



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #**  
**4/26/07**



**MEMORANDUM**

**DATE:** April 6, 2007

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Development Review Division

**FROM:** Catherine Conlon, Subdivision *CC* Supervisor  
Development Review Division (301-495-4542)

**REVIEW TYPE:** Preliminary Plan of Subdivision

**APPLYING FOR:** Nine (9) lots for nine (9) one-family detached dwelling units

**PROJECT NAME:** Clement West Property

**CASE #:** 120060750

**REVIEW BASIS:** Montgomery County Code, Chapter 50 – Subdivision Regulations and  
Chapter 59 – the Zoning Ordinance

**ZONE:** RDT

**LOCATION:** Located on the southeast side of Peach Tree Road, approximately 4,550  
feet south of Old Hundred Road (MD 109)

**MASTER PLAN:** Agricultural and Rural Open Space

**APPLICANT:** Estate of Stephanie J. Clement & Lynwood Farm LLP

**ENGINEER:** Benning & Associates, Inc.

**ATTORNEY:** Miller, Miller and Canby

**FILING DATE:** January 18, 2006

**HEARING DATE:** April 26, 2007

**STAFF RECOMMENDATION:** Approval, subject to the following conditions:

- 1) Approval is limited to nine (9) lots for nine (9) one-family detached residential dwelling units.
- 2) The applicant must comply with the conditions of approval of the Preliminary Forest Conservation Plan. The applicant must satisfy all conditions prior to recording of plat(s) or issuance of sediment control permits, as applicable.
- 3) The applicant must place Category I conservation easements over all environmental buffers and forest retention areas on proposed lots 1 through 4, and 6 through 9, and on the 1.9-acre forest retention area on proposed lot 5.
- 4) The applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated December 13, 2006.
- 5) The applicant must comply with the conditions of MCDPS (Health Dept.) septic approval dated November 9, 2006.
- 6) The applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (MCDPWT) approval letter dated April 20, 2006, unless otherwise amended.
- 7) The applicant must revise the preliminary plan drawing prior to certification to reflect creation of an ingress/egress easement in the southwest corner of the property over the existing driveway.
- 8) The record plat shall contain the following note: "Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone."
- 9) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 10) The applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
- 11) The record plat submission must include a title search and affidavit verifying the availability of a TDR for each existing and proposed dwelling unit shown on the approved preliminary plan. A note referencing the affidavit must be included on the record plat.
- 12) The record plat must reflect an ingress/egress easement in the southwest corner of the property over the existing driveway that accesses parcels P350 and P407.
- 13) Access and improvements as required to be approved by MCDPWT prior to approval of the record plat.
- 14) The term "denied access" is to be placed on the final record plat along the property that abuts Interstate 270, and along Peach Tree Road except for the proposed internal public street.
- 15) Other necessary easements to be reflected on plat.

## **I. SITE DESCRIPTION**

The Clement West Property is located on the southeast side of Peach Tree Road approximately 4,500 feet south of its intersection with Old Hundred Road (MD 109). Interstate I-270 runs along the northeastern property boundary (Attachment A). The property is zoned Rural Density Transfer (RDT) and contains a total of 243.86 acres. Open crops are currently raised on about 150 acres of the property, and the remaining acreage is forested. According to the USDA Natural Resources Conservation Service (NRCS), none of the onsite soils qualify as prime agricultural soils. There is an existing cell tower on the property.

The entire property is in the Little Bennett Creek watershed, classified as Use I-P waters in this section. There are three onsite streams with associated stream buffers, steep slopes, and highly erodible soils.

## **II. PROJECT DESCRIPTION**

The proposed preliminary plan creates nine lots for residential dwellings that have access from Peach Tree Road, a designated rustic road, via a new public street (Attachment B). Seven of the proposed lots are clustered in the northwest corner of the site, and the remaining two will be large farm lots. The lot sizes will be 3.7, 4.1, 4.9, 63.8, 126.1, 6.1, 11.6, 8.7 and 8.4 acres, respectively. The lots will be served by private wells and trench septic systems. Approximately 53 acres of the property will be protected in a Category I conservation easement.

The majority of the site (189.9 acres) will remain available for agricultural uses. A declaration of intent to farm has been submitted for the largest lot (Lot 5) in association with the forest conservation plan, and proposed Lot 4, at 63.8 acres, will likely also be farmed. The existing cell tower will remain on the property. According to documentation provided by the applicant, 39 Transfer Development Rights (TDRs) have been transferred from the subject property and the property remains vacant. The nine TDRs needed for the proposed development are available.

## **III. ANALYSIS AND FINDINGS**

### **A. Relationship to the Master Plan**

The property is located within the Agricultural and Rural Open Space (AROS) Master Plan which establishes agriculture as the preferred use for land area in the Rural Density Transfer (RDT) zone. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass. The proposed development plan creates seven residential lots clustered in the northwest corner of the property, and two large farm lots. Almost 190 acres, or about 78 percent of the site, are included in the large lots and will remain available for agricultural use and forestry. The smaller lots range in size between 3.7 and 11.6 acres. More than half the acreage of most of these lots is made up by stream valley buffer and forest area that is not currently farmed, and would not likely be farmed in the future because of steep slopes. The small lot cluster does a good job of minimizing the use of existing farmland for development, but it also locates the proposed lots

adjacent to a rustic road. Moving the cluster to the north part of the site, septic permitting, would screen the subdivision and minimize conflicts between agricultural and residential traffic, but it would simultaneously increase the length of the access road and the noise impact from I-270 on the proposed homes. After review of both options, staff supports the proposed layout because views of the proposed houses from Peach Tree Road will be minimized by the existing site topography and the forested conservation easement area.

The proposed plan substantially conforms to the AROS Master Plan in that it meets the master plan goal for agricultural preservation and the requirements for the RDT zone. Grouping the smaller lots provides large, contiguous areas for continued agricultural use. The application includes a five-year commitment to continue farming on the largest lot, and in all likelihood, the other large lot will be used similarly.

1. Rustic Roads Functional Master Plan

The property fronts on, and will be accessed from, Peach Tree Road which is designated as a rustic road in the Rustic Roads Functional Master Plan. The plan notes that the road has high historic value, outstanding farm views, and natural features. The narrow, twisting alignment through interesting terrain is noted as a significant feature of the roadway north of Comus Road, including the subject property frontage. The plan recommends retention of tree canopy and vegetation on the embankments adjacent to the road to maintain the character. The subject plan addresses the goals of the Functional Master Plan by preserving all the existing vegetation along Peach Tree Road except for the necessary and unavoidable clearing associated with construction of the new access road.

## **B. Environment**

The applicant submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the subject site that was approved by Environmental Planning staff on December 22, 2005. The property includes approximately 89-acres of existing forest, and 41-acres of stream buffers. The NRI/FSD shows the location of steep slopes and highly erodible soils. The steep slopes are mainly parallel to I-270 but some are also present along the first order tributary that passes underneath Peach Tree Road.

1. Environmental Buffers

The proposed plan meets all requirements of the Planning Board's *Environmental Guidelines* for protection of environmentally sensitive features. The applicant is proposing no permanent encroachment into the environmental buffer areas. All environmental buffers will be protected with a Category I conservation easement, except those located on proposed Lot 5. The applicant has filed a declaration of intent to continue farming on Lot 5, which makes it exempt from buffer requirements.



## 2. Forest Conservation

The proposed preliminary plan meets the forest conservation requirements of Chapter 22A of the Montgomery County Code. The applicant submitted an Agricultural Declaration of Intent (DOI) to continue farming operations on proposed Lot 5. The DOI reduces the net tract area subject to forest conservation to 110.6-acres, and reduces the amount of existing forest counted toward forest conservation requirements to 51.32 acres. The submitted preliminary forest conservation plan includes permanent protection of 50.85 acres of this forested area, and removal of 0.47-acre for the construction of the new subdivision street from Peach Tree Road. The forest removal generates a 0.94-acre planting requirement that will be met by permanently protecting 1.9 acres of existing forest on proposed Lot 5, for a total of 52.75 acres of forest protection onsite.

The proposed development is in an agricultural resource area, as defined by the Forest Conservation law, and therefore must comply with Section 22A-12(f) of the Montgomery County code. This section of the code requires retention or planting of a certain percentage of the onsite net tract area in forest. For this particular plan, 25 percent of the net tract, or approximately 28 acres, must be in retained forest. The preliminary forest conservation plan submitted exceeds this requirement.

## 3. Stormwater Management

MCDPS approved a stormwater management concept for the subject property on December 13, 2006. The concept consists of onsite water quality control and onsite recharge via use of non-structural measures. Channel protection volume storage is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

## **C. Transportation**

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements. The proposed development generates less than 30 vehicle trips during the morning and evening peak-hours, and therefore, is not subject to Local Area Traffic Review (LATR). Safe and adequate vehicle access will be provided via the proposed tertiary roadway and individual driveways. Sidewalks are not recommended for the proposed roadway because the street will be safe for use by pedestrians in this rural subdivision.

### 1. Continuation of the Proposed Public Street to Adjacent Parcels

During review of the preliminary plan, staff was contacted by Dr. John Young, a principal of JMJ Properties, LLC ("Adjacent Property Owner"), who owns two currently landlocked parcels of land (P500 and P800) adjacent to the subject property. The Adjacent Property Owner seeks the imposition of a condition of approval by the Planning Board, requiring the applicant to provide access to these parcels through the subject property to facilitate future residential development. The applicant objects to such a condition.

The Board previously discussed access to these adjacent parcels as part of the subdivision plan for the Garden of Remembrance Cemetery which is located on Comus Road, south of the parcels. At that time, the Adjacent Property Owner was requesting access through the cemetery citing Section 50-35(k)(5)(d) of the Montgomery County Code, Subdivision Regulations (a section that has since been removed from the regulations), which provided that the Planning Board must find that existing or proposed street access within the area of the application is adequate, and does “not result in the inability to develop adjacent lands in conformity with sound planning practices.”

Although the property owner acknowledged that he purchased the parcels knowing they were landlocked, and that there was a possibility that access could be provided to Peach Tree Road or Slidell Road through adjacent properties, he stated that such access was undesirable because portions of those roads are prescriptive rights-of-way with substandard road surfaces. Staff at the time also expressed concerns with access from those roads. The Planning Board found that an ingress/egress easement through the cemetery property to the adjacent parcels was necessary to ensure that the development of the parcels was not significantly impaired. A condition requiring creation of the easement along the western boundary of the cemetery was included as part of the approval. That easement did not extend all the way out to existing Comus Road to the south, but rather, required acquisition of additional easement through an intervening property.

#### **Adjacent Property Owner’s Position**

The Adjacent Property Owner’s position is summarized in a letter dated March 14, 2007 (Attachment C). In this letter, the Adjacent Property Owner’s representative argues that the easement created on the cemetery property does not provide sufficient access for his client because has been unable to obtain the additional easement to Comus Road from the intervening property owner. As such, the Adjacent Property Owner is requesting that the Board require the Applicant to grant another easement across the subject property.

#### **Applicant’s Position**

The Applicant’s position is summarized in a letter dated January 24, 2007 (Attachment D). In this letter, the Applicant’s representative objects to the imposition of a condition requiring an easement because: a) the Planning Board previously addressed the issue by requiring an easement on the cemetery property to the south; b) extension of a roadway through farmland on the property would have both economic and operational impacts on the farm, and require tree clearing; and c) there are other unplatted properties along Peach Tree Road that offer more appropriate locations for an easement to the JMJ Property. The Applicant argues that roadway extension through the subject property would be unwise, and inconsistent with County policy for agricultural preservation.

