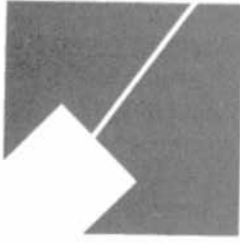


M-NCPPC



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION


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Tel: (301) 495-4646 Fax: (301) 495-2173

Agenda Date: November 5, 2015
Item #5
Reconsideration Request

DATE: October 26, 2015

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel 
301-495-4646

RE: Reconsideration Request
Horizon Hill Preliminary Plan No. 120120170 ("Plan")
MCPB Resolution No. 15-94

With this memorandum, I forward for the Board's review a request for reconsideration filed October 23, 2015, by Dave McKee of Benning & Associates on behalf of the Applicant, Charles Rabkin ("Petition") (Attachment 1)¹ of the referenced Resolution (Attachment 2). The Board denied the Plan for two reasons: i) that the Plan does not substantially conform to either the 2002 Potomac Subregion Master Plan or the Rustic Road Functional Master Plan, and 2) that as a result of the resubdivision analysis required by §50-29(b)(2) of the Subdivision Regulations, the shape of proposed Lot 3 would create a lot out of character with other lots in the delineated neighborhood accepted for the resubdivision analysis. The Petition only requests that the Board reconsider its resubdivision analysis and finding.

Under Rule 4.12.2 as indicated below, If the Board votes to reconsider, the [Board's action] is void and a new hearing is scheduled on the matters raised in the reconsideration request. Because the Petition only raises the Board's resubdivision finding, even if the Board were to find that the shape of proposed Lot 3 is in character with other lots in the neighborhood, the Board's denial of the Plan based on master plan would survive. A redesign of the Plan that relocates access to proposed Lot 3 from Red Barn Lane instead of Glen Mill Road could overcome that problem. However, due to the limited frontage on Red Barn Lane, the shape of a third lot² would necessarily remain as

¹ Although Mr. McKee's submission does not comport with the Board's Rule of Procedure 4.12.1, which requires the Petition be filed with the Planning Director, the Petition meets the substantive requirement by specifying alleged errors of fact as the ground for reconsideration. For administrative efficiency, I do not recommend the Petition be denied for the technical error.

² Two lots already exist.

a “flag lot” or “pipestem.” In other words, it would be practically impossible to overcome a Plan denial through redesign if the Board’s resubdivision finding stands.

I. APPLICABLE RULES

Rule 4.12.1 – Grounds for Reconsideration. The Planning Director or any Party may petition the Board to reconsider a Resolution within ten days after the date of mailing of the Resolution. A petition for reconsideration must specify any alleged errors of fact or law and state fully the grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.

Rule 4.12.2 – Motion and Participation in Action to Reconsider.

1. A motion to reconsider can only be made by a Commissioner who voted in the majority. To participate in the vote, a Commissioner must have been present at the hearing or reviewed the record.
2. If no motion is made, the request for reconsideration is denied, and the [Board’s action] stands. If the Board votes to reconsider, the [Board’s action] is void and a new hearing is scheduled on the matters raised in the reconsideration request.

II. PARTICIPATION

Commissioners Anderson, Dreyfuss, Fani-Gonzalez, Presley and Wells-Harley were all present on July 30, 2015. Although Commissioner Anderson was not in agreement with the other Commissioners with regard to the resubdivision finding, the Board voted unanimously to deny the Plan. Therefore, any of the Commissioners may move to reconsider and participate in the vote.

III. REASONS PROVIDED FOR RECONSIDERATION REQUEST

As indicated above, the Board denied the Plan for two reasons: i) that the Plan does not substantially conform to either the 2002 Potomac Subregion Master Plan or the Rustic Road Functional Master Plan, and 2) that as a result of the resubdivision analysis required by §50-29(b)(2) of the Subdivision Regulations, the shape of proposed Lot 3 would create a lot out of character with other lots in the delineated neighborhood accepted for the resubdivision analysis. The Petition only requests that the Board reconsider its resubdivision analysis and finding.

Specifically, the Petition points out three grounds for reconsideration. As alleged by the Petition:

1. The Resolution indicates that there is only one other flag-lot in the neighborhood, where there are in fact two. The Petition is correct in that both lots 35 and 38 are identified as flag-lots, but the Board must consider whether this error is relevant to the decision it made. The Resolution states: “...the Board noted that the existing lot was part of the original development, and later development along Red Barn

Lane was limited to rectangular lots.” **Therefore, the Board should consider whether it based its decision on the number of flag-lots in the neighborhood, or rather based on their location and the development pattern within the neighborhood.**

2. The existing two-lot subdivision already contains a flag-lot. The resubdivision creates another lot, but does not create a new flag-lot since one already exists. In a resubdivision analysis, the existing subdivision is not included as part of the delineated neighborhood because the existing subdivision will effectively “disappear.” And the original subdivision created in 1990 did not go through the same resubdivision analysis. Furthermore, this is not new information of which the Board was unaware at the hearing. **Therefore the Board should consider whether this issue is grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.**
3. The Board’s findings that the existing flag-lot along Red Barn Lane is “somewhat removed,” and the distinction between lots fronting Red Barn Lane and Glen Mill Road indicate that the Board did not accept the neighborhood as delineated by Staff. This suggests as grounds for reconsideration that the Board erred when it applied the Staff delineated neighborhood in its finding that proposed Lot 3 was out of character with other lots in the neighborhood. **Therefore the Board should consider whether this issue is grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.**

Regardless of the final outcome of the Petition, the Board’s final decision on the Plan is still subject to judicial review. Therefore, if the Board has any specific questions, a closed session would be appropriate for that discussion.

IV. NEXT STEPS

If the Board either does not act on or denies the Petition, its denial of the Plan under the existing Resolution stands. If the Board grants the Petition, the Board must set a new hearing limited to the resubdivision analysis. The Board’s finding that the Plan does not substantially conform to either the 2002 Potomac Subregion Master Plan or the Rustic Road Functional Master Plan would survive, but the Board would need to adopt a new Resolution denying the Plan based on that finding and whatever it determines with regard to the resubdivision at the new hearing.

V. ATTACHMENTS

- Attachment 1 –Reconsideration Request
- Attachment 2 –Resolution
- Attachment 3 –Staff Report

Benning & Associates, Inc.

Land Planning Consultants
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Gaithersburg, MD 20877
(301)948-0240
(301) 948-0241 fax

October 23, 2015

The Honorable Casey Anderson, Chair
Montgomery County Planning Board
The Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Horizon Hill - Preliminary Plan No. 120120170

Dear Planning Board Chair,

On behalf of the applicant, I am writing to request a reconsideration by the Planning Board of the Board's decision made on this application on the 30th of July, 2015. We recently received a copy of the Board's Resolution mailed on the 16th of October.

Item number 2 of the Board's findings states "As a result of the resubdivision analysis required by §50-29(b)(2) of the Subdivision Regulations, the shape of proposed Lot 3 would create a lot out of character with other lots in the neighborhood". In summarizing the Board's finding on this matter, the Resolution states "The Planning Board noted that there is only one other "flag lot" and with frontage at the far end of Red Barn Lane, it is somewhat removed from the Subject Property". The Resolution also states "The Board also noted that no flag lots in the Neighborhood front on Glen Mill Road, making a clear distinction between lots fronting on Glen Mill Road as proposed by the Application, and lots fronting on Red Barn Lane in the vicinity of the Application".

In response to the above, we offer the following information in support of our request for reconsideration:

1. Contrary to what is stated in the Resolution, there are in fact two flag lots located within the area delineated as the Neighborhood in the Staff Report. The Staff

Report identifies lots 38 and 35 as being flag-shaped lots. Each has frontage and shape consistent with what is common for lots identified as flag lots.

2. The subject property already contains a flag-shaped lot and the proposed resubdivision does not change this fact or result in an increase in the number of flag lots.
3. The Board's suggestion in the Resolution that the existing flag lot located along Red Barn is "somewhat removed" and the Board's distinction between lots fronting along Red Barn and those fronting along Glen Mill are indications that the Neighborhood depicted in the Staff Report is in error. In fact, there are an additional 6 flag-shaped lots fronting along Glen Mill Road within the same distance as the flag lots which front along Red Barn.

According to the Staff Report, "the proposed lots are of the same character with respect to the re-subdivision criteria as other lots in the Neighborhood" (page 21). The Planning Board made a different finding using erroneous information. Furthermore, the Staff and Applicant were surprised by the discussion regarding lot shape and were not prepared to address the Board's concerns on this matter.

For the reasons stated above, we respectfully request reconsideration of this matter by the Planning Board. If any further information is needed for a determination of this request, please let us know.

Sincerely,



David W. McKee, Principal



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

OCT 16 2015

MCPB No. 15-94
Preliminary Plan No. 120120170
Horizon Hill
Date of Hearing: July 30, 2015

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on July 31, 2012, Charles Rabkin ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 6.35 acres of land in the RE-2 zone, located at 10616 Red Barn Lane on the southwest side of Red Barn Lane in the 2002 Potomac Subregion Master Plan ("Potomac Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120170, Horizon Hill ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 17, 2015, setting forth its analysis and recommendation for denial of the Application ("Staff Report"); and

WHEREAS, on July 30, 2015, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 30, 2015, the Planning Board voted to deny the Application on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-González, Presley and Wells-Harley voting in favor of the denial.

WHEREAS, the Planning Board based the denial on findings, more specifically outlined below, that i) the Application does not substantially conform to the Master Plan, and ii) due to its shape, proposed lot 3 is not of the same character as other lots within the existing neighborhood delineated in the Staff Report.

Approved as to
Legal Sufficiency

Charles Rabkin 10/16/15
M-NCPPC Legal Department

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Preliminary Plan No. 120120170
Horizon Hill
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BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, that:

1. *The Preliminary Plan does not substantially conform to either the Potomac Master Plan, or to the Rustic Road Functional Master Plan.*

In determining the acceptability of a preliminary plan submitted under Chapter 50, the Planning Board must find that the preliminary plan substantially conforms to the applicable master plan, sector plan, or urban renewal plan, including maps and text.

The Potomac Master Plan designated the section of Glen Mill Road where the Applicant has proposed access for Lot 3 as an Exceptional Rustic Road. The creation of the Rustic Roads Program in 1993 was a result of a Council-appointed task force recommendation of a program "to protect and preserve historic, scenic and agricultural roads in Montgomery County," through the designation of roads as Rustic Roads or Exceptional Rustic Roads in either area master plans or, as later implemented, in the Rustic Roads Functional Master Plan adopted in 1996. The Rustic Roads Functional Master Plan defines a rustic road as, "a road... which enhances the rural character of the area due to its particular configuration, alignment, scenic quality, landscaping, adjacent views, and historic interest, and which exemplifies the rural and agricultural landscape of the county," and an exceptional rustic road as a road, "having such unusual and pleasing character as it exists today that preservation of the road in its current state is highly desirable [with] special characteristics which contribute significantly to the rural, scenic, or historic features of Montgomery County and might lose these specific characteristics if improved or widened."

Glen Mill Road, in the area surrounding the intersection with Red Barn Lane meets all ten evaluation criteria outlined in the Rustic Roads Program. Both the Potomac Master Plan and the Rustic Road Functional Master Plan identify Glen Mill Road as an Exceptional Rustic Road at the location that would be directly impacted by adding an access driveway for Lot 3 in the Application.

The Rustic Roads Functional Master Plan specifically states that, "The rustic roads designation is not intended to affect the use of adjoining land *except in the design of access to a subdivision.*" (emphasis added). Numerous impacts that a new driveway would have on the rustic character of Glen Mill Road

MCPB No. 15-94
Preliminary Plan No. 120120170
Horizon Hill
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were identified and presented to the Board including loss of the vegetation that gave the road a green edge and with the excessive grading that would be required to bring a driveway out to Glen Mill Road within the narrow pipestem width, the likely need for retaining walls within sight of the road.

As proposed, the Planning Board finds that access to the subdivision, specifically Lot 3, directly off of Glen Mill Road, will negatively impact Glen Mill Road as an Exceptional Rustic Road, and such access is inconsistent with both Master Plans.

