



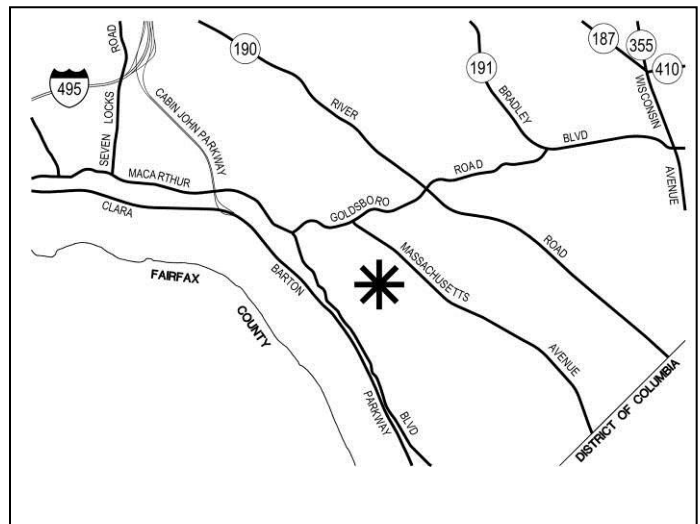
Preliminary Plan 120061120, Glen Echo Heights

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Staff Report Date: 2/12/16

Description

- Resubdivision of two lots into three lots for one one-family detached dwelling unit on each lot
- Located on the east side of Walhonding Road, 800 feet west of the intersection with Wiscasset Road
- 0.84 acres
- R-90 zone
- *Bethesda – Chevy Chase Master Plan*
- Application received on May 4, 2006
- Applicant: Alidad Hakimi
- Chapter 50, Chapter 22A



Summary

- **Staff Recommendation: Denial of the preliminary plan application.**
- The application is not in substantial conformance with the *Bethesda – Chevy Chase Master Plan* with respect to protection of natural features.
- The application is not in compliance with the Forest Conservation Law with respect to the priorities of forest retention and the forest conservation variance requirements.
- The application is not in compliance with Section 50-32c of the Subdivision Regulations with respect to development on steep slopes and erodible soils.
- The application is not in compliance with the Environmental Guidelines approved by the Planning Board in January 2000.

RECOMMENDATION: Denial

The proposed development excessively encroaches into environmentally sensitive areas comprised of mature trees and forested steep slopes associated with highly erodible soils, in conflict with the forest conservation law, the *Environmental Guidelines*, Master Plan recommendations, and the Subdivision Regulations.

- The application is not in compliance with the Forest Conservation Law with respect to the priorities of forest retention and the forest conservation variance requirements.
- The application is not in compliance with the Environmental Guidelines approved by the Planning Board in January 2000.
- The application is not in substantial conformance with the *Bethesda – Chevy Chase Master Plan*:
 - The application proposes excessive clearing and disturbance of a mature forest area within the Palisades, containing large trees.
 - The mature forest and large trees are associated with steep slopes.
 - The mature forest and large trees are associated with highly erodible soils.
 - The proposed destruction of the environmentally sensitive resources will, among other things, have an adverse effect on water quality and the special character of the community which is in conflict with the recommendations of the Master Plan.
- The application is not in compliance with Section 50-32c of the Subdivision Regulations with respect to development on steep slopes and erodible soils.

BACKGROUND

- May 4, 2006 – Preliminary plan application submitted by the applicant.
- June 5, 2006 – DRC meeting on the application. Staff did not support approval of the application.
- May 21, 2013 – The applicant submitted revised plans.
- July 1, 2013 – DRC meeting on the revised application. Staff did not support approval of the application, based on environmental concerns relating to steep slopes, erodible soils, and the environmental recommendations of the Master Plan.
- September 30, 2014 – Staff sent a letter to the applicant stating that, due to a lack of activity on the application for more than one year, the application would be withdrawn unless a resubmission was received within 30 days of the date of the letter.
- October 28, 2014 – The applicant requested an extension of the active status of the application until December 31, 2014.
- November 20, 2014 – Staff met with the applicant and new legal counsel to discuss the deficiencies in the previously submitted application.
- December 16, 2014 – The applicant submitted a letter detailing steps that had been taken to correct the deficiencies in the application and requested an additional extension of the active status of the application.
- March 17, 2015 – The applicant submitted revised plans.
- May 5, 2015 – Staff met with the applicant to discuss the pending staff recommendation of denial of the application.
- June 15, 2015 – Staff, including the Division Chief, met with the applicant at the subject property to further review the property's constraints and environmental features.

SITE DESCRIPTION

The property, shown below and in Attachment A, consists of two platted lots, which together comprise 0.84 acres (36,675 square feet) in area. The property is located on the east side of Walhonding Road, 800 feet west of Wiscasset Road. It is located in the R-90 zone. The property is developed with two one-family detached dwellings – one on each of the two existing lots. Surrounding properties to the north, east, and west are developed with one-family detached dwellings in the R-90 zone.

The property is located in the Palisades area within the Potomac River direct watershed. There are no streams or floodplains on the site. There are 0.48 acres of forest on the property, with numerous specimen trees. The forest continues offsite onto adjacent properties. The property slopes up away from the street, with the rear of the property being 36 feet higher than the front of the property. The area near the street is gently sloping, while a band of steep slopes crosses the property approximately at its center. The steep slope area is overlain by erodible soils, as identified in the 1995 *Soil Survey of Montgomery County, Maryland*.



Figure 1 Subject property

NORTH ↑



Figure 2 View of the subject property from Google Street View.

PROJECT DESCRIPTION

The applicant proposes to resubdivide the two existing lots into three new lots for three one-family detached dwellings. Proposed Lot 52 would be 9,791 square feet in area, proposed Lot 53 would be 14,525 square feet, and proposed lot 54 would be 12,359 square feet. A single shared driveway across the rear steep slope would provide vehicular access to the three lots from Walhonding Drive. One of the three lots will have direct frontage on Walhonding Drive, while the other two will be pipestem lots with building sites in the forested area at the rear of the property. Significant grading and retaining walls would be required to construct the driveway and create building sites on the three lots.

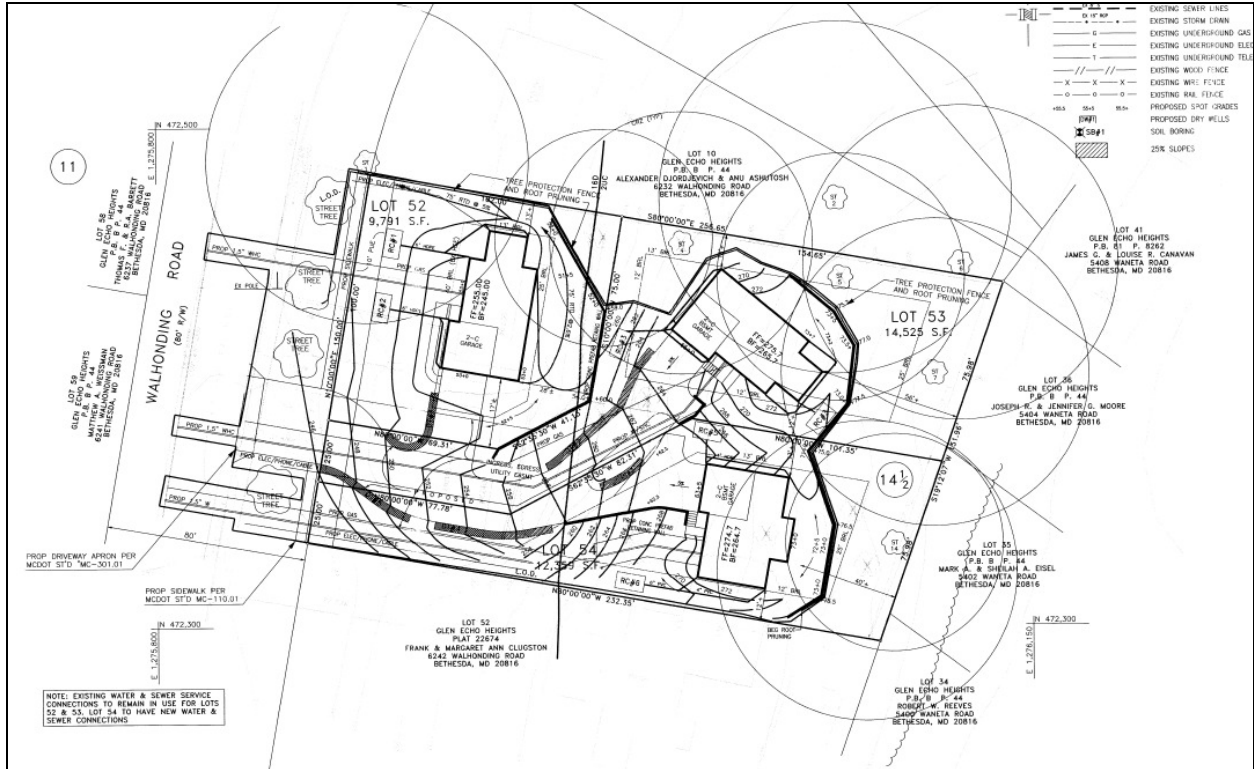


Figure 3 Preliminary Plan

ANALYSIS AND FINDINGS – Chapter 50

Conformance to the Master Plan

The subject property is located in the Palisades area identified in the *Bethesda-Chevy Chase Master Plan* for special consideration. Numerous recommendations and goals relate to the application and the environmentally sensitive features and character of the subject property.

Page 1:

The Bethesda-Chevy Chase area has many desirable characteristics which are critical to the continued stability of the area and which make B-CC one of the strongest communities in the County. These include well established residential neighborhoods, a combination of open space and wooded areas, employment and shopping opportunities, and a high level of transportation service. **A major goal of this Master Plan is to perpetuate and enhance the high quality of life to which citizens of Bethesda-Chevy Chase are accustomed.** [Emphasis in the original.]

Page 6:

This Master Plan addresses a broad range of ways that residents and businesses view their community. The high quality of life in Bethesda-Chevy Chase derives from ... a combination of woodlands and open spaces throughout the area.

Existing houses in the neighborhood are primarily built on the gentler slopes closer to the street, on lots with mature trees. The application would alter this character and would not perpetuate and enhance the high quality of life, as envisioned by the Master Plan. The wooded areas are a critical component of the fabric of the community. The application proposes to remove the entire forested portion of the site.

Page 3:

The major goal of the Master Plan is to protect the high quality of life, the residential character, and the natural environment throughout the area.

...

the [Master] Plan makes the following recommendations which apply to the Planning Area at-large: ...

Preserve and protect sensitive environmental features.

...

In the Palisades, the [Master] Plan endorses protection of the environment, character, and cultural resources of the area. [Emphasis in the original.]

The Master Plan's heavy emphasis on the protection of the environmentally sensitive areas and their associated character apply to the steep slopes, forest, and mature trees of the subject property. Regarding the highly erodible soils in the Palisades area (which occur within the subject property), page 137 also states, "Development on these soils is strongly discouraged." The application is not substantially in conformance with these recommendations because extensive grading on the steep slopes would be required to accommodate the proposed driveway and building sites, and the application proposes to remove the entire forested portion of the site and all but one of the trees that are large enough to trigger the need for a forest conservation variance (30 inches DBH or larger) would be removed.

Page 5:

A goal of this [Master] Plan is to protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase. Steeply sloped and heavily wooded areas are distinctive features of the Palisades area and portions of the Chevy Chase area. Throughout B-CC, residential areas are heavily wooded. Environmental concerns within the area include loss of mature woodlands, stream quality, and highway noise.

Recommendations to protect the natural resources of B-CC include:

1. Preserve wetlands, steeply-sloping areas and, where possible, extensively wooded areas.... [Emphasis in the original.]

As discussed above, the application does not meet the recommendations due to the proposed loss of the mature woodlands and steeply sloping areas, which would adversely affect stream quality.

Page 16:

...large land users, combined with the stream valley park system and low density wooded hillsides, create a strong sense of openness that adds to the special character of the community... In general, this land use fabric is viewed as contributing to a very high quality living environment.

Existing houses in the neighborhood are primarily built on the gentler slopes closer to the street, on lots with mature trees. The application would alter this character and would not perpetuate and enhance the high quality of life, as envisioned by the Master Plan. The wooded areas are a critical component of the fabric of the community. The application proposes to remove the entire forested portion of the site.

Several lots in the neighborhood, that were subdivided prior to adoption of the Master Plan, created flag lots that placed houses on steep slopes in the interior of the block within environmentally sensitive areas. This is a development pattern that the Master Plan seeks to preclude through its recommendations on maintaining the community character through protection of environmental features.

Page 29:

A major goal of the Master Plan is to protect the high quality of life, the existing residential character, and the natural environment throughout the area. [Emphasis in the original.]

As discussed above, the application does not meet this recommendation due to the proposed loss of the mature woodlands and steeply sloping areas, which would adversely affect stream quality.

Page 37:

This Master Plan does not identify large geographic areas, such as the Palisades area, as conservation areas. Instead, such areas are identified and protected through other measures, including development guidelines, land use recommendations, and scenic route designation.

Although the subject property, along with the Palisades as a whole, was not identified for conservation through public acquisition or similar methods, the Master Plan intends that sensitive environmental features be protected through other means, such as through the development review process. The development review process can protect environmental features through conformance with Master Plan recommendations, application of the Forest Conservation Law, and application of the Subdivision Regulations, particularly Section 50-32, which relates to protection of steep slopes and other natural features. As discussed throughout this staff report, the application does not adequately protect the environmental features of the site.

Page 69:

This [Master] Plan recommends preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the “Staff Guidelines for the Protection of Slopes and Stream Valleys,” prepared by the Montgomery County Planning Department staff (April 1983). Due to the sensitive topography in the Palisades, it is critical to protect these steep slopes from disturbance. (See Figure 15, Chapter 5.) With development pressure mounting, slopes which were once considered “unbuildable” are now being developed. In many instances, these slopes are being cleared of vegetation and excavated, leading to further erosion and run-off.

The *Staff Guidelines for the Protection of Slopes and Stream Valleys* was a document that was first approved in 1983. The Guidelines were developed to help meet a number of watershed management goals. It identified steep slopes as an area of concern due to erosion, siltation, and water quality degradation resulting from modification of the natural topography. It was later amended by the *Environmental Guidelines*, which were approved by the Planning Board in 2000.

Contrary to this recommendation, the application proposes to disturb the sensitive topography and associated vegetation, which may lead to erosion. The preliminary plan shows that grading will take place in areas in excess of 25% slope and that contain erodible soils.

Page 137:

A major goal of this [Master] Plan is to protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase. Steeply sloped and heavily wooded areas are distinctive features of the Palisades and portions of the Chevy Chase area. Throughout B-CC, residential areas are heavily treed. Environmental concerns within the area include loss of mature woodlands, stream quality, and highway noise. Objectives to protect the natural resources of B-CC include:

1. Protect wetlands, steep slopes, and wooded areas....

This [Master] Plan supports the preservation, wherever possible, of wetlands and steeply sloping areas (25 percent and greater slopes) that may lie outside floodplains or stream buffers as defined by existing regulations and guidelines. This recommendation will prevent extensive hillside erosion which can result in large amounts of sediment washoff into streams. [Emphasis in the original.]

The Master Plan’s heavy emphasis on the protection of the environmentally sensitive areas and the associated character apply to the steep slopes, forest and mature trees of the subject property. Regarding the highly erodible soils in the Palisades area (which occur within the subject property), page 137 also states, “Development on these soils is strongly discouraged.” As discussed above, the application does not meet these recommendations due to the proposed loss of the mature woodlands and steeply sloping areas, which would adversely affect stream quality.

In summary, the proposed subdivision does not substantially conform to the recommendations adopted in the Master Plan:

- It proposes excessive clearing and disturbance of a mature forest area within the Palisades, containing large trees.
- The mature forest and large trees are associated with steep slopes.
- The mature forest and large trees are associated with highly erodible soils.
- The proposed destruction of the environmentally sensitive resources will, among other things, have an adverse effect on water quality and the special character of the community which is in conflict with the recommendations of the Master Plan.

Environment & Forest Conservation

Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420130130 for the site was approved on January 31, 2013. There are 0.48 acres of forest on the site which contain numerous significant and specimen trees. Additional mature trees and forest setting are also located offsite towards the north, adjacent to the subject property. The western portion of the 0.84-acre property is associated with Brinklow-Blocktown Channery silt loam, which is a highly erodible soil when it occurs on steep slopes. A band of steep slopes in excess of 25 percent occupies the central portion of the property and overlaps with the area of highly erodible soils. There are no streams or wetlands onsite, and no rare, threatened, or endangered species are known to be associated with the subject property.



Figure 4 Subject property with erodible soils (tan shading) and steep slopes (green shading) NORTH ↑

The application proposes to regrade the steep slope area to accommodate a driveway serving the new dwellings. Only two trees mapped within the existing forest setting are proposed to remain (trees #7 & #14). Eight trees subject to a forest conservation variance are proposed to be removed, and two additional significant trees (at least 24 inches DBH and less than 30 inches DBH) that are not subject to the variance would also be removed. With the proposed resubdivision, no area on the subject property would continue to meet the definition of forest.

Section 50-32(c) of the Subdivision Regulations allows the Planning Board to restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas.

Section 50-32(c) of the Subdivision Regulations states that “the board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.”

The band of steep slopes that exceed 25% gradient, in conjunction with the highly erodible soils, that crosses the central portion of the subject property constitutes unsafe land in the meaning of Section 50-32(c).

Regarding steep slopes and erodible soils, the Environmental Guidelines state on page 1: These [environmental] guidelines are intended to ensure that adequate consideration is given to the following environmental management objectives:

- Protection and restoration of stream water quality
- Conservation of forest and trees
- Protection of steep slopes

Page 3 states:

Decreased native vegetative cover, increased stormwater flows and flooding, accelerated land surface and stream channel erosion, and increased sediment deposition constitute some of the major interrelated negative effects on the environment that can occur during and after development. Erosion and sedimentation exist at natural background levels in the absence of human activities. However, excess erosion and sedimentation create problems for streams and their watersheds as human activities modify the natural landscape. Of special concern is the disturbance of steep slopes, especially those adjacent to or in close proximity to streams or drainage courses, and the disturbance of natural stream channels, floodplains, and wetlands. The alteration of these areas exacerbates watershed erosion/sedimentation and contributes to water quantity and quality problems.

Page 11 states:

Identification of unsafe or unsuitable lands is an integral part of this analysis, both from the standpoint of providing safe and habitable buildings and for providing protection

and conservation of natural resources such as streams, wetlands, floodplains, forest and trees.

The primary reasons for classifying land as unsafe or unsuitable for development are problems with soils/geology, topographic constraints, and surface and subsurface water hazards.... One of the most common of these characteristics is highly erodible soils. Highly erodible soils are those listed as having a "severe hazard of erosion" in the 1995 Soil Survey of Montgomery County (see Appendix C for a complete list of highly erodible soil types). Erodible soils on slopes over 15% must be delineated on the NRI and highlighted for potential inclusion in the protected areas of the site.

Page 20:

To the extent possible, hydraulically remote steep slope areas should be incorporated into the site's open space and/or remain undisturbed.

Page 23:

Avoidance and minimization of disturbance to highly erodible soils is the priority management stagey in avoiding erosion problems and sediment transport to streams and storm sewer systems.

Development should avoid areas of the site that contain soils with severe limitations. In some cases, development may be prohibited or restricted in these areas...restrictions can include deletion of lots.

As mentioned above, the submitted NRI/FSD indicates that the western portion of the subject property is associated with Brinklow-Blocktown Channery silt loam, which is a highly erodible soil. The NRI/FSD reaches this conclusion because the *Guidelines for Environmental Management of Development in Montgomery County* (commonly known as the *Environmental Guidelines*) defines highly erodible soils as those having a severe hazard of erosion in the soil profile descriptions of the *Soil Survey of Montgomery County, Maryland* (1995), and the *Soil Survey* shows (on Map 26 of the *Soil Survey*) that the area including the subject property contains the Brinklow-Blocktown Channery silt loam, which is described as having a severe hazard of erosion.

On October 1, 2015, the applicant submitted a geotechnical report from a professional engineer, dated September 8, 2015 (Attachment C). On October 19, 2015, the applicant augmented the geotechnical report with technical information, including a map showing the locations of the three performed borings and a detailed analysis of the soils that were encountered at each of the boring locations, that had been inadvertently left out of the fist submittal. The geotechnical report is intended to show that the subject property does not contain erodible soils that will be impacted by the proposed subdivision. The geotechnical report states that "it is evident that the mapped soil units [in the *Soil Survey of Montgomery County, Maryland*] do not represent the soils encountered in the test borings and therefore the threat of erosion associated with the mapped soil units should not be associated with the actual encountered soils" (page 2).

However, the geotechnical report does not appear to support this conclusion. The boring log for boring location SB-1 indicates that silt loam (the erodible soil) was encountered between boring depths 3 to 4.5 feet below the ground surface (at an elevation between 266 and 267.5 feet above sea level). Contrary to the statements in the geotechnical report and Mr. Orens's letter that this boring was performed in an area that would remain relatively undisturbed between the existing houses and the street, the boring location map shows that boring SB-1 was performed on the steep slopes towards the rear of the property, in an area where extensive grading would take place to develop the subject property. As shown on the preliminary plan, the proposed house on proposed Lot 53 would have a basement with a floor elevation of 265.7 feet, which means that the silt loam found between elevation 266 feet and 267.5 feet would be disturbed during construction of the house.

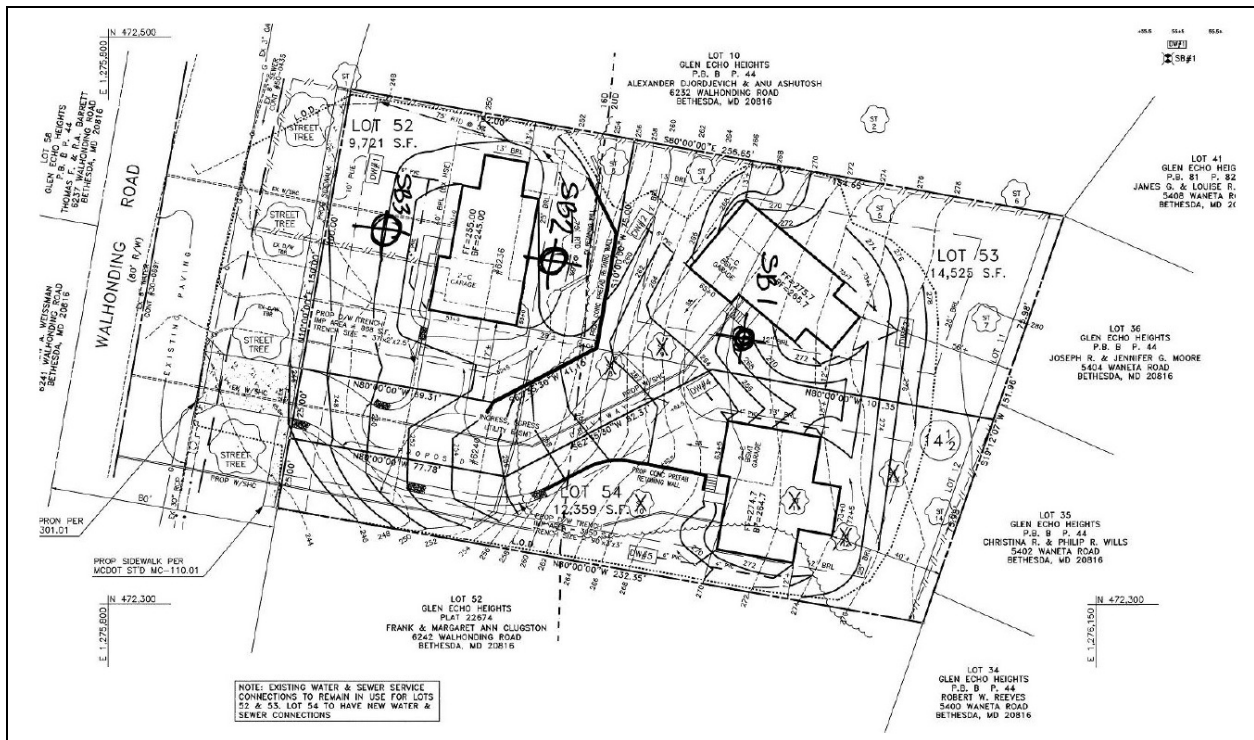


Figure 5 Boring location map

NORTH ↑

Finally, regardless of the conclusions in the geotechnical report, the report may be considered to be a moot point. The *Environmental Guidelines* state, as noted above, that erodible soils are those that are defined as such in the *Soil Survey of Montgomery County, Maryland*. As such, the conclusions reached in the applicant's geotechnical report should have no bearing on the determination. Staff notes that the *Soil Survey of Montgomery County, Maryland* is the determining authority of soil information used for all applications, even in the face of conflicting information from other sources. For example, in the Chelsea Court application (Preliminary Plan 120130060 and Site Plan 820130040), opponents of the application provided alternate mapping sources that showed erodible soils on that site. However, the Planning Board relied on the *Soil Survey of Montgomery County, Maryland* (1995) in finding that erodible soils were not present at the Chelsea Court site.

