



ITEM # 14

DATE: 03-13-03

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



**MEMORANDUM**

**DATE:** July 24, 2003

**TO:** Montgomery County Planning Board

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

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

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Three One Family Dwelling Units

**PROJECT NAME:** Gray Estates

**CASE #:** 1-03093

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

**ZONE:** R-200

**LOCATION:** Northeast Corner of Hermleigh Road and Auth Lane, Approximately 1,000 Feet East of Kemp Mill Road

**MASTER PLAN:** Kensington - Wheaton

**APPLICANT:** Ronald D. Wilbur

**FILING DATE:** April 29, 2003

**HEARING DATE:** July 31, 2003

---

**STAFF RECOMMENDATION:** Approval Pursuant to Section 50-29(b)(2) of the Montgomery County Subdivision Regulation, Subject to the Following Conditions:

- (1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate

- (2) Access and improvements, as required, as outlined in MCDPW&T memo dated July 16, 2003, unless otherwise amended
- (3) Conditions of MCDPS stormwater management approval
- (4) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period

## **ISSUES TO DATE**

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

In order to approve an application for Resubdivision, the Planning Board must find that the proposed lot(s) complies 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."

### **Defined Neighborhood**

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.

The neighborhood used by staff to evaluate the application includes the lots within the same zoning (R-200) classification as the subject property. The lots east and west of the subject property are all zoned R-200. The Lots abutting the site to the north are zoned RE-1 and are much different in character. Staff has elected to limit the proposed neighborhood to those lots located on the north side of Hermleigh Road in Block A, between Kemp Mill Road and Auth Lane and the first row on lots east of Auth Lane on either side of Hermleigh Road in Block E and Block 51. The neighborhood is delineated on the Attachment 2 of this memorandum. Staff feels that the neighborhood as defined provides a good representation of the development pattern characteristics of the overall neighborhood

### **Master Plan Compliance**

The property is located within the Approved and Adopted Kensington - Wheaton Master Plan area. 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-200) residential area. Since the proposed lots meet the requirements for the R-200 zone, it is staff's conclusion that they comply with the general guidelines adopted in the master plan. Staff's final conclusion with regard to the resubdivision criteria is discussed below.

## **PROJECT DESCRIPTION: Vicinity**

The subject site is located at the northeast corner of Hermleigh Road and Auth Lane, approximately 1,000 feet east of Kemp Mill Road. The subject site was created by record plat in 1939. Many of the lots adjoining the subject property to the north and east were created in the latter part of the 1930's through the 1940's. The lots located to the south and west of the subject property were created in the 1960's and 1970's. As stated earlier the lots immediately north of the subject site are located in the RE-1 zoning classification. Many lots in the area, south of the subject property are zoned R-90. The subject site, together with most of the lots fronting Hermleigh Road to the east and west are Zoned R-200.

## **PROJECT DESCRIPTION: Proposal**

The preliminary plan application proposes the creation of three (3) one family detached lots. The subject lots will range in size from 25,200 to 34,700 square feet. An existing one family dwelling exists on the property is proposed to remain on the site. Access is to be provided by individual driveways to Hermleigh Road. The proposed development meets all requirements set forth in Chapter 59 of the Montgomery County Zoning Ordinance.

