



ITEM #10  
DATE: 5/15/03

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



**MEMORANDUM**

**DATE:** May 9, 2003

**TO:** Montgomery County Planning Board

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

**FROM:** A. Malcolm Shaneman, Supervisor (301) 495-4587 *AMS*  
Richard A. Weaver, Senior Planner (301) 495-4544 *RAW*  
Development Review Division

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Part of Parcel 2-A, Block 1, Capital View Park

**PROJECT NAME:** Capitol View Park

**CASE #:** 1-03039

**REVIEW BASIS:** Chapter 50, Sec. 50-29 (b)(2), Montgomery County Subdivision Regulations

**ZONE:** R-60

**LOCATION:** On the West Side of Capitol View Avenue, Opposite Virginia Avenue and the Adjoining the Right-of-Way of Meadowneck Court/Oak Street

**MASTER PLAN:** Capitol View

**APPLICANT:** Dianne Smith

**FILING DATE:** December 6, 2003

**HEARING DATE:** May 15, 2003

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**STAFF RECOMMENDATION:** Approval, Pursuant to Section 50-29 (b)(2) and Subject to the Following Conditions:

- 1) Applicant to submit a detailed tree protection and grading plan to MNCPPC technical staff prior to recordation of plat
- 2) Record plat to reflect common ingress/egress and utility easements over all shared driveways

- 3) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Capitol View Sector Plan unless otherwise designated on the preliminary plan
- 4) Compliance with the conditions of approval of the MCDPS stormwater management approval dated, December 22, 2002
- 5) Compliance with conditions of approval of the MCPDWT letter dated, May 1, 2003, or as amended
- 6) During the course of construction on Lot 46, there shall be no vehicles, construction or otherwise, parked within the combined right-of-way servicing Lot 38, 43 and 44. Access to Meadowneck Court and Lee Street shall remain open at all times to incoming and outgoing traffic.
- 7) Record Plat to reflect dedication of Capitol View Avenue, 35 ft. from centerline
- 8) Prior to issuance of building permits, applicant to submit an engineered sediment and erosion control plan to MCDPS for review and approval
- 9) Access and improvements as required to be approved by MCDPWT prior to recordation of plat
- 10) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- 11) Other necessary easements

### **PREVIOUS ACTION**

This proposal is within the Capitol View Park Historic District. In preparation for the Historic Preservation Commission (HPC) hearing on the subject application, HPC staff recommended approval of the proposed resubdivision. Together with the support of the Capitol View Park Local Advisory Panel (LAP), HPC staff did not feel the application to be adverse to the preservation of the Historic District and felt it to be compatible with the development pattern that is evident in the area. At their January 22, 2003 public hearing the HPC recommended denial of the application based on reduction of trees and open space behind the Historic Resource.

### **DISCUSSION OF ISSUES**

#### **Conformance to Chapter 50-29(b)(2)**

In order to support an application for Resubdivision, the Planning Board must find that the proposed lot(s) comply with all seven of the "Resubdivision Criteria" as set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

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

In administering the Resubdivision section, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. In this case, staff has provided a description of the area analyzed under the resubdivision criteria and has also provided an illustration that delineates the neighborhood.

## **Defined Neighborhood**

Under the resubdivision criteria the neighborhood used to evaluate the application can only include lots within the same zoning (R-60) classification as the subject property. The lots surrounding the subject property are zoned R-60. For this application, staff included all “whole” lots within Block 1 of Capitol View Park, which includes the subject property. These lots have frontage on Meadowneck Court, Oak Street and Capitol View Avenue. Also included in the defined neighborhood are those lots confronting the subject property, across Capitol View Avenue (see attached neighborhood map). Staff excluded a “number of parts of lots” that have been altered from their original platted dimensions by deed.

## **DESCRIPTION**

### **Vicinity**

All of the lots within the defined neighborhood are the result of resubdivisions since the original plats were recorded. A mix of older homes and new homes represents the neighborhood. A historic dwelling, identified as Capitol View Historic District Resource #31/7, is situated on the eastern portion of Part of Parcel 2-A and is accessed from Capitol View Avenue.

The majority of homes on Meadowneck Court were built in the mid 1980’s to early 1990’s by virtue of two resubdivision plats recorded in 1983. The lots immediately to the south of the subject property (Lots 36-45, Block 1) were created by four separate resubdivisions and were recorded between the years of 1988-1995. The lots immediately to the north of the subject property (Lots 15-19, Block 1) were recorded in 1938.

