




November 2, 2001

Agenda Item # 2  
MCPB November 8, 2001

## MEMORANDUM

TO: Montgomery County Planning Board

FROM: Doug Powell, Plan Review Coordinator, Park Planning and Resource  
Analysis Unit of Countywide Planning Division 

SUBJECT: Septic Easement on park property in Olney Acres  
*Location:* Ridge Drive in Olney, part of North Branch Stream Valley Park,  
Stream Valley Unit 3 (SVU 3)  
*Master Plan Area:* Olney  
*Zoning in area:* RE1  
*Applicant:* Montgomery County Department of Public Works and  
Transportation

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## STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

Staff notes that the granting of this septic easement on public parkland for construction of a new home for private use and benefit is contrary to M-NCPPC policy. Septic easements on parkland have previously only been granted to existing homes with failing septic systems where no onsite options were available. However, given the circumstances described in this Memorandum and the Memorandum dated October 12, 2001 attached as "**Attachment 3**", it is staff's recommendation that approval should be given for this limited situation only and shall not constitute a precedent. Staff further notes for the record that:

- a) This matter is being pressed at the request of the County;
- b) The County committed to this easement in advance of Planning Board mandatory referral review, and
- c) Under no circumstances will staff treat the grant of this easement (given as a result of this procedural aberration) a precedent for future septic easements in parkland.

Staff therefore recommends that the Board **APPROVE** the granting of the septic easement subject to the following conditions:

- 1) Procurement of the necessary septic approvals from Montgomery County Department of Permitting Services, including reduction to an approximately 10,600 square foot septic easement area as shown in "**Attachment 1**" (reduced from the 9,812 square feet shown on the original Septic Site Plan). Written documentation shall be provided from the County Department of Permitting Services, Well and Septic Section, that such disturbance is necessary to meet immediate septic needs for Lot 7 and is designed to minimize disturbance.
- 2) Deeding of a combined Public Use and Forest Conservation Easement to M-NCPPC at the rear of Lot 7 for in-kind compensation that equals or exceeds twice the area of the septic easement. This easement shall include language from the Category I Forest Conservation Easement to restrict the owners of Lot 7 from interfering with the land's natural condition. Further, the easement shall allow public use of this portion of the property as if it were parkland. These easements are represented in the Easement Plat marked as "**Attachment 2**")
- 3) Granting of a Category I Forest Conservation Easement to M-NCPPC by the Lot 7 owners on the additional portion of land behind the proposed house and along the north side of the property as delineated in "**Attachment 2**".
- 4) Reforestation and re-stabilization of all areas currently cleared within either of the above-said easements using native plant species agreeable to M-NCPPC staff.
- 5) No further clearing, grading, use, or disturbance of any kind shall occur on Lot #8 without written approval by the Director of Park and Planning, except to provide for necessary septic needs as provided in Condition #1.

## BACKGROUND

This Agenda Item was originally brought before the Montgomery County Planning Board on October 18, 2001. Attached and marked as "**Attachment 3**" is the Planning Board Memorandum prepared for the October 18<sup>th</sup> hearing that sets forth detailed background on the septic easement proposal, the project description and other pertinent information.

At the hearing on the 18<sup>th</sup>, Planning Board members expressed a number of concerns which are summarized as follows:

- a) No representative from Montgomery County was present to discuss some of the Board's questions. In particular, there was

concern that County staff had agreed to the proposed septic easement on parkland prior to consultation with staff from M-NCPPC, and that the discussions and correspondence between the County and the owners of Lot 7 occurred about a year prior to receipt of the proposal by M-NCPPC for review. The Board desired to have some dialogue with County representatives to better understand how this occurred and what might be done to prevent future problems of this type.

- b) Two of staff's proposed conditions for approval included the establishment of Public Use and Forest Conservation Easements on the back portion of Lot 7. This required the applicant to prepare and submit an engineering drawing delineating the easement areas which was to be included with the original Board packet as "Attachment A". By the October 18<sup>th</sup> hearing the applicant had not yet submitted the engineering drawing therefore M-NCPPC staff prepared a proposed "Attachment A" for discussion which was presented at the hearing. A more formal drawing therefore needed to be submitted.
- c) The applicant did not agree with the easement areas as drawn on staff's proposed "Attachment A" at the October 18<sup>th</sup> hearing and there was not sufficient opportunity for all parties to reach agreement on the delineations of the easement areas. The Board wanted to give the opportunity for staff to reach agreement with the applicant on the precise easement areas to be established on Lot 7.

As a result of these concerns set forth above, the Planning Board postponed disposition of this item which is now back before the Board for consideration. Attached to this Memorandum and marked as "**Attachment 1**" and "**Attachment 2**" are the necessary engineering drawings that delineate the septic easement area to be established on Lot 8, and the areas designated for the Public Use Easement and the Forest Conservation Easements to be established on Lot 7.

## CONCLUSION

As a general policy, staff does not support the use of public parkland for septic easements that would benefit new development. In this case, however, it appears that the owners of Lot 7 have invested significant time and money in reliance on representations from the Department of Public Works and Transportation (DPWT) that an easement would be granted. Therefore, staff reluctantly concludes that the easement should be granted with conditions that minimize the impact on existing parkland and the environment, and provide for public access and conservation easements over a portion of

