



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
2/21/08



MEMORANDUM

DATE: September 21, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *OK*
Development Review Division

Catherine Conlon, Supervisor *CA*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RAW*
Development Review Division

REVIEW TYPE: Pre-preliminary Plan Review

APPLYING FOR: Minor subdivision of 2 lots (2 Child Lots)

PROJECT NAME: Bruchie Farm

CASE #: 720020410

REVIEW BASIS: Chapter 50, Section 50-35A(a)(8), Montgomery County
Subdivision Regulations

ZONE: RDT

LOCATION: Located on the northeast side of Browns Church Road,
approximately 2000 feet southeast of the intersection with Ridge
Road (MD 27)

MASTER PLAN: Damascus

APPLICANT: Virginia D. Bruchie c/o Allen Haines

ENGINEER: Macris, Hendricks and Glascock

FILING DATE: January 18, 2001

HEARING DATE: February 21, 2008

STAFF RECOMMENDATION: Approval of one lot for one one-family residential dwelling for the child of the property owner, subject to the following conditions:

- 1) The approval is limited to 1 residential lot. The Applicant must revise the pre-preliminary plan drawing prior to certification to remove one of the proposed lots. Whichever lot is recorded by plat must be of the same size and configuration as shown on the pre-preliminary plan dated January 2002, and revised December 10, 2007.
- 2) The Applicant must revise the proposed Forest Conservation Plan in accordance with Condition #1 and resubmit for staff review and approval. The applicant must comply with the conditions of the Final Forest Conservation Plan. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The Applicant must comply with the conditions of the MCDPS Well and Septic approval dated August 24, 2006.
- 4) Access and improvements as required by the Montgomery County Department of Public Works and Transportation (MCDPWT) to be approved prior to the recordation of plats.
- 5) The Applicant must provide proof and an affidavit to verify the availability of a TDR for the proposed lot with the plat application. The record plat must include a note referencing the affidavit.
- 6) The record plat must reflect a Category I conservation easement over all forest conservation areas and a Category II easement on the tree save areas on the approved lot.
- 7) The applicant must record a covenant that verifies that density has been removed from the parent tract (farm remainder) for the lot.
- 8) Other necessary easements must be shown on the record plat.

I. SITE DESCRIPTION

The 53.56-acre Bruchie Farm property ("Subject Property" or "Property"), shown below and on the vicinity map in Attachment A, is located on the northeast side of Browns Church Road, approximately 2000 feet southeast of the intersection with Ridge Road (MD 27). The Rural Density Transfer (RDT) zoned Property is within the Damascus Master Plan area and currently contains a one-family detached residence, farm tenant house, farm buildings, lawn, pasture, and forest. The property abuts State of Maryland parkland to the north and south, Howard County (low density residential) to the east and residential (RDT) to the west.

The Property is within the Patuxent River watershed (Use Classification IV-P), which is the primary tributary to the two, WSSC, drinking-water supply reservoirs in the eastern part of the county. The Property is also within the Patuxent River Primary Management Area (PMA). The main stem of Patuxent River flows along the northeastern boundary of the Property and a small tributary to the Patuxent runs through the middle of the site. The stream valley of this tributary is forested as is the eastern most corner; open agricultural fields dominate the upland portions of the site.



II. PROJECT DESCRIPTION

The pre-preliminary plan proposes to create two “child lots” through the minor subdivision process, pursuant to Section 59-C-9.74(b)(4) of the Montgomery County Code (Attachment B). Proposed lot sizes are 1.2, and 1.8 acres, respectively. The existing residential dwelling, tenant house and farm structures are retained on the remaining ± 50.0 acres of the property, which will remain an unplatted parcel. The proposed lots front on to Brown Church Road, and will access Brown Church Road with a separate driveway serving each house.

The vast majority of existing forest and stream buffer areas are within the remaining farm parcel. Each lot contains a small amount of tree cover adjacent to forest on State of Maryland property. Most of the area containing prime agricultural soils will be within the remaining farm parcel. Both lots, and the farmhouse and tenant house, have recently approved standard trench septic areas.

