structures, together with existing and proposed landscaping, 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 petition complies with § 131.0.B.3.b.

c. 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.

Parking. The Amended Plan does not call out the number of parking spaces or their location. Currently several employees carpool to the existing use in one company vehicle. One employees drives a second company vehicle to the site. Presumably, Mr. Zirk has occasion to drive to his business. The record does not clearly indicate the number of vehicles used by up to seven additional employees to the business. Therefore, as a condition of approval, the Hearing Examiner is requiring Petitioner to provide a minimum of 7 employee parking spaces, the location of which shall be depicted on the Site Development Plan.

Loading Areas. All loading will be conducted within the fenced Area 1.

Refuse Areas. No refuse area is proposed. In all the Landscape Contractor conditional uses approved by this Hearing Examiner, petitioners have provided for an onsite dumpster. There being no evidence going to the disposal of waste generated by the operation, the Hearing Examiner is requiring Petitioner to provide an appropriately sized dumpster within Area 1. The size and location of the dumpster shall be depicted on the SDP.

Driveways. The proposed 30-foot wide use-in-common driveway extending from Woodbine Road to the main portion of Parcel 362 would be visible from northeasterly Woodbine Road, but with rare exception, Landscape Contractor use drives are commonly visible in the rural landscape. Existing landscaping along the northerly side of the proposed use-in-common driveway will



screen the view of this driveway. A Type C landscape buffer is proposed along that portion of the adjoining Parcels 362 and 504 where Area 1 is proposed. Existing vegetation on the Property will screen the use.

Subject to all conditions of approval, the petition complies with § 131.0.B.3.c.

d. 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.

The TSR estimates the sight distance at the Woodbine Road driveway entrance to the CUS to be about 550 feet to the northeast and more than 600 feet to the southwest. Given the low relatively low traffic to and from the site, no acceleration and deceleration lanes appear necessary. Access appears safe. The Use will share access with the petitioner's residence located on the adjoining parcel via a 30-foot use-in-common driveway. The petitioner will execute a use-in-common easement and maintenance deed upon approval of the conditional use. The petition complies with § 131.0.B.3.d.

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

Off-site and to the east of Area 1 and some 120 feet from a 75-foot buffer is a stream. The TSR concludes there is little potential for the use to impact the stream from this distance. The presence of a dumpster and storage bin containers for chipped wood brought back to Area 1 for storage and appropriate storage for other materials and supplies in Area 1 will ensure no atypical adverse impact on this environmentally sensitive area. The petition complies with § 131.0.B.3.e.

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

According to the TSR, the box culvert for the stream that flows under Woodbine Road has an historic designation (HO-780). This culvert is located to the northeast approximately 530 feet from the entrance to the Property. The closest historic building is estimated to be the early 19th century Bernard Warfield House (HO-113, historically known as "Bite the Skinner"). This historic house is located to the southeast more than 1,500 feet from the entrance to Property. The TSR concludes that the distance from these two historic structures ensures that the proposed use would not have greater potential for diminishing the character and significance of these sites than elsewhere. The petition complies with § 131.0.B.3.f.

III. Specific Criteria for Landscape Contractors (§ 131.0.N.32)

A Conditional Use may be granted in the RC and RR Districts for Landscape Contractors, provided that:

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

The Property is 10 acres in area and that portion of the proposed use-in-common driveway located on Parcel 504, in compliance with § 131.0.N.32.a.

b. 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.

Area 1 is to be used for the parking and storage of commercial vehicles, equipment, materials and supplies. The Amended Plan shows the proposed boundaries of Area 1 being located at least 100 feet from all lot lines and more than 1000 feet from Woodbine Road. Area 1

will contain the proposed equipment repair building and all parking, as well as all loading and storage areas for vehicles, equipment, tool and supplies, in compliance with § 131.0.N.32.b.

c. 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.

Subject to all conditions of approval, the Landscape Contractor operation complies with § 131.0.N.32.c.

d. 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 Amended Plan depicts a 30'x 50', 16'-high steel-frame building structure within this use area and which is to be used for equipment repair only and it will be screened from area residential structures by existing and proposed landscaping, in compliance with § 131.0.N.32.d.