### **Proposal**

This application for resubdivision proposes to create two lots from one existing lot. The existing historic structure would remain on the site and a new house would be located on the western portion of the property with access to the existing right-of-way for Oak Street. Currently three homes access the Oak Street right-of-way as it now serves as a driveway for the homes on lots 38, 44 and 43.

### **Master Plan Compliance**

The property is located within the *Approved and Adopted Sector Plan for Capitol View and Vicinity*. The master plan does not make specific recommendations for this property but does give general guidance and recommendations regarding zoning and land use. The master plan recommends that the area including this property be maintained as a medium density (R-60) residential area. Should this application ultimately be approved, staff’s determination is that it is consistent with guidance in the Capital View Sector Plan.

## **ANALYSIS**

The application requests dividing Part of Parcel 2-A at 14,295 square feet, into two lots. Lot 46 will be 6,264 square feet and Lot 47, with the historic house, will be 7,235 square feet. Again, the historic structure will remain and a new home would be constructed on the westernmost lot with access to the Oak Street right-of-way, which is now improved with a driveway serving three existing homes. The proposed

lots are very similar in size, shape, width, frontage, alignment, area and suitability with the lots to the immediate south and north resulting in a high correlation between the characteristics of the proposed and existing lots. (See attached tabular summary) The character of the neighborhood on Meadowneck Court and Oak Street will be preserved should this application be approved.

HPC staff noted in their report for the January 22, 2003 HPC hearing on this proposal, that the “subsequent new construction, will not, necessarily, have an adverse effect on the historic site or alter the streetscape of Capital View Avenue of Meadowneck Court.” HPC staff further noted that, “a new house will have to be sympathetic to the existing historic house and the existing houses along Meadowneck Court in terms of its design, massing, scale and materials.” Prior to grading and construction on Lots 46, MCDPS must issue a Historic Area Work Permit. As noted in the HPC staff report, the HPC has review and approval authority over new construction within the boundaries of Historic Districts; and therefore, the HPC will have input on the character of the new home.

### **CONCLUSION**

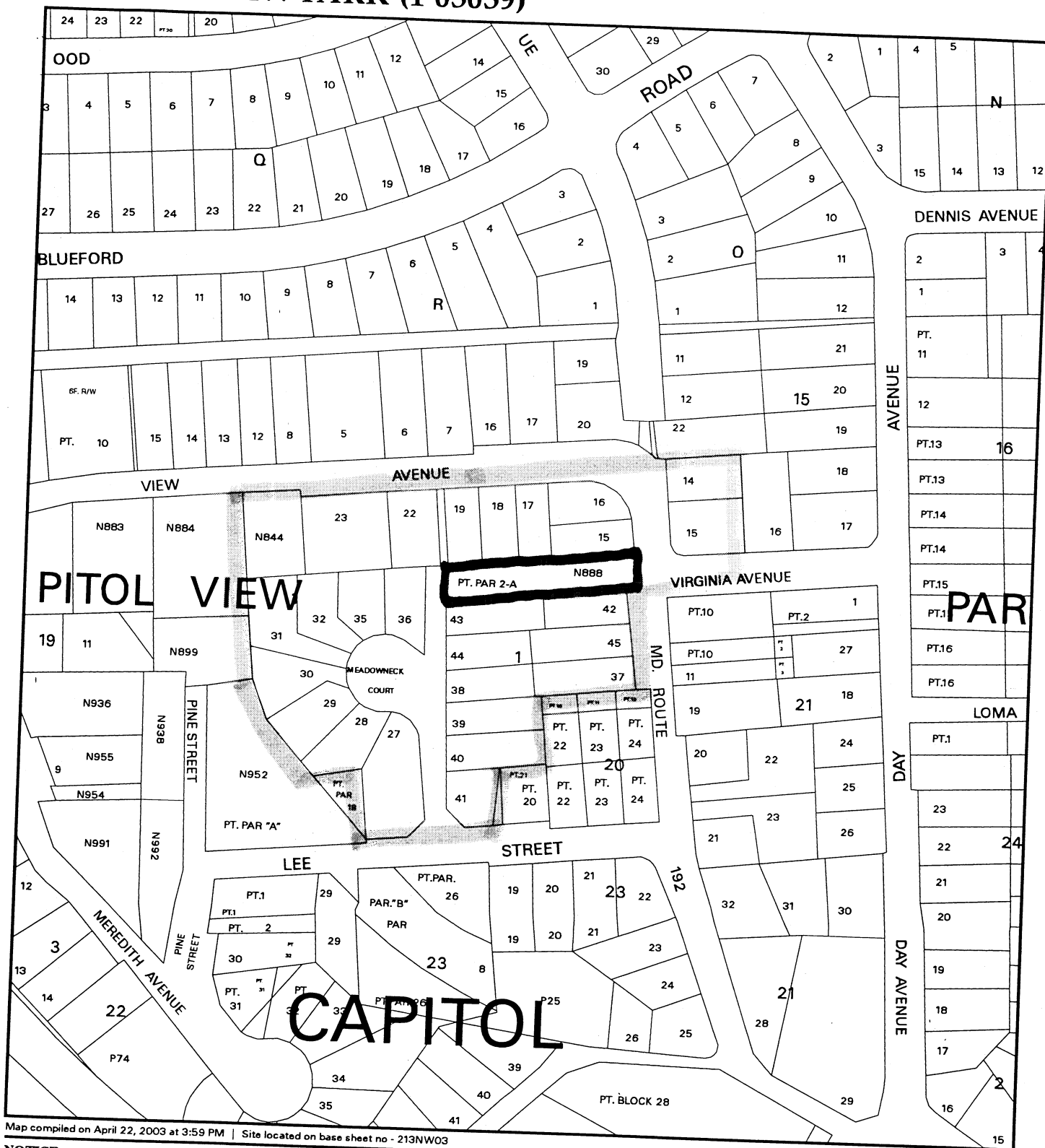
The proposal, as submitted, substantially complies with all seven of the resubdivision criteria pursuant to Section 50-29 (b)(2) of the Montgomery County Subdivision Regulations. Specifically, the application proposes two lots that are consistent with the size, area, shape, width, frontage, alignment and suitability of the majority of lots within the neighborhood. Staff recommends approval of this application, subject to the conditions cited above.