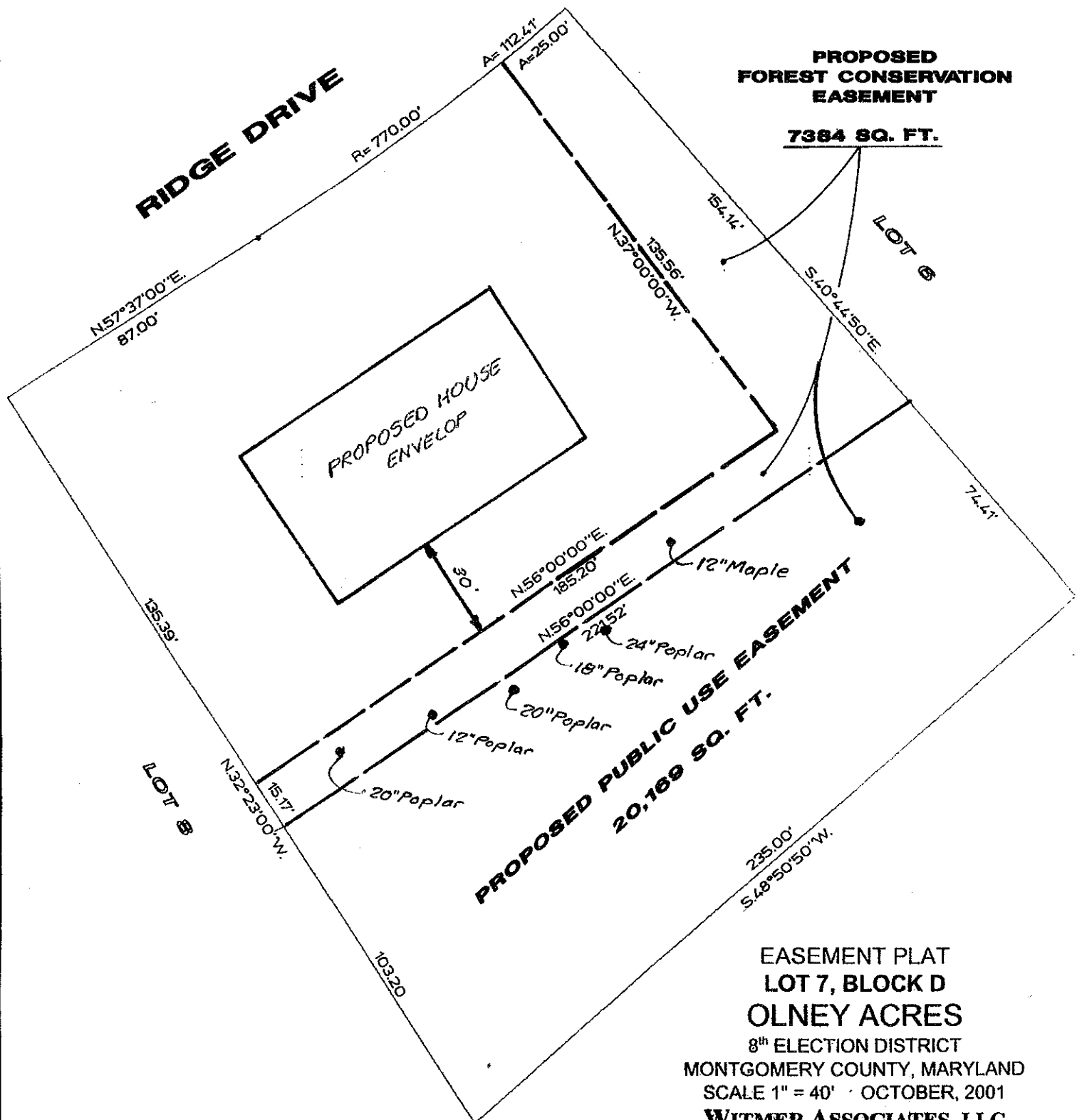
Lot 7. These conditions are discussed on page 2 of this Memorandum and are illustrated on "**Attachment 1**" and "**Attachment 2**".

M-NCPPC Staff and the Chairman have had discussions with the Director of DPWT and his staff for the purpose of ensuring that this situation does not reoccur. We will advise the Board shortly as to what steps have been taken.

Attachments:

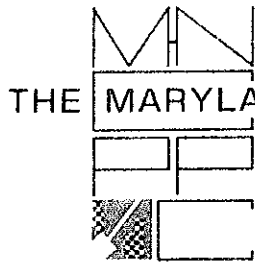
1. Septic Site Plan by Witmer Associates, Inc.
2. Easement Plat for Lot 7 by Witmer Associates, Inc.
3. October 12, 2001 Planning Board Memorandum





**EASEMENT PLAT  
LOT 7, BLOCK D  
OLNEY ACRES  
8<sup>th</sup> ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND  
SCALE 1" = 40' · OCTOBER, 2001  
WITMER ASSOCIATES, LLC  
Land Surveying, Land Planning & Design  
354-A Hungerford Drive  
Rockville, MD 20850  
Tele: (301) 309-8600 Fax: (301) 309-8603**

# Attachment 3



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

Agenda Item # 3  
MCPB October 18, 2001

October 12, 2001

## MEMORANDUM

TO: Montgomery County Planning Board

VIA: Jeff Zyontz, Chief, Countywide Planning Division  
John Hench, PhD, Supervisor, Park Planning and Resource Analysis Unit  
of Countywide Planning Division *John Hench*

FROM: Doug Powell, Plan Review Coordinator, Park Planning and Resource  
Analysis Unit of Countywide Planning Division *Doug Powell*

SUBJECT: Septic Easement on park property in Olney Acres  
*Location:* Ridge Drive in Olney, part of North Branch Stream Valley Park,  
Stream Valley Unit 3 (SVU 3)  
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*Zoning in area:* RE1  
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Staff notes that the granting of this septic easement on public parkland for construction of a new home for private use and benefit is contrary to M-NCPPC policy. Septic easements on parkland have previously only been granted to existing homes with failing septic systems where no onsite options were available. However, given the circumstances described in this Memorandum, it is staff's recommendation that approval should be given for this limited situation only and shall not constitute a precedent. Staff further notes for the record that:

- 1) This matter is being pressed at the request of the County;
- 2) The County committed to this easement in advance of Planning Board mandatory referral review, and

- 3) Under no circumstances will staff treat the grant of this easement (given as a result of this procedural aberration) a precedent for future septic easements in parkland.

Staff therefore recommends that the Board **APPROVE** the granting of the septic easement subject to the following conditions:

- 1) Procurement of the necessary septic approvals from Montgomery County Department of Permitting Services, including reduction to a 10,000 square foot septic easement area (from the current 19,812 square feet), if feasible. Written documentation shall be provided from the County Department of Permitting Services, Well and Septic Section, that such disturbance is necessary to meet immediate septic needs for Lot 7 and is designed to minimize disturbance.
- 2) Deeding of a combined Public Use and Forest Conservation Easement to M-NCPPC at the rear of Lot 7 for in-kind compensation that equals or exceeds twice the area of the septic easement. This easement shall include language from the Category I Forest Conservation Easement to restrict the owners of Lot 7 from interfering with the land's natural condition. Further, the easement shall allow public use of this portion of the property as if it were parkland. (An engineering drawing delineating such area shall be presented at or before the Planning Board meeting that shall become "**Attachment A**" to the formal easement agreement).
- 3) Granting of a Category I Forest Conservation Easement to M-NCPPC by the Lot 7 owners on the additional portion of land behind the proposed house and along the north side of the property as delineated in "**Attachment A**".
- 4) Reforestation and re-stabilization of all areas currently cleared within either of the above-said easements using native plant species agreeable to M-NCPPC staff.
- 5) No further clearing, grading, use, or disturbance of any kind shall occur on Lot #8 without written approval by the Director of Park and Planning, except to provide for necessary septic needs as provided in Condition #1.

