Attachment C

THE CONSERVATION FEDERATION OF MARYLAND, INC.
T/A FOR A RURAL MONTGOMERY (FARM)

(301) 916-3510

September 29, 2005

MEMORANDUM

Re: Abuse of Children's Lots in the Rural Density Transfer (RDT) Zone

Background

The allowance in the Zoning Ordinance for the creation of lots for children of property owners in accordance with prior zoning standards or a relaxation of existing standards, ("Tot Lots"), has always been perceived as an intent by the District Council to allow family members to build a house and live on family property, notwithstanding the subsequent down-zoning of such property since it was originally acquired by the property owner(s). The concept of Tot Lots is not unique to the RDT Zone.

For example, Section 59-C-1.3 of the Zoning Ordinance provides:

> The following lots shall have the area and dimensional requirements of the zone applicable to them prior to their classification in the RE-2, RE-2C, and RE-1 Zones: ... (3) in the RE-2C Zone, a lot created as a one family residence by a child of the property owner or the spouse of a child or by the parents of the property owner, provided the property owner can establish that he/she had title on or before March 16, 1982. This provision permits the creation of only one lot for each child, whether created for the child or spouse of the child, and only one lot for the parents, whether created for one or both parents. The overall density of the property shall not exceed 1.1 dwelling units per acre in any subdivision recorded.

Similarly, Section 59-C-9.71, regarding the Rural (five acre) Zone, provides:

> The following lots are exempt from the area and dimensional requirements of Section 59-C-9.4, but they must comply with the requirements of the zone applicable to them prior to their classification in the Rural Zone. ...

(d) a lot created for use for a one family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:
(1) the property owner can establish that he had legal title on or before June 4, 1974;
(2) this provision applies to only one such lot for each child of the property owner; and
(3) the overall density of the property does not exceed one dwelling unit per five acres in any subdivision recorded as of October 1, 1981.

Provisions for such Tot Lots also are set forth in Section 59-C-9.73 with regard to the Rural Cluster Zone and Low Density Rural Cluster Development Zone.

With regard to the RDT Zone specifically, very similar language is set forth in Section 59-C-9.74.(b):

The following lots are exempt from the area and dimensional requirements of Section 59-C-9.4, but must meet the requirements of the zone applicable to them prior to their classification in the Rural Density Transfer Zone.
.....
(4) a lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:
(i) The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
(ii) This provision applies to only one such lot for each child of the property owner; and
(iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.

Obvious Purpose

The obvious purpose of all of the various "Tot Lot" provisions contained within the Zoning Ordinance were to allow family members to receive a lot(s) smaller in size and perhaps greater in density than what may otherwise be currently required as a result of a down-zoning after the property owners acquired title to the property, in order that children, or the spouse of a child, and in some cases even parents, could acquire such a smaller lot at perhaps greater density than otherwise allowed, build a house and live in the property, notwithstanding the most recent rezoning of the property. Although under no legal obligation to do so, the District Council places these exceptions to the general

rules in the Zoning Ordinance for what is recognized as no doubt a noble and worthy purpose.

Purposes not Intended

Those exceptions to the general rules in the Ordinance were not intended to allow the creation of children's lots for the sole purpose of immediate sale to the general public, nor intended to serve only as a monetary reward to property owners for their potential procreative proclivity, so to speak.

If the District Council meant to even imply that such lots were intended to be created and then only to be sold to unrelated third parties, then the various provisions of the Ordinance would not contain the language to the effect that those exceptions to the normal requirements were only for "a lot *created for use for a one-family residence by a child, or the spouse of a child*, of the property owner. . .", and, if the former was the District Council's intention, that bold portions of that quoted language would be rendered, for all intents and purposes, entirely superfluous and unnecessary.

It is a fundamental principle of statutory construction that all language in legislation, in this case the Montgomery County Zoning Ordinance, is to be afforded its ordinary meaning and to read the same in order that no language is rendered superfluous. The District Council could have very well utilized far more general and non-specific language, for example, 'one single-family lot per each child or spouse of child'. But, that is not what the District Council chose to do nor is it what it meant by its clear and unambiguous language. The Council purposely chose, it is submitted, to insert specific and express language limiting such lots for **use for a single family residence by a child, or the spouse of a child**. Again, it really doesn't make sense that the intent was to reward a property owner for their reproductive ability.

Second, there is nothing in the Zoning Ordinance relating to the RDT Zone that would indicate that the creation of Tot Lots, which can exceed the maximum density otherwise normally imposed, should be ignored in calculating any remaining density for creation of additional lots by subdivision. Again, it just doesn't make a whole lot of sense.

