



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #10
2/6/03

MEMORANDUM

DATE: January 30, 2003

TO: Montgomery County Planning Board

VIA: Joseph R. Davis, Chief, Development Review Division

FROM: A. Malcolm Shaneman, Supervisor, Development Review Division
Richard Weaver, Senior Planner, Development Review Division

REVIEW TYPE: Subdivision Waiver Request

APPLYING FOR: Consolidation of One (1) Lot and One (1) Parcel

PROJECT NAME: Silver Crest

CASE NO.: SRW - 03001

REVIEW BASIS: Chapter 50, Section 50-38 (a)(1) of the Montgomery County Subdivision Regulations and 59-C-9.73 of the Montgomery County Zoning Ordinance

ZONE: Rural Cluster (RC)

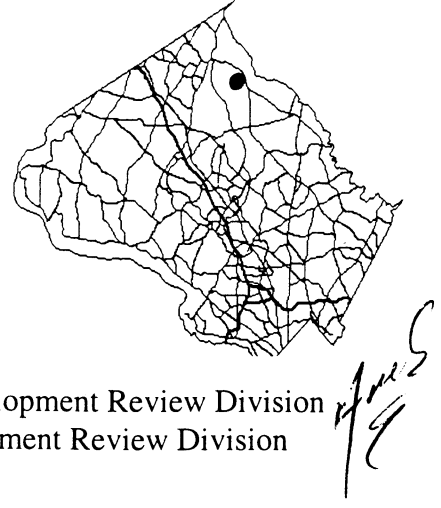
LOCATION: North Side of Hawkins Creamery Approximately 220 Feet East of Silver Crest Drive

VICINITY: Damascus

APPLICANT: William and Sandra Rogers

SUBMITTED: September 12, 2003

HEARING DATE: February 6, 2003



STAFF RECOMMENDATION: Deny Subdivision Waiver Request

PROJECT DESCRIPTION: Site

The subject properties are comprised of two sites totaling 1.48 acres of land. The two properties are identified as Parcel 34 and Lot 2 Block C of the Silver Crest Subdivision. Parcel 34 is comprised of 31,578 square feet and Lot 2 is comprised of 32,917 square feet. An existing single-family dwelling is located on Lot 2 and an old barn structure is located on Parcel 34. Both Lot 2 and Parcel 34 are currently zoned Rural Cluster (RC). Lot 2 was created by record plat in 1966 while Parcel 34 was not recorded by plat, but was created by deed in 1970. Both properties were created prior to the adoption of the RC zone in 1974 and are therefore exempt from the area requirements of the current zone pursuant to section 59-C-9.73 of the Montgomery County Zoning Ordinance. The zoning in place at the time the properties were created was R-R (Rural-Residential), now identified as the R-200 zone, with a minimum lot size requirement of 20,000 square feet. In 1974 a sectional map amendment rezoned the properties from R-R to the RE-2 zone. Then in 1982 another sectional map amendment rezoned the properties from RE-2 to the RC zone.

PROJECT DESCRIPTION: Proposal

The applicant is seeking a subdivision waiver pursuant to Section 50-38 of the Subdivision Regulations for the purpose of consolidating Lot 2 and Parcel 34 into one recorded lot. The applicant is requesting relief from the standard filing procedures to skip directly to the final record plat stage. The applicant wishes to consolidate the two properties in order to obtain a building permit to renovate the existing barn located on Parcel 34. Since Parcel 34 is not a recorded lot, the applicants cannot obtain a building permit for the renovation work. The barn was built as an agricultural structure a number of years ago. The renovation consists of both interior and exterior work. Applicant asserts no intent to create a dwelling unit out of the barn.

DISCUSSION OF ISSUES

Conformance to Chapter 50-38

Pursuant to Section 50-38(a)(1) the applicant is requesting that the Planning Board consider a waiver of the preliminary plan submission requirements to allow the consolidation of the two properties and to go directly to final record plat. The record plat would combine Parcel 34 and Lot 2 into one (1) recorded lot. The plat would be subject to the required standard review process, as if it had been submitted after the preliminary plan approval.