Aside from the concerns about soil type, the applicant's geotechnical report also notes that the development will encompass areas of steep slopes, which could increase the potential for erosion. The

geotechnical report recommends that grading techniques could be used to reduce the steepness of the site, and other methods of site stabilization could be used to neutralize erosion potential. However, a highly engineered site with artificial slopes would be contrary to the Master Plan's goals to "protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase."

FOREST CONSERVATION

The application is not in compliance with the Forest Conservation Law with respect to the priorities of forest retention and the forest conservation variance requirements. 22A-12(b)(1) states as follows:

(b) *Retention.*

- (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:
 - (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;
 - (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and
 - (C) the development proposal cannot be reasonably altered.
- (2) In general, areas protected under this subsection include:
 - (A) floodplains, stream buffers, steep slopes, and critical habitats;
 - (B) contiguous forests;
 - (C) rare, threatened, and endangered species;
 - (D) trees connected to an historic site;
 - (E) champion trees and other exceptionally large trees; and
 - (F) areas designated as priority save areas in a master plan or functional plan.

Staff notes that the subject property exhibits four out of the six categories referenced above. Any single category by itself would be enough to warrant protection.

FOREST CONSERVATION VARIANCE

Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Forest Conservation Law. The proposed project includes disturbance within the CRZ of trees which are subject to a variance due to their size measuring 30 inches DBH or greater. The applicant submitted the variance request on March 17, 2015 for the

impacts and removals of subject trees (see Attachment D, variance request). However, the applicants' variance application contained several errors, including conflicting information between the tabular data and the plan drawing on the number of subject removals and impacts. There are 7 or 8 (based on the tabular data and the plan drawing, respectively) trees proposed for removal and another 7 or 8 trees that are proposed for impact that are considered high priority for retention under Section 22A-12(b) (3) of the Forest Conservation Law.

Table 1
Tree List of Removals

TREE No.	COMMON NAME	BOTANICAL NAME	SIZE D.B.H.	CONDITION REMARKS	% CRZ DISTURBANCE
ST-1	TULIP POPLAR	LIRIODENDRON TULIPIFERA	43"	GOOD	32%
ST-2	SCARLET OAK	QUERCUS COCCINEA	47"	GOOD	19%
ST-3	WHITE OAK	QUERCUS ALBA	29"	GOOD (REMOVE)	46%
ST-4	WHITE OAK	QUERCUS ALBA	35"	GOOD	35%
ST-5	BLACK OAK	QUERCUS VELUTINA	33'	FAIR	38%
ST-6	WHITE OAK	QUERCUS ALBA	42'	GOOD	6%
ST-7	BLACK OAK	QUERCUS VELUTINA	41"	GOOD	24%
ST-8	SCARLET OAK	QUERCUS COCCINEA	28"	GOOD (REMOVE)	100%
ST-9	TULIP POPLAR	LIRIODENDRON TULIPIFERA	49"	GOOD (REMOVE)	100%
ST-10	SCARLET OAK	QUERCUS COCCINEA	33"	GOOD (REMOVE)	100%
ST-11	SCARLET OAK	QUERCUS COCCINEA	43"	GOOD (REMOVE)	100%
ST-12	SCARLET OAK	QUERCUS COCCINEA	40"	FAIR (REMOVE)	23%
ST-13	SCARLET OAK	QUERCUS COCCINEA	37"	GOOD (REMOVE)	100%
ST-14	WHITE OAK	QUERCUS ALBA	29"	GOOD	30%

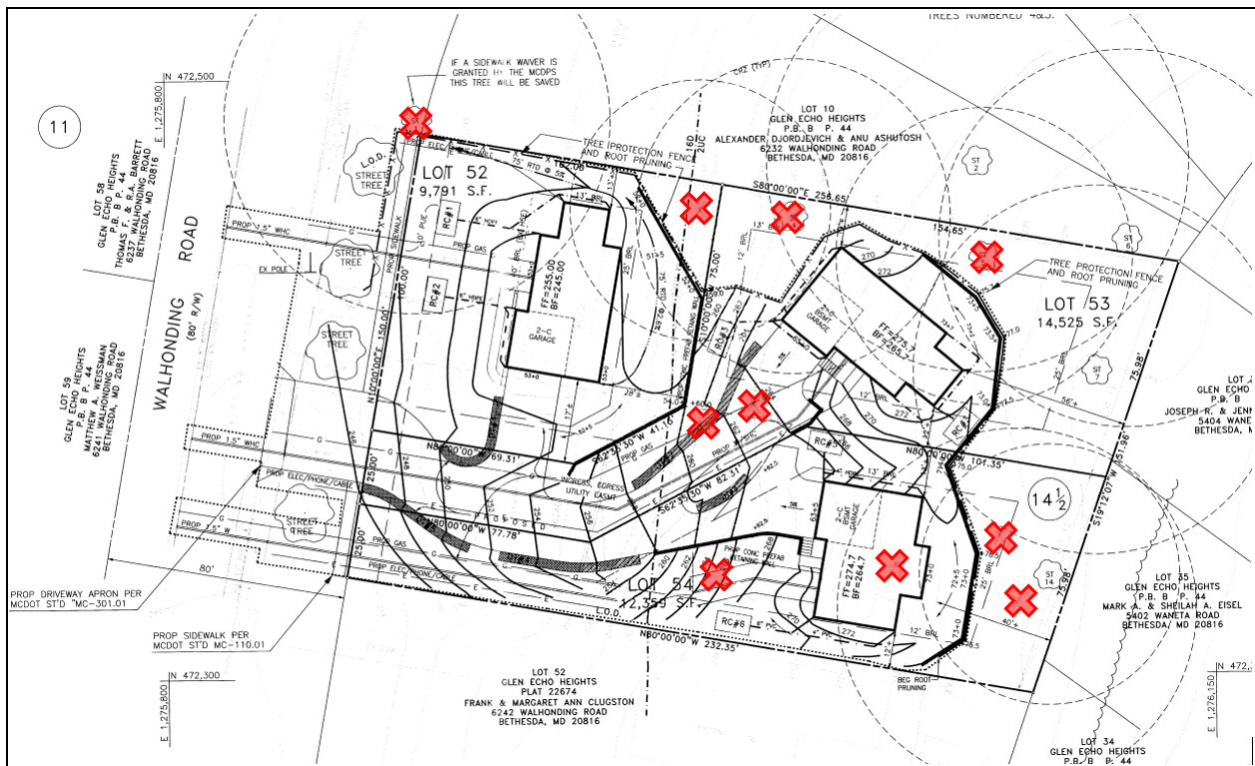


Figure 6 Forest Conservation Plan showing trees to be removed

NORTH ↑

Section 22A-21 of the Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. However, the applicant must first demonstrate that there is an unwarranted hardship.

The proposed development excessively encroaches into environmentally sensitive areas comprised of mature trees and forested steep slopes associated with highly erodible soils, in conflict with the forest conservation law and variance provisions, the *Environmental Guidelines*, Master Plan recommendations, and the Subdivision Regulations. Staff has reviewed this application and does not agree that there is an unwarranted hardship that would deny the applicant reasonable and significant use of the property if a variance is not granted.

COUNTY ARBORIST'S RECOMMENDATIONS

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 September 25, 2015. The County Arborist issued a response to the variance request on October 21, 2015, and recommended that the Planning Board not approve the variance (Attachment E).

RESUBMITTED VARIANCE REQUEST

The variance request initially forwarded to the County Arborist for review was received by staff on March 17, 2015. In correspondence dated July 31, 2015, staff notified the applicant that the forest conservation request contained certain errors. On October 19, 2015, the applicant resubmitted the variance request (Attachment F). The County Arborist issued a response to the resubmitted variance request on December 3, 2015, in which she continues to recommend that the Planning Board not approved the variance (Attachment G).

Action on Previous Applications

The Planning Board has heard several preliminary plan applications with circumstances similar to those of this application. The Planning Board's past actions are instructive here.

On May 10, 2012, the Planning Board denied Preliminary Plan 120110260 (Country Club Village). (See Attachment H, Resolution No. 12-72 for Preliminary Plan 120110260.) The application was a subdivision to create two lots on 0.49 acres. The subject property was located at 6311 Wynkoop Boulevard, which is also in the Palisades area of the *Bethesda-Chevy Chase Master Plan*. Similar to the current application, the subject property was not located immediately adjacent to the Potomac River, but rather was approximately 1,000 feet from River Road.

The Planning Board found that the application was not in substantial conformance with the recommendations of the Master Plan relating to preservation of the natural environment. The Planning Board concluded that Country Club Village application failed to address and adequately protect the natural resources and environmental quality of the Palisades and did not encourage the type of environmentally sensitive development envisioned by the Master Plan.

In addition, the Planning Board also found that the County Club Village application proposed to subdivide on property that contained highly erodible soils (the Brinklow-Blocktown Channery silt loam) and slopes steeper than 25%. The Planning Board found that this would have constituted subdivision of unsafe land under Section 50-32 of the Subdivision Regulations.

On February 8, 1996, the Planning Board conducted a hearing on Preliminary Plan 119960360 (Cabin John Park). (See Attachment I, Resolution for Cabin John Park.) The application was for a three-lot subdivision at the intersection of MacArthur Boulevard and 75th Place, which is also in the Palisades area of the *Bethesda-Chevy Chase Master Plan*. Similar to the Country Club Village application, the Planning Board was concerned with (among other things) the Master Plan's recommendation to preserve the Potomac Palisades' unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area. Although the Planning Board approved this application, its decision included the requirement that the subdivision be limited to two lots, instead of the proposed three, finding that three lots would not have been in substantial conformance with the Master Plan. (Note that in the case of the subject application, approval of the application with a condition to delete one of the proposed lots is not possible, because the subject property currently consists of two existing platted lots and the application seeks resubdivision into three lots.)

Citizen Correspondence

The applicant has complied with all submittal and noticing requirements. As of the date of this staff report, staff has not received any citizen correspondence regarding the application.

Applicant Correspondence

Staff has received correspondence, dated September 2, 2015, from the applicant's attorney, Stephen Orens, responding to the staff recommendation (see Attachment J). The letter argues that the sensitive features that the Master Plan seeks to protect are limited to the linear stretch of cliffs immediately adjacent to the Potomac River and that there are no sensitive soils or steeply wooded slopes anywhere on or near the subject property. This is factually incorrect.

With respect to the Master Plan, there are numerous statements in its recommendations that make it clear that the area of concern to be protected is the entire area designated as "the Palisades" (in which the subject property is located), and not only the narrow line of cliffs immediately adjacent to the Potomac River. In some instances, recommendations for environmental protection are even broader, applying beyond the Palisades area to the entire *Bethesda – Chevy Chase Master Plan* area. For example, on page 3, the Master Plan states, "[i]n the Palisades, the [Master] Plan endorses protection of the environment, character, and cultural resources of the area" (emphasis added). Page 5 states,

A goal of this [Master] Plan is to protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase. Steeply sloped and heavily wooded areas are distinctive features of the Palisades area and portions of the Chevy Chase area. Throughout B-CC, residential areas are heavily wooded. Environmental concerns within the area include loss of mature woodlands, stream quality, and highway noise.

Recommendations to protect the natural resources of B-CC include:

1. Preserve wetlands, steeply-sloping areas and, where possible, extensively wooded areas.... [Emphasis added.]

On Page 137, the Master Plan states, “A major goal of this [Master] Plan is to protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase. Steeply sloped and heavily wooded areas are distinctive features of the Palisades and portions of the Chevy Chase area” (emphasis added). On the same page, the Master Plan further states, “[t]his [Master] Plan supports the preservation, wherever possible, of wetlands and steeply sloping areas (25 percent and greater slopes) that may lie outside floodplains or stream buffers as defined by existing regulations and guidelines” (emphasis added).

These citations demonstrate that the environmental protection goals stated in the Master Plan do not related only to the narrow area occupied by cliffs immediately adjacent to the Potomac River, but rather apply wherever these features occur within the entire area defined as the Palisades and, in some cases, the entire *Bethesda - Chevy Chase Master Plan* area.

With respect to Mr. Orens’s assertion that there are no sensitive soils or steeply wooded slopes anywhere on or near the subject property, the NRI/FSD submitted by the applicant and approved by staff indicates that this is not correct. The NRI/FSD shows that portions of the subject property are covered by forest, slopes 25% or greater, and Brinklow-Blocktown Channery silt loam, which is a highly erodible soil. Furthermore, the 1995 Soil Survey of Montgomery County also shows that the Brinklow-Blocktown Channery silt loam is located on the subject property.

CONCLUSION

Staff recommends denial of the application:

- The application is not in substantial conformance with the *Bethesda – Chevy Chase Master Plan* with respect to protection of natural features.
- The application is not in compliance with the Forest Conservation Law with respect to the priorities of forest retention and the forest conservation variance requirements.
- The application is not in compliance with Section 50-32c of the Subdivision Regulations with respect to development on steep slopes and erodible soils.
- The application is not in compliance with the Environmental Guidelines approved by the Planning Board in January 2000.

Attachments

Attachment A – Vicinity Development Map

Attachment B – Proposed Preliminary Plan and Forest Conservation Plan

Attachment C – Geotechnical Report

Attachment D – Forest Conservation Variance Request

Attachment E – County Arborist Response to Variance Request

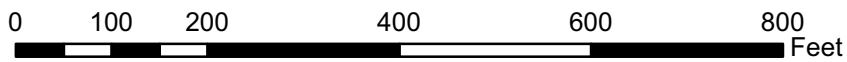
Attachment F – Resubmitted Forest Conservation Variance Request

Attachment G – County Arborist Response to Resubmitted Variance Request

Attachment H – Resolution No. 12-72 for Preliminary Plan 120110260

Attachment I – Resolution for Preliminary Plan 119960360

Attachment J – Applicant Correspondence



1 inch = 200 feet





GEOTECHNICAL LABORATORIES, INC.
ENGINEERS • GEOLOGISTS • CONSULTANTS

Attachment C

September 8, 2015

Dean Packard
P.G. Associates, Inc.
16220 Frederick Road, Ste. 300
Gaithersburg, Maryland 20877

Re: Subsurface Exploration and
Geotechnical Engineering Analysis
Proposed Lots 52, 53 & 54
6236 & 6240 Walhonding Road
Bethesda, Maryland
Project No. 115-068

Dear Mr. Packard:

Geotechnical Laboratories, Inc. (Geolab) has completed the requested exploration and analysis related to the above referenced project. Three soil borings were drilled for this study (designated SB-1, SB-2 and SB-3). The purpose of these test borings was to determine the potential erodibility of the on-site soils for the proposed three single family homes. The test borings were each drilled to a depth of 5.0 feet or auger refusal. Bedrock and groundwater were not encountered to the depths explored.

The types of subsurface materials encountered have been visually classified and are described in detail on the boring logs. Representative samples of the soils were placed in sample jars and are now stored in the laboratory for further analysis if desired. Unless notified to the contrary, all samples will be disposed of after three months.

Immediately below the topsoil/organic layer, the encountered soils classified as USDA: Sandy Loam in all three borings. This stratum extended to a depth of 3.0 feet in SB-1, to 5.0 feet in SB-2 and to 2.0 feet in SB-3. USDA: Silt Loam was encountered in SB-1 from 3.0 feet to 4.5 feet. Below this stratum, USDA: Sandy Loam was encountered until completion at 5.0 feet. USDA: Loam was encountered in SB-3 from 2.0 feet to auger refusal at 4.5 feet.

All of the borings were dry during drilling and at completion. It should also be noted that the groundwater levels on this site may vary due to seasonal conditions and recent rainfall, drought and temperature effects.

According to the USDA Soil Survey, the onsite soils consist of the Glenelg-Urban land complex, 8 to 15 percent slopes (2UC) as well as Brinklow-Blocktown channery silt loam, 15 to 25 percent slopes (16D). The Glenelg-Urban land complex is shown to be located in the front and rear of the current properties. It starts at the curb and extends halfway to the two houses. It shows up again at the rear of the property towards the top of the slope. The Brinklow-Blocktown channery silt loams is shown to be located between these two areas of the Glenelg-Urban land complex, primarily in the location of the current residences.

8980 Route 108, Suite D, Columbia, Maryland 21045
410-772-2220 1-888-4geolab fax: 410-772-2221 geolab@verizon.net

Subsurface Exploration and Geotechnical Engineering Analysis

Walhonding Road

September 2015

Page 2

There are very few similarities between the soils encountered in the soil test borings and the mapped soil descriptions. Based on the current grading of the project site, soils may have been cut or filled to achieve the existing grades. The more erodible soils, those that classified as SILT LOAM, could have been removed from the site during construction of the existing structures. As mentioned above, Silt Loam (Highly erodible 16D, Brinklow-Blocktown channery silt loam) was encountered only in Test Boring SB-1 and at a depth between 3 and 4.5 feet below the surface. This boring location was positioned within one of the least disturbed areas proposed by this development. Where encountered, during future on-site grading, it (silt loam) could be excavated in its entirety and removed from the site.

It is evident that the mapped soil units do not represent the soils encountered in the test borings and therefore the threat of erosion associated with the mapped soil units should not be associated with the actual encountered soils.

According to the current site planning the development will include small areas of steep slopes. These slopes could increase the potential for erosion. It may be prudent to adjust the site grading to reduce the overall steepness of the slopes. Many additional methods of site stabilization, to neutralize erosion potential, are available. Our suggestions can be offered, if requested.

All phases of the soil laboratory testing program were conducted in general accordance with applicable ASTM specifications. The results of these tests can be found on the accompanying Boring Logs, USDA Classification sheets, and Particle Size Distribution test reports attached.

Should you have any questions, please do not hesitate to contact our office at your convenience.

Sincerely,
Geotechnical Laboratories, Inc.



David A. Rockwood, E.I.T.
Staff Engineer

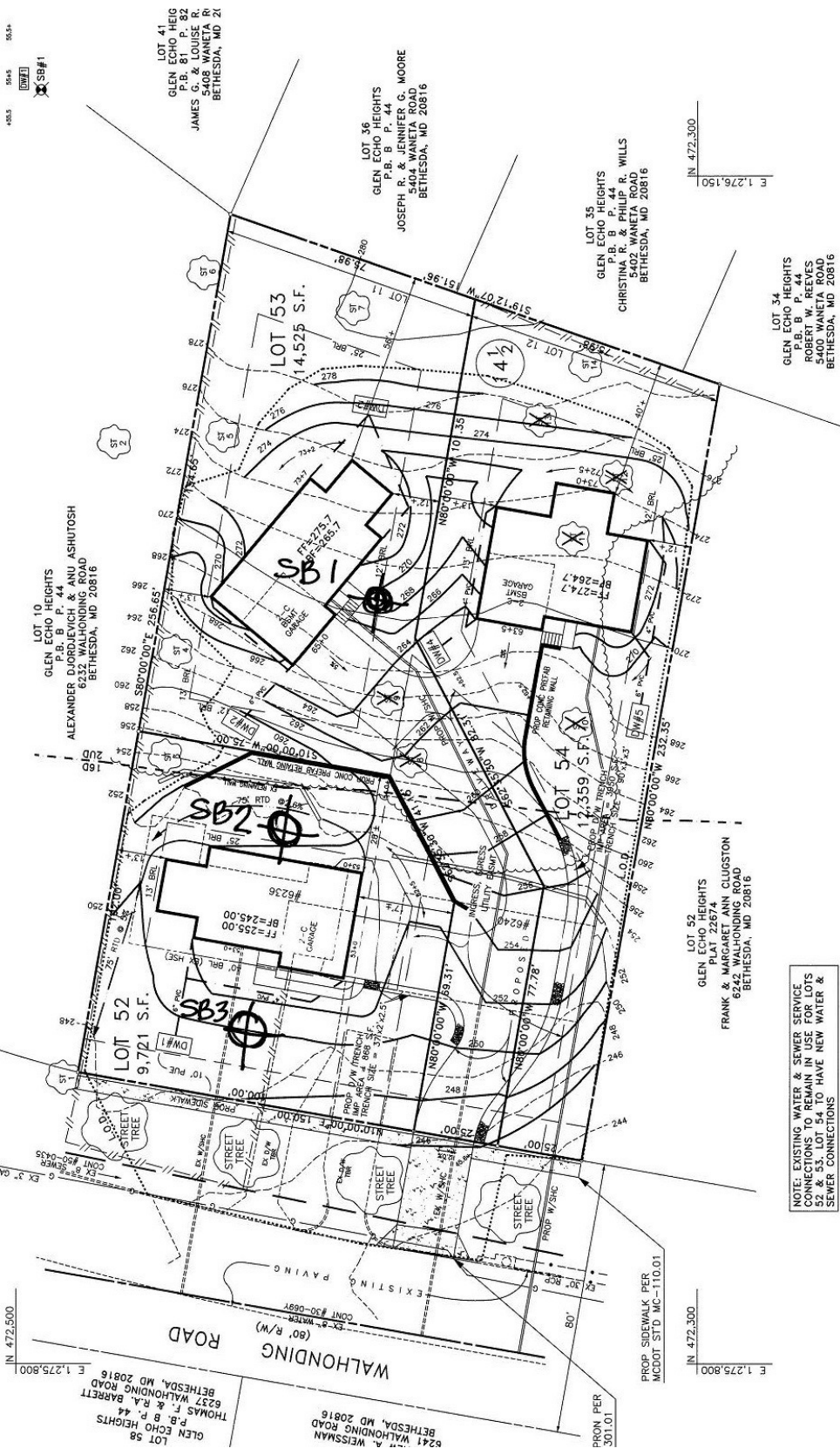


G. Matthew Norris, P.E.
Principal

GMN:dar

Z:\MyFiles\GEOTECH\Walhonding Road - Glen Echo Heights bjl.wpd

4053 1944 5534
 DWG#1
 SB#1



NOTE: EXISTING WATER & SEWER SERVICE CONNECTIONS TO REMAIN IN USE FOR LOTS 52 & 53. LOT 54 TO HAVE NEW WATER & SEWER CONNECTIONS

6236 & 6240 Walthonding Road
Bethesda, Maryland
Project No. 115-068
June 2015

Boring Location Plan

BORING LOG

GEOLAB, INC.

Report No.:

Date: **6/24/2015**

Client: **P.G. Associates, Inc.**

Project: **Lots 52, 53 & 54 Walhonding Road, Glen Echo Heights**

Project No. **115-068**

Boring No.: **SB-1 (1 of 1)**

Total Depth

5

Elev: **270.5 +/-**

Location: **See boring location plan**

Type of Boring: **Hand-Auger**

Started: **6/16/2015**

Completed: **6/16/2015**

Driller: **D. Rockwood**

Elevation	Depth	DESCRIPTION OF MATERIALS (classification)	*Sample Blows	Sample Depth (Feet)	Moisture Content	REMARKS
270.5	0.0	Topsoil with root (organic) matter and organic soil.				Boring was dry during drilling and at completion.
270.17	0.33	Orange-brown fine to medium SAND with some silt and clay, moist to wet. (ML, USDA: Sandy Loam)		1.0	18.8	
				1.5		
267.5	3.0	Red-brown clayey SILT with some fine to medium sand, moist. (ML, USDA: Silt Loam)				
266	4.5	Tan to red-brown silty fine SAND, moist. (SM, USDA: Sandy Loam)				
265.5	5.0	End of boring				

*Number of blows required for a 15 lb hammer dropping 20" to drive 1.5" diameter cone with a 45 degree vertex angle a total of 6 inches three 1.75" increments. The sum of the last two increments of penetration is termed the standard penetration resistance, N.

BORING LOG

GEOLAB, INC.