### **Attachments**

Vicinity and Neighborhood Delineation Map	5
Neighborhood Development Map	6
Proposed Resubdivision Plan	7
Tabular Summary	8
HPC Staff Memorandum	Attached

*Citizen correspondence received to date provided separately*

VICINITY MAP FOR  
**CAPITOL VIEW PARK (1-03039)**



Map compiled on April 22, 2003 at 3:59 PM | Site located on base sheet no - 213NW03

**NOTICE**

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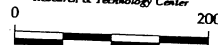
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

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 the general planning purposes is not recommended. - Copyright 1998

Key Map

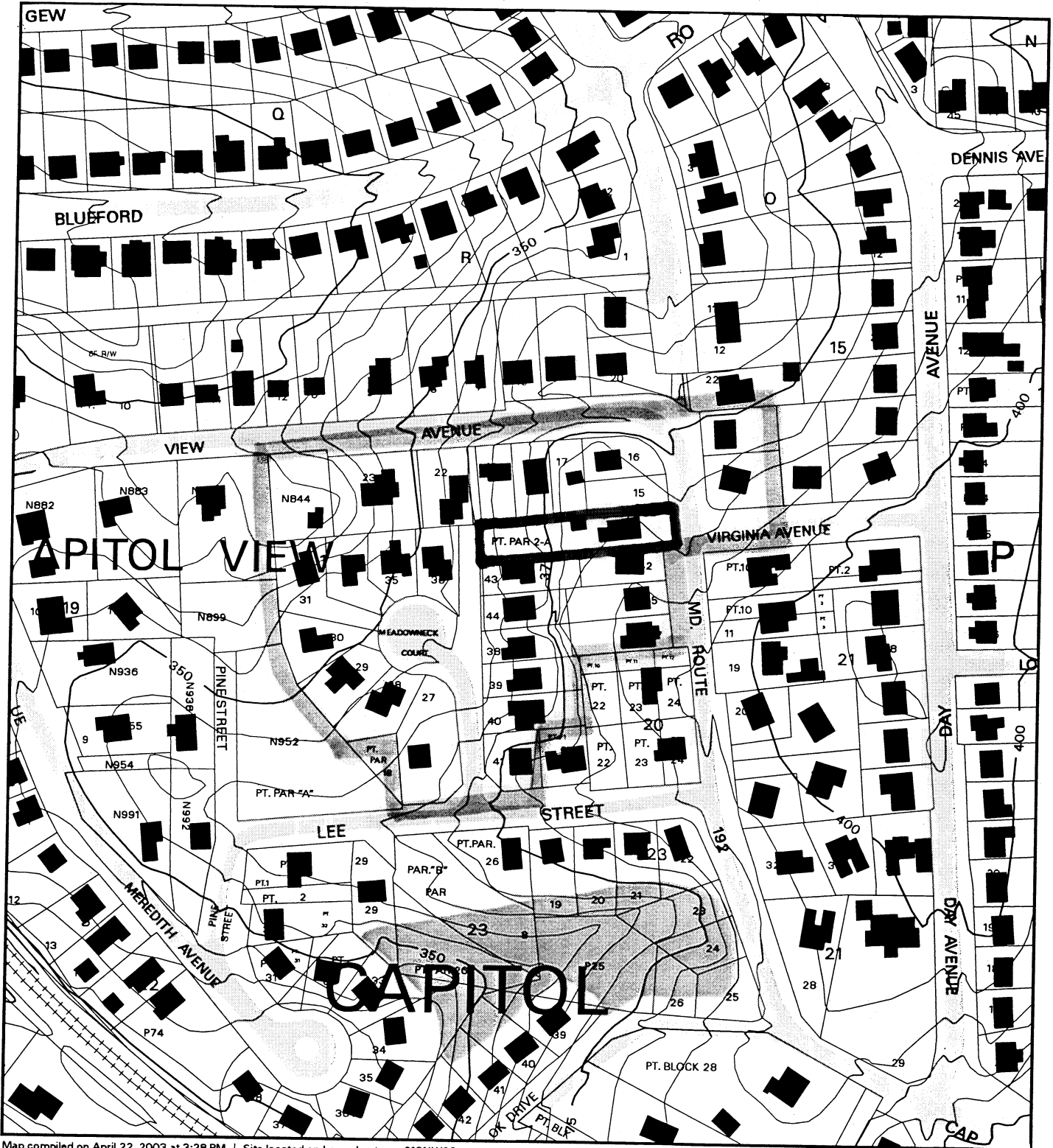


Research & Technology Center



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VICINITY MAP FOR  
**CAPITOL VIEW PARK (1-03039)**



Map compiled on April 22, 2003 at 3:28 PM | Site located on base sheet no - 213NW03

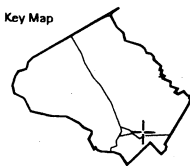
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Key Map



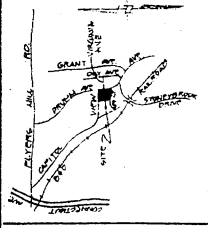
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Research & Technology Center



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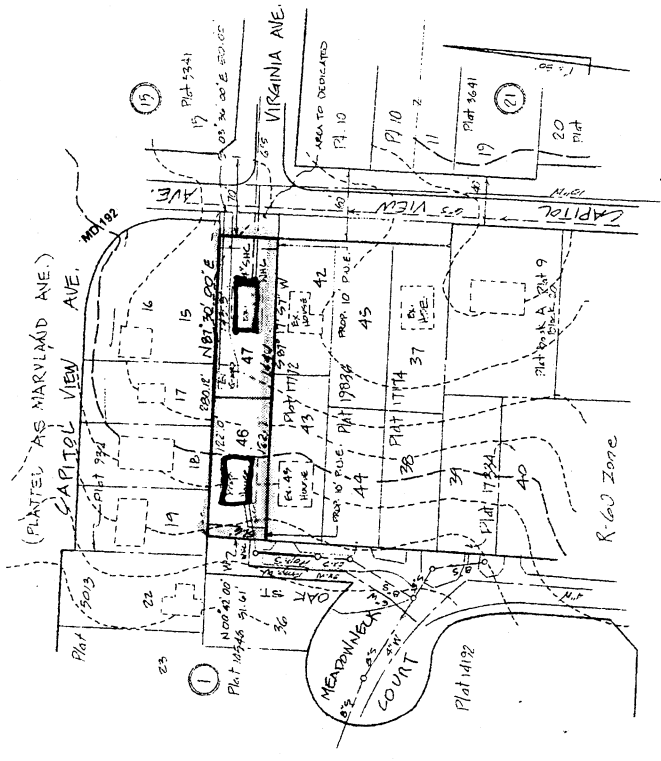