## PROJECT DESCRIPTION

There are two lots at issue, known as Lot 7 and Lot 8 in the Olney Acres subdivision recorded in the Montgomery County Land Records in Plat Book 33, Plat 2166 on May 10, 1948. (See "**Attachment B**") Lot 7 is owned by Jay and Christina Welsh. Lot 8 is owned by Montgomery County, which holds the title to much of the parkland in the County, and is included as part of Stream Valley Unit 3 in North Branch Stream Valley Park. The owners of Lot 7, which lot is currently un-buildable due to



septic field limitations resulting from steep slopes on the property, made a request to purchase from Montgomery County a septic easement on Lot 8 to enable them to build a home on Lot 7. The area required for the requested septic field easement is currently 19,812 square feet, or approximately 1/3 of Lot 8. (The owner's representative has stated that DPS could reduce this area down to the state mandated minimum of 10,000 square feet). Only the initial septic field would currently be installed, with the remaining two backup fields reserved for future use if the initial septic field fails. Public water and sewer are not available in this area and the lots in this subdivision rely on well and septic systems. Lot 8 is completely forested, with the majority of the lot (aside from the septic easement area) containing steep slopes in excess of 25%, draining down to the Upper Rock Creek stream valley. Both lots would be considered un-buildable if the current environmental guidelines were applicable.

## PROJECT BACKGROUND

Lot 8 consists of 56,628 square feet of forested land. It was acquired by M-NCPPC on behalf of the County in 1985 as part of the acquisition of an adjacent 23.98 acre parcel (P120) and is described in the same Deed. The properties were purchased as an addition to North Branch Stream Valley Park in order to provide a greater natural buffer area between existing parkland and the Olney Acres subdivision, and to protect a small North Branch tributary located between Olney Acres and Norbeck Country Club. Attached and marked as "**Attachment C**" is a copy of the letter written by Bill Gries, M-NCPPC land acquisition specialist that sets forth further details of negotiations and intentions surrounding the purchase of the properties that include Lot 8.

Lot 7 (as well as Lot 8) is in an RE-1 zone that requires a minimum lot size of approximately one acre (40,000 square feet) for development. It was purchased by the current owners, Jay and Christina Welsh, in September, 2000 for \$20,000.00 which was the approximate assessment value for an un-buildable lot.

On May 3, 2000, prior to the recordation of the purchase, the owners of Lot 7 requested that the County sell them a septic easement on Lot 8 in order to make Lot 7 buildable. On June 5, 2000, Michael Cassidy with the Montgomery County Department of Public Works and Transportation sent a letter to the owners of Lot 7 indicating that the County was willing to sell the requested septic easement for \$45,000, which letter was signed by both owners of Lot 7 to apparently indicate their agreement and acceptance of its terms. (See copy of the letter that is marked as "**Attachment D**". The origin of the highlights in the letter is unknown.)

At some time prior to February 19, 2001 percolation tests were performed on Lot 8, and in February or March, 2001, a septic site plan was prepared for the Lot 7 owners by Witmer Associates, LLC. (See "**Attachment B**") The disturbance of the land on Lot 8 when the perc tests were performed apparently aroused the concern of some local residents who wrote letters of complaint to the County on February 19, 2001. The County responded to their concerns in a letter dated April 11, 2001 by explaining the

reasons the County was proceeding with the granting of the septic easement. Included in their explanation was an expression of their opinion that environmental damage resulting from a septic easement would be minimal. A copy of one of these letters is attached as **"Attachment E"**)

In May of 2001 the County requested background information on the purchase of Lot 8 from Bill Gries, Land Acquisition Specialist with M-NCPPC, which information was provided by Mr. Gries on May 21, 2001. His written response is included as **"Attachment C"**. On August 3, 2001 the County sent to M-NCPPC some information on the requested septic easement for what was suggested to be a Secondary Review to determine whether there were other public uses for this property. Additional information necessary for a full and informed review by M-NCPPC was received subsequently, and negotiations and discussions regarding the appropriate action for the County and M-NCPPC to take in this matter have been held as recently as Thursday, October 11, 2001. The matter has been brought expeditiously before the Planning Board to prevent the owners of Lot 7 from continued uncertainty regarding their options for proceeding with their home construction.

#### SITE CONDITIONS

Lot 8 is included as part of Stream Valley Unit 3 in North Branch Stream Valley Park. The back portion of the lot is steeply sloped and the entire lot is forested with a good quality mixed oak and hickory forest. The slopes at the back portions of the lot are within the stream buffer and contain highly erodible soils with a severe hazard of erosion.

Lot 7 is steeply sloped on the back half of the lot and has recently been substantially cleared of its forestland by the owner to provide a building site for the proposed house. Most of Lot #7 is within the environmental buffer due to stream buffer setbacks, highly erodible soils and steep slopes, although the lot was approved and platted prior to applicability of the environmental guidelines.

#### SURROUNDING LAND USES

Lot 7 is located at the terminus of Ridge Drive in the Olney Acres Subdivision which is zoned RE1 and consists of single family homes along Ridge Drive and in the surrounding neighborhood. Parkland extends along Ridge Drive behind the lots and homes on the southeast side of the road. The construction of the house proposed on Lot 7 would therefore be consistent with the character of the neighborhood.

#### MASTER PLAN CONSISTENCY

Lot 7 is zoned for residential (RE1) with well and septic required, which is consistent with the use proposed by the owners. The construction of this house would not

deviate from the Master Plan's intent to maintain low density single family housing in this area.

## TRANSPORTATION, TRAFFIC AND PARKING

The granting of the easement would only result in one additional house in the neighborhood and would have its own driveway and on street parking if needed in front of the lot. Impact on transportation, traffic and parking in the area would therefore be minimal.

## IMPACTS ON ADJACENT PROPERTY OWNERS

The addition of a single home to the neighborhood would unlikely add significantly to the noise or lighting on the street, nor is it likely to result in other significant adverse impacts to the local residents in Olney Acres. Its greatest impact is the loss of forest and the protection forest provides on steeply sloped areas. It would be located near the center of a 1.2 acre lot and is well set back from the parkland behind it.

## FOREST CONSERVATION and ENVIRONMENTAL IMPACTS

The property was determined by Environmental Planning to be exempt from the requirements of the Forest Conservation Act, as it is less than 40,000 square feet disturbance. The potential impacts to Lot 8 include loss of understory and ground cover removal along the area of the initial septic trench that will likely increase the chance of some erosion on the property, and the potential demise of about 20 native trees due to root zone impacts from trench digging, some of which has already been done on the northwest edge of Lot 8. The applicant has worked to minimize the effect through slight changes in the trench location.

