

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

MCPB

Item #

2/22/07 and 3/22/07



MEMORANDUM

DATE: Revised March 16, 2007

TO: Montgomery County Planning Board

VIA: Catherine Conlon, Supervisor
Development Review Division *CC*

FROM: Erin Grayson (301-495-4598) *EG*
Development Review Division

REVIEW TYPE: Pre-preliminary Plan Review

APPLYING FOR: Minor Subdivision of Parcel 999 Liber 8906, Folio 634 and Parcel 564
Liber 10647, Folio 675

PROJECT NAME: Kiplinger Property
CASE #: 719980210
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT
LOCATION: Northwest Quadrant, Intersection of River Road and Montevideo Road
MASTER PLAN: Preservation of Agriculture and Rural Open Space

APPLICANT: Austin H. Kiplinger
ENGINEER: Thomas A. Maddox

FILING DATE: November 14, 2006
HEARING DATE: February 22, 2007

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 2 lots for 2 one-family residential dwelling units.
- 2) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 3) Record plat to include a note as follows: “The lots shown hereon are being created under Montgomery County Agricultural Easement Program for the use of the property owner and children of the owner.”
- 4) The record plat shall assign ownership of Lots 1 and 2 as shown on the preliminary plan, to a specific individual child of the property owner.
- 5) Record plat to include a note as follows: “The initial building permit for construction of a one family residence on Lots 1 through 7 (or as numbered by the record plat) must be issued only in the name of the owner of that lots as identified by this plat.”
- 6) The deed, conveying ownership of each lot, shall be only in the name of the child/owner as detailed in Condition #3.
- 7) Prior to recordation of the plat(s), the applicant must obtain a release from the Montgomery County Department of Economic Development. Said release shall include a copy of the plat drawings.
- 8) The Applicant shall submit a final forest conservation plan to M-NCPPC staff for review and approval prior to recordation of the lots.
- 9) Final approval for wells and septic systems must be obtained from Montgomery County Department of Permitting Services, Well and Septic prior to recordation of lots.
- 10) Record Plat to reference a recorded easement for the parent parcels indicating that density for these lots was removed from the parent parcels 999 and 564.
- 11) Other necessary easements shall be shown on the record plat.
- 12) The environmental setting of this historic resource shall not be reduced. The new Lot 1 will remain included within the environmental setting boundaries, and therefore under the Historic Preservation Commission’s Review for new construction and major changes to the landscape, including tree removal. The environmental setting boundary will be clearly identified on the record plat.
- 13) Historic Preservation Commission will review the plans for any new buildings to be built on Lot 1.

I. SITE DESCRIPTION

The subject property, identified as Parcels 999 and 564, is located in the northwest quadrant of the intersection of River Road and Montevideo Road (Attachment A – Vicinity Map). It contains 179 acres and is zoned RDT. Surrounding zoning includes RDT to the west, south, east and northwest, and RC zoning northeast of the site. Parcel 999 of the subject property

~~contains a historic resource, identified as Master Plan Site #17/58, "Montevideo". The farmstead consists of a center hall, double pile dwelling (1828), outbuildings, which include a 1906 barn, smokehouse, and icehouse, and the Peter Family graveyard. Access to the site is from River Road. A one-family house and accessory buildings, as well as a tennis court and cemetery, currently exist on the property. The home is a historic resource, known as "Montevideo House" and currently has access from River Road.~~ Existing onsite environmental features include a stream buffer near the northern boundary of the property. The property is located in the Seneca Creek Watershed. There is no forest on site and the property is exempt from county forest conservation law, because it is used for agriculture purposes.

II. PROJECT DESCRIPTION

This is an application to create 2 lots through minor subdivision to accommodate 2 one-family dwelling units for children of the property owner (Attachment B – Proposed Plan). The proposed lots are both 1 acre in size. Lot 1 is to be served by a sand mound septic system and lot 2 by a standard septic system. To create the smallest possible lots, septic requirements are being met within easements on adjacent land. A septic easement for Lot 1 is proposed on Parcel 999 and a septic easement for Lot 2 is proposed on Parcel 564. Access to the two lots is proposed via separate driveways from Montevideo Road.

A. Section 50-35(8) requirements

The proposed lots are to be platted pursuant to Section 50-35A(a)(8) of the Subdivision Regulations. This section 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. Applications for minor subdivision under Section 50-35A(a)(8) must meet 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 TDR's 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 preliminary plan satisfies the requirements of Section 50-35(8) in that only two, one-acre lots are proposed. However, staff is bringing this application to the Board to ensure compliance with other requirements established by Montgomery County, which are discussed below.