VICINITY MAP  
Scale 1" = 200'

### CAPITOL VIEW PARK PROPOSED LOTS 46 & 47, BLOCK 1 PRELIMINARY PLAN

- NOTES:**
1. Boundary by Oyster, Imus & Petzold, Inc. November, 2002
  2. Current deed recorded in Liber 4172 at folio 284.
  3. Current address 10172 Capitol View Avenue.
  4. Proposed subdivision of 13,100 sq. ft. into 2 lots.
  5. Proposed subdivision of 726 square feet = 13,100 sq. ft. = 0.31 ac.
  6. Zoning R-60  
 Max. Lot Size: 6,000 sq. ft.  
 Max. Lot Area: 13,100 sq. ft.  
 Max. Lot Width: 75'
  7. Minimum Lot Width at BRL: 75'  
 Lot 46 = 51' x 140'  
 Lot 47 = 50' x 140'
  8. Min. Lot Width at Street: 25'  
 Lot 46 = 51' x 140'  
 Lot 47 = 50' x 140'
  9. Min. Setback from Street: 30'  
 Lot 46 = 35' x 140'  
 Lot 47 = 35' x 140'
  10. Sum of both lots: 25'  
 Rear Setback: 25'  
 Max. Building Coverage: 30%
  11. Water Category: "W-1" (Setback Category S-1 (Setbacks required on Oak St))
  12. Flood Hazard: "X" (Special Flood Hazard Area (Capitol View Sector Plan))
  13. Shown on Tax Map HP 53 as parcel N888
  14. The easement shown on the map is a 10' wide easement for utility purposes.
  15. The property qualifies for a standard Stormwater Management waiver.
  16. Servicing utilities for the site are: Water & Sewer - WSSC  
 Telephone - Verizon  
 Electric - Verizon

**STREET ABANDONMENT:** This property appears to have been part of the street dedication for Virginia Avenue shown on a map of Capitol View Park as surveyed by John D. Oyster, Imus & Petzold, Inc. in 2002. The street dedication is shown as part of Lot 24, Block 1 on a plat of the subdivision of Capitol View Park prepared by C. J. Oyster, Imus & Petzold, Inc. on 11/15/02. The plat is on file with the Department of Planning, Public Works and Economic Development, State of Maryland, at 2001 North E Street, Annapolis, MD 21403 and is noted on our file copy as Plat B-17 in which appears to be the original plat of the street dedication. The street dedication is shown as part of Lot 24, Block 1 on a plat of the subdivision of Capitol View Park prepared by C. J. Oyster, Imus & Petzold, Inc. on 11/15/02.



(PLATEL AS MARVLAND AVE.)

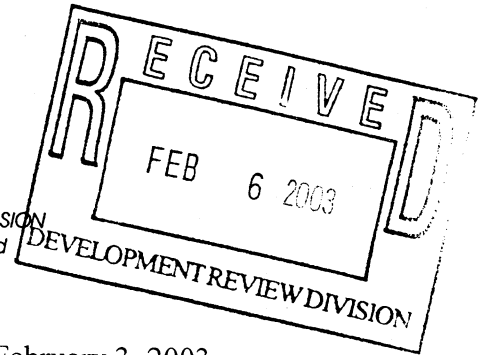
I certify that the information shown herein is correct.  
 [Signature]  
 [Name]  
 [Title]








THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board



February 3, 2003

**MEMORANDUM**

TO: Joe Davis  
Malcolm Shaneman  
Richard Weaver  
Development Review Division

FROM:  Gwen Wright, Historic Preservation Coordinator  
Michele Naru, Historic Preservation Planner  
Historic Preservation Section, County-wide Planning Division

SUBJECT: Review of Preliminary Plan #1-03039 – Capitol View Avenue

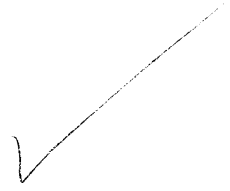
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The Historic Preservation Commission (HPC) reviewed the proposed subdivision at 10122 Capitol View Avenue (#1-03039) at their meeting on January 22, 2003. This proposal involves a lot within the boundaries of the Capitol View Park Historic District. This proposed subdivision is to create two individual lots (Lots 46 and 47). The existing house and garage would be located on the proposed Lot 47 (7,235 sq. ft.). A proposed new house would be constructed on Lot 46 (6,264 sq. ft.).