## PUBLIC MEETINGS AND INPUT

No public meetings were held on the septic easement issue, however the County has written a response to concerns from some of the local residents (See "**Attachment E**") and notice of the October 18 Planning Board hearing was sent to all homeowners along Ridge Drive and to the two civic associations that represent the community, namely Olney Acres Civic Association and Greater Olney Civic Association, and to the closest adjacent civic association, Bowie Mill Civic Association.

## CONCLUSION

As a general policy, staff does not support the use of public parkland for septic

easements that would benefit new development. In this case, however, it appears that the owners of Lot 7 have invested significant time and money in reliance on representations from the Department of Public Works and Transportation (DPWT) that an easement would be granted. Therefore, staff reluctantly concludes that the easement should be granted with conditions that minimize the impact on existing parkland and the environment, and provide for public access over a portion of Lot 7. These conditions are discussed on page 2 of this Memorandum and are illustrated on "**Attachment A**" which will be submitted at or before the October 18 Board hearing.

M-NCPPC Staff and the Chairman have had discussions with the Director of DPWT and his staff for the purpose of ensuring that this situation does not reoccur. We will advise the Board shortly as to what steps have been taken.

**Attachments:**

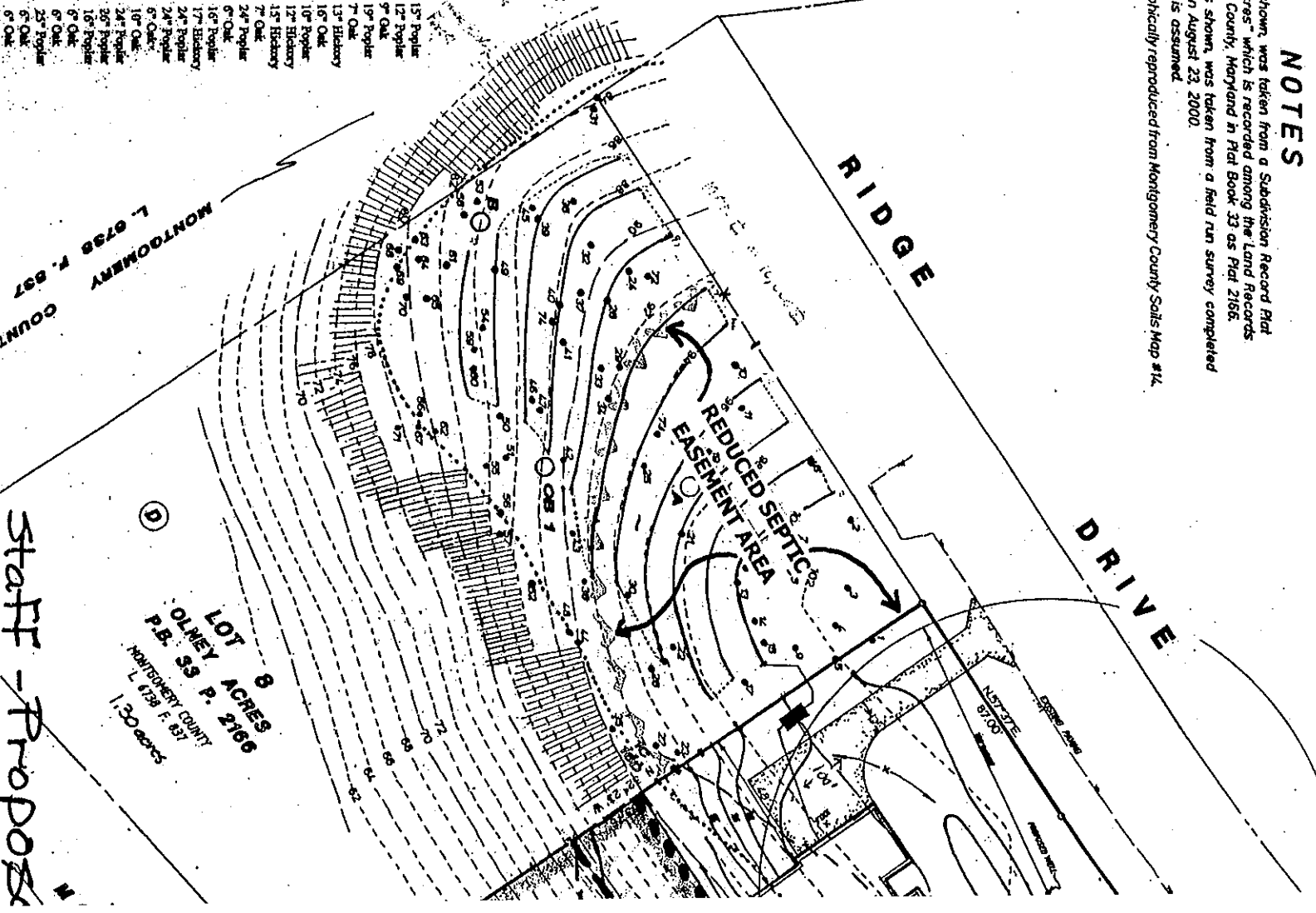
- A. Engineering Drawing Delineating Easement Areas (To be submitted on or before October 18 Board hearing)
- B. Lot Location Maps
- C. Bill Gries Letter to DPWT
- D. Letter from Mike Cassidy of DPWT to Mr. and Mrs. Welsh
- E. Letter from William Mooney to Local Residents

# NOTES

1. Boundary, as shown, was taken from a Subdivision Record Plat titled "Olney Acres" which is recorded among the Land Records of Montgomery County, Maryland in Plat Book 33 as Plat 2166.
2. Topography, as shown, was taken from a field run survey completed by this office on August 23, 2000. Vertical datum is assumed.
3. Soils data graphically reproduced from Montgomery County Soils Map #14.