## **Staff's Position**

In staff's opinion, the previously granted easement through the Garden of Remembrance Cemetery Property provides adequate access for residential development of parcels P500 and P800, without encroaching on the more desirable agricultural uses on the Clement West Property with an extended public road. The record of the previous cemetery case indicates that access to Peach Tree Road and Slidell Road through other parcels was, and may still be, available to P500 and P800. Additional easement was granted through the cemetery because the Adjacent Property Owner, and staff at the time, did not believe connections to either of these roads was desirable because portions are prescriptive rights-of-way with substandard road surfaces. Although conditions along these existing roads may vary, extension of driveways to these roads, or through the existing cemetery easement, is preferable to bisecting desirable farmland with a road for residential uses. Slidell Road is not designated as a rustic road, and already exists as a prescriptive right-of-way. If an easement still exists to this road, it could be improved as part of a public road extension to P500 and P800 that would be shorter in length, and less impact to farmland, than an extension through the subject property.

### **D. Conformance with the Subdivision Regulations and the Zoning Ordinance**

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations, and Chapter 59, the Zoning Ordinance. Access and public facilities will be adequate to support the proposed lots and uses, and the application meets the applicable requirements. Proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision. The proposed wells and septic systems for the development have also been deemed adequate to serve the proposed units.

The lots were reviewed for compliance with the dimensional requirements specified in the Zoning Ordinance for the RDT zone. The lots as proposed will meet all applicable dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1.

### **E. Citizen Concerns**

This application predated any requirements for citizen meetings, but written notice of the application and scheduled public hearing was sent to adjacent and confronting property owners and specific civic/homeowner's associations. As of the date of this report, the only concerns that have been raised were requests for access from adjacent property owners. The first request is discussed in detail above. A second request, for an ingress/egress easement over an existing driveway that crosses the subject property, has been addressed by Condition #12.

## **CONCLUSION:**

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance, and comply with the recommendations of the AROS Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been

reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

**ATTACHMENTS:**

Attachment A – Vicinity Map  
Attachment B – Preliminary Plan  
Attachment C – Adjacent Property Owner Letter  
Attachment D – Applicant Letter  
Attachment E – Citizen Letter  
Attachment F – Referenced Agency Letters

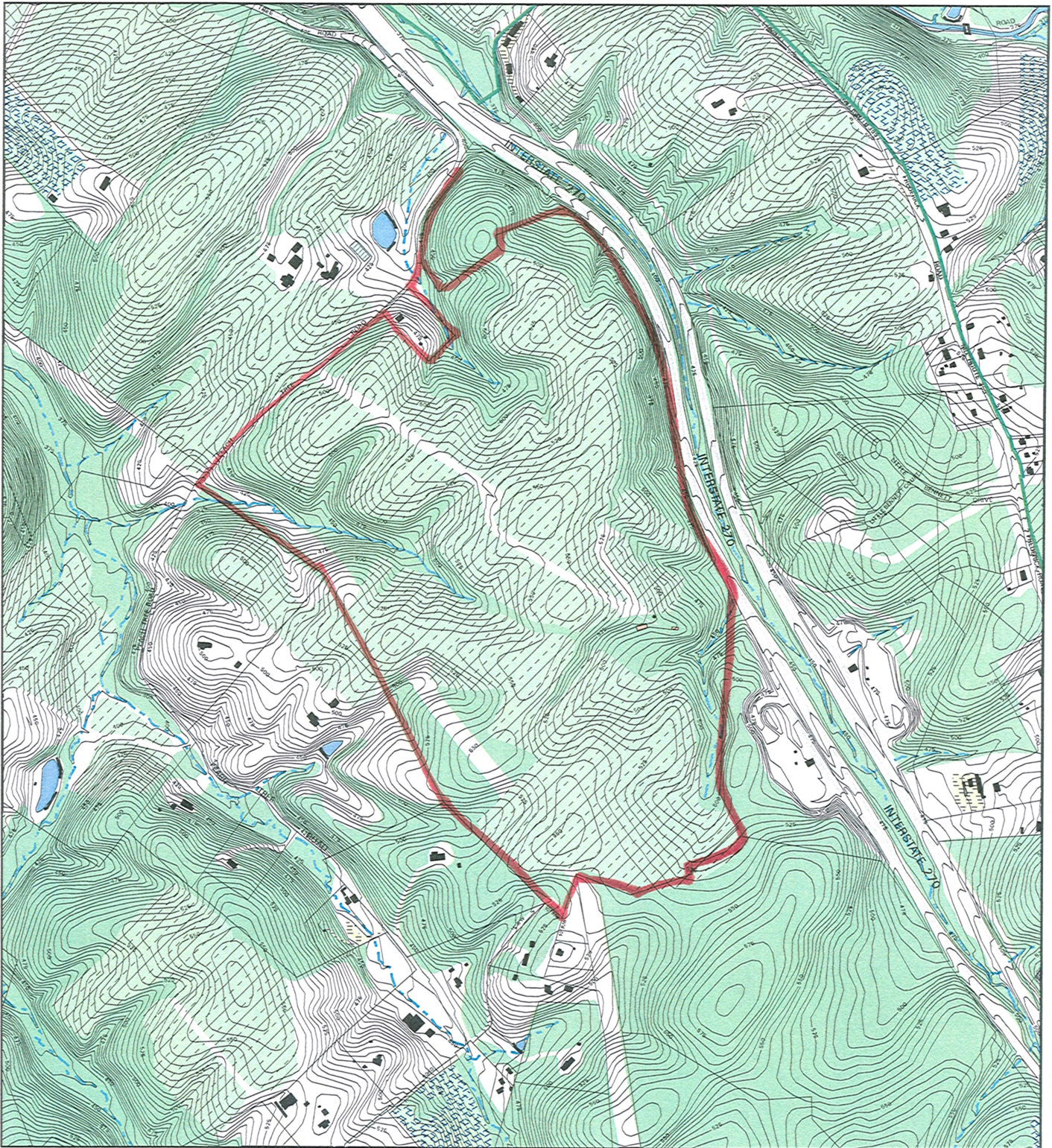
TABLE 1: Plan Checklist and Data Table

<b>Plan Name: Clement West Property</b>				
<b>Plan Number: 120060750</b>				
<b>Zoning: RDT</b>				
<b># of Lots: 9</b>				
<b># of Outlots: 0</b>				
<b>Dev. Type: Residential</b>				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval on the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sf	3.7 ac. is minimum proposed	CAC	4/13/07
Lot Width	125 ft.	Must meet minimum	CAC	4/13/07
Lot Frontage	25 ft.	Must meet minimum	CAC	4/13/07
Setbacks				
Front	50 ft. Min.	Must meet minimum	CAC	4/13/07
Side	20 ft. Min./40 ft. total	Must meet minimum	CAC	4/13/07
Rear	35 ft. Min.	Must meet minimum	CAC	4/13/07
Height	50 ft. Max.	May not exceed maximum	CAC	4/13/07
Max Resid'l d.u. or Comm'l s.f. per Zoning	9 as per base zone	9 lots	CAC	4/13/07
MPDUs	Not required	0	CAC	4/13/07
TDRs	9 Must be available	9 available	CAC	4/13/07
Site Plan Req'd?	No		CAC	4/13/07
<b>FINDINGS</b>				
<b>SUBDIVISION</b>				
Lot frontage on Public Street	Yes		CAC	4/13/07
Road dedication and frontage improvements	Yes, for new internal street.		Agency letter	4/20/07
Environmental Guidelines	Yes		Staff memo	3/29/07
Forest Conservation	Yes		Staff memo	3/29/07
Master Plan Compliance	Yes		Staff memo	4/12/07
Other	N/a			
<b>ADEQUATE PUBLIC FACILITIES</b>				
Stormwater Management	Yes		Agency letter	12/13/06
Water and Sewer (WSSC)	N/A			
Well and Septic	Yes		Agency letter	11/9/06
Local Area Traffic Review	N/A			
Fire and Rescue	Yes		Agency letter	1/18/07



# CLEMENT WEST PROPERTY (120060750)

Attachment A



Map compiled on February 14, 2006 at 9:54 AM | Site located on base sheet no - 235NW15

## NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland - National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

Key Map



N



Research & Technology Center



1 inch = 1000 feet  
1 : 12000





## Surveyor's Certificate:

I hereby certify that the boundary shown hereon is correct to my best knowledge and belief based upon existing records and visual observations. I also certify that test sites shown on this plan have been field surveyed and are shown accurately.

Signature \_\_\_\_\_ Date 1-13-06



## FIRE DEPARTMENT ACCESS NOTES:

1. All Fire Department Access Roads require 20 foot unobstructed width.
2. Fire Department Access Roads must be capable of supporting 85,000 lbs.
3. Turns in Fire Department Access Roads shall be constructed with a minimum radius of 7.6 m (25 ft) at the inside curb line and a minimum radius of 15.2 m (50 ft) at the outside curb line.



(2)

ATTORNEYS

March 14, 2007

**MARTIN J. HUTT**  
DIRECT 301.657.0170  
FAX 301.347.1774  
MJHUTT@LERCHEARLY.COM

Ms. Cathy Conlon  
Development Review Division  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Preliminary Plan 1-200060750  
Clement Property West

Dear Ms. Conlon:

We represent JMJ Properties ("JMJ"), owner of approximately 126 acres of land (Parcels 500 and 800) south of and immediately adjacent to the Clement Property West property (Parcel 666) which is approximately 297.4 acres in size and is the subject matter of the above referenced preliminary plan of subdivision application. See the attached tax map.

The applicant for Clement Property West is Lynwood Farm LLC ("Lynwood Farm"). By letter dated January 24, 2007, Lynwood Farm's attorney wrote the Planning Board setting forth its opposition to the Planning Board conditioning approval of its preliminary plan of subdivision upon the granting JMJ access across its property to Peach Tree Road.

As the attached tax map (Exhibit "A") reflects, JMJ's property does not abut a public street and as described below the access easements it does have over neighboring properties (i.e. the Hays property (parcel 916) and the Garden of Remembrance Cemetery Property (Parcel A) do not extend all the way to a public road. Therefore, JMJ's property is landlocked by the other properties surrounding it from having access to any public street or road.

The lack of public street access for JMJ's property was previously considered by the Montgomery County Planning Board (the "Planning Board") in October 1999 when the Planning Board considered Preliminary Plan of Subdivision Application 1-00004 for the Garden of Remembrance Cemetery property immediately adjacent to JMJ's property and designated as Parcel A on the attached tax map. In preliminary plan 1-00004, that applicant contended that JMJ could obtain access from its property to Slidell Road over Parcel P916 (the Hay Property) or Parcel 350 (the Arnoult Property) to Peach Tree Road. However, JMJ presented evidence to staff and the Planning Board that established that there are no existing easements that connect Parcels 500 and 800 all the way to a public road. In addition, JMJ established that portions of both Slidell Road and Peach Tree Road are prescriptive easements of irregular width, made of gravel and dirt, inconsistently maintained by adjoining owners and are characterized by potholes and washouts, and lack grade shoulders or side ditches. (See page 5 of the Planning Board's Opinion).



