

Town of Milton Planning Board
Town Hall Offices
525 Canton Avenue
Milton, MA 02186
617-696-5732

Reserved for the Office of the Town Clerk

FORM SP

APPLICATION FOR APPROVAL OF A SPECIAL PERMIT

(Milton General By-laws, Ch. 10, §III, G, and §VI, J to O inclusive)

Date: February 10, 2022

To the Planning Board of the Town of Milton:

The undersigned hereby applies, pursuant to the provisions of the above-mentioned Section III and Section VI of Chapter 10 of the General By-laws, for a SPECIAL PERMIT for: RENEWAL of a permit for:

() Cluster Development () Attached Cluster Development () Condominium Conversion
() Open Space Development () Planned Unit Development () Landscaping Use Permit
Accompanying this application is a plan entitled: Plan of Land Nursery and Landscaping
1240-1244 Randolph Avenue, Milton, MA August 6, 2018

Plans prepared by: Claudia Sala PLS Dated: Aug. 6, 2018

Parcel(s) Street Address: 1240-1244 Randolph Avenue

The undersigned's title to said land is derived from: Deed to Thomas Reaity Trust

Milton Assessor's Map Number(s): ① 10 B Parcel(s): 2A Zoning District: ① AA

Deed of Property Recorded in Norfolk County Registry Book number(s): 31958 page(s): 325

Registered in Norfolk County Registry District of the Land Court, Certificate of Title number(s): —

Number of Proposed Units/Lots: 2 Total Acreage: 358.950 SF

Said land is current with regards to taxes and is free of encumbrances except for the following:

right of way, location not specified, to rear lot owned by Animal Rescue League of Boston

Owner: Bunny G. Thomas, Trustee

Applicant: Bunny G. Thomas, Trustee, Thomas Reaity Trust and Andrew Thomas & Sons, Inc.

Company: Thomas Reaity Trust

Company: —

Address: 1237 Randolph Avenue
Milton MA 02186

Address: 1237 Randolph Avenue
Milton, MA 02186

Phone: 617-698-3348

Phone: 617-698-3348

Signature of Owner: _____ Date: _____

Signature of Applicant (or Agent): Maria V. Neethu Esg Date: Feb. 10, 2022

Marion V. McEttrick

Attorney at Law
10 Crown Street
Milton, MA 02186
617-696-5569
Fax 617-696-0552
mmcettrick@gmail.com

APPLICATION FOR RENEWAL OF LANDSCAPING BUSINESS USE SPECIAL PERMIT

Section III, Subsection N
Milton Zoning Bylaws
February 10, 2022

1. APPLICANT

Name: Bunny Thomas, Trustee
Thomas Realty Trust and
Bunny Thomas, President, Treasurer and Director
Andrew Thomas & Sons Inc.
(Secretary: Barbara J. MacDonald)

Applicants' Address: 1237 Randolph Avenue, Milton, MA 02186

2. ADDRESS OF LANDSCAPING BUSINESS

1240 and 1244 Randolph Avenue, Milton, MA 02186

3. PREVIOUS LANDSCAPING USE SPECIAL PERMIT

On February 14, 2019 the Milton Planning Board approved a landscaping use special permit under Section III.N of the Zoning Bylaw and on that date filed a written decision with the Milton Town Clerk. The decision was recorded in Book 36659, Page 495, Norfolk County Registry of Deeds. The Decision is included as Exhibit A with this application.

4. TERMS FOR ISSUANCE OF A RENEWAL OF A LANDSCAPING USE PERMIT

Section H(b) of the 2019 Thomas Landscaping Special Permit for Landscaping Use Decision allows renewal of the permit, prior to expiration of the permit, for up to five years and on the following terms and conditions: "such renewal may be approved with such additional terms and

conditions as may be appropriate provided that there has been substantial compliance with all material terms of this special permit."

5. RENEWAL APPLICATION

This application to renew is for a term of five years on the same terms as the original permit. The documents on file with the Planning Board for the 2019 application are incorporated by reference in this application. There have been no changes in ownership, layout of the site, or operations at the site.

6. LOCUS

1240 Randolph Avenue, Assessor's N 10B 2A, is in a Residence AA District and 1244 Randolph Avenue, Assessor's N 10B 2B, is in a Residence A District.

The most recent deed for 1240, 1244 and 1237 Randolph Avenue is for all of Bunny Thomas's property on both sides of Randolph Avenue and is dated November 14, 2013 and recorded at Book 31958, Page 325, Norfolk Registry of Deeds. The deed conveys the property from Bunny G. Thomas to Bunny G. Thomas, Trustee of the Thomas Realty Trust u/d/t dated November 14, 2013.

Bunny G. Thomas received title to the Locus at 1240 and 1244 Randolph Avenue from Henry Thomas and Sally Thomas, Co-Executors of the will of Francis R. Belliveau, subject to a life estate in the house on the property with benefits reserved in Audrey Richenberg, who died on August 23, 2011. The Richenberg house has since been demolished.

7. PERMITTING HISTORY

Site Plan Approval

The locus received site plan approval and approval of special permit for three years for combined landscaping and nursery business on February 14, 2019. The site has not been changed from what is described in that site plan, which is incorporated by reference in this application for renewal of the permit and is provided as Exhibit B with this application..

In 2002, in connection with an application to erect a new greenhouse, Bunny Thomas applied for and received Site Plan Approval from the Milton Planning Board. The site was reorganized pursuant to that Site Plan approval to more centrally locate materials storage, to regulate delivery times and to create more parking area as well as to allow the construction of the greenhouse. This reorganization of the site was in part in response to concerns of immediate abutters.

Appendix III of the 2019 application on file with the Planning Board contains a copy of the 2002 Site Plan Approval Decision and Plan.

Existing Farm/Nursery Use

1240 Randolph Avenue is 4.50 acres; the adjacent 1244 Randolph Avenue is 3.798 acres; and 1237 Randolph Avenue, owned in common with the other two lots, is .632 acres, according to Milton Assessors records. The entire site on both sides of Randolph Avenue totals 8.93 acres. Because of this acreage, which exceeds five acres, and the extensive use of the site for horticulture, defined as the cultivation of plants, bushes and trees on site, and the sale of these cultivated trees, bushes and plants, the site qualifies under both the current Town Bylaws and state law as a farm.

Under state law, nursery use is considered a horticultural use and if other requirements for farm status are satisfied is considered a farm use. If so qualified, a farm use is an exempt use and includes the right be a nursery, to erect buildings and residences and sell produce whether produced on site or elsewhere.

However, landscaping use in a residential district, which is restricted to 1240-1244 Randolph Avenue, requires a special permit under Section III.N of the Zoning Bylaws.

