

APPLICATION FOR CONDITIONAL USE PERMIT OR ZONING VARIANCE
Millcreek Township Union County, Ohio

Application #: 1164

Name of Applicant(s)/Owner(s): <u>CRAIG + ANGELA SHEARER</u>	
Contact Name (if business): <u>CRAIG SHEARER</u>	
Mailing Address: <u>3362 MARCLIFF DR LEWIS CENTER OH 43035</u>	
Telephone Number: <u>614-885-9981</u>	Best time to contact (Day): <u>Evening</u>
Cell / Office Phone: <u>614-885-9981</u>	Fax: <u>1-740-657-1696</u>
e-mail: <u>CRAIG@SHEARER-LANDSCAPING.COM</u>	

Application for: Conditional Use Permit Variance

- Property Address(es): 14136 SMART COLE RD. OSTRANDEL OH 43061
- Parcel Number(s): _____
- Zoning District: U-1
- Requested Use: SERVICE BUSINESS

Use additional paper if needed

Provide ten (10) copies of the application and all of the following supporting documentation:

- Legal Description and Survey Drawing
- Business or other plan for the CUP / Variance including:
 - The location of all buildings (existing and proposed);
 - Parking areas including the location and number of spaces proposed along with loading, storage, refuse, and other service areas;
 - Traffic access points and circulation routes;
 - Landscaped areas and other open spaces;
 - Lighting (location, type and wattage)
 - Location of existing utilities and proposed utility expansion areas;
 - Location of signs (does not exempt applicant from sign permit requirements)
- A narrative statement describing why a Conditional Use Permit / Variance is required and appropriate in this situation
- A narrative statement discussing the existing and proposed number of employees or residents, hours of operation, and type of business to be conducted on premises.
- A narrative statement evaluating the effects on adjoining property specifically noting the effect of such elements as noise, odor, fumes or any other types of impact; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Millcreek Township Zoning Resolution and Comprehensive Land Use and Growth Plan.

INSTRUCTIONS TO APPLICANT & CERTIFICATION

- Applications must be submitted to the Zoning Inspector.
- Application fees are nonrefundable
- Information requested must be reviewed for completeness by the BZA Chair prior to acceptance of application. Submission to the Zoning Inspector does not constitute official acceptance.
- The application, if approved, is conditioned upon the truthfulness and completeness of the application as well as conformance to the Millcreek Township Zoning Resolution and the Land Use Growth Plan.
- The Township reserves the right to request additional information as needed to rule on the application.
- A list of the names and addresses of all property owners contiguous to or directly across the street (road) from the proposed rezoning area.
- All information submitted becomes part of the application and public record.
- The Variance or Conditional Use Permit, if approved, is conditional upon the truthfulness and completeness of the application. Should the information contained in this application be determined to be inaccurate or misrepresentative, then the permit or use may be withdrawn by the Millcreek Board of Zoning Appeals. By signing this document, the applicant certifies that all information contained herein is true and accurate. Furthermore the applicant certifies he or she has reviewed the Millcreek Zoning Resolution and understands and agrees to the terms of this document and hereby attests to the truthfulness and exactness of all information supplied as part of this application.