## **ANALYSIS**

This proposed resubdivision would create three (3) lots from one (1) 1.99 acre (86,684 square feet) lot. **Size:** Existing lots in the defined neighborhood range in size from 20,000 square feet, on the smaller end to 2.06 acres (89,734 square feet) on the larger end. The proposed lots at 25,021, 26,775 and 34,701 tend to be on the larger end of the range but do fall within the neighborhood range. **Area:** The area within the building envelope for the proposed lots also falls within the range of the other lots in the neighborhood. The proposed lots are at 13,513, 14,253 and 20,360 square feet. The neighborhood ranges from 8,000 to 56,894 square feet. **Width:** Since the most of the lots in the defined neighborhood are rectangular in shape the width is consistent with the frontage. The lot widths range in size from 90 to 100 feet. The proposal, for three lots, shows a range of 100 to 143. Well within the norm established within the neighborhood. **Shape:** The proposed lot shapes are consistent with the variety of lots shapes in the defined neighborhood. The majority of the lots are rectangular as is the subject resubdivision. **Frontage:** The existing lots in the defined neighborhood have frontages that range from 100 to 300 feet. Generally, for most of the lots that are rectangular in shape with in the defined neighborhood, the frontages are 100 feet. The proposal at 91, 100 and 143 feet does compare to the range within the neighborhood. **Alignment:** Each proposed lot is lined perpendicular to the respective street, which is consistent with the neighborhood. **Suitability:** The proposed lots have an adequate and useable building area, meet all current zoning criteria and are deemed suitable for residential development.

## **CONCLUSION**

In applying the resubdivision criteria to the neighborhood delineated by staff, staff finds that the proposed resubdivision does comply with all seven of the criteria set forth in Section 50-29(b)(2) as illustrated by the characteristics set forth on the attached tabular summary. Staff finds that a high correlation does exist for all seven of these characteristics. Specifically, the application proposes three (3)

lots that are consistent with the size, area, shape, width, frontage, alignment and suitability for residential use of the majority of lots within the neighborhood. Staff recommends approval of this application, subject to the conditions cited previously.