8. THRESHOLD REQUIREMENTS TO APPLY FOR RENEWAL OF A LANDSCAPING BUSINESS USE PERMIT

- (a) The landscaping business must have been conducted at the site in substantial compliance with all material terms of the prior permit issued on February 14, 2019.

There have been no complaints filed with the Building Department about the operation of this business. The business is closed in January and February and re-opens in March. The Building Inspector has been asked to inspect the premises and provide a report for the application prior to the date of a public hearing on this application.

9. DEFINITION OF LANDSCAPING

This landscaping business conforms to the definition of such a business in Section III.N of the Bylaw except that this landscaping business does not do snow removal work:

“a business concern which operates to construct, install and maintain lawns, trees, shrubs, gardens, patios, related grounds and other outdoor areas which are owned by others. The business may lease or own real or personal property, employ employees and may be authorized by special permit to own, lease and store vehicles and equipment necessary for business operations. The landscaping business may be authorized to sell trees, shrubs, sold, seed, loam, mulch and related materials and may be authorized to sell stone, stone dust, gravel, pavers, landscape ornamentation, timbers and related materials needed to implement a landscape design. It may be authorized to sell firewood if substantial sales of firewood occurred in 2012. It may be

authorized to sell Christmas trees and other holiday materials if sales of such occurred in 2012. It may be authorized to conduct snow plowing operations." *Milton Zoning Bylaws*, excerpted from Section III.N.

The applicant's landscaping business does not conduct snow plowing operations and has limited firewood operations. Its firewood sales in 2012 were at a volume of no more than 100 cords of wood. In all other respects the description of allowed activities in the Zoning Bylaws is consistent with Applicant's landscaping business, and the Applicant's landscaping business does not include any activities not listed in the Bylaw. See Exhibit D: "List of Landscaping and Nursery Business Activities" from 2019 permit application.

10. PLANS, DOCUMENTS, SPECIFICATIONS AND ADDITIONAL CONDITIONS OF 2019 SPECIAL PERMIT, AS CONDITIONS OF APPROVING PERMIT RENEWAL

Since this application does not change the site plan or ask for any changes in conditions, this application references and incorporates the Site Plan (See Exhibit B) and Special Permit Decision approved on February 14, 2019 (See Exhibit A). No new site plan is submitted.

- (a) The "Existing and Proposed Conditions Plan" entitled "Plan of Land A. Thomas & Sons Nursery and Landscaping, 1240-1244 Randolph Avenue, Milton, MA 02186, dated August 6, 2018, by DECELLE-BURKE-SALA, 1266 Furnace Brook Parkway #401, Quincy, MA 02169 is incorporated by reference in this application for renewal. The plan describes drainage on the property by showing contour lines, existing drain pipes and catch basins on the property and those maintained by Mass Highway in Randolph Avenue. The plan also shows existing buildings, their uses and their dimensions, building setbacks, location and square footage of existing parking areas; existing trees planted along lot lines, a vegetated berm along the right lot line, all fencing, all lighting and all planting areas.

The plan shows in red the limited changes that were made at the time of the original application.

- 1) The Applicant relocated a portion of the electric fence along the back lot line, as the "on the ground" survey revealed that in certain locations on the property to the rear belonging to the Animal Rescue League of Boston the existing electric fence encroached on their property; the plan shows the existing electric fence as "dotted line "E.
- 2) The Applicant added a gate about halfway back on the access driveway, to improve security, as shown in red on the plan.
- 3) The applicant removed the remaining landscaping materials on the right side of the employee parking lot, shown in red on the plan.
- 4) The plan shows the location of seasonal Christmas tree sales behind the sales building, shown in red on the plan.

(b) No Wetland Plan: there was no wetlands plan filed in 2019 or in this application because there are no identified wetlands on or near the site.

(c) Drainage: The existing conditions and proposed conditions plans filed in 2019 show topography, the direction of drainage and existing receptacles for drainage. There have been no complaints from neighbors about drainage flowing onto adjacent sites from the Locus. Thomas Nursery and Landscaping brings trees, bushes and plant to the site on an annual basis where they are planted and continue to grow until they are sold. The business provides for watering of the growing areas using well water, but does not routinely fertilize the plantings as the goal each season is to sell as much of the stock as possible and renew it each year.

(d) Landscaping: the 2019 Site Plan shows landscaping along lot lines. There are existing wood fences along the right and side lot lines that are not located fifteen feet from the lot line, but which have been in these locations more than ten years. These fences were allowed in the 2019 permit to remain as is. There is an electric fence to keep deer out of the Thomas property along the back lot line. There is an extensive growing area to the rear of the property in back of the sales office. There are residential neighbors to the right and left sides, and an undeveloped lot of land, Lot 2, owned by the Animal Rescue League at the rear of the property. The deed to the Animal Rescue League restricts the use of that property to the protection of animals. The Animal Rescue League has a deeded access easement of undetermined location over Lot 1. Bunny Thomas owns the property directly across the street, which is his residence and where some of the nursery business is conducted.

(e) Operations: There are no changes proposed for vehicle movement on site. There is a driveway in the middle of the site to access material storage, growing areas, a maintenance shed, and a wood storage building at the rear of the site. All vehicle parking and equipment parking is as shown on the plan at the rear, right center of the site. This area is a paved area. Both plans show the paved parking area in front of the sales building in the front of the site, on Randolph Avenue. The total areas marked for parking on the site plan, both for trucks, equipment, customers and employees is 6,400 sf (customer parking); 7500 sf (employee parking); and 13,000 sf (truck and equipment parking), for a total parking area of 26,900 sf. There are no driveways close to abutting residential properties on the left and the right sides.

(f) Building Locations: the 2019 site plan shows the square footage and setbacks of the garden center, the greenhouse, the wood barn and the maintenance shed which were part of the approved site plan in 2002, along with the parking, when the site plan was approved. No changes in existing buildings are proposed.

(g) Business Activities and Hours: there are no changes proposed to the business hours and the list of business activities listed in Exhibit D, the list provided for the 2019 special

permit. Activities listed are of the type described in the Zoning Bylaw Section III.N as are the business hours for landscaping and for farm/nursery sales. Additional hours are provided for the sale of Christmas trees and holiday materials in December.

Thomas Nursery and Landscaping is open from 7 a.m. to 6 p.m., Monday through Saturday. There is no landscaping operation on Sunday. The sales office for nursery and landscaping is open 7 a.m. to 6 p.m., Monday through Saturday and 9-6 p.m. on Sunday. The business is completely closed from December 31st to March 1st, every year. The office is open until 9 p.m. daily only during the season when Christmas trees are for sale. For this renewal application the Applicant requests the same operating hours as have been in place for many years and were permitted in 2019.