2. *As a result of the resubdivision analysis required by §50-29(b)(2) of the Subdivision Regulations, the shape of proposed Lot 3 would create a lot out of character with other lots in the neighborhood.¹*

Section 50-29(b)(2) requires that:

"Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential uses as other lots within the existing block, neighborhood or subdivision."

To determine if a resubdivided lot is "of the same character" the Planning Board must find that each proposed lot has a high correlation with respect to each of the listed criteria to existing lots within a delineated neighborhood ("Neighborhood"). The Neighborhood used for the resubdivision analysis includes all lots that abut the Subject Property and all lots that abut Red Barn Lane. The Neighborhood accepted by the Board for this analysis, which provides an adequate sample of the lot and development pattern of the area, consists of 24 lots. Consistent with Planning Board practice, unplatted parcels, parts of previously platted lots and properties with a different zoning category than the Subject Property are excluded from the Neighborhood.

The Planning Board did not raise any concerns with regard to street frontage, alignment, size, width, area and suitability for residential uses. However, it determined that the shape of proposed Lot 3, a "flag lot" or "pipestem," was not of the same character as existing lots in the Neighborhood. The Planning Board noted that there is only one other "flag lot" and with frontage at the far end of Red Barn Lane, it is somewhat removed from the Subject Property. In

¹ Inherent in its review and ultimate decision, under 50-29(b)(2), the Planning Board must delineate the boundaries of the "existing neighborhood" so those properties directly affected by the resubdivision are included in Planning Board's resubdivision analysis.

MCPB No. 15-94
Preliminary Plan No. 120120170
Horizon Hill
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fact, the Board noted that the existing lot was part of the original development, and later development along Red Barn Lane was limited to rectangular lots. The Board also noted that no flag lots in the Neighborhood front on Glen Mill Road, making a clear distinction between lots fronting on Glen Mill Road as proposed by the Application, and lots fronting on Red Barn Lane in the vicinity of the proposed subdivision.

The Board found that flag lots are not a prevalent characteristic within the Neighborhood, and therefore, did not find that proposed Lot 3 had a high correlation as to shape of existing lots within the Neighborhood. The Planning Board found that proposed Lot 3 was out of character with existing lots in the Neighborhood.


BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 16 2015 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor, at its regular meeting held on Thursday, October 15, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

Horizon Hill: Preliminary Plan No. 120120170

JAP
Joshua Penn, Planner Coordinator, Area 3, Joshua.Penn@montgomeryplanning.org 301-495-4546

FAW
Rich Weaver, Supervisor, Area 3, Richard.Weaver@montgomeryplanning.org 301-495-4544

KRR
Kipling Reynolds, Chief, Area 3, Kipling.Reynolds@montgomeryplanning.org 301-495-4575

Completed: 07/17/15

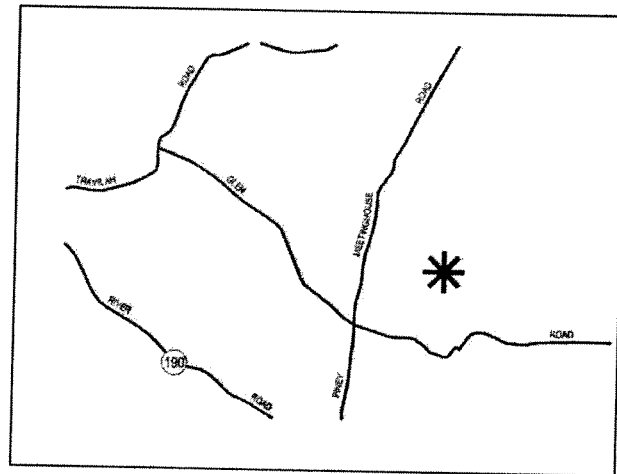
Description

Horizon Hill: Preliminary Plan No. 120120170

A request for three lots for three one-family detached dwelling units as part of a re-subdivision on 6.35-acres in the RE-2 zone; located at 10616 Red Barn Lane on the southwest side of Red Barn Lane in the 2002 Potomac Subregion Master Plan.

Date Submitted: July 31, 2012
Applicant: Charles Rabkin
Review Basis: Chapter 50 and Chapter 22A

Staff Recommendation: Denial



Summary

The Applicant wishes to resubdivide two existing lots that front Red Barn Lane and create three lots using an existing pipestem to Glen Mill Road.

- Staff recommends denial under Section 50-35(l) of the Subdivision Regulations. Section 50-24(k) allows the Planning Board to substitute an alternative requirement for access and other public improvements that are consistent with the Rustic Roads Program; access from Red Barn Lane is consistent with this provision.
- Confirm the Planning Board's previous action on Preliminary Plan 119892860 (Condition 3) and the current plat, #18005, which denied access to Glen Mill Road limiting access to Red Barn Lane only.
- Glen Mill Road is classified as an Exceptional Rustic Road.
 - Access points should be limited to retain the character of the road
 - Changes to abutting properties and the road that have negative impacts on the character of the road should be avoided.
- Red Barn Lane is a Private Street
 - Access for all three lots is recommended from Red Barn Lane
 - Fire and Rescue Services may require improvements.

ATTACHMENT 3

- Access point to Glen Mill Road for third lot would remove two trees greater than 24" DBH and an entire hedge row.
- The proposed access from Glen Mill Road is inconsistent with the 1996 Rustic Roads Functional Master Plan and the 2002 Potomac Subregion Master Plan.
- In past practice, this application would be recommended for approval with a condition that access for all three proposed lots be provided from Red Barn Lane. A tree variance requirement is anticipated by Staff for a driveway to Red Barn Lane, so such a condition requires an amended plan and a variance submittal by the Applicant. The Applicant has been unwilling to consider any plan in which lot 3 accesses Red Barn Lane

RECOMMENDATION: Denial.

SITE DESCRIPTION

Preliminary Plan No. 120120170 ("Application" or "Preliminary Plan") is a request to re-subdivide two properties identified as lots 22 and 23 on Tax Map FQ23; located at 10616 Red Barn Lane and consisting of 6.35-acres, zoned RE-2 ("Property" or "Subject Property") into three lots for three one-family detached dwelling units. The Property is within the 2002 Potomac Subregion Master Plan area ("Master Plan"). As depicted in Figures 1 and 2 below, the Property is surrounded by one-family detached dwellings in the RE-2 zone. The Property currently consists of two recorded lots; however, only one has an existing one-family detached dwelling which is served by well water and a private septic system. Access to the dwelling is by a semi-circular driveway from Red Barn Lane, a private road. The current plat¹ for the Property shows that access for Lot 22 to Glen Mill Road is prohibited, which is discussed later in the staff report.

The Subject Property is located within the Piney Branch Special Protection Area ("SPA") within the Watts Branch watershed. The Property is primarily covered by open, mowed lawn. There are ten specimen trees located on the Property. There are no forests, stream buffers, wetlands, or other environmentally sensitive features on or adjacent to the Property.

¹ See Figure 9 (Plat # 18005)

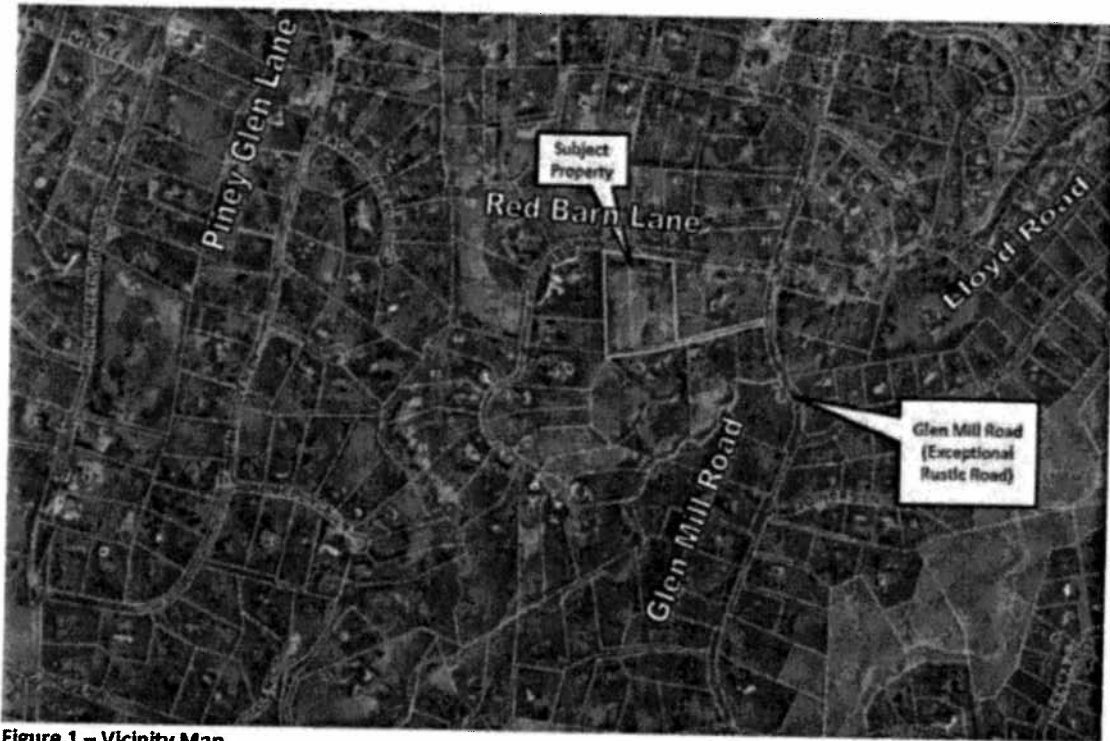


Figure 1 – Vicinity Map



Figure 2 – Subject Property

PROJECT DESCRIPTION

The Applicant proposes to re-subdivide two existing lots into three lots to accommodate three one-family detached dwelling units. The Applicant will keep the existing dwelling unit on proposed Lot 2 (see figure 3 below). All three lots will be approximately 2.1 acres and are generally rectangular in shape. Proposed Lots 1 and 2 will have frontage and access on Red Barn Lane and Lot 3 proposes to have frontage and access on Glen Mill Road. Each new dwelling unit will be served by public water and a private septic system; the existing house will remain on well water and a private septic system.

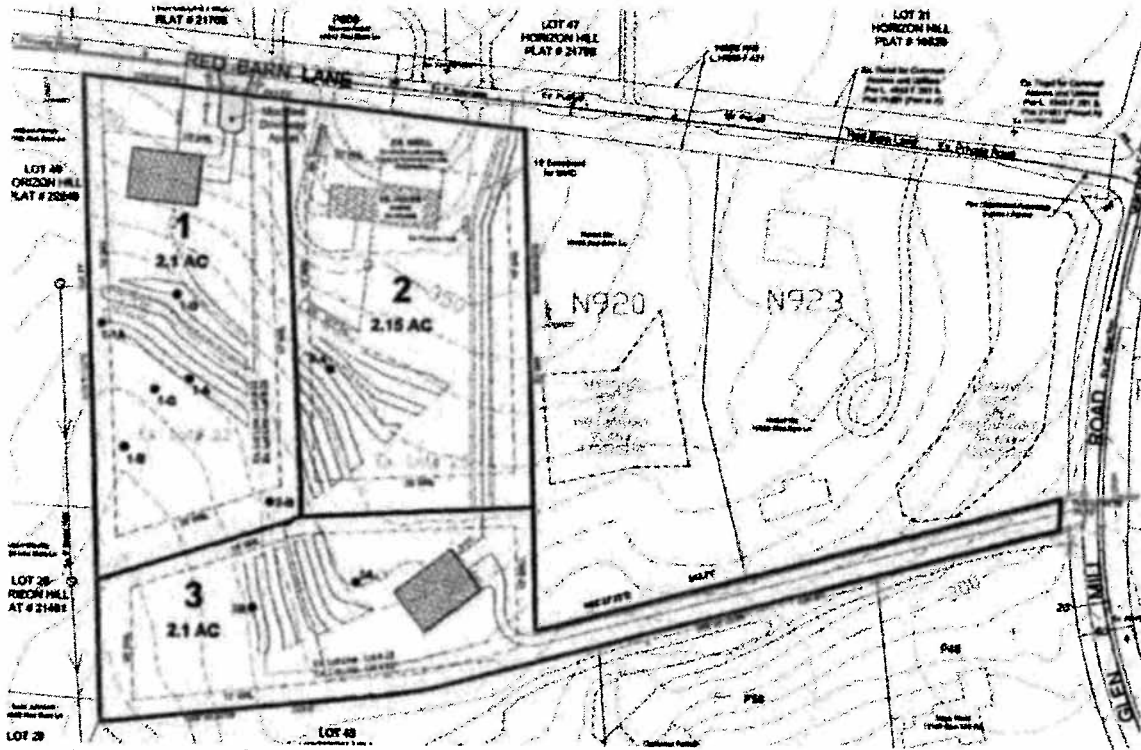


Figure 3 - Proposed Lot Lines

ANALYSIS AND FINDINGS

Conformance to the Potomac Subregion Master Plan and the Rustic Roads Functional Master Plan

The Property is located in the Travilah community area as shown on page 5 of the 2002 Potomac Subregion Master Plan (“Master Plan”). The Master Plan provides overarching recommendations for the general vicinity of the Property but does not specifically address this particular Property. The Master Plan provides the following on the Travilah community area:

ATTACHMENT 3

“This central and southern portion of the Potomac Subregion is a low-density area that acts as a transition from the higher densities of Potomac and North Potomac to lower densities in Darnestown and the natural environment of the Potomac River” (p. 80).