There are two ways to combine the two properties under the current regulations. First, the applicant could submit a preliminary plan for Parcel 34 and, once approved, record the plat for the new lot and then combine the new lot with existing Lot 2 under the minor subdivision process. Under this process, the applicant would be requesting a

waiver of the preliminary plan process for the platting of Parcel 34. Second, the applicant could submit a preliminary plan application consolidating Lot 2 and Parcel 34 into one lot. In this case, the applicant would be requesting a waiver of the preliminary plan process for the consolidation of the two properties.

In order to approve an application for waiver the Planning Board must find that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements of the Chapter 50. Section 50-38 (a)(1), which states:

(a) Authority of Board

- (1) The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The applicant states two practical difficulties in this case: (1) its inability to obtain a building permit to work on the structure without being located on a recorded lot; and (2) a claim that the minimum area requirements of the zone preclude subdivision. It is important to note, however, that should the applicant move forward, under the first method outlined above, and request preliminary plan approval for Parcel 34, the minimum lot area requirement for that property is grandfathered under Sections 59-C-9.73 and 59-C-1.32. The applicant also states that without the ability to record the property by plat, and the ability to receive building permit approvals, the existing structure may fall into disrepair.

In this case, the Board's authority to grant waivers under the provisions of Section 50-38 is limited to situations where practical difficulties or unusual circumstances exist that prevent full compliance with the requirements of subdivision regulations. Applicant's stated difficulties stem from the process, not the property, and do not prevent full compliance with the requirements of the regulations. Unfortunately, the minor subdivision process does not currently cover the present situation. In addition, the Planning Board is not authorized, under any circumstances, to waive minimum lot area requirements.

