



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

MCPB
Item #
3/22/07



MEMORANDUM

DATE: March 9, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Richard Weaver, Planner Coordinator (301-495-4544) *RW*
Development Review Division

REVIEW TYPE: Pre-Preliminary Plan of Subdivision (**Binding Conditions**)
Pursuant to Section 50-33A

APPLYING FOR: Resubdivision of Existing Lot 38, Bowie Mills Estates
Subdivision for Two Lots

PROJECT NAME: Bowie Mill Estates
CASE #: 720060250
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2
LOCATION: On Foggy Lane, approximately 1500 feet east of Bowie Mill Road
MASTER PLAN: Upper Rock Creek

APPLICANT: Mark Sweeney
ENGINEER: CAS Engineering

FILING DATE: December 14, 2005
HEARING DATE: March 22, 2007

RECOMMENDATION: Approval, pursuant to Section 50-33A for compliance with 50-29(b)(2) of the Subdivision Regulations only, and subject to the following condition:

- 1) Applicant must file a preliminary plan application for the proposed subdivision within ninety (90) days following the action of the Planning Board on Pre-Preliminary Plan No. 720060260; otherwise the concept plan shall expire.
- 2) Approval of any feature of Pre-Preliminary Plan No. 720060250 shall not limit the ability of the Planning Board to impose further conditions as required by subdivision regulations at the time of preliminary plan.
- 3) The preliminary plan application shall contain the statement of the Planning Board's action on Pre-Preliminary Plan No. 720060250.

SITE DESCRIPTION (Attachment A)

The subject property consists of 9.27 acres (404,076.8 square feet) of land within the Upper Rock Creek Master Plan area. The property is zoned RE-2 and is located on the north side of Foggy Lane, approximately 1,500 feet east of Bowie Mill Road (see Attachment A). The land is comprised of one existing lot, which was originally recorded in 1984. The property contains an existing residential dwelling, which is accessed from Foggy Lane. Surrounding land use to the north, east and south is residential in the RE-2 zone and to the west, abutting the subject property, there are platted lots in the RE-1 zone.

The property lies within the Upper Rock Creek watershed that is classified as Use III-P, and has been designated as a Special Protection Area (SPA). A tributary stream is located just off the northeast corner of the property, and the northeast corner of the proposed rear lot is within the 150' environmental buffer. The northern half of the property is forested. There are also trees on the property that should be preserved as part of the future forest conservation plan.

PROJECT DESCRIPTION (Attachment B)

This is an application to resubdivide the 9.27 acre subject property into two residential lots, which would be 201,978.9 square feet (Lot 39) and 202,097.9 square feet (Lot 40) in size. The proposal includes modification and retention of the existing dwelling and construction of a new one-family detached dwelling (Attachment B). The two dwellings would have separate driveway access and are served by private well and private septic.

ANALYSIS AND FINDINGS

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code Chapter 50, the Subdivision Regulations, and pursuant to the review requirements of Section 50-33A. Section 50-33A establishes alternative review procedures for preapplication submissions, whereby the staff and Board must make a recommendation to either approve, disapprove or approve with conditions the preapplication. Section 50-33A modifies the typical review

procedures established in Section 50-34 and 50-35, by binding the Planning Board to any conditions of approval imposed on the preapplication, subject to a timely submission of a preliminary plan within 90 days from the date of the action by the Board on the pre-application.

By letter dated October 13, 2006 (**Attachment C**), the applicant requests that the Planning Board review this application for compliance with the resubdivision criteria as per Section 50-29(b)(2). The Planning Board would have the opportunity to review the plan for full compliance with all other applicable sections of Chapter 50, including adequate public facilities, at the time of preliminary plan.

Since this is a preapplication the applicant has not completed all of the reviews that would be required at the preliminary plan stage. However, Fire and Rescue, and the Well and Septic Section of MCDPS have reviewed the plan and do support the application. The septic system location on the plan has been approved by MCDPS. Location of septic systems weighs heavily on the areas available for homesite placement.

The lots meet the dimensional requirements for area, frontage, width, area, and suitability and setbacks in the RE-2 zone, and meet all the requirements for the resubdivision as specified in Section 50-29(b)(2).