Report No.:

Date: **6/24/2015**

Client: **P.G. Associates, Inc.**

Project: **Lots 52, 53 & 54 Walhonding Road, Glen Echo Heights**

Project No. **115-068**

Boring No.: **SB-2 (1 of 1)**

Total Depth

5

Elev: **255.0 +/-**

Location: **See boring location plan**

Type of Boring: **Hand-Auger**

Started: **6/16/2015**

Completed: **6/16/2015**

Driller: **D. Rockwood**

Elevation	Depth	DESCRIPTION OF MATERIALS (classification)	*Sample Blows	Sample Depth (Feet)	Moisture Content	REMARKS
255	0.0	Topsoil with root (organic) matter and organic soil.				Boring was dry during drilling and at completion.
254.75	0.25	Light brown fine to medium SAND with some silt and little clay, moist. (SM, USDA: Sandy Loam)				
254	1.0	Light brown fine to medium SAND with some silt and fine gravel. (SM, USDA: Sandy Loam)		1.0	10.4	
				1.5		
252	3.0	Light brown to tan silty fine SAND, moist. (SM, USDA: Sandy Loam)				
250	5.0	End of boring				

*Number of blows required for a 15 lb hammer dropping 20" to drive 1.5" diameter cone with a 45 degree vertex angle a total of 6 inches three 1.75" increments. The sum of the last two increments of penetration is termed the standard penetration resistance, N.

BORING LOG

GEOLAB, INC.

Report No.:

Date: **6/24/2015**

Client: **P.G. Associates, Inc.**

Project: **Lots 52, 53 & 54 Walhonding Road, Glen Echo Heights**

Project No. **115-068**

Boring No.: **SB-3 (1 of 1)**

Total Depth

4.5

Elev: **250.0 +/-**

Location: **See boring location plan**

Type of Boring: **Hand-Auger**

Started: **6/16/2015**

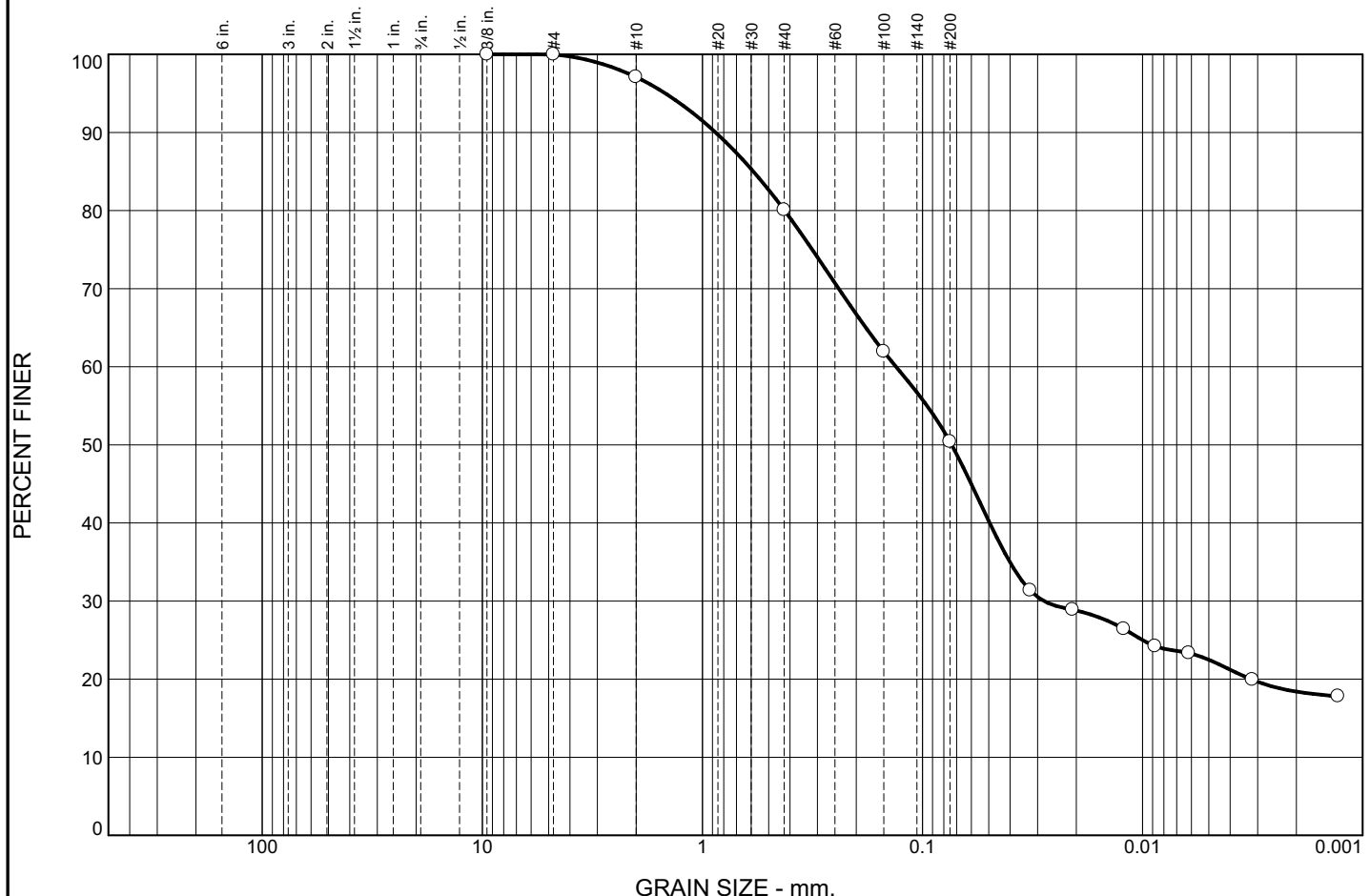
Completed: **6/16/2015**

Driller: **D. Rockwood**

Elevation	Depth	DESCRIPTION OF MATERIALS (classification)	*Sample Blows	Sample Depth (Feet)	Moisture Content	REMARKS
250	0.0	Topsoil with root (organic) matter and organic soil.				Boring was dry during drilling and at completion.
249.75	0.25	Brown fine to medium SAND with some silt and little clay, moist. (SM, USDA: Sandy Loam)		1.0	13.3	
				1.5		
248	2.0	Red-brown fine sandy SILT with trace fine gravel, moist. (SM, USDA: Loam)				
245.5	4.5	Auger refusal - Very dense. End of boring				

*Number of blows required for a 15 lb hammer dropping 20" to drive 1.5" diameter cone with a 45 degree vertex angle a total of 6 inches three 1.75" increments. The sum of the last two increments of penetration is termed the standard penetration resistance, N.

Particle Size Distribution Report



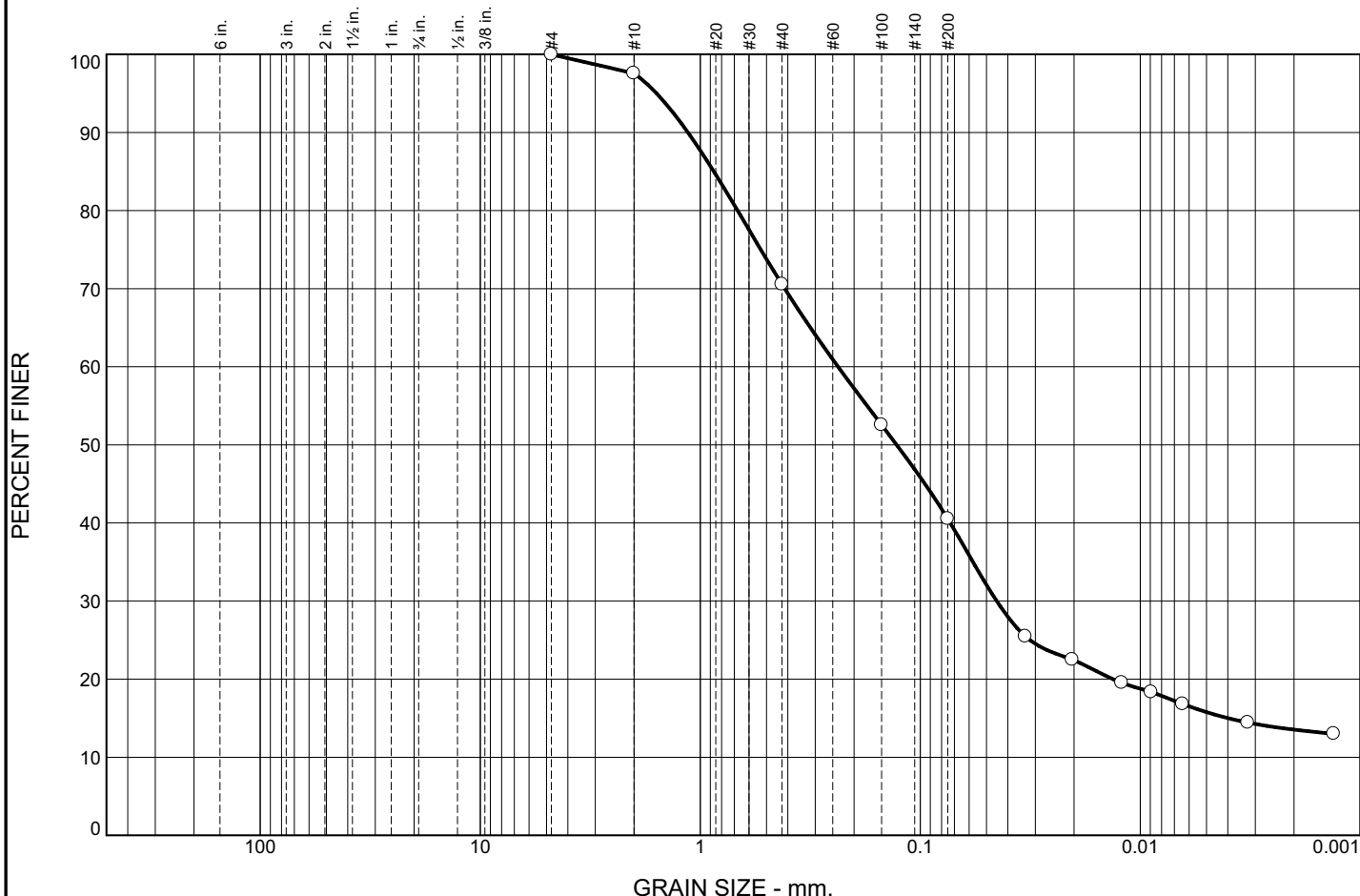
	% +3"	% Gravel		% Sand			% Fines	
		Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
○	0.0	0.0	0.0	2.9	17.0	29.7	27.9	22.5

	LL	PL	D ₈₅	D ₆₀	D ₅₀	D ₃₀	D ₁₅	D ₁₀	C _c	C _u
○	NV	NP	0.5870	0.1320	0.0737	0.0281				

Material Description	USCS	AASHTO
○ Orange-brown fine to medium SAND with some silt and clay	ML	A-4(0)

<p>Project No. 115-068 Client: P.G. Associates, Inc.</p> <p>Project: Lots 52, 53 & 54 Walhoning Road, Glen Echo Heights</p> <p>○ Source of Sample: SB-1 Depth: 1.0-1.5 feet Sample Number: S-1</p>	<p>Remarks:</p> <p>○ SpG Assumed</p> <p>Date Received: 6/16/2015</p> <p>Nat. M/C - 18.8%</p> <p>USDA: Sandy Loam</p>
<p>Geolab, Inc.</p> <p>Columbia, MD</p>	<p>Figure</p>

Particle Size Distribution Report



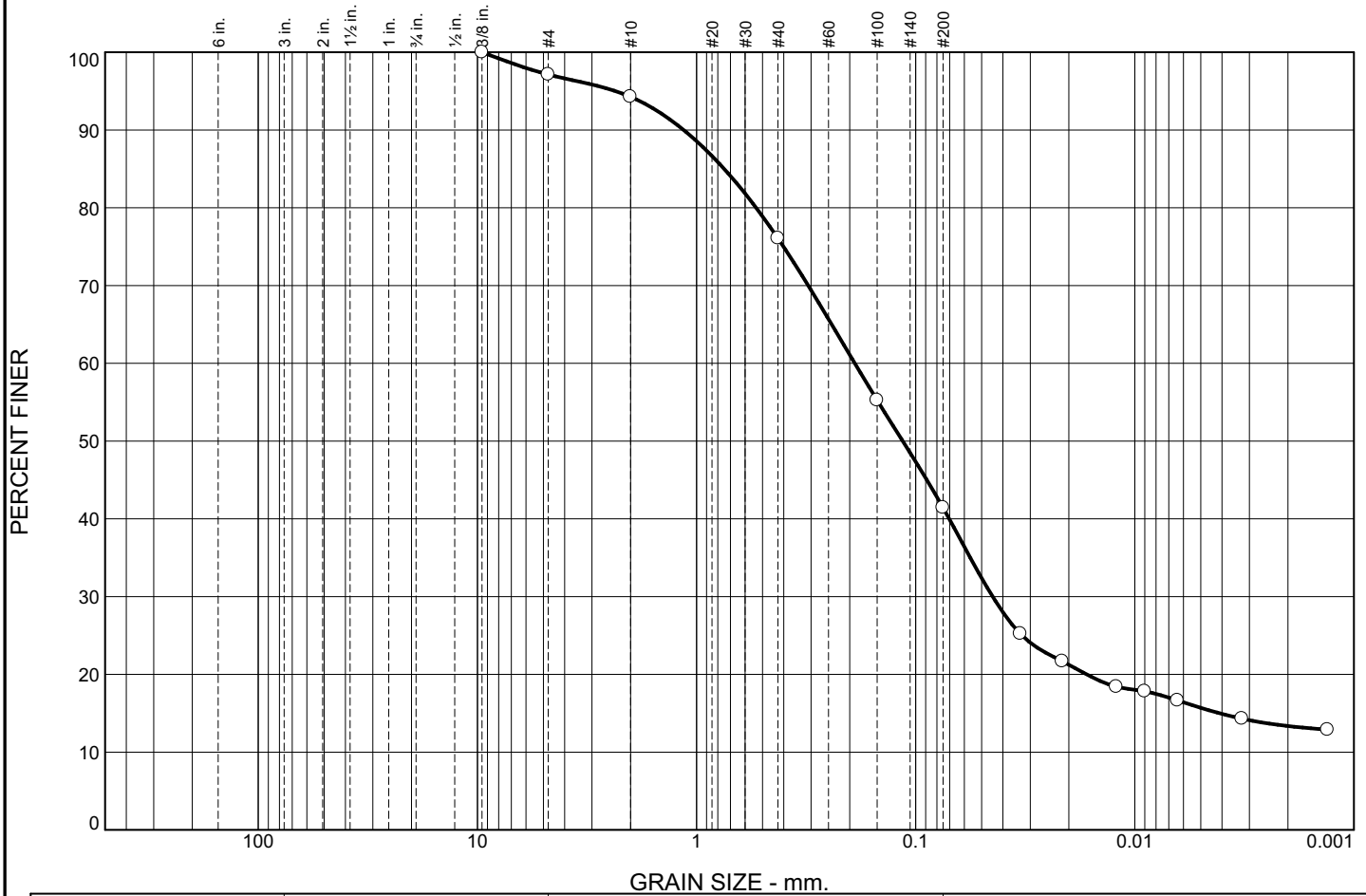
	% +3"	% Gravel		% Sand			% Fines	
		Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
<input type="radio"/>	0.0	0.0	0.0	2.4	27.0	30.1	24.7	15.8

	LL	PL	D ₈₅	D ₆₀	D ₅₀	D ₃₀	D ₁₅	D ₁₀	C _c	C _u
	<input type="radio"/>	NV	NP	0.8681	0.2363	0.1281	0.0449	0.0040		

Material Description	USCS	AASHTO
<input type="radio"/> Light brown fine to medium SAND with some silt and little clay	SM	A-4(0)

<p>Project No. 115-068 Client: P.G. Associates, Inc.</p> <p>Project: Lots 52, 53 & 54 Walhongoing Road, Glen Echo Heights</p> <p><input type="radio"/> Source of Sample: SB-2 Depth: 1.0-1.5 feet Sample Number: S-1</p>	<p>Remarks:</p> <p><input type="radio"/> SpG Assumed</p> <p>Date Received: 6/16/2015</p> <p>Nat. M/C - 10.4%</p> <p>USDA: Sandy Loam</p>
<p>Geolab, Inc.</p> <p>Columbia, MD</p>	<p>Figure</p>

Particle Size Distribution Report

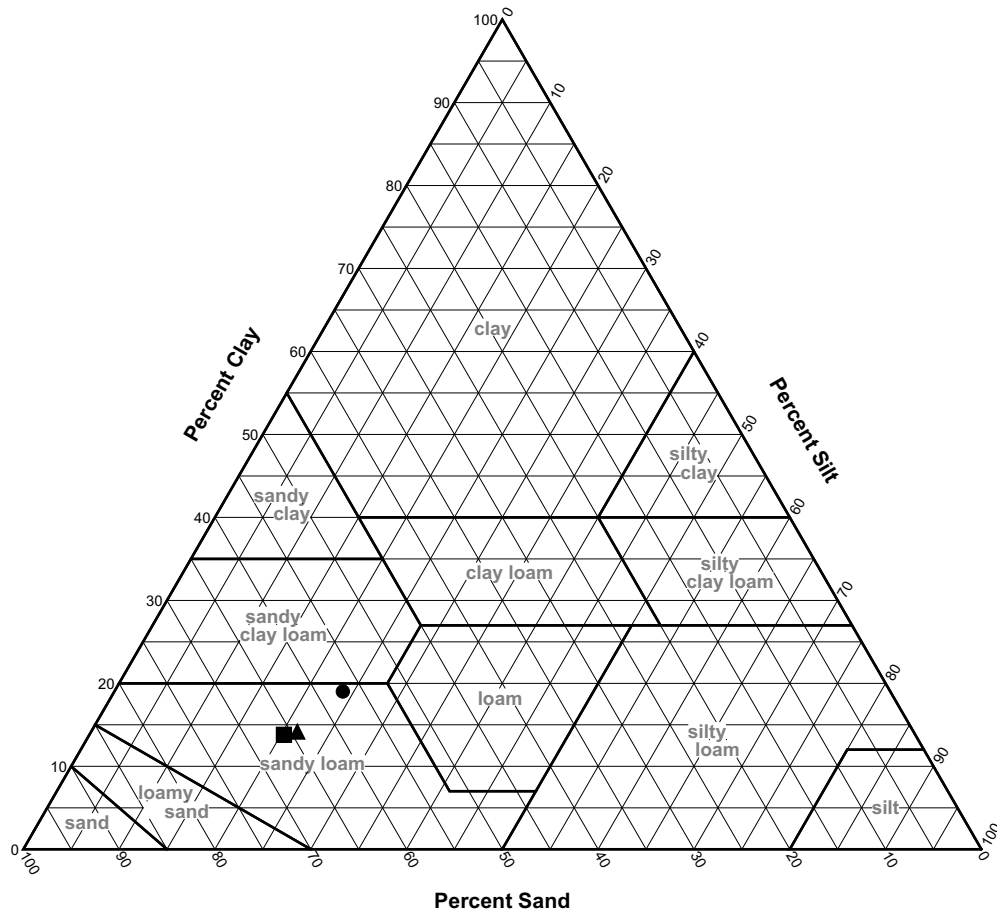


	% +3"	% Gravel		% Sand			% Fines			
		Coarse	Fine	Coarse	Medium	Fine	Silt	Clay		
<input type="radio"/>	0.0	0.0	2.9	2.8	18.2	34.7	25.7	15.7		
<input checked="" type="checkbox"/>	LL	PL	D ₈₅	D ₆₀	D ₅₀	D ₃₀	D ₁₅	D ₁₀	C _c	C _u
<input type="radio"/>	NV	NP	0.7483	0.1896	0.1146	0.0445	0.0041			

Material Description	USCS	AASHTO
<input type="radio"/> Brown fine to medium SAND with some silt and little clay	SM	A-4(0)

Project No. 115-068 Client: P.G. Associates, Inc. Project: Lots 52, 53 & 54 Walhongoing Road, Glen Echo Heights <input type="radio"/> Source of Sample: SB-3 Depth: 1.0-1.5 feet Sample Number: S-1	Remarks: <input type="radio"/> SpG Assumed Date Received: 6/16/2015 Nat. M/C - 13.3% USDA: Sandy Loam
Geolab, Inc. Columbia, MD	Figure

USDA Soil Classification



SOIL DATA

	Source	Sample No.	Depth	Percentages From Material Passing a #10 Sieve			Classification
				Sand	Silt	Clay	
●	SB-1	S-1	1.0-1.5 feet	57.1	24.0	18.9	Sandy loam
■	SB-2	S-1	1.0-1.5 feet	65.9	20.3	13.8	Sandy loam
▲	SB-3	S-1	1.0-1.5 feet	64.3	21.5	14.2	Sandy loam

Geolab, Inc.

Columbia, MD

Client: P.G. Associates, Inc.

Project: Lots 52, 53 & 54 Walhoning Road, Glen Echo Heights

Project No.: 115-068

Figure

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

**Request for a Tree Variance In Connection with the Review of
Preliminary Plan No. 120061120 —Glen Echo Heights Subdivision
A Re- Subdivision of Lots 11 & 12, Block 14½**

A Variance is hereby requested pursuant to Section 22A-21 of Chapter 22A of the Montgomery County Code, 2004, as amended (the "County Code") on behalf of the Applicants, Alidad Hakimi and Roxanna Foroughi, the owners of Lots 11 & 12, Block 14½ Glen Echo Heights Subdivision (the "Subject Property"). This Variance Request is submitted pursuant to Section 22A-21 the County Code in connection with the coordinated review of Preliminary Plan of Subdivision No 120061120 and the accompanying Preliminary Forest Conservation Plan.

I. Background Information

A Chapter 22A Variance is required in order to secure approval of the removal or disturbance of certain identified trees that are considered priority for retention and protection under the Natural Resources Article of the Maryland Annotated Code and the County Code. Accordingly, Norton Land Design and Miles & Stockbridge, P.C. hereby request a Tree Variance for the property identified as Lot 11 and Lot 12, Block 14½ Glen Echo Heights Subdivision. This Variance request is submitted pursuant to Section 22A-21 of Chapter 22A of the County Code and Section 5-1607(c) and Section 5-1611 of Title 5 of the Natural Resources Article of the Maryland Annotated Code, (the "Natural Resources Article").

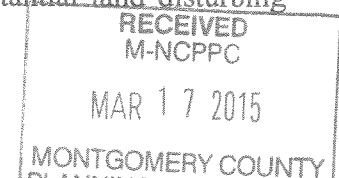
The Subject Property consists of two recorded lots, Lots 11 & 12 Block 14½ located on the east side of Walhonding Road in the Glen Echo community in Bethesda, Montgomery County, Maryland. Lots 11 & 12 are each improved with an older, one family detached dwelling constructed, respectively in 1955 and 1960. As more particularly detailed in the Amended Justification Statement submitted in connection with Preliminary Plan No. 120061120, Lots 11 and 12 were originally platted in 1892 by a plat recorded in Plat book "B" at Plat 44. In 1892 Walhonding Road was part of the Glen Echo Electric Railroad.

Glen Echo Heights is a large, eclectic subdivision of over 100 lots. Also as detailed in the Justification Statement, numerous resubdivisions have been approved throughout Glen Echo Heights substantially altering the character of the neighborhood surrounding the Subject Property. In fact, if approved, this proposed resubdivision will be the 112th re-subdivision approved in Glen Echo Heights.

The above identified Preliminary Plan proposes to divide Lot 11 and Lot 12 into three one-family detached R-90 compliant lots that bear a high correlation to existing platted lots in the "Resubdivision Neighborhood" within Glen Echo Heights identified by the Applicants' engineer, Dean Packard, P.E. of P.G. Associates.

II. Prior Development Activities

The Resubdivision Neighborhood and the entire Glen Echo Heights Subdivision are fully developed. Over the years Glen Echo Heights has redeveloped through extensive resubdivision activity with newer homes replacing older residences. As a result, substantial land disturbing



activities have occurred over a long period of time altering the topographical conditions that existed in 1892. Visual observations by Mr. Norton did not reveal the full extent of the grading and tree removals that occurred during past construction and reconstruction activities. Suffice it to say that compliance with current best practices and regulatory requirements will result in a higher degree of stabilization of remaining slopes on the Subject Property, an improvement over what currently exists, based on Mr. Norton's field observations.

III. Tree Removal and Critical Root Zone Disturbance

The redevelopment of the Subject Property, consistent with the three lot resubdivision proposal, will result in the removal of six trees, the potential removal of three other trees, Trees #1, 4 and 5, and the disturbance of the critical root zones of those trees identified on the Preliminary Forest Conservation Plan prepared by P.G. Associates.

A Forest Conservation Plan is required by the Natural Resources Article and Chapter 22A of the County Code in order "to retain existing forest and trees and avoid reforestation..." in connection with subdivision approvals for new development. (See County Code § 22A-12 (b)(1).

