



Ashton Property - Preliminary Plan No. 120110050

RAW

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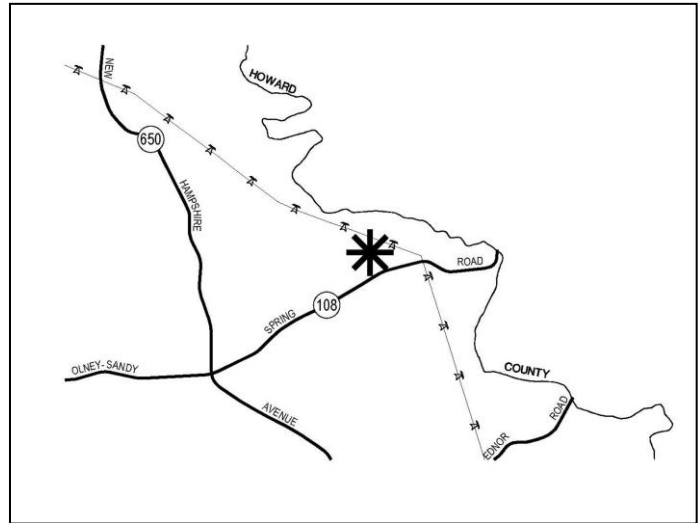
Description

A request for subdivision to create five (5) lots for four (4) new, one family detached residential units and one (1) existing detached unit; located on the north side of Ashton Road (MD 108), approximately 3,250 feet east of the intersection with Mink Hollow Road; RC zone; 28.58 acres in the Sandy Spring/Ashton Master Plan area.

Applicant: Gladys B. Brigham Rev. Trust, Jorge Palmerio & Manuel Palmerio

Application Date: November 6, 2010

Review Basis: Chapter 50 and Chapter 22A, Montgomery County Code



Summary

Staff Recommendation: Approval with conditions.

- This application is a request to create five lots using the optional, cluster method of development in the Rural Cluster zone.
- The property is subject to a private non-development easement which has been considered and accommodated by this application review.
- The preliminary plan places at least 60% of the property in a Category I conservation easement in accordance with the cluster method of development.
- A waiver of the requirement to build a section of bike path is requested.
- There are no outstanding issues that need to be resolved, and there has been no public opposition to this application.

RECOMMENDATION

Approval subject to the following conditions:

1. Approval under this preliminary plan is limited to five (5) lots.
2. The Applicant must comply with the Preliminary Forest Conservation Plan approved as part of this preliminary plan, subject to the following conditions:
 - a. Prior to issuance of a sediment and erosion control permit, the Applicant must secure approval of a final forest conservation plan that is consistent with the approved preliminary forest conservation plan.
 - b. The final forest conservation plan must include twenty-one (21) native canopy trees each with a minimum 3 inch diameter at breast height (DBH) (or native canopy trees with a 64-inch cumulative DBH, individual trees with a minimum size of 3 inches DBH) as mitigation for the loss of specimen trees.
 - c. The record plat(s) must reflect a Category I conservation easement over all areas of forest retention and environmental buffers. M-NCPPC's standard Category I conservation easement document shall be modified to allow for maintenance of the existing gravel access road that is to remain within the easement area as shown on the preliminary plan. Widening or improvements to the gravel driveway must first be reviewed and approved by M-NCPPC.
 - d. The record plat must contain a note referencing the existing gravel driveway within the conservation easement and that it may be maintained in its current condition in accordance with the modified Category I easement.
 - e. The Category I conservation easements must be recorded in the land records prior to the initiation of clearing and grading and the liber and folio reference for the Category I easement must be referenced on the record plat.
 - f. Inspections must occur consistent with Section 22A.00.01.10 of the Forest Conservation Regulations.
 - g. The final sediment control plan's limits of disturbance must be consistent with final limits of disturbance as shown on the final forest conservation plan as approved by M-NCPPC staff.
 - h. The Applicant must install permanent signage along the perimeter of the Category I conservation easements.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in a letter dated December 22, 2010 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with recommendations as set forth in the letter which may be amended by MCDOT, provided the amendment does not conflict with other conditions of the Preliminary Plan approval.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Water Resources Section in a letter dated March 7, 2011 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with recommendations as set forth in the letter which may be amended by MCDPS, provided the amendment does not conflict with other conditions of the Preliminary Plan approval.
5. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Well and Septic Section in a letter dated August

21, 2012 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with recommendations as set forth in the letter which may be amended by MCDPS, provided the amendment does not conflict with other conditions of the Preliminary Plan approval.

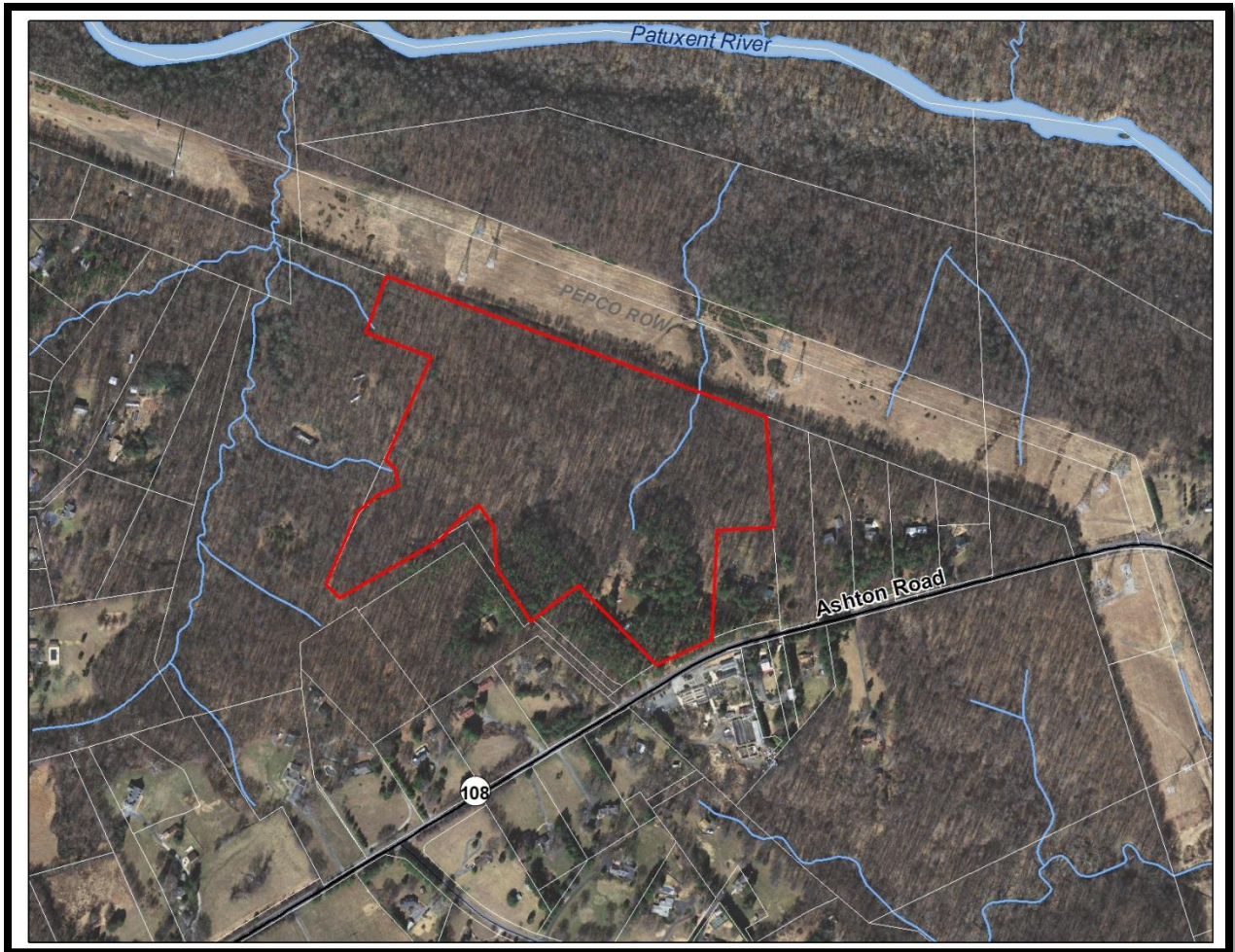
6. The Planning Board has accepted the recommendations of the Maryland State Highway Administration (“MDSHA”) in a letter dated February 12, 2007 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with recommendations as set forth in the letter which may be amended by MDSHA, provided the amendment does not conflict with other conditions of the Preliminary Plan approval.
7. Prior to issuance of access permits MDSHA, the Applicant must comply with the provisions for access and improvements required by MDSHA.
8. The Planning Board has accepted the recommendations of the Montgomery County Department of Fire and Rescue Services (“MCFRS”) in a letter dated December 5, 2011 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with recommendations as set forth in the letter which may be amended by MCFRS, provided the amendment does not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must dedicate the road right-of-way in accordance with the Sandy Spring – Ashton Master Plan and as shown on the Certified Preliminary Plan. The dedicated area must be shown on the record plat(s).
10. Prior to recordation of the initial record plat, the Applicant must make a pro rata contribution towards the MCDOT CIP Project No. 507596, Annual Bikeway Program for the recommended 8 foot wide shared use path along the Property frontage with Ashton Road.
11. The record plat must show a common ingress/egress/utility easement for the shared driveway.
12. The record plat must identify any area that is under Homeowners Association ownership.
13. The record plat must reflect the easement area required for the MCFRS water storage cistern.
14. The record plat must contain the following note: “The land contained herein is within an approved cluster development and further subdivision or resubdivision is not permitted after the Property is developed.”
15. The following note must be shown on the Certified Preliminary Plan: “Unless specifically noted on this plan drawing or as a condition of the preliminary plan approval, the building footprints and driveways shown on this plan drawing are illustrative. The final location of these features will be determined at the time of building permit.”
16. The Adequate Public Facilities Review for this preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
17. The record plat must reference all other necessary easements.