Conformance with Section 50-29(b)(2)

A. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots are in character for the neighborhood with respect to all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the subdivision of any lot, tract or other parcel of land that is a 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.

B. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "Neighborhood" to evaluate the application. For this application, the applicant submitted a Neighborhood of 32 lots that includes all lots that abut or confront the proposed lots and all lots fronting Foggy Lane as well as those in close proximity that front on Bowie Mill Road and Dun Horse Lane (**Attachment D**). This Neighborhood includes lots in the RE-1 zone; the Subject Property is zoned RE-2. Staff and the Planning Board have historically not crossed zoning boundaries when determining the Neighborhood suitable for a resubdivision evaluation. Therefore, staff asked the applicant to include only those lots in the immediate neighborhood that are zoned RE-2.

In Staff's opinion, the Applicant's proposed Neighborhood cannot be justified. Although the lots in the Applicant's Neighborhood do front on the main vehicular access route to the Subject Property, approximately half were developed under the RE-1 standards. This, and rather successful septic percolation results for those lots, has resulted in a distinct difference in lot character between the zoning boundaries on Foggy Lane and Dun Horse Lane. Therefore, staff maintains that when an adequate number of like-zoned lots are available to make a reasonable resubdivision comparison, one should exclude lots of another zoning category, based in part on the unique characteristics that each zoning category can impart upon a given subdivision. The Neighborhood that staff used for analysis includes the 13 lots in the RE-2 zone, and staff is of the opinion that it is the appropriate Neighborhood for this application (Attachment C).

C. Comparison of the Character of Proposed Lots to Existing (Staff's Neighborhood)

In performing the analysis, the above-noted resubdivision criteria were applied to the Neighborhood delineated by staff. The proposed lots are of the same character with respect to the resubdivision criteria as the lots within the Neighborhood. The proposed resubdivision complies with the criteria of Section 50-29(b)(2). As set forth below, the attached tabular summary (**Attachment E**) supports this conclusion.

Frontage: The existing lots range in frontage from 41 feet to 499 feet. Proposed Lot 39 has a lot frontage of 511 feet, and proposed Lot 40 has a frontage of 41 feet. The existing lot, which is the subject of this application, currently has the greatest amount of frontage of all lots in the Neighborhood. The proposed lots tend to be more in character than the existing lot. **The proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.**

Alignment: All of the lots in the Neighborhood generally align perpendicularly to the street, although lots at the end of Foggy Lane, around the cul-de-sac, do take on a radial appearance with lot lines that come to the street at a slightly skewed angle. But the existing lots do, in all cases, allow the homes to front to the street. For proposed Lot 40, the lots lines do align perpendicularly to the street; however, the relative location of the pipestem lot to the rear of proposed Lot 39 creates a situation that staff has reviewed with additional scrutiny.

Staff considered the existing pipestem lot (Lot 35) at the end of Foggy Lane where a similar relationship was created with a lot and house located behind two lots that front on the cul-de-sac. In higher density zones this relationship can be problematic for staff because appropriate separation between structures on such lots can't be achieved. The two proposed lots are each over four acres in size. Such large lots provide much more flexibility in house location. For the subject application, the distance of separation shown between the existing house on Lot 39 and the new house on lot 40 is approximately 200 feet. As shown, the location of the proposed house places it in a position where it would be visible from the street. This relationship of lots to lots and houses to houses is similar to the existing relationship found on existing Lots 34, 35 and

36. **The proposed lots are, therefore, of the same character as existing lots with respect to the alignment criterion.**

Size: The existing lots range in size from 99,617 square feet to 448,170 square feet. Proposed Lots 39 and 40 will be 201,979 square feet and 202,098 square feet, respectively. **The proposed lot sizes are in character with the size of existing lots in the Neighborhood.**

Shape: Proposed Lots 39 and 40 will be rectangular in shape, with Lot 40 having a pipestem. The Neighborhood consists of 6 rectangular shaped lots, 5 irregular shaped lot and 1 pipestem shaped lot. **The shapes of the proposed lots to be in character with shapes of the existing lots.**

Width: The existing lots range in width at the building line from 133 feet to 523 feet. Proposed Lot 39 will have a lot width of 456 feet and Lot 40 will have a lot width of 516 feet. **The proposed lots will be in character with existing lots in the Neighborhood with respect to width.**