The unloading and loading of noisy equipment is allowed to be from 7 am to 6 pm Monday through Friday.

- (h) Mitigation Plan: There is no plan for new mitigation, and there have been no requests for any type of mitigation from neighbors. The site was reorganized to address concerns about dust and noise in 2002. There is no longer any material storage at the edges of the site; loose materials are stored in large cement block bins and hardscape materials are stored in one area of the site in the middle rear, away from neighboring properties, all as shown on the plans. Because this property is already located on an extremely busy and noisy state highway, at all times of the day and in the evening there is a high level of ambient noise. The current fencing and landscaping is designed to provide visual screening. There are no sound reduction fences. Instead the site design locates truck movement in the center of the property, away from residential neighbors, to reduce any impact from noise. Furthermore, the vehicle noise from this site is the same or less than the ambient noise level coming from trailer trucks and other vehicles which use Route 28, 24 hours a day.
- (i) Lighting: lighting remains as is shown on the site plans and there are no changes proposed. Light poles shown on the plan next to the sales office contain lighting fixtures that are designed to be directional and except in December, for Christmas tree sales, are turned off when the office closes at 6 p.m. Lights for Christmas tree sales are on a pole at the left rear of the sales office, are directional towards the center of the site, are only used from November 30 – December 31st and are turned off at 9 p.m.
- (j) Street Improvements: there is no proposed street improvement plan; this site is on a state highway.
- (k) Signs: there are no changes proposed for existing signs.
- (l) Vehicles: there has been no change in the “List of Vehicles” provided in Exhibit C, including equipment such as bobcats, trailers and wood chippers used for landscaping, provided in Exhibit C, from the 2019 list. This list includes identifying information and

weight capacity information. Equipment used only for the nursery/farm/garden center is listed separately.

- (m) Truck Idling: In compliance with its 2002 Site Plan Approval, trucks will not be left idling more than five minutes when not in operation. Delivery trucks arriving before 7 a.m. are required to park with engines turned off until the business opens at 7 a.m. These conditions are part of the 2019 landscaping permit and will continue for any renewal of that permit.
- (n) Firewood: the volume of firewood sales in 2012 was not large; as in 2019, the Applicant proposes to limit the maximum yearly firewood sales to the 2012 volume of 100 cords of wood.
- (o) Snow and Ice Removal: the Applicant does not have a snow and ice removal business.
- (p) Sales, Landscaping: the sales operation for landscaping currently uses the same hours as the farm/nursery sales as described in "g" above; the sales business is conducted in the sales office which already exists on the property, along with the nursery sales business.
- (q) Storage of fertilizer and fuel oil: the landscaping business and nursery business only sell packaged fertilizer. There is a 500 gallon fuel storage tank as shown on the plan, at the rear of the truck parking area, which is inspected by the Fire Department. Prior to the hearing on the renewal application the Applicant will provide a letter from the Fire Chief stating that the fuel tank has been inspected and meets all requirements.
- (r) Employees: Employees remain the same as in 2019. Bunny G. Thomas continues to be the operator of the Landscaping Business and is generally available during regular business hours, or his Garden Center Manager is available on site. There is also a secretary/administrator and an estimator. The maximum number of employees during times the business is operating is: 8 landscape employees, 10 garden center employees and 1 clerical employee. All employees are seasonal as the business is closed from end of December through March.
- (s) Thomas Truck and Equipment Parking: the 2019 Site Plan shows where trucks and equipment for the landscaping and nursery/farm business are parked, which is the center rear of the property, and not near abutting residential properties. The business does use back-up warning devices as necessary to ensure safe operation of vehicles on the site. Vehicles are not left running for more than five minutes when not in use. The designated parking areas for trucks and other equipment, for employee parking and for customers on site are adequate for the needs of this business. There is no parking allowed on the state highway. These conditions will be the same for a renewal permit.

- (t) Truck delivery times: truck deliveries adhere to the 2002 site plan permit, which specifies that loam, crushed stone, wood chips, mulch and other such materials will be delivered between 7 a.m. and 6 p.m.
- (u) Waste removal: waste removal and emptying of the recycling bins by outside contractors is scheduled at optimal times for traffic on Route 28. The current schedule is the same as in 2019; between the hours of 10 a.m. and 3 p.m. on weekdays.

5. PRE-APPLICATION REVIEW BY OTHER DEPARTMENTS

Because this application must be filed prior to expiration of the current landscaping permit, and at this time the business is closed, site inspection by the Building Department and departmental review will be scheduled after the application is filed but before a hearing on the application is scheduled.

5. CONDITIONS UNIQUE TO THIS SITE

Thomas Nursery and Landscaping is located on Route 28, a state highway, which has always been a busy commuter route and where traffic increases every year. The highway is a truck route as well as being heavily used by other vehicles resulting in excessive noise throughout the day and night. Both this business and residential neighbors are impacted by the existing condition of the traffic and noise from this highway.

The landscaping and nursery/farm business contain very extensive planting areas which can be viewed effectively by looking at the Thomas website, where there is an aerial video of the site. The site is of sufficient size and is used for horticultural activities consistent with the definition of a “farm” in the General Laws as an activity which zoning may not regulate, Section 40A, subsection 3.

At this location, on this busy highway, the nursery growing areas provide an oasis of calm and natural plantings close to neighboring properties. Most of the plant material used by the landscaping business comes from the Applicant’s on-site growing areas, and some of the wood chips and mulch required by the landscaping business is produced on-site by re-utilizing leftover brush from landscaping work, which reduces the volume of wood chips and mulch that must be delivered. Landscaping materials are delivered to the site as well but the delivery location is directly off the state highway onto and through the middle of the site so as to be as far as possible from neighboring residences.

The extensive growing areas are along the left side and back of the site. On front right side, where there is an employee parking area, the Applicant has created a mulched berm and a wooden fence along with large evergreen trees and other trees and shrubs which creates an effective visual barrier for the neighboring property on that side. On the left side, in front of and beside the sales office, the Applicant has planted evergreen trees and erected a wooden fence and the there is a green strip along Randolph Avenue planted with grass and flowers.

The truck and equipment movement and storage is located in the center of the premises, minimizing visual and noise impact, although, as already explained, noise from vehicle traffic on Route 28 exceeds noise generated at this site.

No alteration in existing fencing has been requested by neighbors.

The management and design of this site does not detract from neighboring properties and the uses are appropriate for this busy highway location. No changes are proposed to the site from how it was operated in 2012 and how it was permitted in 2019.

6. REQUEST TO APPROVE RENEWAL PERMIT FOR LANDSCAPING BUSINESS

The Applicant respectfully requests that the Planning Board grant a renewal of his special permit for his landscaping business for a term of five years, on the same terms and conditions as in the original permit approval. The business has been conducted for the previous three years in accordance with all material terms of the special permit for landscaping issued in 2019.