SITE DESCRIPTION

The subject property is 28.58 acres in size and is located on the north side of Ashton Road (MD 108), approximately 3,250 feet east of the intersection with Mink Hollow Road, in the Sandy Spring/Ashton Master Plan area, (“Property” or “Subject Property”). The zoning of the Property is Rural Cluster, RC. The Property generally sits on the side of gently sloping hill that drops in elevation from Ashton Road, down to the Patuxent River to the north. Two small streams have their headwaters near the northern and western Property boundaries, both of which flow directly north into the Patuxent. A small ridge divides these two streams. The Property is almost completely forested, except for a small clearing around the existing dwelling located in the southernmost portion of the Property. In general, evergreen

trees dominate the southern portion of the Property along Ashton Road, with deciduous trees in the center and north.

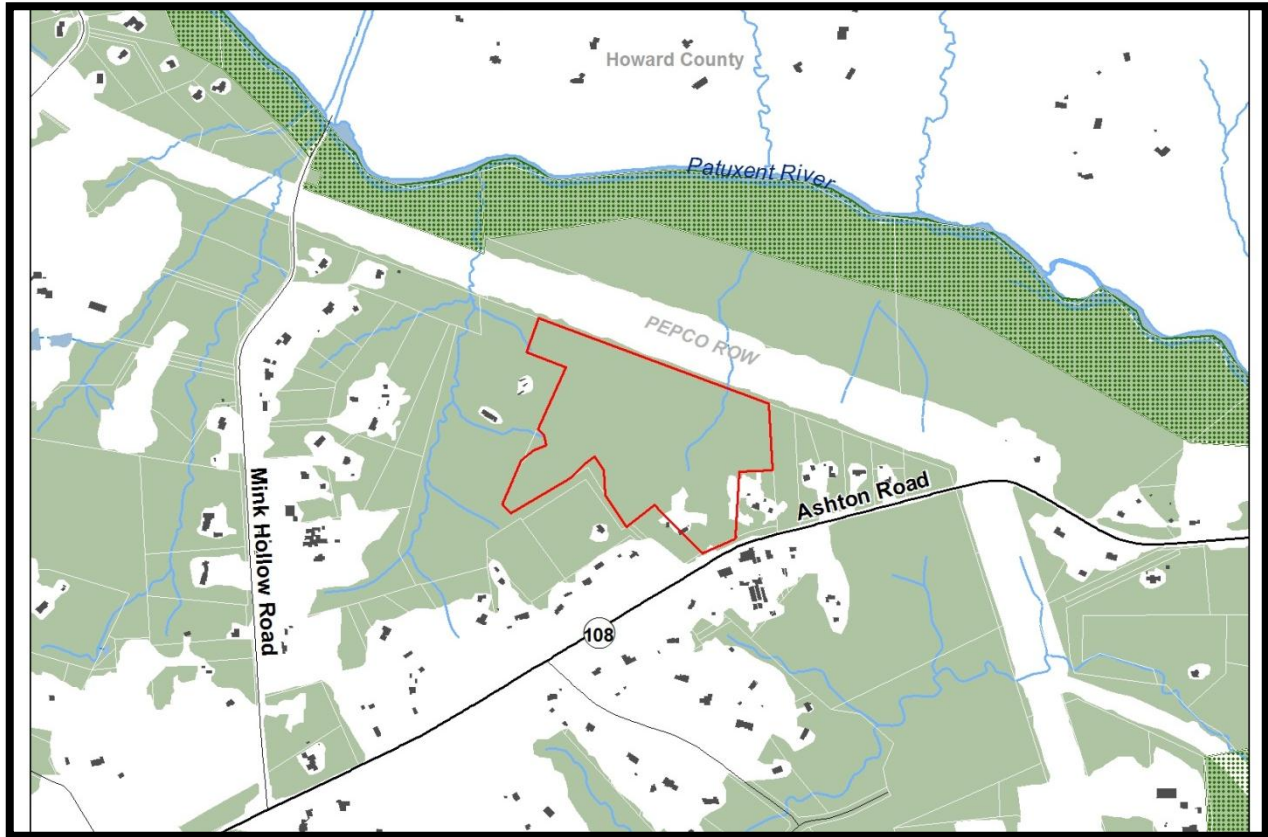
Aerial Photo



One-family detached homes, also located in RC zoning, are found along both sides of Ashton Road in the vicinity of the Subject Property. Many of these dwellings are on lots and unplatted parcels near two acres in size. Larger properties in the 25 to 30 acre range are also located in this vicinity and are likely used for agricultural purposes. Generally, the surrounding residential lots are well forested. Directly across Ashton Road from the Subject Property is a landscaping and retail nursery business. The northern boundary of the Property is established with by a PEPCO right of way, with high voltage electrical transmission lines.

The Property is within the Lower Patuxent watershed which is designated as a Use IV-P stream system. There are areas of steep slopes near the headwaters of the two streams that begin on site with the associated stream valley buffers extending further into the Property.

Vicinity Map



PROJECT DESCRIPTION

Preliminary Plan No. 120110050 (“Application” or “Preliminary Plan” or “Plan”) requests five lots to accommodate four new, one family detached dwellings and one existing, one family detached dwelling on the Subject Property. The Property is comprised of a part of Parcel 400 and Parcel 250 shown on Tax Map JT563. The lots will range in size from 2.2 acres to 3.9 acres in size. The lot for the existing dwelling will by necessity be located with frontage on Ashton Road and the house will continue to use the existing driveway. The four other lots will be clustered along the northern and eastern portion of the Property and will share a common driveway. Three of these four lots will have pipestems to provide them with the required frontage to Ashton Road, which is an arterial, master plan highway. The configuration of the lots will ultimately allow the one existing and two proposed homes to front on to Ashton Road, with two homes located further off Ashton Road and generally shielded from views along Ashton Road. The requirements of the RC zone cluster development option is to generally limit development to 40 percent of a site and to protect a minimum of 60 percent of a site as open space.

Rendered Preliminary Plan



A 13.73 acre outlet, (Outlot A) is proposed. The boundaries of this outlet follow a private non-development easement that the Brigham family had agreed to establish with an adjacent property owner. Outlot A is included in the largest open space area “Open Space A” totaling 14.23 acres. The Plan also shows an “Open Space Area B” at 3.90 acres and “Open Space Area C” at 0.41 acres. Together, the three open space areas total 18.54 acres which is 65.21 percent of the net tract area after 0.17 acres of dedication for the Ashton Road right-of-way. The open space areas shown on the plan are required to meet the 60 percent open space requirements for the RC zone optional, cluster method of development. Open Space Area A also contains an existing gravel driveway used by PEPCO to access the aforementioned power lines to the north of the Property. This gravel drive will remain in place but will have limitations placed on it regarding maintenance and improvements. Water and sewer do not extend to this area therefore; the dwellings will be on well and septic.

ANALYSIS AND FINDINGS

Conformance to the Master Plan

The Preliminary Plan is in conformance with the Sandy Spring – Ashton Master Plan, (“Master Plan”). The Property is located in the *Rural/Open Space Area* as defined by the Master Plan which recommends a “low-density land use pattern to protect farmland and other rural open space.” The Master Plan acknowledges that this area is not within the critical mass of farm land, such as that found in the Olney area. The Master Plan envisions the continuation of small farms with some residential development. The Master Plan also does not recommend that public sewer be extended into the Rural/Open Space Area and does not recommend that the density be any lower than one unit per five acres. Further, the Master Plan recognizes that the use of the clustering provision can provide for 60 percent of a property to remain available for farming, private recreation, or other uses allowed in the Rural Cluster zone.