Area: The buildable areas of lots in the neighborhood range from 67,049 square feet to 374,463 square feet. Proposed Lot 39 will have a buildable area of 146,533 square feet. Lot 40 would also have a buildable area of 141,689 square feet. Both of these are within the range for all lots within the Neighborhood. **The proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.**

Master Plan Compliance

The Upper Rock Creek Master Plan does not specifically identify the subject property for discussion but does give general guidance and recommendations regarding zoning and land use. The plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of one-family detached homes. The proposed resubdivision complies with the recommendations adopted in the Master Plan in that it is a request for residential development and is consistent with the Zoning Ordinance development standards for the RE-2 zone.

Transportation

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hour. Therefore, the application is not subject to Local Area Transportation Review.

Environment

There are streams and environmental buffer on the property. No stormwater management is required to be approved at this time but will be required to be approved at the time of the Preliminary Plan application. The stream buffers as shown on the preapplication plan would be further reviewed and approved as part of a preliminary plan

Forest Conservation

The plan will be subject to the Forest Conservation Law at the time of preliminary plan.

Citizen Concerns (Attachment F)

An adjacent neighbor on Lot 37 immediately to the east has raised concerns regarding the proposed subdivision. That property contains a pond that the owners fear may be impacted by erosion if trees are cleared for construction of the proposed house. Apparently some illegal clearing on another lot had taken place in the past that adversely affected the pond. In staff's opinion, such impacts should not occur with the proposed development. It is true that clearing will need to take place for the dwelling and at least the initial length of a septic trench, but the limit of that clearing would be almost 300 feet away from the subject pond. During installation of the septic field, sediment control fencing will be required to be maintained along that limit. Given the forested area that will remain between the clearing and the pond, and the fact that the slope of the intervening land is generally 10% or less, soil would not likely be transported to the pond in the event the sediment control failed. The future stormwater management review would determine if permanent measures are needed to control runoff from the new rooftop and driveway.

CONCLUSION

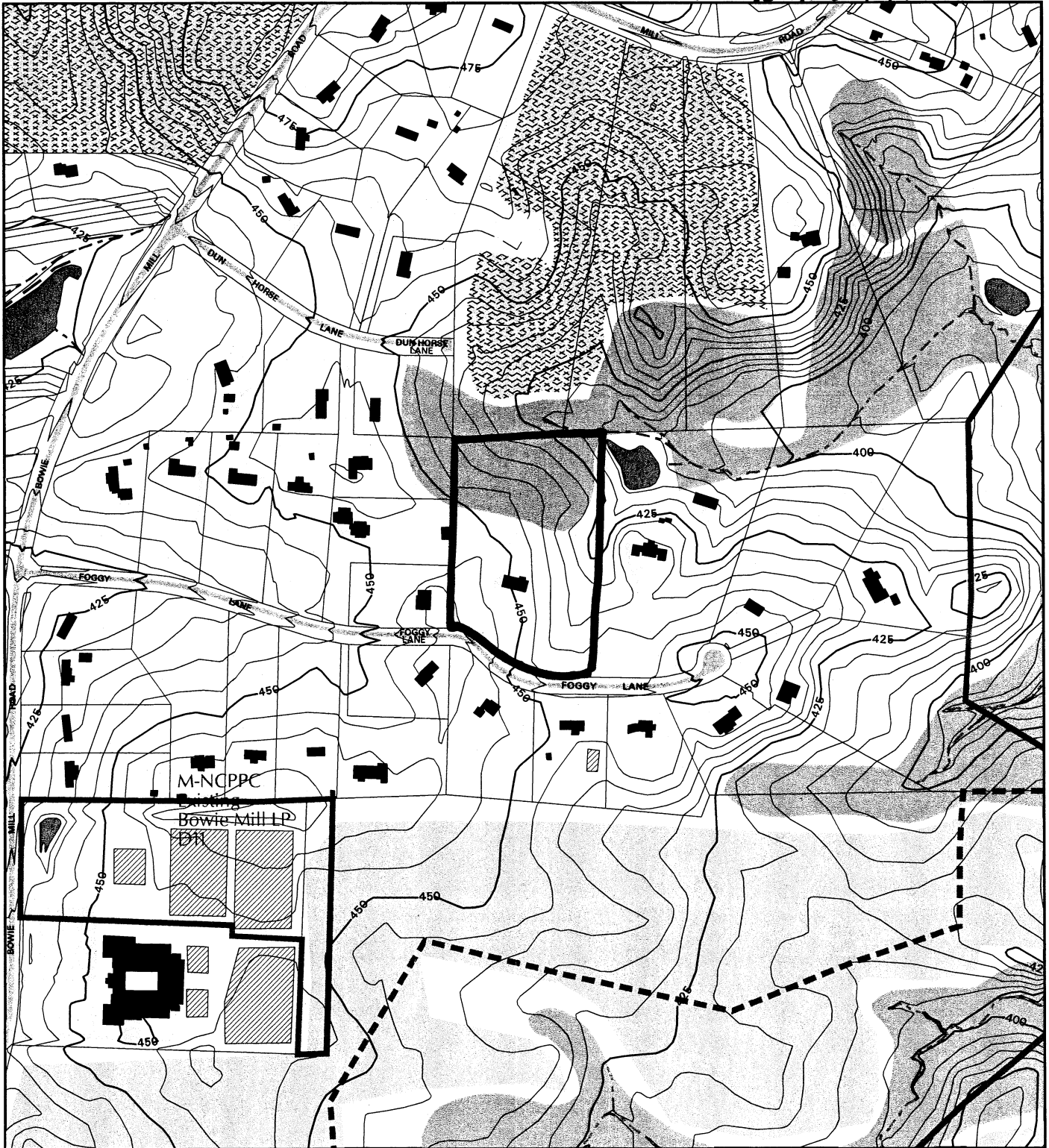
For the foregoing reasons, Staff recommends that the Planning Board find that the proposed lots are in character for the neighborhood with respect to all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations; and that the Board approve the concept plan with respect to that sole feature, subject to the conditions set forth above.