The applicant requests that the permit period be extended to the maximum of five years allowed in the original special permit, to reduce the time and expense of filing more frequent renewal applications, and in recognition of the complaint free operation during the last three years.

The issuance of the 2019 Landscaping Business Permit consolidated the landscaping business activities on only one side of Randolph Avenue, where there is plenty of space to locate material storage and vehicle movement in the center of the parcel, ample growing area, and an existing sales office used now for both landscaping and nursery/farm functions. The 2019 site plan memorializes the existing use which was re-designed to address concerns about neighbor impact in 2002 in connection with an application to build a new greenhouse

EXHIBIT A

Thomas Nursery

LANDSCAPING SPECIAL PERMIT DECISION

February 14, 2019

RECEIVED
TOWN OF MILTON
MASSACHUSETTS

2019 FEB 15 A 9:41

**COMMONWEALTH OF MASSACHUSETTS
Town of Milton
Special Permit and Site Plan Approval for
Landscaping Business Use
1240 and 1244 Randolph Avenue
Bunny Thomas, Trustee, Thomas Realty Trust and Andrew Thomas & Sons Inc.
Applicants**

Grant of Special Permit and Site Plan Approval

February 14, 2019

Pursuant to Section III., Subsection N (the Bylaw) of Chapter 10 of the General Bylaws of the Town of Milton, known as the Zoning Bylaws, after a public hearing, the Milton Planning Board, duly constituted as a special permit granting authority, subject to the terms and conditions hereinafter listed, hereby grants a Special Permit for a Landscaping Business Use to the Applicants, Bunny Thomas, Trustee, Thomas Realty Trust and Andrew Thomas & Sons Inc. (hereinafter the "Applicants") for the lots of land containing approximately 8.24 acres known and numbered as 1240 and 1244 Randolph Avenue. Pursuant to Subsection D of Section VIII of the Zoning Bylaws, the Planning Board also hereby grants Site Plan Approval for the existing and proposed conditions described on the Site Plan submitted with the Application.

A. Eligibility Requirements for an Application

The purpose of the Bylaw is defined in item 1 thereof as follows:

"to permit the ongoing operations of landscaping businesses, which were in operation in 2012 and which existed on lots for at least one of which a special permit pursuant to Section III.A.7(d) or use variance issued by the Board of Appeals was in force in July, 2012."

The purpose of the Bylaw is further described as to make the physical layout and day-to-day operations of each such landscaping business reasonably compatible with the interests of abutters and nearby residents and their rights to reasonable quiet enjoyment of their properties and to provide and require enforceable specifics for the layout and operations of each such landscaping business in order to control dust, noise, light and odor, to promote safety, to reduce inconvenience to neighboring residents, and to establish reasonable limits on the amount of infrastructure, equipment and operations.

As prerequisites for filing an application for a special permit the Bylaw specifies that the landscaping business must be conducted in a residence zone on a lot or lots on which a

landscaping business was being conducted in July, 2012 provided that the applicant or applicants or their predecessors in interest on that date held a special permit pursuant to Section III.A.7(d) of the Zoning Bylaws (Section III.A.7(d)) or use variance issued by the Board of Appeals with regard to all or part of any such lot.

In this zoning context in which this Special Permit is granted for the use of land, the Planning Board interprets "predecessor in interest" to mean a prior owner which in July 2012 held a special permit issued under Section III.A.7(d) or a use variance issued by the Board of Appeals with regard to all or any part of a lot or lots on which a landscaping business was being conducted in July 2012. Provided that the special permit or use variance allowed subsequent owners to use the special permit or use variance on the land to which it applied, subsequent owners of the subject land would be entitled to apply for a special permit under the Bylaw. The owner of the land can be any entity that can own land, including without limitation a person, a trust or a corporation

On December 8, 1955, a special permit under Section III.A.7(d) was granted by the Board of Appeals for the land with buildings thereon at 1237 Randolph Avenue, to the landowners at that time, Andrew and Louise Thomas to use that property as a nursery and to erect and maintain a greenhouse thereon. On November 1, 1963, a special permit under Section III.A.7(d) for an additional greenhouse was granted by the Board of Appeals to the same owners for the same land. In 1976 Andrew Thomas established Andrew Thomas & Sons Inc. to operate a nursery and landscaping business. In 1992, Andrew and Louise Thomas conveyed the land with buildings thereon at 1237 Randolph Avenue to their son, Bunny Thomas. In 1993 Bunny Thomas purchased contiguous land with buildings thereon at 1240 and 1244 Randolph Avenue and continued to operate the nursery and landscaping business through Andrew Thomas & Sons, Inc. from all three lots. In 2013 Bunny Thomas conveyed to Bunny G. Thomas, Trustee of Thomas Realty Trust the land with buildings thereon at 1237 Randolph Avenue, 1240 Randolph Avenue, and 1244 Randolph Avenue.

In 2002 the Milton Planning Board required that the business, Andrew Thomas & Sons, Inc., receive site plan approval in order to build a new greenhouse on the land at 1240 Randolph Avenue, based on the requirements in the Milton Zoning Bylaws that commercial structures must be approved by a site plan review process. The Planning Board determined that this form of review was allowed for an exempt farm use because it was a limited regulation of structures for commercial use. The site plan approval issued to Andrew Thomas & Sons Inc. on August 26, 2002 approved a new layout for the site including both the land with buildings thereon at 1240 and 1244 Randolph Avenue, requiring that materials storage be relocated to the rear, more parking area be created in the front, and allowing limited truck delivery between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday, as well approving the location of an additional greenhouse on the site. Subsequent implementation issues were resolved and the site has been operated under that site plan approval to the present day.

With respect to the land with buildings thereon at 1237 Randolph Avenue, for which the 1955 special permit under Section III.A.7(d) was granted, the predecessors in interest since 1955 to Thomas Realty Trust, one of the Applicants, are Bunny Thomas and before Bunny Thomas, Bunny Thomas's parents, Andrew and Louis Thomas.

Bunny Thomas is both the trustee and the sole beneficiary for Thomas Realty Trust. Bunny Thomas is also the president and Treasurer of Andrew Thomas & Sons Inc.

Andrew Thomas & Sons, Inc., which continues to operate the landscaping and nursery business, also has a real estate interest in the land in the form of a lease from Thomas Realty Trust to Andrew Thomas & Sons Inc.

Thomas Realty Trust is the current owner of the land with buildings thereon at 1237, 1240 and 1244 Randolph Avenue for which special permits granted in 1955 and 1963 under Section III.A.7(d) were in force in 2012. Andrew Thomas & Sons Inc. operates the nursery and landscaping business for the owner of the land. Thomas Realty Trust and Andrew Thomas & Sons, Inc. are both named as Applicants under this landscaping business use special permit application.