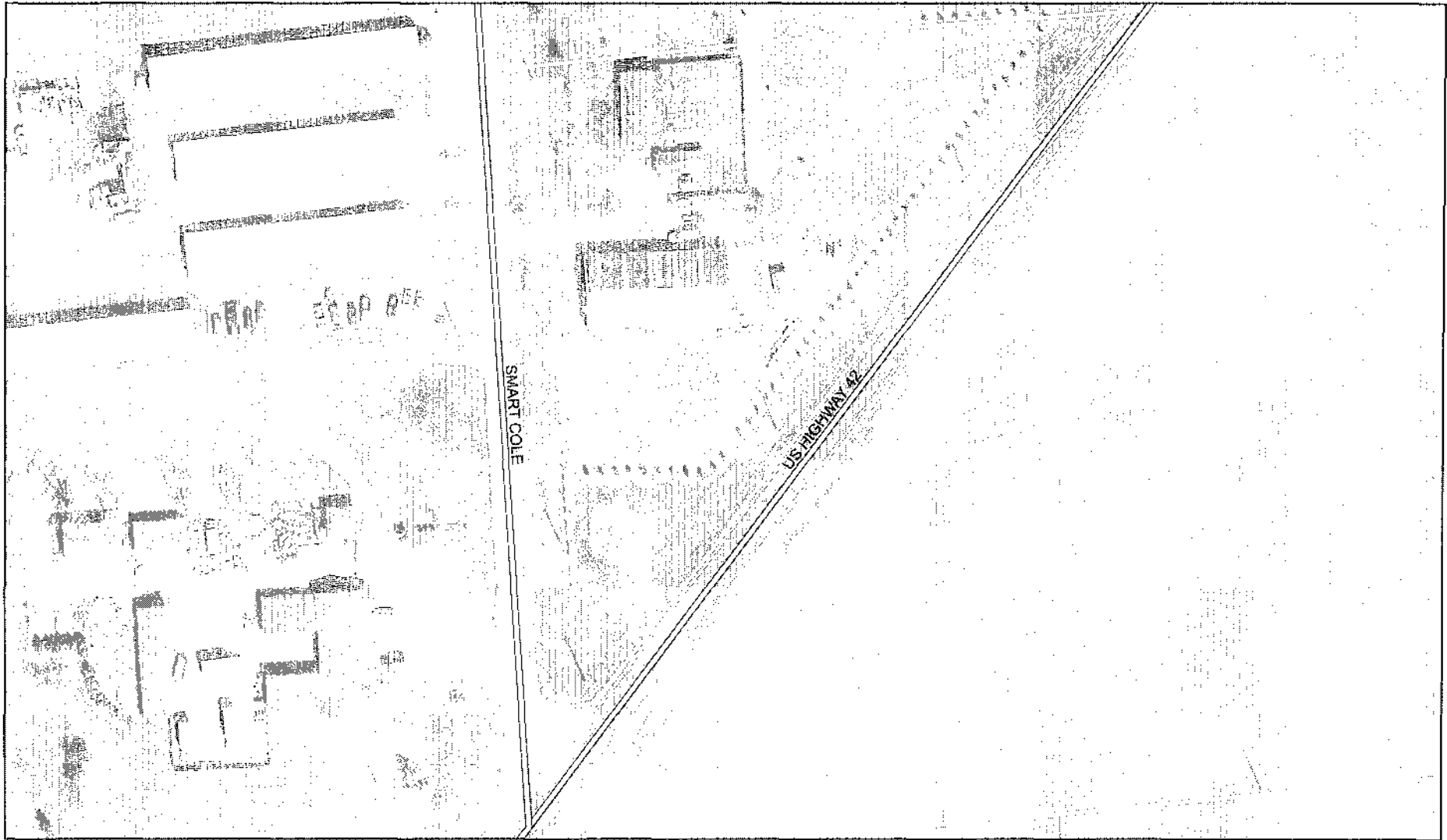
8/25/2010 Date Craig Shearer Applicant's Signature

For Official Use Only – Zoning Inspector & BZA Application #: _____

Date Received by Zoning Inspector: <u>8/25/10</u>	Received By: <u>CLASE</u>
Fee Paid: \$ <u>400.00</u>	Check to Twp Clerk: _____
Check # <u>8265</u>	
Date of Acceptance by BZA: _____	Received By: _____
Date of Public Hearing: _____	
Date of Notice to Marysville Journal Tribune: _____	By: _____
Date of Notice to Neighbors / Anyone Testifying: _____	By: _____
Date of Notice to Trustees / Zoning Inspector: _____	By: _____
CUP / Variance Issued: YES NO	
Conditions / Comments: _____	

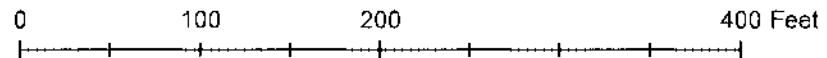
Board of Zoning Appeal Chair Signature: _____	

Craig W. & Angela L. Shearer - 14136 Smart Cole Road, Ostrander Ohio 43061
Parcel No. 250003024600 (3.138 acres)



Legend

- Roads
- Property Lines



July 6, 2010

Millcreek Twp. Board of Zoning Appeals
c/o Joe Clase, Zoning Administrator
P.O. Box 157
Ostrander, OH 43061

Re: Application for Conditional Use Permit – 14136 Smart Cole Road

Dear Mr. Clase,

We would like the Board of Zoning Appeals to consider the attached application for a conditional use at 14136 Smart Cole Road to allow for a landscaping business to operate on this property.