The Master Plan also recommends that MD 108 maintain its rural character. Widening beyond two lanes except to provide a third turning lane, is discouraged. An on-road, signed bike path is recommended in the Master Plan for Ashton Road, but this was superseded by the Countywide Bikeway Functional Master Plan to require a shared use, off road bike path. (see below)

The Preliminary Plan proposes a low density development of one family detached homes and preservation of open space in conformance with the RC zoning recommended by the Master Plan. The open space will be available for private recreation and will be placed in conservation easements to protect the Property’s forest resource. The Preliminary Plan also dedicates additional right-of-way (40 feet from centerline) for Ashton Road (MD 108) in conformance with the Master Plan recommendations but does not require widening beyond the two lane cross section.

Countywide Bikeways Functional Master Plan

The dedicated right-of-way provides for the eventual construction of a Class I, shared use path (SP-37) recommended by the Countywide Bikeway Functional Master Plan. This shared use path is planned to be 8 feet wide along the north side of Ashton Road and will provide a regional connection from the Howard County line to the center of Ashton and beyond. The functional bikeway plan envisions that the path will be built as development occurs along its path or as part of a Capital project.

At this time, there is no section of this shared use path currently built or required to be built by a developer within the 2.5 mile section of Ashton Road extending from Ashton to the Howard County line. The Applicant has submitted a subdivision waiver request citing practical difficulties and unusual circumstances which prevent full compliance with the Regulations. The Applicant seeks relief from the requirement to construct the shared use path along the Property’s 400 feet of frontage and has proffered to instead contribute a pro rate share of the shared use path construction cost toward the MCDOT, CIP Project No. 507596, Annual Bikeway Program to serve the public interest.

Adequate Public Facilities

Roads, Transportation and Pedestrian Facilities

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours, therefore; the Application is not subject to a Local Area Transportation Review. The Policy Area Mobility

Requirement (PAMR) guidelines for the Patuxent policy area require no mitigation of any new peak hour trips. The Application satisfies LATR and PAMR requirements.

The Application provides for adequate and safe access. The existing driveway access point and the proposed, shared driveway have both been analyzed for safe sight distance and meet all MDSHA requirements. The design of the driveway aprons on to Ashton Road meet MDSHA design standards.

The Plan proposes to dedicate 0.17 acres of land for the Ashton Road right of way in conformance with the Master Plan. The dedication will accommodate a suitable area within the right-of-way along the Property frontage for the Class I shared use path (SP-37). The shared use path is typically a frontage requirement that a developer must construct pursuant to Section 50-23(b) of the Subdivision Regulations. As stated previously, the Applicant has submitted a subdivision waiver request to forego construction of the path and contribute toward a Capital Improvement Program project that uses developer funds to build other pedestrian and bikeway paths. If the waiver request is approved by the Planning Board, the limited amount of pedestrian activity generated by this 5 lot subdivision can be safely accommodated within the site by use of the driveways and the private open space. There are no local schools or other public facilities within a reasonable walking distance that would otherwise benefit from the construction of the short segment of the bike path along the Property frontage. Staff does not support construction of the bike path at this time.



Subject Property frontage is to the left of the roadway

Subdivision Regulations Waiver Request

The Applicant has submitted a subdivision waiver request pursuant to Section 50-38 of the Subdivision Regulations. Section 50-38 authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent an Applicant from fully complying with the requirements of Chapter 50. The waiver must be: the minimum necessary to provide relief from the requirement; not inconsistent with the objectives of the General Plan; and not adverse to the public interest.

The Applicant's request cites practical difficulties and unusual circumstances that essentially prevent full compliance with Section 50-24(b) of the Regulations. This section requires developers to make reasonable improvements to existing roads on which the proposed lots front, as necessary to serve the needs of the subdivision. This includes the provision of sidewalks. For this Application, the Applicant seeks relief from constructing approximately 400 feet of the regional, shared use path along the Property frontage as it is identified in the Countywide Bikeways Functional Master Plan (SP-37).

As evidenced from the preceding image in this report, the frontage along the Property is vegetated, and this vegetation for the most part will remain after the development of this subdivision. This roadside character is consistent with most of the properties along the length of Ashton Road from New Hampshire Avenue to the Howard County line. Other notable characteristics of the roadway are open fields, fenced pasture and low density residential homes on large lots. Because there are currently no other sections of this bike path constructed or slated for construction along this 2.5 mile length of Ashton Road, the Applicant suggests that building this one isolated section of bike path would be practical difficulty in that it is adverse to the public interest both visually and from a safety perspective. The clearing of roadside trees for a small section of this regional pathway would create a frontage that appears very different from the vast majority of other properties. For some time well into the future, this would be the only sidewalk on Ashton Road, east of New Hampshire Avenue to the Howard County line and would tend to diminish the rural character of this small section of roadway.

More important is that construction of this segment of path would create a hazardous situation that places a user of the path in a precarious situation at each end where the pavement ends. At these locations, there is nowhere to continue and no safe access back on to the pavement of Ashton Road which is a rural highway with 50 mile per hour travel speeds and very little shoulder. The Applicant contends that this is a regional path way and that it should be constructed and designed comprehensively as a complete connection or at a minimum, built in sections that connect to safe destinations. To require construction of a short segment with no destination or safe points of termination is adverse to the public interest and to public safety. Additionally, if the path was built, it might be many years if not decades before it is connected to other segments or completed as a Capital Project given the low density of the area. At that time, it is probable that any section built along this Property's frontage would need to be replaced in its entirety due to normal deterioration.

To serve the public interest, the Applicant proffers to contribute on a pro-rata basis for the path construction toward the County, Annual Bikeway Program, CIP Project (No. 507596). The funds collected under this program are used to build bike paths that serve a more immediate purpose within the County, including other pathways identified in the Countywide Bikeway Functional Master Plan.

Staff finds that there are practical difficulties and unusual circumstances that prevent this Applicant from fully complying with Chapter 50. An isolated segment of bike path along the limited frontage provided by the Subject Property would tend to create an unsafe situation and would serve no useful purpose as only a portion of a regional bike path connection. There are no destination points on, or near the Property for which a small section of bike path would serve any immediate useful purpose. The waiver is the minimum required to provide relief from the requirement to provide this frontage improvement. The Applicant is dedicating the necessary right-of-way required by the Master Plan so that the path can be built in the future. The waiver is not adverse to the public interest and there is some validity to the argument that construction of this length of bike path would tend to be adverse to the public interest. The public interest is best served by the Applicant's proffer to contribute to the County's CIP Bikeway Program and this has been incorporated as a condition of approval with the consent of the Applicant.

Other Public Facilities and Services

Staff finds that all other public facilities and services are available and will be adequate to serve the proposed and existing dwelling units. The lots will be served by approved on site well and septic. All utilities, including Verizon and PEPCO have indicated that local service is available and adequate for the

proposed units. The Department of Fire and Rescue Services have reviewed the Application and have approved it for fire and emergency apparatus access. An easement will be established for a water supply cistern to be placed at the driveway entrance. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policies in effect. The Property is not within a school cluster that is in moratorium or otherwise limited and is therefore, not subject to a School Facilities Payment.

Environment

Stormwater Management

A Stormwater Management concept was approved by the Department of Permitting Services on March 7th, 2011. Stormwater management for the proposed lots includes the use of dry wells to catch all rooftop runoff. Non-rooftop disconnections are proposed for paved areas with gentle slopes, and flat bottom grass swales with gabion enhancements are proposed for more steeply sloping paved areas.

Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) # 420101040 for this property was approved on September 9th 2010. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Property has 25.49 acres of forest on site which is 89% of the total site. There are 236 trees identified on the NRI/FSD, 52 trees were identified as specimen trees which are either 30 inches and greater diameter at breast height (DBH) or greater than 75% the size of the Champion tree for that species. An additional 184 trees between 24 inches and 30 inches DBH are located on the Property. The site generally drains to the north, into two small tributaries that flow directly into the Patuxent River. The headwaters of both tributaries have areas of stream valley buffer that extend onto the site. Areas of steep slopes are also found near the two stream heads, continuing further into the Property than the identified stream channel areas.

The Property is located in the Lower Patuxent watershed which is designated as a Use IV-P stream system, and a portion of the Property is located within the Patuxent River Primary Management Area (PMA). The PMA includes the area within 1,320 feet of the mainstem of the Patuxent and Hawlings Rivers, and 660 feet of all tributaries. The land area in the PMA that is not within the environmental buffer is managed as a *transition area*. The PMA guidelines recommend that the impervious area within the transition area not exceed ten percent. The impervious area proposed within the transition area on this Property is five percent. The PMA guidelines also recommend a minimum 300-foot septic setback requirement from the Patuxent and Hawlings mainstems and a minimum 200-foot septic setback requirement from all other watershed tributaries. The locations of the septic systems for this project comply with the recommended minimum setback requirements. This Plan is in compliance with the Montgomery County Environmental Guidelines including the Patuxent River PMA Guidelines.

