



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

MCPB
Item #
12/3/09



MEMORANDUM

DATE: October 23, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: Erin Grayson (301-495-4598) *EG*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: 1 lot for 1 one-family detached dwelling unit

PROJECT NAME: Luhn Property

CASE #: 120080390

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: Rural Cluster (RC)

LOCATION: On Bowman Acres Lane, 1360 feet southwest of Damascus Road

MASTER PLAN: Damascus

APPLICANT: George Magas

ENGINEER: Benning & Associates

FILING DATE: May 30, 2008

HEARING DATE: December 3, 2009

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 1 lot for 1 dwelling unit.
- 2) The applicant must comply with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 4) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 5) The applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated May 29, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated September 25, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 15, 2008. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 9) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION

The Luhn Property, "Property" or "Subject Property", consists of 3.0 acres in the RC zone on Bowman Acres Lane, 1,360 feet southwest of Damascus Road, in the Damascus Master Plan area. The site, pictured on the following page in Figure 1, is surrounded by property also zoned RC. Directly to the east is an unrecorded parcel improved with a one-family detached dwelling unit and several accessory structures. Upper Great Seneca Stream Valley Park, part of the M-NCPPC park system, abuts the Subject Property on the south and west. To the north of the site is open space created by a previous cluster subdivision. Access to the site is provided via a private driveway in a 30-foot wide ingress/egress easement that extends from the cul-de-sac of Bowman Acres Lane to the edge of the site. The Subject Property is an unrecorded parcel, created by deed on July 7, 1966. The current deed for the Property, which reflects ownership by the applicant, is dated October 22, 2008 and the description matches the description for the Property in the 1966 deed. The zoning for this Property in 1966 was RE-2.

The entirety of the Property is forested and there are no specimen trees located on the Property. The site is in the Great Seneca Creek Watershed (Use I-P).



Figure 1: Vicinity Map

PROJECT DESCRIPTION

The lot which the applicant proposes to create will consist of 3 acres to accommodate a one-family detached dwelling unit. The current access point to the Property from the driveway within the 30-foot wide ingress/egress easement will be retained with a private driveway to the new dwelling unit extending from it. A fire department T-turnaround is required to be constructed by utilizing the new driveway on the Subject Property. An emergency vehicle pull-off area approximately 180 feet north of the site is also required to be constructed by the Applicant within the 30-foot easement. These two measures will provide appropriate maneuverability for emergency vehicles to and from the site.

A private, standard septic system and well will serve the new dwelling unit. A Category I Forest Conservation Easement is proposed to be located in the rear of the lot to protect forest that will not be impacted by this development.