III. ANALYSIS AND FINDINGS

A. Compliance with RDT Density and Minor Subdivision Requirements

Density Permitted in the RDT Zone

In order to approve the proposed lots, the Board must find that they conform to the requirements of the RDT zone. According to Section 59-C-9.41, the base density of the RDT zone is limited to one one-family dwelling unit per 25 acres, except that certain dwelling units are excluded from this calculation provided they are accessory uses to a farm. The section states:

“59-C-9.41. Density in RDT zone.

Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined in section 59-A-2.1, title “Definitions.”
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of division 59-G-1 and 59-G-2.”

The provisions of the zone also include exemptions for certain lots and parcels as contained in Section 59-C-9.74. This section states:

“59-C-9.74. Exempted lots and parcels – Rural Density Transfer zone.

- (a) The number of lots created for children in accordance with the Maryland Agricultural Land Preservation Program must not exceed the development rights assigned to the property.
- (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.
 - (1) A recorded lot created by subdivision, if the record plat was approved for recordation by the Planning Board prior to the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (2) A lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (3) A record lot having an area of less than 5 acres created after the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone by replating 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.
 - (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."

The subject application proposes to create child lots pursuant to Section 59-C-9.74(b)(4), however, the proposed density exceeds what is permitted in Section 59-C-9.41. As previously interpreted, the child lot provision of Section 59-C-9.74(b)(4)(iii) was used to justify creation of child lots in addition to any market lot(s) that could be created under Section 59-C-9.41. The Planning Board, however, has made clear in more recent discussions on this topic, that, in their opinion, the fact that each child lot requires the use of a development right does not justify creating any lots, child or market, in excess of the base density of the zone.

STAFF'S POSITION

A plain reading of the Section 59-C-9.41 RDT density provisions does not support creation of child lots in excess of the one dwelling unit per 25-acres density limit. Absent a decision by the District Council to change the language of the zone as part of the pending zoning text amendments, staff does not believe child lots should be created in excess of base density. Staff, therefore, recommends approval of only one of the two proposed child lots. Staff supports Lot 2, as shown on the plan, because its septic reserve area is located partially on the lot. Staff further believes that this lot better minimizes impact to the scenic vista. However, as discussed below, either of the proposed lots would be acceptable.

Minor Subdivision Requirements

The proposed lots are requested pursuant to Section 50-35A(a) of the Subdivision Regulations. Section 50-35A(a)(8) establishes the ability to plat up to five (5) lots in the RDT zone through the minor subdivision process after Planning Staff or Planning Board approval of a pre-preliminary plan, and if the application meets the following criteria:

- a. Written approval for a proposed septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section prior to recordation of the plat;
- b. Any required street dedications along the frontage of the proposed lot(s) must be shown on the record plat;
- c. An easement must be recorded for the balance of the property noting that density and TDRs have been utilized for the new lots. Reference to this easement must be reflected in the record plat for the lots;
- d. Lots created in the RDT zone through the minor subdivision procedure must not exceed an average lot size of five (5) acres in size unless approved by the Planning Board in the review of a pre-preliminary plan of subdivision; and

- e. Forest conservation requirements must be satisfied prior to recording of the plat.

The proposed 2 lot application meets the specific minor subdivision requirements cited above. MCDPS Well and Septic Section has approved standard septic systems and well locations for both proposed lots. Compliance with the right of way dedication requirements would, as a matter of process, be reviewed by the Department of Public Works and Transportation at the time of record plat. Recordation of an easement noting the use of any TDR from the parent parcel is a condition of approval, and neither of the proposed lots exceed five acres in size. A forest conservation plan has been approved for the Property which will have to be amended prior to record plat if the Board approves staff's recommendation and only one of the proposed lots created.

The application does not, however, meet the following general minor subdivision requirement that applies to all minor subdivision applications as found in Sec. 50-35A(b)-(e). Section 50-35A(d) states:

- “(d) Any lot created through the minor subdivision process and any lot replatted as part of a minor lot line adjustment must satisfy all applicable zoning requirements as contained in Chapter 59 of this Code.”