Forest Conservation

There are 25.49 acres of forest on site. The Preliminary Forest Conservation Plan (PFCP) proposes to clear 8.35 acres of forest for construction of the proposed dwellings; however, a portion of the forest counted as cleared is outside of the proposed limits of disturbance and will only be cleared in the future if necessary for use of the septic reserve areas. This forest must be counted as cleared since it cannot be protected in a Category I conservation easement. The remaining 17.14 acres of forest on site is proposed to be protected in a Category I conservation easement. The Category I conservation easement

will also include an additional 0.32 acres of land that is an unforested gravel road. This existing road traverses through the forest and serves as access from MD Route 108 to the PEPCO right of way and is set to remain on site. In total, the Category I conservation easement will include 17.46 acres of land, including 1.75 acres of forested stream valley buffer and the gravel road. The proposal generates a 2.09 acre reforestation requirement for clearing above the conservation threshold; however it provides a credit of 10.00 acres for retention of forest above the conservation threshold. Therefore, no reforestation or afforestation is required.

Since this Plan proposes to utilize the optional, cluster method of development it must comply with Section 22A-12(f) of the Montgomery County code. This section of the code requires developments utilizing an optional method of development to either retain or plant a certain percentage of the net tract area in forest on site. For this particular plan, 25 percent of the net tract, or 7.15 acres of forest must be in retained. As discussed, the PFCP will retain 17.14 acres of forest and it will all be protected in a Category I conservation easement. The preliminary forest conservation plan submitted satisfies the requirements of 22A-12(f) of the Montgomery County code.

Forest Conservation Variance

Section 22A-12(b)(3) of the County code requires applicants to identify certain trees, shrubs, plants, and specific areas as priority for retention and protection. This section of the code requires those areas to be left in an undisturbed condition unless the applicant obtains a variance in accordance with Chapter 22A-21 of the County code. More specifically, the vegetation to remain undisturbed includes:

A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*

- (1) *The federal Endangered Species Act of 1973,*
- (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
- (3) *COMAR 08.03.08;*

B. *Trees that:*

- (1) *Are part of an historic site,*
- (2) *Are associated with an historic structure, or*
- (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*

C. *Any tree having a diameter measured at 4.5 feet above the ground of:*

- (1) *30 inches or more, or*
- (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

Under Chapter 22A-21 of the County Code, a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant for a variance must:

- (1) Describe the special conditions specific to the property that would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules might deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and

(4) Provide any other information appropriate to support the request.

The Applicant submitted a variance request in a letter dated June 23, 2011 (Attachment B) requesting removal of twenty-six (26) trees that are 30 inches and greater, DBH, and to impact, but not remove, six (6) others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Trees to be removed*

Tree #	Species/Condition	DBH (Inches)	Reason for Impact
1	White Pine/Fair-Good	35	Shared driveway entrance
4	White Pine/Good	34	Shared driveway entrance
6	White Pine/Good	30	Shared driveway entrance
18	White Pine/Good	31	Shared driveway and Lot 3 well
20	White Pine/Good	36	Shared driveway
23	White Pine/Good	30	Lot 4 driveway
24	White Pine/Good	30	Shared driveway
29	Tuliptree/Good	36	Lot 4 grading
30	Tuliptree/Good	30	Lot 4 grading
38	Tuliptree/Good	31	Lot 3 house/grading
42	Tuliptree/Fair-Poor	30	Lot 3 grading
49	White Pine/Fair	30	Shared driveway
54	Tuliptree/Good	34	Septic for Lot 5
96	Tuliptree/Good	30	Lot 4 septic field
97	Tuliptree/Good	30	Lot 4 septic field
99	Tuliptree/Fair	30	Lot 4 septic
105	White Pine/Good	30	Lot 3 septic
106	White Pine/Fair	31	Lot 3 septic
113	White Pine/Good	31	Lot 3 septic reserve
118	White Pine/Good	34	Lot 3 septic
196	Pignut Hickory/Poor	38	Shared driveway & Lot 3 septic reserve
200	Tuliptree/Good-Fair	34	Shared driveway

203	Tuliptree/Good	39	Shared driveway
224	Tuliptree/Good	34	Lot 1 grading
226	Tuliptree/Good	32	Lot 1 septic/septic reserve
235	Tuliptree/Fair	34	Lot 2 driveway/grading/house

***The applicant's variance request included two additional trees to be removed; however, these two trees (#50 and #119) were determined to be dead so a variance is not required**

Trees to be affected but retained

Tree #	Species/Condition	DBH (Inches)	CRZ Impact	Reason for Impact
66	Tuliptree/Good	31	20%*	Future Septic Lot 5
68	Tuliptree/Good	30	8%*	Future Septic Lot 5
82	White Pine/Poor	33	32%*	Future Septic Lot 5
91	Tuliptree/Good	34	17%	Grading Lot 4
182	Tuliptree/Good	31	9%	Shared driveway
193	Tuliptree/Good	30 & 42	35%	Shared driveway

***Impact amount is an estimation of potential future impacts**

Unwarranted Hardship Basis

There are twenty-six (26) specimen trees on the Property that will need to be removed and six (6) specimen trees that will be impacted as part of site construction. Approximately 90% of the subject property is forested and much of the remaining acreage contains areas of tree cover. There are 236 specimen trees scattered throughout the forest and the property. The property contains additional features that dictate the area available for development including two areas of environmental buffer that protect tributaries to the Patuxent River that originate on site, an existing, privately held non-development easement, an existing gravel road that provides access to the adjacent PEPCO right of way to remain, an existing house to be retained, and the need for septic fields and reserve areas for each of the proposed lots. Given the number and location of the existing specimen trees on the Property, it is not possible to develop this site and totally avoid impacts to specimen trees. These existing conditions and development requirements including stormwater management have limited the ability to avoid removal and impact to specimen trees. Staff has reviewed the Applicant's justification and based on the existing conditions on the Property, finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings

The Planning Board must make findings that the Applicant has met all requirements of this Chapter 22A-21 before granting the variance. Staff has made the following determination on the required findings:

1. Will not confer on the applicant a special privilege that would be denied to other applicants;

Granting the variance will not confer a special privilege on the Applicant as disturbance to the specified trees are due to the development of the site. The land is zoned for residential use and the project has been planned to meet all applicable requirements for zoning and forest conservation. The 28.58-acre property is almost entirely forested, and contains numerous large trees located throughout the property. These trees and their critical root zones lie within the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. The proposed development activities that result in the impacts to trees subject to the variance requirement are within the existing developed area of the site. Staff has determined that the removal and impacts to the trees subject to the variance requirement cannot be avoided. Therefore, staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant;

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The Applicant has prepared and submitted plans which meet all applicable zoning, septic, and forest conservation requirements. The requested variance is based upon existing site conditions, including the number and locations of the large trees.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The requested variance is a result of the existing and proposed site design and layout on the Subject Property, and not as a result of land or building use on a neighboring property.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan has been approved by the Montgomery County Department of Permitting Services and the project complies with all of the recommendations identified in the Environmental Guidelines for the Patuxent River Primary Management Area.

Mitigation for Trees Subject to the Variance Provisions – Eighteen (18) trees proposed for removal in this variance request are located within the existing forest and their removal is accounted for in the forest clearing calculations. Staff does not recommend additional mitigation for the removal of trees that are accounted for in the forest clearing calculations. Eight (8) trees proposed for removal are located outside of the existing forest and their removal is not included in the forest clearing calculations. Staff

recommends mitigation at a rate that approximates the form and function of the trees removed. Therefore, staff is recommending that replacement occur at a ratio of approximately 1" DBH (Diameter at Breast Height) for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 256 caliper inches of trees removed, they will be mitigated by the applicant with twenty-one (21) native canopy trees with a minimum size of 3" DBH on the site. While these trees will not be as large as the trees lost, they will provide some immediate canopy and ultimately replace the canopy lost by the removal of these trees. There is some disturbance within the critical root zones of six trees; however, they will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on August 8, 2011. On August 18, 2011, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation. (Attachment B)

Staff recommends that the variance be granted and finds that the Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code.

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. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision. The cluster development meets the Master Plan goals to provide low density residential development while protecting open space, forest and environmentally sensitive areas. Further, the lots are designed in such a way to meet all other requirements of the Subdivision Regulations, including access, frontage, dedication for public uses, adequacy of public facilities and conformance to Master Plan recommendations. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application.

The lots were reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. This finding is detailed in Table 1 below.

Table 1: Preliminary Plan Data Table

PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan
Minimum Lot Area	40,000 sq. ft.	95,382 sq. ft. minimum
Lot Width	125 ft.	155 ft. minimum
Lot Frontage	25 ft.	25 ft. minimum
Setbacks		
Front	50 ft. Min.	Must meet minimum ¹
Side	17/35 ft. Min./total	Must meet minimum ¹
Rear	35ft. Min.	Must meet minimum ¹
Height	50 ft. Max.	May not exceed maximum ¹
Maximum Residential Dwelling Units	5 lots	5 lots
MPDUs	N/A	
TDRs	N/A	
Site Plan Required	No	

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

CITIZEN CORRESPONDENCE AND ISSUES

This Application was submitted and noticed in accordance with all Planning Board adopted procedures. The pre-submission meeting was held at the Ross Boddy Community Center located at 18529 Brooke Road, Sandy Spring, MD on June 30th, 2010 at 7:00pm. Eleven people signed in at the meeting. Elizabeth Brigham, owner of parcel 350 to the east of the proposed subdivision raised concern over an existing fence and the location of existing survey markers along her border. Steven Kanstaroom, co-owner with Susan Mize of Lot 12 to the west of the site had questions regarding how the proposed right of way dedication may impact an unrecorded deed conveying a portion of the property to him and inquired about the timeline for the subdivision process. The minutes of the meeting provided by the Applicant indicate that all inquiries made at the public meeting were addressed at the time of the meeting. No other citizen comments have been received by staff to date.