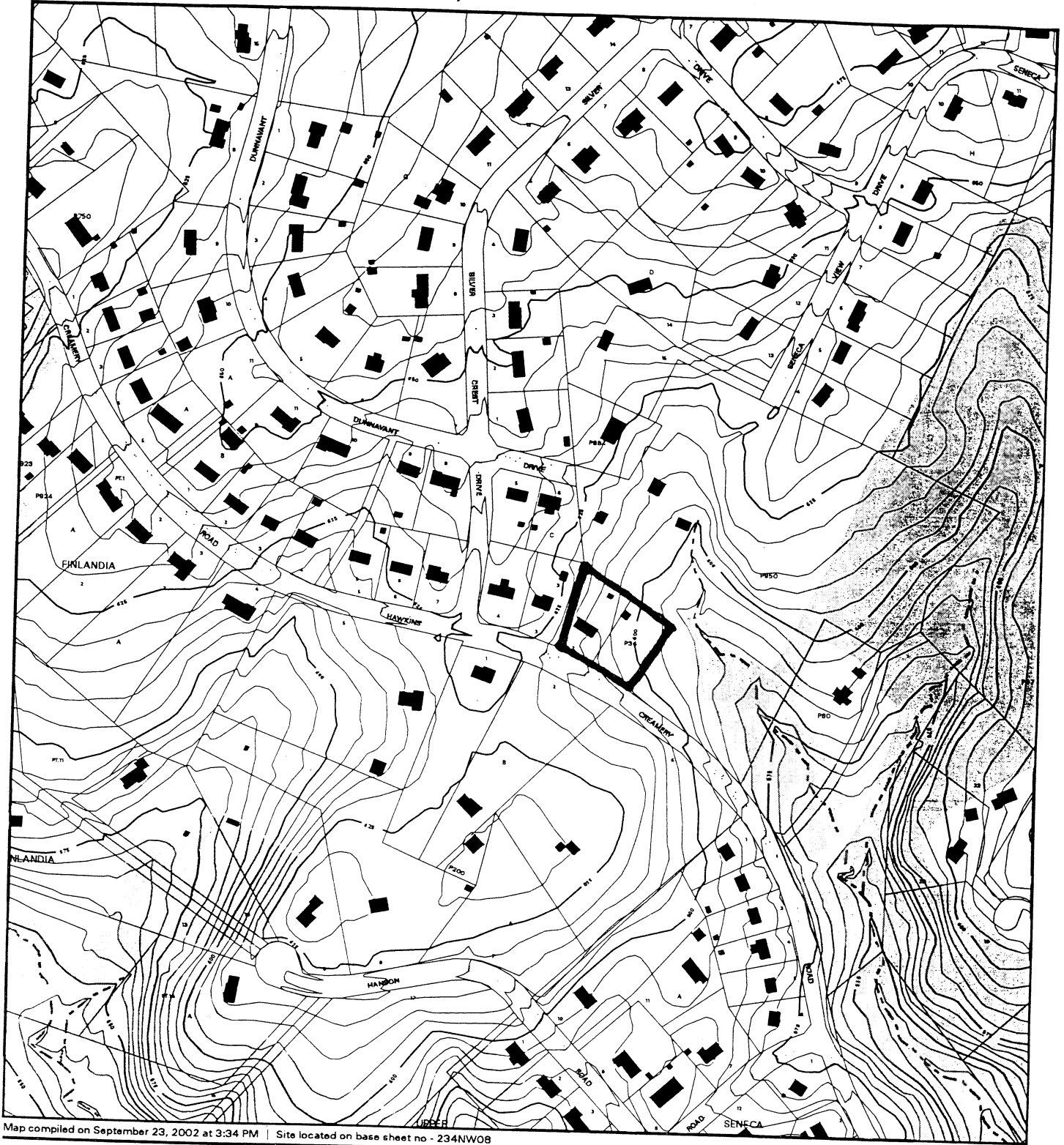
CONCLUSION

Staff has reviewed the applicant's request for waiver and recommends that the waiver not be granted. Staff is not convinced that the practical difficulties sighted by the applicant satisfy the requirements of Section 50-38 and would prevent full compliance under Chapter 50. Staff is not aware of any issues that would prevent the property from being able to receive preliminary plan approval. Staff recommends that the applicant submit a complete preliminary plan application for staff review and Planning Board action.

Attachments

GIS Development Map	4
Property Map	5
Applicant's Waiver Request	6 - 8

VICINITY MAP FOR
SILVER CREST (SRW-03001)



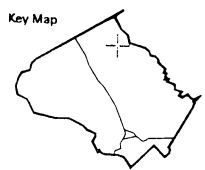
Map compiled on September 23, 2002 at 3:34 PM | Site located on base sheet no - 234NW08