Attachments

- Attachment A Vicinity Map
- Attachment B Pre-Preliminary Plan
- Attachment C October 13, 2006 letter
- Attachment D Neighborhood Map
- Attachment E Resubdivision Data Table
- Attachment F Citizen's Letter

BOWIE MILL ESTATES (720060250)

Attachment A



Map compiled on December 21, 2005 at 2:40 PM | Site located on base sheet no - 223NW05

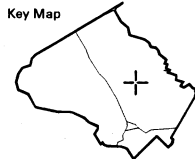
NOTICE

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



N



Research & Technology Center



1 inch = 500 feet
1 : 6000

**ENGINEERING**

A Division of CAS Enterprises, Inc.

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phone 301/607-8031 • fax 301/607-8045 • www.casengineering.com

October 13, 2006

The M-NCP&PC
Development Review Division
8787 Georgia Avenue
Silver Spring, MD 20910

Attn: Cathy Conlon

Re: #5615 Foggy Lane
Proposed Lot 39 & Lot 40
Bowie Mill Estates
File 7-20060250

Dear Cathy:

Please find attached (4) copies of the revised Neighborhood Map along with the respective Lot Data Tables. At your request we have added the few properties to the north. However, we respectfully disagree with your request to exclude the properties to the west. While we understand that staff would prefer not to include properties located in different zones, in this case, we find it absolutely appropriate to include those properties which immediately adjoin the subject property. As you know the subject property is zoned RE-2 and those properties to the west and bordering the subject site are zoned RE-1. It is important to realize that while they may be zoned RE-1, they are all much greater in size than the minimum 40,000 square feet permitted in that zone. In fact the smallest of these lots is 1.8 acres in size. It is also important to realize that our proposal is for only two lots which are each 4.64 acres in size, much larger than most in the RE-2 zone, and consistent with the density and the character of the neighborhood. Typically neighborhoods have been determined by those lots which are visible upon approaching the subject property. In this particular situation, the subject property is located on a cul-de-sac, therefore when arriving at or departing from the said property one would pass those RE-1 zoned lots. It is reasonable to assume that those properties that front along Foggy Lane all use the cul-de-sac, whether while walking or for parking and turn-a-round by guests.