CONCLUSION

Staff concludes that the Application has been properly submitted, reviewed and noticed in accordance with adopted procedures. The Application meets all applicable sections of the Subdivision Regulations including adequacy of public facilities, appropriateness of the lots’ size, width, shape and orientation, protection of environmentally sensitive areas and conformance to the master plan. The Plan complies with Chapter 22A, the forest conservation law and a tree variance is supported. The lots meet all zoning standards established for the RC zone. With the conditions proposed and approval of the requested waiver for the bikepath, Staff recommends approval of the Application.

Attachments:

A) Agency Approvals

B) Forest Conservation documents

C) Waiver request

Attachment A

Agency Letters



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

March 7, 2011

Mr. Pearce Wroe
Macris, Hendricks & Glascock, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request
for Ashton / Snowden's 3rd Addition to His Manor
Preliminary Plan #: 120110050
SM File #: 238123
Tract Size/Zone: 29.08 acres / RC
Total Concept Area: 5.44 acres
Lots/Block: NA
Parcel(s): P250
Watershed: Lower Patuxent River

Dear Mr. Wroe:

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 stormwater management via ESD practices which include Dry Wells and an Engineered Channel.

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 filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Stormwater management will not be required for the existing house at this time since there are no proposed changes to the structure. If structural changes are proposed in the future, stormwater management may be required.
6. The proposed common driveway must be constructed and graded as shown on the approved stormwater management concept plan, and an as-built plan must be submitted for review and approval after it has been submitted. Construction of the common driveway and approval of the as-built must precede construction on any of the new lots.
7. As partial compensation of the required ESD volume for the driveway, Lots 1-4 as shown on the approved stormwater management concept plan must provide ESD volume treatment of 2.6 inches of rainfall. This treatment volume requirement may not be reduced.

8. Per the proposal in the stormwater management concept package, a homeowner's association must be "established to maintain the driveway and the associated stormwater facility". This area must be placed within and covered by a stormwater management easement and maintenance covenant that reflects this maintenance responsibility.

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 Mark Etheridge at 240-777-6338.

Sincerely,



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

RRB:tlm mce

cc: C. Conlon
M. Pfefferle
SM File # 238123

QN -ON; Acres: 5.44
QL - ON; Acres: 5.44
Recharge is provided



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

MEMORANDUM

August 21, 2012

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

FROM: Diane R. Schwartz Jones, Director
Department of Permitting Services *Diane R. Jones*

SUBJECT: Status of Preliminary Plan: #120110050, "Ashton", Lots 1-5

This is to notify you that the Well & Septic Section of MCDPS has approved the plan received in this office on August 20, 2012.

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
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



FIRE MARSHAL COMMENTS

DATE: 05-Dec-11
TO: David Crowe
Macris, Hendricks & Glascock
FROM: Marie LaBaw
RE: Ashton
7-20070100 120110050

Montgomery County
RECEIVED

★ DEC 12 2011 ★

Planning Department

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **05-Dec-11**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

**** Approval of altered cistern location ****



August 13, 2010

TRANSPORTATION STATEMENT

Ms. Catherine Conlon
Development Review Division
M-NCPPC/Silver Spring
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Ashton, Parcels 250 & 400
MHG Project No. 06-124

Dear Ms. Conlon:

In support of the application for the referenced property, we are providing the following traffic statement.

Local Area Transportation Review:

The proposed development will generate 5 AM peak-hour trips and 6 PM peak hour trips based on the formulas and rates contained in the 2004 Local Area Transportation Review Guidelines.

Residential Use:
Single Family Detached:
AM: 5 D.U.'s @ 0.95 trips per unit = 5 Trips
PM: 5 D.U.'s @ 1.11 trips per unit = 6 Trips

If you have any questions or need any additional information, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Crowe", written over a large, loopy flourish.

David A. Crowe



Isiah Leggett
County Executive

DEPARTMENT OF PERMITTING SERVICES
ZONING
December 20, 2010

Carla Reid
Director

Project Name: Ashton
Preliminary Plan #: 120110050
Site Plan #: N/A
Applicant: Gladys Brigham / Jorge & Manuel Palmeiro
Engineer: Macris, Hendricks, & Glascock, P.A.
Zone: RC
Number of Lots (Acres): 5 Lots (29.08 Acres)
Zoning Reviewer: Mark Beall

The DPS Site Plan Enforcement Inspector is responsible for ensuring that the terms and conditions of the Certified Site Plan Agreement are met. They sign off on Use and Occupancy Certificates and have the authority to trigger the release of performance bonds.

Development Standards on Submitted Plan(s):

Standard	Required	Proposed
Front:	50'	50'
Rear:	35'	35'
Sides:	17' & 35' total	17' & 35' total
Height:	50'	50'
Building Coverage:	10%	10%
FAR	N/A	N/A

- Plan(s) meets zoning requirements.
- Plan(s) meets zoning requirements, but see comments below.
- Plan(s) do not meet zoning requirements. See comments below.

Comments:

***Note**-When applying for a building permit please identify both the BRL approved on the certified site plan and the dimensions from the structure to the property lines on all four sides.

Mark Beall: (240) 777-6298 or Laura Bradshaw: (240)777-6296
255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850-4166.



Martin O'Malley, Governor |
Anthony Brown, Lt. Governor

State Highway Administration

John D. Porcari, Secretary Designate
Neil J. Pedersen, Administrator

Maryland Department of Transportation

February 12, 2007

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

Re: Montgomery County
Ashton
File # 7-20070100
MD 108
Mile Post: 18.15

Dear Ms. Conlon:

The State Highway Administration (SHA) appreciates the opportunity to review the pre-preliminary application for the proposed 5-lot residential development. We offer the following comments:

- Only one (1) use-in-common entrance will be permitted on MD 108.
- The submission of sight distance evaluation on SHA worksheets is required. The worksheet must be sealed, signed and certified by a professional engineer.
- The applicant must apply to SHA's District #3 Utilities Office 301-513-7350 for the required residential access permit.
- Right-of-way dedications must be in accordance with the Master Plan of Highways. SHA will require that the right-of-way dedications be platted using SHA standards. These plats must be submitted in hard copy format for review and final issuance. Please contact Mr. Daniel Andrews at 410-545-8975 or dandrews@sha.state.md.us for additional information.

If you have any questions, please contact Raymond Burns at 410-545-5592 or our toll free number in Maryland only 1-800-876-4742.

Very truly yours,

for

Steven D. Foster, Chief
Engineering Access Permits Division

SDF/rbb

cc: Ms. Debbie Tolbert / 3300 Olney-Sandy Spring Road, Olney, Maryland 20832
MHG, PA / 9220 Wightman Road, Suite 120, Montgomery Village, MD 20886
Mr. Shahriar Etemadi / M-NCPPC
Mr. Sam Farhadi / MCDPWT
Mr. Jeff Wentz sent via e-mail
Ms. Kate Mazzara sent via e-mail
Mr. Augustine Rebish sent via e-mail

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com



Sight Distance Measurement and Evaluation Worksheet

LEFT (North) _____ RIGHT (South)

MD RTE 108

SITE - Ex ENTRANCE (1070 ASHTON RD)

INTERSECTION SIGHT DISTANCE	MEASUREMENT (ft)	
	LEFT	RIGHT
• 3.5' object placed at proposed access	495'	550' +
• 3.5' driver's eye height on approaching lane		
STOPPING SIGHT DISTANCE	MEASUREMENT (ft)	
• 20' object placed at proposed access	LEFT	RIGHT
• 3.5' driver's eye height on approaching lane	485'	550' +

Evaluation

Posted Speed = 40 mph
 Design Speed = Posted Speed + 10 mph = 50 mph (EAPD Policy)

Intersection Sight Distance (ISD):

Turning Movement	State Standard ISD Requirement Based on Design Speed	Reduced ISD Requirement Based on Posted Speed *
Left Turn from Site Access	555'	445'
Left Turn into Site Access	555'	445'
Right Turn from Site Access	480'	385'

*Substandard condition meeting this requirement may be acceptable upon consideration of site specific traffic and safety conditions, feasibility constraints, etc. Mitigation may be required for any substandard condition.