NOTICE

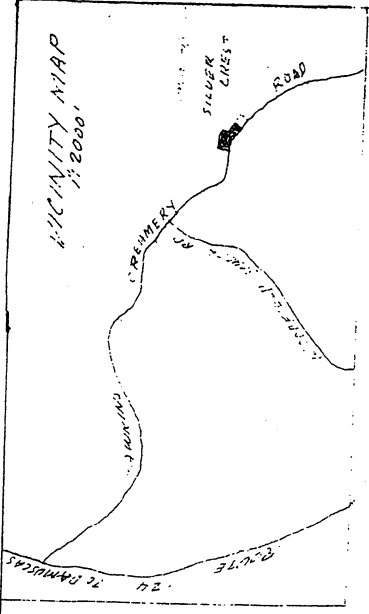
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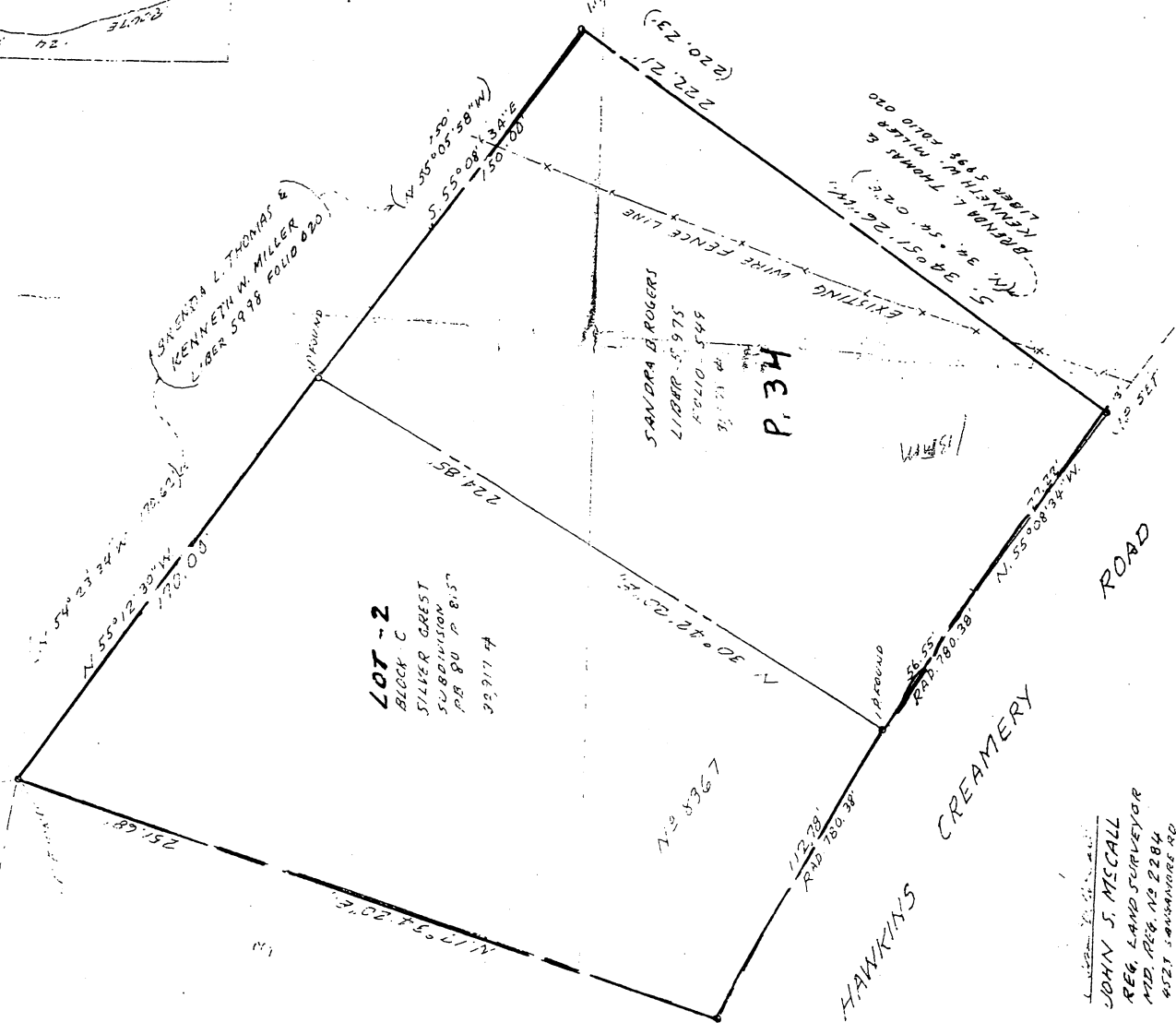
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1 : 4800



PROPERTY SURVEY
FOR
SANDRA G. ROGERS
LIBER 5975 FOLIO 549
PART OF PARCEL 10 2-1978-278
MONTGOMERY COUNTY, MARYLAND
SCALE 1" = 30' DATE: OCT. 22, 1993



JOHN S. MICAL
REG. LAND SURVEYOR
MD. REG. NO. 2284
8021 SAUNDERS RD
BETHESDA, MD. 20814
TEL. 225-2814

LINOWES AND BLOCHER LLP

ATTORNEYS AT LAW

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September 12, 2002

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Anne C. Martin
301.650.7027
acm@linowes-law.com

VIA HAND DELIVERY

Mr. Malcolm Shaneman
Development Review Division
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Request for Subdivision Waiver - Minor Subdivision: Hawkins Creamery Road,
Gaithersburg, Maryland

Dear Mr. Shaneman:

On behalf of William and Sandra Rogers (the "Applicants"), the purpose of this letter is to request a waiver of the Subdivision Regulations pursuant to Section 50-38 of the Montgomery County Code (the "Subdivision Regulations") to allow the consolidation of two properties into one record lot as a minor subdivision. The two properties are identified as: i) Lot 2, Block C of the Silvercrest Subdivision, known as 8367 Hawkins Creamery Road ("Lot 2"), and ii) Tax Parcel 34 - Richardson Range 5975-549, which is located adjacent to Lot 2 on Hawkins Creamery Road ("Parcel 34"). Lot 2 is comprised of 32,917 square feet. Parcel 34 is comprised of 31,578 square feet. Both Lot 2 and Parcel 34 are zoned RC. The attached property survey dated October 22, 1983 delineates the two properties. (Exhibit "A")

The Applicants request a waiver from the Subdivision Regulations to consolidate Lot 2 and Parcel 34 into one lot in order to obtain a building permit to renovate an existing barn located on Parcel 34. The barn will be used as a personal workroom/study and storage area. Because Parcel 34 is not a record lot, the Applicants cannot obtain a building permit for the renovation work. In this regard, we note that Section 50-35A(a)(2) of the Subdivision Regulations permits an outlot to be consolidated with an existing lot under the minor subdivision procedures. However, after consultation with Staff, we have been advised that Parcel 34 is not considered an "Outlot" as described in Section 50-35A(a)(2). Further, as noted above, Parcel 34 contains only 31,578 square feet, which does not satisfy the minimum 40,000 square foot area requirement of the RC zone. Creation of a separate lot out of Parcel 34 is therefore not possible.

The Applicants purchased Lot 2 in 1975 and Parcel 34 in 1982. Lot 2 was platted in 1966 as part of Block C of the Silver Crest Subdivision. (Exhibit "B") Although Parcel 34 was not recorded as part of the Silver Crest Subdivision in 1966, it was shown on, but not included in,

Mr. Malcolm Shaneman
September 12, 2002
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the Silver Crest Subdivision Plat for Blocks D, E, and H recorded in 1970 (Exhibit "C"). Lot 2 and Parcel 34 were a part of the same acreage at one time and both properties were in the R-R (Rural-Residential) zone when the above-referenced subdivision plats were recorded. The R-R zone permitted a minimum net lot area of 20,000 square feet. Both properties were rezoned by sectional map amendment from the R-R zone to the RE-2 zone in 1974 and from the RE-2 zone to the RC zone in 1982. The RC zone requires a minimum net lot area of 5 acres or 40,000 square feet under the cluster option.

The Applicants seek to renovate the barn, the only improvement on Parcel 34, for personal use. The barn was built as an agricultural structure and houses one sheep. However, the Applicants do not intend to continue such use. The renovation work proposed consists of adding a porch and an interior floor to the barn. The renovation will not include the addition of any bathroom or bedroom facilities and the structure will be used as a workroom area only, not as a dwelling unit. No changes are proposed for Lot 2, which contains a single-family dwelling unit used as the Applicants' home.

Pursuant to Section 50-38 of the subdivision regulations, the Planning Board may grant a waiver from the subdivision requirements upon the determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is (1) the minimum necessary to provide leave from the requirements, (2) is not inconsistent with the purposes and objectives of the general plan, and (3) not adverse to the public interest.

As noted above, the Applicants cannot obtain a building permit for the barn because Parcel 34 is not subdivided, and Parcel 34 does not meet the minimum lot area requirements of the RC zone which would be required for such subdivision. Clearly, the barn will eventually fall into disrepair once its agricultural use is discontinued if renovation work is not permitted. Therefore, the Applicants are faced with the practical difficulty of being unable to obtain a building permit to work on the structure and being unable to subdivide the property (which would allow them to obtain such permit) because Parcel 34 does not meet the minimum lot size for the zone. We also note that this waiver request is for all intents and purposes consistent with the minor subdivision provision that permits consolidation of a lot with an outlot and is the minimum measure necessary to obtain a building permit for the limited purposes described above. Importantly, the Applicants do not seek any extension of water or sewer services or street access to the structure on Parcel 34, only to permit the existing building to be renovated for use as a workroom and storage area.