Reforestation will not be required if the resubdivision application is approved. Approval of this Tree Variance Request in conjunction with the resubdivision application will enable the Applicant to redevelop the Subject Property by replacing the two existing dwellings and adding one additional detached dwelling in a manner consistent with the resubdivided R-90 character of the Walhonding Road neighborhood.

IV. The Variance Requirements

Section 5-1607 of the Natural Resources Article requires a variance for the removal or disturbance of trees having a diameter of 30 inches when measured at 4.5 feet above the ground. Section 5-1611 of the Natural Resources Article authorizes the Montgomery County Planning Board to grant such a variance:

"where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant."

Chapter 22A of the County Code implements the Natural Resources Article of the State law and specifies the circumstances that permit the Planning Board to grant a variance from Chapter 22A. Section 22A-21(a) of the County Code establishes the "minimum criteria" for securing a Tree Variance and an applicant seeking a Variance from any Chapter 22A requirement must:

- (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 Tree Variance request that meets the "minimum criteria" set out in Section 22A-21(a) of the County Code may not be approved 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 result from the actions by the applicant;
- (3) is based on 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.

The following paragraphs illustrate the factual basis supporting Planning Board approval of this Tree Variance. Technical information for this request has been provided by the Applicants' engineer, Dean Packard P.E of P. G. Associates.

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

The Subject Property is within a developed medium density priority funding area served by public water and sewer within the Bethesda-Chevy Chase Planning Area. As reflected in the Justification Statement, the Subject Property is the seventh re-subdivision on Block 14½ in the Glen Echo Heights subdivision. The functionally obsolete existing houses on the Subject Property are 63 and 68 years old and are not compatible with the houses built following prior resubdivision approvals in the defined neighborhood.

Six of the nine trees that must be removed in order for the Subject Property to be developed are located within the building envelopes for proposed Lots 56, 57 & 58. Three of those six trees would have to be removed even if the Subject Property were redeveloped without resubdivision, as two out of character elongated, 1892 style lots.

The trees that require removal in order to develop the three proposed lots are an obstacle to a development proposal that furthers the County's smart growth policies and its housing goal of avoiding sprawl by locating greater density in developed, urban communities such as Glen Echo Heights.

Unwarranted hardship is demonstrated, for the purpose of obtaining a Chapter 22A Variance when an applicant presents evidence that denial of the variance would deprive the Applicant of the reasonable and substantial use of the property.

These Applicants would suffer unwarranted hardship if the removal and disturbance of the designated trees were not allowed. The resubdivision of Lots 11 & 12 into three conforming and compatible R-90 lots in a fully developed urban community of similar lots is clearly within the class of reasonable and substantial uses that justify the approval of a Chapter 22A Variance. If the requested Variance were denied the Applicants would be precluded from redeveloping the Subject Property, a right commonly enjoyed by the owners of adjacent properties and the owners

of numerous other properties whose requests for resubdivision of Walhonding Road properties along Block 14½ in the Glen Echo Heights subdivision were approved.

- Enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas

Enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas. If the requested Variance were denied, the Applicant would suffer unwarranted hardship by being deprived of rights commonly enjoyed by other Glen Echo Heights property owners whose requests for resubdivision of Walhonding Road properties along Block 14½ were previously approved. These Applicants are merely seeking the same redevelopment opportunity enjoyed by other similarly situated property owners on Block 14½ who were allowed to redevelop their R-90 zoned property in a similar manner, permitted by the zoning ordinance, recommended by the Bethesda Chevy Chase Master Plan, and consistent with the redevelopment history of Glen Echo Heights.

If the Subject Property were redeveloped in its current two lot configuration it would be entitled to an exemption from Chapter 22A. Under that scenario the Applicant would still face the same tree retention challenges that this Variance Request seeks to overcome in order to redevelop the two oversized lots with homes that would be compatible with the newer homes on resubdivided R-90 lots in Block 14½.

In my (Michael Norton's) opinion, if the requested Variance were not granted and the trees identified for removal on the Preliminary Forest Conservation Plan were required to remain, the Applicants would be unable to redevelop the property as either two lots or three lots resulting in the disparate treatment of the Applicants in comparison to the treatment of the owners of other properties on Block 14½ and the Applicants would be denied rights commonly enjoyed by others in the same Glen Echo Heights Subdivision and in similar R-90 zoned areas.

- 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.

The Department of Permitting Services approved a Stormwater Management Concept Plan for the Subject Property using environmental site design techniques to the maximum extent practicable and the proposed three lot development will meet State water quality standards. The approval of the requested Variance will not result in any measurable degradation in State water quality standards.

A copy of the approved Stormwater Management Concept Plan (SM File # 225991, Dated: December 10, 2010) has been previously submitted.

- Other information that supports the requested Variance:

The Approved and Adopted Trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Chapter 22A Variance. Generally, the Technical Manual recognizes that clearing is appropriate to create a building

envelope for development and for street and driveway construction to provide access to new development. Among the development factors that the Technical Manual considers appropriate for consideration when a Variance request is before the Planning Board is whether an urban form of development is desired at a particular location. Glen Echo Heights, where the Subject Property is located is a medium to high density residential area with both R-60 and R-90 zoning patterns and is precisely appropriate for the urban form of development that will result from approval of the proposed resubdivision. Further, approval of the requested Variance furthers that County's urban development policy for the Bethesda - Chevy Chase Planning Area.

The Environmental Resource Plan for the Bethesda-Chevy Chase Planning Area stresses a goal to protect the natural resources and environmental qualities of properties in the area. The plan assigns the highest priority to areas of moderately and extremely steep sloped wooded areas, wetlands, and floodplain areas that have the highest impact on the Environmental Qualities of the area. The Subject Property is not an extremely steep sloped wooded property and there are no wetlands or floodplain on the property. There are no wetlands, floodplain or critical features other than some specimen trees on the Subject Property.

The previously disrupted slopes located toward the front of the two lots are predominately between ten percent (10%) and twenty percent (20%), except where the rear yards behind the two existing houses were graded into the slope and retaining walls were constructed. The development proposed by this resubdivision will improve slope stability through replacement retaining walls. Further, the proposed plan allows for construction of the proposed basement entry houses (Lots 56 & 57) and for saving trees around the perimeter of the property.

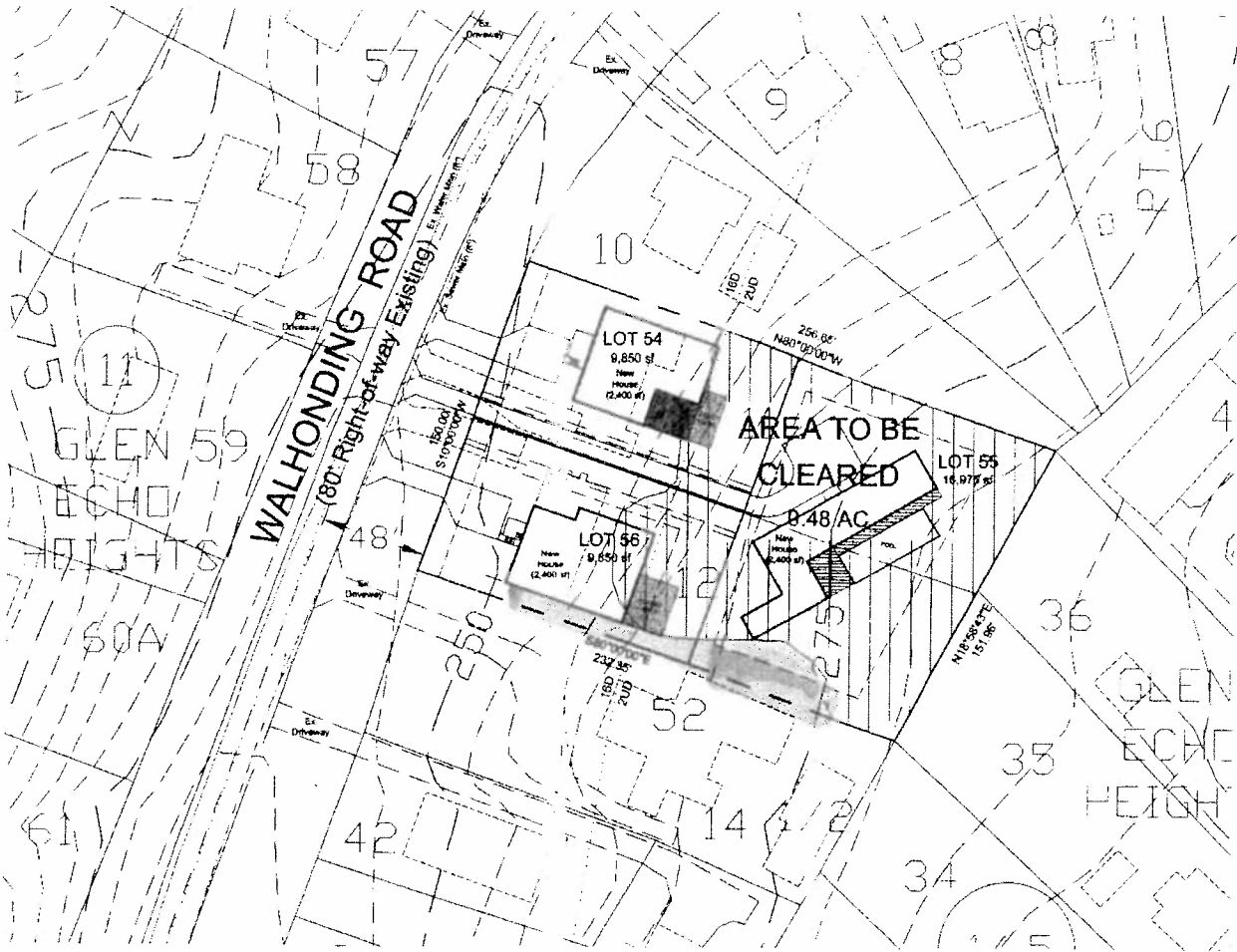
The Technical Manual also acknowledges that well planned clearing balances the public policies of preserving specimen trees and funneling development into appropriate locations. The Technical Manual provides that one factor to be considered is:

"The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees."

The proposed resubdivision of the Subject Property into three conforming and locational desirable urban style R-90 lots fully complies with the specific regulations of the Zoning Ordinance and the land use recommendations and intent of the Master Plan. As indicated above, any redevelopment of the property will require clearing of trees.

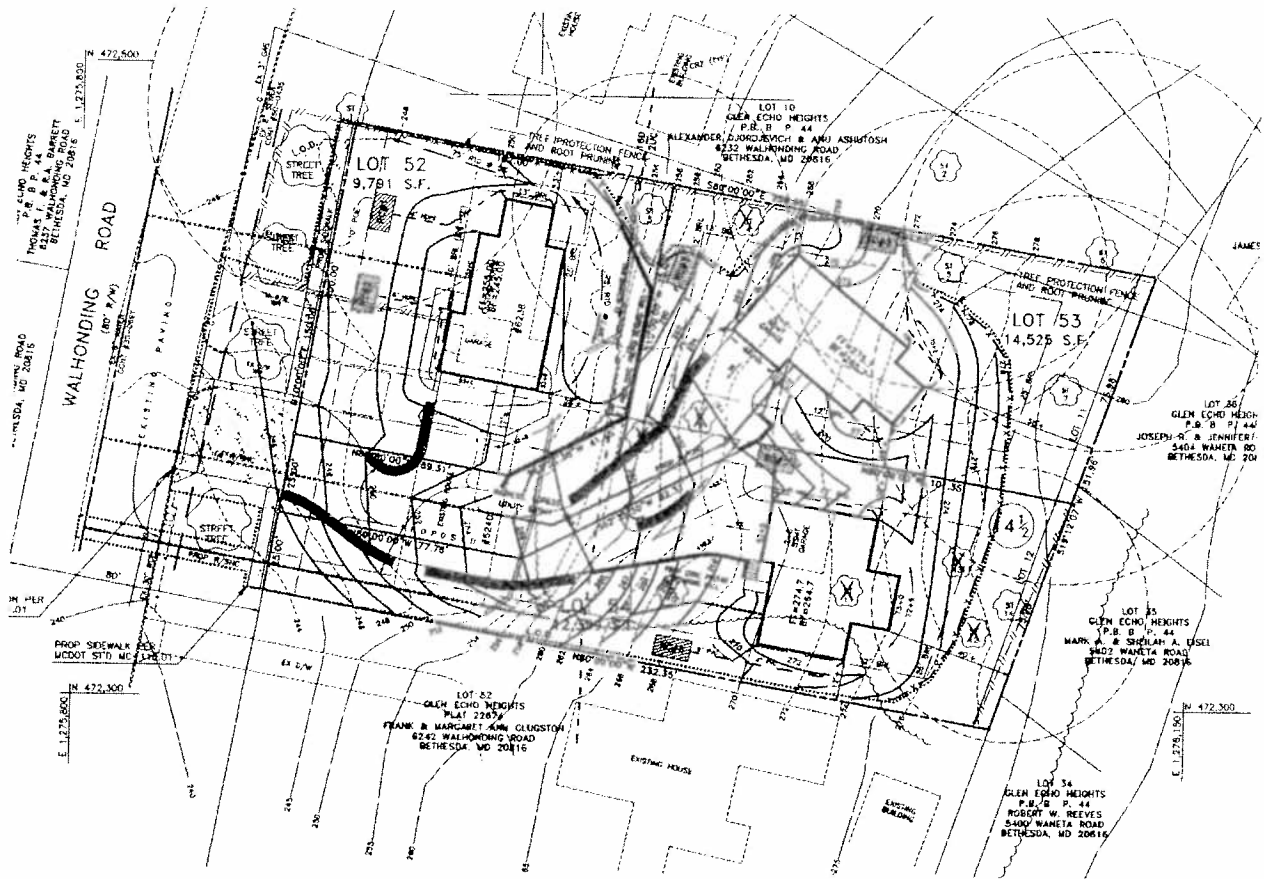
The drawings on the following pages illustrate the extent to which the plans have been redesigned to save specimen trees.

FCP-1 Original Forest Conservation Plan prepared in 2007 by "Others" shows complete removal of all onsite trees.



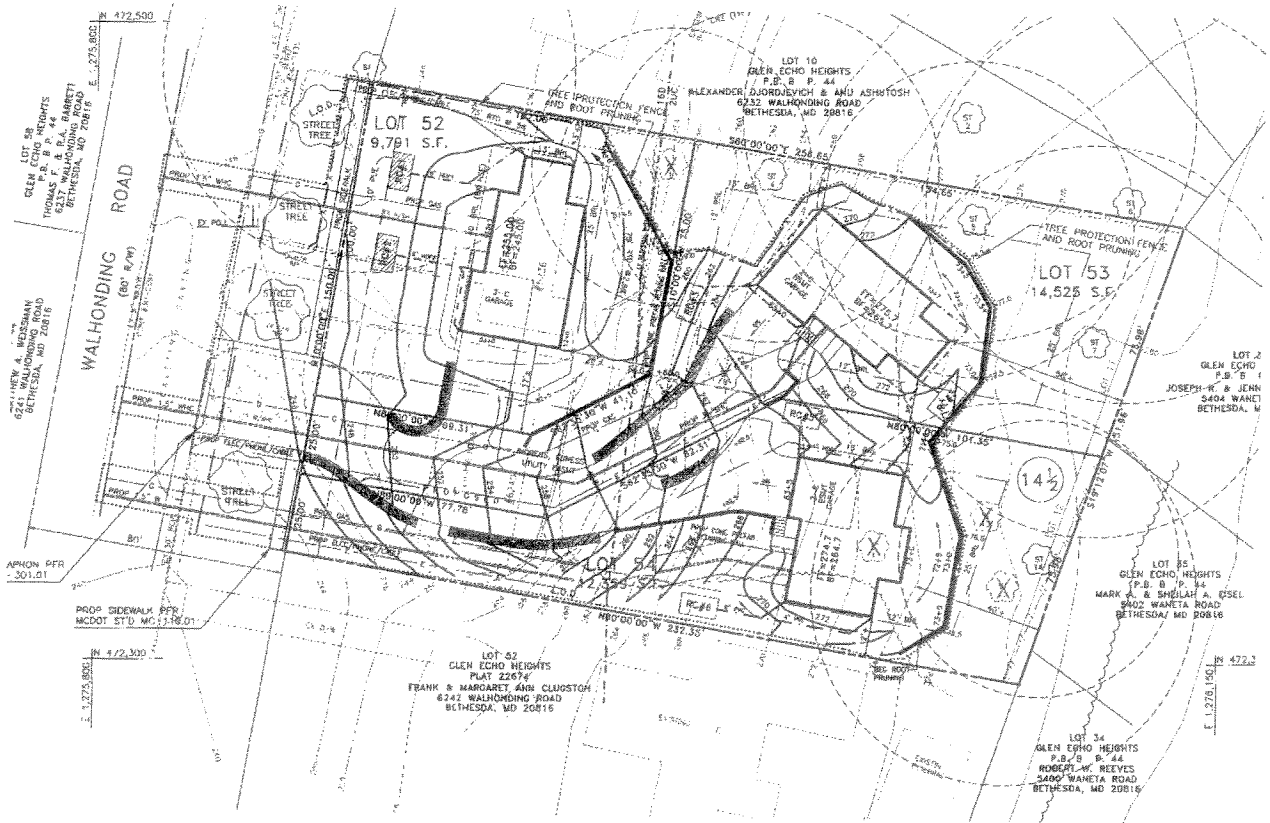
FCP-2

The following FCP is from 2012 and shows a substantial redesign of the site that attempts to save trees to the rear of the property along with two trees that are interior (these trees are shown as removal for planning and variance purposes)



FCP-3

The current Forest Conservation Plan, below, reflects additional changes in design to further reduce environmental impacts to the property.



Tree List of Removals

TREE No.	COMMON NAME	BOTANICAL NAME	SIZE D.B.H.	CONDITION REMARKS	% CRZ DISTURBANCE
ST-1	TULIP POPLAR	LIRIODENDRON TULIPIFERA	43"	GOOD	32%
ST-2	SCARLET OAK	QUERCUS COCCINEA	47"	GOOD	19%
ST-3	WHITE OAK	QUERCUS ALBA	29"	GOOD (REMOVE)	46%
ST-4	WHITE OAK	QUERCUS ALBA	35"	GOOD	35%
ST-5	BLACK OAK	QUERCUS VELUTINA	33"	FAIR	38%
ST-6	WHITE OAK	QUERCUS ALBA	42'	GOOD	6%
ST-7	BLACK OAK	QUERCUS VELUTINA	41"	GOOD	24%
ST-8	SCARLET OAK	QUERCUS COCCINEA	28"	GOOD (REMOVE)	100%
ST-9	TULIP POPLAR	LIRIODENDRON TULIPIFERA	49"	GOOD (REMOVE)	100%
ST-10	SCARLET OAK	QUERCUS COCCINEA	33"	GOOD (REMOVE)	100%
ST-11	SCARLET OAK	QUERCUS COCCINEA	43"	GOOD (REMOVE)	100%
ST-12	SCARLET OAK	QUERCUS COCCINEA	40"	FAIR (REMOVE)	23%
ST-13	SCARLET OAK	QUERCUS COCCINEA	37"	GOOD (REMOVE)	100%
ST-14	WHITE OAK	QUERCUS ALBA	29"	GOOD	30%

Chapter 22A of the County Code prohibits the granting of a Tree Variance even if the requested variance meets the Minimum Criteria detailed in Section 22A-21(d), if granting the variance:

- (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.

Approval of the Requested Variance will not confer on the applicants a special privilege that would be denied to other applicants. To the contrary, approval will bestow on these applicants the same rights, privileges and opportunities previously conferred on prior applicants for whom resubdivision requests were approved.

The need for the requested variance is due to the unique characteristics of the Subject Property, and is not the result of any actions undertaken by the Applicants.

The need for the requested Tree Variance does not arise from condition relating to the physical characteristics or building use of neighboring properties. Adjacent properties do not have any inherent characteristics or conditions that have created or contributed to the need for the requested variance.

As stated above, approval of the requested Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.

V. Conclusion

For the above reasons, and on behalf of the Applicants, Alidad Hakimi and Roxanna Foroughi, we respectfully request that the Planning Board Grant the Applicant's request for a Variance from the provisions the Montgomery County Forest Conservation Ordinance, Chapter 22A of the County Code and permit the removal of certain trees and the disturbance of the critical root zones of other trees as identified on the Preliminary Forest Conservation Plan and as detailed in the Revised Arborist's Report dated February 8, 2015.

Respectfully submitted,
NORTON LAND DESIGN



By: Michael Norton,
Certified Arborist

MILES & STOCKBRIDGE, P.C.


By: Stephen J. Ofens

Attached: Revised Arborist Report with greater tree detail



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

October 21, 2015

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

RE: Glen Echo Heights, DAIC 120061120, NRI/FSD application accepted on 7/26/2012

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 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 cannot 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



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.

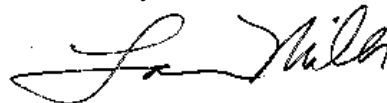
Therefore, I recommend a finding by the Planning Board that this applicant does not qualify for a variance. Based on careful consideration of the documents provided with the application and the staff report, as well as discussions with Planning Department staff, the applicant does not meet the minimum criteria required in Section 22A-21(d)(1) and would be granted special privileges denied to other similarly-situated applicants for impacts to trees subject to the variance provisions on the property. The variance includes errors that are not acceptable in finalized plans. For example, it includes trees that are not subject to the variance requirements; it contains conflicting counts of the number of removals requested; and it does not include a request for removal with the intent to save and tree save plans for trees #1, 4, and 5 even though more than a third of the critical root zones (CRZ) are significantly impacted. If tree #1 is removed or die as a result of the proposed impacts, mitigation beyond that included on the forest conservation worksheet should be required.

In addition to the errors, the applicant has not described special conditions peculiar to this property which would cause unwarranted hardship or how the landowner would be deprived of rights commonly enjoyed by others in similar situations, as required by Sections 22A-21(b)(1-2), if other configurations for development would be required. In other words, the applicant did not provide alternative designs or reasons why alternatives are not viable to reduce disturbance to the high-priority trees, highly erodible soils, and steep slopes on the site. The applicant provided no information concerning requirements for subdividing the two lots into three; nor did the applicant provide specific information concerning special conditions peculiar to these properties which would cause unwarranted hardship if redevelopment was limited to the two existing lots.

Therefore, I recommend that the Glen Echo Heights project not be granted a variance from the requirements of 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: Lisa Feldt, Director
Stan Edwards, Chief
Walter Wilson, Associate County Attorney
Marco Fuster, Senior Planner



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

December 3, 2015

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

RE: Glen Echo Heights, DAIC 120061120, NRI/FSD application accepted on 7/26/2012

Dear Mr. Anderson:

In a letter to you, dated October 21, 2015, I recommended a finding by the Planning Board that this applicant does not qualify for a variance. Following a second review of this request including the revised documents, the original variance request, and the staff report, as well as additional discussions with Planning Department staff, I continue to recommend a finding that the applicant does not qualify. While the errors in the variance request have been addressed, the applicant still has not described special conditions peculiar to this property which would cause unwarranted hardship or how the landowner would be deprived of rights commonly enjoyed by others in similar situations, as required by Sections 22A-21(b)(1-2), if other configurations for development would be required. The applicant has not provided alternative designs or reasons why alternatives are not viable to reduce disturbance to the high-priority trees, highly erodible soils, and steep slopes on the site. The applicant provided no additional information concerning requirements for subdividing the two lots into three; nor did the applicant provide specific information concerning special conditions peculiar to these properties which would cause unwarranted hardship if redevelopment was limited the two existing lots.

Therefore, I continue to recommend that the Glen Echo Heights project not be granted a variance from the requirements of Chapter 22A of the Montgomery County Code. If you have any questions, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Miller".

Laura Miller
County Arborist

cc: Lisa Feldt, Director
Stan Edwards, Chief
Walter Wilson, Associate County Attorney
Marco Fuster, Senior Planner

255 Rockville Pike, Suite 120 • Rockville, Maryland 20850 • 240-777-7770 • 240-777-7765 FAX
www.montgomerycountymd.gov/dep



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

**Amended Request for a Tree Variance In Connection with the Review of
Preliminary Plan No. 120061120 —Glen Echo Heights Subdivision
A Re- Subdivision of Lots 11 & 12, Block 14½**

A Variance is hereby requested pursuant to Section 22A-21 of Chapter 22A of the Montgomery County Code, 2004, as amended (the "County Code") on behalf of the Applicants, Alidad Hakimi and Roxanna Foroughi, the owners of Lots 11 & 12, Block 14½ Glen Echo Heights Subdivision (the "Subject Property"). This Tree Variance Request is submitted in connection with the coordinated review of Preliminary Plan of Subdivision No 120061120 and the accompanying Preliminary Forest Conservation Plan.