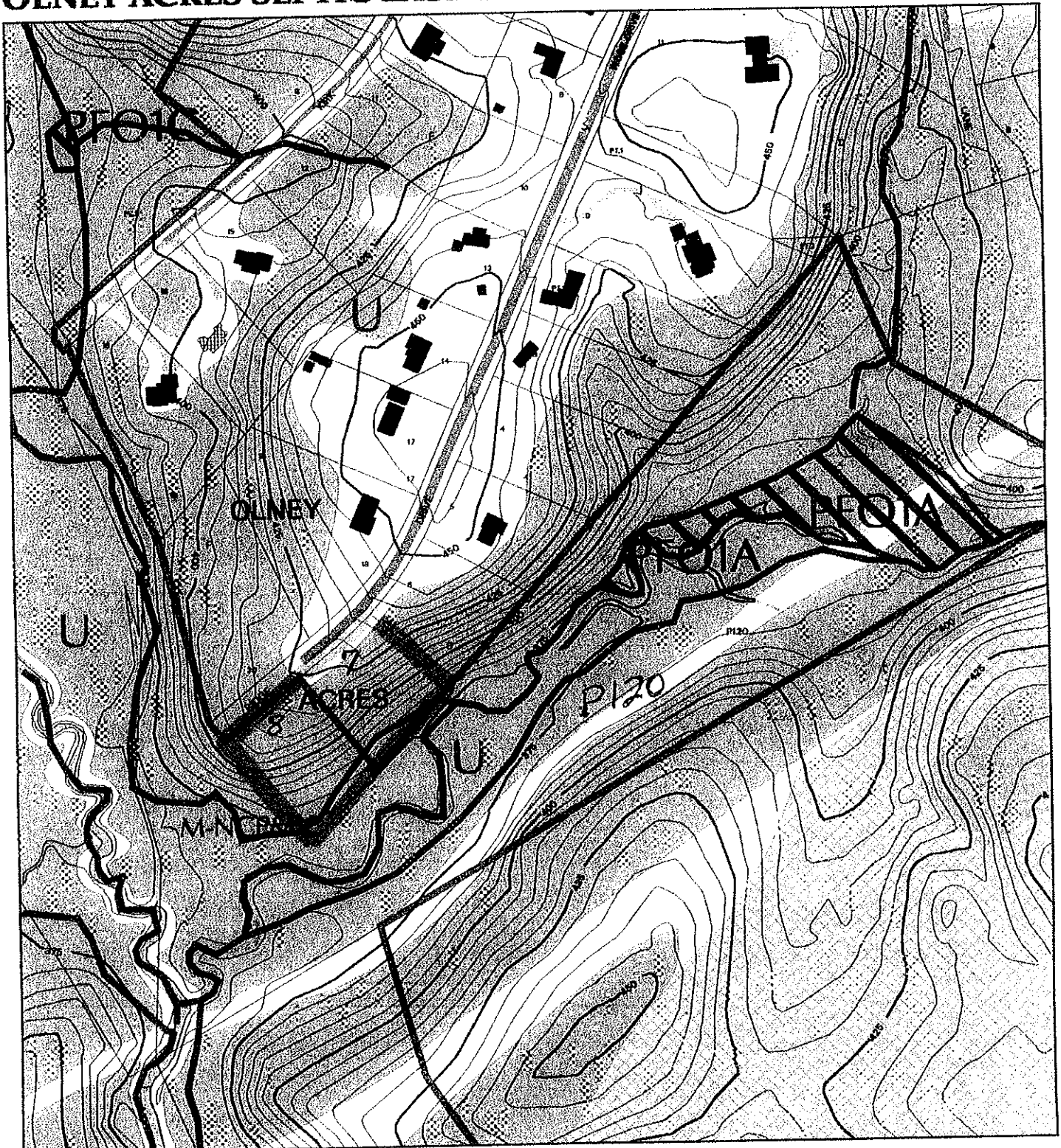
EXISTING TREE SCHEDULE

1	12" Poplar
2	12" Hickory
3	12" Hickory
4	12" Poplar
5	12" Oak
6	12" Hickory
7	12" Oak
8	12" Oak
9	12" Hickory
10	12" Oak
11	12" Poplar
12	12" Poplar
13	12" Hickory
14	12" Oak
15	12" Hickory
16	12" Hickory
17	12" Hickory
18	12" Poplar
19	12" Hickory
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68	12" Oak
69	12" Oak
70	12" Oak



STAFF - PROPOSED

VICINITY MAP FOR

**OLNEY ACRES SEPTIC EASEMENT PROPERTIES**

Map compiled on October 11, 2001 at 4:15 PM | Site located on base sheet no - 223NW05