The Applicants' request to consolidate Parcel 34 with Lot 2 is also consistent with the general plan and intent of the RC zone. The waiver will encourage and retain larger lot sizes and the rural character of this area. The waiver is in the public interest because the consolidation of the

Mr. Malcolm Shaneman
September 12, 2002
Page 3

two lots (i) will not result in an increased number of structures on Lot 2 or Parcel 34; (ii) will facilitate the adaptive reuse of the existing structure; and (iii) will avoid the eventual long-term disrepair that will result if the structure is not permitted to be renovated. Further, the consolidation will enable Parcel 34 to be identified, along with Lot 2, as a single record lot in the County Land Records, thus eliminating any future confusion as to its legal status or ownership. The consolidation will not increase any burden on public facilities, it will help retain the rural character of the area, and it will increase the lot size to be more consistent with the RC zone and the lots on the neighboring Blocks D, E and H of the Silver Crest Subdivision.

We have also enclosed the required copies of the waiver request, a completed waiver application form, a check in the amount of \$785.00 representing the filing fee for this request, and a current list of adjoining and confronting property owners. A copy of the current zoning map and tax map with the properties identified are also enclosed. Because the Applicants do not intend to increase occupancy, construct new structures, or provide additional utilities on either of the two properties as part of this consolidation and minor subdivision request, plans depicting storm drainage, traffic studies, septic studies, etc are not applicable to this application.

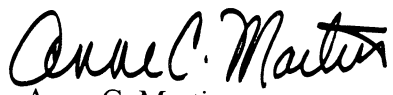
Thank you for your consideration. Please do not hesitate to call if you have any questions or need any additional information.

Very truly yours,

LINOWES AND BLOCHER LLP



Todd D. Brown



Anne C. Martin

Enclosures

cc: William and Sandra Rogers

Item #10



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: January 31, 2003
TO: Montgomery County Planning Board
FROM: A. Malcolm Shaneman
Development Review Division
(301) 495-4587
SUBJECT: Informational Maps for Subdivision Items on the
Planning Board's Agenda for February 06, 2003.

Attached are copies of plan drawings for Items #07, #08, #09, #10. These subdivision items are scheduled for Planning Board consideration on February 06, 2003. The items are further identified as follows:

Agenda Item #07 - Preliminary Plan 1-02072
Oak Hills Estates

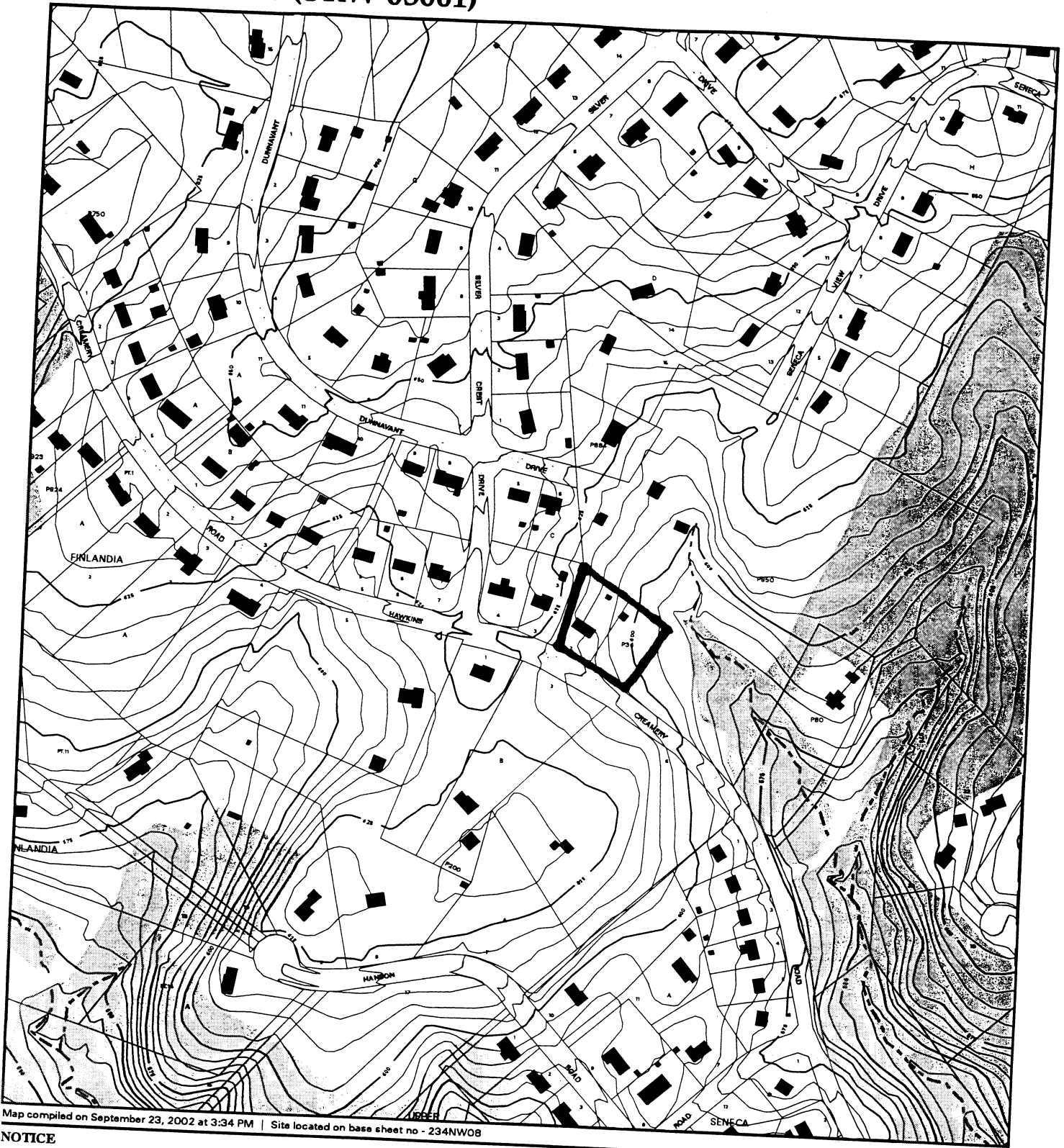
Agenda Item #08 - Preliminary Plan 1-02074
Sunnymeade

Agenda Item #09 - Pre-Preliminary Plan 7-03018
Brooke Manor Farms

Agenda Item #10 - Subdivision Regulation Waiver SRW-03001
Silver Crest

Attachment

VICINITY MAP FOR
SILVER CREST (SRW-03001)