As discussed above, the application as proposed with 2 child lots does not satisfy all zoning requirements, and therefore, does not meet the Section 50-35A(d) requirement for minor subdivision. Creation of only one lot, however, will satisfy all the minor subdivision requirements.

B. Conformance to the Master Plan

The Damascus Master Plan includes the following language and recommendations related to areas that are zoned Rural Density Transfer (RDT):

Rural Density Transfer Area (ppg. 32-34 Damascus Master Plan)

This Master Plan confirms and retains the existing boundaries of the Rural Density Transfer (RDT) Zone in Damascus with minor modifications in Browningsville, Etchison and Purdum. This Plan supports agriculture and agriculturally related businesses. Agriculture is evolving in Montgomery County, and this Plan supports programs that encourage emerging and evolving types of agriculture. As stated in the 1993 Refinement to the General Plan: Agriculture is a dynamic industry whose success depends upon the ability to adapt to market forces. In addition to continued traditional farming, some transition to non-traditional farming practices is expected. Some fields that once grew corn and wheat may well be planted with fruits, berries, and vegetables to serve the regional market place. Greenhouses, hydroponic farms, and other intensive farming techniques may be more prevalent in the future as the industry responds to changing market needs, preferences, and policies. This Plan supports

programs, practices and regulatory changes necessary to ensure the continued evolution of sustainable agriculture and agriculturally related uses. To further that goal, this Plan supports additional guidance for residential development in the RDT Zone, an issue of concern from agricultural preservation and rural character perspectives. Creative land use will foster the preservation of both farmland and rural character. These standards reflect goals for residential uses in the Agricultural Reserve that protect the potential for agriculture—the primary intent of the zone. Putting a greater priority on the preservation of open, contiguous farmland is a primary goal of any reform of subdivision in the RDT Zone. In preserving rural character and open vistas of farmland and open spaces, lot size is usually less of a determinant than placement of home building sites. With appropriate tools and incentives in place, arable land and vistas may be more easily preserved by the creative use of easements or by creating non-buildable out-lots than through either clustering or large lot development.

This Plan recommends a land conservation approach for residential development in the RDT Zone properties in Damascus. The guidelines encourage either small lot clusters, non-buildable out-lots, or creative homesite placement with overlay easements to preserve contiguous fields, important vistas, or environmentally sensitive features. The guidelines encourage creative development patterns that preserve both open contiguous fields and forests, and the preservation of rural character. Large contiguous areas of prime and productive farm fields have the greatest potential for continuing agricultural production. The guidelines are primarily intended for subdivisions creating five or more lots and on properties of 100 or more acres.

Development Guidance - Agricultural Conservation Standards for Residential Development in the RDT Zone:

- The use of cluster, out-lot, or easement methods is encouraged to preserve contiguous fields and forest, while providing increased flexibility in lot layout and allowing the density permitted in the zone. Large lots should be avoided unless conservation or other protective easements are used to designate and protect farm fields, environmental resources, or other open space.
- If common open space is identified for conservation, the preliminary plan must include a description of the intended use and a plan for maintenance of the common open space. Areas reserved for conservation should be recorded on the plan of development as either a separate parcel, non-buildable outlot, or easement on the residential lot or lots. The designated area must be clearly delineated and the easement noted on the record plat in the land records of Montgomery County.
- The location of building sites and roads should further the preservation of prime and productive farm fields, environmentally sensitive areas, scenic vistas, and rural character to the extent allowed by the need to accommodate waste treatment.

- *Residential development should be designed to reduce the potential for conflict between the residential and the agricultural uses within the development and in relation to existing uses on adjoining tracts. Substantial setbacks can provide buffers between designated agricultural areas and any existing residential buildings on adjoining property, and between designated or existing offsite agricultural areas and planned housing sites.*
- *Development design should first identify important resources and related buffer areas that need to be preserved, including location of prime and productive soils. When determining the location of building sites, the identified resources should be avoided to the greatest possible extent.*

The design of the road network should consider the following:

- *Limit physical impact on the natural and historic environment, and avoid extensive cutting through wooded areas.*
- *Respect the contours of the land and avoid cross slope routes.*
- *Protect rural vistas by preserving existing woodland buffers to the extent safety considerations allow.*
- *Placement of building sites should consider the preservation of rural vistas and the preservation of contiguous open fields.*

It is evident that the master plan places a premium on situating homesites so as to preserve the maximum amount of agricultural land, to preserve scenic vistas, limit impact to historic and environmental resources and to minimize conflict with agriculture. In staff's opinion, either proposed lot satisfies the specific Development Guidelines in the Master Plan. A lot in either location will leave wide open vistas along the road down into the agricultural fields and forested area. Both are as small as reasonably possible at 1.2 acres and 1.8 acres. One septic area is located entirely on the farm remainder in easement; the other is partially on the farm remainder in easement, thus either minimizes lot size and promotes continuation of the agricultural uses. Septic easements can continue to be farmed. Further, either lot would be located to the side of the open agricultural areas to minimize impact on the agricultural fields and neither require the removal of any trees.

Parks

The Damascus Master Plan identifies this Property as within the "desire" line for State Park acquisition along the Patuxent River. Staff is of the opinion that approval of one lot will not preclude eventual acquisition by the State, nor does it compromise the intent of the State to acquire forested properties along the River, for purposes of water quality protection. Neither of the two lots is within forest or would result in tree loss. The State remains in a position to negotiate for the Property should the Board approve this application.

Agricultural and Rural Opens Space Master Plan (AROS)

The property also falls within the Agricultural Reserve area described in the AROS plan. The plan describes the Reserve as area that "includes the majority of the remaining working farms, as well as other land uses that will serve to define and support those working farms" (p. 38), and as areas that "contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass" (p. 41). The plan recommends RDT zoning and transfer of development density to help preserve farmland and farming in these areas. The purpose clause of the RDT zone also speaks to this intent:

*"The intent of this zone is to promote agriculture as the primary land use * * *. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to designated receiving areas. * * * Agriculture is the preferred use in the Rural Density Transfer zone."*

In staff's opinion, approval of either of the proposed lots will adequately preserve agricultural uses on the Property in conformance with the AROS Plan. The existing farm operations involve hay production and pasturing of horses. The farm remainder parcel contains the majority of the overall acreage and the vast majority of existing agricultural fields. Either lot is the smallest that can reasonably be expected on this Property. The location and size of either lot should not hamper the agricultural uses on the Property.

C. Environmental Review

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), describing the environmental features of the property was approved by Environmental Planning staff on June 11, 2007 (NRI/FSD #4-02235R). This plan indicates that the site includes streams, wetlands, floodplains, forested area and steep slopes. The site is within the Patuxent River watershed and the Patuxent River Primary Management Area. The proposed lots are subject to the requirements of the Forest Conservation Law, and a Forest Conservation Plan has been submitted. The farm parcel remainder has received a forest conservation exemption under a Declaration of Intent to continue agricultural uses.

Environmental Guidelines

The majority of the stream valleys and associated environmental features are located on the proposed farm remainder parcel, and so would not be covered by the Planning Board's *Environmental Guidelines for Development*. Neither of the proposed lots are adjacent to the stream buffers or other environmentally sensitive areas.

Forest Conservation

The Environmental Planning staff has reviewed the submitted Forest Conservation Plan (FCP) for two lots and find that it meets the requirements of the Montgomery County Forest Conservation Law, County Code Chapter 22A. The plan preserves an approximate total of 1,300 square feet of tree cover in Category II easements on portions of both lots adjacent to forest cover in the State Park. In addition, 1.09 acres of high priority forest in the Patuxent River stream valley on the farm remainder would be preserved in a Category I easement to satisfy afforestation requirements for the two lots. A one lot plan will require revision to the submitted FCP and will reduce the overall tree and forest protection requirements.

Patuxent Primary Management Area

The subject property is almost entirely within the Patuxent Primary Management Area (PMA) and is subject to the PMA requirements. One requirement is that overall imperviousness should not exceed 10 percent for the entire site. Another requirement is that septic fields be setback a minimum of 200' from stream channels. The proposed two-lot plan meets these requirements as would a plan that includes only one lot.