Definition of Terms

In order to fully appreciate and understand this Memorandum, an explanation of terms is in order, especially in light of the very common public misperceptions that the RDT zone is a "25 acre zone" (See the distinct differences between "Density" and "Lot Size" discussed below).

Regular or Normal Density. Normal Density in the RDT zone is one dwelling unit per 25 acres, which means, for each full 25 acres, a maximum density of one dwelling is usually permitted.

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Lot Size or Area & Dimensional Requirements. The RDT zone normally requires a minimum lot size of 40,000 square feet, and certain dimensional requirements, which refers to road frontage, setbacks, etc. While the majority of property placed in the RDT zone was previously zoned as 5 acres, there were also properties rezoned from what are commonly referred to as the 1 acre and ½ acre zone (even though the area requirements attributable thereto are slightly less; e.g., 40,000 and 20,000 square feet, respectively.)

Development Rights. At the same time property was re-zoned to the RDT zone, each parcel of property received 1 Transferable Development Right (TDR) for every full 5 acres of property, to sell or keep. (For example, 100 acres = 20 TDRs.) Each separate dwelling existing or to be erected on the property would require 1 TDR attributable to that dwelling. Other TDRs may be sold if the property owner so desires.

Tot Lot Density. Per the above, a maximum of 1 Tot Lot per each Development Right (1 per 5 acres) regardless of prior zoning classification.

Regular Development

In light of the foregoing, regular residential development in the RDT zone requires a minimum of a 40,000 square lot per dwelling, and a total density not to exceed 1 dwelling per each full 25 acres. In addition, each full 5 acres has one Development Right (TDR), 1 of which would be applied to any dwelling, and the remainder of which may be sold. The followings examples of possible Regular Development are provided.

Example #1: 100 acres with 1 existing residence.

100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
Less 1 existing residence = 3 lots for sale or development. (Regular Density)
Lot size could be as small as 40,000 square feet for 3 lots and 97+ acres for 1 remaining lot. (Lot Size)
20 TDRs total, 4 used, 16 remaining for sale. (Development Rights)

Example #2: 100 acres vacant, small lots.
100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
Lot size as small as 40,000 square feet for all 4, and 96+ remaining acres for agricultural land. (Regular Density)
20 TDRs total, 4 used, 16 remaining for sale. (Development Rights)

Example #3: 100 acres vacant, 25 acre lots.
100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
25 acres each lot. (Regular Density)
20 TDRs total, 4 used, 16 remaining for sale. (Development Rights)

Development With Tot Lots

In connection with **lots to be used by children of the property owner for their residence**, which is, after all, what the law says, the Regular Density requirement is substantially lessened from 1 dwelling per 25 acres to 1 dwelling per the number of Development rights. (1 per 5 acres). Again, each full 5 acres has one Development Right (TDR), 1 of which would be applied to any existing or proposed dwelling, and the remainder of which may be sold.

Utilizing the examples above (1-3), the following examples are provided to illustrate development of property with Tot Lots assuming 4 children's lots will be utilized.

Example #4: 100 acres with 1 existing residence, same as Example #1 above, but now with 4 Tot Lots.

100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
Less existing residence = 3 lots for sale or development. (Regular Density)
Lot size could be as small as 40,000 square feet for 3 and 97+ acres for 1. (Lot Size)
Tot Lot size could possibly could go down to as little as 20,000 square feet for each residential Tot Lot if previously in the R200 zone. (Tot Lot Area & Dimensional Requirements)
Up to 19 Children's lots (down to 1 per 5 acres) could be created (20 minus Development Right for existing residence). (Tot Lot Density)
Existing residence, 1, plus 4 Tot Lots = 5 total.
Regular Density has been exceeded, no additional lots, other than Tot Lots available to create or sell.
20 TDRs total, 15 remaining for sale. (Development Rights)

Example #5: 100 acres vacant, Example #2 above, but now with 4 Tot Lots

100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
Lot size as small as 40,000 square feet for all 4, and 96+ acres for agricultural land. (Regular Density)
Tot Lot size could possibly go down to as little as 20,000 square feet for each residential Tot Lot if previously in the R200 zone. (Tot Lot Area & Dimensional Requirements)
Up to 20 Children's lots (down to 1 per 5 acres) could be created. (Tot Lot Density)
4 Tot Lots meets maximum Regular Density, no additional lots, other than Tot Lots available to create or sell.
20 TDRs total, 16 remaining for sale. (Development Rights)