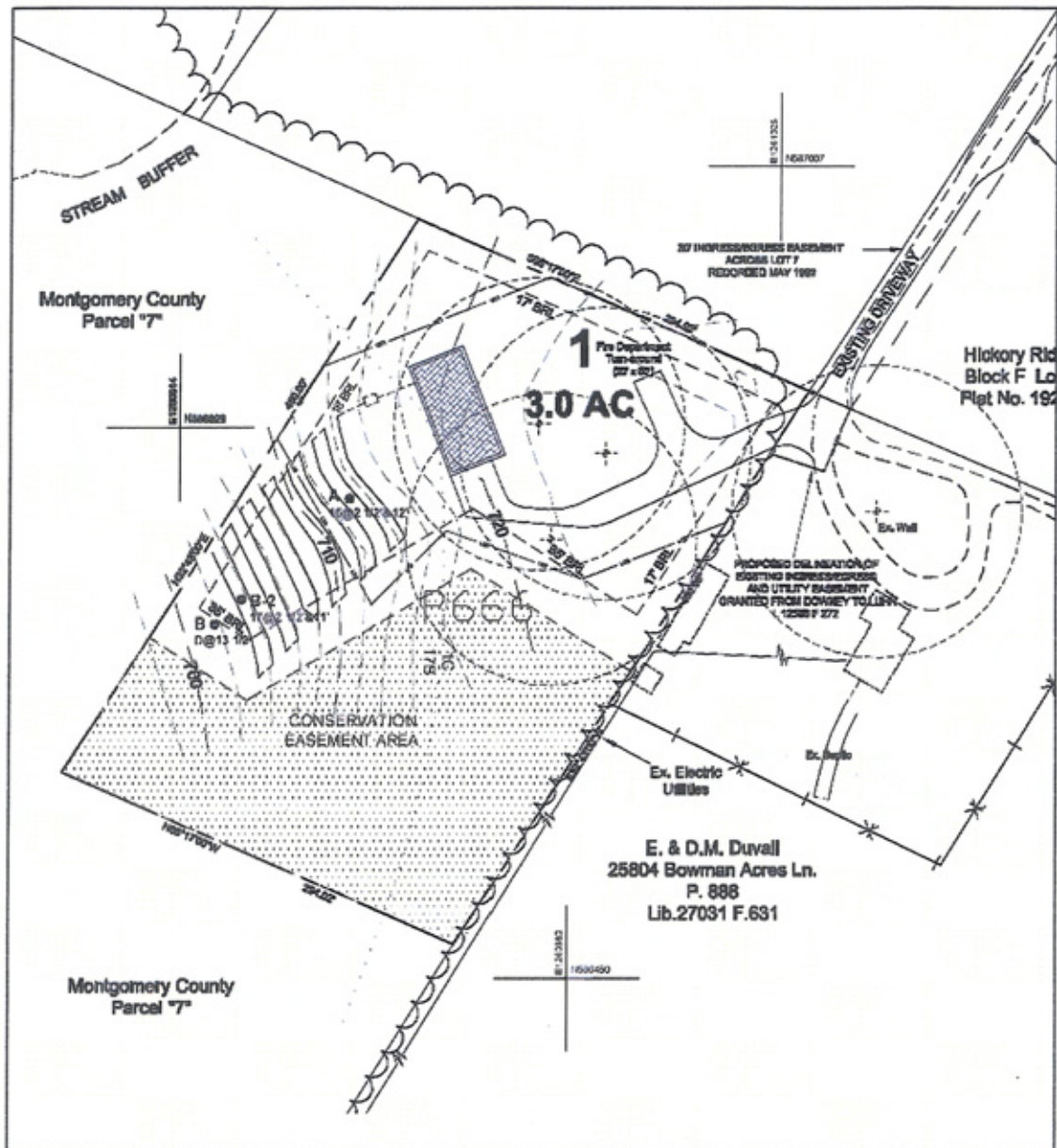


Figure 2: Preliminary Plan

ANALYSIS AND FINDINGS

Exempted Lots and Parcels – RC Zone

The application is exempt from the dimensional requirements of the RC zone (5 acre net lot minimum) but complies with the standards of the RE-2 zone, which were in place at the time the parcel was created. The applicant proposes to record the parcel as 1 lot according to the RE-2 zoning standards. This is permissible under Section 59-C-9.73(b)(2) of Chapter 59, the Zoning Ordinance, which states:

- (a) *The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Cluster zone or Low Density Rural Cluster zone:*

* * *

(2) A lot created by deed executed on or before the approval date of the most recent sectional map amendment or local map amendment that included the lot.

In this case, the most recent sectional map amendment rezoned the Property from RE-2 to RC in 1982. The boundaries of the site have not changed since the deed was executed in 1966 and, therefore, the application is eligible to be recorded per this provision of the Zoning Ordinance.

Lot without frontage

Section 50-29(a)(2) of Chapter 50, the Subdivision Regulations requires all lots to abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. This section of the regulations also states that in exceptional circumstances, the Board may approve not more than (2) lots on a private driveway or private right-of-way provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities and is accessible for other public services and not detrimental to future subdivision of adjacent lands.

This lot requests the creation of a lot with no street frontage. The applicant, in his justification, argues that the Subject Property is land-locked and thus an exceptional circumstance exists in that the only access to the site is via a private lane in an easement through the adjacent property to the east. Furthermore, the applicant states that the driveway access to the site is free and clear of any obstructions and is suitable for the installation of underground utilities and for emergency vehicle access with the additional pull-off and turnaround improvements. Staff and Montgomery County Fire and Rescue concur that access is adequate to serve the lots for emergency vehicles and installation of the necessary utilities.

With the addition of the Subject Property, two lots will now be served by the private driveway. Parcel 888 directly east of the site contains only one main structure but many accessory structures, therefore, the 2 lot limitation will not be exceeded by this subdivision. Any future subdivision of Parcel 888 will be accommodated by extending Woodfield School Road, which is currently stubbed at the boundary of Parcel 888. This situation is depicted in Figure 3 below. Access to MNCPPC park property to the south and the open space area to the north will be unaffected by the new lot.