The Planning Board concludes that the Applicants, , satisfy the threshold requirements to be eligible to apply for a landscaping business use permit. The land with buildings thereon at 1237 Randolph Avenue, 1240 Randolph Avenue and 1244 Randolph Avenue, was the location of a landscaping and nursery business in 2012 and the owner of that land, Thomas Realty Trust, is a successor in interest to Andrew Thomas and Louise Thomas, to whom the special permits under Section III.A.7(d) were issued in 1955 and 1963.

B. Requirements for a Landscaping Business Use Permit

This Special Permit and Site Plan Approval ("Special Permit") authorizes the site layout described in the Existing and Proposed Conditions Site Plan by DeCelle-Burke-Sala dated August 6, 2018 (the "Site Plan") submitted with the Application as well as the uses described herein. The plan specifications required by Section III, Subsection N of the Zoning Bylaws are contained within the Existing and Proposed Conditions Site Plan, including existing conditions, drainage, landscaping, parking, building, lighting and signage. All of these features are components of the existing operation and the Special Permit does not require any changes to these conditions. The only changes shown on the site plan are the addition of a security gate on the driveway and the relocation of certain portions of electric fencing found to be encroaching on the abutting lot to the rear of the property. These changes are proposed by the Applicant to address a minor fence encroachment issue identified when the "on the ground" survey of the site was done by DeCelle-Burke-Sala, and to improve security for the back of the site, but are not required in order for the Applicant to operate under the Special Permit.

As conditions of this Special Permit the Planning Board requires that use of the site be as shown on the Site Plan submitted with this application and as described in this decision and with reference to Appendix V of the Application, "List of Landscaping and Nursery/ Farm Business Activities and Appendix VI, "List of Landscaping and Business Vehicles", and that the number of employees, lighting, parking, vehicle movement, deliveries and hours, storage of fertilizer and fuel oil, truck deliveries and waste removal be as follows, as proposed in the Application and described at the hearing. Delivery hours, heavy equipment loading and unloading times and dumpster removal times are as specified in Section B, Subsections 3 and 12 of this decision, and do vary from the business's 2012 hours of operation, to the extent those hours were not consistent with what Section III.N allows.

The Planning Board finds that these conditions satisfy the general purpose of the Zoning Bylaws in Section III.N which is to provide that a landscaping business in operation in 2012 be allowed to continue if the physical layout and day-to-day operation is reasonably compatible with the interests of abutters and nearby residents and their rights to reasonable quiet and enjoyment of their properties and if the special permit provides enforceable specifics for the layout and operations to control noise, dust, light and odor, to promote safety, to reduce inconvenience to neighboring residents, and to establish reasonable limits on the amount of infrastructure, equipment, hours and operations. The Planning Board also finds that in meeting these standards the Applicants have satisfied the general requirements in the Milton Zoning Bylaws for a special permit, that there be no substantial detriment to neighboring properties and that the special permit is consistent with the Zoning Bylaws in Section IX.C.1.

1. Allowed Parameters of Landscaping Business; Conditions relating to Permissible Activities

The Bylaw defines what is to be allowed as a continued landscaping use in terms of specific functions or operations. The Planning Board finds that the Applicants have provided sufficient information to define the allowed parameters of the business operation as follows and that these parameters meet the definition of landscaping in Section III.N.

The Applicants provided a description of landscaping business activities and hours of operation in 2012 in their application narrative as well as in Appendix V "List of Applicant's Landscaping Activities and Nursery Farm Business Activities and Hours of Operation" and Appendix VI, "List of Business Vehicles and Equipment". These lists are included as part of this special permit as Exhibits D and E. Based on the information provided, and according to the limitations on allowed landscaping operations in residential districts imposed by the Landscaping Bylaw, the Planning Board authorizes the following activities, vehicles and equipment, numbers of employees, and hours of operation.

- i. Landscape services including for off-site design and installation may be conducted Monday through Saturday, between the hours of 7:00 a.m. and 6:00 p.m. from March 1 through December 31st.

- ii. Sale of Christmas tree and other holiday materials may be conducted, daily, November 30 through December 31, between the hours of 7:00 a.m. and 9:00 p.m;
- iii. Sale of firewood is allowed at a volume of up to 100 cords per year;
- iv. Owning or leasing real and personal property is allowed;
- v. Employing employees, up to 8 landscaping employees, 10 garden center employees and 1 clerical employee is allowed; all employees are seasonal as the business closes from December 31 – March 1; employees work in both the nursery and landscaping business.
- vi. Owning, leasing, operating and storing the following landscaping vehicles and equipment:

Vehicle	GVW	VIN	Title
2004 Sterling	33,000	2FZACGDC84AN43280	BR355632
1987 Ford Dump	33,000	1FDXT84A6HV63413	AS252905
1999 Ford Pickup	8,800	1FTNX21S3XED56548	AT311824
1987 Ford	33,000	1FDXR80U0HVA37307	AS780821

Equipment

Trailer (for bobcat). Wright, 2 axlw

Trailer, Wright, 14,000

2017 S650 Bobcat

T 1000 Hydroseeder

Bandit Wood Chipper, M250XP

2016 S650 bobcat

Bobcat Mini Excavator M331

2000 863 Bobcat

This list of vehicles and equipment existing in 2012 defines the permissible numbers and types of equipment allowed for the Landscaping Business under this Special Permit. The vehicle type and weight capacity information is to be used to establish a basis for substituting substantially similar vehicles and equipment as replacements are required. When new trucks or equipment are to be acquired, the Building Commissioner is to be provided with information like that in this list, and shall make a determination that the replacements are substantially similar to the 2012 vehicles and equipment. The identification information is provided in order for the Building Department to have a way of identifying which vehicles and equipment are for the landscaping business, as the same site also is used to store nursery trucks and equipment.

- vii. Selling trees, shrubs, and plants, sod, seed, loam, mulch and related materials, stone, stone dust, gravel, pavers, timbers and landscape fixtures needed to implement and used in landscape designs installed by the Landscaping Business is

permitted. The storage areas as shown on the Site Plan shall continue to be used as depicted and capacity of storage bins shall limit the amount of unpackaged materials that can be stored on the site at any given time. These locations are consistent with the 2002 Site Plan approval for the land with buildings at 1240 Randolph Avenue and 1244 Randolph Avenue by the Planning Board which reorganized the site to reduce noise and dust impact from material storage. The Sales Office (Garden Center) which is for both nursery and landscape business shall be permitted to be open between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday and between the hours of 9:00 a.m. and 6:00 p.m. on Sunday, the 2012 business hours.