The Property is not within the sewer service envelope recommended by the Master Plan and is appropriately served by private, on-site septic systems. The Master Plan recommends that the Property and neighboring properties continue to be zoned RE-2. This zone provides the low density transition envisioned by the Master Plan.

The Property is also located in the Watts Branch Watershed and specifically within the Piney Branch subwatershed, which is a SPA. For this area, the Master Plan states,

“The Piney Branch subwatershed is a Special Protection Area (SPA) due to unusually good water quality, a fragile ecosystem, and susceptibility to development pressures” (p. 16).

The Property is zoned RE-2 and is located in the lower Piney Branch area, which remains medium to low density residential zoning despite development pressures. The Master Plan has many references regarding impacts of extending sewer service and potential negative impacts to environmental resources. The Master Plan advises that community sewer allows the potential for maximum density under the zone, increasing imperviousness. The Master Plan recommends that areas zoned for low density development (RE-1, RE-2, and RC) and not already approved for service, be excluded from extension of community sewer service (p. 23).

The 2002 Potomac Subregion Master Plan designated this section of Glen Mill Road as an Exceptional Rustic Road. In March of 1990 there was a Proposal for a Rural Rustic Roads Program. This document was written by a Council-appointed task force to study a “Rural Roads Program.” The task force recommended the creation of a program “to protect and preserve historic, scenic and agricultural roads in Montgomery County”. The task force recommended a list of roads that should be considered—Glen Mill Road was included on p. 62 and this portion was recommended as Exceptional Rustic. This document resulted in the creation of the Rustic Roads Program in 1993, and the designation of roads as Rustic Road or Exceptional Rustic Roads in subsequent master plans.

Page 3 of the 1996 Rustic Roads Functional Master Plan (RRFMP) defines a rustic road as, “a road... which enhances the rural character of the area due to its particular configuration, alignment, scenic quality, landscaping, adjacent views, and historic interest, and which exemplifies the rural and agricultural landscape of the county.” On page 5 the RRFMP defines an exceptional rustic road as a road, “having such unusual and pleasing character as it exists today that preservation of the road in its current state is highly desirable. The road has special characteristics which contribute significantly to the rural, scenic, or historic features of Montgomery County and might lose these specific characteristics if improved or widened.”

The 2002 Potomac Subregion Master Plan also adds the following language on page 110 ... “The Rustic Roads Program was developed, in part, to protect the sylvan nature of the Subregion’s roads, particularly in Watts Branch Glen where Glen Road intersects with Glen Mill and South Glen Roads.”

ATTACHMENT 3

The Master Plan identifies Glen Mill Road, at this location (Red Barn Lane to Glen Road), as an Exceptional Rustic road with a minimum right-of-way width of 80-feet and two travel lanes. The evaluation table on page 112 of the Master Plan includes the following criteria for inclusion in the Rustic Roads Program: Compatible planned land use, narrow intended for local use, traffic volume consistent with the rustic status, outstanding natural features, follows historic alignments, accident history suggests safe conditions, significant contribution to natural, agricultural, or historic characteristics, unusual features, and would be negatively affected by modifications. Glen Mill Road at this location meets all ten evaluation criteria and was adopted as an Exceptional Rustic road.

The RRFMP specifically states that, **“The rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivision.** It is also not intended to prevent needed improvements to adjoining land uses or to the roads and bridges themselves,” (emphasis added). For consistency with the Potomac Subregion and Rustic Roads Functional Master Plans, the access to the proposed subdivision should protect and maintain the character of the Exceptional Rustic road. As proposed, the access will negatively impact the road, and is inconsistent with the Master Plans. If all access is moved to Red Barn Lane, this Master Plan conflict will no longer exist and the proposal should be consistent with both Master Plans.

Montgomery County Department of Transportation (MCDOT), the Rustic Roads Advisory Committee and the community have all recommended that access be limited to Red Barn Lane in order to protect the Exceptional Rustic road, as discussed below.

Figures 4-9 show visual impacts at various points of access for the Subject Property. The letters (A-D) in figure 4 show the aerial locations, while figures 5-7 show corresponding street level views.

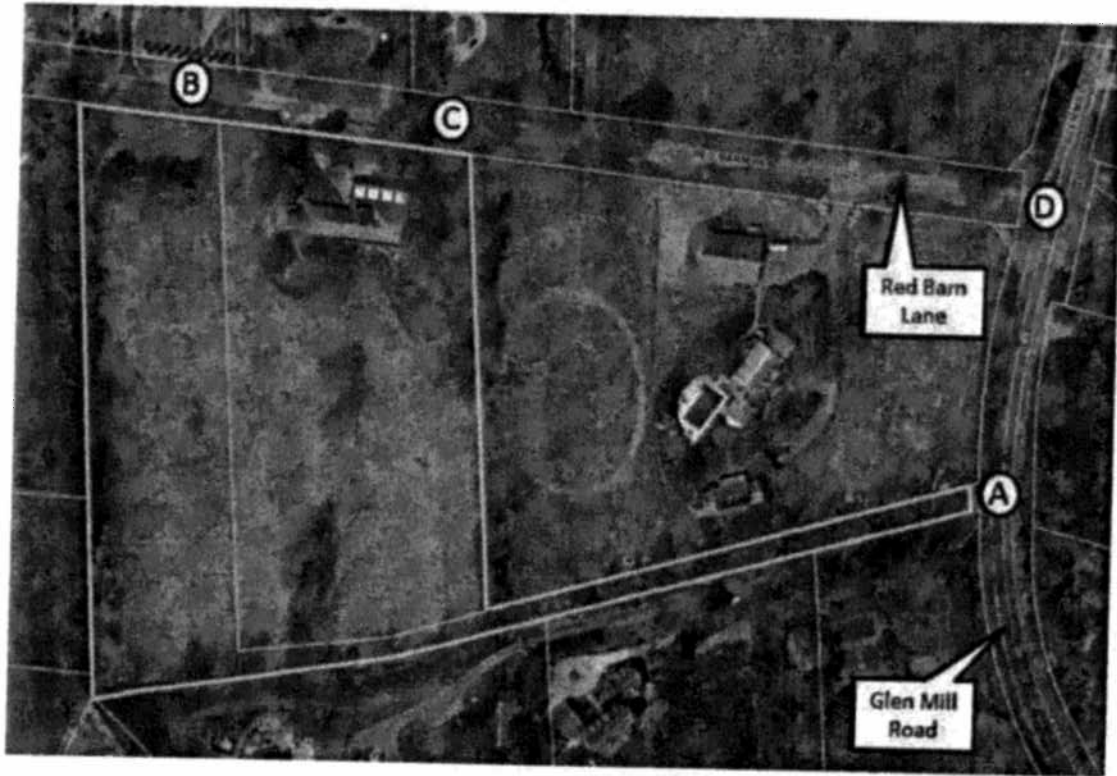


Figure 4: Aerial View

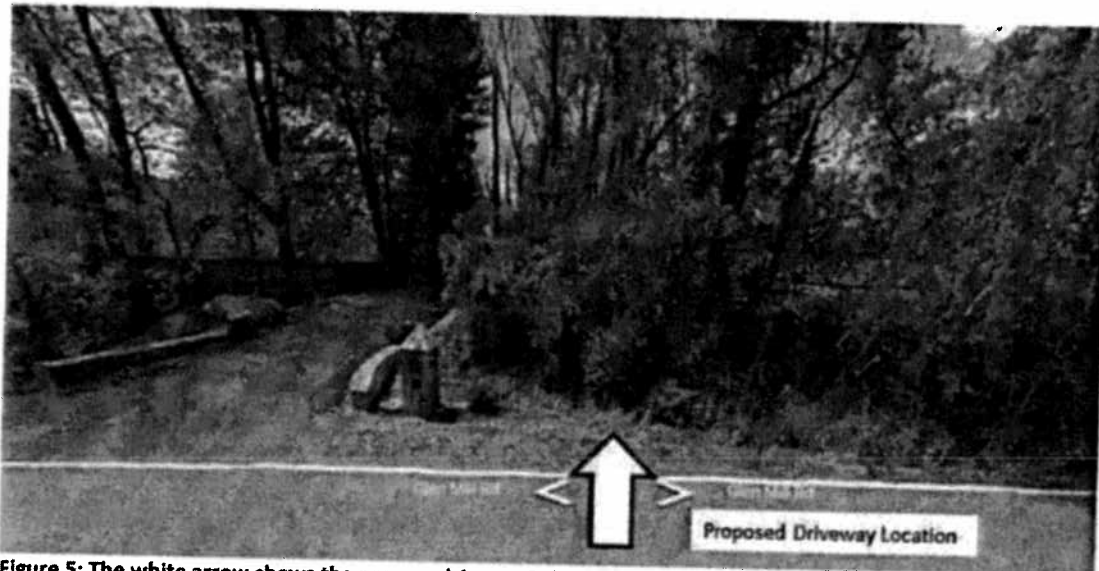


Figure 5: The white arrow shows the proposed Access Point on Glen Mill Road (Point A in the map above). The driveway shown to the left of the arrow is the one the RRAC recommends sharing, if access from Red Barn Lane is not feasible.