**NOTICE**

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

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

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

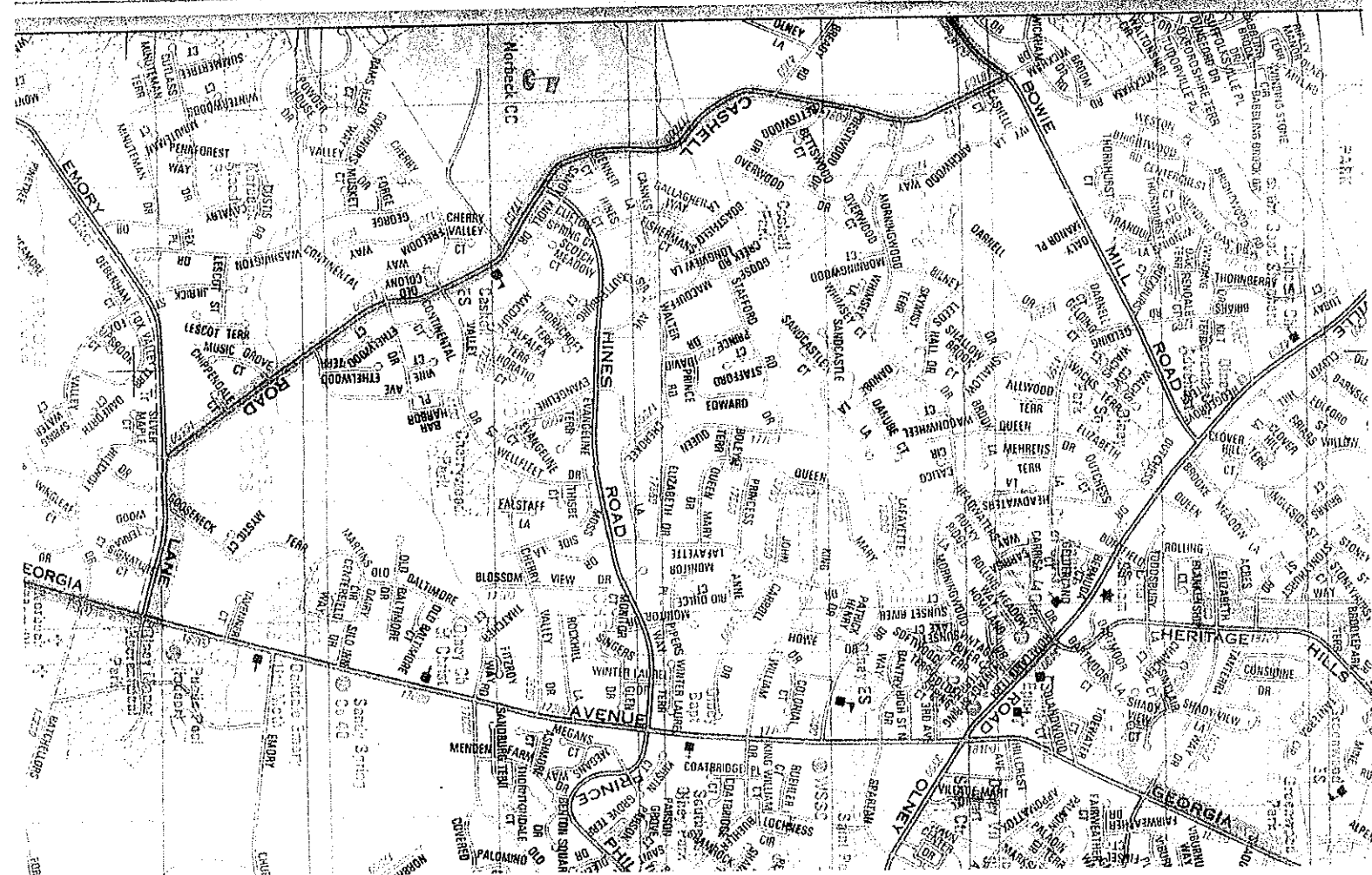
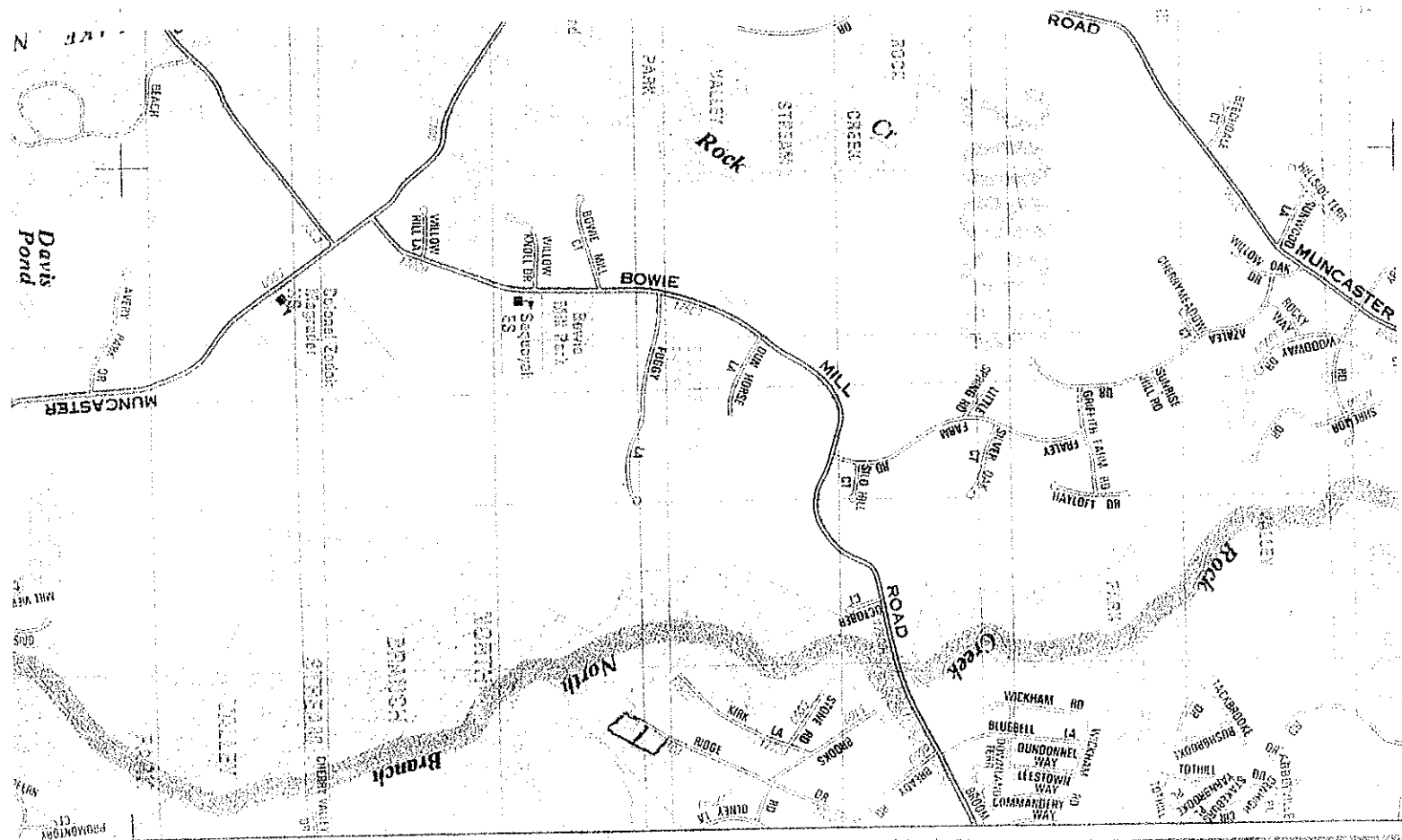
Key Map