**The HPC recommends denial of this proposed subdivision.** The Commissioners felt that the proposed subdivision plan would negatively affect the historic character of the district by the reduction of the trees and open-space behind the resources fronting Capitol View Avenue.

The Commission notes that the adjacent neighbors testified with concerns regarding construction debris, construction sediment and erosion control, and construction access on existing property. Additionally, neighbors along Capitol View Avenue located in historic resources expressed concerns with water drainage and landscape issues. Attached is written comments received by the HPC prior to and during the January 22, 2003 public hearing.

Maryland-National Capital Park and Planning Commission  
8787 Georgia Ave  
Silver Spring, MD 20910



RE: MNCP&PC No: 1-03039

After receipt of a letter from Oyster, Imus & Petzold, Inc. as well as a hearing announcement on January 22, 2003, and in consultation with Mr. Stan Abrams of Abrams, West & Storm law firm, we are writing to comment on the subdivision of the lot at 10122 Capitol View Avenue in Silver Spring, which is adjacent our property at 10113 Meadowneck ct.

We recommend that the commission rejects the proposal for the following reasons:

- Access to this new lot is through a common driveway. It is bound by a maintenance agreement as referred to in Liber 13338 folio 524-534 as well as liber 13576 folio 506-516 (see attached). As the easement agreement(s) clearly show(s), the driveway must remain unobstructed at all times, and no vehicles shall be parked in or on the joint driveway at any time. This renders any major construction project virtually impossible, as it would mean that the driveway would have to be obstructed. Furthermore, as shown in the attached photographs, the driveway is very narrow, with only enough room for one car at a time. Obstruction is thus inevitable if construction occurs, rendering access to our house impossible. Being the last house at the end of the driveway, we are concerned that vehicles will need to use our private garage driveway to turn around. Please be advised that under no circumstance we will allow anyone to use our private garage entrance to maneuver their equipment.
- The Commission must also take into consideration that the lot itself is small by local standards. In fact, we would argue that this is not a lot, but merely a backyard. A house built there would be surrounded on three sides by other houses' backyard. This is not enhancing the quality of the neighborhood in anyway. Furthermore, It is in everyone's benefit that all regulations regarding minimum lot and house size and minimum distances from property lines be fully enforced. We are skeptical that a respectably-sized single-family home can sit comfortably on this lot. The quality and charm of the Capital District Historical area must be preserved. I strongly suggest that members of the commission take the time and come to see for themselves where the lot is situated before making a decision. We are positive they will realize that this is not a lot to build a house.

Should the commission disagree with the many objections brought forward by concerned residents and approves the proposal anyway, we have various concerns and comments regarding this application. Specifically:

- As mentioned above, the existing common driveway - which this new subdivided lot will have to use - has a maintenance agreement as referred to in Liber 13338 folio 524-534 as well as liber 13576 folio 506-516 (see attached). The subdivided lot must

be included as part of this maintenance agreement. The maintenance of the grassy area as shown in attached photographs, which has been maintained by owners of 10113 and 10111 Meadowneck ct must also be shared with the owner of the subdivided lot abutting Meadowneck ct.

- The new lot owner must be fully responsible for any and all damages caused to the common driveway during construction of any improvement of the new lot. We are also greatly concerned with damages incurred to our house, our private landscaping, and the trees along the driveway during construction. We request that the commission includes as a condition to the subdivision that the builder pays for the cost of pre and post construction assessment surveys of our house and land, and repair any damage reported in the post-construction inspection. We would retain the right to choose the survey company.
- If the lot does get subdivided, it is time that Montgomery country finally considers taking responsibility for the easement by converting it into Oak street, as the master plan clearly shows was the intention. Adding a third household, with probably six cars using this driveway daily, clearly makes this more of a street than a driveway.

Finally, the commission may remember that the building of 10111 and 10113 Meadowneck ct has generated a lot of criticism, debates, and even court cases. We understand that many of the same concerns, and more, apply to the creation of this new subdivision. We strongly advise the commission to examine this case very carefully, and not ignore the many concerns that people living near the lot will bring forward. The Local Advisory Panel (LAP) may have endorsed the proposal, but the people directly affected should have a stronger voice.

We are all concerned about the long term effects such a subdivision will create.



Stephan and Greta Beauchesne  
10113 Meadowneck ct  
Silver Spring, MD