Ms. Cathy Conlon

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In its written opinion approving Preliminary Plan 1-00004, a copy of which is attached as Exhibit "B", the Planning Board noted that JMJ Properties had bought a land locked piece of land and Preliminary Plan 1-00004 did not exacerbate an already existing situation. The Planning Board further noted in its written opinion that the purpose of the Subdivision Regulations and the preliminary plan process was to ensure harmonious and coordinated development of land within the County. (See page 6 of the Planning Board's Opinion). Notwithstanding the assertions of the applicant of the existence of alternative ways to gain access to a public road, the Planning Board, in Preliminary Plan 1-00004, found that an ingress/egress easement for Parcels 500 and 800 across the Garden of Remembrance Property was necessary to ensure that the development of adjoining parcels is not significantly impaired.

The Planning Board in approving Preliminary Plan 1-00004 required the creation of a 50 foot wide vehicular, pedestrian and natural surface easement across the Garden of Remembrance's property. However, due to that property's limited frontage along Comus Road and the use of the property as a cemetery, the Planning Board did not extend the easement entirely across the Garden of Remembrance Property to Comus Road thereby making it the obligation of JMJ Properties to obtain the additional needed easement to access Comus Road from an adjoining property owner (Parcel 333). Despite good faith efforts by JMJ to obtain the needed easement from the owners of Parcel 333 to access Comus Road, the owners of Parcel 333 have repeatedly expressed no interest in the granting of any such easement. See Exhibits "A", "B" and "C".

Lynwood Farm's letter to the Planning Board, dated January 24, 2007 similarly contends that JMJ Properties can obtain access through one of the other unplatted properties along the east side of Peach Tree Road extending from Comus Road to the Clement Property when any of them come through the preliminary plan of subdivision process. Lynwood Farm's letter also makes additional assertions for not conditioning approval on the granting of an easement to the JMJ. Those assertions and our responses to them are in bold type below and are as follows:

1. "Extension of an easement for access through the subject property to serve JMJ property would have a detrimental impact upon the use and development of the Subject Property and upon the environment."

**Response:** The subject preliminary plan of subdivision most likely is the last opportunity for JMJ to obtain access to a public road. The purpose of this letter is not to find fault with the merits of the preliminary plan of subdivision application as filed so that it will be denied by the Planning Board. We are confident that if the Applicant is willing to have its civil engineer work in good faith with JMJ's civil engineer that a lot layout and the location for an

Ms. Cathy Conlon

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access easement could be found so that such access location would not, as asserted by the Applicant, affect the use and development of the Subject Property and/or the environment.

2. "All of the parcels located along the east side of Peach Tree Road extending from Comus Road to the Subject Property are currently unsubdivided. If these properties are ever subdivided, there may be an opportunity for a connection to be established at a more logical location that is much shorter in length and which will not impact the potential agricultural use of the land." (emphasis added)

**Response:** Most of the other properties located between JMJ's property and a public road are currently improved with a single family home and/or are less than the 25 acre minimum lot size under the applicable RDT (Rural Density Transfer) zone and therefore most likely will not be filing a preliminary plan of subdivision to either subdivide into more than 1 lot or in order to obtain building permits in the near future. Also see our response to #4 below.

3. "Even if these parcels are never subdivided, it is possible for JMJ Properties to negotiate to acquire the necessary right-of-way over parcel 333 for reasonable compensation." (emphasis added)

**Response:** JMJ has made repeated efforts to obtain an access easement across parcel 333 but all such efforts have been rejected by the owners of parcel 333. See Exhibits "C-E".

4. "Although the intended easement across the intervening Hay property failed to extend far enough southward to achieve actual frontage on Slidell Road, there is indication in the prior record that the owners of the Hay property were willing to negotiate with JMJ Properties to correct the deficiency."

**Response:** For the reasons set forth in Response to #1 above, access through the Hay property is neither reasonable nor appropriate as such an extended easement would only lead to accesses that are still insufficient privately maintained gravel road ways that are inadequate for the development of JMJ Properties.

In addition, in Preliminary Plan 1-00004, this same argument was made by that applicant. In Preliminary Plan 1-00004, the staff found that portions of Peach Tree Road and Slidell Road are prescriptive rights-of-way, which have not been dedicated to public use, are not full-width right-of-ways, and are substandard. In addition, staff did not know if Montgomery County Departments of Public Works and/or Fire and Rescue Services would permit development of

Ms. Cathy Conlon

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JMJ's parcels with access to such substandard conditions. Therefore, staff recommended a condition to the Planning Board which would require that applicant to negotiate in good faith with JMJ for an access easement across its property to Comus Road (see page 5 of the Planning Board's Opinion). The Planning Board found that taking into consideration the current substandard conditions of Slidell Road and Peach Tree Road, and the substantial road improvements that would be necessary to provide safe access via those roads that the suggested alternative means of access would not be adequate to support and service the potential development of JMJ's parcels (see page 7 of the Planning Board's Opinion). The Planning Board then conditioned its approval upon the granting of a 50' wide vehicular, pedestrian, and natural surface equestrian easement which easement did not extend all the way to Comus Road. (See page 8 of the Planning Board's Opinion).

The physical conditions described by staff and concurred by the Planning Board in its written opinion, with respect to such alternative means of access for Parcels 500 and 800 to either Slidell Road or Peach Tree Road, have not changed nor improved since 1999. Finally, the topography of these adjacent properties does not make access reasonable and access through such properties would most likely be more environmentally adverse than the requested access over the Clement's property. Most importantly, the Clements property is presently before the Planning Board while none of these other properties are presently before the Planning Board or likely to be, if ever.

For all these reasons, access over the Clements property is currently the only access to a public road available to JMJ. Therefore, we respectfully request the Planning Board, if it approves the subject preliminary plan of subdivision application, to condition it upon the Applicant to negotiate in good faith with JMJ for an easement across the Clements Property to Peach Tree Road.

Very truly yours,



Martin J. Hutt

MJH:kss

Enclosures

cc: John Young

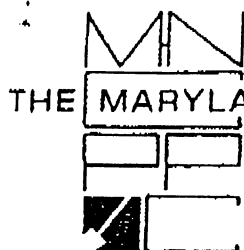
Sue Carter, Esq.

Callum Murray



**EXHIBIT**

Date of Mailing: January 27, 2000



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

**Corrected Version**

Preliminary Plan No.: 1-00004

Project: Garden of Remembrance Cemetery

Date of Hearing: October 11, 1999

Action: **APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Perdue; duly seconded by Commissioner Bryant; with a vote of 5-0, Commissioners Perdue, Bryant, Holmes, Wellington and Hussmann voting in favor.)

**INTRODUCTION**

On July 12, 1999, Washington Hebrew Congregation ("Applicant") filed a preliminary plan application seeking the creation of one (1) lot on 152.23 acres of land in the Rural Density Transfer ("RDT") Zone. The application was designated Preliminary Plan No. 1-00004.

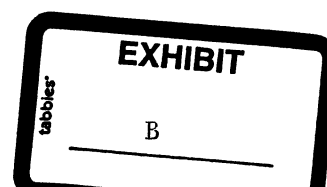
After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on October 11, 1999, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code ("Code") Chapter 50, and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Applicant, a representative of Trail Riders of Today, and a neighboring property owner, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information including plan drawings, vicinity maps, and correspondence from the Applicant and the community. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

**THE SUBJECT PROPERTY**

The Subject Property is located on the north side of Comus Road (a public road), west of Interstate 270 ("I-270"). The site is zoned RDT (Rural Density Transfer Zone, with a minimum lot size of 25 acres). The property has 200 feet of frontage on Comus Road and is irregular in shape and unimproved. The property lies within the Little Bennett watershed and is characterized by gently rolling topography, with approximately 60 acres of tree cover and the remainder in open fields dotted with fencerows of trees and shrubs. A stream is located along the northwestern boundary of the site. The Allegheny Power Company has an easement that crosses through the western portion of the site.

(8)



Garden of Remembrance Cemetery Opinion  
Preliminary Plan No. I-00004  
Corrected Version Page 2

The surrounding area is primarily rural in character. The site is bordered on the east by I-270. Further east, across I-270, a trucking warehouse, a small church, a rural service facility and the headquarters for an excavation company are located at the intersection of Comus Road and Frederick Road. The nearest occupied house is located approximately 600 feet from the site, across Comus Road at the I-270 overpass. There are no other nearby homes on the west side of I-270. The land uses to the south, west and north of the site include a mix of agriculture, open fields and woodland.

The Applicant proposes the creation of one (1) lot on 152.23 acres to allow the construction of a memorial garden. The cemetery will be accessed from Comus Road via a gated, stone monumental entrance. ~~The entrance drive will progress 100 to 200 feet through a wooded area and then through open areas of grass to a memorial chapel/administration building. The main building will consist of a chapel with seating for 250, an administrative wing for staff offices and a central vestibule and reception area, totalling approximately 4,865 square feet. Parking will be provided for 75 vehicles. Beyond the main structure, the site will be divided into several burial garden areas, including one area with six mausoleums. A smaller memorial chapel for small group services and ceremonies may be built in the future further within the site. A 3,200 square foot~~ Inside the cemetery gates, the property will be divided into various burial areas, some with themes (Founders' Garden). Improvements in the cemetery include a memorial chapel/administrative building with associated parking; internal roadways; a future mausoleum and a maintenance and storage building will to be located in the southwestern corner of the site, away from the burial areas.

The Applicant proposed significant screening for the property by the maintenance of existing forest and landscape berms. A substantial portion of the site (approximately 36 acres) will be preserved in forest. Additional screening will be provided around the site perimeter to create a buffer area between the cemetery and adjoining properties. A 25-to-35-foot landscaped berm will be constructed along I-270 to further screen memorial services from noise and fumes. Staff recommended approval of the Applicant's preliminary forest conservation plan, and Applicant's stormwater management plan, as approved by MCDPS, which consists of on-site water quantity and quality control.

The subject property is located within the area covered by the Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan"). The Master Plan is silent as to the proposed cemetery use, but recommends open space and limited structures for the site area. The Master Plan also states that the property is unsuitable for the type of high technology office employment envisioned along the I-270 Corridor.

The proposed use requires special exception approval by the Montgomery County Council, sitting as the District Council ("District Council"), pursuant to Sections 59-G-1.13 and 2.12 of the Code. After a public hearing on the application, and review and recommendation of approval by the Hearing Examiner, the District Council adopted a resolution approving the special exception, subject to conditions (Resolution No. 13-1331, dated June 23, 1998). Thereafter, an adjacent landowner filed an appeal to the Circuit

Garden of Remembrance Cemetery Opinion  
Preliminary Plan No. 1-00004  
Page 3

Court for Montgomery County, seeking access across the subject site to the neighbor's allegedly landlocked property. On February 8, 1999, the Circuit Court denied the appeal and affirmed the special exception approval.

### **THE SUBDIVISION CRITERIA**

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Montgomery County Code ("Code"). The Planning Board administers Chapters 50 ("Subdivision Regulations") and 59 ("Zoning Ordinance") of the Code. In order to gain approval, the application must meet the requirements of the Subdivision Regulations and the Zoning Ordinance applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road.

Section 50-35 of the Subdivision Regulations provides the approval procedure for preliminary plans of subdivision. After a hearing on the Preliminary Plan, the Planning Board must act to approve or disapprove the plan, or approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Code and all other applicable regulations.