Example #6: 100 acres vacant, Example #3 above, but now with 4 Tot Lots
100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
25 acres each lot. (Regular Density)
Up to 20 Children's lots (1 per 5 acres) could be created. (Tot Lot Density)
4 Tot Lots meets maximum Regular Density, no additional lots, other than Tot Lots available to create or sell.
20 TDRs total, 4 used, 16 remaining for sale. (Development Rights)

A final example:

Example #7: 100 acres vacant, 10 Tot Lots
100 acres divided by 25 = 4 single family dwelling lots. (Regular Density)
10 Tot Lots = 1 per every 10 acres.
Up to 20 Children's lots (1 per 5 acres) could be created. (Tot Lot Density)
10 lots exceeds maximum Regular Density, no additional lots, other than Tot Lots available to create or sell.
20 TDRs total, 10 used, 10 remaining for sale. (Development Rights)

Discussion

The idea to provide limited exemptions for Tot Lots in the RDT zone was not by any means a new idea in connection with the creation of the RDT zone. Historically, the District Council, and the Upper Montgomery County Planning Commission before that, have included various exceptional provisions in the Zoning Ordinance regarding "down-zoning" of property to allow property owners who acquired the property prior to the down-zoning to create lots for their children under the area and dimensional requirements of the prior zoning classification, and that principle was carried forward in the RDT zoning enacted as a result of the adoption of the Functional Master Plan for the Preservation of Agriculture & Rural Open Space. While still serving a noble purpose, its use and application in the much more transient Montgomery County today admittedly is not as important to most property owners in maintaining the "family homestead" as it was 30 or even 20 years ago.

The somewhat novel idea in connection with the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in 1981, however, was to introduce the concept of total *density* of residential development into the mix, regardless of lot size, as well as the concept of TDRs. It is essentially a simple concept but, as noted above, is often misunderstood by the general public, and sometimes even by elected and appointed officials. When Tot Lots are thrown into the mix, the concept becomes even more confusing.

What does the Zoning Ordinance actually say regarding Tot Lots?

Section 59-C-9.74.(b) states:

> The following lots are exempt from the **area and dimensional requirements** of Section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classifications in the Rural Density Transfer zone. (Emphasis Supplied). . .
>
> (4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner . . . . .

It then goes on to set certain conditions; for example, that the property owner must have taken title prior to the property being placed in the RDT zone.

Subsection (iii) thereof further provides:

> Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.

Section 59-C-9.41 expressly sets forth the only conditions for exemption of the density requirements for development in the RDT zone in connection with further development. And that provision **only** exempts "farm tenant dwelling, farm tenant mobile home or guest house" and "an accessory apartment or accessory dwelling", but then goes even further to expressly state that even with regard to those limited exceptions, "[o]nce the property is subdivided, the dwelling is not excluded."

While Section 59-C-9.74.(b)(iii) does allow the number of **Tot Lots** to exceed the Regular Density applicable to the RDT zone, there is absolutely nothing that can be pointed to which would exempt Tot Lots from the total mix of maximum allowed Density in the event of future or simultaneous subdivision and marketing of additional lots of a particular property. And it is submitted that it's not there because, again, when you really sit down and think about it, it really wouldn't make sense.

The Problems

The problems associated with the continued creation of "Tot Lots" in connection with the Planning Board's past approvals of subdivisions in the RDT Zone are twofold.

1. Frustration of the Intent. The obvious intent of the District Council in allowing children to acquire a lot on a family's property and build a house and live in that house was to preserve some sense of a family unit on certain property. This applies not only to the RDT Zone, but all of the other zones discussed above as well.

This first problem, therefore, is that intent has been frustrated by certain property owners who have created Tot Lots, with no intention whatsoever that they would serve as homesteads for their children, but rather as a means to create lots which exceed the maximum Regular Density, and then turn right around and sell those "Tot Lots" at

substantial personal gain on the open market. The more children you can claim, the more money you can make.

It is submitted the law was never intended to financially reward a property owner for their proclivity of procreation in order that any number of Tot Lots could be created for any number of children, only to be immediately sold on the open market. Again, that just doesn't make sense, especially in light of the express language of the Zoning Ordinance.

The intent was, and always has been, that such lots would be created for the purpose of children building a house and residing on the property. For example, at least in the late 1980's, the Montgomery County Planning Board required a bold notation on the recorded plat of subdivision stating that a particular lot had been created for a child of the property owner [a requirement which apparently has been discontinued for reasons we do not understand]. While the legal significance of that may be subject to debate, it nevertheless put the world on notice as to the purpose of that lot, and it would have been difficult for a property owner to simply put a Tot Lot on the open market without a child never even having taken legal title to the lot.