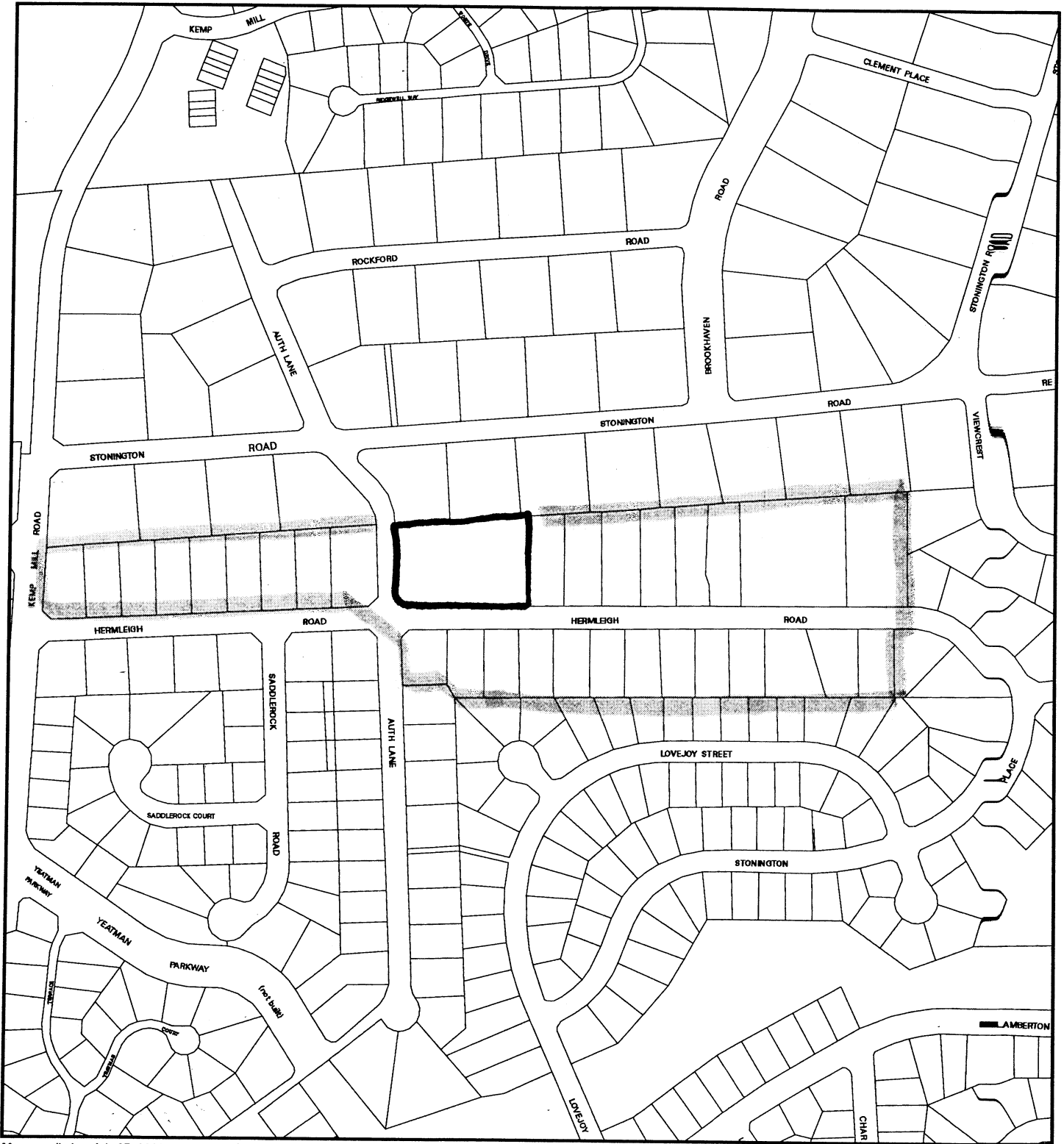
**Attachments**

Vicinity Map	5
Development and Neighborhood Map	6 - 7
Proposed Resubdivision Plan	8
Tabular Summary	9

Citizen correspondence has been attached to this memorandum

VICINITY MAP FOR

# GRAY ESTATES (1-03093)



Map compiled on July 25, 2003 at 11:58 AM | Site located on base sheet no - 215NW01

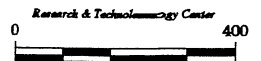
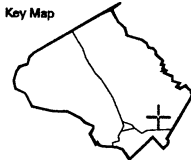
### NOTICE

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.

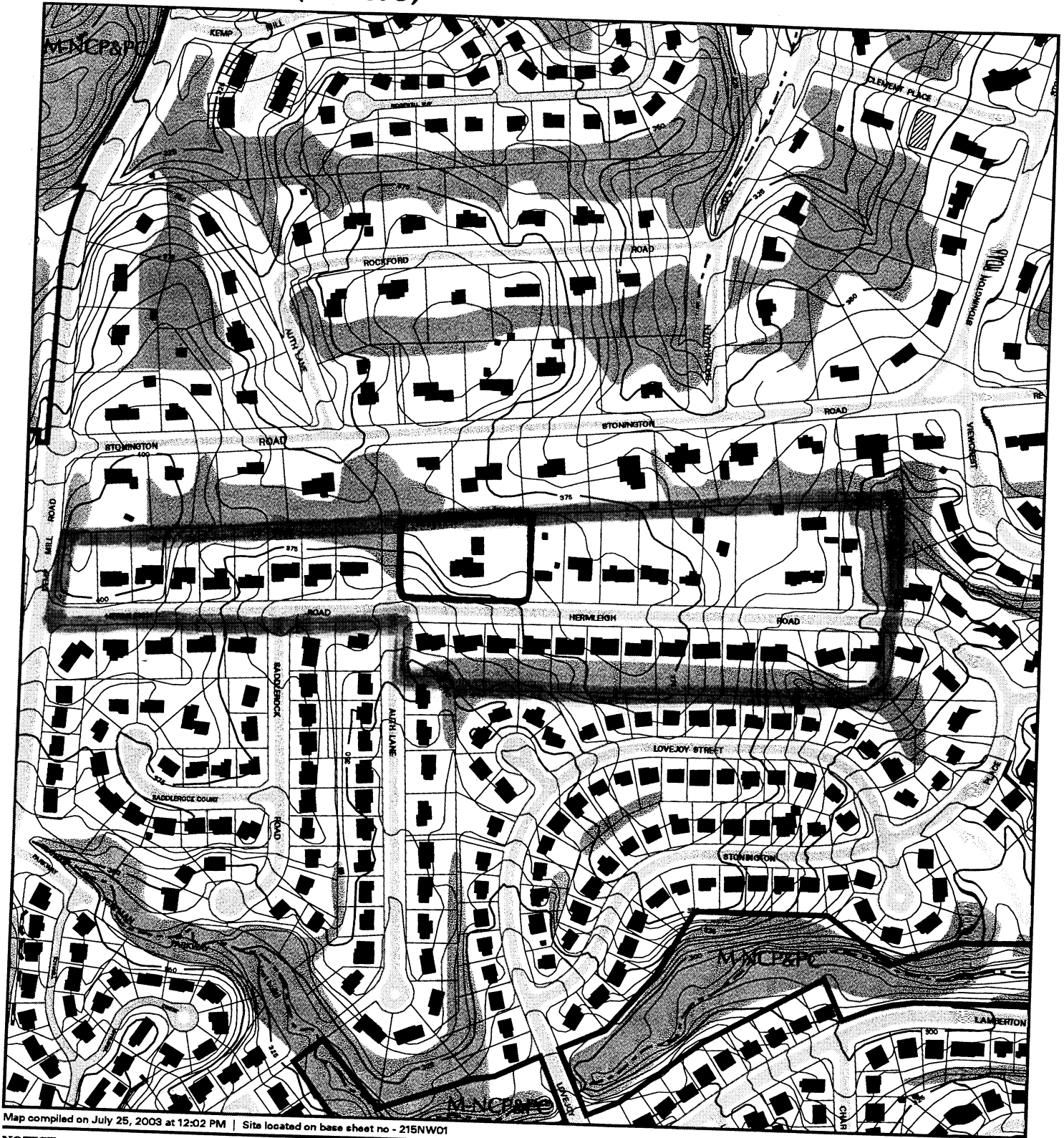
This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area 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