Stopping Sight Distance (SSD):
 SSD Required for the Design Speed: 425 ft

Results

Sight Distance Measurement and Evaluation Worksheet

LEFT (North) RIGHT (South)

MO RTE 108

SITE: Ex. Drive #1 - Westwood Forest DriveWAY

INTERSECTION SIGHT DISTANCE	MEASUREMENT (ft)	
	LEFT	RIGHT
• 3.5' object placed at proposed access	600' +	600' +
• 3.5' driver's eye height on approaching lane	600' +	600' +
STOPPING SIGHT DISTANCE	MEASUREMENT (ft)	
• 2.0' object placed at proposed access	LEFT	RIGHT
• 3.5' driver's eye height on approaching lane	600' +	600' +

Evaluation

Posted Speed = 40 mph
 Design Speed = Posted Speed + 10 mph = 50 mph (EAPD Policy)

Intersection Sight Distance (ISD):

Turning Movement	State Standard ISD Requirement Based on Design Speed	Reduced ISD Requirement Based on Posted Speed *
Left Turn from Site Access	555'	445'
Left Turn into Site Access	555'	445'
Right Turn from Site Access	480'	385'

* Substandard condition meeting this requirement may be acceptable upon consideration of site specific traffic and safety conditions, feasibility constraints, etc. Mitigation may be required for any substandard condition.

Stopping Sight Distance (SSD):
 SSD Required for the Design Speed: 425 ft

Results

ISD & SSD ARE ACCEPTABLE FOR BOTH APPROACHES

Sight Distance Measurement and Evaluation Worksheet

LEFT (North) _____ RIGHT (South)

MD RTE 108

DRIVE #2

SITE - PROPOSED BELLAIR DRIVEWAY

INTERSECTION SIGHT DISTANCE	MEASUREMENT (ft)	
	LEFT	RIGHT
• 3.5' object placed at proposed access	420'	600' +
• 3.5' driver's eye height on approaching lane		
STOPPING SIGHT DISTANCE	MEASUREMENT (ft)	
• 2.0' object placed at proposed access	LEFT	RIGHT
• 3.5' driver's eye height on approaching lane	380'	600' +

Evaluation

Posted Speed = 40 mph
 Design Speed = Posted Speed + 10 mph = 50 mph (EAPD Policy)

Intersection Sight Distance (ISD):

Turning Movement	State Standard ISD Requirement Based on Design Speed	Reduced ISD Requirement Based on Posted Speed *
Left Turn from Site Access	555'	445'
Left Turn into Site Access	555'	445'
Right Turn from Site Access	480'	385'

*Substandard condition meeting this requirement may be acceptable upon consideration of site specific traffic and safety conditions, feasibility constraints, etc. Mitigation may be required for any substandard condition.

Stopping Sight Distance (SSD):
 SSD Required for the Design Speed: 425 ft

Results

ISD & SSD ARE NOT ACCEPTABLE FOR LEFT TURN MOVEMENT
ISD & SSD ARE ACCEPTABLE FOR RIGHT TURN MOVEMENT



June 23, 2011

Mr. Mark Pfefferle, Chief
Regulatory Coordination Division
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Md. 20910-3760

Re: Preliminary Plan of Subdivision #120110050 -Ashton Properties
Revised Request for Forest Conservation Variance
MHG Project No. 06.124

Dear Mr. Pfefferle:

Macris Hendricks and Glascock, on behalf of its clients, the Brigham Revocable Trust (as to Parcel P250) and Jorge Palmeiro and Manuel Palmeiro (as to Parcel P400), hereby requests a variance pursuant to Section 22A-21 of Chapter 22A of the Montgomery County Code, 2004, as amended (the "County Code") in connection with the coordinated review of the above referenced Preliminary Plan of Subdivision and the Final Forest Conservation Plan for the Ashton Properties. This variance request is required pursuant to Section 5-1607(c) and Section 5-1611 of the Natural Resources Article of the Maryland Annotated Code as amended by Chapter 298 (HB 666) of the laws of Maryland 2009 ("State Law"). This request is submitted to secure approval of the removal or disturbance of certain identified trees that are considered priority for retention and protection under State and County law.

Enforcement of the requirements of State Law and Chapter 22A of the County Code prohibiting the disturbance of the identified trees would result in unwarranted hardship to these applicants for subdivision approval. In order for the Planning Board to grant a variance under Chapter 22A of the County Code an applicant is required by Section 22A-21(b) to:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance; and
- (4) provide any other information appropriate to support the request.

A. The special conditions that are peculiar to the Subject Property that would cause the unwarranted hardship are described as follows:

Development of the Subject Property is restricted by the presence of two streams with adjacent stream valley buffers and erodible soils that limit the area of the property that is suitable for development. These restrictive physical conditions are peculiar to the Subject Property and they fall within the class of special, unique conditions that result in an unwarranted hardship to the property owners seeking to develop the Subject Property in accordance with its zoning classification and the land use recommendations of the master plan. The requested variances will alleviate the unwarranted hardship and enable the owners to develop a modest five lot subdivision that preserves 17.69 of the 25.97 acres of forest.

Thirty-four trees are affected by the proposed development, twenty-eight of which are to be removed. Four of the twenty-eight trees slated for removal are either in poor condition or dead. Twenty of the twenty-eight trees for which removal variances are requested are located in proximity to Ashton Road (MD RT 108) along the entrance drive that will serve four of the five lots proposed by this application. Twelve of those trees are white pines, clustered in a White Pine stand. Four of the trees for which a removal variance is requested will in fact remain but must be counted as removed because they are within future septic or septic reserve areas that may be installed in the event of a future septic system failure.

Six other trees that will remain will be disturbed by construction activities and even though most of the disturbance will be very minor all trees that will be disturbed will receive stress reduction measures as determined appropriate by a certified arborist.

In order to save as much of the largest contiguous forest on the site as possible, lots 3 and 4 have been positioned to take maximum advantage of the three non-forested acres.

B. Enforcement of Chapter 22A restrictions would deprive the landowner of rights commonly enjoyed by other applicants for cluster development under the RC Zone in other areas.

Section 22A-21 of the County Code authorizes the Planning Board to grant variances from the strict application of Chapter 22A and the regulations that implement the County's forest conservation requirements if the applicant for the variance demonstrates that special conditions peculiar to the property would cause unwarranted hardship to the landowner. Unwarranted hardship is demonstrated when strict enforcement of the forest conservation laws and regulations would deprive the landowner of rights commonly enjoyed by others developing under the cluster option in areas classified in the RC Zone.

The Subject Property is classified in the RC (Rural Cluster) Zone. The RC Zone is intended to provide for low-density residential development in designated areas in the County in order to promote and protect scenic and environmentally sensitive areas. Development under the cluster option in the RC Zone requires that at least 60 percent of the property be reserved for open space in order to accomplish that purpose.

The physical characteristics, shape and topography of the Subject Property restrict the areas suitable for cluster development outside of the primary forested area, an environmentally sensitive part of the Subject Property. The proposed lot layout for the clustered lots has been designed to protect the significant contiguous forested open space and forest canopy. In order to accomplish that environmental objective and to limit ingress and egress to the clustered lots, twenty eight (28) individual trees, the majority of which are located within the area of disturbance required to construct a Code compliant driveway, must be removed.

If the landowner is not permitted to remove the twenty-eight trees and establish a single access to the clustered lots, the Subject Property can not be developed under the cluster method for which the RC Zone was established. Without the requested variances permitting the removal of these trees, the landowner would be unable to simultaneously protect the property's primary environmental feature – the existing contiguous forest - and develop the proposed low density cluster of single family homes. The physical features described are peculiar to the Subject Property and would result in unwarranted hardship if the variances were not granted.

The fifth lot is already improved with a single family home that is not proposed for further development. Although variances are requested for three trees on the fifth lot, those trees are not proposed to be removed or impacted by the proposed development.

C. State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variances.

A Stormwater Management Concept Plan has been prepared for the Subject Property and submitted for approval. As part of that concept plan we determined that the facilities proposed to manage storm water using environmental site design techniques to the maximum extent practicable will meet the state water quality standards. State water quality standards will not be violated by the grant of the requested variances and no measurable degradation in water quality will occur as a result of granting the variances. A copy of the A Stormwater Management Concept Plan submittal is included.

D. Other information that supports the requested variances:

Granting the requested variances **will not** (1) confer on the applicant a special privilege that would be denied to other applicants; (2) **is not** based on conditions or circumstances that result from any actions by the applicant; (3) **is not** based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and (4) **will not** violate State water quality standards or cause measurable degradation in water quality.

The design of this proposed subdivision accommodates an existing single family dwelling that will remain on the fifth lot, a portion of which will be protected in the future by a Category I Forest Conservation Easement. That Category I easement, coupled with a private "non disturbance easement" that compliments the Category I Easement protect the larger contiguous forest on the site.

A copy of the Preliminary Forest Conservation Plan along with a Tree Variance Detail Table has been provided as part of this variance request. The proposed removal of the twenty-eight protected trees and the disturbance of the other six trees for which variances are requested are indicated both on the plan and on the detail table.