Notwithstanding that prior practice, the creation of Tot Lots in the RDT Zone has been subject to *substantial* abuse over the past several years. A growing number of land owners in the RDT Zone have used the Tot Lot provision to create subdivided lots for the sole purpose of sale on the open market. Some of these transactions have flagrantly ignored the purposes of that particular provision in the Zoning Ordinance.

In some cases, the land owner has complied with the letter but not the spirit of the law and have avoided compliance by apparently misrepresenting their intentions to the Montgomery County Planning Board and the applicable County agencies.

For example:

In 1998, two Tot Lots were created on a farm west of Poolesville, and immediately sold on the open market as building lots.

In 1999, a land owner near Barnesville created children's lots by asserting that he jointly owned the land with a sibling (thus making use of two families' headcount of children), and even *before the preliminary plan of subdivision was finally approved by the Montgomery County Planning Board*, began marketing the Tot Lots through a real estate broker as a residential subdivision. To the best of our knowledge, none of the children for whom those Tot Lots were approved ever took title to the land, much less built a residence, or lived in any residence in that subdivision, and all of the lots and houses are now owned and occupied by unrelated persons.

A farming family obtained subdivision approval incorporating three Tot Lots near Beallsville on or about 2003. By that date, some staff of the Planning Board had at least become aware of the continuing pattern of abuse of the Tot Lot privilege, and asked

outright of the property owner if the lots would be used for a residence of his children. The landowner actually flat out refused to answer that question. Nevertheless, the Planning Board went ahead and approved the subdivision. The Planning Board, in order to approve any Tot Lots, really must make an affirmative finding that such lots "are created for use for a one-family residence by a child, or spouse of a child, of the property owner .....", as required by Section 59-C-9.74.(b) of the Code. If the landowner actually refused to provide evidence of the purpose of the Tot Lots, ***how on God's green earth could the Planning Board have approved that subdivision?***

This is not rocket science. It's the application of clear and unambiguous law and, for that matter, plain common sense.

2. Unlawful Increase in Density. **This second issue is, by far, the more pressing concern. It requires no interpretation of Legislative intent. It requires no Zoning Text Amendment. It requires no adoption of Rules of the Planning Board. It requires no future enforcement action. It only requires the plain application of existing law in the approval of any subdivision incorporating Tot Lots.**

This issue relates to the fact that Tot Lots consistently have been ignored in the past in the Planning Board's and Staff's calculation of total density in connection with subdivisions in the RDT Zone. For reasons that appear to be totally unjustified and with no basis in law, the Planning Board has routinely *excluded* Tot Lots from the maximum density calculations in reviewing plans of subdivision which include other lots for development and sale.

Under the existing ordinance, a 100 acre parcel of vacant property could yield a maximum of 20 Tot Lots (1 per Development Right or every 5 acres). That's not necessarily desirable, but a correct application of the current law.

Let's say, for example, a property owner has 8 children and 100 vacant acres. 8 Tot Lots could be created (1 per 12.5 acres), 200% of the Regular Density. 8 TDRs used, 12 remaining for sale. No additional subdivision should be allowed.

But wait, under prior opinions of the Planning Board, the Tot Lots have not been included in calculating the total density of the subdivision. IN OTHER WORDS, IT IS AS IF THE TOT LOTS DID NOT EXIST. That misplaced application of the law means an additional 4 lots could be created for sale pursuant to the Regular Density, thereby increasing the total lots to 12 (1 per 8.33 acres), and the total density to 300% of that normally allowed.

It is not subject to any serious debate that the existing provisions of the Zoning Ordinance allow Tot Lots created to exceed the otherwise maximum density in the RDT zone. The troubling question is: How can the Planning Board and its staff basically ignore the existence of those Tot Lots in connection with even further development?

What is the basis for excluding those Tot Lots from the maximum allowable density in connection with further development of property? Under existing law, there is no basis whatsoever.

Notwithstanding what appears to be clear and unambiguous language of the Zoning Ordinance, the Montgomery County Planning Board continues to approve plans of subdivision which include Tot Lots, and simply ignore and exclude those Tot Lots from density calculations. On the basis of the plain language of the law, Tot Lots may be created smaller in area and dimensions than what is required under the applicable provisions of the RDT Zone, (provided they adhere to prior zoning requirements applicable to the subject property), but it does not, should not have in the past, and definitely should not in the future, serve to undermine or alter the maximum density available to the property owner in the RDT Zone in connection with further development, as set forth quite clearly in Section 59-C-9.41. The property owner is afforded the *privilege* of an increase in allowable density for Tot Lots. The property owner is not afforded *any more* over and above that.