The record on the subject application includes information about the lot size, width, shape and orientation of the proposed subdivision and the relationship of the lot to public roads. Specifically, Staff advised the Board that the proposed lot conforms with the Zoning Ordinance requirements, and that it abuts a public road. The record also contains uncontested information as to the Preliminary Plan's conformance with the development standards for the RDT Zone. As for the adequacy of public facilities, the record displays that although the proposed use of the property is expected to generate 719 average daily vehicular trips (based on the acreage of the site), most of the traffic volume will occur sporadically throughout the day. Accordingly, neither a traffic study nor Local Area Transportation Review is required. Further, because the subject property is located in the Clarksburg/Hyattstown Special Study Area of the Agriculture and Rural Policy Area, it is exempt from any job or housing ceiling regulations. Finally, the stormwater management plan, as approved by MCDPS, and the preliminary forest conservation plan, as approved by Staff, were uncontested elements of the record.

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### DISCUSSION OF ISSUES

During the Planning Board hearing two issues were raised and discussed. The issues were the creation of an access easement and a public trail easement through the western portion of the site.

#### Access Easement

Through public hearing testimony, and through written correspondence to the Planning Board, JMJ Properties (hereinafter "Owner"), the owner of the adjoining northern properties (Parcels 500 and 800 (hereinafter "Parcels")) of the Subject Property expressed concern that the development of the Subject Property would effectively "landlock" the adjoining Parcels. JMJ Properties' representative (hereinafter "Owner") also testified that these Parcels did not abut a public street, and thus needed an access easement across the Applicant's Subject Property to Comus Road. Owner requested that the Planning Board condition Applicant's Preliminary Plan approval on granting an access easement along the western boundary of the Subject Property to the benefit of the Parcels, and stated that an access easement in this location would respect the purpose and objectives of the Applicant and would not disrupt the sanctity of the cemetery. In addition, Owner advised the Planning Board that the number of vehicular trips involved would be relatively few because the Parcels can be improved with a maximum of five dwelling units under the existing RDT zoning.

As support for the requested access easement, Owner noted that an objective of the Subdivision Regulations is the coordination of roads within a proposed subdivision with adjacent undeveloped properties. Accordingly, Owner stated that in reviewing an application for a Preliminary Plan, the Planning Board is authorized to include conditions to aid the orderly development of adjacent properties.

Through correspondence with the Planning Board, and through testimony at the hearing, the Applicant objected to the granting of an easement through the Subject Property as being unnecessary and inappropriate. Applicant advised the Board that the Parcels have two possible alternative means of access to a public street, specifically easements to Peach Tree and Slidell Roads. Additionally, Applicant noted that the Parcels never had access across the Subject Property. The Applicant explained that, although at one time the properties were under common ownership, the properties were separately owned prior to their common ownership and were never commingled into a single tract.

The Applicant further testified that providing access to neighboring residential properties through the Subject Property would be incompatible with the proposed use for burials, memorial services and gravesite visits. Applicant argued that the setting should allow solitude and contemplation and that additional traffic through the Subject Property would disturb the tranquility and security of the cemetery.



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The Applicant also stated that the Subject Property has limited road frontage (only 200 feet of frontage on Comus Road), and Applicant plans to locate a monumental gated entrance feature at this location, thus leaving no room for an access easement at Comus Road. Applicant further testified that construction of a road along either side of the Subject Property, crossing into the adjoining Parcels would be environmentally unsound because of steep slopes, stream crossings, disturbance of the forest conservation area and tree loss.

In response to the Applicant's assertion that access could be provided across other neighboring properties, Owner acknowledged the possibility, but stated that there are no existing easements that connect the Parcels to a public road. In addition, Owner testified that Slidell Road and Peach Tree Road are prescriptive easements of irregular width, made of gravel and dirt, inconsistently maintained by adjoining owners, characterized by potholes and washouts, and lack graded shoulders or side ditches. He also noted that Montgomery County would have to condemn adjacent property to bring those roads up to standard. Therefore, Owner contended that the proposed easement along the western side of the Subject Property would provide more appropriate and safer ingress and egress to the Parcels.

After describing the Subject Property, the proposal, the surrounding area and the existing and proposed road network, Staff expressed similar concerns regarding the Applicant's suggested alternative means of access for the Parcels. Staff agreed that portions of Peach Tree Road and Slidell Road are prescriptive rights-of-way, which have not been dedicated for public use, are not full-width right-of-ways, and are substandard. In addition, Staff does not know if the Montgomery County Departments of Public Works & Transportation and/or Fire and Rescue would permit development of the Parcels with access to these substandard roads. Therefore, Staff recommended a condition to the Planning Board which would require Applicant and Owner to negotiate in good faith for an access easement across the Subject Property to Comus Road.

#### Trail Easement

The Montgomery County representative of Trail Riders of Today ("TROT"), who resides in the site area, testified before the Board that an easement for an equestrian trail should be located across the Subject Property. He stated that the trail would help the equestrians in their efforts to link the major parks in the area by providing access to Comus Road and the bridge over I-270, linking Black Hills and Little Bennett Regional Parks. He noted that this link is important because the Comus Road bridge is the only way to cross I-270 to Little Bennett Regional Park.

The Applicant opposed the location of a pedestrian and/or equestrian trail on the Subject Property. The Applicant explained its concern about maintaining a serene and

Garden of Remembrance Cemetery Opinion  
Preliminary Plan No. 1-00004  
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somber setting for the cemetery and noted that use of a trail by hikers, bikers and equestrians would not be compatible with the solemnity of memorial services or the Applicant's need to maintain security. The Applicant further testified that there is no existing or master-planned equestrian trail on the Subject Property.

In response to questions from the Commissioners, Staff testified that a trail along the western portion of the Subject Property, adjacent to the Allegheny Power Company power line right-of-way, would be beneficial to the area's trail system. Staff advised the Board that any trail would be four feet wide with two feet of brush clearing on either side. Staff explained that, although there is not an existing trail on the Subject Property, there is a lot of equestrian activity in the area. Further, Staff noted that the Montgomery County Master Plan of Park Trails (adopted by the Planning Board in July of 1998) recommends a natural surface trail connection from Frederick County to Little Bennett Regional Park and the 10-Mile Creek corridor, which could be achieved partially by the proposed trail easement on the Subject Property. By way of aside, Frederick County's recently issued Master Plan of Trails seeks a connection from Frederick County to Little Bennett Regional Park for which the corridor along the Allegheny Power Company power line right-of-way appears to be the best location.

### FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that Preliminary Plan No. 1-00004 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. The Planning Board further finds that: (1) the proposed lot is appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated use; (2) the proposed lot abuts a public road; (3) the Preliminary Plan meets the development standards of the RDT Zone; and (4) the Preliminary Plan is in accordance with the Master Plan. The Planning Board also finds that the proposed conditions, as modified, will ensure the appropriate use of the Subject Property and adequate access and road improvements, forest conservation measures, stormwater management and screening. Therefore, the Planning Board adopts Staff's conditions, as modified.

Regarding the issue of access to the adjoining Parcels 500 and 800, the Planning Board finds that Owner bought a landlocked piece of land and the subject Preliminary Plan does not exacerbate an already existing situation. The Planning Board also agrees that the proposed use requires a tranquil and secure setting. Nevertheless, the Planning Board notes that the purpose of the Subdivisions Regulations and the preliminary plan process is to ensure harmonious and coordinated development of land within the County. Additionally, Section 50-35(k)(5)(d) of the Subdivision Regulations provides that the Planning Board must find that existing or proposed street access within the area of the

Garden of Remembrance Cemetery Opinion  
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application is adequate, and does "not result in the inability to develop adjacent lands in conformity with sound planning practices." Accordingly, the Planning Board finds that this ingress/egress easement is necessary to ensure that the development of these adjoining Parcels is not significantly impaired.

Taking into consideration the current substandard condition of portions of Slidell Road and Peach Tree Road, and the substantial road improvements that would be necessary to provide safe access via those roads, the Planning Board cannot find that the suggested alternative means of access will be adequate to support and service the potential development of Parcels 500 and 800. Therefore, the Planning Board finds that an access easement across the western portion of the Subject Property is necessary and appropriate to facilitate orderly development in the site area. Recognizing the need to minimize any encroachment upon the operation of the cemetery and its entrance, the Planning Board further finds that the access easement need not extend all the way through the Subject Property to Comus Road, but should extend only from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan. (See Attachment One.) It will then be Owner's responsibility to obtain an easement to Comus Road from the adjoining property owner.

Regarding the requested pedestrian and equestrian trails, the Planning Board again recognizes the Applicant's concerns about visual encroachment and maintaining security. However, the Planning Board finds that a trail easement across the western portion of the subject property would provide a desirable connection between Frederick County, along the power line corridor and the Comus Road bridge over I-270, to access Little Bennett Regional Park. The Board finds that the power line corridor is the only unifying open space north of the site. In addition, Section 50-30(c)(3) of the Subdivision Regulations authorizes the Planning Board to require the "dedication to public use of rights-of-way or platting of easements of land necessary for such public uses as pedestrian paths, equestrian trails, . . . ." The Planning Board also finds that the subject property is located in a rural area and that some accommodation of rural agricultural uses, including horses and equestrians, is appropriate. Therefore, the Planning Board finds that the inclusion of a right-of-way for pedestrian and equestrian use in the easement area required by modified Condition No. 2 is appropriate.

The Planning Board therefore finds that recommended Condition No. 2 should be modified to require the provision of a 50-foot easement along the western edge of the Subject Property from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan (see Attachment One) for both the trail and access to the adjoining Parcels.

The Planning Board further finds that the construction of an access road and/or a trail in the easement area may accelerate the need for construction of a fence to provide separation and security for the cemetery. Therefore, the Planning Board finds that when