ATTACHMENT 3

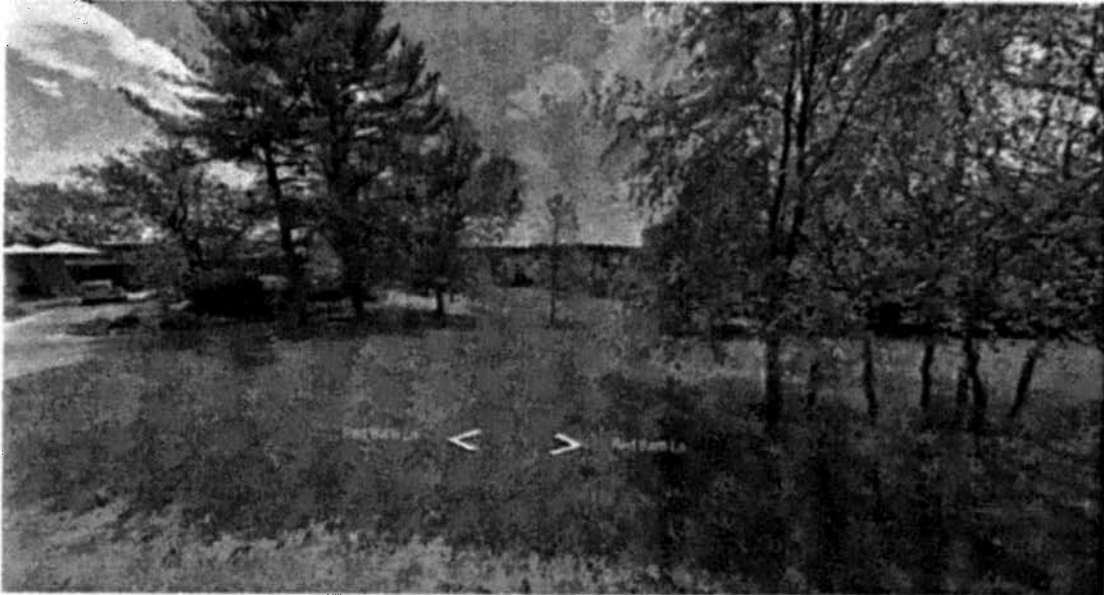


Figure 6: Red Barn Lane Frontage West of Existing House and possible access to Red Barn Lane (Point B)



Figure 7: Red Barn Lane Frontage East of Existing House and possible access to Red Barn Lane (Point C)

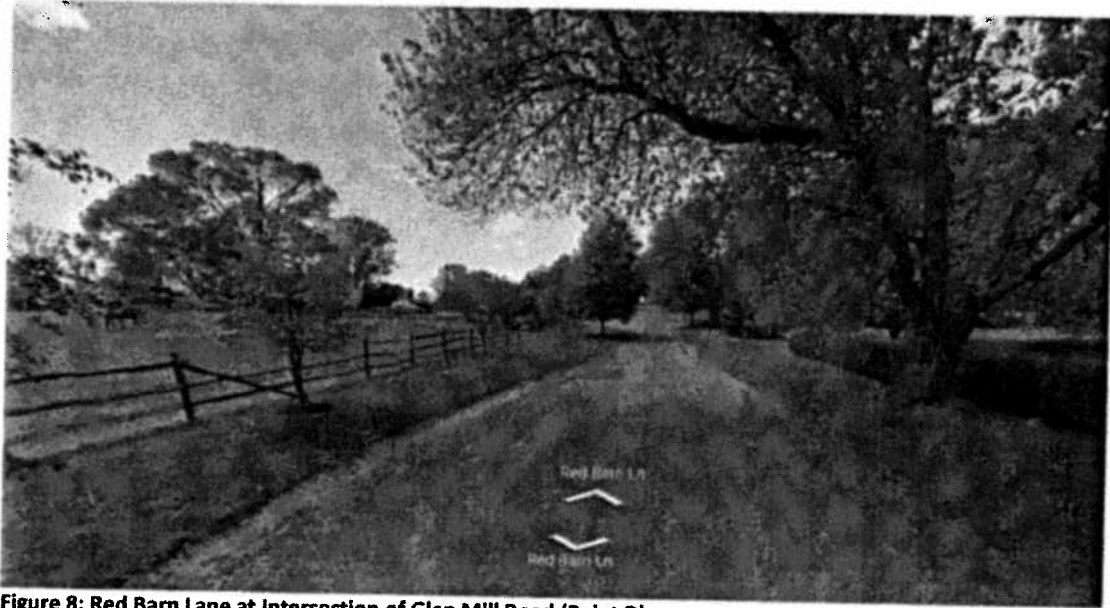


Figure 8: Red Barn Lane at Intersection of Glen Mill Road (Point D)

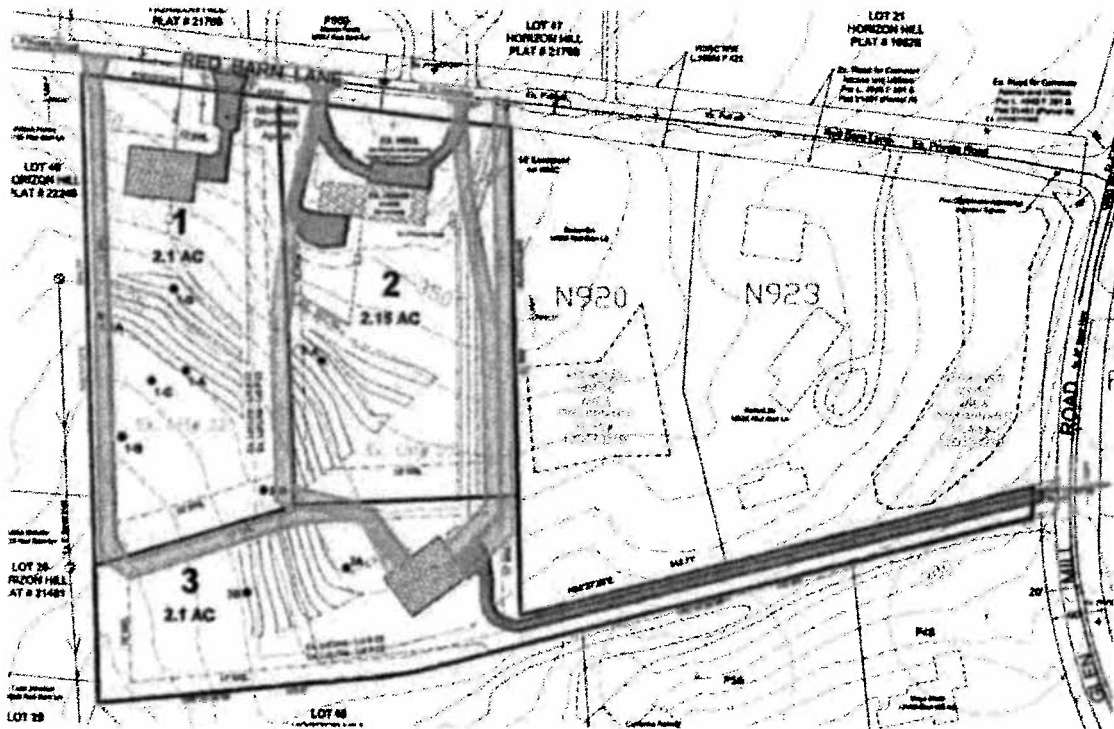


Figure 9: Possible Driveway Alternatives

It is Staff's position that the Applicant can access Red Barn Lane and still achieve the proposed density being requested. The threshold of considering an access point on Glen Mill Road an Exceptional Rustic Road has not been met since there are viable alternatives which would still achieve a three lot subdivision (figure 9).

Staff concludes that the Application is **not** in substantial conformance with the 2002 *Potomac Subregion Master Plan* or the 1996 *Rustic Roads Functional Master Plan*. This will be discussed further as it relates to the required subdivision findings, Sec. 50-35(I).

Public Facilities

Roads and Transportation Facilities

The Applicant proposes access to Lots 1 and 2 from Red Barn Lane, a private road, and Lot 3 would have access from Glen Mill Road, an exceptional rustic road. In 1990, (after the publication of the Proposal for a Rural/Rustic Roads Program and prior to adoption of the RRFMP) Plat 18005 depicted in Figure 9 was approved by the Planning Board stating "deny access to Glen Mill Road" from Lot 22, ostensibly to force the two lot subdivision to gain all access to Red Barn Lane. The note on the Record plat is a result

ATTACHMENT 3

of Condition #3 of the Preliminary Plan Opinion #119892860 "No direct driveway access to Glen Mill Road" (Attachment H).

The Application has been reviewed by the MCDOT who determined that the Property has adequate vehicular access and sight distance as proposed (on Glen Mill Road), in a transmittal letter dated, March 14, 2014 (Attachment E). The MCDOT letter does recommend approval of the subdivision, but prefers all access be granted off of Red Barn Lane. MCDOT acknowledges that the Planning Board could allow Access to Glen Mill Road from proposed Lot 3 and notes if this does occur the previous "driveway access denied" note would need to be removed from the plat.

The Rustic Roads Advisory Committee (RRAC) reviewed the proposal on November 27, 2012, and commented on the Application². The RRAC recommends avoiding the creation of a new access point on the exceptional rustic road, Glen Mill Road. The RRAC further advised that if this cannot be done, the Applicant should share the neighbor's existing driveway to access Glen Mill Road. The Applicant has approached the neighbor(s) with a request to share the existing driveway they currently have for the three lots adjacent to proposed Lot 3. According to the Applicant, the request to share use of the driveway was rejected by one or more neighbors (no documentation provided). Therefore, the Applicant proposes to create a new driveway access point on Glen Mill Road that was presented to the RRAC. Again, the RRAC recommends that Lot 3 have access to Red Barn Lane; however, the RRAC would not oppose access to Glen Mill Road if the Planning Board does not support access on Red Barn Lane or sharing the existing driveway.

The RRAC and the Montgomery County Department of Transportation, agree that access from Red Barn Lane is preferable to access from Glen Mill Road for proposed Lot 3.

Staff does not support access for Lot 3 from Glen Mill Road. Staff believes there are several other options for the location of the driveway to Lot 3 that the Applicant has not evaluated and that should be analyzed. To date, the Applicant has been unwilling to submit information that would be required to analyze the impacts of a driveway for Lot 3, from Red Barn Lane.

² See attached letter dated February 14, 2013.

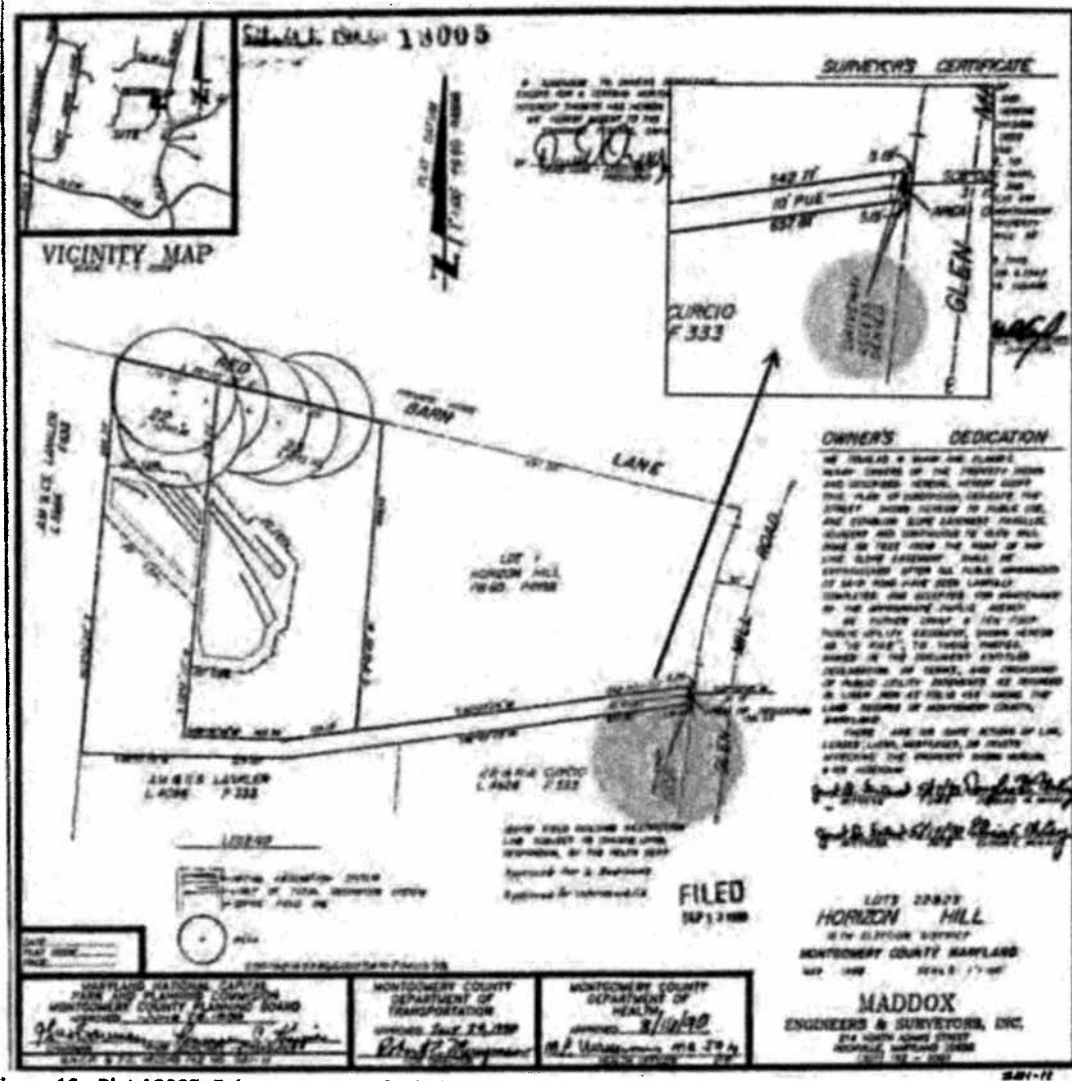


Figure 10 - Plat 18005: Driveway access denied

The Local Area Transportation Review (LATR) guidelines require a traffic study to be performed if the development generates 30 or more peak-hour trips. The Application is expected to generate traffic volumes well below the 30-trip threshold. Therefore, no LATR is required.