We trust that you will reconsider your delineation of the neighborhood in this particular case and recommend approval of this Pre-Application Concept Plan. In accordance with Section 50-33A, we hereby request that the Board issue a written decision based on the resubdivision criteria as indicated in Section 50-29(b)(2). Please add this project to the Planning Board schedule at the earliest possible convenience

If you have any questions or need any additional information please do not hesitate to call.

Sincerely,

Jeffrey A. Robertson
Project Manager

cc: M. Sweeney
M Hutt
File

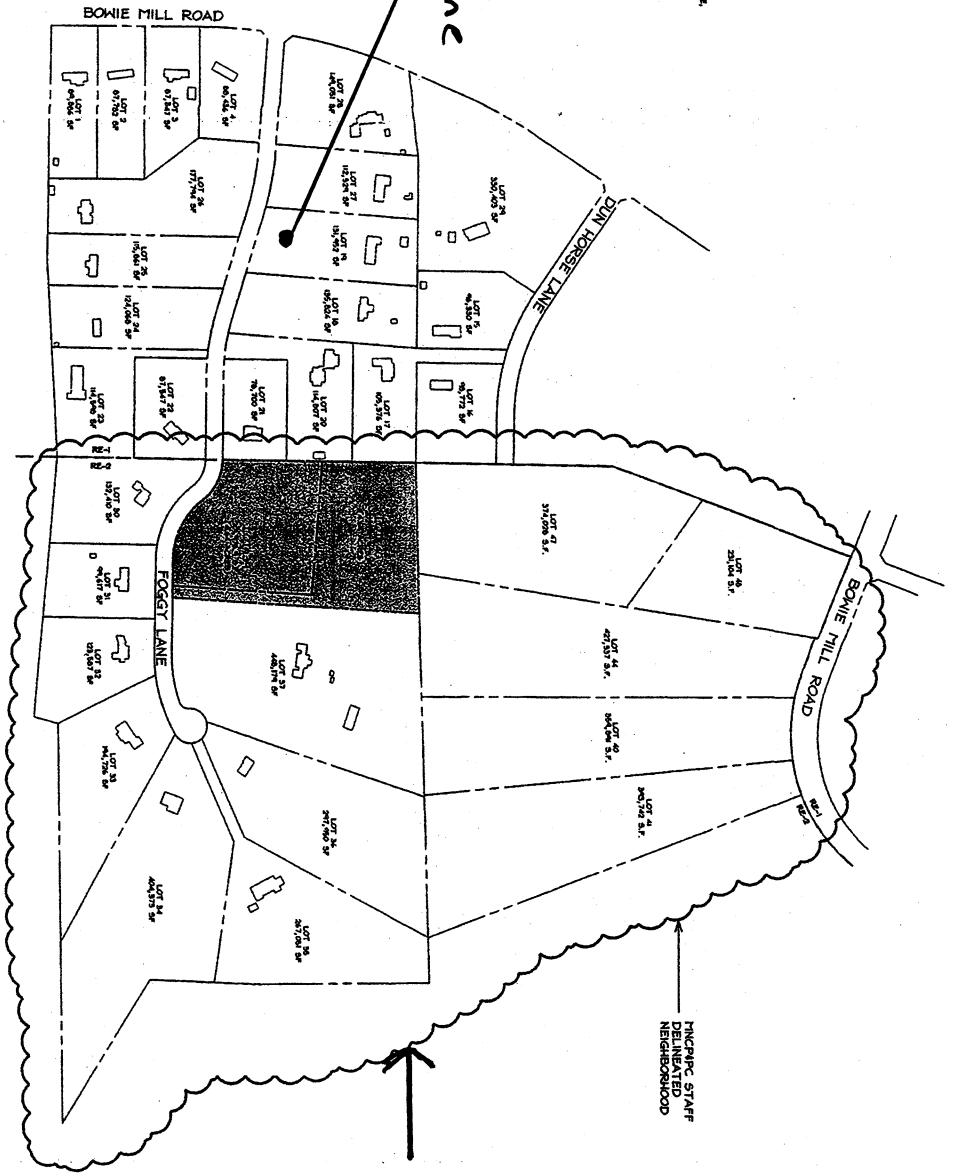
Attachment D

GENERAL NOTES

- 1) WATER CATEGORY - 1 - SEWER CATEGORY - 1 -
- 2) PROPERTY SHOWN ON TAX MAP AT 023, LOT 39, BOWIE HILL ESTATES.
- 3) PROPERTY SHOWN ON TAX MAP AT 023, LOT 39, BOWIE HILL ESTATES.
- 4) PROPERTY SHOWN ON MONTGOMERY COUNTY SOLID WASTE MAP No. 14, DISTRICT (S) 20, M-1, DC.
- 5) FLOOD ZONE - V (FLOOD VENTURE), CONTAMINANT.
- 6) FLOOD ZONE - V (FLOOD VENTURE), CONTAMINANT.
- 7) FLOOD ZONE - V (FLOOD VENTURE), CONTAMINANT.
- 8) LOCAL UTILITIES INCLUDE: WATER & SEWER - MONTGOMERY SUBURBAN SANITARY COMMISSION; TELEPHONE - VERIZON; GAS - MONTGOMERY GAS.

ZONING DATA

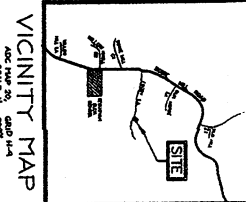
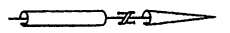
- 1) FRONT SETBACK - 30 FT
- 2) SIDE SETBACK - 5 FT PER SIDE
- 3) REAR SETBACK - 5 FT PER SIDE
- 4) TOTAL FRONT YIELD - 30 FT
- 5) TOTAL REAR YIELD - 30 FT