It is, after all, an accommodation, an exception, an aberration, and a privilege afforded by the District Council in its wisdom to long time property owners to maintain the family unit on the family property. It *is not and never has been* some vested right in landowner to line their pockets at the expense of the intent of the Zoning Ordinance and Master Plan.

Conclusion & Requested Relief

Property in the Agricultural Reserve no doubt is becoming more valuable every day, and always will attract questionable, and sometimes even attempted unlawful actions, by a few landowners attempting to "push the envelope" to its absolute maximum. Obviously, this is a problem not unique to the Reserve.

While this organization, when we first began to carefully examine these continuing abuses, considered that a Zoning Text Amendment may be required in order to address this matter, we have now come to the conclusion that, at a minimum, the enforcement of the plain meaning of the existing law would, by itself, go quite a long way to protect the Agricultural Reserve as it relates to these "Tot Lots", at least with regard to total density as it relates to other lots to be created. Such a common sense interpretation and application will serve the purposes of the law, (e.g., provide long time property owners with the opportunity to create residential lots for children under prior zoning regulations), and at the same time discourage the continued abuse of the law, (e.g., remove to a certain extent the economic incentive to market those lots to the general public by enforcing across the board the maximum density allowed in the RDT zone).

In the grand scheme of things, it really should not be that difficult to adopt standards and strict rules regarding Tot Lots without the necessity of a Zoning Text Amendment. Common sense application and enforcement of existing law could include, at a minimum:

1. Require affidavits from the property owner(s) and children to the effect the Tot Lots are being created "for use for a one-family residence by a child, or spouse of a child" in connection with approval of a plan of subdivision, (which, after all, only quotes the Zoning Ordinance provision granting the privilege which the landowner seeks to invoke in the first instance);

2. Require a notation to that effect on the recorded Plat of Subdvision (which, after all, the Planning Board previously required at least as recently as the 1980s); and

3. Require a minimum residency requirement for a period of time before a Tot Lot may be sold outside of the family, only to be waived by the Planning Board during that time for good cause, i.e., death, foreclosure, etc.

With regard to number 3 above, some may question whether there is sufficient authority to impose such a condition. But that is exactly the type of condition imposed by the Maryland Agricultural Land Preservation Foundation in connection with Tot Lots created on property subject to an easement pursuant to that State Program. While COMAR Section 15.15.01.17.B(c) grants the authority to the Foundation to approve a Tot Lot provided "... that the lot and the dwelling house are only for the use of the landowner or the landowner's children . . ." (sound familiar?), the State law and regulations provide no more guidance nor express authority to the Foundation. Nevertheless, the Foundation, applying more than a little bit of common sense, typically requires a minimum 5 year residency requirement before such a residential lot for a child may be sold or transferred.

The time has come for Montgomery County and the Planning Board to apply a little bit of common sense of its own in protecting, preserving, and furthering the obvious intent of the privilege of Tot Lots granted under the Zoning Ordinance.

Perhaps a Zoning Text Amendment with more definitive restrictions is required if the existing plain language of the law simply cannot be adequately applied and enforced. Or perhaps the Tot Lot provisions should just be done away with altogether, as some elected and appointed officials have actually suggested in the past. But we believe the latter would be truly unfortunate, because, as set forth above, the Tot Lot provisions serve a very worthy purpose, so long as they are appropriately applied in the circumstances to which they were intended to apply, and thereafter adequately enforced. Our greatest fear is that the District Council will simply throw up its hands up in frustration and just do away with these exceptional provisions altogether, thereby denying legitimate long time farm families with legitimate concerns the opportunity to further enjoy these provisions.

That would be truly unfortunate.

And there simply is no reasonable fashion that the Zoning Ordinance can be interpreted to exclude Tot Lots from the total mix of density at the time of simultaneous or future subdivision which creates additional lots for sale.

We recognize, of course, that the Planning Board has seen fit to apply some type of administrative interpretation that apparently is at odds with this analysis. And we also recognize that administrative interpretations generally are entitled to some degree of deference.

However, any such interpretation, no matter how strained, must be based on some language of the law to justify that position. Such language just doesn't exist here. In fact, at least with regard to the density issue, prior actions of the Planning Board do not appear to be based on any 'interpretation'; but rather, and with all due respect to the Planning Board and its Staff, more akin to basic ignorance of the actual language of the Zoning Ordinance. And the District Council, the legislative body, certainly should know what it meant by its legislation, and owes no deference to a misplaced administrative interpretation of its own words.