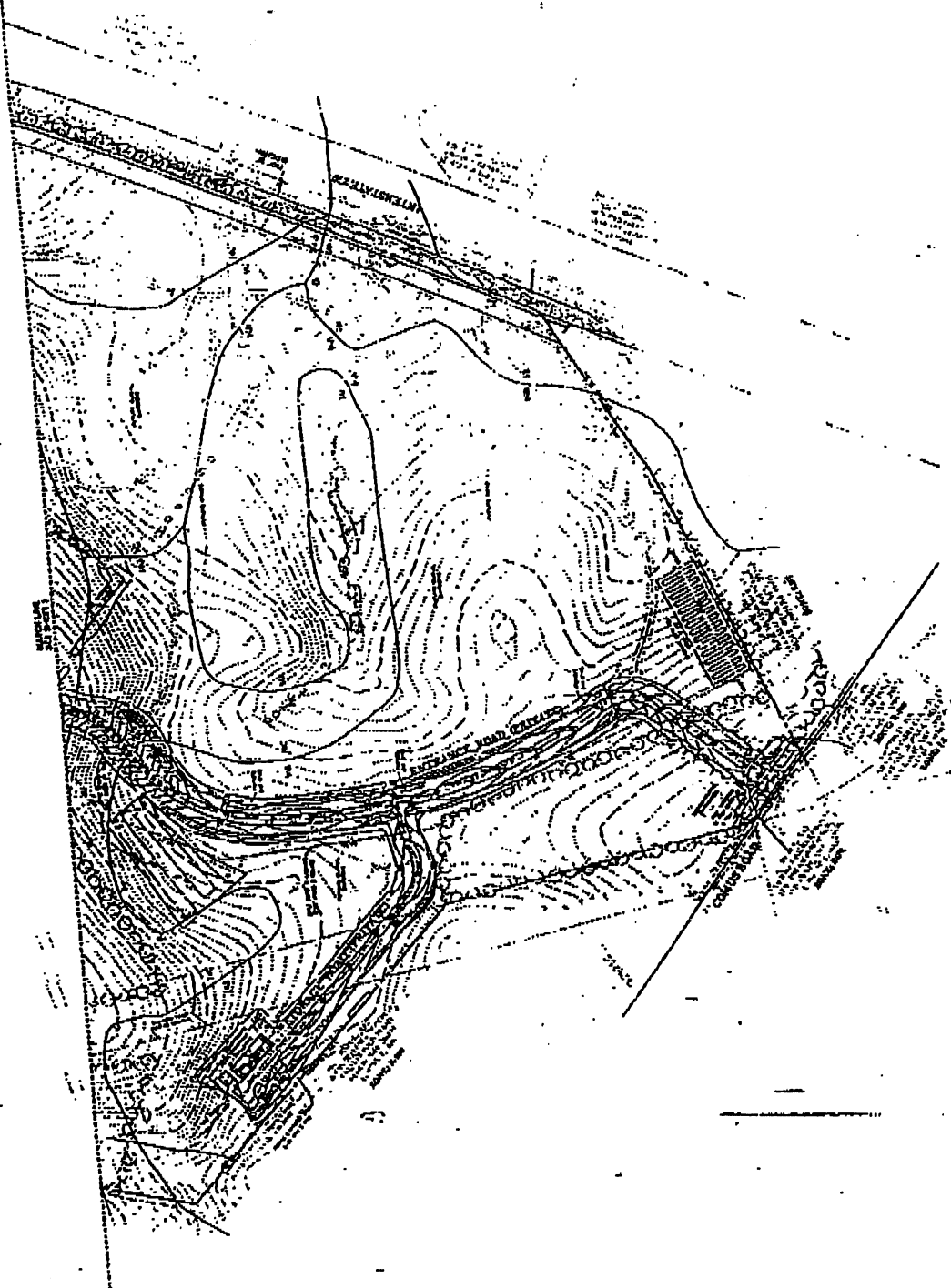
Garden of Remembrance Cemetery Opinion  
Preliminary Plan No. 1-00004  
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a road and/or pathway/trail is constructed in the easement area, if the Applicant has not already erected a fence, the responsible entity also should be responsible for the construction of a fence and screening that is acceptable to the Applicant, Staff and the Planning Board.

### **CONCLUSION**

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-00004 to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-00004, subject to the following conditions:

- 1) Compliance with the conditions of approval of the preliminary forest conservation plan. The Applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate.
- 2) Record plat to create a 50 foot wide vehicular, pedestrian, and natural surface equestrian easement along the western boundary of Applicant's property, adjacent to Parcel 333, from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan. The vehicular ingress/egress easement and the equestrian trail easement shall each be 25 feet wide. Unless Applicant has already constructed a fence in this location, the first party (the Commission or the owner(s) of Parcels 500 and 800) to improve the easement for a roadway, driveway, or trail/pathway, shall provide a fence and associated landscaping and plant materials, of a style, design, and in a location approved by Staff and the Applicant, which approval shall not be unreasonably withheld, along the easement/cemetery boundary to screen the easement uses from the cemetery on Applicant's property.
- 3) Provide public utility easement along Comus Road.
- 4) Other necessary easements.
- 5) This preliminary plan will remain valid until February 27, 2003 (37 months from the date of mailing which is January 27, 2000). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.



ATTACHMENT ONE

(16)

**UNITED STATES DEPARTMENT OF JUSTICE**  
**FEDERAL BUREAU OF INVESTIGATION**  
**WASHINGTON, D. C. 20535**

**Form No. 1**  
**Rev. 1-15-60**

**TO: SAC, NEW YORK**  
**FROM: SAC, NEW YORK**  
**SUBJECT: [REDACTED]**

**RE: [REDACTED]**  
**DATE: [REDACTED]**  
**BY: [REDACTED]**

**CLASSIFICATION: [REDACTED]**  
**EXEMPTION: [REDACTED]**  
**DATE OF REVIEW: [REDACTED]**

**APPROVED AND FORWARDED:**  
**SPECIAL AGENT IN CHARGE**  
**[Signature]**

FROM :

PHONE NO. :

Feb. 01 2007 05:53PM P11



SEARCHED		SERIALIZED		INDEXED	
FILED		FILED		FILED	
FEB 01 2007		FEB 01 2007		FEB 01 2007	
FBI - MEMPHIS		FBI - MEMPHIS		FBI - MEMPHIS	

GARDEN OF REMEMBRANCE CEMETERY

MEMPHIS, TENNESSEE

MEMPHIS, TENNESSEE

MEMPHIS, TENNESSEE

John Young  
c/o JMJ Properties, LLC  
10410 Willowbrook Drive  
Rockville, MD 20854  
August 11, 1999

John W. Ferguson, et.al.  
15010 Comus Road  
Boys, MD 29841

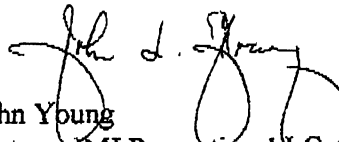
RE: Ingress and Egress Easement for the Benefit of the Parcels P500 and  
P800-Property to JMJ Properties, LLC

Dear Mr. Ferguson,

I am one of the partners in JMJ Properties, LLC and I am writing with regards to our effort to gain access to Comus Road for our property. I am currently in discussion with the Washington Hebrew Congregation, the probable purchaser of 152.23 acres (Parcel 220) from Comus Industrial Park Joint Venture et. al., to obtain access to Comus Road (see attached map). One of the possible arrangements for such as easement would involve passing through your property as shown on the attached map. Therefore, I am writing to solicit your input and comments regarding this possibility.

I would like to discuss this matter with you in person or by phone at your earliest convenience in order to determine the feasibility of such an arrangement. Please feel free to write or call me at (301) 983-1542 at any time. Your attention and response to this matter is appreciated.

Sincerely,

  
John Young  
Partner, JMJ Properties, LLC

cc: Martin J Hutt, Esq.

John Young  
c/o JMJ Properties, LLC  
10410 Willowbrook Drive  
Rockville, MD 20854  
August 17, 1999

John W. Ferguson, et. al.  
15010 Comus Road  
Boyd's, MD 29841

Re: Ingress and Egress Easement for the Benefit of the Parcels P500 and  
P800-Properties to JMJ Properties, LLC

Dear Mr. Ferguson,

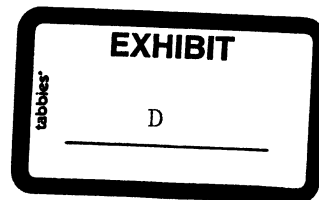
I received your recent telephone message concerning your response in the above matter. I understand and respect your decision to deny my proposal to obtain easement through your property. For the record, however, I have no other "access on the other side of Comus Road" which you mentioned in your message. Frankly, I believe I am in a "landlocked" situation which I am currently seeking relief through the county Park and Planning. Nevertheless, that is my problem and I didn't mean to trouble you about this.

Sincerely,

  
John Young  
Partner, JMJ Properties, LLC

cc: Martin J Hutt, Esq.

(19)





FROM :

PHONE NO. :

Feb. 01 2007 11:38AM P1

June 9, 2006

Dr. John Young, Managing Member  
JMJ Properties, LLC  
10410 Willowbrook Drive  
Potomac, MD 20854

Re: Access for Parcels 500 & 800  
Clarksburg, MD

Dear Dr. Young:

As you are aware, your property does not have access to a publicly maintained road. Furthermore, the easements that were established for you cross PEPCO were established within a ravine or flood plain area and you would never be granted building permits should you apply. The lack of access has made our attempts to market the property for a market value nearly impossible.

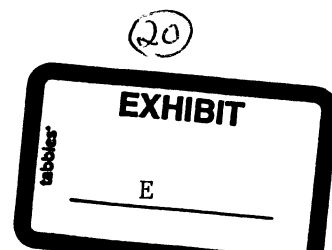
Knowing the access issue, I have attempted over the past several years to represent you to obtain an agreement with the adjacent property owner, J.W. Ferguson (Map DW63, Parcel 333) for an easement thru his property to Comus Road. I have offered on your behalf to purchase his property or a portion for the ingress/egress easement. Mr. Ferguson has continued to decline all such offers.

Should you have any additional questions, please don't hesitate to contact me at your earliest convenience.

Respectfully,

*Ken Griffin*  
Kenneth M. Griffin  
Vice President  
The Michael Companies  
4640 Forbes Blvd, Suite 300  
Lanham, Maryland 20706

cc. G Michael



LAW OFFICES

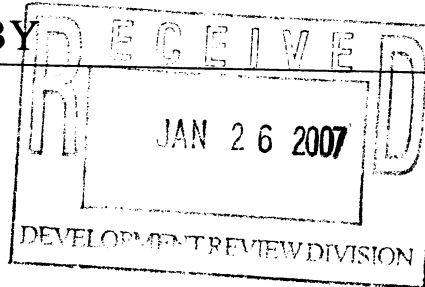
**MILLER, MILLER & CANBY**

CHARTERED

200-B MONROE STREET  
ROCKVILLE, MARYLAND 20850

(301) 762-5212  
FAX (301) 762-6044

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JAMES R. MILLER, JR.  
PATRICK C. MCKEEVER  
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LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
MAURY S. EPNER  
JOSEPH P. SUNTUM  
SUSAN W. CARTER  
ROBERT E. GOUGH  
GLENN M. ANDERSON\*  
DONNA E. McBRIDE  
MICHAEL G. CAMPBELL  
SOO LEE-CHO

*\*Licensed in Maryland and Florida*

January 24, 2007

Montgomery County Planning Board  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Clement Property West  
Preliminary Plan No. 1-20060750

Dear Chairman Hanson and Members of the Planning Board:

Our firm represents Lynwood Farm LLC, the Applicant in the above-referenced matter. It has been brought to our attention that Dr. John Young, a principal of JMJ Properties, LLC, owner of the adjacent property, seeks the imposition of a condition of approval that would require the Applicant to provide a lengthy access through its property in order to facilitate development of the JMJ property. The JMJ property consists of Parcels 500 and 800 located south of and immediately adjacent to the Subject Property (see attached tax map). We object to the imposition of any such condition for the following reasons:

1. **The Planning Board has previously addressed the issue of access to the JMJ property and an easement for access to the south has been recorded.**

First, this is not the first time that JMJ Properties has requested that the Board provide access to its property through the land of an adjacent property owner. Board members may recall that a similar request was made by JMJ Properties when the preliminary plan of subdivision for "Garden of Remembrance Memorial Garden" (Preliminary Plan No. 1-00004) was considered by the Planning Board. The Garden of Remembrance property is also highlighted on the attached tax map and is located south of and immediately adjacent to the JMJ property. Also attached, for your reference, is a copy of the Planning Board's written Opinion where the access easement issue is discussed at some length.

(21)

To briefly summarize the prior proceeding, JMJ's representative argued that its property would be effectively "landlocked" if the Garden of Remembrance property were developed and that it required an access easement along the western boundary of the Garden of Remembrance property in order to access Comus Road. In opposing this request, the applicant, Washington Hebrew Congregation, objected to this access easement as being unnecessary and inappropriate. The Washington Hebrew Congregation pointed to the fact that the JMJ property did have alternative means of access to a public right-of-way through the "Hay property" to Slidell Road and through the "Arnoult property" to Peach Tree Road and also testified that construction of a roadway along the edge of the Cemetery property would be environmentally unsound due to steep slopes, stream crossings, disturbance of forest conservation areas, and tree loss. In response, JMJ's representative argued that while access out to Slidell and Peach Tree Roads might, indeed, be possible, these were both prescriptive easements of irregular width and were otherwise unsuitable for its needs.