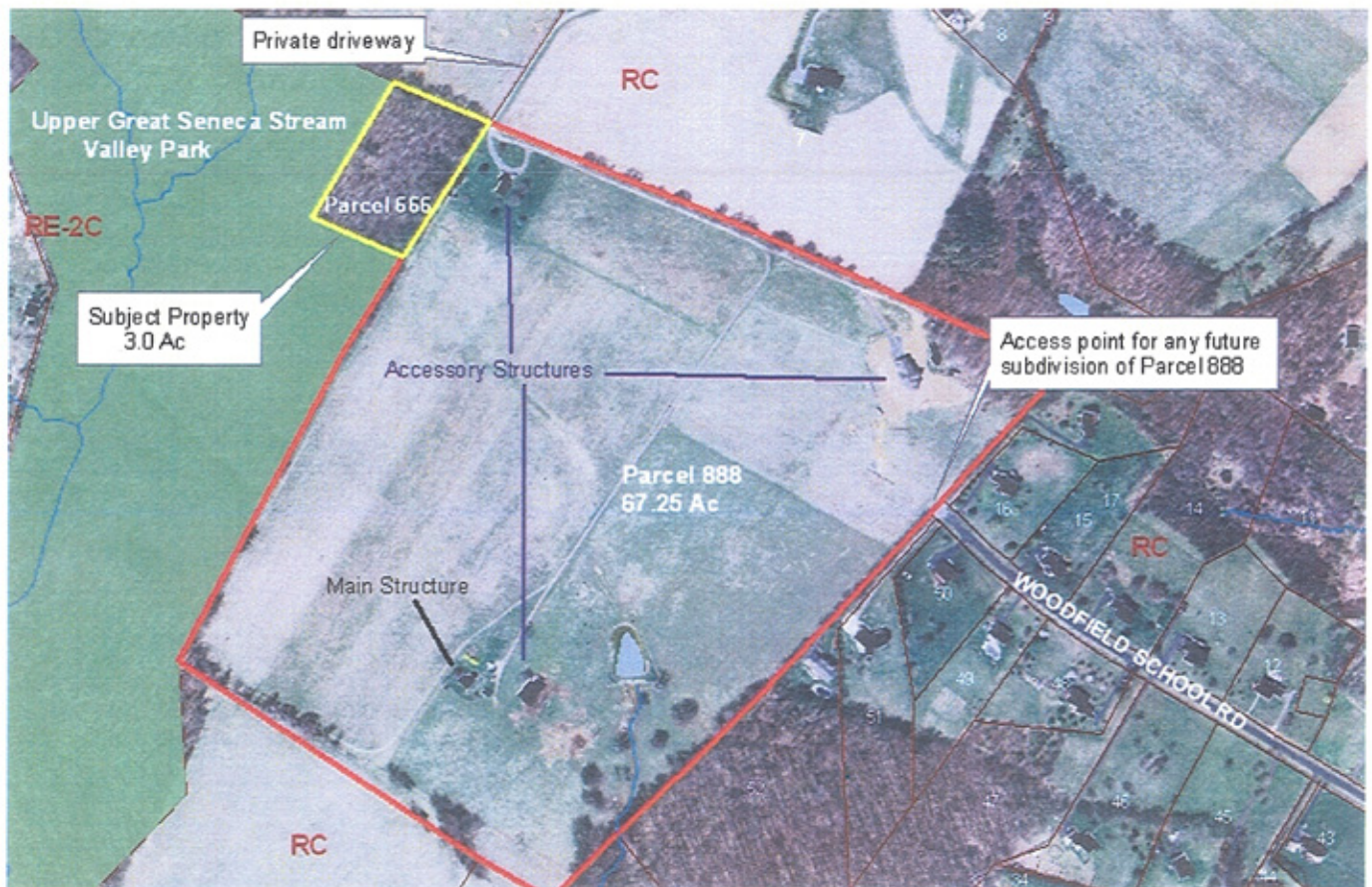


Figure 3: Access Map

Substantial Master Plan Conformance

The 2006 Approved and Adopted Damascus Master Plan does not specifically identify the Subject Property but does make general recommendations regarding zoning and land use for the Rural Transition Area in which the site is located. The Rural Transition Area assists in the transition from 1 dwelling unit per 25 acres zoning in the Agricultural Reserve east of the Property to 1 dwelling unit per acre zoning to the west. For the Rural Transition Area, the plan recommends a mix of low-density residential and agricultural uses at a density of 1 dwelling unit per 5 acres. The plan does recognize, however, that 1 dwelling unit per 2 acre zoning does exist in this area as a result of older subdivisions. The preliminary plan application substantially conforms to the Damascus Master Plan in that low-density residential development is proposed without infringing on existing agricultural uses in the immediate area.