As a matter of public urgency, the responsible officials, including the office of the County Attorney and Counsel for the Montgomery County Planning Board, must immediately provide competent guidance on the scope, meaning and enforceability of the "Tot Lot" provisions of the law, not only with regard to the RDT Zone, but with regard to other zoning classifications as well. This should not take a long investigation. It is simply a matter of reading the plain language of the law and enforcing the same, which has been severely lacking over the past two decades. If it is determined that a Zoning Text Amendment is advisable to provide clarification, then the same should be immediately prepared and forwarded to the District Council for prompt consideration.

Obviously, the requested action to remedy this problem would have no effect on those subdivisions abusing the Tot Lot privilege that may have been previously approved. The requested action will, however, serve to prevent future abuses. At least an earnest effort to apply and enforce the existing law and its intent will be far better than the previous pattern of simply, for all intents and purposes, ignoring the same.

Perhaps this continuing abuse of the law has been brought to the forefront by recent problems associated with the developments in other areas of the County. It is unfortunate that this matter is one more issue to deal with, but it is an issue that cries out for immediate attention and resolution. These Tot Lot abuses have been going on for far too long, and are only increasing in frequency as the pressure for development in the RDT zone increases.

The concerns of those persons, including representatives of this organization, who have appeared and testified at public hearings on subdivision applications incorporating Tot Lots before the Planning Board to date seem to have fallen largely upon deaf ears. In the past, maybe we were not detailed enough in the presentation of our concerns in order for the Planning Board to fully appreciate them.

Hopefully, this admittedly lengthy, but absolutely necessary document, will remedy any prior oversight on our part. It is long overdue.

Respectfully, the time also is long overdue for the Planning Board to remedy its respective oversights regarding this issue. Any remedy probably cannot change that erroneously approved before. That is done and over with. But, the Planning Board can immediately begin applying the plain language of the Zoning Ordinance to further its obvious intent and, we submit, applying at least a modicum of common sense to the application of that law.

That really is not too much to ask.

Attachment D

AGENCY LETTERS

DEPARTMENT OF PUBLIC WORKS
AND TRANSPORTATION

Douglas M. Duncan
County Executive

Arthur Holmes, Jr.
Director

September 9, 2005

Ms. Catherine Conlon; Acting Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-04064
Ganassa Property

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated March 2003. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to MCDPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Show all existing planimetric and topographic details (paving, storm drainage, driveways adjacent and opposite the site, sidewalks and/or bikeways, bus stops, utilities, etc.) as well as existing rights of way and easements on the preliminary plan.

2. Necessary dedication for widening of Halterman in accordance with the master plan. The applicant controls the property on both sides of the road through the area proposed to be developed by this plan. Therefore the applicant should dedicate the full sixty (60) foot wide right of way.

3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.

4. Wells and septic systems cannot be located within the right of way nor slope or drainage easements.

5. The sight distances study has been accepted for lots 2 through 6. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.

6. Prior to MCDPS approval of the record plat, the applicant will need to submit an updated Sight Distances Evaluation certification form, for the proposed driveway(s) serving lots 1, 7 and 8, which indicates tree trimming and/or removal has been completed to achieve a minimum of two hundred (200) feet of sight distance in each direction.

   Tree removal/trimming along existing public rights of way is to be coordinated with the State Forester's Office of the Maryland Department of Natural Resources. They may be contacted at (301) 854-6060.

7. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.

8. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.

9. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Patrick Bradley of our Traffic Control and Lighting Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.

10. Trees in the County rights of way - species and spacing to be in accordance with the applicable MCDPWT standards. A tree planting permit is required from the Maryland Department of Natural Resources, State Forester's Office [(301) 854-6060], to plant trees within the public right of way.

11. Permit and bond will be required as a prerequisite to MCDPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:

A. On Halterman Road, widen the existing pavement to twenty (20) feet, construct sod shoulder seven (7) wide, construct parallel and adjacent side drainage ditch, plant street trees, and grade back to natural ground at a 2:1 slope*. Sod or seed as directed all other areas from the edge of the shoulder to the property line. The drainage ditch on the southeast side of Halterman Road may be omitted until such time as development is proposed on that side of the road. The improvement should continue a reasonable distance past the common driveway for lots 3 through 6 (the driveway may need to be shifted to the northeast to stay within the applicant's controlled property.

* **NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1.**

B. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.

C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Montgomery County Department of Permitting Services (MCDPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the MCDPS.

D. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDPWT Division of Traffic and Parking Services.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please call me on (240) 777-2190 or email me at jeff.riese@montgomerycountymd.gov.

Sincerely,

Gregory M. Leck, Manager
Traffic Safety Investigations
and Planning Team
Traffic Engineering and Operations Section

m:/subd/gml/prel/104064gannasa

Enclosures (2)
cc: Bill Wirtz; Tri-County Surveys
Tony and Vera Ganassa
Joseph Y. Cheung; MCDPS Subdivision Development
Christina Contreras; MCDPS Subdivision Development

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Department of Park & Planning, Montgomery County, Maryland
8787Georgia Avenue, Silver Spring, Maryland 20910

MEMORANDUM

TO: Cathy Conlon, Supervisor, Development Review

FROM: Mark Pfefferle, Planning Coordinator, Environmental Planning MP

DATE: December 27, 2005

SUBJECT: Preliminary Plan 120040640
Ganassa Property

The Environmental Planning staff has reviewed the preliminary plan referenced above. Staff recommends approval of the preliminary plan of subdivision with the following conditions:

1. Compliance with the conditions of approval of the preliminary forest conservation plan approved by Environmental Planning staff on December 23, 2005.

2. If any house on lots 2 through 7 is sited within 50 feet of an unforested portion of the proposed forest conservation easement a two-rail permanent split rail fence must be erected along the conservation easement boundary.

3. Imperviousness for the site not to exceed 10 percent of the total tract area.

BACKGROUND

The 81-acre property is located on the west side of Halterman Road east of Damascus, Maryland. The property currently includes one single-family residence, farm buildings, lawn, pasture, and woodlands. There is 21.35-acres of existing forest on the property. The site includes a stream flowing south to north, associated floodplains, and wetlands. The application proposes to retain the existing farmhouse and farm support buildings and create 7 new lots, which includes 5 child lots. The existing house is located at 24250 Halterman Road. The entire property is within the Upper Patuxent River watershed and is zoned rural density transfer.

Forest Conservation

There is 21.35 acres of existing forest on the property. There are 5 distinctive forest stands on the subject property. All stands have good forest structure value and are of mixed age but suffer from excessive invasive growth in the understory. Chestnut oaks, tulip trees, and red maples dominant the forest stand canopies.

The applicant has submitted an agricultural declaration of intent for 27.8-acres of the 39-acre lot 1. The 11.2 acres not included in the agricultural exemption is forest. The Agricultural Declaration of Intent reduces the net tract area from 81.7 acres to 53.9 acres. Section 22A-12(f)(2)(A) of the Montgomery County code states "in an agricultural and resource area, on-site forest retention must equal 25% of the net tract area". Since this property is zoned RDT the forest conservation plan must comply with this section of the Montgomery County code. The applicant is proposing to preserve all 21.35 acres of existing forest and to place this forest into a category I forest conservation easement. This corresponds to approximately 40 percent of the net tract area and exceeds the requirements established by this section of the Montgomery County code.

Environmental Buffers

The site includes 30.45-acres of environmental buffers on the subject property (26.05-acres of stream buffers and 4.5-acres of wetland buffers). There is also a farm pond in the middle of the subject property. It is the applicant's intent to completely lot out the subject property and to retain lot 1, where the existing house is located, as the farm lot. Proposed lots 1, 6, 7, and 8 will have on lot forest conservation easements. All environmental buffers on lots 6, 7, and 8 will be included in a category I forest conservation easement. Only the forested portions of the environmental buffers on lot 1 will be in a forest conservation easement. Lots 2, 4, and 5 will border environmental buffers, but the environmental buffers will not be protected by a forest conservation easement. The non-forested portions of lot 1 are included in the Agricultural Declaration of Intent. The preliminary plan of subdivision does not indicate any encroachment into the environmental buffers except for the continuation of the agricultural activities.

Imperviousness

The subject property is located in the Patuxent River Primary Management Area (PMS) and is subject to 10 percent impervious limitation. The applicant's preliminary plan of subdivision shows an imperviousness rate of less than 5 percent. The preliminary plan of subdivision meets the 10 percent impervious limitation.

RECOMMENDATION

Environmental Planning recommends approval of the preliminary plan of subdivision with the conditions stated above.

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

March 12, 2004

Robert C. Hubbard
Director

Mr. Bill Wirts
Tri County Surveys Inc.
9350 Reichs Ford Road
Ijamsville, MD 21754

Re: Stormwater Management ***CONCEPT*** Request
for Ganassa Property
SM File #: 211529
Tract Size/Zone: 81.72/RDT
Total Concept Area: 7ac
Lots/Block: 1-8/
Watershed: Upper Patuxent

Dear Mr. Wirts:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and onsite recharge via the natural area conservation credit and the disconnection of rooftop and non rooftop runoff credits. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.