Please contact me via email, at fjohnson@mhgpa.com, or by phone, at (301) 670-0840 should you require any additional information or have any additional comments or concerns.

Very truly yours,



Frank Johnson

Tree Variance Detail Table

Tree ID #	Impact/Count as Removed	% Impacted	Condition	Reason for Impact	Why cannot be avoided
1	Count as Removed	100%	Fair/Good	Shared driveway Entrance	*
4	Count as Removed	100%	Good	Shared driveway Entrance	*
6	Count as Removed	50%	Good	Shared driveway Entrance	*
96	Count as Removed	45%	Good	lot 4 septic	#
30	Count as Removed	100%	Good	lot 4 house	**
97	Count as Removed	44%	Good	lot 4 septic	#
29	Count as Removed	100%	Good	lot 4 house	**
23	Count as Removed	100%	Good	lot 4 driveway	**
24	Count as Removed	100%	Good	shared driveway	*
18	Count as Removed	100%	Good	shared driveway & lot 3 well	*
38	Count as Removed	100%	Good	lot 3 house	**
42	Count as Removed	100%	Good	lot 3 house	**
118	Count as Removed	100%	Fair/Poor	lot 3 house	**
119	Count as Removed	100%	Good	lot 3 septic	#
105	Count as Removed	100%	Dead	lot 3 septic	#
106	Count as Removed	100%	Good	lot 3 septic	#
99	Count as Removed	100%	Fair	lot 3 septic	#
20	Count as Removed	68%	Fair	lot 4 septic	**
49	Count as Removed	100%	Good	shared driveway	*
50	Count as Removed	100%	Fair	shared driveway	*
200	Count as Removed	100%	Dead	shared driveway	*
203	Count as Removed	100%	Good/Fair	shared driveway	*
235	Count as Removed	100%	Good	shared driveway	*
224	Count as Removed	100%	Fair	lot 2 driveway & house	**
113	Count as Removed	100%	Good	lot 1 house	**
54	Count as Removed	none	Good	lot 3 septic reserve	#
196	Count as Removed	none	Good	existing septic lot 5	existing septic
226	Count as Removed	16%	Poor	shared driveway & lot 3 septic reserve	* #
91	Count as Removed	32%	Good	lot 1 septic/ septic reserve	#
82	Impact Only	17%	Good	Off-site lot 4 house impacts	**
68	Impact Only	none	Poor	lot 5 existing septic	existing septic
66	Impact Only	none	Good	lot 5 existing septic	existing septic
182	Impact Only	none	Good	lot 5 existing septic	existing septic
193	Impact Only	9%	Good	shared driveway	*
	Impact Only	35%	Good	shared driveway	*

* Shared driveway enters property where site distance for property was approved. Per Fire Department requirements the common drive is 20' wide with a 25' wide turning radius at the entrance. Per SWM requirements the private common drive is required to be an open section with flat bottom side ditches. The common drive follows the existing road until it reaches the existing 'Private Non-Development Easement' (NDE) minimizing tree removal and maximizing forest saved areas.

** House and individual driveway locations were a result of building restriction lines, the location of the common drive, the location of the septic system, spacing for wells, topography, and spacing for drywells.

Septic systems were designed per successful septic tests and existing topography

Attachment B

Forest Conservation Documents



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

August 18, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Ashton Parcels 400 and 250 - Revised, DAIC 120110050, NRI/FSD application accepted on 12/21/2009

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.
2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

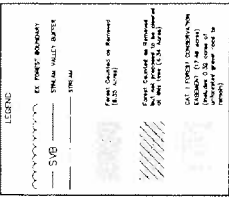
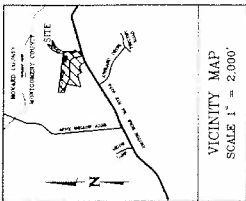
If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief



THESE PLANS WERE PREPARED BY THE ENGINEER AND ARCHITECT FOR THE PURPOSE OF OBTAINING A PERMIT FROM THE MONTGOMERY COUNTY DEPARTMENT OF PUBLIC WORKS. THE ENGINEER AND ARCHITECT ARE NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR FOR THE RESULTS OF ANY INVESTIGATION OR ANALYSIS CONDUCTED BY THE CLIENT OR ANY OTHER PARTY. THE ENGINEER AND ARCHITECT ARE NOT RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF ANY SEPTIC SYSTEM OR FOR THE PERFORMANCE OF ANY SEPTIC SYSTEM. THE ENGINEER AND ARCHITECT ARE NOT RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF ANY SEPTIC SYSTEM OR FOR THE PERFORMANCE OF ANY SEPTIC SYSTEM.

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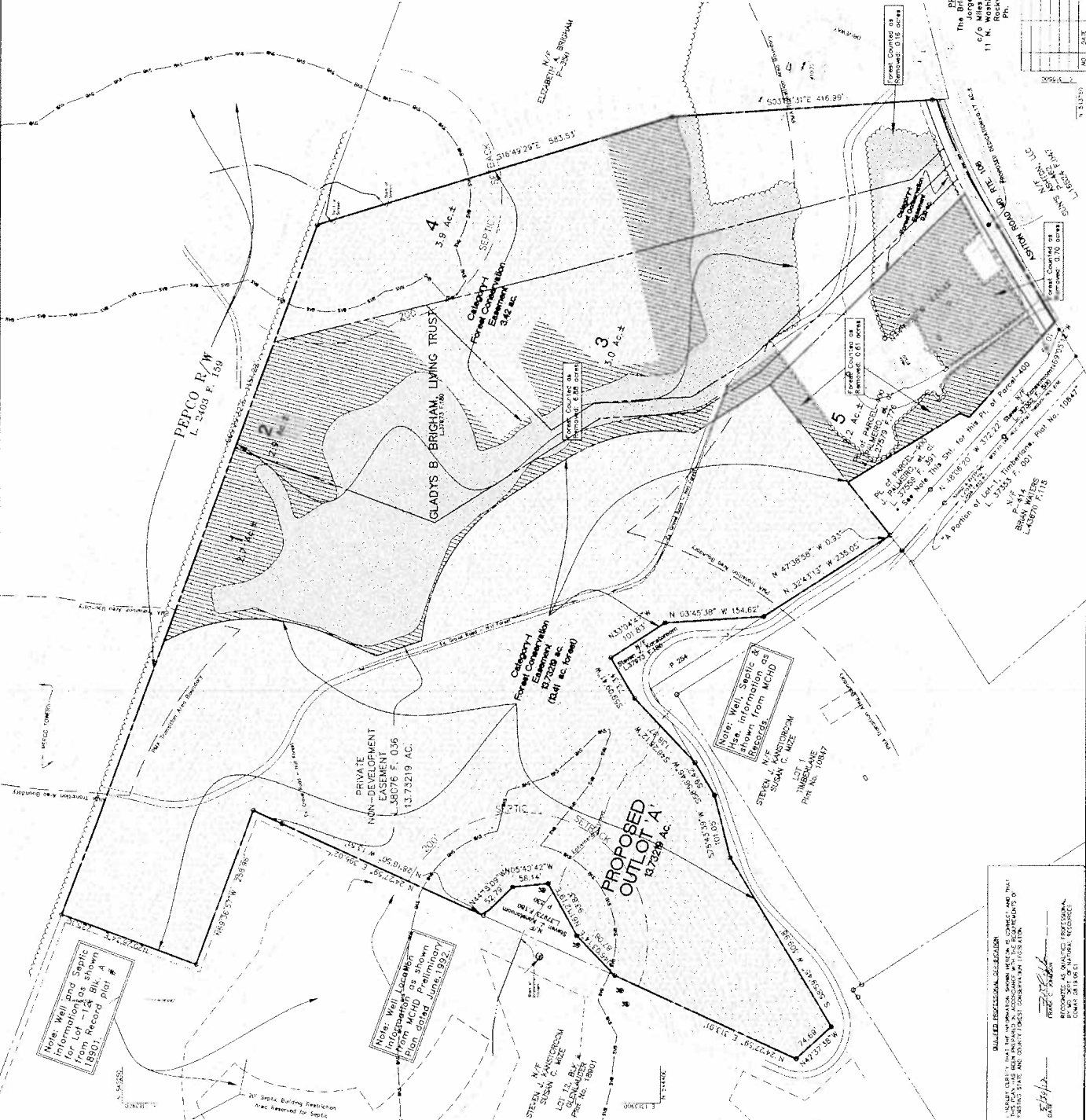
DATE: 08/28/2014

PRELIMINARY FOREST CONSERVATION PLAN
 FOREST COUNTED AS REMOVED/FOREST SAVED

ASHTON
 P250 & PI. P400 L. 37873 F. 180 & L. 27579 F. 776
 8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

DATE	DESCRIPTION
08/28/2014	PRELIMINARY FOREST CONSERVATION PLAN
08/28/2014	FOREST COUNTED AS REMOVED/FOREST SAVED
08/28/2014	ASHTON
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MHG
 Michael, Haskins & Glasscock, P.A.
 Engineers, Planners & Surveyors
 20000 Rockville Pike, Suite 300
 Rockville, MD 20850
 Tel: 301-762-1600
 Fax: 301-762-1600
 www.mhgpa.com



PREPARED FOR:
 The Brigham Trust & Mr.
 Jorge Palomero et al
 c/o Washington Surveyors, Inc.
 11 N. Rockville, Md. 20850
 Ph. 301-762-1600

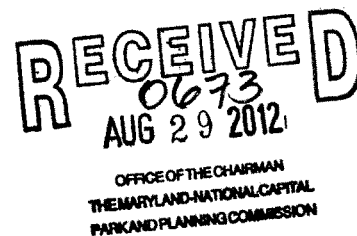
NO.	DATE	DESCRIPTION
1	08/28/2014	PRELIMINARY FOREST CONSERVATION PLAN

QUALIFIED PROFESSIONAL CERTIFICATION
 I, the undersigned, being a duly licensed Professional Engineer, do hereby certify that I am a duly licensed Professional Engineer in the State of Maryland and that I am duly qualified to prepare and seal these plans and that I am duly qualified to prepare and seal these plans and that I am duly qualified to prepare and seal these plans.