Our business is currently being operated across the road on a commercially zoned property, but we feel that the passive nature of our business could be best suited on this property which we purchased four (4) years ago solely for this purpose.

This property is located between residential and commercial businesses along U.S. 42. We feel our residential service business along with our plans for property improvements would be the perfect long-term buffer between these two uses.

If you have any questions about the application, please contact me by phone (614)889-9981 or e-mail craig@shearerlandscaping.com. To find out more about our business you can visit us online at www.shearerlandscaping.com.

Sincerely,

Craig Shearer

Conditional Use Permit for Shearer Landscaping 14136 Smart Cole Road | Ostrander OH 43061

Overview

In 1996 Craig and Anglea Shearer started a home occupation landscape business at their home in Orange Township, Delaware County, Ohio. The business offers landscaping services at their client's homes or businesses. They focus their business on custom patios/walkways/driveways, outdoor living spaces grills/fireplaces/kitchens, landscape design build, ponds/water features, landscape lighting, pergolas/arbors, landscape maintenance, fertilization/mowing, as well as irrigation installation and maintenance. As the business grew, the Shearer's began looking for sites where they could have a small office, locate their equipment, vehicles and conduct regular maintenance.

On November 28, 2006 the Shearers purchased the 3.138 acre property at 14136 Smart Cole Road, after consulting the Millcreek Township Zoning Administrator and being assured that their prospective use of the property would be compliant with the Millcreek Township Zoning Resolution. After purchasing the property and relocating their business, they were made aware that they were misinformed that their use was permitted. Because of the cost involved in investing in the property and relocating their business, they defended their actions as Millcreek Township attempted to correct their error. It was later affirmed by the courts that their use was not permitted.

During litigation, the Shearers attempted to sell the property to someone without business interests but once advertised they found that the only people interested in the property had business interests as well. Most interested parties noted that the significant about of road frontage on U.S. 42 and Smart Cole Road as well as the odd configuration of the property does not lend well to residential use of the property. After months of unsuccessful marketing of the property it was removed from the market and the applicants contacted a newly hired Millcreek Township Zoning Administrator in an effort to determine options for seeking approval to locate their landscape business on the property that they purchased solely for this purpose.

It was advised that a rezoning would likely be unsuccessful because the property is not recommended in the Comprehensive Plan for commercial use, but that a Conditional Use Permit would be a more favorable method for seeking approval.

Conditional Use Request

After reading the Millcreek Township Zoning Resolution and referencing the Zoning Map, we have recognized that the property is located in the U-1 Farm / Residential District. We hereby request the Board of Zoning Appeals grant a Conditional Use Permit under the conditions specified in the Zoning Resolution in accordance with their powers and duties listed in Section 4230. We would welcome the opportunity to discuss any additional safeguards that the Board finds suitable after review of our application and hearing any concerns from neighbors.

Section 6120(a) lists "service business" as a conditional Use in the U-1 District. Section 20200 references the definition of "service business" to read:

Any profit making activity which renders primarily services to the public or to other commercial or industrial enterprises. Some retail sales may be involved in connection with the service rendered.

The business meets this definition, though it will not have retail services on the property. Shearer Landscaping is a profit making activity which renders services on residential and commercial properties in north-central Ohio. The business is owned and operated by Craig & Angela Shearer. They have twelve (12) employees and primarily operate Monday thru Friday between the hours of 8:00 a.m. to 6:00 p.m.