According to the 2012-2016 Subdivision Staging Policy (SSP), this Application was submitted before January 1, 2013 and is subject to either Policy Area Mobility Report (PAMR) or Transportation Policy Area Review (TPAR). According to the current SSP, the Application may meet its requirement under TPAR by either complying with all applicable requirements of either TPAR or PAMR that were in force immediately before the County Council's SSP resolution, Resolution No. 17-601, was amended in 2012.

ATTACHMENT 3

Since this Application is located in the Rural West Policy Area, there are no PAMR or TPAR mitigation requirements.

The Applicant will be required to dedicate their portion of road frontage to bring the total right-of-way width to 80 feet from the opposite property line. The Applicant will dedicate 10 feet from the centerline of Glen Mill Road towards the right-of-way.

There are currently no sidewalks along Red Barn Lane and Glen Mill Road. No sidewalks will be required along this Property's frontage because Red Barn Lane is a private road and Glen Mill Road is an exceptional rustic road, which severely limits the ability to make significant frontage improvements. Sidewalks are not recommended on rustic roads³.

The sight distance for the new driveway location on Red Barn Lane was not reviewed by MCDOT as Red Barn Lane is a private road.

School Capacity

The Subject Property is within the Winston Churchill High School cluster area. Applications approved in FY2016 are subject to a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate for all units for which a building permit is issued and a School Facilities Payment⁴. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Other Public Facilities and Services

The Property is located in Tier III according to the Septic Tiers Map for Montgomery County and W-1 and S-6 water and sewer service categories which requires onsite septic systems and public water. Within Tier III, the Planning Board may approve a subdivision for any number of residential lots that would be served by one or more septic systems. Septic system locations were approved for each lot by Montgomery County Department of Permitting Services and are found to be adequate to serve the proposed re-subdivision (Attachment E). The proposed dwelling units will have public water and the existing dwelling unit must connect to public water when a new house is built⁴. The Application was reviewed by the Montgomery County Fire and Rescue Services, which approved the submitted fire access plan on March 19, 2014, finding that the Application has adequate access for emergency vehicles. Police stations, fire stations, and health clinics are currently operating within the standards set by the Subdivision Staging Policies currently in effect. The Application can be adequately served by all other public facilities and services.

Environment

Environmental Guidelines (2000)

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #4201105200 for Horizon Hill was approved on October 28, 2010 and was subsequently revised on February 3, 2015. The NRI/FSD identified no forest or Stream Valley Buffer on the Subject Property. The Subject Property contains 16 trees 24" DBH to 30" DBH and 11 trees 30" DBH or greater.

³ Chapter 50-35(q) of the Subdivision Regulations

⁴ Per MCDPS Well and Septic Section memo dated August 13, 2012.

The Property is also located in the Watts Branch Watershed and specifically within the Piney Branch subwatershed, which is within the Piney Branch SPA.

Forest Conservation

A Preliminary Forest Conservation Plan (PFCP) (Attachment B) was submitted for review as part of the Application. The PFCP shows no forest clearing and no forest retention. The PFCP worksheet generates a 1.27 acre planting requirement, which the Applicant proposes to meet through an off-site mitigation bank. An afforestation planting requirement is generated because the Property contains no existing forest and under the Medium Density Residential land use category the Property has a 20 percent afforestation threshold for the net tract area.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires no impact to trees that: measure 30 inches or greater, DBH ("Protected Tree"); are part of a historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to a Protected Tree, including removal or disturbance within the Protected Tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. In the written request for a variance, an applicant must demonstrate that strict adherence to Section 22A-12(b)(3), i.e. no disturbance to a Protected Tree, would result in an unwarranted hardship as part of the development of a property.

Unwarranted Hardship

Staff does not entirely support the Applicant's basis for an Unwarranted Hardship as worded in the Variance Request. However, Staff does believe an unwarranted hardship would be created if a Variance were not considered. Based on the distribution of the Protected Trees, the locations of the septic fields, and the location of the existing water line in Red Barn Lane, it would be extremely difficult for the Property to be re-subdivided or redevelop the existing two lots without impacting the CRZ of a Protected Tree. Staff believes for this reason a variance should be considered for this Application.

Variance Request

In October 2014, the Applicant made the initial variance request for the Subject Property. That request was revised several times but always included an analysis of impacts based on a driveway out to Glen Mill Road. The final version of the Variance was submitted on April 10, 2015 and requested impacts to two Protected Trees and the Removal of one Protected Tree.

ATTACHMENT 3

Tree Number	Botanical Name	Common Name	Size (DBH)	Condition	% CRZ Impacted	Reason for Removal
ST-11	Prunus serotina	Black Cherry	31"	Poor/declining	11%	Installation of Utility

Table 1: Protected Trees Removed

Tree Number	Botanical Name	Common Name	Size (DBH)	Condition	% CRZ Impacted	Reason for Impact
ST-13	Acer saccharinum	Silver Maple	32.3"	Moderate-Poor	9%	Construction Grading
ST-14	Quercus nigra	Water Oak	42.3"	Moderate-Poor	15%	Installation of Utility

Table 2: Protected Trees Proposed for Impact

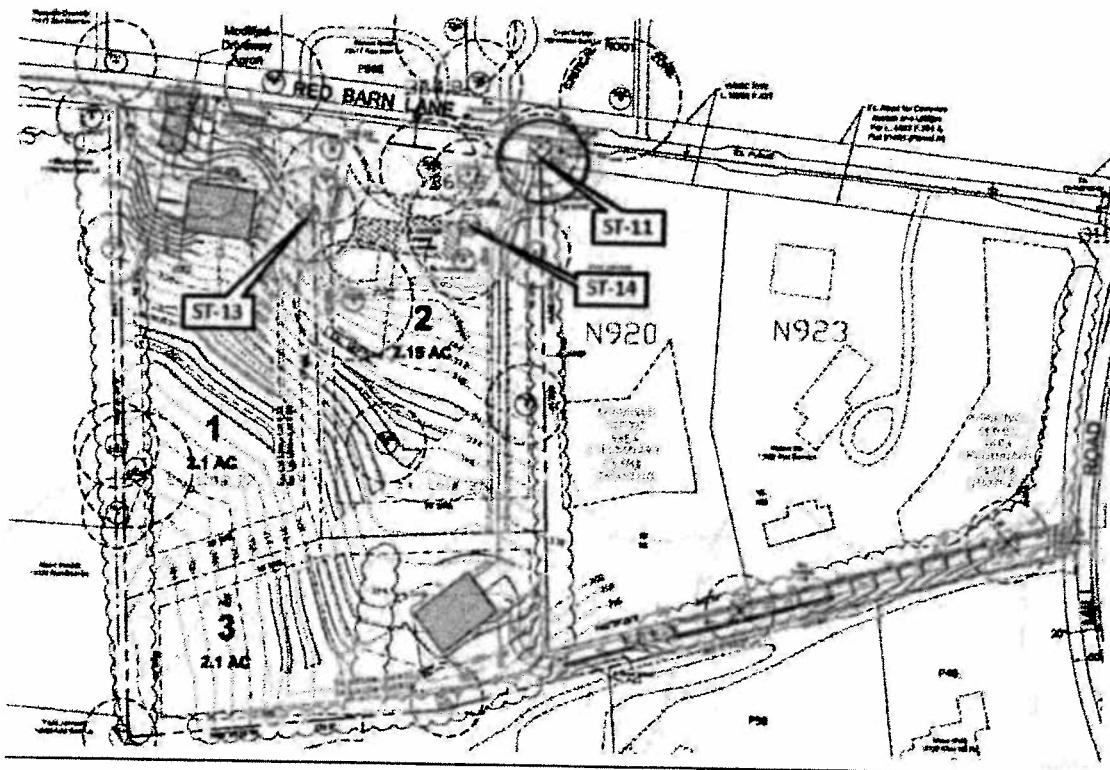


Figure 11: Proposed Variance Evaluated

Variance Findings

The Planning Board must make findings that the Application has met all requirements of section 22A-21 of the County Code before granting the variance. Staff has made the following determination on the required findings for granting the variance:

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

The use of this site for single family residential uses is permitted in the RE2 zone. The proposed lots and buildings meet these zoning requirements as well. As such, the granting of this variance is not unique to this Applicant and does not provide special privileges or benefits that would not be available to any other applicant.

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

The configuration of the Subject Property, regulatory requirements, and the location of the Protected Trees are not the result of actions by the Applicant. There are no feasible options to reconfigure a 3 lot subdivision and avoid impact to the Protected 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 not related in any way to a condition on an adjacent, neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Water Quality Inventory including a Stormwater Management Concept Plan has been by the Montgomery County Department of Permitting Services. Additionally, the mitigation for the removal of ST-11 should offset any other limited water quality issues.

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 for a recommendation prior to acting on the request. Via letter dated May 15, 2015, the County Arborist recommended the variance be approved with mitigation (Attachment D).

Mitigation

Mitigation for Trees Subject to the Variance Provision - There is one (1) tree proposed for removal in this variance request. ST-11 a 31" DBH Black Cherry in poor to declining status; however, Staff does not differentiate mitigation rates for Protected Trees.

Mitigation should be 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" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper size. For example, this means that for the 31" DBH of trees removed the Applicant should replace with 7.75 caliper inches of trees or three (3) 3" caliper size, native, canopy trees on the Property. While these trees will not be as large as the tree 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 two (2) trees, but they are candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

Variance Recommendation

Staff recommends that the variance could be granted with mitigation if the Planning Board chooses to approve the overall subdivision. The submitted FFCP meets all applicable requirements of the Chapter 22A of the County Code (Forest Conservation Law).

Piney Branch SPA WATER QUALITY

Review for Conformance to the Special Protection Area Requirements

As part of the requirements of the SPA law a preliminary plan application must comply with Chapter 19. Under the provision of the SPA law, the Montgomery County Department of Permitting Services is the lead agency for determining applicability of Chapter 19 of the Montgomery County Code including the requirements to either submit a Water Quality Plan or a Water Quality Inventory.

MCDPS has determined that this Application is not required to submit a Water Quality Plan and only requires a Water Quality Inventory. M-NCPPC has no regulatory action involved with the approval of a Water Quality Inventory.

The MCDPS – Water Resources Section approved a Water Quality Inventory, including a stormwater management concept, for the Application by letter dated August 31, 2012. Stormwater management will be accommodated by using Environmental Site Design practices including rooftop disconnects, drywells, and driveway gravel trenches. The stormwater management requirements as provided in Chapter 19 of the County Code will be satisfied.

Compliance with the Subdivision Regulations and Zoning Ordinance

The Application was reviewed for compliance with the Montgomery County Code, Chapter 50 in the Subdivision Regulations. The proposed lots' size, width, shape and orientation are appropriate for the location of the subdivision. Based on a review of the local area development map, figure 11, the lots are comparable in size, width, shape and orientation to existing properties fronting on to Red Barn Lane in the general area.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 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. A summary of this review is shown below in Table 3.