1 : 4800

VICINITY MAP FOR  
**GRAY ESTATES (1-03093)**



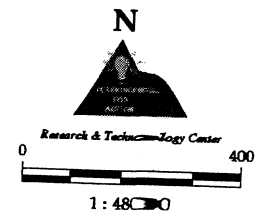
Map compiled on July 25, 2003 at 12:02 PM | Site located on base sheet no - 215NW01

**NOTICE**

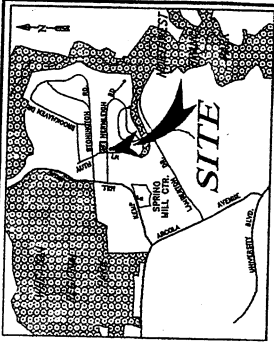
The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland - National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from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



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
 8787 Georgia Avenue - Silver Spring, Maryland 20910-3760



VICINITY MAP  
SCALE: 1" = 200'

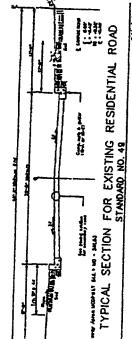
**GENERAL NOTES**

ZONED: R-200 ZONE  
 GROSS TRACT AREA: 86,497 S.F. OR 1.99 Ac.  
 NET TRACT AREA: 34,701 S.F. OR 0.80 Ac. LOT 12 (EXISTING LOT 10)  
 26,775 S.F. OR 0.62 Ac. LOT 11 (EXISTING LOT 13)  
 25,021 S.F. OR 0.57 Ac. LOT 13 (LOD = 0.28 Ac.)

THERE ARE NO IMPACTS TO THE JURISDICTIONAL WETLANDS, WATER COURSES OR FLOODPLAIN ON THIS SITE. THE PROPERTY IS PART OF THE POTOMAC WATERSHED.

THE PUBLIC UTILITIES SERVING THIS SITE ARE VERIZON, PEPCO, WASHINGTON GAS OF MD, WSSC & MONTGOMERY CABLE TV. ALL DIMENSIONS AND AREAS HAVE BEEN SCALED AND ARE SUBJECT TO CHANGE AT TIME OF FINAL RECORD PLAT.