The existing residence on the north side of this property is currently occupied by a rental tenant. It will continue to be rented out. The business will have a small office located in one (1) of the two (2) sheds located between the house and the large building. The 12-foot by 15-foot office has existing heat and air-conditioning. This office may have one (1) or two (2) employees working on designing projects throughout the workday and occasionally on the weekend. Those working in the office will park adjacent on the existing gravel drive. A similar sized shed is located adjacent this shed and will be used for storage.

The existing large 50-foot by 100-foot building will be used for storage of supplies and maintenance activities. This building was previously used as a horse barn and then for a dog care business. This building along with a proposed 15-foot by 100-foot will provide a buffer between the rest of this business use and residences to the north.

On-site activities at 14136 Smart Cole Road would occur from 7:00 a.m. to 9:00 a.m. when employees would check-in and pick up equipment (trucks, trailers & landscaping equipment). These are typically 30 to 45 minute visits where employees would park on the southwest side of the building and leave with equipment and supplies. Arbor-vitae will be planted along the western boundary of the existing gravel parking lot to screen the view of this parking from the adjacent road and surrounding residences.

On-site activities would also occur between 4:00 p.m. and 7:00 p.m. when employees would unload and clean equipment, vacuum-out vehicles and check-out. Up to seven (7) dump trucks and trailers along with six (6) pick-up trucks may be stored on the existing gravel lot on the south side of the large building and screened with existing vegetation. All company vehicles and trailers which would be stored inside the existing large building and on the southeast side of the building. A 8-foot privacy fence will enclose the east side of the existing large building and be home to landscape materials which could be easily loaded and unloaded without disrupting neighbors or being visible from adjacent roadways.

Seventy percent (70%) of the company's business is one-time projects that can last from a week to a month in time. Equipment and supplies will in most cases be stored off-site at the jobsite for these projects. This will limit the activity on this property compared to businesses where they have more short-term projects. Thirty percent (30%) of the company's business is contract related where projects reoccur on the same properties and are more reflective of a lawn-care company.

In the winter, Shearer Landscaping takes on snow removal contracts and the same landscape equipment and vehicles are used with the addition of snow blades and salt spreaders.

Current Use of the Property

Since being notified by the Zoning Administrator that our activities were in violation of the Millcreek Township Zoning Resolution and having this affirmed in court, all business activities have been ceased on the property.

Proposed Use of the Property

The use shall conform to all the requirements of the Millcreek Township Zoning Resolution, per Section 4250.1. The proposed use of this property will be for a landscaping business, as described above. The following are standards that we plan to maintain in order to ensure harmony with the area and to ensure the use shall not be more objectionable to nearby properties than would be the operation of any permitted use, per Section 4250.2.

We understand that this Conditional Use Permit shall expire if the use shall cease for more than one year for any reason. We understand the Zoning Administrator can inspect the property at any time to

ensure compliance with the conditional use. We understand the Board of Zoning Appeals may modify the Conditional Use Permit at some point in the future to account for any changes in our business activity that is either noted during the Zoning Administrator's inspection or at our request.

Per Section 4250.3, we will maintain this use at 14136 Smart Cole Road and will not operate a second business from this property without any subsequent application being approved by the Township.

Per Section 4250.4 the property does not currently contain any existing violations. Please understand that prior zoning violations were solely the result of poor advice being issued by a prior Millicreek Township Zoning Administrator. Since zoning restrictions have been affirmed in court, we have removed all business activities from the property.

A proposed site plan and an existing aerial photograph has been attached to this application containing information required in Section 4250.5. The following is an explanation of this plan in relation to these required elements:

Section 4250.5(a): The location of all buildings (existing and proposed);

The existing residence and three (3) existing accessory buildings along with one (1) proposed accessory building are indicated on the plans.

Section 4250.5(b): Parking, loading, and storage areas;

The existing gravel drive and gravel parking lot will be maintained and is sufficient for the residential and business parking needs.

Section 4250.5(c): Traffic access points and circulation routes;

Traffic enters the property through two existing driveways off Smart Cole Road. The northern drive is primarily for the residence though it would also be used for parking for the business office. The southern drive is gated and leads to a parking lot surrounded by pine trees on a mound which was added to screen the parking lot. There is sufficient area at the end of both drives for vehicles to turn around.