2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.

3. An engineered sediment control plan must be submitted for this development.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The **concept** approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

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If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-6309.

Sincerely,

Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm CN211529

cc: M. Shaneman
S. Federline
SM File # 211529

QN –ON SITE; Acres: 44.5ac
QL – ON SITE; Acres: 44.5
Recharge is provided

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

MEMORANDUM

May 4, 2005

TO: Maryland-National Capitol Park and Planning Commission
Attn: Richard Weaver, Dev. Review

FROM: Robert Hubbard, Director
Department of Permitting Services

SUBJECT: Status of Preliminary Plan: # 1-04064, Ganassa Property

Lots 1 thru 8, outlot A

This is to notify you that the status of the above named subdivision plan which was received in this office on January 25, 2005 is as follows:

Approved with the following reservation:

1. Record plat must be at the same scale as the approved preliminary plan or provide a certified film positive of the record plat at the preliminary plan scale.
2. All lots approved for a maximum of six (6) bedrooms.

If you have any questions, contact Gene von Gunten at 240-777-6319.

GVG: gvg/sdapproval.doc

cc: Owner
Surveyor
File

1-04009

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

July 26, 2005

Mr. William Wirts
Tri-County Surveys, Inc.
P.O. Box 55
Damascus, MD 20872

Re: Montgomery County
MD 108
Ganassa Property

Dear Mr. Wirts:

The State Highway Administration (SHA) would like to thank you for the opportunity to review the materials submitted for the proposed driveway location for the Ganassa Property on MD 108. We have completed our review and offer the following comments:

- The newly proposed driveway location meets stopping sight distance requirements for the design speed of 60 MPH. It also meets the intersection sight distance requirements for the posted speed limit (50 MPH) along MD 108. SHA will accept the revised driveway location for the proposed Ganassa Property.

- Access to this property is subject to the "Rules and Regulations" of this Administration with a permit issued by our District 3 Utility Engineer for (1) one 20' residential driveway, necessary grading, and utility relocation to accommodate intersection sight distance. Please contact Mr. Augustine Rebish, District 3 Utility Engineer @ 301-513-7350 for permitting requirements.

- A copy of the plans should be provided to the District office along with a sight distance profile signed and sealed by a professional engineer or professional land surveyor denoting the obstructions to be removed and grading necessary to achieve the necessary sight distance measurements.

If additional information is required from SHA regarding this project, please do not hesitate to contact Mr. Gregory Cooke at 410-545-5602, Mr. John Borkowski at 410-545-5595, or by using our toll free number in Maryland only, 1-800-876-4742 (x-5602 for Greg, x-5595 for John). You may also E-mail Greg at gcooke@sha.state.md.us or John at jborkowski@sha.state.md.us. Thank you for your cooperation.

Very truly yours,

for Steven D. Foster, Chief
Engineering Access Permits Division

SDF/jb

cc: Mr. Darrell Mobley (Via E-mail)
Mr. Augustine Rebish (w/copy of package)

MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Douglas M. Duncan
County Executive

November 22, 2005

Thomas W. Carr, Jr.
Fire Chief

Ms Catherine Conlon
Development Review Division
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Ganassa Property
Preliminary Plan 1-01064

Dear Cathy:

Fire Code Enforcement has reviewed the proposal prepared by Mr. William Wirts, Tri-County Surveys, Inc. regarding the two private drives that will serve a total of seven homes on the Ganassa Property. Mr. Wirts' originally proposed a 12-foot wide drive with 2-foot shoulders, pull-offs at 1000-foot intervals, and 60-foot hammerheads at each terminus. This proposal does not meet fire department access requirements.

I discussed this with Mr. Wirts on November 22, 2005 and he will amend the plans to show 20-foot wide gravel drives, no pull-offs, and the hammerheads will remain unchanged. These revisions will meet our requirements for fire department access.

If you have any questions, please do not hesitate to contact me at (240) 777-2470.

Sincerely,

Michael A. Donahue, Battalion Chief
MCFRS Fire Code Enforcement

RECEIVED
NOV 30 2005
DEVELOPMENT REVIEW DIVISION

cc: Mr. William Wirts, Tri-County Surveys, Inc.
file

c:\memoranda\ganassa drive approval

Office of Fire Code Enforcement
2255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850-2589 240/777-2457 FAX 240/777-2465

Serving with dedication, courage and compassion

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