2. Number of employees

This Special Permit authorizes the landscaping business to employ 8 landscape employees, 10 garden center employees, and 1 clerical employee. These types and numbers of employees were employed by Andrew Thomas & Sons Inc. for the landscaping operation in 2012. These employees may work in both the landscaping and nursery/farm operations.

3. Conditions for materials deliveries and loading and unloading equipment

Loading and unloading of noisy equipment may occur during regular business hours, between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 5:00 p.m. on Saturday. The Planning Board finds these hours to be reasonably necessary because this business has operated with these hours since 2004 and there have been no complaints of noise, dust or public safety issues related to these hours. There is no equipment loading on Sunday because the business is not open on Sunday. Deliveries to the business premises shall be between the hours of 9:00 a.m. and 2:00 p.m. on weekdays. A log shall be maintained of deliveries made outside these hours stating the time and date of the delivery and the reason for the out-of-hours delivery.

4. Landscape buffers and fencing

All existing buffers, trees and fencing as shown on the Site Plan shall be maintained in reasonably good condition. The existing wood fences, tree buffers and berm on the right side are not at a distance of more than 15 feet from the side lot lines, and the electric fence at the rear is on the lot line. These locations are pre-existing nonconforming conditions which were constructed prior to adoption of Section III.N. Each was approved in a site plan approval issued by the Milton Planning Board in 2002 and have been maintained well, have grown in size and have been improved on the right side by a berm. Immediate abutters and other neighbors commenting on this application have requested that the site remain in its present design and not be changed. Furthermore, to the rear of this site is a permanently protected area of open land. And, the site is

located on a busy highway generating a significant level of noise throughout the day and at night, minimizing the noise reducing value of fencing setbacks.

5. Vehicle movement and parking

All existing parking and driveways shall continue to be maintained. There is a driveway in the middle of the site to access material storage, growing areas, a maintenance shed and a wood storage building at the rear of the site. The Applicants are permitted to install a security gate in the driveway to protect these areas when the business is closed. All vehicle parking is to continue to be located as it is now: there is a 6400 square foot paved parking area in front of the sales building for customers, a 7500 square foot employee parking area to the front right of the driveway and a 13,000 square foot truck and equipment parking area to the right rear of the driveway for a total parking area of 26,900 square feet. The location of the driveway in the center of the site directs traffic away from neighboring properties. Customers and employees do not park on Randolph Avenue where the speed and volume of traffic create unsafe conditions for exiting a parked vehicle. This parking configuration has been in place for approximately ten years and there have been no problems or complaints about parking at this site during that time.

6. Buildings: all buildings including the garden center, greenhouse, wood barn and maintenance shed which were approved in the 2002 site plan decision area may remain as shown on the Site Plan. All buildings are at the required setbacks from neighboring properties.
7. Lighting: the lighting shall be maintained as shown on the Site Plan. There is one pole light next to and to the right of the Garden Center and one pole light at the left rear of the Garden Center, that is used only during the Christmas season to light the Christmas tree area after dark. The lighting is not used when the business is not open. Those lights on poles, to the right of the Garden Center and to the left of the Garden Center rear, where Christmas trees are displayed, are directed down and away from neighboring properties.
8. Signs are to remain unchanged and there are no street improvements; the location is on Randolph Avenue, which, in this area, is a portion of Route 28, a busy State Highway which provides direct truck access.
9. Firewood sales are not to exceed 2012 levels of 100 cords per year. In order to document the volume of firewood sales receipts shall be maintained for firewood deliveries to the site on an annual basis.
10. Storage of fuel oil and fertilizer: fertilizer shall be stored and sold in packaged form; the existing 500 gallon fuel tank is to be maintained where it is shown on the Site Plan and inspected as required by the Fire Department.

11. The Operator of the landscaping business is Andrew Thomas & Sons, Inc, Bunny Thomas, President and Treasurer. Either Bunny Thomas or his Garden Center manager and Garden Center employees shall be available on site when the business is open.
12. Waste removal and emptying of recycling bins by outside contractors shall be scheduled as optimal based on traffic conditions on Randolph Avenue, between the hours of 10:00 a.m. and 2:00 p.m..

The Applicants have explained to the Planning Board that the business operates both the nursery and landscaping businesses at 1240 and 1244 Randolph Avenue. There is no separate accounting, material storage or structures for the two functions. For purposes of this permit, the Planning Board has determined that permit conditions shall apply to these uses together, except that the number of landscaping vehicles is limited to those in use at this location in 2012 and this limitation does not apply to vehicles and equipment identified in the application as used in nursery operations.

After careful consideration of the information provided in the application and at the public hearing, the Planning Board concludes, provided that these conditions are followed, that allowing this landscaping operation at 1240 and 1244 Randolph Avenue will not be detrimental to surrounding properties or to the Town. The conditions imposed are appropriate given the location of this business on Route 28, a State Highway that is a high traffic area especially during morning and evening commuter times. Existing conditions create ambient noise levels that are likely to be similar or worse than any vehicle noise from the landscaping business. Existing buffers in the form of wood fencing and trees as well as a berm on the right front side of the property provide an effective visual barrier for neighboring residential properties and are to be maintained. Properties adjacent to the site at the rear have a view of the large planting area which provides a sense of open space in that direction. The property has no residential neighbors directly to the rear as that land is permanently protected from development.

As an additional benefit, this Special Permit will restrict the landscaping activities to only the land with buildings thereon at 1240 Randolph Avenue and 1244 Randolph Avenue; previously landscaping activities were conducted at the land with buildings thereon at 1237 Randolph Avenue as well. The land with buildings thereon at 1237 Randolph Avenue may continue to be used according to the terms and conditions of the existing nursery permits.

The Planning Board further acknowledges that there are letters of support in the record from abutting neighbors and that no requests have been received by the Planning Board or Planning Department or expressed at the public hearing for any changes in the operation at this site.

C. Decision

Therefore the Milton Planning Board hereby grants a Special Permit and approves a Site Plan to allow the continued operation of the combined nursery and landscaping business at the land with buildings thereon at 1240 Randolph Avenue and 1244 Randolph Avenue as it existed in 2012, subject to the conditions in this decision.

D. Recording

This Special Permit shall be recorded with the Norfolk Registry of Deeds by the Applicants at their own expense within thirty (30) days from the date when such Special Permit becomes final. A copy of the recorded document shall be provided to the Town Planner promptly after recording.

E. Transfer of Property or Landscaping Business

In the event that the Property is to be transferred to a third party and said third party shall seek to continue operation of the landscaping business use on all or part of the subject property, then a new application shall be required under the provisions of this Bylaw, provided that the third party shall meet the criteria for an application.