Public Facilities

Roads and Transportation Facilities

Since the proposed lot does not have frontage on a public street, right-of-way dedication for a public road is not necessary, nor can a sidewalk along the property frontage be required. However, proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed private improvements. The addition of one new lot generates less than 3 new

peak-hour vehicle trips, so the application is not subject to either Local Area Transportation or Policy Area Mobility reviews.

Other Public Facilities and Services

The proposed lot will be served by a private, standard septic system and well. The 30-foot wide ingress/egress easement is proposed to be re-recorded as an ingress/egress and utility easement to accommodate the installation of electrical and telecommunication services to serve a new dwelling unit. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access because the application includes providing a pull-off area off-site, within the 30-foot wide ingress/egress easement as well as a T-turnaround on-site. Area schools are operating at adequate levels; therefore, the Subject Property is not within a school moratorium area and no facilities payment is required. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Gas, electrical and telecommunications services are also available to serve the lots.

Environment

Environmental Guidelines

There are no environmentally sensitive features on-site. The application fully complies with the Montgomery County Environmental Guidelines.

Forest Conservation

The Subject Property is fully forested, containing 3.0 acres of forest. The applicant proposes to retain 1.20 acres and clear 1.80 acres of existing forest. This plan meets the break-even point, where no reforestation is required. The submitted forest conservation plan complies with the Montgomery County Forest Conservation Law. All retained forest will be protected in a Category I easement located on the Property.

There are no specimen trees on-site but there are 2 large or specimen trees just off-site, neither of which will be disturbed by this proposed development. Under State Bill #666 "No Net Loss of Forest Policy" a variance is not required because no specimen trees are proposed to be removed.

Stormwater Management

The stormwater management concept for this application was approved by the MCDPS Stormwater Management Section on May 29, 2009. The concept consists of on-site water quality control and groundwater recharge via drywells and disconnection practices. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections including the

justification for a finding in favor of a lot without public street frontage as discussed above. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lot was reviewed for compliance with the dimensional requirements for the applicable RE-2 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

A pre-submission meeting was held by the applicant to discuss this application, as required, on March 4, 2008. The applicant notified adjacent and confronting property owners and applicable citizen associations of the plan submission on June 2, 2008. As of the date of this report, no community concerns have been brought to the attention of MNCPPC staff.

CONCLUSION

The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and complies with the recommendations of the 2006 Approved and Adopted Damascus 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 – Applicant’s Justification for Waiver
Attachment B – Agency Correspondence

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Luhn Property				
Plan Number: 120080390				
Zoning: RC (exempt from RC but subject to RE-2)				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Standard, Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	2.0 ac	3.0 ac is min. proposed	EG	10/23/09
Lot Width	150 ft.	282 ft. is min. proposed	EG	10/23/09
Lot Frontage	25 ft.	Waiver request	EG	10/23/09
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	EG	10/23/09
Side	17 ft. Min./35 ft. total	Must meet minimum ¹	EG	10/23/09
Rear	35 ft. Min.	Must meet minimum ¹	EG	10/23/09
Height	50 ft. Max.	May not exceed maximum ¹	EG	10/23/09
Max Resid'l d.u. or Comm'l s.f. per Zoning	1 unit	1 unit	EG	10/23/09
Lot Coverage	25% Max.		EG	10/23/09
TDRs	No		EG	10/23/09
Site Plan Req'd?	No		EG	10/23/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Waiver request	EG		10/23/09
Road dedication and frontage improvements	N/a	Agency letter		7/15/08
Environmental Guidelines	Yes	Staff memo		10/16/09
Forest Conservation	Yes	Staff memo		10/16/09
Master Plan Compliance	Yes	Staff memo		10/16/09
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Agency letter		5/29/08
Water and Sewer (WSSC)	N/a	Agency comments		7/14/08
10-yr Water and Sewer Plan Compliance	N/a	Agency comments		7/14/08
Well and Septic	Yes	Agency letter		9/25/09
Local Area Traffic Review	N/a	Staff memo		7/14/08
Policy Area Mobility Review	N/a	Staff memo		7/14/08
Transportation Management Agreement	No	Staff memo		7/14/08
School Cluster in Moratorium?	No	EG		10/23/09
School Facilities Payment	No	EG		10/23/09
Fire and Rescue	Yes	Agency letter		8/14/09
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.