IV. CITIZEN CORRESPONDENCE

Written notice of the application and the date of the public hearing were given for this pre-preliminary plan. The applicant (son-in-law of the owner) has submitted a statement of his intent to continue the active farming operations on the Property (Attachment C). The applicant notes that the Property owner's son currently lives on the farm and would be the recipient of one of the two proposed lots. The applicant would be the other recipient and states that he has been engaged in some type of agriculture all of his life. He suggests that he and his wife will live on the farm and support farming operations.

V. CONCLUSION:

The applicant's request for two child lots on the subject property is not in conformance with the requirements of Section 59-C-9.41 of the Zoning Ordinance. The lots are requested pursuant to Section 59-C-9.74(b)(4) of the Zoning Ordinance which exempts certain lots from the area and dimensional requirements of the RDT zone, provided among other things, that the lots are not created in excess of the development rights available on the property. This section has been interpreted in past cases to grant exemption from the RDT zone base density requirement of one dwelling unit per 25 acres, but plain reading of these two sections does not support this interpretation. Staff therefore recommends approval of only one of the proposed child lots with the conditions specified above. One lot, with the farm remainder, would be in conformance with the density limitations of the RDT zone for this 53-acre property. The farm remainder, including the farmhouse and tenant house would continue as an exemption from platting. As discussed above, either of the proposed lots can meet all the

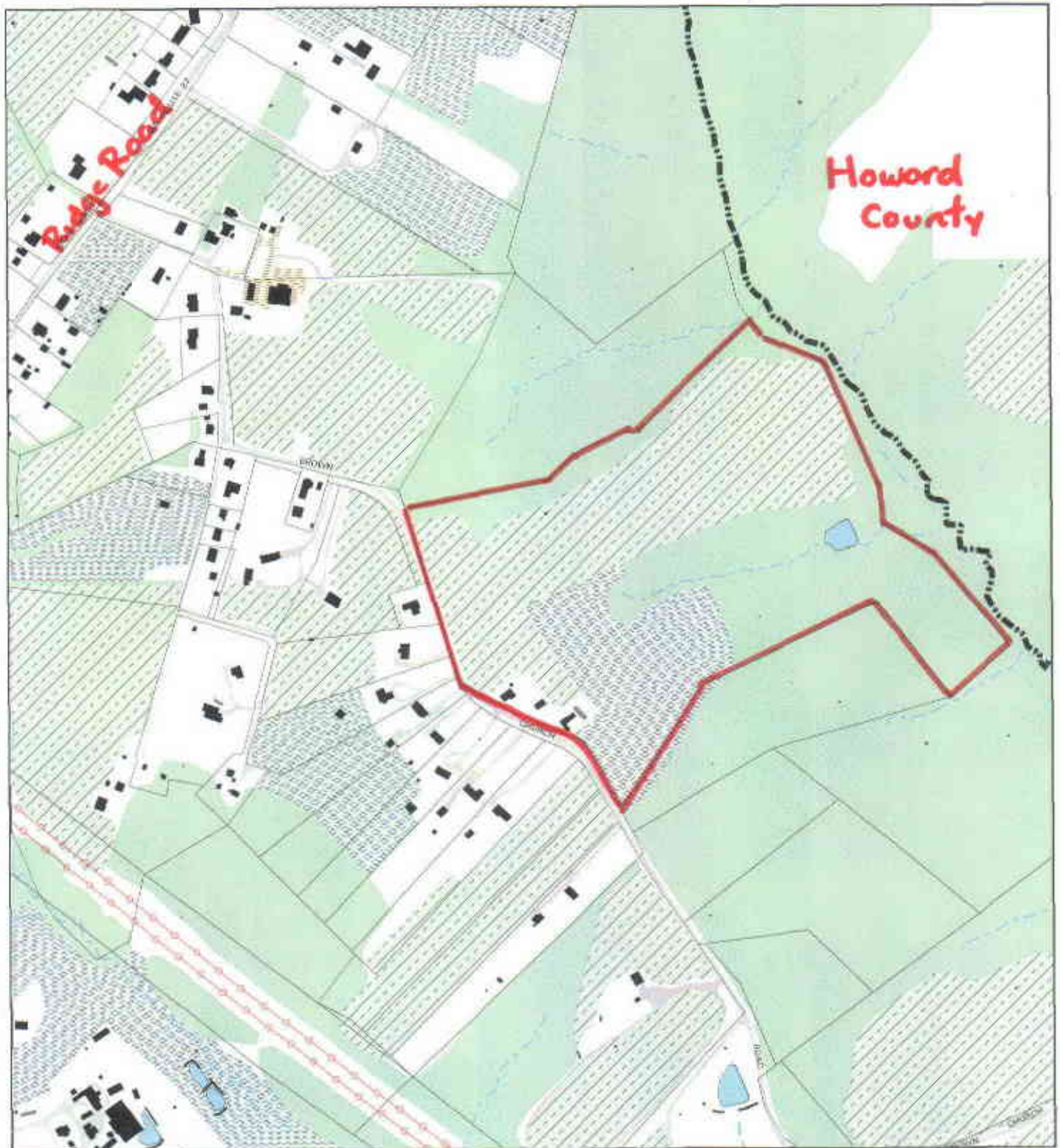
requirements of minor subdivision and would be in substantial conformance with the recommendations of the Damascus Master Plan.