F. Complaints, Access and Review of Records

- (a) As provided in Sub-Subsection 7(c) of the Bylaw, the Applicants shall have an operator or an authorized representative on the Property during regular business hours. The operator shall be a person responsible for ensuring that there is compliance with all requirements, terms and conditions of this Special Permit, and if an oral or written complaint is received by him or her, he or she shall promptly take the necessary steps to determine if the complaint constitutes noncompliance and if so, cause such noncompliance to be cured. Any written complaint sent to Andrew Thomas & Sons Inc. should be dated and provide a name, address and email address, as well as a detailed description sufficient to identify the activity, how it may violate the Bylaw or this Special Permit, the date(s) of the activity and requested curative action.

If upon receipt the Applicants determine that a complaint has merit they shall promptly cure the noncompliant activity and take steps to prevent recurrence. The Applicants may respond in writing to such a complaint and state if they dispute that the activity is non-compliant, or indicate steps taken to cure. This procedure shall not preclude a person from pursuing a complaint under the relevant procedures for lodging a complaint with the Building Commissioner.

- (b) The Applicants shall allow access to the Property by the Building Commissioner and /or his designee for purposes of inspection during normal hours of operation as described in this Special Permit or outside normal business hours in response to a complaint, with reasonable notice provided according to the usual procedures followed by the Building

Commissioner. Failure to grant such access shall be a material violation of this Special Permit.

(c) The Applicants shall provide the opportunity for the Building Commissioner to review business records to substantiate compliance with the terms of the Special Permit after reasonable notice is provided to the Applicants that an inspection is necessary and as to what records must be inspected, so that an employee can be available to provide the records.

G. Training Employees

Training of employees need not be formal but shall be sufficient that the employees are aware of and understand the terms and conditions of this Special Permit under which the operation of the activity shall be conducted.

H. Term, Renewal, Revocation and Amendment

(a) Initial Term

This Special Permit shall be for an initial term of three (3) years.

(b) Renewal

This Special Permit may be renewed for one or more additional terms of up to five (5) years, upon application and prior to expiration of this Special Permit. Such renewal may be approved with such additional terms and conditions as may be appropriate provided that there has been substantial compliance with all material terms of this Special Permit.

(c) Revocation by the Board of Appeals

Upon application by the Building Commissioner during the term or extended term of the Special Permit, this Special Permit may be revoked by the Board of Appeals after hearing on a material violation which has not been promptly cured following notice from the Building Commissioner. Upon notice of a violation, the Applicants in good faith shall commence a cure and diligently pursue completion of the cure.

Executed at Milton, Massachusetts this 14th day of February, 2019, pursuant to a vote of the Board with 5 votes in favor and 0 opposed.

Planning Board of Milton

Cheryl F. Toulias
Cheryl F. Toulias, Chair

April A. Lamoureux
April A. Lamoureux, Secretary

Bryan W. Furze
Bryan W. Furze

Denise R. Swenson
Denise R. Swenson

Richard J. Boehler
Richard J. Boehler

EXHIBITS

Exhibit A: Site Plan

Exhibit B: 1955 and 1963 Special Permits and 2002 Site Plan Approval

Exhibit C: Deeds and Lease

Exhibit D: List of Business Activity and Hours

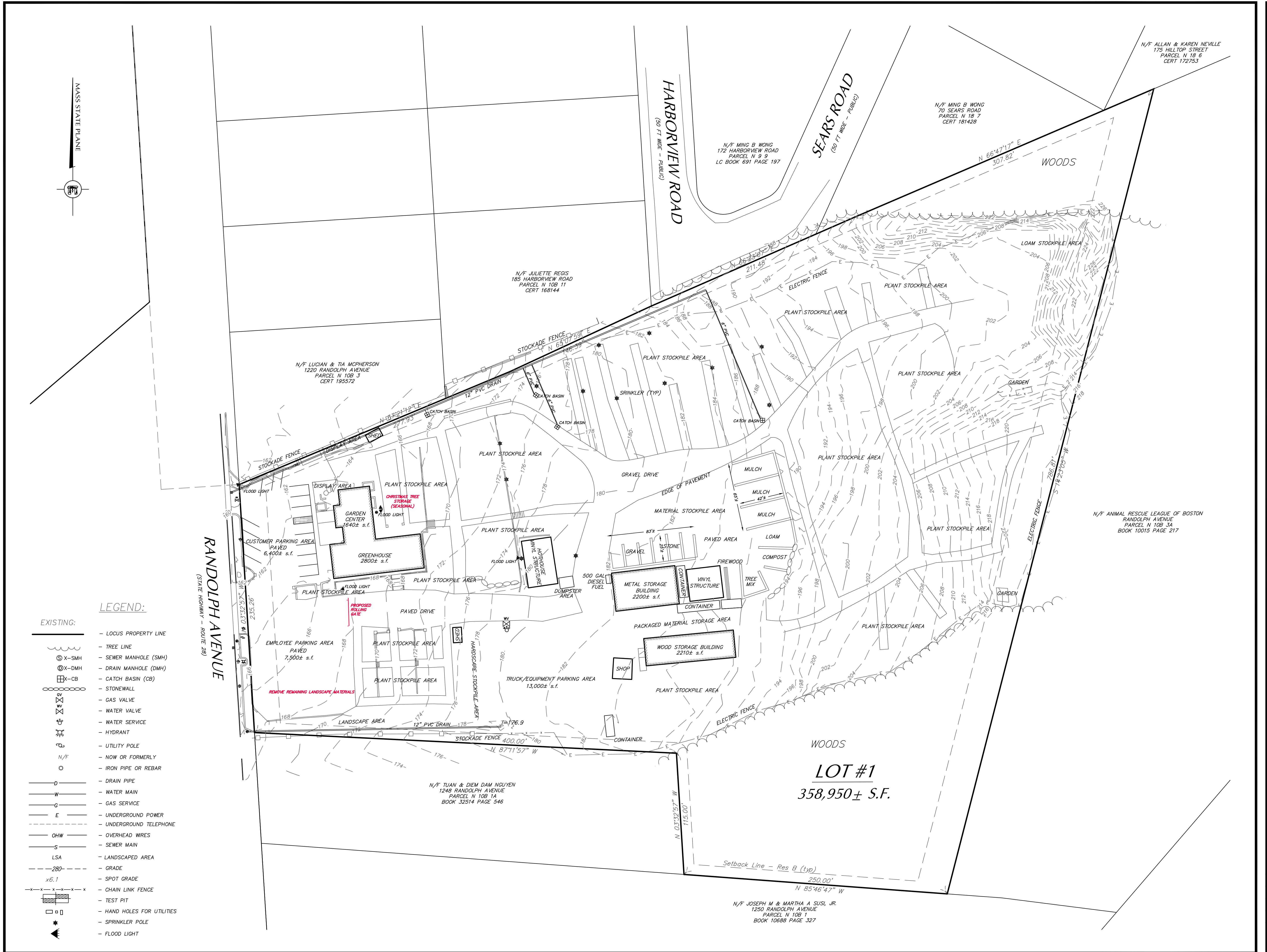
Exhibit E: List of Business Vehicles and Equipment