WATER & SEWER CATEGORIES ARE BOTH 0.



TYPICAL SECTION FOR EXISTING RESIDENTIAL ROAD  
STANDARD: 80.1.4

**DEVELOPER'S CERTIFICATE**

THE UNDERSIGNED AGREES TO EXECUTE ALL THE FEATURES AND REQUIREMENTS OF THIS SITE PLAN IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE MONTGOMERY COUNTY PLANNING BOARD AND THE UNDERSIGNED.

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_

**ENGINEER'S CERTIFICATE**

I hereby certify, to the best of my professional knowledge with the information furnished to me, that the site plan shown herein conforms with the Montgomery County Zoning Ordinance and all other applicable laws and regulations of Montgomery County, Maryland and I am a duly licensed Professional Engineer in the State of Maryland.

FRANK E. ROSCOE, JR., P.E. #11028

**PRELIMINARY PLAN**

**GRAY ESTATES**  
**LOTS 11, 12 & 13**  
MONTGOMERY COUNTY  
SILVER SPRING, MARYLAND

MISS UTILITY NOTE  
RECORDING CONTRACT NUMBER: 1564-00-XX. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES PRIOR TO CONSTRUCTION.



NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

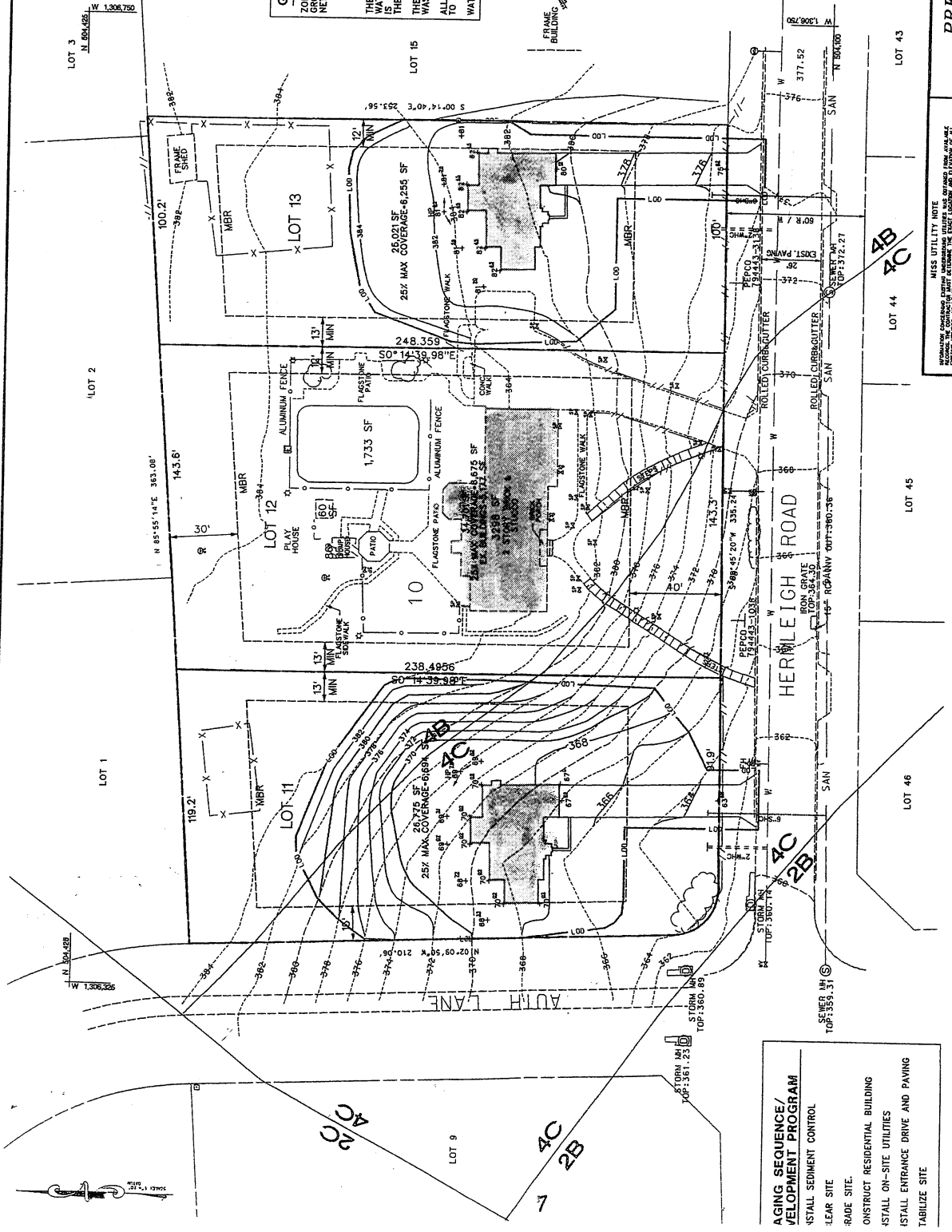
NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY PLAN	11/14/11	FR	1
2	REVISED PLAN	11/14/11	FR	2
3	REVISED PLAN	11/14/11	FR	3
4	REVISED PLAN	11/14/11	FR	4
5	REVISED PLAN	11/14/11	FR	5