The Planning Board concluded that JMJ had knowingly purchased a "landlocked" piece of land. Nevertheless, in an effort to ensure that development of the JMJ Property was "not significantly impaired", the Planning Board imposed a condition on the approval of that preliminary plan requiring the provision of a 50-foot easement along the western edge of the "Garden of Remembrance" property for access to the JMJ Property. This easement terminates at the southern end of the "Garden of Remembrance" property near Comus Road. The Planning Board, recognizing that a shared entrance with the Cemetery was inappropriate, placed the onus on JMJ Properties to obtain an easement from the remaining intervening property owner (Parcel 333) to complete the access to Comus Road.

The 50 foot wide easement requested by JMJ Properties has now been established (see attached copy of the record plat of subdivision for "Garden of Remembrance"). However, JMJ Properties has never acquired the necessary interest in the remaining intervening property (Parcel 333, the "Ferguson" property) to complete the approximate 500 foot connection to Comus Road. JMJ has submitted a letter to staff indicating that it has been unsuccessful in its attempt to acquire this relatively short connection from the intervening property owner, but there is no indication what efforts have been taken to secure the access and no indication that reasonable compensation has been offered and rejected. Instead, JMJ Properties is seeking an alternative access through the Subject Property to Peach Tree Road. This proposed easement would burden the Subject Property with a twenty (20') foot wide roadway that would add an additional 3,400 to 4,500 linear feet of pavement through one of the two proposed farm parcels.

2. **Extension of an easement for access through the Subject Property to serve the JMJ property would have a detrimental impact upon the use and development of the Subject Property and upon the environment.**

It is the intent of the RDT zone "to promote agriculture as the primary land use" in areas designated for agricultural preservation and this is "to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses". The Applicant has attempted, through the proposed layout, to maximize the land area that will continue to be devoted to farming. The Subject Property consists of 243.86 acres, with a maximum of 9 lots permitted. The seven (7) smaller proposed lots, which average 6.7 acres in size, have been clustered near Peach Tree Road, making it possible to create two large lots at the rear of the Subject Property with a combined acreage of approximately 189 acres, large enough to allow viable farming operations to continue.

We have considered the impact that an easement through the Subject Property would have on the proposed development and have determined that an additional 3,400 to 4,500 linear feet of pavement would be required, depending upon the precise location of the easement. Further, any roadway must be at least twenty (20') feet in width to accommodate two-way traffic and to satisfy Fire Department access road requirements for shared roadways or driveways.

If an easement were to be established across the most direct route through the Subject Property, it would bisect the larger, 125 acre farm parcel and would impose a road directly through the fields that are intended for crops or livestock. This would have both an economic and operational impact as it would not only reduce the land area available for farming, but would also impose a burden on the owner to install fencing and to alter farming operations to accommodate the roadway. From an environmental standpoint, a roadway of this length would have an adverse impact insofar as it would likely require the clearing of trees not otherwise necessary. In addition, the increase in impervious area would trigger additional storm water management requirements making it likely that some collection of runoff from the pavement into a holding pond (not currently required) would become necessary. This would further reduce the land area available for agricultural operations.

There is already an existing utility easement located along the southwestern boundary of the Subject Property, the alternative location for this roadway. Not only would a roadway in this location add an additional 4,500 feet linear feet of paving that will potentially interfere with the utility easement, but it would also be necessary to construct a stream crossing and an additional turnaround area to satisfy Fire and Rescue requirements.

**3. There are other unplatted properties along Peach Tree Road that would provide more appropriate locations for an easement to the JMJ Property.**

All of the parcels located along the east side of Peach Tree Road extending from Comus Road to the Subject Property are currently unsubdivided. If these properties are ever subdivided, there may be an opportunity for a connection to be established at a more logical location that is much shorter in length and which will not impact the potential agricultural use of the land.

Even if these parcels are never subdivided, it is possible for JMJ Properties to negotiate to acquire the necessary right-of-way over parcel 333 for reasonable compensation. Additionally, there is correspondence in the file of the prior preliminary plan application for "Garden of Remembrance" noting that when JMJ Properties initially acquired its property, easements were recorded that were intended to provide access from Slidell Road to the JMJ property. Although the intended easement across the intervening Hay property failed to extend far enough southward to achieve actual frontage on Slidell Road, there is indication in that prior record that the owners of the Hay property were willing to negotiate with JMJ Properties to correct the deficiency.

**Summary**

In summary, we urge the Planning Board not to impose any condition requiring access through the Subject Property to serve the JMJ property. Such access would be a lengthy intrusion on the Subject Property and would undermine the objective of this preliminary plan to maximize the preservation of land that may continue to be farmed. The Planning Board has already responded to JMJ Properties and

a 50 foot wide easement has been platted across the "Garden of Remembrance" lot in order to accommodate its request for more suitable access. The only obligation the Board imposed on JMJ Properties was to negotiate an easement for the last link to Comus Road -- a relatively short distance across a single intervening property -- a step that it has failed to undertake.

While we understand that the subdivision regulations are intended to promote the orderly development of property, these regulations have already been applied to create an opportunity for access to the JMJ Property. On balance, a 20 foot wide roadway extending such a distance through the Subject Property is unwise and inconsistent with County policy.

Thank you for your attention to these comments and concerns. We will be present at the public hearing and available to answer any questions you may have.

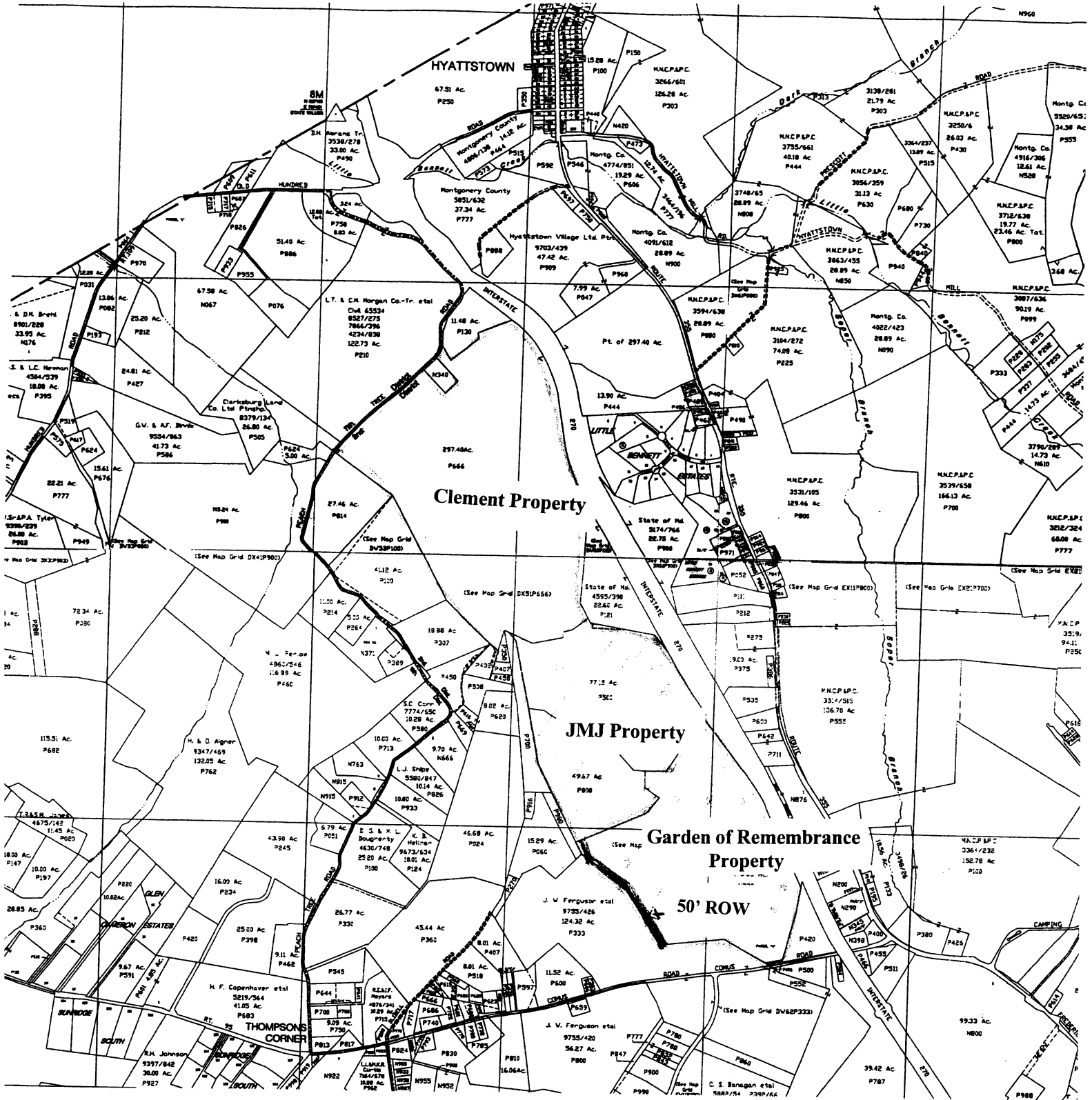
Very truly yours,

MILLER, MILLER & CANBY

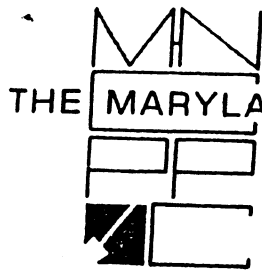
  
Susan W. Carter

SWC/dlt

cc: Lew Schumann, Esquire  
Dave McKee  
Cathy Conlon  
Taslima Alan  
Dr. Young







8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

**Corrected Version**

Preliminary Plan No.: 1-00004  
Project: Garden of Remembrance Cemetery  
Date of Hearing: October 11, 1999

Action: **APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Perdue; duly seconded by Commissioner Bryant; with a vote of 5-0, Commissioners Perdue, Bryant, Holmes, Wellington and Hussmann voting in favor.)

**INTRODUCTION**

On July 12, 1999, Washington Hebrew Congregation ("Applicant") filed a preliminary plan application seeking the creation of one (1) lot on 152.23 acres of land in the Rural Density Transfer ("RDT") Zone. The application was designated Preliminary Plan No. 1-00004.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on October 11, 1999, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code ("Code") Chapter 50, and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Applicant, a representative of Trail Riders of Today, and a neighboring property owner, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information including plan drawings, vicinity maps, and correspondence from the Applicant and the community. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

**THE SUBJECT PROPERTY**

The Subject Property is located on the north side of Comus Road (a public road), west of Interstate 270 ("I-270"). The site is zoned RDT (Rural Density Transfer Zone, with a minimum lot size of 25 acres). The property has 200 feet of frontage on Comus Road and is irregular in shape and unimproved. The property lies within the Little Bennett watershed and is characterized by gently rolling topography, with approximately 60 acres of tree cover and the remainder in open fields dotted with fencerows of trees and shrubs. A stream is located along the northwestern boundary of the site. The Allegheny Power Company has an easement that crosses through the western portion of the site.



The surrounding area is primarily rural in character. The site is bordered on the east by I-270. Further east, across I-270, a trucking warehouse, a small church, a rural service facility and the headquarters for an excavation company are located at the intersection of Comus Road and Frederick Road. The nearest occupied house is located approximately 600 feet from the site, across Comus Road at the I-270 overpass. There are no other nearby homes on the west side of I-270. The land uses to the south, west and north of the site include a mix of agriculture, open fields and woodland.