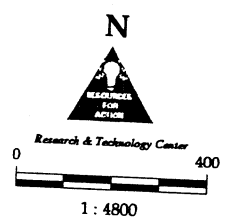


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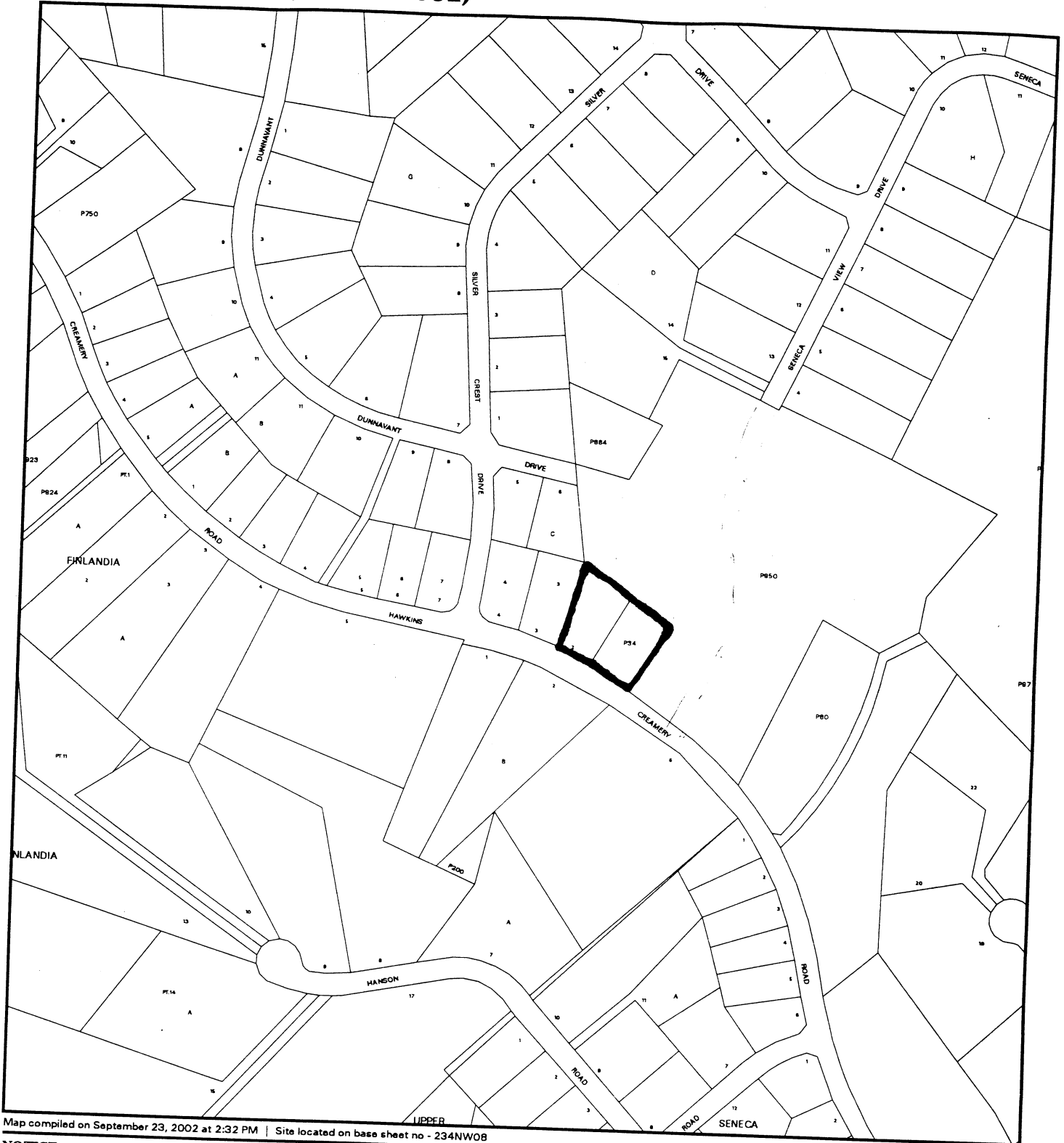
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VICINITY MAP FOR
SILVER CREST (SRW-03001)



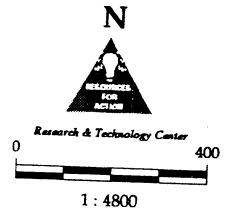
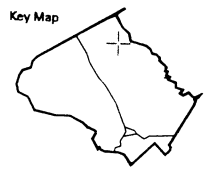
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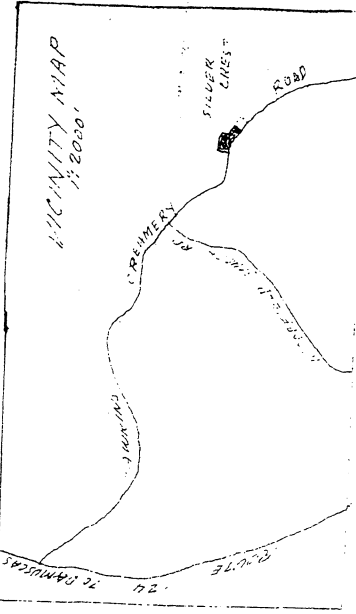
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PROPERTY SURVEY

FOR
SANDRA B. ROGERS
LIBER 5975 FOLIO 549
SAME AS
PART OF PARCEL 10 - 142N-43E
MONTGOMERY COUNTY, MARYLAND

SCALE 1"=30' DATE: OCT 23, 1993



JOHN S. MISCALL
REG. LAND SURVEYOR
MID. REG. NO. 2284
4521 SAUSANAC RD. NO
COTYMETO, MD. 20616
781.829.2814