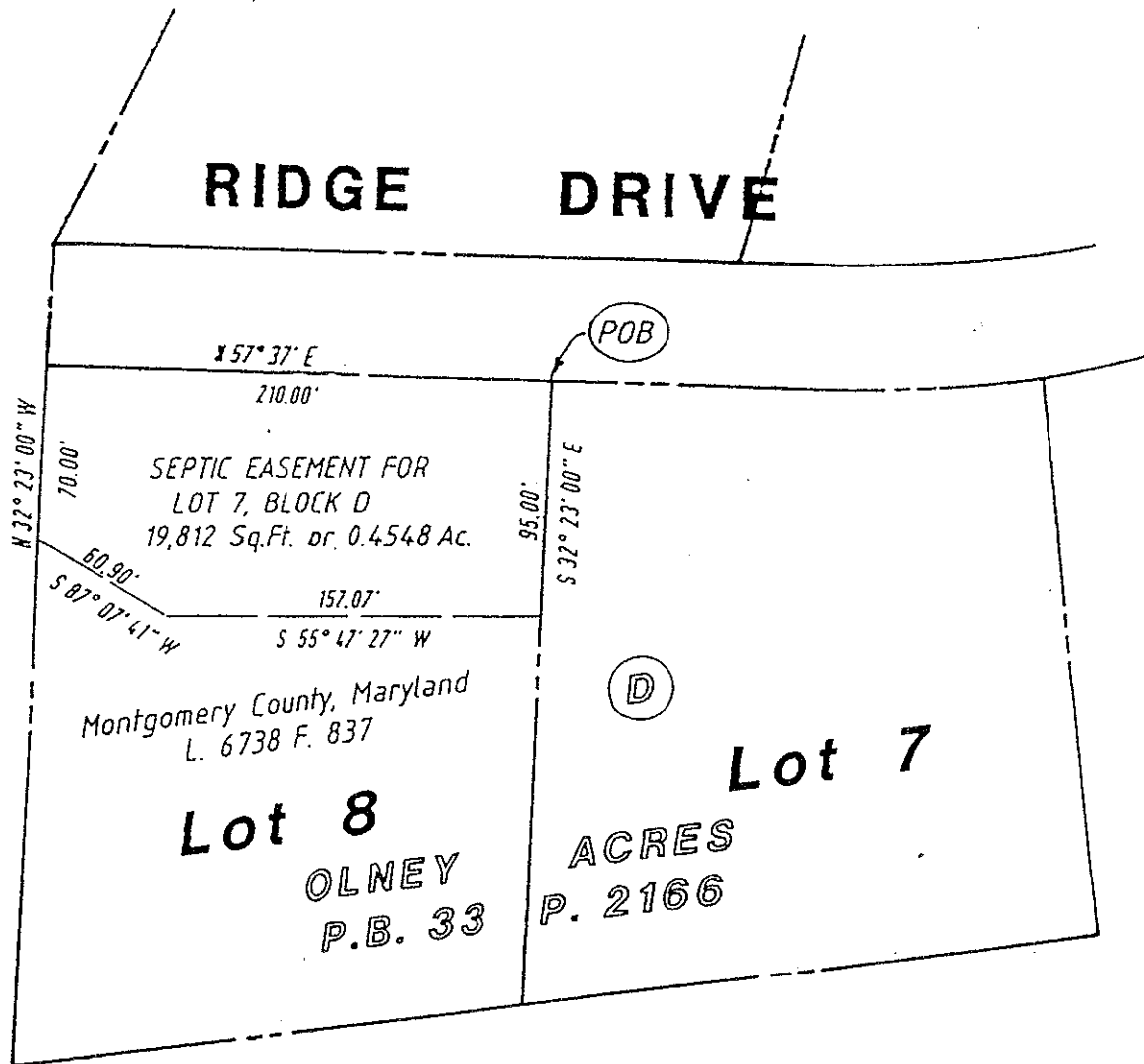
Research &amp; Technology Center



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



SCHEDULE B

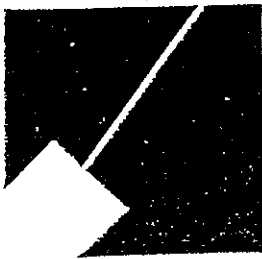


METES & BOUNDS DESCRIPTION  
FOR A SEPTIC EASEMENT  
ON LOT 8, BLOCK D  
TO SERVE LOT 7, BLOCK D  
OLNEY ACRES

SCALE: 1" = 80' APRIL, 2001



M-NCPPC

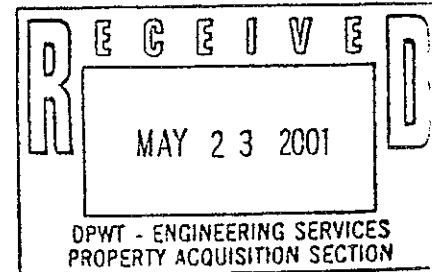


MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

9500 Brunett Avenue  
Silver Spring, Maryland 20901

May 21, 2001



MEMORANDUM

TO: Mike Cassedy, DPW&T, Property Acquisition Section

FROM: <sup>bs</sup> Bill Gries, M-NCPPC, Land Acquisition Specialist

SUBJECT: North Branch Stream Valley Park, Unit 3  
Former Kushner Trust Property (23.98 acres and Lot 8, Block D "Olney Acres")

Please accept this memorandum as confirmation of my recollections regarding the County's purchase of the above subject properties and a statement of my opinion concerning the sale of a septic field easement on the recorded lot.

In fiscal year 1984 the County programmed the acquisition of the above properties as a proposed addition to North Branch Stream Valley Park, Unit 3. These acquisitions were subject to a Public Hearing held in either June or July of 1983. The acquisition of these properties was important to the park system in that their purchase put into public ownership lands that provided additional natural buffer area between existing parkland and the "Olney Acres" subdivision located to the north and east. It also added to the park system a small tributary stream to North Branch located between Norbeck Country Club and "Olney Acres". The purchase price of the unrecorded acreage (23.98 acres) was \$3,000 per acre for a total of \$101,940. The purchase price of the recorded lot was \$30,000. This acquisition was completed on May 15, 1985.

With respect to the details regarding my negotiations for these properties, I really cannot remember anything too specific as these negotiations were concluded sixteen years ago. I do remember that the purchase was a package deal in that the lot was acquired at the same time as the acreage. Whether or not buying the lot was a condition to purchasing the acreage, I am not certain. I am certain, however, that when the County bought the property that we had no intentions on developing the lot or the acreage for residential or any other purpose.

Selling an easement on the recorded lot for a septic field to serve an adjacent property will not, in my opinion, seriously damage the conservation value of this lot as it exists today. Further, a sale of such an easement will allow the County to recoup its investment in this property and will allow the property next door to develop which in turn will generate additional tax revenues for the County. This appears to be a win-win situation for the County and the adjacent property owner.

If I can be of further assistance to you in this regard, please call me at (301) 650-2861.

Post-it® Fax Note	7671	Date 10/2/01	# of pages 1
To <i>Charlie</i>	From <i>P. Erickson</i>		
Co./Dept.	Co.		
Phone #	Phone #		
Fax #	Fax #		

June 5, 2000

John M. Welsh and Christina N. Cahill-Welsh  
17824 Hidden Garden Lane  
Ashton, MD 20861

Re: Offer to Sell Easement on Property Owned by  
Montgomery County, Maryland

Dear Mr. And Mrs. Welsh:

In response to your letter dated May 3, 2000, to Gayle Libby Curtiss, Montgomery County is willing to sell to you either a septic-system/field easement or a well easement to serve Lot 7, Block D, Tax Map HT21. The County owns adjacent property identified as parcel P120 and Lot 8, Block D on Tax Map HT21. The sale price of the easement is FORTY-FIVE THOUSAND AND NO/100's DOLLARS (\$45,000.00). One month prior to the purchase of this easement provide me with a civil engineer's certified description of the area needed. Prior to your contractors performing any work on the County-owned property you will need a Right-of-Entry Agreement (R-O-E enclosed).