Table 3 - Preliminary Plan Data Table

PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan
Minimum Lot Area	2 acres	2.0 acres or larger
Lot Width	150 ft.	150 ft. minimum
Lot Frontage	25 ft.	25 ft. minimum
Setbacks		
Front	50 ft. Min.	Must meet minimum ¹
Side	17 ft. Min./ 35 ft. total	Must meet minimum ¹
Rear	35 ft. Min.	Must meet minimum ¹
Maximum Residential Dwelling Units	3	3
Site Plan Required	No	No

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

Conformance with Section 50-35(l) (Master Plan Conformance)

The proposal does not meet the requirements of this section of the Subdivision Regulations which covers the Master Plan conformance requirements of a Preliminary Plan:

Relation to Master Plan. In determining the acceptability of a preliminary plan submitted under this Chapter, the Planning Board must consider the applicable master plan, sector plan, or urban renewal plan. A preliminary plan must substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.

As described in the Master Plan section above, Staff finds that the proposed subdivision does not substantially conform to the 2002 Potomac Subregion Master Plan or the 1996 Rustic Roads Functional Master Plan due to the negative impact the proposed Lot 3 driveway location will have on the Exceptional Rustic Road. There are multiple driveway routes to Lot 3 from Red Barn Lane that will not impact the Exceptional Rustic Road. (Figure 9).

Conformance with Section 50-24(k) (Rustic Roads conformance)

An alternative requirement for access is available, as allowed under Section 50-24, Required public improvements, which includes the following provision specifically for rustic roads:

Sec. 50-24(k) Notwithstanding the requirements of this Section for any new subdivision that abuts a rustic road, the Planning Board may waive any requirement of subsection (a) or (b) that is incompatible with the rustic road or substitute any alternative requirement that is consistent with the goals of the rustic roads law.

Subsection (a) addresses new roads and subsection (b) addresses existing frontage roads, which reads, in part, "the subdivider shall provide, in addition to and required dedication 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..." The Planning Board may waive such improvements on Rustic and Exceptional Rustic roads to assure that the character of the road is protected.

Under the alternative requirement, Staff recommends that previously denied access to Glen Mill Road be maintained and that all access to the subdivision be limited to Red Barn Lane to protect the character of Glen Mill Road.

Conformance with Section 50-29(b)(2) (Resubdivision)

A. Statutory Review Criteria

In order to approve an application for re-subdivision, the Planning Board must find that each of the proposed lots complies with all seven of the re-subdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential uses as other lots within the existing block, neighborhood or subdivision.

- B. **Neighborhood Delineation** In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "Neighborhood" for evaluating the Application. In this instance, the Neighborhood selected by the Applicant consists of 24 lots, all zoned RE-2, excluding the Subject Property. The Neighborhood provides an adequate sample of the lot and development pattern of the area depicted in Figure 10.

ATTACHMENT 3



Figure 12 - Re-subdivision Neighborhood shown in red with lot numbers

Table 4 – Re-subdivision Criteria

Lot #	Frontage	Alignment	Size (Ac.)	Shape	Width (ft.)	Area (s.f.)	Area (Ac.)
1	203	Perpendicular	2.10	Rectangular	203	57,823	1.33
2	240	Perpendicular	2.15	Rectangular	240	57,456	1.32
3	31	Flag	2.10	Rectangular	185	62,157	1.43
19	145	Perpendicular	2.53	Rectangular	155	78,046	1.79

ATTACHMENT 3

Lot #	Frontage	Alignment	Size (Ac.)	Shape	Width (ft.)	Area (s.f.)	Area (Ac.)
20	175	Perpendicular	2.09	Rectangular	168	56,318	1.29
21	203	Corner	2.05	Rectangular	215	46,590	1.07
28	178	Perpendicular	2.03	Rectangular	178	56,375	1.29
29	309	Perpendicular	2.66	Rectangular	270	78,400	1.80
30	258	Perpendicular	2.07	Rectangular	226	55,150	1.27
31	264	Perpendicular	2.00	Irregular	215	52,670	1.21
34	62	Perpendicular	2.05	Rectangular	176	31,568	0.72
35	33	Flag	3.63	Irregular	150	48,611	1.12
36	91	Perpendicular	2.33	Irregular	172	35,859	0.82
37	210	Perpendicular	2.79	Irregular	194	46,314	1.06
38	32	Flag	6.11	Irregular	150	36,529	0.84
39	176	Perpendicular	2.40	Irregular	194	34,211	0.79
40	152	Perpendicular	2.80	Rectangular	189	39,139	0.90
41	79	Perpendicular	3.40	Irregular	150	25,454	0.58
42	132	Perpendicular	2.24	Irregular	158	20,516	0.47
43	109	Perpendicular	2.10	Irregular	150	14,004	0.32
44	308	Perpendicular	2.04	Irregular	292	31,235	0.72
45	0	None	5.13	Irregular	577	66,570	1.53
46	183	Perpendicular	2.00	Rectangular	183	56,534	1.30
47	175	Perpendicular	2.00	Rectangular	175	57,504	1.32
48	363	Perpendicular	4.06	Irregular	392	110,142	2.53
49	710	Perpendicular	4.00	Irregular	636	111,221	2.55
50	206	Perpendicular	5.00	Irregular	227	118,775	2.73

C. Analysis

Comparison of the Character of Proposed Lots to Existing

In performing the analysis, the above-noted re-subdivision criteria were applied to the Neighborhood. The proposed lots are of the same character with respect to the re-subdivision criteria as other lots within the Neighborhood. Therefore, the proposed re-subdivision complies with the seven criteria of Section 50-2(b) (2). As set forth below, the tabular summary shown in Table 4 and graphical documentation depicted in Figure 12 support this conclusion:

Frontage:

In the Neighborhood of 24 lots, lot frontages range from 32 feet to 710 feet. Six of the lots have frontages of less than 100 feet and the remaining 18 lots have frontages of more than 100 feet. Proposed Lot 1 has a frontage of 203 feet on Red Barn Lane and Proposed Lot 2 has a frontage of 240 feet on Red Barn Lane. Proposed Lot 3 has existing frontage of 31 feet on Glen Mill Road and will not change as part of this application. The proposed lots will be of the same character as existing lots in the Neighborhood with respect to lot frontage.

ATTACHMENT 3

Alignment:

Of the 24 existing lots in the Neighborhood, 20 are perpendicular in alignment, two are flag, and one is a corner lot. Proposed Lots 1 and 2 are perpendicular lots and proposed Lot 3 is a flag lot. The proposed lots are of the same character as existing lots with respect to the alignment criterion.

Size:

The lots in the Neighborhood range from two acres to 6.11 acres. Ten of the 24 existing lots are less than 2.1 acres in size. Proposed Lots 1 and 3 are 2.1 acres in size and proposed Lot 2 is 2.15 acres in size. The proposed lot sizes are in character with the size of existing lots in the Neighborhood.

Shape:

Fourteen of the existing lots in the Neighborhood are irregularly shaped. The remaining ten lots consist of rectangular shaped lots. The proposed lots are rectangular shaped. The shapes of the proposed lots will be in character with shapes of the existing lots.

Width:

The lots in the Neighborhood range from 150 feet to 636 feet in width. Fifteen of the existing lots have widths fewer than 200 feet and nine lots have a width greater than 200 feet. Proposed Lot 1 has a width of 203 feet. Proposed Lot 2 has a width of 240 feet. Proposed Lot 3 has a width of 185 feet. The proposed lots will be in character with existing lots in the Neighborhood with respect to width.

Area:

The lots in the Neighborhood range from 0.32 acres to 2.73 acres in buildable area. Eighteen of the existing lots have a buildable area under 1.5 acres and six have a buildable area over 1.5 acres. Proposed Lot 1 has a buildable area of 1.33 acres. Proposed Lot 2 has a buildable area of 1.32 acres. Proposed Lot 3 has a buildable area of 1.43 acres. The proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.

Suitability for Residential Use:

The existing and proposed lots are zoned residential and the land is suitable for residential use.

Citizen Correspondence and Issues

The Applicant notified adjacent and confronting property owners of the pre-submission meeting, as required, held on November 15, 2011 at 7 p.m. at the Potomac Community Library located at 10101 Glenolden Drive. Nine people attended the pre-submission meeting. The owners of 12110 and 12100 Glen Mill road asked questions regarding Lot 3. They were concerned about safe access from Glen Mill Road to the proposed driveway for Lot 3 as well as stormwater runoff from the new driveway onto their properties. The neighbors along Glen Mill Road suggested Lot 3 have access from Red Barn Lane. Other neighbors attending the meeting suggested that Glen Mill Road access was appropriate since Red Barn Lane, a private road, is not built to County standards.

Staff has received nine letters to date, spanning from 2012 to 2014, from neighbors. The following is a summary of their concerns.

- The speed limit on Glen Mill Road is not observed. It is currently difficult to get in and out of the existing adjacent driveway to Lot 3's proposed driveway to Glen Mill Road due to the curves and

slope. Sight lines will be challenging with the additional proposed driveway so close to the existing entrance. An adjacent driveway would be hazardous for the current users of the existing driveway. Sight lines are better and longer at Red Barn Lane.

- The Application sent to the neighbors is lacking in information regarding the construction and design of the proposed driveway from Glen Mill Road. Will there be retaining walls for the new driveway as there are steep slopes? Where would those retaining walls be located?
- How will drainage be addressed? The removal of mature trees will affect the water run-off and erosion as the trees anchor the soil and reduce erosion.
- There will be removal of several mature trees and potentially relocating utility poles. Will the Applicant plant trees between the proposed driveway and the existing driveway?
- There are not sufficient screening opportunities to the adjoining properties creating sound and light disturbances to the nearby residences.
- Glen Mill Road has a rural historic character with dense hedgerow planting along the streetscape. This character would be adversely damaged if mature trees are removed.
- The driveway for Lot 3 should access Red Barn Lane and not Glen Mill Road through an easement access between Lots 1 and 2. Red Barn Lane has lightly traveled low speed road and can safely handle the driveway.
- Is this Plan consistent with the general character of the neighborhood along Red Barn Lane?
- A public notice sign should be located on Glen Mill Road.⁵
- If access to Red Barn Lane is required, there are safety concerns, children, sight distance, inclement weather conditions, and effect on existing neighborhood.
- Access to Red Barn Lane could cause headlights into front windows of adjacent property owners.
- Access to Red Barn Lane could create a long "awkward" driveway along the adjacent property owner's property and removal of vegetation along Red Barn Lane.
- Access to Red Barn Lane may require a driveway of steep grade creating an unsafe situation.

The overwhelming issue of almost all of the letters received has been over the access point for the third lot, of the nine letters, five requested the access go to Glen Mill Road and four requested access go to Red Barn Lane.

In addition to the nine neighbor letters, we also received a letter from the West Montgomery County Citizens Association (WMCCA). The primary concern of this letter was the proposed access to Glen Mill Road via a parallel drive to serve proposed Lot #3. WMCCA went on to support the RRAC recommendation; "Where alternatives exist, the committee's first preference is to avoid creating new access points on rustic and exceptional rustic roads."

The WMCCA Board voted and oppose the use of the pipestem for an additional driveway; calling it redundant and unnecessary, since all 3 lots can be accessed via Red Barn Lane.

⁵ After this letter was received, the Applicant has posted a public notice sign on Glen Mill Road and has staked the centerline of the driveway for proposed Lot 3.

CONCLUSION

The previously approved Plat (#18005) currently restricts driveway access from Glen Mill Road. The construction of a new access point on Glen Mill Road will negatively impact the Exceptional Rustic Road. The RRAC, MCDOT, and Staff all recommend that the access for proposed Lot 3 be from Red Barn Lane and would only support access to Glen Mill Road if the Planning Board finds access to Glen Mill Road will not be a negative impact on an Exceptional Rustic Road. The Applicant has the ability to achieve the third lot with no impact to an Exceptional Rustic Road by accessing Red Barn Lane.