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

The SDP will depict the specific location of all parking and storage areas within Area 1, which shall be fenced. Existing and proposed landscaping will screen these uses from neighboring properties and roads, in compliance with § 131.0.N.32.e.

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

All minor repairs to vehicles and equipment will occur within the building located in Area 1, in compliance with § 131.0.N.32.f.

g. 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.

Area 1 is approximately 21,798sf, in compliance with § 131.0.N.32.f.

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

The approved hours of operation 6:30am to 6:00pm, Monday through Saturday. A maximum of 15 employees is approved.

i. 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.

No snow removal service is approved or proposed.

j. On an ALPP purchased or dedicated easement property, the following additional criteria are required:

(1) The use shall not interfere with farming operations or limit future farming production.

(2) 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.

Neither Parcel 362 nor 504 is an ALPP purchased or dedicated easement property.

IV. Compliance with the Standards for Variances (HCZR § 130.0.B.2.a)

Pursuant to HCZR § 130.0.B.2.a, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variances comply with §§ 130.0.B.2.a(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

Compliance with this first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty

arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's shape, including that portion of the proposed use-in-common driveway on Parcel 504, is a physical condition causing practical difficulty in complying with the current setback regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

There is no evidence of the requested variances altering the essential character of the neighborhood or district in which the lot is located, substantially impairing the appropriate use or development of adjacent property, or being detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulty in complying strictly with the setback regulations is caused by the irregular shape of the Property and was not created by Petitioners.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The variances are for a use-in-common driveway intended to conform to county requirements, which as the TSR comments, is controlled by the Howard County Design Manual

Volume III. Appendix A of Volume III requires a minimum 24-foot easement and 16-foot pavement for use-in-common driveways. The variances are therefore the minimum necessary.

ORDER

Based upon the foregoing, it is this **23rd Day of December 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Chad Zirk for a Landscape Contractor conditional use and related variances in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district are hereby **GRANTED;**

Provided, however, that:

1. The Conditional Use and Variance shall apply only to the uses and structures as described in the petition, the Amended Plan, and the Findings of Fact and not to any other activities, uses, structures, or additions on the Property and as subject to all conditions of approval.
2. The approved hours of operation are 6:30am to 6:00pm, Monday through Saturday.
3. A maximum of 15 employees, including the Petitioner, is approved.
4. The entire perimeter of Area 1 shall be fenced. The fence shall be compliant with HCZR § 128.0.A.9 and shall be erected no later than 30 calendar days upon final inspection of the building in Area 1.
5. Equipment and vehicles to be used and/or stored on the site will include only the following, or similar machinery: two chip trucks, two chippers, a spare chipper, two trailers, and a mini-skid stored on the trailer attached to the truck, a log truck and a log trailer. When the work crew increases to 15, two additional trucks are approved.
6. Petitioner shall provide an appropriately sized dumpster within Area 1. The size and location of the dumpster shall be depicted on the Site Development Plan.
7. Petitioner shall obtain all permits, including a building permit for the equipment repair structure in Area 1 and any required fence permit.
8. The Landscape Contractor operation shall comply with the Howard County Noise Ordinance.
9. No mulching or wood chipping or any type of chipping or processing of wood is permitted within any part of the Conditional Use Site. No mulching or chipping associated with the

approved Landscape Contractor use shall be performed elsewhere on Parcels 362 or 504.

10. No Bulk Firewood Processing shall be conducted within the Conditional Use site or on Parcels 362 or 504.

11. Petitioner shall submit a Site Development Plan for review and approval. This requirement for Site Development Plan approval may not be waived. No alternative compliance is permitted. The Site Development Plan shall denote Areas 1 and 2 and their square footage, which shall be noted as the Conditional Use Site, the location of all parking areas, paving surface materials, and the location of all vehicle and equipment parking/storage areas. Seven employee parking spaces shall be noted on the Site Development Plan. The Site Development Plan shall also specify the type of materials/supplies to be stored within Area 1, their location and manner of storage and the location and size of contained storage areas for the wood chipping material brought back to the site for long-term storage. These storage areas shall comply with all state and county laws and regulations. No open storage of chipped wood is permitted.