**AGING SEQUENCE/ VELOPMENT PROGRAM**

- INSTALL SEDIMENT CONTROL
- LEAVE SITE
- GRADE SITE
- ONSTRUCT RESIDENTIAL BUILDING
- INSTALL ON-SITE UTILITIES
- INSTALL ENTRANCE DRIVE AND PAVING
- TABILIZE SITE

Loiederman Soltesz Associates

Professional Engineer  
Frank E. Roscoe, Jr., P.E. #11028

**GRAY ESTATES 1-03093 - TABULAR SUMMARY**

LOT NO.	BLOCK	GROSS AREA (SQ.FT.)	FRONTAGE	ALIGNMENT	SHAPE	WIDTH	NET AREA (SQ.FT.)	REMARKS
10	C	19,543	57'	Perpendicular	Irregular	124'	8,715	714 Hermleigh Road
12	C	19,559	46'	Perpendicular	Rectangular	124'	8,715	710 Hermleigh Road
13	C	19,900	50'	Perpendicular	Corner	128'	8,807	708 Hermleigh Road
34	51	20,006	40'	Perpendicular	Rectangular	100'	9,755	406 Hermleigh Road
37	51	20,006	42'	Perpendicular	Rectangular	100'	9,755	412 Hermleigh Road
38	51	20,006	43'	Perpendicular	Rectangular	100'	9,755	500 Hermleigh Road
39	51	20,006	40'	Perpendicular	Rectangular	100'	9,755	502 Hermleigh Road
40	51	20,006	43'	Perpendicular	Rectangular	100'	9,755	504 Hermleigh Road
41	51	20,006	40'	Perpendicular	Rectangular	100'	9,755	506 Hermleigh Road
42	51	20,006	42'	Perpendicular	Rectangular	100'	9,755	508 Hermleigh Road
43	51	20,006	40'	Perpendicular	Corner	100'	9,755	512 Hermleigh Road
44	51	20,006	42'	Perpendicular	Rectangular	100'	9,755	600 Hermleigh Road
2	B	20,071	44'	Perpendicular	Corner	135'	8,756	700 Hermleigh Road
1	B	20,082	52'	Perpendicular	Corner	135'	8,000	11809 Saddlerock Road
11	C	20,190	50'	Perpendicular	Rectangular	128'	9,071	712 Hermleigh Road
2	A	20,485	44'	Perpendicular	Rectangular	100'	10,112	715 Hermleigh Road
45	51	20,553	42'	Perpendicular	Rectangular	105'	9,754	602 Hermleigh Road
3	A	20,788	51'	Perpendicular	Irregular	100'	10,343	713 Hermleigh Road
9	C	21,005	59'	45 Degree	Corner	145'	10,460	716 Hermleigh Road
4	A	21,091	51'	Perpendicular	Irregular	100'	10,574	711 Hermleigh Road
46	51	21,124	41'	Perpendicular	Rectangular	130'	9,680	604 Hermleigh Road
5	A	21,393	34'	Perpendicular	Irregular	100'	10,805	709 Hermleigh Road
6	A	21,695	36'	Perpendicular	Rectangular	100'	11,036	707 Hermleigh Road
7	A	21,998	55'	Perpendicular	Rectangular	100'	11,267	705 Hermleigh Road
8	A	22,301	60'	Perpendicular	Irregular	100'	11,498	703 Hermleigh Road
1	A	23,287	N/A	N/A	N/A	127'	13,089	717 Hermleigh Road
35	51	24,333	48'	Perpendicular	Irregular	150'	12,317	408 Hermleigh Road
13	N/A	25,021	70'	Perpendicular	Rectangular	100'	13,513	NEW ADDRESS
11	N/A	26,775	70'	Perpendicular	Corner	112'	14,253	NEW ADDRESS
18	N/A	27,971	64'	Perpendicular	Rectangular	100'	15,666	501 Hermleigh Road
19	N/A	28,002	63'	Perpendicular	Irregular	100'	15,535	415 Hermleigh Road
20	N/A	28,002	94'	Perpendicular	Square	94'	15,857	413 Hermleigh Road