The Preliminary Plan as shown is not in substantial conformance with the 2002 Potomac Subregion Master Plan and the 1996 Rustic Roads Functional Master Plan. The Planning Board has authority under Section 50-24(k) to substitute an alternative requirement for access to be limited to Red Barn Lane. This Application is recommended for denial pursuant to Section 50-35(l).

Denial of the Application for the following reasons:

- Not in substantial conformance with the 2002 Potomac Subregion Master Plan or the 1996 Rustic Roads Functional Master Plan.
- Negative avoidable impacts to an Exceptional Rustic Road.
- Alternative access is available (would state where it is available).
- Glen Mill Road access is not preferred by MCDOT or RRAC.
- Applicant has not provided additional information on impacts from multiple alternatives to analyze
- Inconsistent with Planning Board's previous action on Preliminary Plan 119892860 (Condition 3) and the current plat, #18005, which denied access to Glen Mill Road.

Attachments

Attachment A – Proposed Development Plan

Attachment B – Forest Conservation Plan

Attachment C – Tree Variance Request

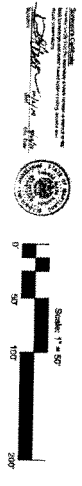
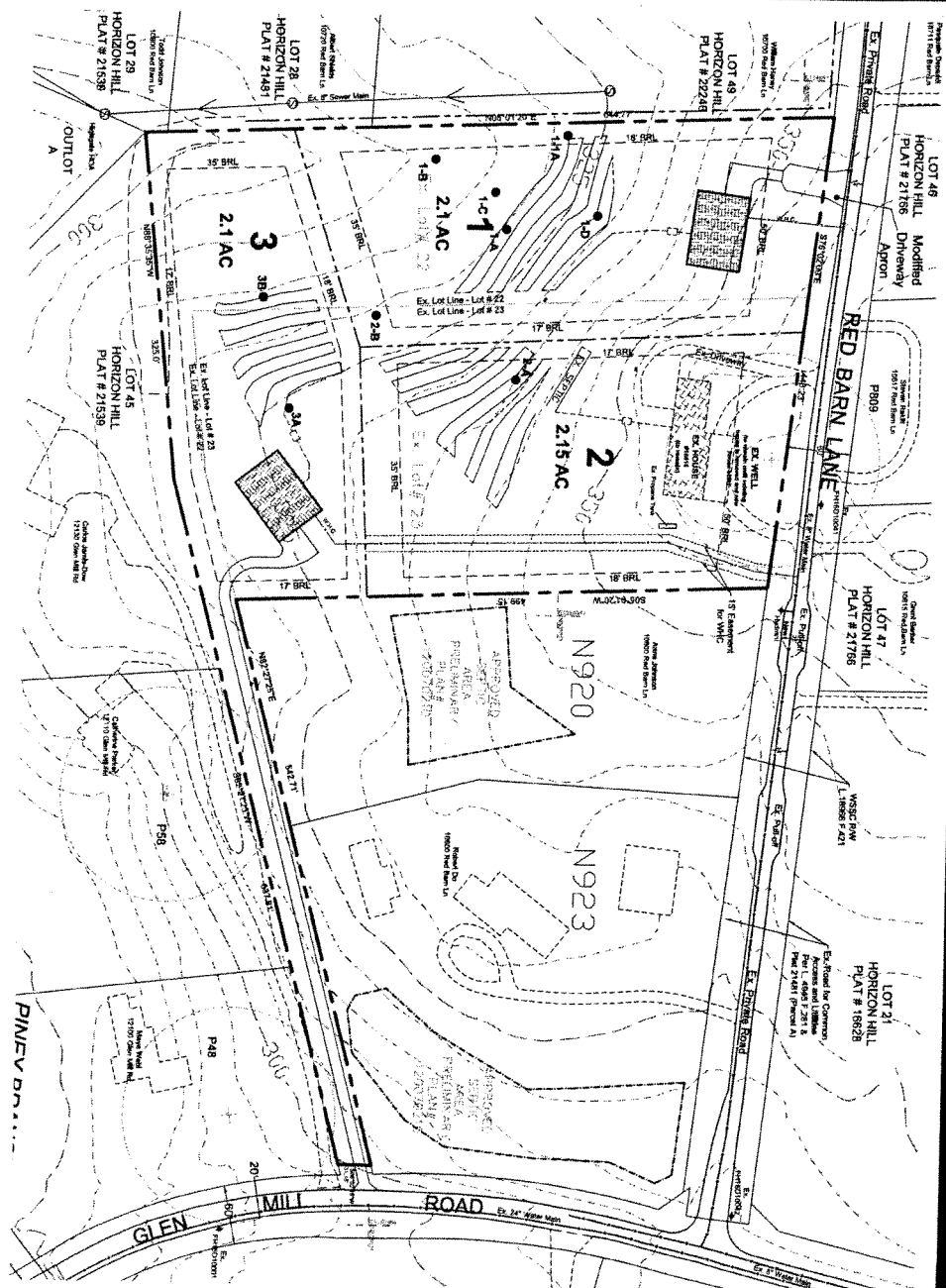
Attachment D – Arborist's Letter

Attachment E – Agency Correspondence

Attachment F – Citizen Correspondence

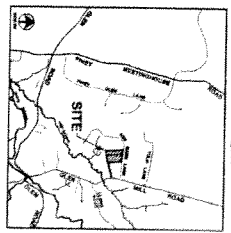
Attachment G – Page 62; 1990 Proposal for a Rural Rustic Roads Program

Attachment H - Preliminary Plan 11989286 McKay Property Opinion



The building footprints shown on the preliminary plan are illustrative. Final building footprints will be determined during the building permit process. Please refer to the zoning code for setbacks and lot coverage for each lot. The building footprint shown for development may also be included in the conditions of the Planning Board's approval.

Prepared by:
Charles Rabkin & Mari Plogge
 10616 Red Barn Lane
 Potomac, MD 20854
 301-728-1102



NOTES:

- AREA OF PROPERTY: 6.35 acres
- EXISTING ZONING: RE-2
- NO. OF LOTS PERMITTED: 3
- NO. OF LOTS SHOWN: 3
- USE: RESIDENTIAL
- LOCATED IN PINEY BRANCH SUBDIVISION
- UTILITIES TO BE PROVIDED BY: Vision, Potomac Edison
- ALL WELL AND SEPTIC AREAS WITHIN 100' OF PROPERTY BOUNDARY ARE SHOWN ACCORDING TO AVAILABLE RECORDS OR VISUAL OBSERVATIONS.

ZONING STANDARDS:	
ZONE: RE-2	Req. Prov.
Lot Size	2.0 AC
Front Setback	50'
Sideyards	17' min., 35' total
Rearyard	35'
Building Height	50' Max.
Lot Coverage	25% Max.
Lot Width @ Building Line	150'
Frontage	25'

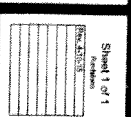
LEGEND:

- Proposed Roads
- Proposed Easements
- Proposed Setbacks
- Water Utility Corridor
- Electric Utility Corridor
- Gas Utility Corridor
- Proposed Lot Lines
- Existing Lot Lines
- Existing Easements
- Existing Features

PRELIMINARY PLAN
HORIZON HILL
 (Resubdivision of Lots 22 & 23)
 Montgomery County, Maryland

B&A
 Benning & Associates, Inc.
 1913 Study Grove Court
 Gaithersburg, MD 20878
 301-286-9046

date: 07/23/12
 scale: 1" = 50'



Sheet 1 of 1
 10/20/12



date: 07/23/2012
scale: 1" = 50'

Blending & Associates, Inc.
1717 South Rock Creek Rd.
Chillicothe, MD 20747
(410) 842-4210



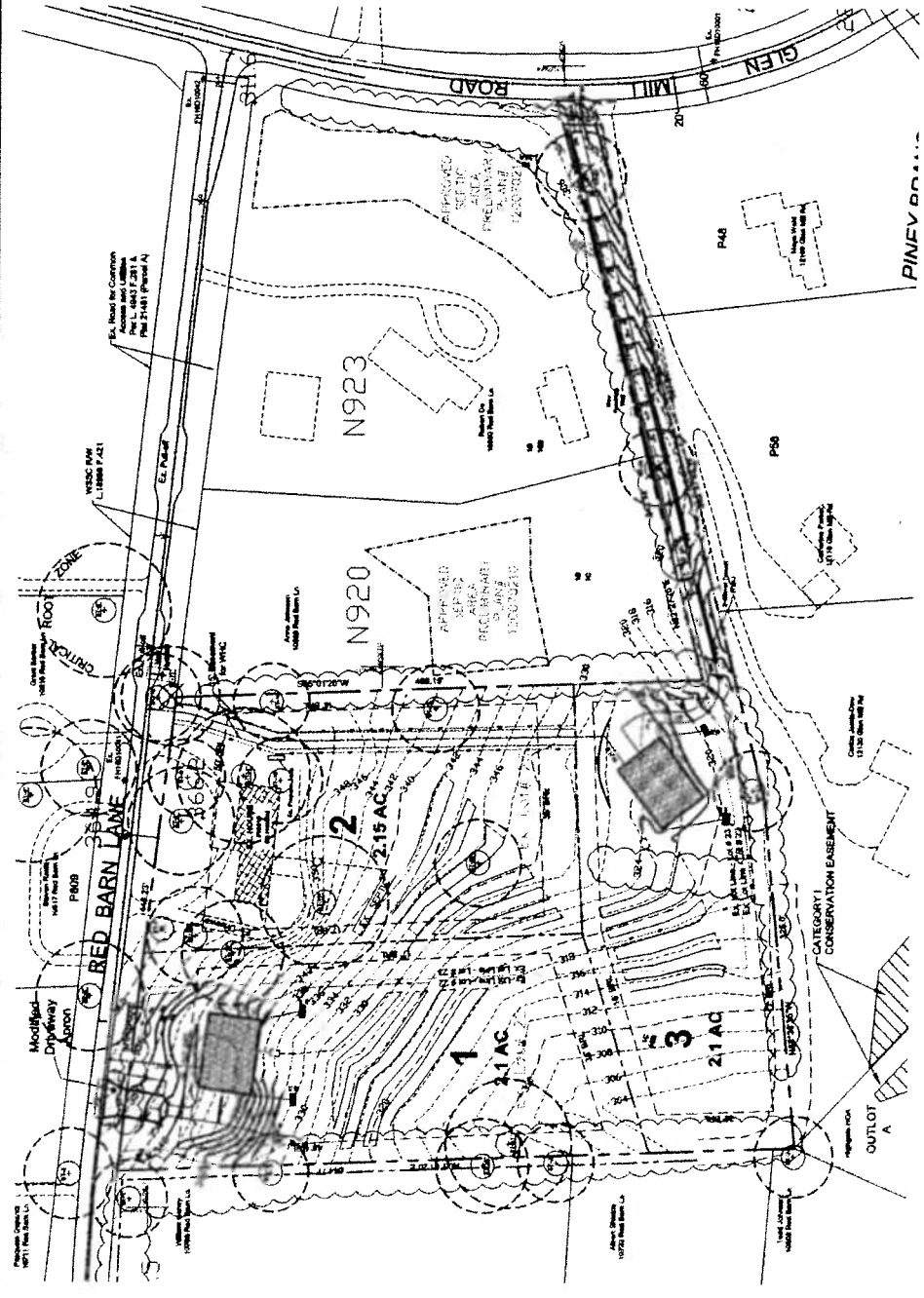
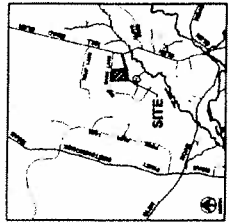
PRELIMINARY FOREST CONSERVATION PLAN
HORIZON HILL
Resubdivision of Lots 22 & 23
Montgomery County, Maryland

- NOTES:**
1. AREA OF PROPERTY: 6.58 ACRES
 2. EXISTING ZONING: REC-2
 3. LOT AREA: 2.15 ACRES
 4. NO. OF LOTS SHOWN: 3
 5. EXISTING SEWER & WATER SERVICE CATEGORIES: SA, WH-1
 6. LOTS TO BE SERVED BY PUBLIC WATER AND SEPTIC SYSTEMS
 7. LOCATED IN PINEY BRANCH SPECIAL PROTECTION AREA
 8. UTILITIES TO BE PROVIDED BY: Washington Gas, Verizon, Potomac Electric Power Co.
 9. ALL WELL AND SEPTIC AREAS WITHIN LOT OF PROPERTY BOUNDARY ARE SHOWN ACCORDING TO AVAILABLE RECORDS OR VISUAL OBSERVATIONS.