Attachment C

Waiver Letter

MILES & STOCKBRIDGE P.C.



Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

Casey L. Cirner
301-517-4817
ccirner@milesstockbridge.com

August 29, 2012

VIA ELECTRONIC MAIL

Mrs. Françoise Carrier, Chair
Members of the Planning Board
Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Shared Use Path Waiver Request**
Preliminary Plan No. 120110050 – Ashton
Parcels P250, Ashton Road & P400 (1020 Ashton Road) (the “Properties”)

Dear Chairwoman Carrier and Members of the Board:

On behalf of Paul Kolanowski, Trustee for the Estate of Gladys B. Brigham and the Gladys B. Brigham Revocable Trust (collectively “Brigham”) and Jorge Palmeiro and Manuel G. Palmeiro (collectively “Palmeiro”) we hereby request, pursuant to Section 50-38(a)(1) of the Montgomery County Code, a variation of the requirement to construct a shared use path along the frontage of the Properties. As an alternative to construction of the Shared Use Path, the Applicants propose to pay a fee in lieu of their pro rata share of the construction of the Shared Use Path along the site frontage of the Properties. In support of this request, the Applicants state as follows:

I. BACKGROUND

The Properties that are the subject of the Preliminary Plan front on Maryland Route 108. The Countywide Bikeways Functional Master Plan recommends that Shared Use Path SP-37 be constructed along the north side of Maryland Route 108 from Layhill Road to the Howard County line. This recommendation was reiterated by both the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) and the Montgomery County Department of Transportation (“DOT”) recommended the construction of Shared Use Path SP37 during their review of the Preliminary Plan. See the Transportation Planning of the M-NCPPC December 20, 2011 memorandum and DOT letter dated December 22, 2010.

II. THE PLANNING BOARD HAS AUTHORITY TO GRANT THE REQUESTED WAIVER

The Planning Board has the authority under Section 50-38(a)(1) of the Montgomery County Code to grant a variation (waiver) of the requirements of Chapter 50 "upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objective of the General Plan; and 3) not adverse to the public interest.

The Applicants request a waiver from full compliance with the requirement to construct the Shared Use Path under Section 50-24(b) of the Montgomery County Code. Section 50-24(b) entitled "Existing Frontage Road" provides that "In the case of a plat containing lots fronting on an existing state, county or municipally maintained road, the subdivided shall provide in addition to any required dedicated for widening the existing right-of-way, such reasonable improvement to the road in front of such lots necessary to serve the needs of such subdivision for access and traffic as required by the road construction code, an including the provision of sidewalks."

III. PRACTICAL DIFFULTIES AND UNUSUAL CIRCUMSTANCES PREVENT THE CONSTRUCTION OF THE SHARED USE PATH

Practical difficulties and unusual circumstances exist that prevent the construction of Shared Use Path SP-37, but supports the payment of a fee in lieu. No other segments of Shared Use Path SP37 are constructed along Maryland Route 108. In reality, Shared Use Path SP37 is a proposed path to be constructed within the right of way of Maryland Route 108 once it achieves its full right of way width through dedication. Constructing this one isolated portion of Shared Use Path SP37 will be detrimental to the character of Maryland Route 108 and cause a hazardous condition that would be unsafe for pedestrians utilizing the isolated segment of Shared Used Path SP37.

The character of Maryland Route 108 is that of a rural highway that winds through heavily vegetated areas. The frontage of the Properties is heavily vegetated and the Applicants propose to preserve the existing vegetation because it is characteristic of the general area and to not alter the character of the frontage except for the installation of a single driveway apron along Maryland Route 108 to serve four of the proposed lots. The driveway apron for the fifth proposed lot is already installed. Removing the vegetation to construct this single isolated portion of Shared Use Path SP37 will detrimentally alter the character of Maryland Route 108 in a location along Maryland Route 108 where no other portions of the Shared Use Path are proposed or constructed.

In fact, the recent approval of Preliminary Plan No. 120100060 for the Sullivan Property, situated a few blocks west of the Properties along Maryland Route 108, included a condition of approval to pay a fee in lieu of construction of the associated segment of Shared Use Path SP37

or construct the Shared Use Path. As evidenced by the prior recordation of the plat for the Sullivan Property (Plat No. 24215) and nonexistence of the Shared Use Path along the frontage of the Sullivan Property, those applicants opted to pay the fee in lieu. Therefore, that portion of the Shared Use Path will be constructed as part of a County CIP project. Because no other portions of SP37 are proposed for construction in the vicinity of the Properties (New Hampshire Avenue to the Howard County line), the rural and vegetative character of Maryland Route 108 should continue to be preserved until the entirety of Shared Use Path SP37 is constructed.

Since the completion of Shared use Path SP37 is reliant on the dedication of the full master planned right of way width of Maryland Route 108, it is unknown when, if ever, the full right of way width will be achieved. It is unlikely that all of the necessary dedications along Maryland Route 108 will be made. The adjacent properties are owned by Steve J. Kanstoroom and Susan C. Mize and will unlikely be the subject of a subdivision, causing the proposed Shared Use Path along the frontage of the Properties to perpetually be segmented.

The construction of this isolated portion of Shared Use Path SP37 along the frontage of the Properties will also create hazardous conditions adverse to the public interest. Those persons utilizing the Shared Use Path along the frontage of the Properties would have only 430 feet of safe traveling along Maryland Route 108. This isolated segment does not connect to and is not in the vicinity of any other portions of the Shared Use Path. Pedestrians using this segment of Shared Use Path will then be forced to travel on Maryland Route 108, which has very little shoulder and a posted speed limit of 50 mph. The construction of isolated segments of the Shared Use Path should be avoided and the comprehensive design and construction completed before pedestrians may utilize the path. Otherwise, pedestrians will be deprived of safe connection points during their use of the Shared Use Path.

The Applicants request to condition approval of the proposed preliminary plan on the payment of a fee in lieu of construction of their pro rata share of the Shared Use Path along the frontage of the Properties. The Applicants will contribute this fee to DOT's CIP Project No. 507596, Annual Bikeway Program. The relief from constructing the application portion of Shared Use Path SP37 and alternative contribution of the fee in lieu for the comprehensive construction of the Shared Use Path is the minimum necessary to provide relief from the requirements of Section 50-24(b), is not inconsistent with the objectives of the General Plan because funds are being contributed for the construction of the Shared Use Path and is not adverse to, but in the best interest of the public.

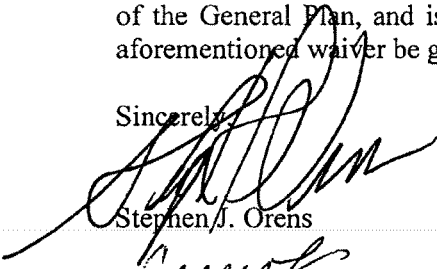
IV. CONCLUSION

Since practical difficulties and unusual circumstances exist that prevent full compliance with the requirement under Section 50-24(b) to construct the Shared Use Path along the limited frontage of the Properties and the Applicants' proposal to pay a fee in lieu is the minimum necessary to provide relief from the requirements of Section 50-24(b), is not inconsistent with the objectives


Page 4

of the General Plan, and is in the public interest, the Applicants respectfully request that that
aforementioned waiver be granted.

Sincerely,



Stephen J. Orens



Casey L. Orner

cc: Via Electronic Mail and Regular Mail
Richard Weaver, Supervisor Area 3, M-NCPPC
Paul Kolanowski, Trustee
Dave A. Crowe, MHG
William J. Chen, Jr., Esquire

Via Electronic Mail, Overnight Mail and Regular Mail
Steven J. Kanstoroom and Susan C. Mize