5/19/08

LUHN PROPERTY: Request for Waiver of Street Frontage Requirement

Section 50-29(a)(2) of the Subdivision Regulations requires all lots to "abut on a street or road which has been dedicated to public use". However, the Regulations go on to say "in exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands". The subject property as currently configured is a "land-locked" property with access only by means of a private lane through an adjacent property. The private lane currently exists to provide access to an adjacent home at 25804 Bowman Acres Lane. An existing easement encompassing the driveway from Bowman Acres Lane provides legal access to 25804 Bowman Acres Lane and the subject property.

Currently, driveway access to the site is free and clear of any obstructions for a width of more than 20 feet. Our plan for the subject site proposes an improvement to the end of the existing private driveway to allow emergency equipment to turn around. Also, there is suitable space within the easement area for underground utilities (electric, communications) to be located within the easement. Since there is no potential to bring a public road to the site, there is no effect on any future subdivision potential for adjacent properties. Furthermore, the adjacent properties include parkland and a large farm with access and frontage along Hawkins Creamery Road.

For the above stated reasons, a waiver from the street frontage requirement is requested for the one proposed lot on the Luhn Property.

Signature: DM (David W. McKee)

Date: 5/19/08



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

May 29, 2008

Carla Reid Joyner
Director

Mr. David McKee
Benning & Associates, Inc.
8933 Shady Grove Court
Gaithersburg, MD 20877

Re: Stormwater Management **CONCEPT** Request
for Luhn Property
Preliminary Plan #: TBA
SM File #: 233675
Tract Size/Zone: 3.00 ac./RC
Total Concept Area: 3.00 ac.
Lots/Block:
Parcel(s):
Watershed: Great Seneca Creek

Dear Mr. McKee:

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 groundwater recharge via dry wells and disconnection practices. 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 **conditions** 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.

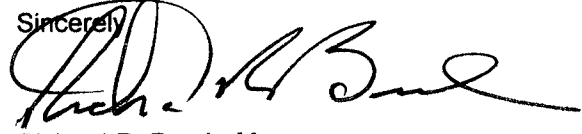
This list may not be all-inclusive and may change based on available information at the time.

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 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 Blair Lough at 240-777-6335.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Brush". The signature is fluid and cursive, with the first name "Richard" being more prominent.

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

RRB:dm bll

cc: C. Conlon
S. Federline
SM File # 233675

QN -not required; Acres: 3.0
QL - on-site; Acres: 3.0
Recharge is provided



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

July 15, 2008

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 #1-20080390
Luhn Property

Dear Ms. Conlon:

We have completed our review of the preliminary plan signed on 05/29/08. This plan was reviewed by the Development Review Committee at its meeting on July 14, 2008. 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. Please note DOT access policy typically allows no more than four (4) lots to be served by a common driveway.
2. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
3. 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. Also homeowners' documents to establish each driveway user's (property owner's) rights & responsibilities with respect to use, maintenance, & liability of the common driveway.

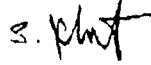
Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at sam.farhadi@montgomerycountymd.gov or (240) 777-6000.

Division of Traffic Engineering and Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
Customer Service 240-777-6000 • Main Office 240-777-2190 • 240-777-6013 TTY • 240-777-2080 FAX
trafficops@montgomerycountymd.gov

Ms. Catherine Conlon
Preliminary Plan No. 1-20080390
Date July 15, 2008
Page 2

Sincerely,



Sam Farhadi, P.E.
Development Review Group
Traffic Engineering and Operations Division

m:/subdivision/farhas01/preliminary plans/ 1-20080390. Luhn Property.doc

Enclosures ()

cc: George Magas
David McKee, Benning & Associates
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Henry Emery; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck, DOT DTEO
Preliminary Plan Folder
Preliminary Plans Note Book



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

MEMORANDUM

September 25, 2009

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

FROM: Carla Reid, Director
Department of Permitting Services

SUBJECT: Status of Preliminary Plan: # 120080390,

Luhn Property, Lot 1

This is to notify you that the Well & Septic Section of MCDPS approved the plan received in this office on September 4, 2009.

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.

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

cc:

Surveyor
File