12. The Site Development Plan shall comply with the Bureau of Environmental Health's comment: "The proposed conditional use plan shows the vehicle and equipment storage area overlapping a large portion of the sewage disposal area. The sewage disposal area must remain free from buildings and any other permanent or physical objects, and may not be disturbed by earth moving, compaction, tree removal or grading."

13. The Site Development Plan shall contain a note stating a Landscape Contractor Conditional Use and Variances were granted in BA No. 16-016C&V, decided December 15, 2016, for Parcels 362 and 504. The note shall list all approval conditions.

14. Pursuant to Howard County Zoning Regulations § 131.0.1.2, the approved Conditional Use shall not commence until all required building permits are issued.

15. The use-in-common easement shall be recorded in the Land Records of Howard County prior to submission of the Site Development Plan. The Site Development plan shall reference the easement recording liber and folio.

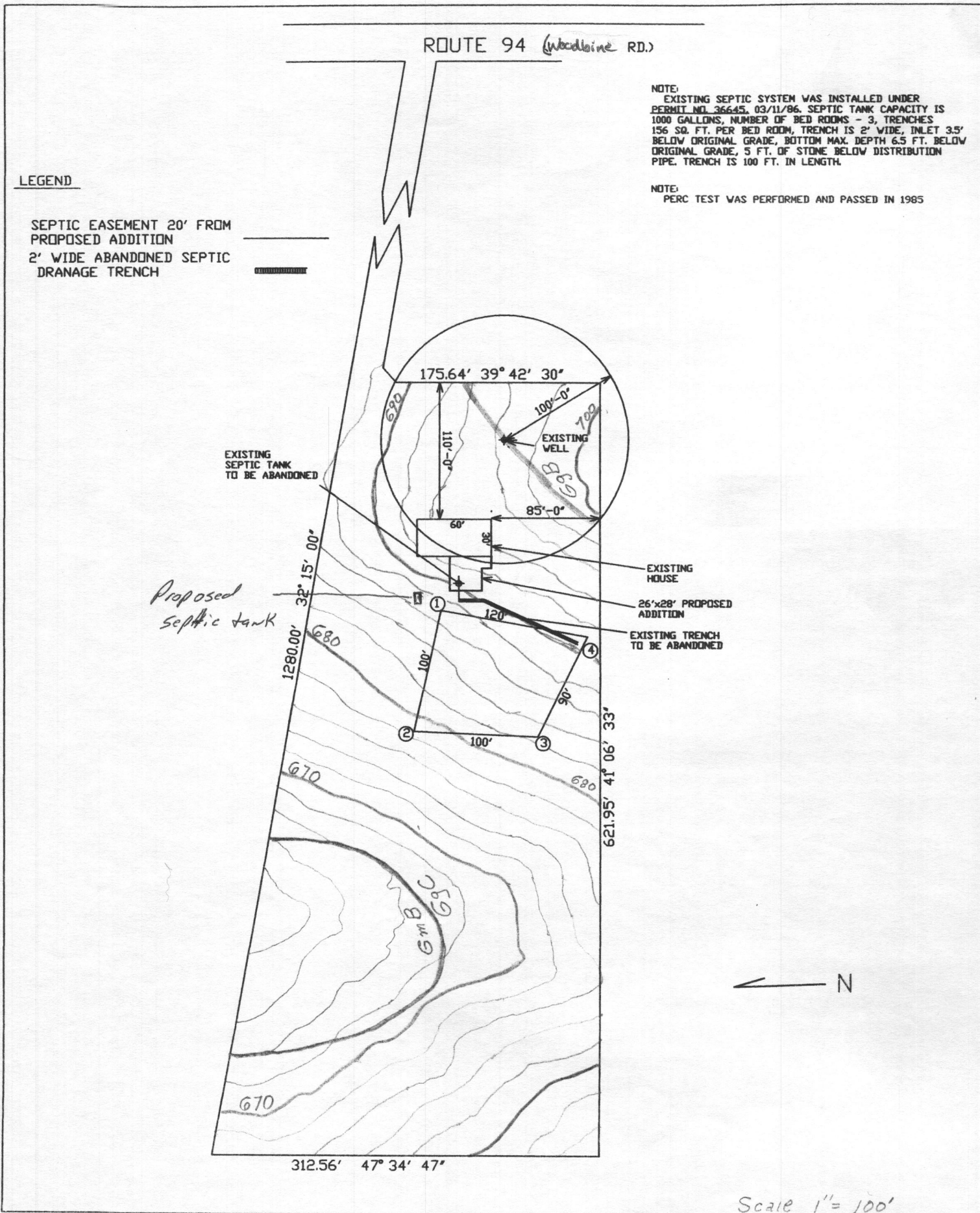
**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