Potentially eight (8) protected trees have to be removed in order to develop the proposed three lot subdivision. Four of those trees are located within the building footprints of the proposed new residential dwellings. The proposed building envelopes were identified based on exiting topography, in locations that minimize grading and take advantage of existing level ground. The three other trees that may have to be removed are identified on the Preliminary FCP as Trees ST-1, ST-4, and ST-5.

The critical root zones of trees identified as ST-2; ST-6 and ST-7 located within the limits of disturbance area ("LOD") will be disturbed as a result of the required site work. Appropriate mitigation and tree protection measures, hereafter described will be implemented in order to minimize CRZ impacts and mitigate tree removal on site to the greatest extent feasible.

I. Background Information

A Chapter 22A Variance is required in order to secure approval of the removal or disturbance of certain identified trees that are considered priority for retention and protection under the Natural Resources Article of the Maryland Annotated Code and the County Code. Accordingly, Norton Land Design and Miles & Stockbridge, P.C. hereby request a Tree Variance for the property identified as Lot 11 and Lot 12, Block 14½ Glen Echo Heights Subdivision. This Variance request is submitted pursuant to Section 22A-21 of Chapter 22A of the County Code and Section 5-1607(c) and Section 5-1611 of Title 5 of the Natural Resources Article of the Maryland Annotated Code, (the "Natural Resources Article").

The Subject Property consists of two recorded lots in the area of Glen Echo Heights known as "Mohican Hills." Lots 11 & 12 are located on the east side of Walhonding Road each is improved with an older, one family detached dwelling constructed, respectively in 1955 and 1960. Lots 11 and 12 were originally platted in 1892 by a plat recorded in Plat book "B" at Plat 44. In 1892 Walhonding Road was part of the Glen Echo Electric Railroad. At that time the Subject Property and those adjacent to it on the east side of Walhonding Road were characterized by slopes estimated to be at or less than 20%.

Glen Echo Heights is a large, eclectic subdivision of over 100 lots, many of which were reshaped and resized by either less formal boundary line adjustments by deed or by approved resubdivisions. In fact, a significant number of resubdivisions were previously approved throughout Glen Echo Heights substantially altering the character of the 1892 neighborhood

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surrounding the Subject Property. If approved, this proposed resubdivision will be the 112th resubdivision approved in Glen Echo Heights.

The pending Preliminary Plan proposes to divide Lot 11 and Lot 12 into three one-family detached R-90 compliant lots that bear a high correlation to existing platted lots in the "Resubdivision Neighborhood" within Glen Echo Heights identified by the Applicants' engineer, Dean Packard, P.E. of Packard and Associates.

II. Prior Development Activities

The Resubdivision Neighborhood in Mohican Hills is fully developed, as is the rest of the Glen Echo Heights Subdivision. Over the years Glen Echo Heights has redeveloped through extensive resubdivision activity with newer homes replacing older residences. As a result, substantial land disturbing activities have occurred over a long period of time altering the natural slopes that characterized the topographical conditions that existed in 1892. The natural slope that in 1892 extended from the west property line of the Subject Property, east to Walhonding Road is estimated to have been less than 20% prior to the grading activities that established the multi-level retaining wall supported terraces that exist today on the Subject Property.

Visual observations by Mr. Norton did not reveal the full extent of the prior grading and tree removals that occurred during past construction and reconstruction activities. However, the Geotechnical Analysis by Geotechnical Laboratories, Inc. is informative as to the current soil and topographical characteristics of the Subject Property. Mr. Norton's visual observations did confirm that existing retaining wall structures have stabilized the established topography preventing erosion.

Suffice it to say that compliance with current best practices and regulatory requirements will result in a higher degree of stabilization of remaining slopes on the Subject Property, an improvement over what currently exists, based on Mr. Norton's field observations.

III. Tree Removal and Critical Root Zone Disturbance

The redevelopment of the Subject Property, consistent with the three lot resubdivision proposal, will result in the removal of six trees, the potential removal of three other trees, Trees #1, 4 and 5, and the disturbance of the critical root zones of those trees identified on the Preliminary Forest Conservation Plan prepared by Packard Associates.

A Forest Conservation Plan is required by the Natural Resources Article and Chapter 22A of the County Code in order "to retain existing forest and trees and avoid reforestation..." in connection with subdivision approvals for new development. (See County Code § 22A-12 (b)(1).

In addition to satisfying the reforestation requirements of Section 22A-12 of the County Code by providing off-site reforestation at an approved and designated Forest Mitigation Bank under Section 21A-13, the Applicant voluntarily agrees to provide additional on-site mitigation of proposed tree removal and critical root zone disturbance by the on-site re-planting of trees having a cumulative tree caliper of sixty-one inches (61").

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Approval of this Tree Variance Request in conjunction with the resubdivision application will enable the Applicant to redevelop the Subject Property by replacing the two existing dwellings and adding one additional detached dwelling in a manner consistent with the resubdivided R-90 character of the Walhonding Road neighborhood.

IV. The Variance Requirements

Section 5-1607 of the Natural Resources Article requires a variance for the removal or disturbance of trees having a diameter of 30 inches when measured at 4.5 feet above the ground. Section 5-1611 of the Natural Resources Article authorizes the Montgomery County Planning Board to grant such a variance:

"where owing to special features¹ of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant."

Chapter 22A of the County Code implements the Natural Resources Article of the State law and specifies the circumstances that permit the Planning Board to grant a variance from Chapter 22A. Section 22A-21(a) of the County Code establishes the "minimum criteria" for securing a Tree Variance and an applicant seeking a Variance from any Chapter 22A requirement must:

- “(1) describe the special conditions² 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 Tree Variance request that meets the "minimum criteria" set out in Section 22A-21(a) of the County Code may not be approved 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 result from the actions by the applicant;
- (3) is based on 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.

The following paragraphs illustrate the factual basis supporting Planning Board approval of this Tree Variance. Technical information for this request has been provided by the Applicants' engineer, Dean Packard P.E of Packard Associates.

¹ See Footnote 2 below.

² The language in Chapter 22A of the County Code differs from that in the Natural Resources Article of the Maryland Code. Chapter 22A appears to look at "special conditions peculiar to the property" that would result in "unwarranted hardship" approval of a variance is justified under the Natural Resources Article where "special features of a site ... would result in unwarranted hardship." (See Natural Resources Article, Section 5-1611.)

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

The artificially tiered topography that characterizes the Subject Property is a "special feature" of the site that is a unique or "special condition" peculiar to the Subject Property. Two of the three building envelopes have been located in the upper western tier of the Subject Properties where extensive grading can be avoided. The combination of the properties' artificially "tiered" topography and the existing, adjacent, front yard setbacks of redeveloped neighboring properties confine two of the three building envelope locations to the western part of the properties. From an environmental aspect, the western portion of the properties is the most appropriate location for the one additional dwelling and for the dwelling that will replace the one currently on Lot 12. The existing footprint on Lot 11, located on a flat, level portion of the property is the best location for a potential replacement dwelling.

The Subject Property is within a developed medium density priority funding area served by public water and sewer within the Bethesda-Chevy Chase Planning Area. As reflected in the Revised Justification Statement, the Subject Property is the seventh re-subdivision on Block 14½ in the Glen Echo Heights subdivision. The functionally obsolete existing houses on the Subject Property are 63 and 68 years old and are not compatible with the newer houses built following prior resubdivision approvals in the defined neighborhood.

Six of the nine trees that must be removed in order for the Subject Property to be developed are located within the building envelopes for proposed Lots 56, 57 & 58. Three of those six trees would have to be removed even if the Subject Property were redeveloped without resubdivision, as two, out of character, elongated, 1892 style lots.

The trees that require removal in order to develop the three proposed lots are an obstacle to a development proposal that furthers the County's smart growth policies and its housing goal of avoiding sprawl by locating greater density in developed, urban communities such as the Mohican Hills neighborhood in Glen Echo Heights.

- Unwarranted hardship is demonstrated, for the purpose of obtaining a Chapter 22A Variance when an applicant presents evidence that denial of the variance would deprive the Applicant of the reasonable and substantial use of the property.

Section 5-1611 of the Natural Resources Article of the Maryland Code authorizes the Planning Board to grant a forest conservation variance "where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant." Those special features are described above.

Section 22A-21 of the County Code authorizes the grant of a variance under that Chapter when an applicant "shows that enforcement would result in unwarranted hardship." The phrase "unwarranted hardship" used in both the State Code and the County Code is not defined in either. Under Chapter 22A of the County Code a variance may only be granted following consideration of a list of factors set out in the Code, one of which is the presence of special conditions that would result in unwarranted hardship if the variance were denied. The decision of the Maryland Court of Appeals in *White v. North* is instructive. In that case the Court of Appeals concluded

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that the list of factors “must be considered are part of the entire matrix that defines what information is necessary to reach a finding as to the existence or nonexistence of an unwarranted hardship.” The list of factors in *White v. North* is strikingly similar to the variance requirements in Chapter 22A of the County Code.

The factors identified in are described as:

- (1) a deprivation of rights commonly enjoyed by others; (2) that no special privilege will be conferred on an applicant; (3) that the need for relief not be caused by an applicant's own acts; (4) the need for a variance does not arise from conditions on adjacent property; (5) a variance will not adversely affect water quality, (736 A.2d at 1083.)

According to the Court of Appeals “If total compliance with every specific requirement were necessary, relief would be nearly impossible and serious "taking" questions might arise.’ The Court went on to express its view “that these specifically stated requirements are to be considered in the context of the entire variance ordinance, to the end that, when interpreted as a whole, either they are or are not generally met.”

Interpreting the factors that apply under the County Code, these Applicants would suffer unwarranted hardship if the removal and disturbance of the designated trees, especially those within the most appropriate building footprint locations were not allowed. The resubdivision of Lots 11 & 12 into three conforming and compatible R-90 lots in a fully developed urban community of similar lots is clearly within the class of reasonable and substantial uses that justify the approval of a Chapter 22A Variance. If the requested Variance were denied the Applicants would be precluded from redeveloping the Subject Property, a right commonly and previously enjoyed by the owners of adjacent properties and the owners of numerous other properties whose requests for resubdivision of Walhonding Road properties along Block 14½ in the Glen Echo Heights subdivision were approved.

- Enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas

Enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in this neighborhood and in similar areas. If the requested Variance were denied, the Applicant would suffer unwarranted hardship by being deprived of rights commonly enjoyed by other Glen Echo Heights property owners whose requests for resubdivision of Walhonding Road properties along Block 14½ were previously approved. These Applicants are merely seeking the same redevelopment opportunity enjoyed by other similarly situated property owners on Block 14½ who were allowed to redevelop their R-90 zoned property in a similar manner, permitted by the zoning ordinance, recommended by the Bethesda Chevy Chase Master Plan, and consistent with the redevelopment history of Glen Echo Heights.

If the Subject Property were redeveloped in its current two lot configuration it would be entitled to an exemption from Chapter 22A. Under that scenario, the Applicant would still face the same tree retention challenges that this Variance Request seeks to overcome. Approval of this Variance request will enable the Applicants to redevelop the two oversized lots as three lots with

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new homes that bear a higher correlation to the newer homes on resubdivided R-90 lots in Block 14½.

It is the opinion of the Certified Arborist, co-author Michael Norton, that if the requested Variance were not granted and the trees identified for removal on the Preliminary Forest Conservation Plan were required to remain, the Applicants would be unable to redevelop the property as either two lots or three lots resulting in the disparate treatment of the Applicants in comparison to the treatment of the owners of other properties on Block 14½ and the Applicants would be denied rights commonly enjoyed by others in the same Glen Echo Heights Subdivision and in similar R-90 zoned areas.

- 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.

The Department of Permitting Services approved a Stormwater Management Concept Plan for the Subject Property using environmental site design techniques to the maximum extent practicable and the proposed three lot development will meet State water quality standards. The approval of the requested Variance will not result in any measurable degradation in State water quality standards.

A copy of the approved Stormwater Management Concept Plan (SM File # 225991, Dated: December 10, 2010) has been previously submitted.

- Other information that supports the requested Variance:

The Approved and Adopted Trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Chapter 22A Variance. Generally, the Technical Manual recognizes that clearing is appropriate to create a building envelope for development and for street and driveway construction to provide access to new development. Among the development factors that the Technical Manual considers appropriate for consideration when a Variance request is before the Planning Board is whether an urban form of development is desired at a particular location. The Mohican Hills neighborhood in Glen Echo Heights, where the Subject Property is located, is a medium to high density residential area with both R-60 and R-90 zoning patterns and is precisely appropriate for the urban form of development that will result from approval of the proposed resubdivision. Further, approval of the requested Variance furthers that County's urban development policy for the Bethesda - Chevy Chase Planning Area.

The Environmental Resource Plan for the Bethesda-Chevy Chase Planning Area stresses a goal to protect the natural resources and environmental qualities of properties in the area. The plan assigns the highest priority to areas of moderately and extremely steep sloped wooded areas, wetlands, and floodplain areas that have the highest impact on the Environmental Qualities of the area. The Subject Property is not an extremely steep sloped wooded property and there are no wetlands or floodplain on the property. There are no wetlands, floodplain or critical features other than a few specimen trees on the Subject Property.

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The previously disrupted slopes stabilized by retaining walls that are located toward the front of the two lots are predominately between ten percent (10%) and twenty percent (20%), except where the rear yards behind the two existing houses were graded into the slope and retaining walls were constructed. The development proposed by this resubdivision will improve slope stability through replacement retaining walls. Further, the proposed plan allows for construction of the proposed basement entry houses (Lots 56 & 57) and for saving trees around the perimeter of the property.

The Technical Manual also acknowledges that well planned clearing balances the public policies of preserving specimen trees and funneling development into appropriate locations. The Technical Manual provides that one factor to be considered is:

"The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees."

The proposed resubdivision of the Subject Property into three conforming and locational desirable urban style R-90 lots fully complies with the specific regulations of the Zoning Ordinance and the land use recommendations and intent of the Master Plan. As indicated above, any redevelopment of the property will require clearing of trees.

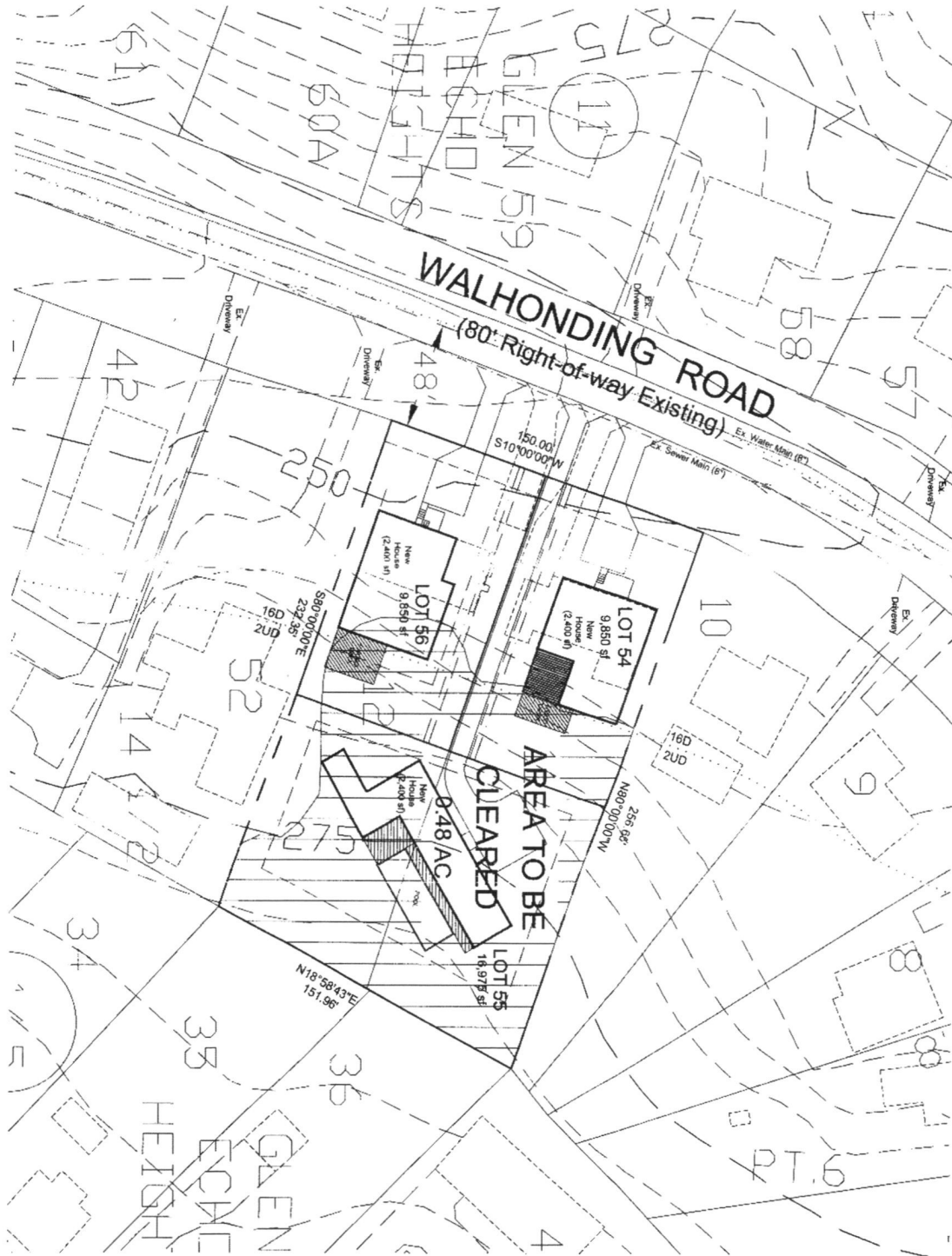
The Preliminary Plan originally submitted in 2006, prepared by a different land planning consultant, depicted two flag lots with three separate driveways and the complete removal of existing canopy. Substantial revisions were made to the originally submitted Preliminary Plan to reduce impervious surfaces, eliminate the multiple driveways and reduce development impacts on existing trees. The originally submitted Preliminary Forest Conservation Plan ("PFCP") was also modified to protect specimen trees to the greatest extent practicable and to reduce the potential for critical root zone disturbances by restricting the areas within the limits of disturbance ("LOD") depicted on the original PFCP submission.

The drawings on the following pages illustrate the extent to which the Preliminary Forest Conservation plans have been twice redesigned to save specimen trees and protect critical root zones.

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PFCP-1

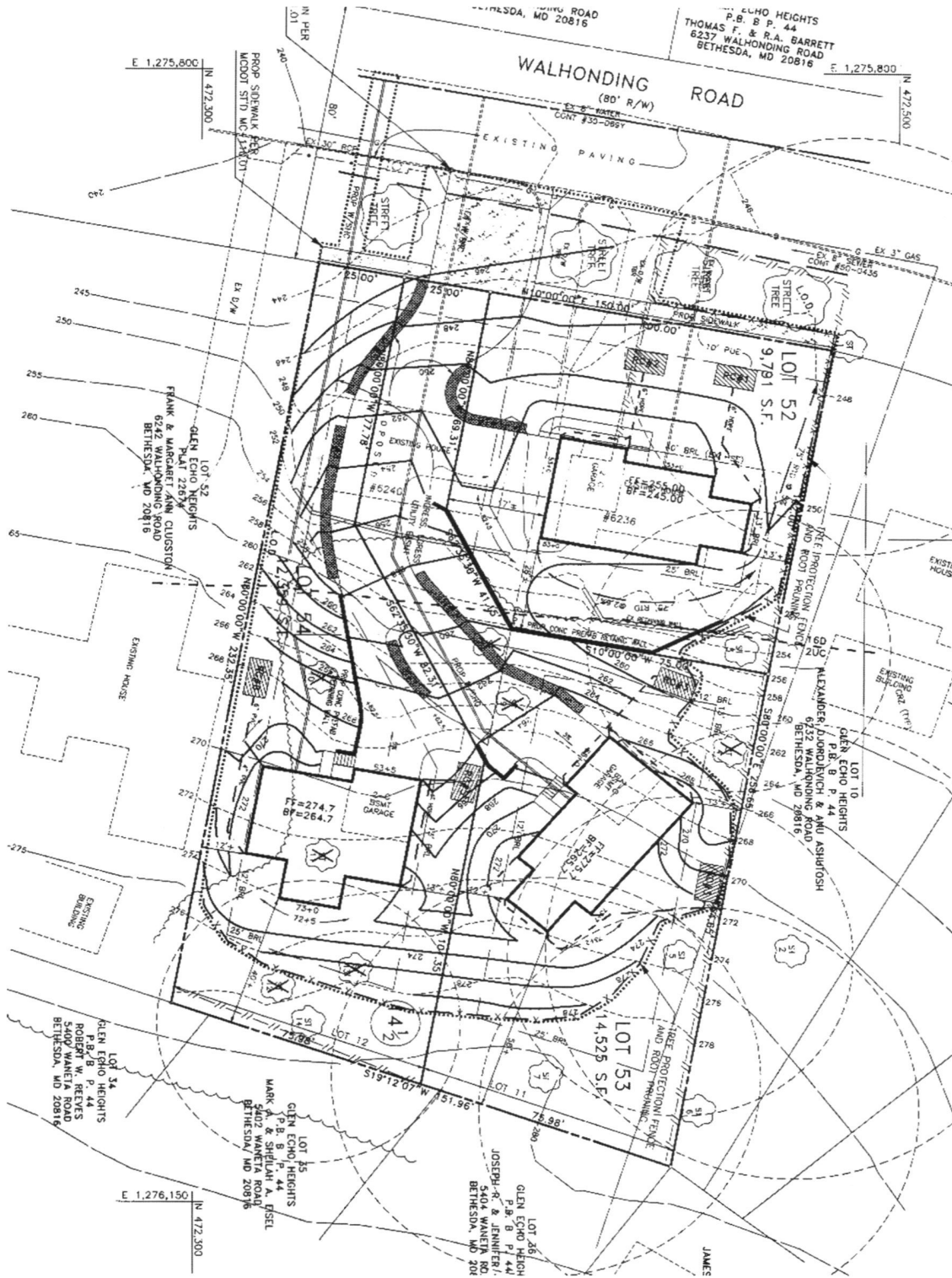
The original Forest Conservation Plan was prepared in 2007 by "Others." The original PFCP proposed the complete removal of all onsite trees.



**BEFORE THE MONTGOMERY COUNTY PLANNING BOARD
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PFPC-2.

The following FCP is from 2012 and shows a substantial redesign of the site that attempts to save trees to the rear of the property along with two trees that are interior (these trees are shown as removal for planning and variance purposes)



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PFCP-3.

Recognizing that the removal of every tree on the Subject Property was unacceptable, the Applicants retained Norton Land Design to reevaluate the minimum tree removal and critical Root disturbance that would be necessary in order to redevelop the Subject Property as a three lot subdivision.

The current Forest Conservation Plan, below, reflects additional changes in design to further reduce environmental impacts to the property. New retaining walls will be added to provide a level space in the rear of the houses and pull the LOD in further reducing the impacts to the tree critical root zones.



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List of Trees to be Removed

Specimen Tree Summary								
Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	Tree Condition	Comments	Variance Request	% CRZ Impacts	Disposition
ST-1	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	43	GOOD	IMPACTS FOR RIGHT-OF-WAY SIDEWALK AND GRADING	YES	31%	POTENTIAL REMOVAL
ST-2	QUERCUS COCCINEA	SCARLET OAK	47	GOOD	IMPACT ONLY	YES	13%	SAVE
ST-4	QUERCUS ALBA	WHITE OAK	35	GOOD	IMPACTS FOR SEDIMENT CONTROL AND WALLS	YES	34%	POTENTIAL REMOVAL
ST-5	QUERCUS VELUTINA	BLACK OAK	33	GOOD	RETAINING WALLS	YES	29%	POTENTIAL REMOVAL
ST-6	QUERCUS ALBA	WHITE OAK	42	FAIR	IMPACTS ONLY	YES	3%	SAVE
ST-7	QUERCUS VELUTINA	BLACK OAK	41	GOOD	IMPACTS ONLY	YES	12%	SAVE
ST-9	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	49	GOOD	LOD OF HOUSE	YES	100%	REMOVE
ST-10	QUERCUS COCCINEA	SCARLET OAK	33	GOOD	LOD OF HOUSE	YES	100%	REMOVE
ST-11	QUERCUS COCCINEA	SCARLET OAK	43	GOOD	LOD OF HOUSE	YES	100%	REMOVE
ST-12	QUERCUS COCCINEA	SCARLET OAK	40	FAIR	IMPACTS FOR WALL AND GRADING	YES	25%	REMOVE
ST-13	QUERCUS COCCINEA	SCARLET OAK	37	GOOD	LOD OF HOUSE	YES	38%	REMOVE

Specimen Tree Detailed Analysis

Tree ST-1, 43” Tulip Poplar is a potential removal based upon sidewalk requirements as a part of Preliminary Plan process. If the sidewalk waiver is granted, the LOD can be adjusted and the tree can be saved.