Section 4250.5(d): Parking areas including the location and number of spaces proposed;

Spaces will be at least 9 feet wide by 19 feet deep or otherwise compliant with Section 12040, Section 12100 and Section 12101. Drainage will be maintained in accordance with Section 12070. All parking and loading will be maintained in accordance with Section 12080. No lighting will be required as noted in Section 12090 because parking and loading areas are to be only used during daylight hours. Parking is not adjacent other properties, so it will not require parking blocks as regulated in Section 12050.

Section 4250.5(e): Landscaped areas and other open spaces;

The property has been landscaped and we will maintain this in the future as can be expected with any other property in the district. Additional arbor-vitae will be added along the western property line as noted on the plan.

Section 4250.5(f): Lighting (location, type and wattage)

No additional lighting is proposed. Three security lights are currently located on the large building with motion-sensors.

Section 4250.5(g): Refuse and service areas;

All refuse will be enclosed within the buildings and such service will only be at or less than that of a residential level.

Section 4250.5(h): Location of existing utilities and proposed utility expansion areas;

No new utilities are proposed.

Section 4250.5(i): Location of signs (does not exempt application from sign permit requirements);
No signage is being proposed, though "no trespassing" signs may be erected around the existing gravel parking lot on the south side of the property.

Section 4250.5(j): Other such information as the BZA may determine needed to determine if the proposed conditional use meets the requirements of the Resolution.

We would request the Board supply us with time to provide them any additional information that is needed and that such a request be reasonable.

With respect to Section 4250.6, this text has been supplied and the following is a narrative of the required information:

- Existing number of employees: 12
- Proposed number of employees: 20
- Existing hours of operation: Monday thru Friday, 7:00 a.m. to 7:00 p.m. (seasonal)
- Proposed hours of operation: Monday thru Friday, 7:00 a.m. to 7:00 p.m. (seasonal)
- Existing sales on premises: not applicable
- Proposed sales on premises: not applicable
- Effects on adjoining property: None. This property will be maintained to look like a residence from the north and outdoor storage will be screened on the south.
- Expected Noises: The only noise may be that of occasional loading or unloading of equipment or supplies. All maintenance will be done inside the existing building.
- Expected Odors: None.
- Expected Fumes: None.

In respect to Section 4260, we feel the board should consider the following:

Section 4260.1(a): Whether the proposed use is in accordance with the general objectives and specified objectives of the Zoning Resolution.

According to Section 6100, the purpose of the Farm / Residential District (U-1) is to "permit... non-urban types of... agricultural activities so that the basically rural character of these areas may be preserved and maintained." Landscaping equipment is common on rural properties.

Section 4260.1(b): Whether the proposed use will be designed, constructed, operated and maintained so as to be compatible and appropriate in appearance with existing or intended character of the neighborhood and zoning district.

This property will be landscaped significantly and will be designed, constructed and operated similar to an agricultural use that would be common in the district.

Section 4260.1(c): Whether the proposed use will create an undue burden on public facilities and services and whether it will be detrimental to the economic welfare of the community.

This use will have no additional burden on public facilities or services than a typical agricultural or residential property in the Township.

Section 4260.1(d): Whether the proposed use will be hazardous or disturbing to existing or future permitted uses or entails a use, structure or condition of operation that constitutes a nuisance.

The proposed use will not be hazardous, disturbing or a nuisance to existing or future uses in the area.

We understand that in accordance with Section 4260.5, if we sell the property, the new owner has sixty (60) days to come before the BZA to review and sign the Conditional Use Permit thereby

acknowledging the conditions imposed on the property. Failure of the new owner to appear before the BZA and sign the Conditional Use Permit in that time frame voids the CUP and a new conditional use permit will be required.

Additionally, we understand that if the use for which the Conditional Use Permit is approved is discontinued for a period of more than one year, the Conditional Use Permit will expire.

Lastly, we understand if the application is disapproved by the Board the applicant may seek relief through the Court of Common Pleas.

As stated earlier in this text, the proposed use shall conform to all the requirements of the Millcreek Township Zoning Resolution.