ATTACHMENTS:

Attachment A – Vicinity Map

Attachment B – Pre- preliminary Plan

Attachment C – Applicant's statement



Map compiled on February 11, 2008 at 1:34 PM | Site located on base sheet no - 240NW09

NOTICE

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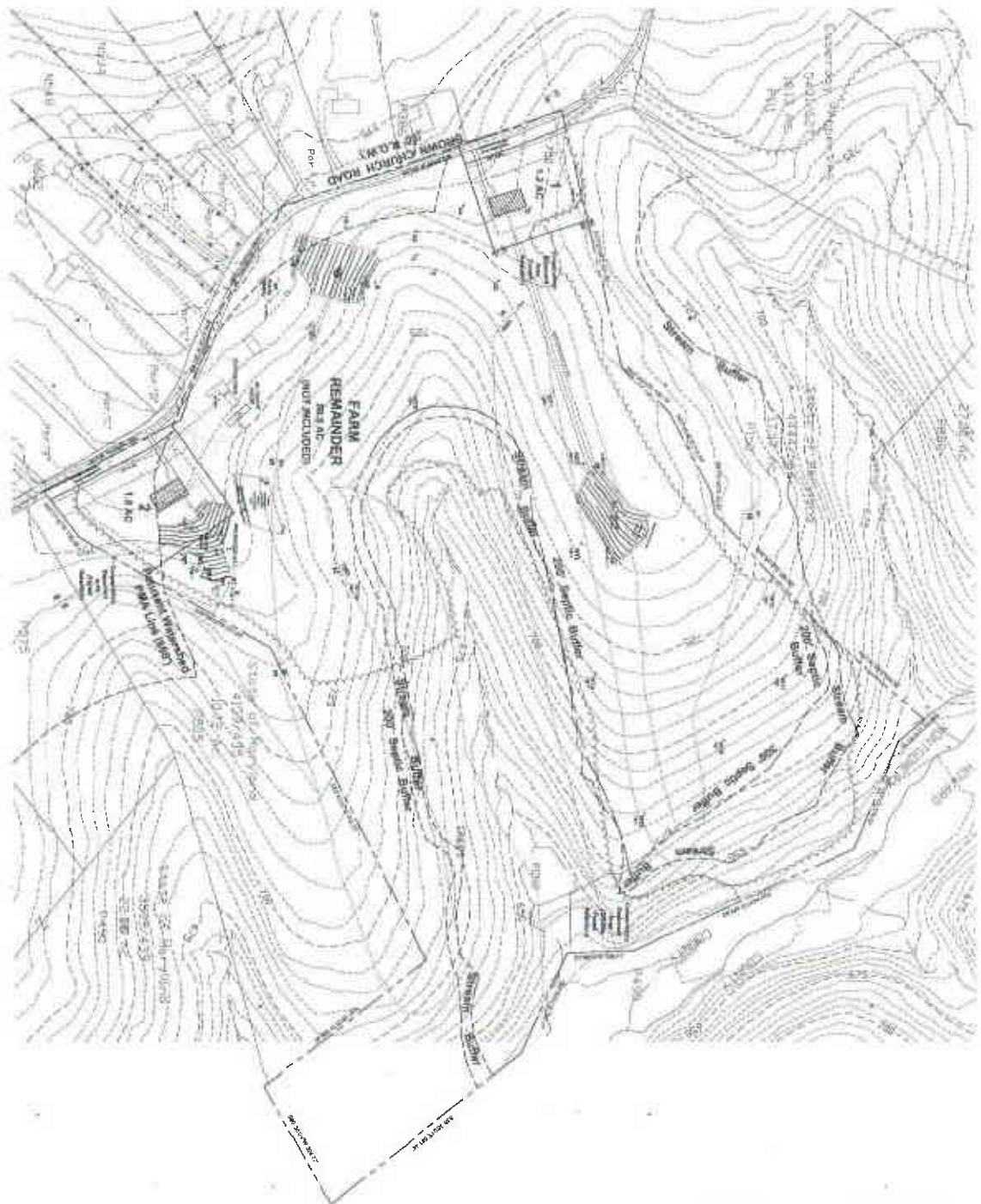
MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3704