Tree ST-2, 47” Scarlet is impacted only but is a preservation tree

Tree ST-4, 35” White Oak is a potential removal based upon sediment control. If techniques such as filter logs or trenchless silt fence can be applied at the time of sediment control, the tree can be preserved.

Tree ST-5, 33” Black Oak is a potential removal based upon the retaining wall location.

Tree ST-6, 42” White Oak is impacted only but is a preservation tree

Tree ST-7, 41” Black Oak is impacted only but is a preservation tree

Tree ST- 9, 10, 11 are within the LOD of the houses

Tree ST-12, 40” Scarlet Oak is within the structural plate of the tree to be saved and must be removed

Tree ST-13, 37” Scarlet Oak is within the LOD of the houses

Mitigation Planting

The Current Preliminary Forest Conservation plan proposes the removal or potential removal of eight (8) trees equaling 245 inches of specimen trees. Even though mitigation is not required and forest banking is proposed, the final forest conservation plan will provide for additional on-site mitigation by planting an additional sixty-one inches of tree caliper (61”) onsite at a tree caliper size not less than 3” per tree planted.

Chapter 22A of the County Code prohibits the granting of a Tree Variance if granting the variance:

- (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.

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

Approval of the Requested Variance will enable the Applicants to reconfigure the Subject Property, addition one additional lot through the same process that that enabled the owners of similarly situated properties in the Mohican Hills neighborhood of Glen Echo Heights to re-subdivide and would not confer on the Applicants a special privilege that would be denied to other applicants. To the contrary, denial of the variance would deprive these applicants of the same rights, privileges and opportunities previously conferred on others for whom resubdivision requests were approved.

The need for the requested variance is due to the unique characteristics of the Subject Property, and is not the result of any actions undertaken by the Applicants.

The need for the requested Tree Variance does not arise from condition relating to the physical characteristics or building use of neighboring properties. Adjacent properties do not have any inherent characteristics or conditions that have created or contributed to the need for the requested variance.

As stated above, approval of the requested Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.

V. Conclusion

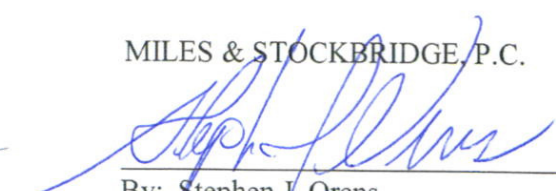
For the above reasons, and on behalf of the Applicants, Alidad Hakimi and Roxanna Foroughi, we respectfully request that the Planning Board Grant the Applicant's request for a Variance from the provisions the Montgomery County Forest Conservation Ordinance, Chapter 22A of the County Code and permit the removal of certain trees and the disturbance of the critical root zones of other trees as identified on the Preliminary Forest Conservation Plan and as detailed in the Revised Arborist's Report dated February 8, 2015.

Respectfully submitted,

NORTON LAND DESIGN


By: Michael Norton,
Certified Arborist

MILES & STOCKBRIDGE, P.C.


By: Stephen J. Orens

Attached: Revised Arborist Report with greater tree detail



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

December 3, 2015

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

RE: Glen Echo Heights, DAIC 120061120, NRI/FSD application accepted on 7/26/2012

Dear Mr. Anderson:

In a letter to you, dated October 21, 2015, I recommended a finding by the Planning Board that this applicant does not qualify for a variance. Following a second review of this request including the revised documents, the original variance request, and the staff report, as well as additional discussions with Planning Department staff, I continue to recommend a finding that the applicant does not qualify. While the errors in the variance request have been addressed, the applicant still has not described special conditions peculiar to this property which would cause unwarranted hardship or how the landowner would be deprived of rights commonly enjoyed by others in similar situations, as required by Sections 22A-21(b)(1-2), if other configurations for development would be required. The applicant has not provided alternative designs or reasons why alternatives are not viable to reduce disturbance to the high-priority trees, highly erodible soils, and steep slopes on the site. The applicant provided no additional information concerning requirements for subdividing the two lots into three; nor did the applicant provide specific information concerning special conditions peculiar to these properties which would cause unwarranted hardship if redevelopment was limited the two existing lots.

Therefore, I continue to recommend that the Glen Echo Heights project not be granted a variance from the requirements of Chapter 22A of the Montgomery County Code. If you have any questions, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Miller".

Laura Miller
County Arborist

cc: Lisa Feldt, Director
Stan Edwards, Chief
Walter Wilson, Associate County Attorney
Marco Fuster, Senior Planner





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

MCPB No. 12-72
Preliminary Plan No. 120110260
Country Club Village
Date of Hearing: May 10, 2012

AUG 13 2012

RESOLUTION

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

WHEREAS, on June 9, 2011, Ulrike Berger, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 0.49 acres of land in the R-60 zone, located at 6311 Wynkoop Boulevard approximately 350 feet south of its intersection with Winston Lane ("Subject Property"), in the Bethesda Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110260 Country Club Village ("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 April 27, 2012, setting forth its analysis and recommendation for denial of the Application ("Staff Report"); and

WHEREAS, on May 10, 2012, 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 May 10, 2012, the Planning Board voted to deny the Application on motion of Commissioner Dreyfuss seconded by Commissioner Wells-Harley with a vote of 4-0; Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor, and Commissioner Anderson being absent from the meeting.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board denies Preliminary Plan No. 120110260 to create 2 lots¹ on the Subject Property.

¹ Although the Planning Board was authorized to restrict the Preliminary Plan to a single lot under Sections 50-32(a)-(d) of the Subdivision Regulations, the Applicant was unwilling to revise the Application accordingly.

Approved as to
Legal Sufficiency:

Amelia M. - 7/19/12

8787 Georgia Avenue, Suite 200, Spring, Maryland 20910 Chairman's Office: 301.495.1005 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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, and upon consideration of the entire record, the Planning Board FINDS, that:

1. *The Preliminary Plan fails to substantially conform to the Master Plan as required under Section 50-35(l) of the Subdivision Regulations.*

The entire Master Plan area is in the Piedmont Region. The Subject Property lies within the area identified in the Master Plan as the Potomac Palisades, an area characterized by rolling and hilly topography with both moderately steep slopes (15 to 25 percent grade) and extremely steep slopes (over 25 percent grade). Master Plan goals include protection of the environment, character, and cultural resources of the Palisades area. The Master Plan stated the following objectives for natural resource protection in this area:

“The Master Plan recommends preserving the Potomac Palisades unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area.”

“The established pattern of development in the Palisades has resulted from average lot sizes larger than the minimum 6,000 square feet required for the R-60 Zone. These larger lots have allowed for less intrusion on the steeply sloped and wooded topography characteristic of this area.”

The Master Plan recommends the preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the Staff Guidelines for the Protection of Slopes and Stream Valleys, prepared by the Montgomery County Planning Department (April 1983), which states:

“Due to the sensitive topography in the Palisades, it is critical to protect the steep slopes from disturbance. With development pressure mounting, slopes which were once considered “unbuildable” are now being developed. In many instances, these slopes are being cleared of vegetation and excavated, leading to further erosion and runoff. To minimize this destruction these guidelines should be strictly applied to preliminary plans of subdivision in this area. Where areas of steep slopes and mature trees exist a conservation easement may be placed to ensure the preservation of these environmentally sensitive areas in an undisturbed state. The placement of conservation easements should be done on case-by-case basis.”

The Master Plan also discussed natural features in an effort to avoid erosive conditions and protect the steep slopes of this area, recommending “the preservation, whenever possible, of wetlands and steeply sloped areas (25 percent and greater slopes) that may lie outside floodplains or stream buffers”.

The topography of the Subject Property is comprised mostly of slopes exceeding 15 percent, with nearly half of the site on slopes greater than 25 percent. The soils are highly susceptible to erosion as classified in the 1995 Soil Survey of Montgomery County. Although the Master Plan recommends conservation easements as a measure to protect steep slopes, the Application does not preserve any of the onsite forest. Furthermore, properties with environmentally sensitive features trigger additional review under the Montgomery County Planning Board Environmental Guidelines, January, 2000 (“Environmental Guidelines”). The Environmental Guidelines outlined a variety of restrictions that may be required to protect the slopes and forest, including the deletion of lots and the establishment of building restriction lines.

The Board considered protection of the steepest areas of the site by limiting subdivision of the Subject Property to one lot. The Applicant could develop this Property with one lot that would place a single dwelling unit in an area of the site that would have less impact on the existing environmentally sensitive areas. One lot on the site would limit the amount of disturbance to the steep slopes and existing trees. However, the Applicant was not prepared to revise the Application accordingly. The Application failed to address and adequately protect the natural resources and environmental quality of the Palisades through any of the recommended measures. This Application neither encourages nor considers the type of environmentally sensitive development envisioned by the Master Plan.

2. *The Preliminary Plan as proposed is unsafe for development due to unprotected steep slopes and highly erodible soils.*

The majority of the Subject Property is comprised of Brinklow-Blocktown Channery silt loam; a highly erodible soil. The Property's topography is severe with approximately 48 percent of the site having slopes steeper than 25 percent, and approximately 22 percent having slopes ranging from 15-25 percent. The Application proposed subdivision into two lots, grading the steep slopes and removing all forest. The intensive grading and clearing proposed will permanently alter the topography.

Section 50-32(b) of the Subdivision Regulations states:

“Unsafe land. The Board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosion

stream action, soils, with structural limitations, unstabilized slope or fill or similar environmental or topographical.”

The Environmental Guidelines, referring to the Soil Survey of Montgomery County, Maryland identify soils with severe limitations for development as those that are located on excessive slopes with high susceptibility to erosion. The Environmental Guidelines states:

“Development should avoid areas of the site that contain soils with severe limitations. In some cases, development may be prohibited or restricted in these areas as a condition of plan approval. Restrictions can include the requirement for implementation of engineered solutions, the use of building restriction lines, restriction of housing types (such as prohibiting basements), and relocation or deletion of lots.”

Sections 50-32(c) and (d) provide additional support for the Planning Board to limit the Preliminary Plan to a single lot. One lot would have less impact on the existing environmentally sensitive areas and limit the amount of disturbance to the steep slopes and existing trees. A topographic overlay of the area reveals that other dwellings in the surrounding neighborhood were carefully sited and tucked into their sites to protect the slope and community character. Lots to the south of the Property were successfully developed through the careful placement of houses that averted cutting and removing steep, forested slopes. The Application does not follow this careful placement.

3. *The Application fails to satisfy all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features under the Environmental Guidelines.*

The Application’s failure to protect environmentally sensitive features, specifically steep slopes under the Environmental Guidelines has been addressed.

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s CRZ, requires a variance under Section 22A-12(b)(3) (“Variance”). This Application will require the removal or CRZ impact to eight Protected Trees. In accordance with Section 22A-21(e), the Applicant has requested a Variance.

The Board was unable to make the following findings necessary to grant the Variance:

- a) *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Board finds that the recommendations in the Master Plan for larger lots are not intended to increase neighborhood density but for protection of natural features such as steep slopes and trees. The Board finds that granting this Variance would confer a special privilege on this Applicant since other applicants that had sought to subdivide in the Palisades had significant development controls imposed in order to protect the environmental sensitive features on their properties.

- b) *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Planning Board finds that this Variance is based on circumstances which are the result of actions undertaken by the Applicant. The Board finds that the Applicant could restrict the development to a single lot, and undertake further tree and slope protection measures to meet the requirements of the Master Plan, the Forest Conservation Law, and the Environmental Guidelines. The Board does not agree that disturbance has been minimized, that sensitive house placement was considered, or that the shorter driveways significantly reduce impacts to the erodible slopes. When comparing the lot layout with the layouts found in the rest of the community, it is apparent that other house designs and layouts worked to avoid the steep slopes to protect the integrity of the local ecology and geology.

- c) *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The Board finds that the need to remove trees on this site was not caused by conditions or actions that have taken place on the neighboring properties.

- d) *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Board finds granting of this variance will cause measurable degradation in water quality. Although stormwater management will be provided for the Subject Property, the erodible soils and grade of the slopes will likely result in some sloughing.

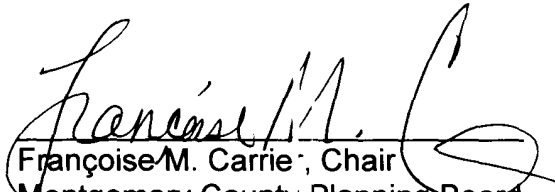
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 13 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion at its regular meeting held on Thursday, July 26, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Preliminary Plan No.: 1-96036

Name of Plan: Cabin John Park

Date of Hearing: February 8, 1996

*Action: **APPROVAL, for two lots only, SUBJECT TO CONDITIONS.** (Motion to approve made by Commissioner Aron, duly seconded by Commissioner Baptiste; with a vote of 3-0 in favor of the motion, Commissioners Holmes and Richardson absent).*

INTRODUCTION

The subject preliminary plan application was filed on November 3, 1995, requesting the resubdivision approval of property in the R-90 zone (residential, 9,000 square feet ("sf.") minimum lot size). The application was designated Preliminary Plan 1-96036. The subject property is located in Cabin John Park in the northeast corner of the intersection of MacArthur Boulevard and 75th Place. The Applicant proposed 3 single family, residential lots on approximately 30,288 sf. The proposed lots have areas of 9,050 sf., 9,675 sf. and 11,250 sf.

On February 8, 1996, the Montgomery County Planning Board ("Planning Board") held a public hearing on Preliminary Plan 1-96036 in accordance with the requirements of Maryland Code Annotated, Article 28, the Montgomery County Code, Chapter 50 ("Code"), and the Board's Rules of Procedure. At the public hearing, the Board heard testimony and received evidence submitted in the record on the application.

In presenting the Preliminary Plan to the Planning Board, the Planning Department prepared a Staff Report describing the application, the Property, the surrounding area, applicable requirements and other issues. The Staff Report was distributed to the Board and made a part of the record. All findings and recommendations set forth in the Staff Report, unless otherwise modified or rejected by the Board during the public hearing, were adopted by the Planning Board.

Two issues are germane to the Planning Board's decision on this application:

- (1) The Master Plan requirements.
- (2) The resubdivision criteria.

MASTER PLAN REQUIREMENTS

Section 50-35 (f)(2) of the Code allows the Planning Board to approve preliminary subdivision plans subject to conditions and/or modifications necessary to bring the plan and proposed development into accord with all applicable regulations

Section 50-29 of the Code provides that "[l]ot size, width, shape and orientation will be appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan." Section 50-35(1) of the Code provides that:

[i]n determining the acceptability of the preliminary plan submitted under the provisions of this chapter, the Planning Board must consider the applicable master plan. A preliminary plan must substantially conform to the applicable master plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan recommendation no longer appropriate.

At the public hearing, the staff noted that the Bethesda-Chevy Chase Master Plan ("Master Plan"), recommends retaining and maintaining the semi-rural, wooded environment of the Cabin John community and does not allow new curb cuts on MacArthur Blvd. The staff noted that the proposed resubdivision would adjoin a cluster of two houses on small lots along MacArthur Blvd. The existing small lots with houses are shown on Exhibit 1 (Attached). The two lots proposed for alignment on MacArthur Blvd. would occupy the remaining open space on MacArthur Blvd. The staff concluded that the application for three lots, of which two lots are on MacArthur Blvd., conflicts with the Master Plan. Therefore, the staff recommended approval of two lots only, with only the lot with the existing house having frontage on MacArthur Blvd. and no new curb cuts on MacArthur Blvd.

Several people who live near the proposed resubdivision also presented testimony at the public hearing. One group of neighbors, through their attorney, argued against the resubdivision on the grounds that the curb cuts for the new lots and the small lot size would conflict with the Master Plan. The Cabin John Citizens Association, through a representative, also spoke in opposition to the proposed resubdivision on the grounds that it conflicted with the Master Plan. Several other neighbors voiced similar concerns.

The Applicant acknowledged those concerns but argued that the revision of the plans to eliminate the curb cuts along MacArthur Blvd. brought the proposed resubdivision into compliance with the Master Plan. (The record shows that the Applicant revised the plans of the subject application to eliminate curb cuts along MacArthur Blvd. Access for Lot 1-A would be through Lot 1-A off of 75th Street. But the plan still called for two lots aligned with MacArthur Blvd.) The Applicant cited sections of the Master Plan which allow higher density in the Cabin John area when compatible with existing development and noted that the area of the proposed development had already lost its open space and wooded character.

The Planning Board discussed the application and focussed on the conformity of the proposed resubdivision to the Master Plan's recommendation that open space and Cabin John's wooded character be maintained.

The Master Plan recommends the following for the area that includes the subject property:

The preservation of the Potomac Palisades' unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area (p. 64);

The unique character of the Cabin John community should be retained by keeping the existing scale and type of housing along with the semi-rural, wooded environment (p. 70);

To designate MacArthur Boulevard from the District line to the intersection with Falls Road in the Potomac subregion as a State of Maryland Scenic Route (pp. 65, 70); and

To preserve the green quality of palisades, there should be no additional curb cuts along MacArthur Boulevard. (p. 70).

The Board considered the Staff's Report and the concerns expressed by neighbors and the civic association represented regarding the conformity of the proposed resubdivision to the Master Plan.

The Board finds that adding two small lots with houses next to the two existing small lots adjoining the subject property along MacArthur Blvd. would create a crowded cluster development in an area where the Master Plan calls for the preservation of open space and the protection of the scenic character of MacArthur Blvd. This cluster is shown on Exhibit 1. The three lots as proposed would also eliminate the remaining open space on MacArthur Blvd. While there are other small lots in the area near the subject property, those lots are concentrated along Ridge Road , East End Place and 75th Street to the north of MacArthur Blvd. (See Exhibit 1). The Board acknowledges that the Master Plan allows higher density in the area but only

where appropriate. The Board finds that the area along MacArthur Blvd. is not appropriate for higher density as proposed in the subject plan. Therefore, a three lot subdivision, which includes two lots along MacArthur Blvd., is not in substantial conformity with the Master Plan. The Board finds that a two lot subdivision, with no new curb cuts along MacArthur Blvd. and only one additional lot with frontage along MacArthur Blvd. is in conformity with the Master Plan.

THE RESUBDIVISION CRITERIA

Having made that finding, the Board must now consider whether the Preliminary Plan meets the resubdivision criteria at Section 50-29(b)(2) of the Code:

Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a 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 use as other lots with the existing block, neighborhood or subdivision.

In administering this section, the Planning Board first determines the appropriate neighborhood within which the character of the area is established. Then, the Planning Board tests the proposed resubdivision lots against this existing neighborhood lots to see if the proposed lots are of the same character as the existing lots.

The Applicant proposes to resubdivide Lot 2 and a part of Lot 3 originally recorded in 1914 as part of Section One, Cabin John Park, Plat Book 2, Plat #178. (See Exhibit 2, attached). The staff delineated the neighborhood for purposes of the resubdivision criteria as the area bounded by 76th Street on the west, Arden Road on the north, 75th Street on the east and Tomlinson Avenue and MacArthur Blvd. on the south. (See Exhibit 1). The staff excluded from the neighborhood, for purposes of the resubdivision criteria comparison, lots created by deed which include Lots 1-A, 1-B, 1-C, PT. 21, PT. 120 and 121 as identified on Exhibit 1. The lots in the neighborhood delineated by staff ranged in size from 8,464 sf. to 18,000 sf., have frontages between 70' and 100' and are rectangular in shape. Therefore, the staff concluded that the lots in the proposed resubdivision were of the same character with regard to alignment, size, shape, width, residential use and area as the existing neighborhood lots.

The Cabin John Citizens Association, through a representative, stated that the lots were smaller and had less frontage than the existing lots on the block. Several other individual neighbors and another civic group voiced similar concerns.

The Applicant argued that the neighborhood for purposes of comparison should include the lots identified as 95-A, 95-B, 99-A, 99-B, and 99-C as noted on Exhibit 1. These lots range in size from 7,195 sf. to 9,500 sf. and have various widths, shapes, alignments and frontage.

The Board adopts the Staff's definition of the neighborhood as the area bounded by as the area bounded by 76th Street on the west, Arden Road on the north, 75th Street on the east and Tomlinson Avenue and MacArthur Blvd. on the south. The Board also agrees with staff that lots created by deed which included Lots 1-A, 1-B, 1-C, PT. 21, PT. 120 and 121 as identified on Exhibit 1 should be excluded from the comparison. The Board, in routinely reviewing preliminary plan applications and applying Sect. 50-29(b)(2) of the Code has refrained from reviewing lots created by deed in light of the language of the Code requiring that "[l]ots on a plat for resubdivision of any lot...that is a part of an existing subdivision previously recorded in a plat book shall be of the same character...as other lots within the existing block..."

This section contemplates that once a lot and block have been created by recorded plat of subdivision, such plat has created and defined the neighborhood. This logical conclusion is reached in that a "block" can only be created by plat, and that the plain language of this section speaks only of lots created by plat of subdivision. Any modification (i.e., subdivision) to such a plat can be approved only upon a clear showing that it will not result an alteration of the character of the neighborhood previously created by the record plat.¹

The Subdivision Regulations do not provide for or contemplate the evaluation of deed-created lots for practical reasons. Lots on record plat are certified by licensed engineers as to such matters as lot size, width, shape, and orientation and, furthermore, are graphically represented on the Plat. A lot created by deed does not share these characteristics. It is not practical for the Board, Staff or an Applicant to obtain all deeds creating lots in the area, then transform the metes and bounds description of each lot from the deed into a graphic rendition for purposes of comparison.

Maps prepared by the State Department of Assessments and Taxation ("Tax Maps") purport to illustrate all lots created by deed or record plat. These maps assist the Board in reviewing plans and orienting the Board to the general location and nature of development patterns in the area. Staff ultimately conforms the accuracy of lots shown on a tax map being evaluated which are created by record plat of subdivision by reviewing each plat (which plats are entered in the record).

Tax Maps, especially in the case of lots created by deed, fail to achieve the same level of certainty provided by record plats and give rise to necessary confusion. Tax Maps expressly caveat their accuracy by stating the "Property lines are compiled by this office [SDAT] from descriptions and are not to be interpreted as actual field survey." Record plats are certified to be the result of field surveys undertaken by licensed professionals.