- LEGEND:**
- Proposed Tree
 - Retention Tree
 - Category 1 Conservation Easement
 - Category 2 Conservation Easement
 - Category 3 Conservation Easement
 - Tree to be Preserved
 - Proposed Utility
 - Proposed Water Lines
 - Address
 - Street Front
 - Adjacent Lot
 - Limit of Disturbance

VICINITY MAP
SCALE: 1" = 2,000'



SOURCE OF THE FOOT CONTOUR INTERVAL TOPOGRAPHY:
THOMAS A. MADROX, PROFESSIONAL LAND SURVEYOR
4833 SHADY GROVE CT
GAITHERSBURG, MD 20877
301-488-0064

PREPARED FOR:
Charles Rabkin & Mari Piegge
1818 Red Barn Lane
Piney Branch, MD
301-728-1182

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
Fax: 301-948-0241
E-mail: jmaisel@benninglandplan.com

To: Mr. Josh Penn, M-NCPPC Area 3
From: Joshua O. Maisel
Date: October 27, 2014 (Revised 04/10/15)
Re: Horizon Hill - Request for Variance (M-NCP&PC #120120170)

Dear Mr. Penn,

In accordance with Section 22A-21 of the Montgomery County Code, we are writing to request a variance for the removal of 1 specimen tree and the impact to 2 additional specimen trees located on the subject property. Plans for this project identify 27 significant trees on or near the property and 12 of these are specimen-size trees with a diameter-at-breast-height of at least 30" (with the exception of ST-19, a 29" White Pine which is a specimen for its species). As indicated above, the project as planned impacts only 3 of the specimen-size trees. Furthermore, the 1 specimen-size tree which we request to remove has been identified as hazard tree and is recommended for removal irrespective of the planned development. Given these facts and the additional information which follows, we respectfully ask for your approval of this variance request.

Project Description

The subject property is zoned RE-2 and located within the limits of the Potomac Subregion Master Plan. The owners, Charles Rabkin & Mari Plagge, intend to re-subdivide the property into 3 residential building lots. Located within the area proposed for new construction is one specimen tree that will require a variance for removal. The one tree proposed to be removed is identified on the Preliminary Forest Conservation Plan (PFCP) as ST-11.

ST-11, a 31" Black Cherry in dead-hazard condition, is located in the public right-of-way at the northeast corner of the property in an area where construction activities are proposed. A water line to serve a new residence is proposed within 10' of this tree. The tree was classified as a hazard tree on the approved Natural Resources Inventory/ Forest Stand Delineation Plan. This tree is a risk to public health, safety, and welfare due to its proximity to Red Barn Lane and should be removed regardless of any impact from the development.

There are two specimen trees that will not be removed which require a variance due to small impacts from construction activities. The two trees are identified on the PFCP as ST-13, and ST-14. ST-13, a 32" Silver Maple in moderate condition, is located in the northern central portion of the property in an area proposed for construction activities. Minor grading associated with the new house on Lot 1 will impact only 8% of the critical root zone. This tree will be retained. ST-14, a 40" Water Oak in moderate-poor condition, is located in the northeastern portion of the property in an area where construction activities are proposed. A water line which will serve a new residence is to be installed

within 40' of the tree. Construction activities and the associated grading will impact only 12% of the critical root zone. This tree will also be retained.

SIGNIFICANT TREE CHART: TREE TO BE REMOVED

TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	COMMENTS	%CRZ IMPACT	REASON FOR IMPACTS / REMOVAL
ST-11	Prunus serotina	Black Cherry	31"	Dead-Hazard	Dead standing, remove ASAP	11%	Dead standing tree with a target; installation of utility line

SIGNIFICANT TREE CHART: TREES IMPACTED / NOT REMOVED

ST-13	Acer saccharinum	Silver Maple	32.3"	Moderate-Poor	Growing on slope with good response root flairs, exposed roots with wounds, co-dominant leaders, response wood growth at branch union, adjacent to driveway, broken dead limbs with decay, dead leader tree is in decline	9%	Grading and construction activities will impact a portion of critical zone
ST-14	Quercus nigra	Water Oak	42.3"	Moderate-Poor	Enormous amount of response wood growth in the root collar and lower trunk, possible indicator of internal decay, tree should have a Level III Hazard Assessment and be closely monitored for hazards, large broken scaffold limbs with decay, carpenter ants observed, co-dominant leader, response wood growth at branch union, broken dead limbs with decay	15%	Installation of utility line will impact critical root zone

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states the applicant must:

1. Describe the special conditions peculiar to the property which would cause unwarranted hardship;
2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
3. Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of granting of the variance; and
4. Provide any other information appropriate to support the request.

In addition, Section 22A-21(d) indicates 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.

In accordance with Section 22A-21(b), please note the following:

ATTACHMENT 3

There are special conditions unique to the property which would cause unwarranted hardship should the variance not be approved. The subject property has the unique circumstance of having frontage along a public road (Glen Mill Road) and a private street (Red Barn Lane). The property already consists of 2 lots with access to Red Barn Lane including the lot which contains the owner's residence (Lot 2). Therefore, the primary reason for the application to subdivide the site is to create proposed Lot 3. For a variety of reasons including the condition of Red Barn Lane (sub-standard), ownership of Red Barn Lane (privately owned by others), and relationships between existing and proposed homesites, the use of the Glen Mill Road frontage is proposed for access to Lot 3. The pipestem where this access will be located contains two significant trees but no specimen trees. In addition, the property has the unique circumstance of being adjacent to a public water main in Red Barn Lane and a public water main in Glen Mill Road. However, the water main in Glen Mill Road is a large-diameter pipe and WSSC is opposed to tapping directly into this main line. For this reason, it is necessary to tap into the water line in Red Barn Lane for all of the proposed lots including Lot 3 which does not abut Red Barn Lane. To provide water service to this lot, the location of the water house connection has been carefully planned to avoid major impacts to significant or specimen trees within a proposed easement area on Lot 2. However, given the arrangement of large trees on the property near Red Barn Lane, some impact is unavoidable. We are requesting to remove ST-11 due partly to the impact from the planned water line to Lot 3. However, this tree is a dead-hazard tree and needs to be removed irrespective of the planned activity. Overall, despite the unique circumstances of the property and the prevalence of specimen trees on or near the site, the impact from the proposed development is minimal and results only in the removal of one specimen tree (also a hazard tree). Alternative options for driveway access to Lot 3 from Red Barn Lane were considered and all would result in additional and more substantial impacts to specimen trees. These impacts and the need for additional variances are avoided with the plan as proposed.

Should this variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. This project has been designed to meet or exceed all development standards for the RE-2 zone but certain impacts to specimen trees are unavoidable if the property is to be developed. Access to the WSSC public water system is needed as the property is within water service category W-1. However, without a variance for certain impacts to specimen trees as detailed earlier, the property owner would be deprived of gaining access to the public water system. The proposed water line to Lot 3 has been carefully planned so that its impact is slight to one specimen tree and more significant to another specimen tree which is a dead-hazard tree and needs to be removed in any case.

The granting of a variance will not result in a violation of State water quality standards or any measurable degradation in water quality. There are no environmentally sensitive features such as streams, floodplains, or wetland areas located on the property. Furthermore, the project has been planned to provide environmental site design (ESD) practices in accordance with the latest State and County requirements for stormwater management and the Montgomery County Department of Permitting Services has approved a Stormwater Management Concept Plan for the project.

In accordance with Section 22A-21(d), please note the following:

Approval of this variance does not confer a special privilege to the applicant which would be denied to others. Conversely, approval of the variance permits the applicant to develop the property in accordance with the RE-2 zone similar to what has occurred at nearby properties for other applicants. Approval of the variance allows the applicant to conduct minor grading and to access the public water system. These privileges are commonplace and necessary for development of land in the RE-2 zone.

ATTACHMENT 3

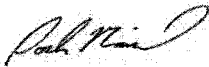
The requested variance is not based upon conditions or circumstances caused by the applicant. Instead, the applicant has painstakingly reviewed all of the possibilities for development of the property in accordance with zoning and subdivision standards in order to present plans which are in keeping with these standards. The applicant is requesting the variances in advance of any activities which might impact specimen trees on the site. The applicant has minimized impact to specimen trees to the greatest extent possible based upon the circumstances of the site.

The requested variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. As has been documented, the requested variance is a result of planned development of the subject property.

Finally, the requested variance will not violate State water quality standards or cause measurable degradation in water quality. The requested variance if approved would result in impacts to two specimen trees one of which will remain and the other of which should be removed irrespective of the planned development. Water quality on the property is not affected by these actions.

For the above reasons, we respectfully request approval of a variance for this project in accordance with the requirements of Section 22A-21 of the Montgomery County Code. If you have any questions or concerns regarding this request, please do not hesitate to contact me.

Sincerely,



Joshua O. Maisel, RLA
ISA Certified Arborist # MA-4514A
ISA Tree Risk Assessment Qualified
PNW/ISA Certified Tree Risk Assessor # CTRA 918



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

May 15, 2015

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

RE: Horizon Hill, DAIC 120120170, revised NRI/FSD accepted on 1/20/2015

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, 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, I make the following findings as the result of my review:

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 criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the



Casey Anderson
May 15, 2015
Page 2

variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

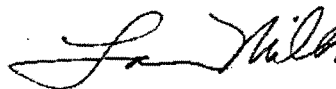
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet 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.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

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

Sincerely,



Laura Miller
County Arborist

cc: Josh Penn, Planner Coordinator

**RUSTIC ROADS ADVISORY COMMITTEE**

February 14, 2013

Dave McKee
Benning & Associates
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877

Re: Horizon Hill
Preliminary Plan No. 120120170

Dear Mr. McKee:

We are writing to thank you for your presentation to the Rustic Roads Advisory Committee on November 27, 2012. The applicant proposes three residential lots on Glen Mill Road, an exceptional rustic road, and Red Barn Lane; two lots are proposed with access on Red Barn Lane and one is proposed with access on Glen Mill Road. The current plat shows "Driveway Access Denied" on Glen Mill Road.

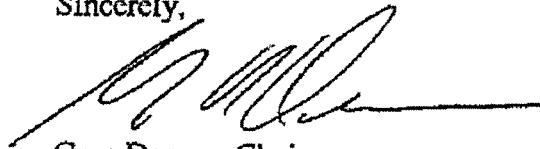
The Committee recommends the following for the proposed access on the exceptional rustic road:

1. Where alternatives exist, the committee's first preference is to avoid creating new access points on rustic or exceptional rustic roads.
2. The committee's next preferred option is to share access points (e.g., by creating a shared driveway, or in this case, using the existing shared driveway).
3. In cases where no alternative location or shared access is possible, and a new access point on a rustic road is deemed necessary and appropriate by the regulatory agencies, then new access points should be as narrow as possible. (In this case, a 10-to-12-foot wide driveway is proposed within the existing pipestem.)

The property owner indicated to the RRAC that sight distances along Red Barn Lane are inadequate to allow access for the third driveway. A sight distance evaluation was not presented to the Committee.

Thank you for providing us with an opportunity to review this project. If you have any questions regarding our comments, you may contact us through our staff coordinator, Mr. Jay Beatty in the Department of Permitting Services at 240-777-6340.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Deaver', with a long horizontal line extending to the right.

Greg Deaver, Chair
Rustic Roads Advisory Committee

Committee Members: Christopher Marston, Robert Goldberg, Marc Miller
Greg Glenn, Eric Spates, Angela Butler

ATTACHMENT 3