The Applicant proposes the creation of one (1) lot on 152.23 acres to allow the construction of a memorial garden. The cemetery will be accessed from Comus Road via a gated, stone monumental entrance. ~~The entrance drive will progress 100 to 200 feet through a wooded area and then through open areas of grass to a memorial chapel/administration building. The main building will consist of a chapel with seating for 250, an administrative wing for staff offices and a central vestibule and reception area, totalling approximately 4,865 square feet. Parking will be provided for 75 vehicles. Beyond the main structure, the site will be divided into several burial garden areas, including one area with six mausoleums. A smaller memorial chapel for small group services and ceremonies may be built in the future further within the site. A 3,200 square foot~~ Inside the cemetery gates, the property will be divided into various burial areas, some with themes (Founders' Garden). Improvements in the cemetery include a memorial chapel/administrative building with associated parking; internal roadways; a future mausoleum and a maintenance and storage building will to be located in the southwestern corner of the site, away from the burial areas.

The Applicant proposed significant screening for the property by the maintenance of existing forest and landscape berms. A substantial portion of the site (approximately 36 acres) will be preserved in forest. Additional screening will be provided around the site perimeter to create a buffer area between the cemetery and adjoining properties. A 25-to-35-foot landscaped berm will be constructed along I-270 to further screen memorial services from noise and fumes. Staff recommended approval of the Applicant's preliminary forest conservation plan, and Applicant's stormwater management plan, as approved by MCDPS, which consists of on-site water quantity and quality control.

The subject property is located within the area covered by the Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan"). The Master Plan is silent as to the proposed cemetery use, but recommends open space and limited structures for the site area. The Master Plan also states that the property is unsuitable for the type of high technology office employment envisioned along the I-270 Corridor.

The proposed use requires special exception approval by the Montgomery County Council, sitting as the District Council ("District Council"), pursuant to Sections 59-G-1.13 and 2.12 of the Code. After a public hearing on the application, and review and recommendation of approval by the Hearing Examiner, the District Council adopted a resolution approving the special exception, subject to conditions (Resolution No. 13-1331, dated June 23, 1998). Thereafter, an adjacent landowner filed an appeal to the Circuit

Court for Montgomery County, seeking access across the subject site to the neighbor's allegedly landlocked property. On February 8, 1999, the Circuit Court denied the appeal and affirmed the special exception approval.

### **THE SUBDIVISION CRITERIA**

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Montgomery County Code ("Code"). The Planning Board administers Chapters 50 ("Subdivision Regulations") and 59 ("Zoning Ordinance") of the Code. In order to gain approval, the application must meet the requirements of the Subdivision Regulations and the Zoning Ordinance applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road.

Section 50-35 of the Subdivision Regulations provides the approval procedure for preliminary plans of subdivision. After a hearing on the Preliminary Plan, the Planning Board must act to approve or disapprove the plan, or approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Code and all other applicable regulations.

The record on the subject application includes information about the lot size, width, shape and orientation of the proposed subdivision and the relationship of the lot to public roads. Specifically, Staff advised the Board that the proposed lot conforms with the Zoning Ordinance requirements, and that it abuts a public road. The record also contains uncontested information as to the Preliminary Plan's conformance with the development standards for the RDT Zone. As for the adequacy of public facilities, the record displays that although the proposed use of the property is expected to generate 719 average daily vehicular trips (based on the acreage of the site), most of the traffic volume will occur sporadically throughout the day. Accordingly, neither a traffic study nor Local Area Transportation Review is required. Further, because the subject property is located in the Clarksburg/Hyattstown Special Study Area of the Agriculture and Rural Policy Area, it is exempt from any job or housing ceiling regulations. Finally, the stormwater management plan, as approved by MCDPS, and the preliminary forest conservation plan, as approved by Staff, were uncontested elements of the record.

## DISCUSSION OF ISSUES

During the Planning Board hearing two issues were raised and discussed. The issues were the creation of an access easement and a public trail easement through the western portion of the site.

### Access Easement

Through public hearing testimony, and through written correspondence to the Planning Board, JMJ Properties (hereinafter "Owner"), the owner of the adjoining northern properties (Parcels 500 and 800 (hereinafter "Parcels")) of the Subject Property expressed concern that the development of the Subject Property would effectively "landlock" the adjoining Parcels. JMJ Properties' representative (hereinafter "Owner") also testified that these Parcels did not abut a public street, and thus needed an access easement across the Applicant's Subject Property to Comus Road. Owner requested that the Planning Board condition Applicant's Preliminary Plan approval on granting an access easement along the western boundary of the Subject Property to the benefit of the Parcels, and stated that an access easement in this location would respect the purpose and objectives of the Applicant and would not disrupt the sanctity of the cemetery. In addition, Owner advised the Planning Board that the number of vehicular trips involved would be relatively few because the Parcels can be improved with a maximum of five dwelling units under the existing RDT zoning.

As support for the requested access easement, Owner noted that an objective of the Subdivision Regulations is the coordination of roads within a proposed subdivision with adjacent undeveloped properties. Accordingly, Owner stated that in reviewing an application for a Preliminary Plan, the Planning Board is authorized to include conditions to aid the orderly development of adjacent properties.

Through correspondence with the Planning Board, and through testimony at the hearing, the Applicant objected to the granting of an easement through the Subject Property as being unnecessary and inappropriate. Applicant advised the Board that the Parcels have two possible alternative means of access to a public street, specifically easements to Peach Tree and Slidell Roads. Additionally, Applicant noted that the Parcels never had access across the Subject Property. The Applicant explained that, although at one time the properties were under common ownership, the properties were separately owned prior to their common ownership and were never commingled into a single tract.

The Applicant further testified that providing access to neighboring residential properties through the Subject Property would be incompatible with the proposed use for burials, memorial services and gravesite visits. Applicant argued that the setting should allow solitude and contemplation and that additional traffic through the Subject Property would disturb the tranquility and security of the cemetery.

The Applicant also stated that the Subject Property has limited road frontage (only 200 feet of frontage on Comus Road), and Applicant plans to locate a monumental gated entrance feature at this location, thus leaving no room for an access easement at Comus Road. Applicant further testified that construction of a road along either side of the Subject Property, crossing into the adjoining Parcels would be environmentally unsound because of steep slopes, stream crossings, disturbance of the forest conservation area and tree loss.

In response to the Applicant's assertion that access could be provided across other neighboring properties, Owner acknowledged the possibility, but stated that there are no existing easements that connect the Parcels to a public road. In addition, Owner testified that Slidell Road and Peach Tree Road are prescriptive easements of irregular width, made of gravel and dirt, inconsistently maintained by adjoining owners, characterized by potholes and washouts, and lack graded shoulders or side ditches. He also noted that Montgomery County would have to condemn adjacent property to bring those roads up to standard. Therefore, Owner contended that the proposed easement along the western side of the Subject Property would provide more appropriate and safer ingress and egress to the Parcels.

After describing the Subject Property, the proposal, the surrounding area and the existing and proposed road network, Staff expressed similar concerns regarding the Applicant's suggested alternative means of access for the Parcels. Staff agreed that portions of Peach Tree Road and Slidell Road are prescriptive rights-of-way, which have not been dedicated for public use, are not full-width right-of-ways, and are substandard. In addition, Staff does not know if the Montgomery County Departments of Public Works & Transportation and/or Fire and Rescue would permit development of the Parcels with access to these substandard roads. Therefore, Staff recommended a condition to the Planning Board which would require Applicant and Owner to negotiate in good faith for an access easement across the Subject Property to Comus Road.

### Trail Easement

The Montgomery County representative of Trail Riders of Today ("TROT"), who resides in the site area, testified before the Board that an easement for an equestrian trail should be located across the Subject Property. He stated that the trail would help the equestrians in their efforts to link the major parks in the area by providing access to Comus Road and the bridge over I-270, linking Black Hills and Little Bennett Regional Parks. He noted that this link is important because the Comus Road bridge is the only way to cross I-270 to Little Bennett Regional Park.

The Applicant opposed the location of a pedestrian and/or equestrian trail on the Subject Property. The Applicant explained its concern about maintaining a serene and

somber setting for the cemetery and noted that use of a trail by hikers, bikers and equestrians would not be compatible with the solemnity of memorial services or the Applicant's need to maintain security. The Applicant further testified that there is no existing or master-planned equestrian trail on the Subject Property.

In response to questions from the Commissioners, Staff testified that a trail along the western portion of the Subject Property, adjacent to the Allegheny Power Company power line right-of-way, would be beneficial to the area's trail system. Staff advised the Board that any trail would be four feet wide with two feet of brush clearing on either side. Staff explained that, although there is not an existing trail on the Subject Property, there is a lot of equestrian activity in the area. Further, Staff noted that the Montgomery County Master Plan of Park Trails (adopted by the Planning Board in July of 1998) recommends a natural surface trail connection from Frederick County to Little Bennett Regional Park and the 10-Mile Creek corridor, which could be achieved partially by the proposed trail easement on the Subject Property. By way of aside, Frederick County's recently issued Master Plan of Trails seeks a connection from Frederick County to Little Bennett Regional Park for which the corridor along the Allegheny Power Company power line right-of-way appears to be the best location.

## **FINDINGS**

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that Preliminary Plan No. 1-00004 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. The Planning Board further finds that: (1) the proposed lot is appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated use; (2) the proposed lot abuts a public road; (3) the Preliminary Plan meets the development standards of the RDT Zone; and (4) the Preliminary Plan is in accordance with the Master Plan. The Planning Board also finds that the proposed conditions, as modified, will ensure the appropriate use of the Subject Property and adequate access and road improvements, forest conservation measures, stormwater management and screening. Therefore, the Planning Board adopts Staff's conditions, as modified.

Regarding the issue of access to the adjoining Parcels 500 and 800, the Planning Board finds that Owner bought a landlocked piece of land and the subject Preliminary Plan does not exacerbate an already existing situation. The Planning Board also agrees that the proposed use requires a tranquil and secure setting. Nevertheless, the Planning Board notes that the purpose of the Subdivisions Regulations and the preliminary plan process is to ensure harmonious and coordinated development of land within the County. Additionally, Section 50-35(k)(5)(d) of the Subdivision Regulations provides that the Planning Board must find that existing or proposed street access within the area of the

application is adequate, and does "not result in the inability to develop adjacent lands in conformity with sound planning practices." Accordingly, the Planning Board finds that this ingress/egress easement is necessary to ensure that the development of these adjoining Parcels is not significantly impaired.

Taking into consideration the current substandard condition of portions of Slidell Road and Peach Tree Road, and the substantial road improvements that would be necessary to provide safe access via those roads, the Planning Board cannot find that the suggested alternative means of access will be adequate to support and service the potential development of Parcels 500 and 800. Therefore, the Planning Board finds that an access easement across the western portion of the Subject Property is necessary and appropriate to facilitate orderly development in the site area. Recognizing the need to minimize any encroachment upon the operation of the cemetery and its entrance, the Planning Board further finds that the access easement need not extend all the way through the Subject Property to Comus Road, but should extend only from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan. (See Attachment One.) It will then be Owner's responsibility to obtain an easement to Comus Road from the adjoining property owner.