EXHIBIT B

Thomas Nursery

LANDSCAPING SPECIAL PERMIT SITE
PLAN

Dated August 6, 2018



CLAUDIO SALA, PLS DATE

GENERAL NOTES:

1. LOCUS ASSESSORS ID N 108 2A & 2B
RECORD OWNER: THOMAS REALTY TRUST
DEED REFERENCE: BOOK 31958 PAGE 325
PLAN REFERENCE: PLAN 207 OF 1993
2. THIS PLAN IS THE RESULT OF AN ON THE GROUND SURVEY
PERFORMED BY THIS OFFICE IN JUNE 2018. ELEVATIONS SHOWN
ON NAV088.
3. EXISTING UTILITIES WHERE SHOWN IN THE DRAWINGS ARE FROM
SURFACE OBSERVATION AND ARE INFERRED AND ARE
CONSIDERED APPROXIMATE. THE CONTRACTOR SHALL BE RESPONSIBLE
FOR PROPERLY LOCATING AND COORDINATING THE PROPOSED
CONSTRUCTION ACTIVITY WITH DIG-SAFE AND THE APPLICABLE UTILITY
COMPANIES AND MAINTAINING THE EXISTING UTILITY SYSTEM IN SERVICE.
4. DIG-SAFE SHALL BE NOTIFIED PER THE STATE OF MASSACHUSETTS
STATUTE CHAPTER 82, SECTION 409 AT TEL 1-888-344-7233. THE
ENGINEER DOES NOT GUARANTEE THEIR ACCURACY OR THAT ALL UTILITIES
AND SUBSURFACE STRUCTURES ARE SHOWN. LOCATIONS AND
ELEVATIONS OF UNDERGROUND UTILITIES WERE TAKEN FROM RECORD
PLANS. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION, AND INVERTS
OF UTILITIES AND STRUCTURES AS REQUIRED PRIOR TO THE START OF
CONSTRUCTION.
5. THE LOT SHOWN DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD
ZONE AS DELINEATED ON FIRM 25021C0202, DATED 7/17/12.

5. PARCEL IS ZONED RES B.

LOT #1

358,950± S.F.

N/F JOSEPH M & MARTHA A SUSI, JR.
1240 RANDOLPH AVENUE
PARCEL N 108 1A
BOOK 10688 PAGE 327

EXHIBIT C

Thomas Nursery

LANDSCAPING SPECIAL PERMIT

VEHICLE LIST

February 14, 2019



ANDREW THOMAS & SONS, INC.

Nursery and Garden Center

Landscaping To Your Liking

VEHICLE and EQUIPMENT LIST

Landscaping

Vehicle	GVW	VIN	TITLE
2004 Sterling	33,000	2FZACGDC84AN43280	BR355632
1987 Ford Dump	33,000	1FDXT84A6HVA63413	AS252905
1999 Ford Pickup	8,800	1FTNX21S3XED56548	AT311824
1987 Ford	33,000	1FDXR80U0HVA37307	AS780821

Equipment

Trailer (for Bobcat) Wright, 2 axle

Trailer, Wright, 14,000

2017 S650 Bobcat

T 1000 Hydroseeder

Bandit Wood Chipper, M250XP

2016 S650 Bobcat

Bobcat Mini Excavator M331

2000 863 Bobcat



ANDREW THOMAS & SONS, INC.

Nursery and Garden Center

Landscaping To Your Liking

VEHICLE and EQUIPMENT LIST

Garden Center

Vehicle	GVW	VIN	TITLE
2006 Ford	19,500	1FDAF56P96ED90673	BD442869
1995 Ford	33,000	1FDXF80E2SVA54571	BK106749
2008 Mitsubishi	17,995	JL6CCD1SX8K006889	BH619810
2000 Ford	30,000	3FDPF7564YMA49032	BB968937
1995 Ford	35,000	1FDYR82E7SVA19971	BA467521
1995 Ford 350	10,700	1FDKE37F85HA20406	BF177098
1999 Ford	14,500	1FDWF36S7XED25675	AW484001
2013 Ford	10,000	1FTFX1ET5DFC45328	BM485246
1998 Ford	32,000	1FDXF80C7WVA31565	BK048776

Equipment

2014 CAT 906H, 2 Loader, 8EU1002
2003 Loader, 3NW44169
2012 CAT 908H, Loader, CE1754
1997 Swinger Loader 2000, NW 995
2000 Bobcat 873
2014 Bobcat T55
Trailer (Wright), 2 axle, GCW 28,000

EXHIBIT D

Thomas Nursery

LANDSCAPING SPECIAL PERMIT OPERATIONS DESCRIPTION

February 14, 2019

Thomas Nursery and Landscaping

Business Activities and hours as of July 2012

Landscaping

1. Constructing, installing and maintaining lawns, trees, shrubs, gardens, patios, related grounds and other outdoor areas owned by others. Monday – Saturday 7 a.m. to 6 p.m. From March 1 through December 31st.
2. The sale of trees, sod, seed, loam, mulch, and related materials and stone, stone dust, gravel, pavers, landscape ornamentation, timbers and related materials needed to improve landscape design. Hours same as #1.
3. Sale of up to 500 cords of firewood annually. Hours same as #1.
4. Sale of Christmas trees and other holiday materials from November 30 – December 31. Hours daily from 7 a.m. to 9 p.m.

Farm/Nursery

1. Sale of sod, seed, loam, mulch, trees, shrubs, lawn ornamentation, packaged fertilizer and related materials and gravel, pavers, timbers and related materials to be taken away by the customer for use on the owner's property. Hours the same as #1 above.
2. Sale of up to 500 cords of firewood annually (this is the same wood sale, not any increase in quantity, as listed in #3 above).
3. Sale of Christmas Trees and holiday material, same function and hours as listed in #4 above.
4. Cultivation of trees, plants, and shrubs including commercial agriculture, horticulture and floriculture, at least 25% of which is "grown on the premises", defined to include cultivated on site and generating at least \$1000 per acre of gross sales annually.

The Thomas Nursery and Landscaping site at 1240-1244 Randolph Avenue is shared by both uses including the use of the sale office and other buildings on the two lots.

1237 Randolph Avenue is used exclusively for farm/nursery functions and not for landscaping functions and is not proposed to be part of this landscaping Business Permit Application.