Key Map



[illegible]

NOTE
Two-Step is the official training program for the U.S. Coast Guard Auxiliary. It is a 16-hour course that is divided into two 8-hour sessions. The first session is held during the first 8 hours of the course and the second session is held during the last 8 hours of the course. The course is held at the U.S. Coast Guard Auxiliary Training Center, 1000 N. 1st St., Annapolis, MD 21403.

[illegible]

IN ADDITION TO ANY RESERVATIONS, THE ORIGINAL TWO DEVELOPMENT RIGHTS ATTACHED TO THE SUBJECT PARCEL ARE TO REMAIN WITH THE DEVELOPER.

OWNER:
VIRGINIA D. BRUCHE
c/o H. Allen Holmes
Stage Supply Church Road
Thurmont, MD 21798-1312
301-463-1287

VICINITY MAP
SCALE: 1" = 2,000'

**PRE-APPLICATION PLAN (Minor Subdivision)
BRUCHIE FARM
Montgomery County, Maryland**



Charles R. Newkirk, Sr.
Lead Planning Consultant
9211 South Grand Ave.
Fremont, CA 94555
908-236-0000

date: January 2000

scale: 10 = 100



Benning & Associates, Inc.

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To: Mr. Richard A. Weaver, Development Review Coordinator - MNCPPC
From: David W. McKee
Date: 2/7/2008
Re: Bruchie Farm (MNCPPC File #7-02041)

Mr. Weaver,

Our plan for the subject property proposes two "child lots". Earlier this week, you called and asked if the children had plans to live on the farm and support the farming operation. Below is information sent to me by email from Allen Haines, our client contact and son-in-law of Virginia Bruchie. I think you will find the information very useful.

Currently, one child is living with the owner of the farm, Virginia Bruchie and is waiting for child lot approval to build a house. It is our intention to live on the farm as well. The farm is a farm and will remain a farm. The farming operation consists of: rotational cropping and pasture ground, all of which can be verified through the Montgomery County Farm Service Agency. Horses are currently pastured. Beef cattle and sheep were pastured in the past.

Yes, my wife and I plan to support farming operations as the other child will. At 53, I have farmed all my life. Grew up on a dairy farm in Montgomery County milking cows early in life both morning and evenings. Spent many days riding a draft horse working the fields with my grandfather. The only years I have not actively farmed were my college years and I still owned beef cattle during those years away from home. I have always owned at least 10 head of beef and as many as 50. I am currently a certified/licensed nutrient management consultant and licensed spray applicator through the Maryland Department of Agriculture.

Please let me know if you need anything else.

Sincerely,



David W. McKee