**GRAY ESTATES 1-03093 - TABULAR SUMMARY**

15	N/A	28,268	65'	Perpendicular	Rectangular	109'	15,807	511 Hermleigh Road
9	A	28,545	69'	Perpendicular	Corner	127'	15,578	701 Hermleigh Road
36	51	28,683	45'	Perpendicular	Rectangular	115'	15,518	410 Hermleigh Road
16	N/A	29,038	68'	Perpendicular	Irregular	109'	16,424	505 Hermleigh Road
17	N/A	29,809	68'	Perpendicular	Rectangular	109'	17,043	503 Hermleigh Road
PROP. LOT 12	N/A	34,701	69'	Perpendicular	Irregular	143'	20,360	NEW ADDRESS
3	E	43,788	69'	Perpendicular	Rectangular	195'	25,469	516 Stonington Road
2	E	43,912	73'	Perpendicular	Rectangular	195'	26,382	600 Stonington Road
1	E	45,000	50'	Perpendicular	Corner	200'	25,443	608 Stonington Road
14	N/A	57,934	105'	Perpendicular	Rectangular	182'	39,534	401 Hermleigh Road
13	N/A	87,120	72'	Perpendicular	Irregular	297'	63,997	411 Hermleigh Road

George E. Hellman, Esq.  
511 Hermleigh Road  
Silver Spring, MD 20902

July 23, 2003

**VIA FAX (301-495-1320) & VIA REGULAR MAIL**

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

**VIA FAX (301-495-1306) & VIA REGULAR MAIL**

Mr. Malcolm Shaneman, Supervisor  
Development Review Division  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Re: Gray Estates (Resubdivision) File Number 1-03093

My wife and I are the owners of Gray Estates lot 15 (also known as 511 Hermleigh Road), the lot directly adjacent to the property located at Gray Estates existing lot 10 (also known as 601 Hermleigh Road), which is the subject property of the proposed resubdivision, subdivision file number 1-03093. I am writing in opposition to the proposed resubdivision and in the alternative, to respectfully request that should the Planning Board approve the proposed subdivision that it do so subject to the restrictions set forth below.

**Denial of the Application for Resubdivision**

The opposition to the application relies on an equitable argument that has its basis in the polestar for review by the Planning Board of resubdivision applications of this type, coupled with the economic and practical realities of the real estate market generally, and the real estate market specifically on Hermleigh Road.