Regarding the requested pedestrian and equestrian trails, the Planning Board again recognizes the Applicant's concerns about visual encroachment and maintaining security. However, the Planning Board finds that a trail easement across the western portion of the subject property would provide a desirable connection between Frederick County, along the power line corridor and the Comus Road bridge over I-270, to access Little Bennett Regional Park. The Board finds that the power line corridor is the only unifying open space north of the site. In addition, Section 50-30(c)(3) of the Subdivision Regulations authorizes the Planning Board to require the "dedication to public use of rights-of-way or platting of easements of land necessary for such public uses as pedestrian paths, equestrian trails, ...." The Planning Board also finds that the subject property is located in a rural area and that some accommodation of rural agricultural uses, including horses and equestrians, is appropriate. Therefore, the Planning Board finds that the inclusion of a right-of-way for pedestrian and equestrian use in the easement area required by modified Condition No. 2 is appropriate.

The Planning Board therefore finds that recommended Condition No. 2 should be modified to require the provision of a 50-foot easement along the western edge of the Subject Property from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan (see Attachment One) for both the trail and access to the adjoining Parcels.

The Planning Board further finds that the construction of an access road and/or a trail in the easement area may accelerate the need for construction of a fence to provide separation and security for the cemetery. Therefore, the Planning Board finds that when

a road and/or pathway/trail is constructed in the easement area, if the Applicant has not already erected a fence, the responsible entity also should be responsible for the construction of a fence and screening that is acceptable to the Applicant, Staff and the Planning Board.

### **CONCLUSION**

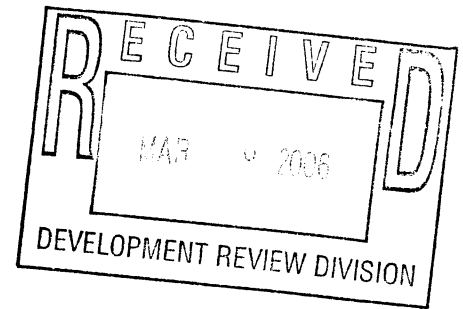
Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-00004 to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-00004, subject to the following conditions:

- 1) Compliance with the conditions of approval of the preliminary forest conservation plan. The Applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate.
- 2) Record plat to create a 50 foot wide vehicular, pedestrian, and natural surface equestrian easement along the western boundary of Applicant's property, adjacent to Parcel 333, from the northwestern corner of the property to the rear of the maintenance and storage building shown on the illustrative plan. The vehicular ingress/egress easement and the equestrian trail easement shall each be 25 feet wide. Unless Applicant has already constructed a fence in this location, the first party (the Commission or the owner(s) of Parcels 500 and 800) to improve the easement for a roadway, driveway, or trail/pathway, shall provide a fence and associated landscaping and plant materials, of a style, design, and in a location approved by Staff and the Applicant, which approval shall not be unreasonably withheld, along the easement/cemetery boundary to screen the easement uses from the cemetery on Applicant's property.
- 3) Provide public utility easement along Comus Road.
- 4) Other necessary easements.
- 5) This preliminary plan will remain valid until February 27, 2003 (37 months from the date of mailing which is January 27, 2000). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.





24445 Peach Tree Rd  
Clarksburg, MD 20871  
March 12, 2006



Review Division  
MNCP&PC  
8787 Georgia Ave.  
Silver Spring, MD 20910

Attn: Ms. Cathy Conlon

Re: Clement Property West  
MNCP&PC File #120060750

Dear Ms. Conlon:

My wife and I are the owners of parcel P350 which abuts the southern boundary of the subject property. We also own and reside on parcel P407 which adjoins P350. In general, my wife and I are supportive of the plan and the cluster concept which allows the creation of two very large lots and seven smaller lots. We feel that this concept preserves the nature of the agricultural reserve much more than creation of nine 25 acre lots.

Our primary concern with the proposed development of the Clement Property (the Property) is that the plan shows that a portion of our driveway is located on the Property. Please see the attached copy of part of the preliminary plan for the Property. The driveway which is our sole means of ingress and egress is in the same location as when we purchased our home in 1976. It is our understanding that the driveway has been in this location since the early 1900s and in fact shows up in aerial photographs from the 1950s. We would like to see some type of right of way established as part of the development process that would guarantee our right to continue to use the driveway in its current location.

There is also an unpaved access road to the power lines that is not depicted on the preliminary plan for the Property. This road is used by the Allegheny Power Company for access to the electrical transmission lines on the Property. Some type of right of way or easement should also be established for this access road. Please see the attached photocopy.

Finally, we have some concerns that the Property can support the number of well and septic systems proposed. The wells will draw from the same aquifer that all existing houses in the area currently draw upon. The permeable soil, steep slopes, and shallow depth to bedrock could result in stream pollution and if the bedrock is fractured could contribute to pollution of the aquifer. We simply ask that these well and septic concerns be considered and carefully evaluated as part of the development review process.

Thank you very much for your consideration of these requests. Please feel free to call us if you need any information from us.

Sincerely,

Handwritten signatures of James D. Arnoult and Jennifer H. Arnoult. The signatures are in cursive and are written in black ink. The signature of James D. Arnoult is on the left and the signature of Jennifer H. Arnoult is on the right.  
James D. Arnoult and Jennifer H. Arnoult

Attachment





DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

December 13, 2006

Shahriar Amiri  
Acting Director

Mr. Ray Norris  
Maddox Incorporated  
100 Park Avenue  
Rockville, MD 20850

Re: Stormwater Management **CONCEPT** Request  
for Clement Property West  
Preliminary Plan #: 120060750  
SM File #: 223249  
Tract Size/Zone: 243.86/RDT  
Total Concept Area: 243.86ac  
Lots/Block: 1-9 Proposed  
Parcel(s): P666  
Watershed: Monocacy River

Dear Mr. Norris:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and onsite recharge via the use of non structural measures. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All impervious surfaces must be treated with non structural measures.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable



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Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-6309.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm CN 223249

cc: C. Conlon  
S. Federline  
SM File # 223249

QN - On Site; Acres: 243.86ac  
QL - On site; Acres: 243.86ac  
Recharge is provided



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

Robert C. Hubbard  
Director

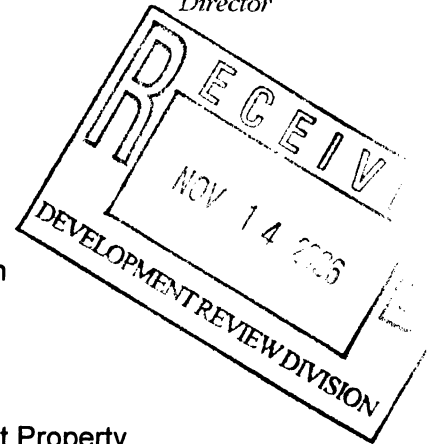
MEMORANDUM

November 9, 2006

TO: Cathy Conlon, Development Review,  
Maryland National Capital Park and Planning Commission

FROM: Robert Hubbard, Director  
Department of Permitting Services

SUBJECT: Status of Preliminary Plan: #1-20060750, Clement West Property,  
Lots 1-9 (inclusive)



This is to notify you that the status of the plan received in this office on November 6, 2006, is as follows:

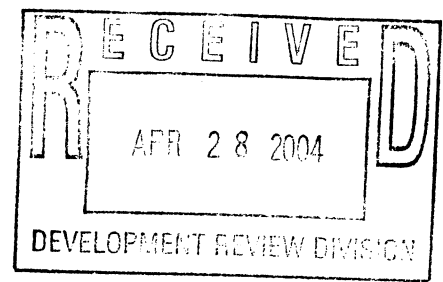
Approved with the following reservations:

1. The record plat must be at the same scale as the preliminary plan, or submit an enlargement of the plat to match the preliminary plan.
2. All existing buildings to appear on the record plat.

If you have any questions, contact Gene von Gunten at (240) 777-6319.

cc: Owner  
Surveyor  
File

40



DEPARTMENT OF PUBLIC WORKS  
AND TRANSPORTATION

Douglas M. Duncan  
*County Executive*

Arthur Holmes, Jr.  
*Director*

April 20, 2006

Ms. Catherine Conlon, Subdivision Supervisor  
Development Review Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-20060750  
Clement West Property

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated 1/13/06. This plan was reviewed by the Development Review Committee at its meeting on 2/27/06. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Show all existing planimetric and topographic details specifically paving, storm drainage, driveways adjacent and opposite the site as well as existing rights of way and easements on the preliminary plan.
2. Justify the proposed right of way for Peach Tree Road. Once that is accomplished, dedicate the necessary right of way for Peach Tree Road and I-270 in accordance with the master plan.
3. Full width dedication and construction of the interior public street.
4. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
5. Prior to approval of the record plat by the Department of Permitting Services (DPS), the applicant's consultant will need to obtain the approval of grade establishments for new public streets from DPS.
6. Wells and septic systems cannot be located within the right of way nor slope or drainage easements.
7. We did not receive complete analyses of the capacity of the downstream public storm system(s) and the impact of the post-development runoff on the system(s). As a result, we are unable to offer comments on the need for possible improvements to the system(s) by this applicant.  
Prior to approval of the record plat by the Department of Permitting Services (DPS), the applicant's consultant will need to submit this study, with computations, for review and approval by DPS. Analyze the capacity of the existing downstream public storm drain system and the impact of the post-development one hundred (100) year storm runoff on same.



Division of Operations

(41)



8. Since access will be from a roadway included on the Rustic Roads Program, stake and pavement mark the proposed street location(s) for our evaluation of the impact on the Rustic Road features. As such, every effort must be made to preserve the significant features within the right of way of that roadway.
9. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
10. Record plat to reflect denial of access along Peach Tree Road (except for the interior public street).
11. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
12. Revise the plan as necessary to meet the requirements of the Montgomery County Department of Permitting Services with regard to wells and/or septic systems.
13. The owner will be required to submit a recorded covenant for the operation and maintenance of storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
14. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
15. Trees in the County rights of way for the interior public street - species and spacing to be in accordance with the applicable DPWT standards. A tree planting permit is required from the Maryland Department of Natural Resources, State Forester's Office [(301) 854-6060], to plant trees within the public right of way.
16. Please coordinate with Department of Fire and Rescue about their requirements for emergency vehicle access.
17. Access and improvements along I-270 as required by the Maryland State Highway administration.
18. The plan should provide a horizontal alignment for the interior public street which satisfies the design speed.
18. Waiver from the Montgomery County Planning Board for overlength cul-de-sac.
19. Applicant should coordinate all aspects of their development proposal with the Maryland Transit Administration (MTA) with regard to the Corridor Cities Transitway (CCT). MTA is the proper current source for all such information as alignment, right-of-way widths, station locations, etc., of the CCT. Please contact Gary Erenrich directly (240-777-7156) if have any questions or need further detail than the above statement.
20. Public Improvements Agreement (PIA) will be an acceptable method of ensuring construction of the required public improvements within the County right of way. The PIA details will be determined at the record plat stage. The PIA will include, but not necessarily be limited to, the following improvements:
  - A. Street grading, paving, shoulders and side drainage ditches and appurtenances, and street trees along the interior public street as open section tertiary residential roadway.

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- B. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- D. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.
- F. Construct a cul-de-sac at the end of interior public street.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [sam.farhadi@montgomerycountymd.gov](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist  
Development Review Group  
Traffic Engineering and Operations Section  
Division of Operations

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Enclosures ()

cc: Lewis R. Schumann  
David McKee, Benning & Associates  
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Preliminary Plan Folder  
Preliminary Plans Note Book