NOTE: THIS NEIGHBORHOOD MAP IS FOR GRAPHICAL REPRESENTATION ONLY. ALL LOT STATISTICS TAKEN FROM AVAILABLE RECORD PLATS.

CLIENT
MOUNT ACRY ENTERPRISES, INC.
100 WEST RIDGEVILLE BOULEVARD, SUITE 101
MOUNT ACRY, MARYLAND 21771

5615 FOGGY LANE
PROPOSED LOTS 39 - 40
BOWIE MILL ESTATES
NEIGHBORHOOD MAP



<p>CAS ENGINEERING CIVIL • SURVEYING • LAND PLANNING A DIVISION OF CAS ENTERPRISES, INC. 100 West Ridgeville Boulevard, Suite 101, Mount Airy, Maryland 21771 DC Metro (301) 607-6031 FAX (301) 607-6045</p>	PROPOSED LOTS 39 - 40 BOWIE MILL ESTATES OLNEY (8TH) ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND NEIGHBORHOOD MAP		<table border="1"> <thead> <tr> <th>DATE</th> <th>BY</th> <th>REVISION</th> </tr> </thead> <tbody> <tr> <td>02/25/05</td> <td>EBT</td> <td>SUBMISSION TO PI-NEMPC</td> </tr> <tr> <td>09/25/05</td> <td>CES</td> <td>REVISED PER STAFF DELEGATION</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	DATE	BY	REVISION	02/25/05	EBT	SUBMISSION TO PI-NEMPC	09/25/05	CES	REVISED PER STAFF DELEGATION							<table border="1"> <tr> <td>PROJECT</td> <td>05-154</td> <td>DATE</td> <td>11/2005</td> </tr> <tr> <td>DRAWN BY</td> <td>EBT</td> <td>APPROVED BY</td> <td>N/A</td> </tr> <tr> <td>SCALE</td> <td>1" = 200'</td> <td>APPROVAL</td> <td>CAS</td> </tr> </table>	PROJECT	05-154	DATE	11/2005	DRAWN BY	EBT	APPROVED BY	N/A	SCALE	1" = 200'	APPROVAL	CAS
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PROPOSED LOTS 39 & 40
BOWIE MILL ESTATES
FILE No. 720060250

Comparable Lot Data Table (sorted by Lot Size)