The record includes the following information on the lots in the neighborhood of the proposed resubdivision:

Lot 4: Street Frontage: 100'
Alignment: aligned with 75th Pl.
Size: 100' x 150'
Shape: rectangular
Width: 100'
Area: 15,000 sf.
Suitability for Residential
Development: yes

Lot 8: Street Frontage: 100' on 75th St.
Alignment: aligned with 75th St.
Size: 100' x 150'
Shape: rectangular
Width: 100'
Area: 15,000 sf.
Suitability for Residential
Development: yes

Lot 5: Street Frontage: 100'
Alignment: aligned with 75th Pl.
Size: 100' x 150'
Shape: rectangular
Width: 100'
Area: 15,000 sf.
Suitability for Residential
Development: yes

Lot 9: Street Frontage: 100' on 75th St.
Alignment: aligned with 75th St.
Size: 100' x 150'
Shape: rectangular
Width: 100'
Area: 15,000 sf.
Suitability for Residential
Development: yes

Lot 6-A: Street Frontage: 101.90'
along Arden Rd.; 95' along 75th Pl.
Alignment: corner lot, Arden Rd.
and 75th Place
Size: 101.90' x 95'
Shape: square
Width: 101.90'
Area: 9,681 sf.
Suitability for Residential
Development: yes

Lot 10: Street Frontage: 100' on 75th St.
Alignment: aligned with 75th St.
Size: 100' x 150'
Shape: rectangular
Width: 100'
Area: 15,000 sf.
Suitability for Residential
Development: yes

Lot 7-A: Street Frontage: 70' along
75th St.; 85.10 along Arden Rd.
Alignment: corner lot, 75th
St. and Arden Rd.
Size: approx. 98.1' x 95'
Shape: square
Width: 98.1'
Area: 9,007 sf.
Suitability for Residential
Development: yes

Lot 6-B: Street Frontage: 95' along Arden
Rd.
Alignment: aligned with Arden Rd.
Size 95' x 95'
Shape: square
Width: 95'
Area: 9,025 sf.
Suitability for Residential
Development: yes

Lot 25-A: Street Frontage: 92.5' on Arden Rd.
Alignment: aligned with Arden Rd.
Size: 92.5' x 92.5'
Shape: square
Width: 92.5'
Area: 8,550 sf.
Suitability for Residential Development: yes

Lot 26: Street Frontage: 100' on 75th Pl.
Alignment: aligned with 75th Pl.
Size: 100' x 180'
Shape: rectangular
Width: 100'
Area: 18,000 sf.
Suitability for Residential Development: yes

Lot 27: Street Frontage: 100' on 75th Pl.
Alignment: aligned with 75th Pl.
Size: 100' x 180'
Shape: rectangle
Width: 100'
Area: 18,000 sf.
Suitability for Residential Development: yes

Lot 22-A: Street Frontage: access to 76th St.
Alignment: aligned with 76 St.
Size: approx. 80' x 120'
Shape: pipestem
Width: 120'
Area: 11,975 sf.
Suitability for Residential Development: yes

Lot 22-B: Street Frontage: 95' on 76th St.
Alignment: aligned with 76th St.
Size: 95' x 95'
Shape: square
Width: 95'
Area: 9,025 sf.
Suitability for Residential Development: yes

Lot 23-A: Street Frontage: 80' on 76th St.
Alignment: aligned with 76th St.
Size: approx 80' x 195'
Shape: roughly rectangular
Width: 80'
Area: 12,125 sf.
Suitability for Residential Development: yes

Lot 24-B: Street Frontage: 75' along Arden Rd.; 70' along 76th St.
Alignment: corner lot, 76th St. and Arden Rd.
Size: approx. 75' x 95'
Shape: square
Width: 95'
Area: 9,188 sf.
Suitability for Residential Development: yes

Lot 24-A: Street Frontage 75' along Arden Rd.
Alignment: aligned with Arden Rd.
Size: approx. 75' x 95'
Shape: roughly rectangular
Width: 75'
Area: 9,000 sf.
Suitability for Residential Development: yes

After comparing the two proposed lots to the lots in the existing neighborhood, the Board finds that the two proposed lots are suitable for residential development and have the same frontage, size, shape, width and area as the existing lots in the neighborhood.

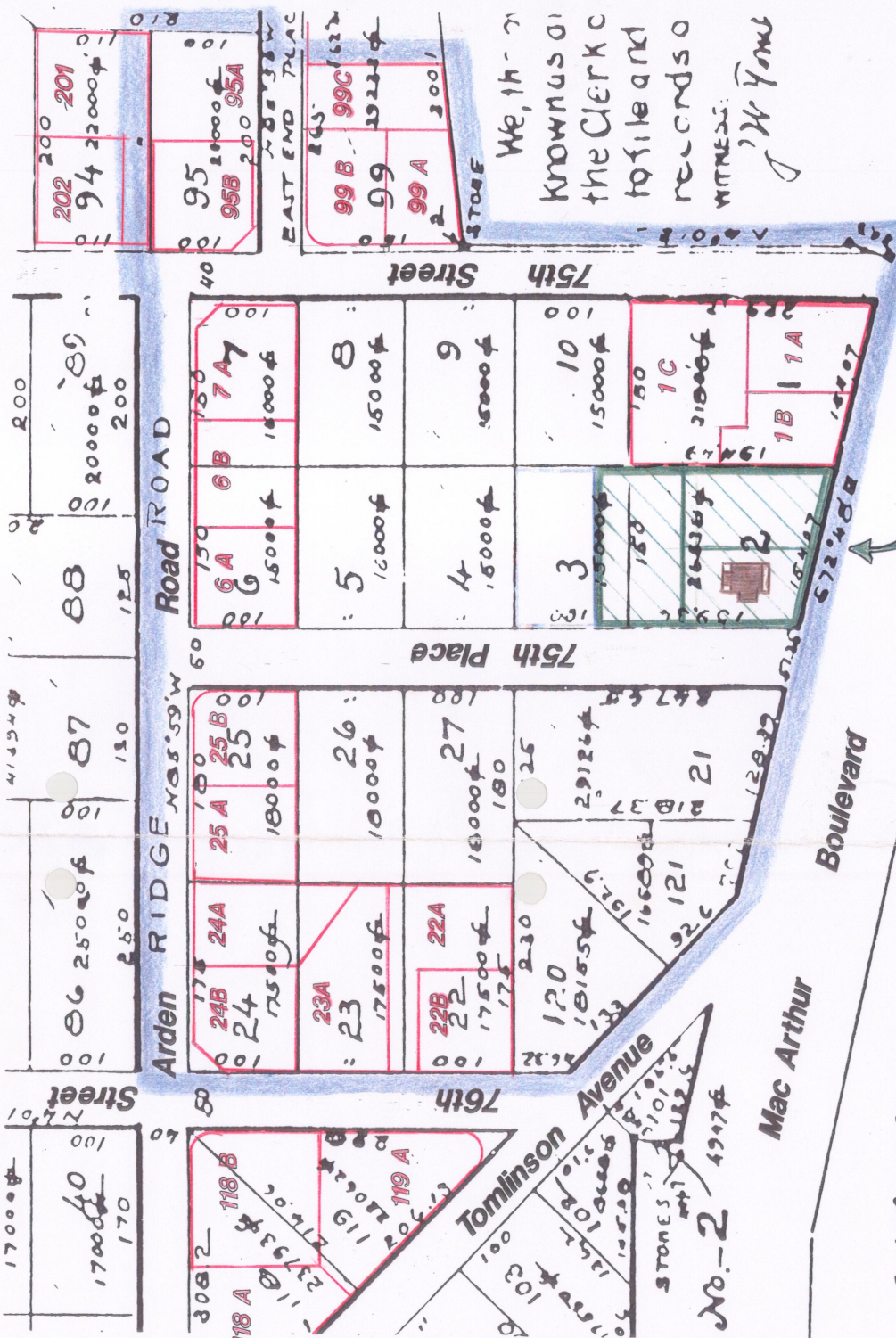
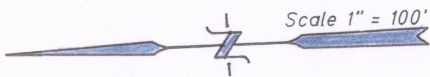
CONCLUSION

Based on the testimony, evidence and exhibits presented as well as the content of the Preliminary Plan file, the Planning Board finds the Preliminary Plan to be in accordance with the Subdivision Regulations of the Montgomery County Code as well as the Maryland Code Annotated, Article 28. Therefore, in accordance with Section 50-35 of the Subdivision Regulations, the Planning Board approves the plan for 2 lots subject to the following conditions:

- (1) Submit final grading, tree preservation plan, and revised lot configuration per Exhibit 3 or technical staff approval prior to recording of plat.
- (2) Conditions of MCDEP stormwater management approval dated 12/21/95.
- (3) Access and improvements as required and approved by MCDOT.
- (4) Record plat(s) to reference common ingress/egress easements to 75th Place.
- (5) Record plat(s) to reflect no Access to MacArthur Blvd.
- (6) Other necessary easements.
- (7) This preliminary plan will remain valid until July 13, 1999 (37 months from the date of mailing which is June 13, 1996). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

Exhibits 1, 2, 3

g:\1-96036.wpd



NOTES

Base map is a reproduction of part of a record plat of Cabin John Park recorded in Plat Book 002 as Plat No. 00178.

Existing zoning = R-90.

Neighborhood
Re-subdivisions

This plat has been called - Carderock - particularly known as - Miniland

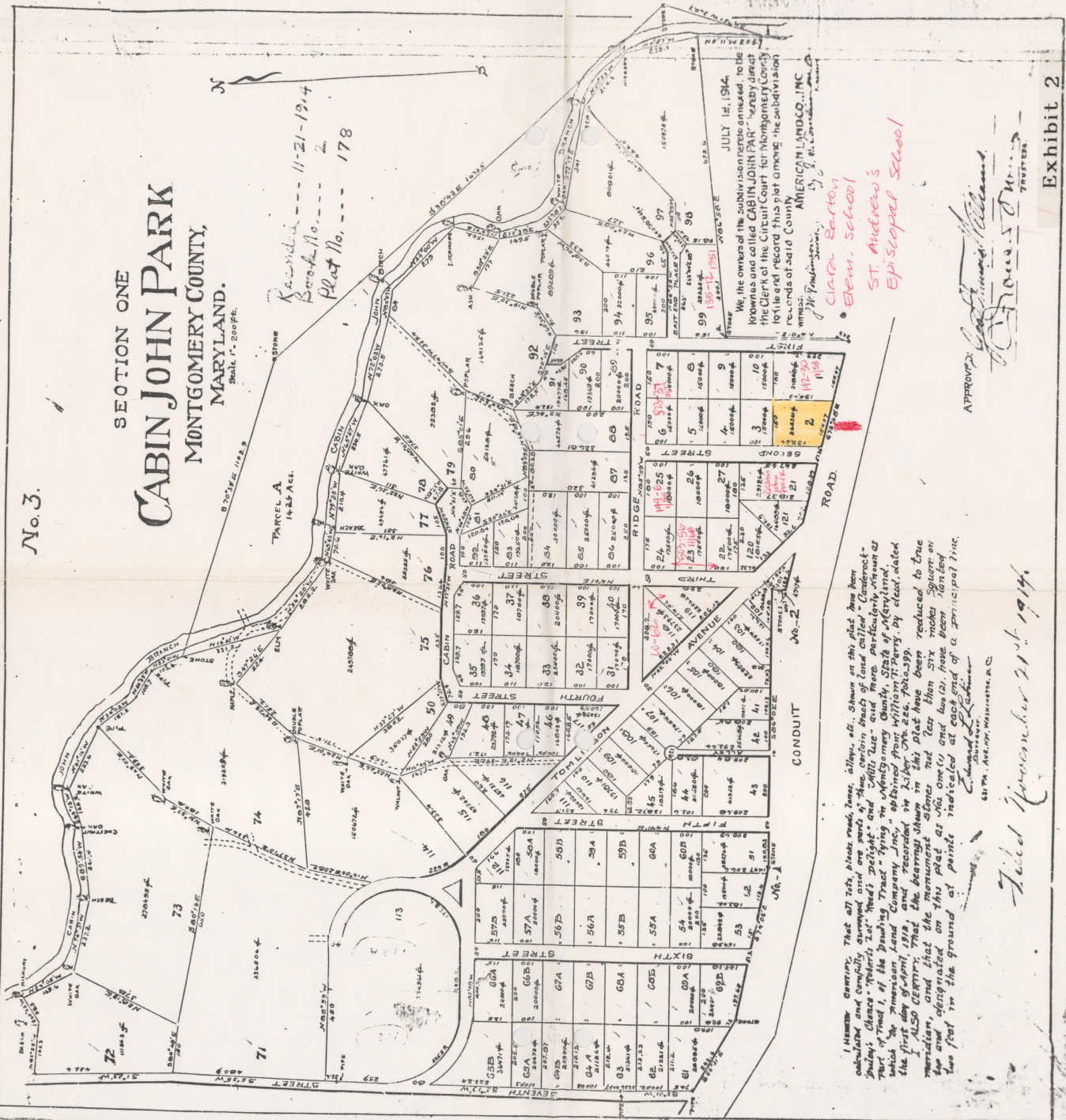
RESUBDIVISION EXHIBIT
CABIN JOHN PARK

SITE
LOT 2 & PART OF LOT 3

No. 3.

SECTION ONE
CABIN JOHN PARK
MONTGOMERY COUNTY,
MARYLAND.
Scale 1" = 2000 FT.

Revised
Book No. --- 11-21-1914
Plot No. --- 2
178



JULY 12, 1914.
We, the owners of the subdivision herein annexed, to be known as and called CABIN JOHN PARK, hereby direct the Clerk of the Circuit Court for Montgomery County to file and record this plat among the subdivision records of said County.
AMERICAN LAND CO., INC.
By J. B. [Signature]

*Clara Barton
Elem. School
St. Andrew's
Episcopal School*

I HEREBY CERTIFY: That all lots, streets, roads, lanes, alleys, etc., shown on this plat, have been calculated and correctly set out by the surveying party, and that the same are in accordance with the plan of the subdivision, and that the same have been approved by the Board of Commissioners of Montgomery County, Maryland, on the 11th day of November, 1914, and that the same have been recorded in the office of the Clerk of the Circuit Court for Montgomery County, Maryland, on the 11th day of November, 1914, and that the same have been reduced to true meridian, and that the monument shown on this plat have been reduced to true meridian, and that the monument shown on this plat as No. 101 and 102, have been placed two feet in the ground at points indicated at each end of a principal line.

Edward L. [Signature]
Surveyor
617 N. ANNETT, WASHINGTON, D.C.

Filed November 21st 1914.

APPROVED
[Signature]
Trustee

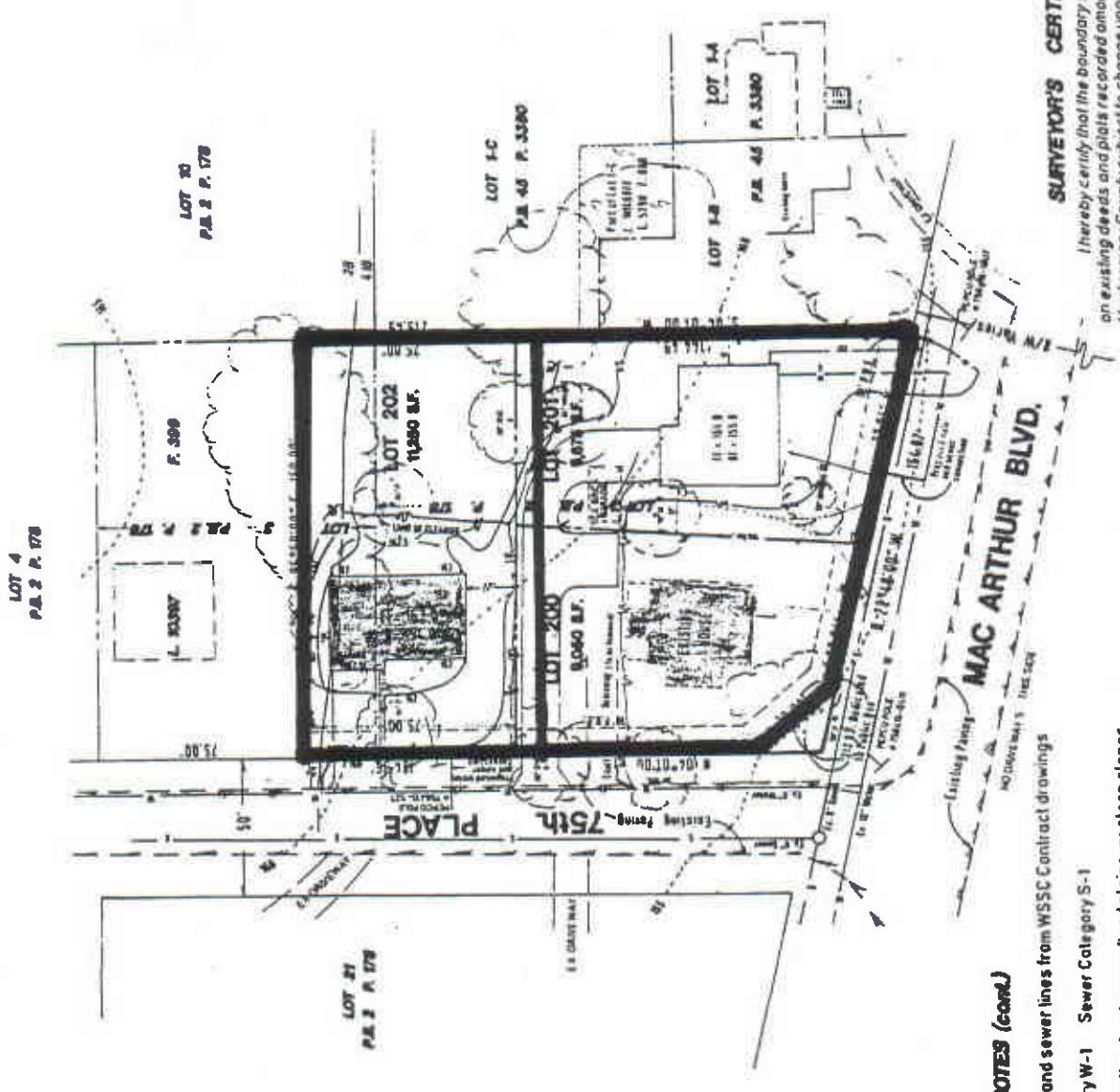
Exhibit 2

NOTES

- 1 This plan is a proposed subdivision of Lot 2 and part of Lot 3 Section 1, Cabin John Park, Plat Book 2 Plat 17A, containing 30,288 Sq Ft
- 2 Boundary as shown, has been compiled from deeds and plats of record
- 3 Topography as shown is from M-NCP&PC Sheet 37A, 5' C1
- 4 Zoning: R-90.
- 5 Property does not include an Historic Site
- 6 Existing House Address is 7507 Mac Arthur Blvd.
- 7 Property located in P.A. 35 (Bethesda Chevy Chase)
- 8 Property shown on Soil Map W-26.
- 9 Plan is scaled. Location of proposed elements and dimensions are subject to change at the time of final plot.
- 10 Proposed number of lots: 3 (Standard method of development) (Cont.)

UTILITY COMPANIES SERVICING THIS SITE

- Helmox Electric Power Company
1610 Gaither Road
Rockville, MD 20850
- Washington Gas Light Company
6801 Industrial Road
Springfield, VA 22161
- Washington Suburban Sanitary Commission
14901 Switzer Lane
Laurel, MD 20707
- Bell Atlantic - MD
3951 Calverton Blvd. 3rd Flr
Beltsville, MD 20705
- Cable TV Montgomery
20 West Glade Drive
Rockville, MD 20820



NOTES (cont.)

- 11 Existing water and sewer lines from WSSC Contract drawings
- 12 Water Category W-1 Sewer Category S-1
- 13 There are no wetlands, streams, floodplains, or steep slopes affecting this site.

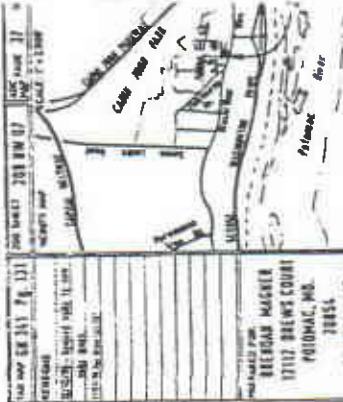
SURVEYOR'S CERTIFICATE

I hereby certify that the boundary shown hereon is based on existing deeds and plats recorded among the Land Records of Montgomery County, subject to change upon completion of a final survey. Topography is from sources noted.

Date: 12/17/2022
 JOHN W. WITMER
 PROFESSIONAL LAND SURVEYOR
 NO. REG. 05688

THE PRELIMINARY PLAN

SECTION 1
 LOT 200 - 303
CABIN JOHN PARK
 THE ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND
LANIER/WITMER ASSOCIATES
 LITTLETON • WASHINGTON • FALLS CHURCH
 224 NORTH ADAMS STREET
 ROCKVILLE, MD 20850
 (301) 291-6730



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

VIA ELECTRONIC MAIL
VIA REGULAR MAIL

September 2, 2015

Mr. Robert Kronenberg, Chief
Planning Area One Division
Department of Planning
The Montgomery-National Capital Park and Planning Commission
8787 Georgia Ave.
Silver Spring, Maryland 20910

Re: Preliminary Plan No. 120061120 –Master Plan Compliance

Dear Mr. Kronenberg:

Your Team's patience is appreciated and we appreciate this opportunity to provide our analysis of the applicable recommendations of the Bethesda-Chevy Chase Master Plan and the Master Plan's environmental objectives in response to your e-mail to me dated July 30, 2015. Although we agree with the Master Plan objective of protecting the scenic vistas and natural features of the "Palisades," we submit that those objectives do not uniformly apply, generally to the entire 4,000 acres to which the Name "Palisades" has been applied or specifically to the Subject Property on Walhonding Road.

You have summarized the Planning Area One team's position as follows:

"The neighboring properties that were shown to our team appear to be built without regard to much of the protective needs of the Palisades and probably before environmental regulations were in effect. Our site visit confirmed the significant impacts that the additional development would have on the subject property as well as adjoining sites. The Planning Board is sensitive to development in the Palisades area and have denied previous cases for some of the reasons provided herein."

The enclosed Memoranda, we submit, confirm that the one additional lot proposed by this application, in fact has no significant impact on that portion of the 4,000 acre area dubbed the Palisades that is in fact the true "Scenic Palisades."

It would be appreciated if you would identify the previous cases that you reference in your email as having been denied by the Planning board. I was not able to find them using the DAIC. What

Page 2

I did find as a resubdivision that the board approved in 2010 that is very informative as the Board and Staffs understanding of what actually constitutes the "Palisades."

You have also informed us that:

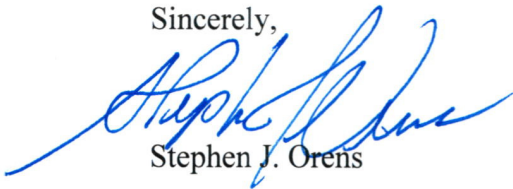
"Section 50-32(c) of the Subdivision Regulations allows for the Planning Board to restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas."

As noted in both Memoranda a report of a soils analysis by Geotechnical Laboratories, Inc. is being prepared to update and correct the data in the approved NRI as it relates to highly erodible soils on site. We anticipate submitting that report next week. As you will note in the report, no surface level highly erodible soils were found on the property and the only Silt Loam soil encountered was three to four and one half feet below the surface in an area not characterized by steep slopes.

I agree that we need to revise the Tree Variance Request and we will address the concerns listed in your email. That revised Variance Request will be submitted separately as soon as it is completed.

Thank you again for bringing your team's concerns to our attention. Our team is available to continue our discussions regarding the review of this one lot resubdivision.

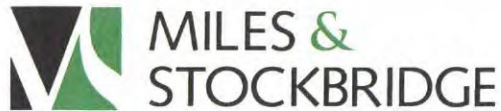
Sincerely,



Stephen J. Orens

Encl.

cc: Gwen Wright, Planning Director
Rose Krasnow, Deputy Planning Director
Elza Hisel-McCoy
Neil Braunstein
Marco Fuster
Dean Packard
Michael Norton
Alidad Hakimi
Casey L. Cirner, Esquire



MEMORANDUM

TO: Robert Kronenberg Planning Area One Division Chief
FROM: Stephen J. Orens
RE: Preliminary Plan No. 120061120 –Master Plan Compliance –The “Palisades”
DATE: September 2, 2015

This Memorandum addressing Master Plan compliance is submitted on behalf of the Preliminary Plan Applicants, Alidad Hakimi and Roxanna Foroughi (“Hakimi” or the “Applicants”).

We have been advised that the Planning Area One Division of the Planning Department (“Planning Staff”) is unable to support the proposed resubdivision to add one additional R-90 lot to Block 14½ of the Glen Echo Heights Subdivision on the basis that the “proposal with three lots is not consistent with the objectives of the Bethesda-Chevy Chase Master Plan (1990).” (The “Master Plan”). Planning Staff identifies the Master Plan objective to “protect the environment, character and cultural resources of the Palisades area” as support for their position regarding Master Plan compliance.

The Applicants respectfully disagree with Planning Staff’s interpretation of the Master Plan in general and the applicability of the Master Plan’s environmental guidelines in particular.

Preliminary Plan No.120061120 requests the approval of one additional R-90 lot on Block 14½ of the Glen Echo Heights Subdivision in the Mohican Hills community through the resubdivision of Lots 11 and 12 (the “Subject Property”).

Planning Staff contends that the one additional R-90 lot proposed by this application is inconsistent with one of the Master Plan’s area-wide goals, applicable to the entire Bethesda Chevy Chase Planning Area, “to protect the high quality of life, the existing residential character, and the natural environment throughout the area.” (Master Plan p.3) This generalized “Areawide” Master Plan “goal” is an aspirational expression of the significance of protecting the natural features located in the Planning Area, but as explained at page 137 of the Master Plan, the natural features that are to be protected must be “defined and delineated on a site-by-site basis.” None of the protected natural features are on the Subject Property.

There are no Master Plan protected natural features on Walhonding Road in general or on the Subject Property in particular. Walhonding Road is located in a community commonly known as “Mohican Hills.” Mohican Hills is a community within the 4,000+ acre area that the Master Plan identifies as the “Palisades.”