The standard for review is that which is set forth in *Lee v. Maryland Park Commission*, 107 Md. App. 486, 668 A.2d 980 (1995), interpreting Montgomery County Code Section 50-29(b)(2). That provision states that lots on a plat for resubdivision be of the *same character* as other lots within the existing block, neighborhood or subdivision when considering several stated criteria. While the language of the code provision no doubt refers to the character of the lot itself, it is equally clear that the purpose underlying this provision is a concern that a resubdivision result in a lot which alters the character of an entire neighborhood. *Lee* itself conforms this in concluding that all criteria set forth in Montgomery Code Section 50-29(b)(2) must pass muster under the test, describing the character of the neighborhood which must not be altered by lots resulting from a resubdivision as "...the aggregate of features and traits that give it its distinctive look and feel." *Lee*, 107 Md. App. at 494.

Mr. Derick P. Berlage  
Mr. Malcolm Shaneman  
July 23, 2003  
Page 2

The proposed *lots* may pass muster, but the homes that will inevitably be constructed on them will unalterably change the "aggregate of features and traits" that give Hermleigh Road its distinctive look and feel.

Any doubt as to this conclusion should be readily erased by an examination of market forces that are currently swirling down Hermleigh Road. It seems fanciful to conclude anything other than that the purchasers of the two newly created empty lots resulting from this resubdivision, if approved, would build homes at or near the maximum square footage of the permissible footprints (6,694 and 6,255 square feet for resultant lots 11 and 13, respectively)—homes which themselves could dwarf the existing structure at 601 Hermleigh Road (3,298 square feet), not to mention our home (a 1951 farm house under 2,000 square feet in total) and those other homes in the immediate vicinity, many of which were constructed in the mid 1960s and are of the more modest size that is emblematic of that era.

For potent evidence in support of this conclusion one need look a mere five lots further down Hermleigh Road—to existing lot 13 of Gray Estates (corresponding to 401 Hermleigh Road, I believe). A very substantial older home on a 2-acre plus lot was purchased within the last year at a price of \$750,000, only to be demolished. In its place is now rising what is said to be an 11,000 square foot dwelling. Two more structures of this magnitude on Hermleigh Road (6,000+ square foot footprints, two stories each) and I submit that the distinctive look and feel of Hermleigh Road will be irretrievably lost.

For these reasons, I respectfully request that the Planning Board exercise its equitable powers in favor of preserving this neighborhood's character by denying this resubdivision application.

#### **Requested Restrictions on the Resubdivision, If Approved**

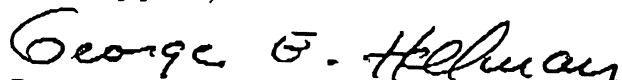
Should the Planning Board approve the resubdivision application, then it is respectfully requested that it do so subject to the following terms and conditions:

1. Access to any new structure that would be built on would become lot 13 be required to be via the existing driveway at 601 Hermleigh Road or alternatively, any new driveway to be built on what would then be lot 13 be required to be built as close as is physically possible to the existing driveway at 601 Hermleigh Road, and therefore as far as possible from the property line that would separate lot 13 from our lot, lot 15.
2. If the requested restriction in paragraph 1 above is not approved, then it is respectfully requested that special care be taken in the construction of any new driveway on what would be lot 13 so as not to disturb or damage the root zone of any trees on our lot 15. Of particular concern is our large evergreen tree in the southwest corner of our property.

Mr. Derick P. Berlage  
Mr. Malcolm Shaneman  
July 23, 2003  
Page 3

I thank all the members of the Montgomery County Planning Board for taking the time to read and consider the points raised in my letter. Should you have any questions, I can be reached during working hours at my office, 202-488-6591, and in the evenings at home at 301-593-8555.

Very truly yours,



George E. Hellman, Esq.

CC: Dr. Ronald Wilbur  
601 Hermleigh Road  
Silver Spring, MD 20902