Lot #	Block	Frontage	Alignment	Lot Size	Lot Shape	Width	Buildable Area
37		499	perpendicular	448,179	rectangular	523	374,463
44		215	perpendicular	427,337	rectangular	232	362,767
34		68	perpendicular	404,373	irregular	452	325,270
41		120	perpendicular	393,742	rectangular	150	333,384
47		60	perpendicular	374,028	irregular	388	317,463
40		226	perpendicular	359,891	rectangular	220	289,396
29		803	parallel	330,403	irregular	608	230,606
36		63	perpendicular	297,950	irregular	451	246,690
35		41	perpendicular	267,051	pipestem	133	198,951
48		310	perpendicular	231,184	rectangular	316	173,454
* * 40		41.1	parallel	202,098	rectangular	516	141,689
39		511	perpendicular	201,979	rectangular	456	146,533
33		218	perpendicular	194,726	irregular	484	140,046
26		319	perpendicular	177,794	irregular	280	131,705
28		450	parallel	149,051	rectangular	426	106,530
18		220	perpendicular	135,824	rectangular	220	98,184
30		352	perpendicular	132,409	rectangular	300	91,604
19		239	perpendicular	131,952	rectangular	232	95,014
24		222	perpendicular	124,068	rectangular	215	88,191
32		200	perpendicular	123,588	irregular	295	88,302
25		188	perpendicular	115,861	rectangular	180	80,730
20		92	parallel	114,807	pipestem	252	69,121
23		30	parallel	114,598	pipestem	205	76,476
27		221	perpendicular	112,529	rectangular	217	78,717
17		52	parallel	105,376	pipestem	230	63,810
31		260	perpendicular	99,617	rectangular	256	67,049
16		350	parallel	98,772	rectangular	330	57,265
15		220	perpendicular	96,330	rectangular	274	61,604
1		165	perpendicular	89,886	rectangular	170	59,929
4		390	parallel	88,436	rectangular	392	48,677
2		165	perpendicular	87,782	rectangular	165	58,110
22		350	parallel	87,547	rectangular	352	51,991
3		190	perpendicular	87,347	rectangular	190	56,691
21		350	parallel	78,700	rectangular	350	44,038

NOTES:

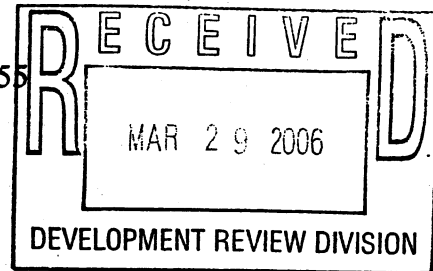
1. All lot statistics taken from available record plats.
2. Longest front property line used for frontage calculation on corner lots.
3. A 50' Front Building Restriction Line (per RE-2 zone) was assumed for buildable lot calculations.

* - Proposed lots

_____ = Lots in Applicant's
Neighborhood
(Struck from consideration)

Attachment F

5607 Foggy Lane
Derwood, MD 20855
March 15, 2006



Ms. Catherine Conlon
M-NCPPC Department of Park and Planning
Subdivision Office
Development Review Division
8787 Georgia Ave
Silver Spring, MD 20910

Dear Ms. Conlon,

We are writing to inform you of our environmental concerns regarding File#7-20060250. We are the adjacent property and have a pond (see map) that would be negatively impacted if the "*possible forest conservation easements*" and the "*stream buffer*" on the survey we received in the mail from CAS Engineering are not actually implemented. We are hereby requesting that these actually be implemented. Our pond is stocked with fish and was negatively impacted when a similar project was initiated on Bowie Mill Road (Lot 45 on the map). The homeowner of Lot 45 removed *all* the trees in the rear of his property, (adjacent to the present Lot 40), and as a result, significant soil erosion occurred and significantly impacted our pond. The homeowner was fined and obliged to pay for the dredging of the pond, due to the excess sediment that was deposited in the pond when the trees were cut. Obviously, this did not restore the wooded conservation area that backed up our property.

We are concerned that the same may occur with the present planned subdivision. The property in File#7-20060250 is much closer than the Bowie Mill property (Lot 45) and would undoubtedly have a negative effect on both the pond and the wooded area if the forest conservations easements are not respected. We strongly request that the environmental measures foreseen and suggested on the map we received be actually implemented and enforced.

Please contact us if you need any further information from us.

Thank you.

Sincerely

A handwritten signature in cursive script, appearing to read "Georges L. Chahine".

Dr. and Mrs. Georges L. Chahine

P.S. Our fears are further compounded by another subdivision letter we just received for Lot 44, File No. 720060490