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.



NOTE:

- EXISTING WELLS ON THE SUBJECT PROPERTY AND WITHIN 100 FEET OF SUBJECT PROPERTY BOUNDARIES ARE REPRESENTED TO THE BEST OF MY KNOWLEDGE & BELIEF.
- TOPOGRAPHY ON THIS PLAT IS FROM HOWARD COUNTY GIS (2006) AND IS VERIFIED TO ACCURATELY REPRESENT THE RELATIVE ELEVATION CHANGES ON AND NEAR THE SUBJECT PROPERTY.
- ANY CHANGES TO A PRIVATE SEWAGE EASEMENT SHALL REQUIRE A REVISED PERCOLATION CERTIFICATION PLAN.
- THIS AREA DESIGNATES A PRIVATE SEWAGE EASEMENT OF A LEAST 10,000 SQ. FT. AS REQUIRED BY THE MARYLAND DEPARTMENT OF ENVIRONMENT FOR INDIVIDUAL SEWAGE DISPOSAL. IMPROVEMENTS OF ANY NATURE IN THIS EASEMENT ARE RESTRICTED. THIS EASEMENT SHALL BECOME NULL AND VOID UPON CONNECTION TO A PUBLIC SEWERAGE SYSTEM. THE COUNTY HEALTH OFFICER SHALL HAVE AUTHORITY TO GRANT ADJUSTMENTS TO THE PRIVATE SEWAGE EASEMENT. RECORDATION OF A REVISED SEWAGE EASEMENT SHALL NOT BE NECESSARY.
- THE EXISTING RESIDENCE AND WELL SHALL REMAIN
- THE PURPOSE FOR THIS PERCOLATION CERTIFICATION PLAN IS TO PLAT A SEPTIC EASEMENT IN COMPLIANCE WITH HOWARD COUNTY CODE REQUIREMENTS, AND IN SUPPORT OF A BUILDING PERMIT APPLICATION FOR A PROPOSED ADDITION.
- THE REPLACEMENT SEPTIC TANK, DISTRIBUTION BOX AND TRENCH WILL BE INSTALLED, AND THE EXISTING SEPTIC TANK AND TRENCH ABANDONED, PRIOR TO HEALTH DEPARTMENT APPROVAL OF THE BUILDING PERMIT APPLICATION.

I CERTIFY THAT THE INFORMATION SHOWN HERE ON IS BASED ON WORK PERFORMED IN MY PRESENCE OR BY MY DIRECTION, AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Chad Zirk
(SIGNATURE) 7/14/08
(DATE)

APPROVED FOR PRIVATE WATER AND PRIVATE SEWERAGE SYSTEMS.
B. Wilson for Peter Brilensen, MD 7/22/2008
(DATE)

TITLE: PERCOLATION CERTIFICATION PLAN, "2070 WOODBINE ROAD"
PLAT#: PC17674

PLOT PLAN		
LOT #5 PARCEL 363 ROAD 2070 FLORENCE RD. SUB-DIV. THOMAS F. OLES TAX MAP #7	MR. & MRS. CHAD ZIRK 2070 WOODBINE RD. WOODBINE, MD. 21797 PHONE 410-978-2342	
	DRAWN BY: PAUL WILDISAN 114 MIAMI AVE. WESTMINSTER, MD. 21157 PHONE 410-848-2915	
SCALE 1"=100' DATE 06-30-2008		

PC17674