Planning Staff's contention that the one requested additional lot should be rejected also relies on one of the Master Plan's "community land use objectives," that being the objective to "protect the environment, character and cultural resources of the Palisades area." (Master Plan p.29)

The question that Planning Staff has not addressed is where exactly are those resources located? Factually, there are no sensitive soils, steeply wooded slopes unique natural features such as scenic cliffs or cultural resources anywhere on or near the Subject Property. This generalized Master Plan objective to "protect the environment, character and cultural resources of the Palisades area" is clarified by the Master Plan's "Areawide Plan" (Master Plan p.64) for the 4,000+ acre geographic area identified as the "Palisades." The 4,000 acre geographic area must not be confused with the linear stretch of cliffs that characterize the "Scenic Palisades" overlooking the Potomac River.

The Planning Staff also appears to contend that the Master Plan objective to preserve "the Potomac Palisades unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area" applies to the entire 4,000+ acre area that the Master Plan calls "the Palisades" and that it pertains specifically to the Subject Property and Walhonding Road, despite the absence of "steeply wooded slopes and vistas" and the fact that Walhonding Road is decidedly not characterized by open space vistas.

The Master Plan text in Mr. Kronenberg's email has been quoted out of context. The Master Plan text that follows the language quoted by Mr. Kronenberg provides that context. The Master Plan describes precisely where the preservation objectives apply and the text of the Master Plan also explains why those objectives are directed expressly to the line of steep cliffs overlooking the Potomac River, not Walhonding Road.

The scenic Palisades is one of the few areas in Montgomery County with a combination of delicate, irreplaceable environmental features of wooded bluffs, river, and cliffs. The large stands of mature trees are not only a critical asset from an environmental perspective but also greatly contribute to the ambience associated with the area. The steep slopes of the Palisades are an integral part of this character since they form the scenic vistas and overlooks, of the Potomac River. Their preservation in an undisturbed state is essential to minimize erosion and stream degradation. Due to these unique, lovely, and relatively unspoiled characteristics, it is of great importance to protect this area through a variety of measures. (Master Plan p.64.) (Emphasis added.)

Beyond the linear stretch of cliffs that characterize the Scenic Palisades, lies the remainder of the 4,000 + acres "from Massachusetts Avenue to the Potomac River and west of Sangamore Road to Goldsboro Road" downzoned from the R-60 Zone to the R-90 as recommended by the Master Plan. The Subject Property is within the R-90 area that was downzoned from R-60 and where additional development under the R-90 zone is appropriate.

Planning Staff erroneously assumes that the “environment, character and cultural resources” that the Master Plan seeks to protect apply to Walhonding Road, the Subject Property, and, presumably everywhere else in the 4,000+ acres identified by the Master Plan as “the Palisades.”

This expansive, previously developed area that the Master Plan refers to as “the Palisades” is bounded by River Road on the north, the Potomac River on the south, the District of Columbia on the east and the Capital Beltway, I-495 on the west. At the risk of redundancy, we emphasize that Mohican Hills, while within the geographic portion of the Planning Area called the “Palisades,” is not the location of the unique natural features intended for Master Plan protection and should not be confused with the physical phenomenon that is the “Scenic Palisades located along the old river bank of the Potomac River that is defined by its unique natural features and cliffs.

The Master Plan’s environmental guidelines do not preclude further development within the Mohican Hills residential community. The environmental guidelines are not intended to affect the entire 4,000+ acres or encumber that area as a development restricted “conservation area.” In fact, the Master Plan expressly states, with respect to establishing “conservation areas,” that “this Master Plan does not identify large areas such as the Palisades Area as conservation areas.” (Master Plan page 37) (Emphasis added.)

The intention of the Master Plan’s environmental guidelines is to protect those unique natural features found within that linear stretch of steep wooded cliffs running parallel to the current Potomac River. That is where “the Potomac Palisades” unique environmental features of steeply wooded slopes and vistas” are found and that is where the Master Plan’s guidelines appropriately apply to assure “the perpetuation of the open space character established in the area.” (Master Plan page 64). Those guidelines do not restrict development elsewhere or preclude the additional lot proposed by this resubdivision application.

The Subject Property is located on Walhonding Road in Mohican Hills south of Massachusetts Avenue. This property is not remotely within the area of the Scenic Palisades along the Potomac River to which the environmental guidelines and development constraints are intended to apply.

The context of the Master Plan’s environmental recommendation does not support restricting development or rejecting the requested additional lot on Walhonding Road by applying there the environmental guidelines intended to protect distinctive natural features along the Potomac River. The Planning Board and the Planning Staff both previously recognized that the environmental guidelines did not extend over the entire 4,000+ acre area identified in the Master Plan as “the Palisades” but were limited to that “linear stretch of steep slopes, mostly wooded, and running parallel to the current Potomac River.”¹

In 2010, Planning Staff recommended, and the Planning Board approved, Preliminary Plan 120100030 (Brooke Park) for ten multi-family condominium dwelling units at the intersection of Sangamore Road and MacArthur Boulevard. The Planning Staff’s Report and Recommendation

¹ See page 5 of the Staff Report to the Planning Board in Preliminary Plan No.120100030.

to the Planning Board in Brooke Park includes the following observation that is equally applicable to this resubdivision application to add one more lot to Walhonding Road:

The Master Plan also recognizes the significance of the "Palisades" which **is** the remnants of the ancient stream bank created by the former alignment of the Potomac River. **The Palisades are defined by a linear stretch of steep slopes, mostly wooded, and running parallel to the current Potomac River.** On page 64, the Master Plan provides the following guidance on protection of the Palisades by recommending:

"preservation of the Potomac Palisades unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area."

The 2010 Planning Staff analysis of what constitutes the protected "Scenic Palisades" coincides with the geological definition of the term "palisades" and the definitions of that term which, according to Encarta, include "a row of high cliffs, usually rising sharply from the side of a river" and a "line of cliffs alongside water." According to Wikipedia, the online encyclopedia, "Cliffs" are the common physical characteristic of a "palisade." There are no cliffs on Walhonding Road; the cliffs are where Planning Staff said they were in 2010 – along the Potomac River.

The Master Plan's environmental guidelines intended to preserve the Potomac Palisades' unique environmental features expressly pertains to the area abutting the Potomac River, not Walhonding Road. Subsection 6b of Section 2.14 of the Master Plan confirms that the Palisades environmental recommendations apply to a limited area and not to the Subject Property by stating that the goal is to:

"Protect and enhance the environmental, scenic and cultural qualities of the Palisades/MacArthur Boulevard area." (Master Plan page 20)

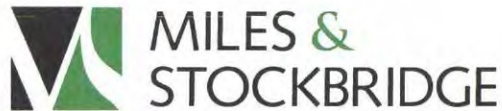
Planning Staff has no basis upon which it can now disclaim the definition of the term "Palisades" that Planning Staff recommended be accepted and was, in fact, accepted by the Planning Board in 2010. The boundaries of the *Scenic* Palisades have not changed since 2010 and have not crept northward to encompass the Subject Property in Mohican Hills or the surrounding properties along Walhonding Road. The defining natural feature of the "Palisades" was in 2010 and is today that linear stretch of steep cliffs contiguous to **"the remnants of the ancient stream bank created by the former alignment of the Potomac River."**

Rejection of one additional R-90 lot on Walhonding Road surrounded by resubdivided residential lots and isolated by distance and surrounding development from that linear stretch of land that the Planning Board previously recognized as the **"Scenic Palisades"** would be unwarranted and unjustified and would constitute an impermissible change of mind by the Planning Board. The facts are today what the facts were in 2010, Planning Staff's current

position notwithstanding. The cliffs and scenic vistas of the Scenic Palisades are not anywhere near the Subject Property.

Conclusion

The only specific Master Plan recommendation for the Subject Property and the surrounding Walhonding Road neighborhood is that the residential character of Glen Echo Heights be maintained under the Master Plan recommended R-90 zone. The proposed resubdivision is consistent with this recommendation and the Master Plan recommendation for a **moderate level of development**.



MEMORANDUM

TO: Robert Kronenberg, Planning Area One Division Chief
FROM: Stephen J. Orens
RE: Preliminary Plan No. 120061120 – Sensitive Topography in the Palisades
DATE: September 2, 2015

This Memorandum submitted on behalf of the Preliminary Plan Applicants, Alidad Hakimi and Roxanna Foroughi (“Hakimi” or the “Applicants”) responds to the objections raised by Planning Area One Staff (“Planning Staff”) based on soils, slopes and other “sensitive topography” issues. According to the e-mail received from Area One Division Chief Robert Kronenberg, it is Planning Staff’s opinion that the Bethesda-Chevy Chase Master Plan (1990) (the “Master Plan”) precludes approval of one additional R-90 lot on Walhonding Road because of “sensitive topography.” The Applicants respectfully disagree for the following reasons.

Preliminary Plan No.120061120 requests the approval of one additional R-90 lot on Block 14½ of the Glen Echo Heights Subdivision in the community known as “Mohican Hills” through the resubdivision of Lots 11 and 12 in Block 14½ (the “Subject Property”).

Mr. Kronenberg’s e-mail correctly points to the Master Plan observation that: “Due to the sensitive topography in the Palisades, it is critical to protect **these** steep slopes¹ from disturbance.” The exact location of “**these** steep slopes” is not addressed in Mr. Kronenberg’s email and the explanatory reference to Figure 15 in Chapter 5 of the Master Plan that follows the quoted text is omitted. Master Plan Figure 15 is informative because it identifies with symbols the locations of areas in which flooding and erosion problems that the protection objective quoted by Mr. Kronenberg seeks to address. A modified version of Figure 15 that includes the approximate location of the Subject Property is attached to this Memorandum as is a composite map that also depicts the locational relationship between the Subject Property and the flooding and erosion prone areas identified by symbols on Master Plan Figure 15. There are no identifying symbols anywhere near or on the Subject Property.

The areas of “sensitive topography” discussed in the Master Plan are located a significant distance from the Subject Property and do not preclude the one lot addition requested by this Resubdivision application. What the Master Plan identifies as sensitive topography is found east of Westbard Avenue, west of Goldsboro Road and along the cliffs overlooking the Potomac River. In fact, sensitive topography is one of the unique features

¹ The exact wording of the e-mail includes the following bracketed phrase “[those 25% or greater]” not found in the Master Plan itself.

found along the steep cliffs (slopes) that characterize and define that linear stretch of land running parallel to the current Potomac River. Erosion problems typically associated with sensitive soils are also shown on Master Plan Figure 15 to be along the stream adjacent to Little Falls Parkway. That same sensitive topography is not found along Walhonding Road or on the Subject Property.

The proposed redevelopment of the Subject Property will include replacing the house located at 6236 Walhonding Road with a modern home on approximately the same footprint as the existing house, demolishing the other existing house and replacing it with one of the other two houses, both of which will be located in the upper middle third of the depth of the Subject Property.

Site disturbance required for construction of the replacement house at 6236 Walhonding Road will be minimal. There will be some controlled site disturbance required for the installation of the proposed driveway and to build the two other proposed houses. A portion of the narrow band of slopes identified as being at or marginally greater than 25% that was created in the 1950's with the rear yard excavation to construct the now existing houses will require additional grading to install the driveway. That being the case and as part of the Applicants' due diligence, a geotechnical engineer with Geotechnical Laboratories was engaged to test the soil and determine its characteristics and suitability for construction of the driveway. The geotechnical engineer drilled soil borings on the property in the areas proposed for disturbance to test the soil and determine its characteristics. A copy of the geotechnical engineer's report will be provided for Planning staff review.

As noted by the Planning Staff, 16D, Brinklow/Blocktown soils are identified on the approved Natural Resource Inventory ("NRI") map. These soils were characterized by the environmental staff as being highly erosive. While this may be generally correct, it is not necessarily an impediment to the installation of the proposed driveway, as verified by the soils study and on site analysis conducted by the Applicants' geotechnical engineer.

The soils in the 16D classification are known as "Silt Loam Soils." Silt Loam Soils contain more "fine soils" than do other soils typically found in Montgomery County. If Silt Loam Soils are exposed to the surface and are not stabilized they present a higher than normal chance of erosion. The only 16D Silt Loam Soil in the area of the proposed grading that was identified in the Soils Study is from 3 feet to 4.5 feet deep, below the ground surface. Current regulations require that all properties on which construction occurs be permanently stabilized with grass, hard surface or a mechanical stabilization method. The proposed construction on the Subject Property must and will comply with the geotechnical engineering and soil stabilization requirements of State and County laws and regulations.

The first soil boring by the geotechnical engineer was in front of the existing house. Sandy Loam soil was present from the surface to 3 feet deep. Sandy Loam soils are Glenelg Soils and are not considered highly erosive. In this first boring, Silt Loam was present beginning at a depth of 3 feet to 4.5 feet deep. This Silt Loam soil is the 16D

Brinklow/Blocktown soil that is of concern as highly erosive. The location of the soil profile, being deeper than 3 feet in the ground, in an area where no cut other than removing the existing house is proposed, precludes any concern about potential erosion due to construction activities on the Subject Property in front of the existing house.

The second boring was just behind the existing house. The area behind the existing house represents an area that was cut out to build the two existing houses in the 1950's. The soil boring test at this location confirms the presence of Sandy Loam Soil to the full 5 foot depth of the test. Therefore, the areas behind the houses, back to the existing retaining walls, do not contain any soil that would be classified as highly erosive.

We acknowledge that this finding contradicts the soil information on the approved NRI map that was prepared based on the County Soils Map without the benefit of a site-specific soils analysis. The geotechnical analysis confirms, however, that there are no Silt Loam Soils, or other highly erosive soils, at the lower end of the area previously designated as highly erosive soils on 25% steep slopes.

The third soil boring was on the hill upslope of the existing retaining walls at the top of the area designated on the NRI as "25% slopes." This soil boring identified Loam and Sandy Loam in the test area. There is no Silt Loam Soil present in this area. Therefore, the geotechnical soil test analysis confirms that there are no highly erodible soils present in areas identified as 25% slopes. The only highly erodible soils present are below a depth of 3 feet, at the front of the property, where no excavation is proposed.

Protection of "scenic vistas" is one of the objectives of the environmental guidelines in the Master Plan. However, there are no scenic vistas on the Subject Property. Another environmental guidelines objective is the protection of steeply wooded slopes in excess of 25%. However, the existing terraced topography on the Subject Property that was the result of grading operations in the 1950's is not a 25% slope. In fact, historical data indicates that prior to the 1950's development the Subject Property and its neighbors along Walhonding Road, the area was characterized by a far more gentle slope from the top of the existing ridge line down to what is now Walhonding Road, then a railroad right of way.

According to the information provided by Mr. Kronenberg via his e-mail dated July 31, 2015, Planning Staff has determined that the slopes on the Subject Property resulting from that 1950's grading operation are less than 25%. We agree with that statement in Mr. Kronenberg's e-mail that "disturbed areas (on the Subject Property) include slopes [that] are in excess of 20%."

Slopes that are less than 25% are not, by definition, steep slopes. The isolated, "terraced slope" on the Subject Property is located west of the two proposed house locations. This terraced slope" is not a natural topographic feature and is "man-made", created in the 1950's when the existing rear yards of the two developed, existing lots were graded and stabilized by retaining walls, which remain in place.

It is apparent that prior to the 1950's, when the two existing houses were constructed, the natural contour of the land sloped upward from Walhonding Road. This is an engineering conclusion by PG Associates based on their review of the adjoining and abutting properties in the neighborhood. At least 4 feet of cut excavation was removed to build the two existing houses. In order to create a flat back yard, part of the slope behind the existing houses was also cut to accommodate the yard grading. It is this area of additional cut behind the existing houses that has artificially created the existing slopes. The rear yard is now terraced, not level and the original 10% to 20% grade was cut to create usable rear yards that created the slop conditions that exist today.

The protection of heavily wooded area on 25% or greater slopes is a reasonable objective of the Master Plan, but subjecting The Hakimi Property to increased scrutiny because of a narrow band of artificially created 25% slopes is not what the Master Plan intended.

The area proposed "to be disturbed" for driveway construction is sparsely wooded, not "heavily wooded" and only three variance trees will be disturbed/removed to accommodate the driveway. This small, isolated "slope" in the center of Lots 11 and 12 is not a "vista" and the grading required to construct the proposed driveway will not cause either erosion or stormwater runoff.

We agree with Planning Staff that the steep cliffs that characterize the "scenic Palisades" are an integral part of the character of that area overlooking the Potomac River. At the risk of being redundant, we repeat that the Subject Property affords no view of that truly unique environmental features characterized as the Scenic Palisades overlooking the Potomac River.

There is nothing scenic about the Subject Property. Nothing on the Subject Property can be reasonably identified as contributing to the ambiance of the "Scenic Palisades." The Potomac River is not visible from the Subject Property and the previously subdivided and resubdivided Walhonding Road neighborhood is decidedly not characterized by the sensitive topography prone to erosion that is a unique natural feature of the MacArthur Boulevard area overlooking the Potomac River that is identified in the Master Plan.

We submit that it is inappropriate to characterize the isolated, man-made terraced topography on the Subject Property as a "unique environmental feature" or as a steeply wooded slope and vista. Such a characterization is factually inaccurate, inappropriate and unfounded. It cannot serve as a basis for denial.

Planning Staff also contends that the "(l)imits of Disturbance shown on the three-lot proposal is excessive" relying to support its conclusion on guidelines/regulations prepared in 1983, thirty three years ago that as best we can tell were never formally adopted, notwithstanding the reference to them in the Master Plan. In support of its recommendation of denial, Planning Staff also relies on references in the Master Plan about pre-1990

development, observing that the Master Plan includes a generalized comment that “slopes which were once considered unbuildable are now being developed.” The implication being that the two previously developed lots and all of Walhonding Road would be considered unbuildable today. That is also factually incorrect.

Regarding the prior development in Mohican Hills, it is obvious that development then was not subject to modern best practices and restrictions on grading that the Planning Board requires when development is approved today. Contrary to the pre-1990 development referenced in the Master Plan and the circumstances addressed in the 1990 Master Plan, the Subject Property was then and is now buildable and does not contain unbuildable slopes.

Contrary to Planning Staff’s position, as presented in Mr. Kronenberg’s e-mail, the redevelopment proposed by this resubdivision will not lead to erosion and runoff under required environmental site design standards that the Master Plan intends to be applied on a “site-by-site basis (See Master Plan page 137). The houses proposed **for this site** by this Preliminary Plan are located on existing level surfaces in either an existing footprint or in the rear (eastern part) of the Subject Property and do not require “extensive grading.” The grading that will be required is in the area of the proposed shared driveway where state of the art erosion control and storm drainage will be implemented. In addition, existing retaining walls that currently support the terraced elevations will be retained and enhanced.

It must also be noted that the Master Plan does not expressly preclude development even in the linear stretch of land where there are steep cliffs overlooking the Potomac River. This fact was reinforced by the Planning Board in 2010 when it approved the Brooke Park Preliminary Plan for ten condominium units on MacArthur Boulevard. The Staff Report to the Board in Brooke Park highlighted the fact that the Master Plan recommendation “to preserve the unique environmental features of steeply wooded slopes and vistas, and the perpetuation of the open space character” of the linear stretch of land that constitutes the Scenic Palisades is balanced with the Master Plan’s zoning and development recommendations for cluster development within that area. It was on that basis that the Planning Board accepted Planning Staff’s recommendation of approval of a subdivision plan for ten condominium units, finding substantial conformance with the Master Plan.

Conclusion

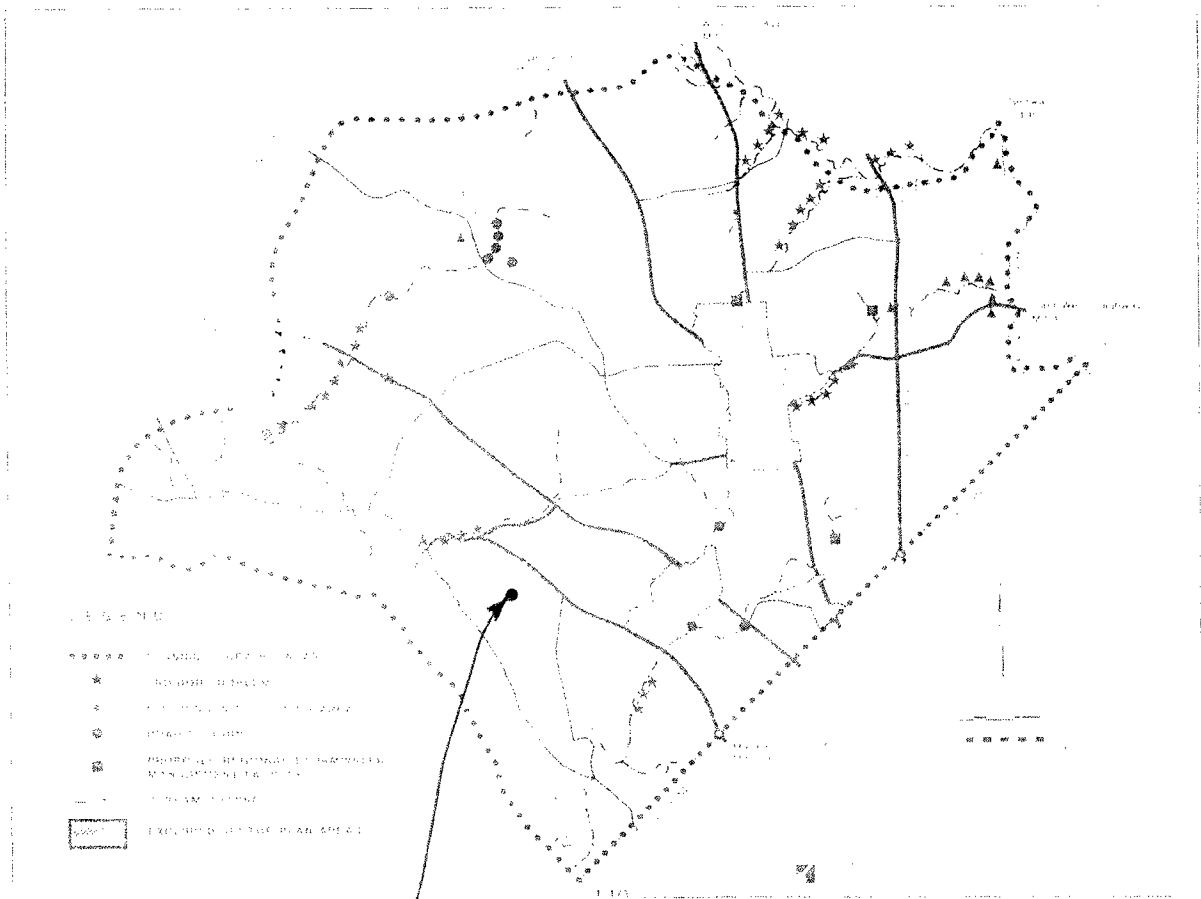
The only specific Master Plan recommendation applicable to the proposed resubdivision of the Subject Property is the recommendation to maintain the residential character of Glen Echo Heights under the Master Plan recommended R-90 zone. The proposed resubdivision is consistent with this recommendation and the Master Plan recommendation for a moderate level of development in the “Palisades area.”

Planning Staff’s position that the addition of one additional lot on Walhonding Road is not compliant with the Master Plan is misguided. The Subject Property is not located within the Scenic Palisades and does not contain any of the environmental features of the

Scenic Palisades that the Master Plan strives to protect and is not prone to either flooding or erosion. Interpreting the Master Plan to apply to the Subject Property environmental guidelines intended for other areas, including the linear stretch of land along the Potomac River is not factually supported and would be inconsistent with prior Planning Board actions in the same area.

Accordingly, we respectfully submit that, for the reasons stated, the additional lot proposed by this Preliminary Plan application warrants a recommendation of approval from Planning Area One Staff.

FLOODING AND EROSION





Subject Property →

Mohican Hills

Ohio Echo Heights Park

Wood Acres

Goldsboro Rd 374

396



Barton Pkwy

ert d

Westpath

Westpath

Westpath

Goldstone Rd

Tulip Hill Ter

Tulip Hill

Play Tree Ln

Bayberry Ct

Wainbonding Rd

Mohican Rd

MacArthur Blvd

Chesapeake and Ohio Canal

Byway Clara Barton Pkwy

Wainbonding Rd

Madawaska Rd

Waukesha Rd

Wahawken Rd

Waukesha Rd

Wahawken Rd

Waukesha Rd

Wahawken Rd

Avalon Dr

Newburn Dr

Cranston Rd

Ranchside Dr

Massachusetts Ave

Winnwood Rd

Wainbonding Rd

Waukesha Rd

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