This Agreement to sell and purchase said easement is conditioned upon the following:

1. If Purchasers efforts to obtain a successful septic field are unsatisfactory or impractical, in purchasers sole discretion, purchaser may declare this agreement null and void
2. Purchaser shall notify seller of its determination to purchase by June 30, 2001 and make full settlement within 30 days or as soon thereafter. Furthermore, it is agreed that if purchaser cannot obtain from Montgomery County Department of permitting Service the required permits to erect a residential single-family dwelling, this easement purchase agreement shall be extended until required permits are issued.

Please sign this letter and the Agreement and return them. I will call you when The R-O-E is ready.

Sincerely,

*Michael S. Cassedy*

Michael S. Cassedy

Enclosure

AGREE TO ACCEPTED BY:

*John M. Welsh*

John M. Welsh

6/05/2000

Date

*Christina N. Cahill-Welsh*

Christina N. Cahill-Welsh

Date

*Donna M. [Signature]*

Witness

*Donna M. [Signature]*

Witness



**OFFICES OF THE COUNTY EXECUTIVE**

Douglas M. Duncan  
*County Executive*

April 11, 2001

Bruce Somer  
*Chief Administrative Officer*

Mr. Benjamin J. Divico  
Ms. Mary K. Mannix  
17417 Ridge Drive  
Rockville, MD 20853-1040

Dear Mr. Divico and Ms. Mannix:

Your correspondence concerning a Right of Entry Agreement entered into the County on June 20, 2000, with your neighbors, Mr. John M. Welsh and Ms. Christina N. Cahill-Welsh has been forwarded to me for response. All of you signed the February 19, 2001 correspondence; only Ms. Mannix signed the March 19, 2001 correspondence but presumably you are all aware of the contents of that letter, so the concerns raised in that letter can be answered here as well. Your February 19, 2001, letter raised a number of questions, all of which required investigation. Hopefully, those questions will be answered in this letter. Obviously, retracing the history of the acquisition of the lot by the County required some time and effort.

Your February 19, 2001, correspondence expressed your distress at the fact that the County has entered into an agreement to permit tests to be conducted on a lot owned by the County with an eye toward selling a septic tank easement to the purchasers of the adjoining lot. Your letter referenced the status of your efforts to research the situation, speculated on potential environmental degradation if a septic easement were granted to Mr. and Mrs. Welsh, and stated that severe damage had been done to the County's property in the process of contractors conducting perc tests on the Property. Mr. Wong on behalf of the County's Department of Permitting Services; Ms. Gayle Libby Curtiss, Chief of the Property Acquisition Section of the Engineering Division of the County's Department of Public Works & Transportation; a representative of the County Attorney's Office; and I met at the property in late February to inspect the site and to determine if there was any significant damage to the County's property and to get a firsthand look at the property.

The impact on the County's property was consistent with perc tests having been conducted. The ground disturbance was minimal, and would not have triggered a requirement to obtain a sediment control permit. We did observe that a couple of saplings and one large root were damaged during the testing; the saplings would almost certainly not have survived to maturity since their access to light was blocked by mature trees, and the root damage should not adversely affect the tree. With respect to the potential environmental degradation due to the location of a septic tank on the property, Mr. Wong pointed out that all of the other developed lots in the subdivision have been able to develop because they are served by individual septic fields. There apparently was enough acreage on these lots to permit them to develop with both a house and a septic field located on one lot. The lot purchased by Mr. and Mrs. Welsh and the County's lot are burdened by steep grades at the back half of the lots that will not permit either of them to develop with both a house and a septic field on each lot. However, the area of the lots can be combined to

Mr. Benjamin J. Divico  
Ms. Mary K. Marnix  
April 11, 2001  
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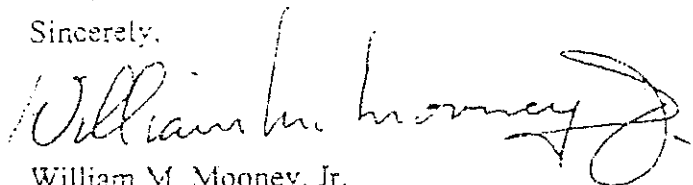
permit development of one additional house if one lot serves as a septic field, and one lot is improved by a dwelling unit. This does not violate the Council's previous actions with respect to refusing to extend a sewer line through parkland to permit development of two lots.

The County purchased Lot 8, Block D in the Olney Acres subdivision in 1985 for \$30,000.00. The lot has a current assessed value of \$20,000.00. The lot was not purchased for development by the County, nor was it purchased to be part of the adjacent park. The lot was purchased because the sellers of the adjacent land, which is now incorporated into the park, required the County to purchase the Lot as a condition of the sale of the parkland to the County. The lot is essentially valueless on its own. It is conceivable that the lot could be developed for the County to use with a low intensity residential use such as a group home, but the relative remoteness of the location of the lot does not make it an ideal candidate for such a use. The Property Acquisition Section, which does have expertise in these matters, determined that the County can retain the land but sell the valuable easement right to the adjoining landowner. The County will be able to recoup its expenditure to purchase the lot, and the lot next door will be able to develop and begin producing tax revenues. Both of these benefits are real, tangible, and of considerable value to all of the taxpayers of Montgomery County.

The County's Department of Permitting Services must be satisfied that any proposed use of the lot owned by Mr. and Mrs. Welsh satisfies all Code requirements, including environmental requirements, before they issue a building permit to Mr. and Mrs. Welsh to develop the property. It is likely to see that, with acquisition of an easement for a septic tank on the County's Lot, there probably will not be any impediment to development of the Welsh's Lot. All of the other lots in the subdivision were able to develop without fear of degrading the environment to such an extent as to cause a health hazard. Development at half of the density of the other lots in the subdivision should not raise any alarms about environmental damage.

I hope that this has been fully responsive to your correspondence. The County's lot will be posted with a sign advising you of the intended sale of the easement, and providing you with the name and telephone number of a contact in the County to discuss the sale. Ms. Curtiss, who is familiar with the property, the neighborhood, and the transaction will be the probable contact and can fully advise you as to the status of the sale of the easement.

Sincerely,



William M. Mooney, Jr.

Assistant Chief Administrative Officer

cc: Gayle Libby Curtiss, DPWT ✓  
Stan Wong, DPS  
Eileen Basaman, OCA  
Malcom Spicer, Esq.,