B. Agricultural Preservation Easement Agreement

In 1989 Austin H. and Mary Louise Kiplinger entered into an agricultural preservation easement agreement with Montgomery County to preserve the agricultural capacity of 326 acres of the family's land in perpetuity (Attachment C—Deed of Agricultural Preservation Easement). This application includes 179 of the 326 acres. The agricultural preservation easement agreement is a result of the Montgomery County Preservation Easement Program, which is discussed in greater detail in Attachment D. The agreement, with regard to subdivision of the subject property into lots, specifies the following in Section 2 of the document:

“Subdivision of Property—The Grantors relinquish the right to subdivide the Property for industrial, commercial, or residential use or purpose except as provided below.

- a. *The Grantor reserves as a personal covenant only and one not intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater upon written application to the Grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.”*
- b. The Grantor shall pay the Grantee, for the release of the easement on the lot used for constructing a dwelling for Grantor's or his child's use, the price per acre that the Grantee paid the Grantor for the grant of easement.”
- c. The Grantor may not create lots at a density greater than one per twenty-five (25) acres of the Property, nor may the total number of lots exceed ten (10).
- d. The Grantor retains the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres. The land on which the tenant house is constructed may not be subdivided or conveyed to any persons and the tenant house may not be conveyed separately from the original parcel.
- e. The Grantor shall notify the Grantee if the land is subdivided for agricultural use to permit the Grantee to determine whether such subdivision violates any of the covenants, conditions, limitations, or restrictions contained herein.”

The two lots being created are for children of the property owner as stipulated in the agreement. Since the minor subdivision provisions of the Subdivision Regulations don't specifically include the creation of such lots, staff is presenting this pre-preliminary plan to the Board for approval.

III. ANALYSIS AND FINDINGS

A. Relationship to the Agricultural and Open Space Master Plan

The Agricultural and Rural Open Space (AROS) Master Plan establishes agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. Staff believes that preliminary plan lot configurations in the RDT zone should promote the continued use of the property for agricultural purposes. For this plan, a 177-acre farm operation will be maintained

on Parcels 999 and 564. The lots are as small as practical and situated to have minimal impact on the agricultural operation of the property. Staff believes the proposed preliminary plan conforms to the recommendations for preservation of agricultural uses, which are included in the Agricultural and Rural Open Space Master Plan.

B. Historic Preservation

The subject property is identified in the Master Plan for Historic Preservation as Master Plan/Site #35/73 “Montevideo”. The entirety of Parcel 999 is the environmental setting for the historic resource and, therefore, subject to further procedural requirements of the Historic Preservation Ordinance, implemented by the Montgomery County Historic Preservation Commission (HPC).

On March 14, 2007, the HPC reviewed the pre-preliminary plan. The HPC recommends that the Planning Board support the proposed subdivision, with the conditions specified on page 2 of this report. The proposed subdivision complies with the Master Plan for Historic Preservation in that the historic features of the property will not be compromised.

C. Compliance with the Subdivision Regulations and Zoning Ordinance

Section 59-C-9.74(b)(4) of the Montgomery County Zoning Ordinance, which includes the requirements for a lot created for use for a one-family residence by a child, does not apply to this pre-preliminary plan. In this case, it is the agricultural preservation easement agreement that stipulates that any subdivision of the property must be created for the owner or his children.

The density requirement in the RDT zone is 1 dwelling unit per 25 acres. This 179-acre property is therefore eligible for 7 residential lots. This two lot proposal is in conformance with the allowable density per Section 59-C-5.3 of the Zoning Ordinance. The Agricultural Preservation Advisory Board (APAB) has approved the size and location of the proposed lots (Attachment E), and determined that there are an adequate number of TDR’s available to accommodate them.

The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in the RDT zone. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision. A summary of this review is included in attached Table 1.

C. Environment

The proposed lots do not include any environmentally sensitive areas. The parent parcels are exempt from forest conservation because they are used for agriculture, but the two lots are subject to the forest conservation law. The planting requirements for these two lots will likely be met on the parent parcels.

D. Citizen Correspondence and Issues

As of the date of this report, no citizen concerns have been received by MNCPPC staff.

IV. CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance, and comply with the recommendations of the Preservation of Agriculture and Rural Open Space Master Plan. The plan adheres to the preservation easement agreement which was established in 1989 on the subject property and the proposed lots have been approved by the Agricultural Preservation Advisory Board. Access and public facilities will be adequate to serve the proposed lots. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

Attachment A – Vicinity Development Map

Attachment B – Proposed Plan

Attachment C – Deed of Agricultural Preservation Easement

Attachment D – Origins/Governing Provisions for the Montgomery County Preservation

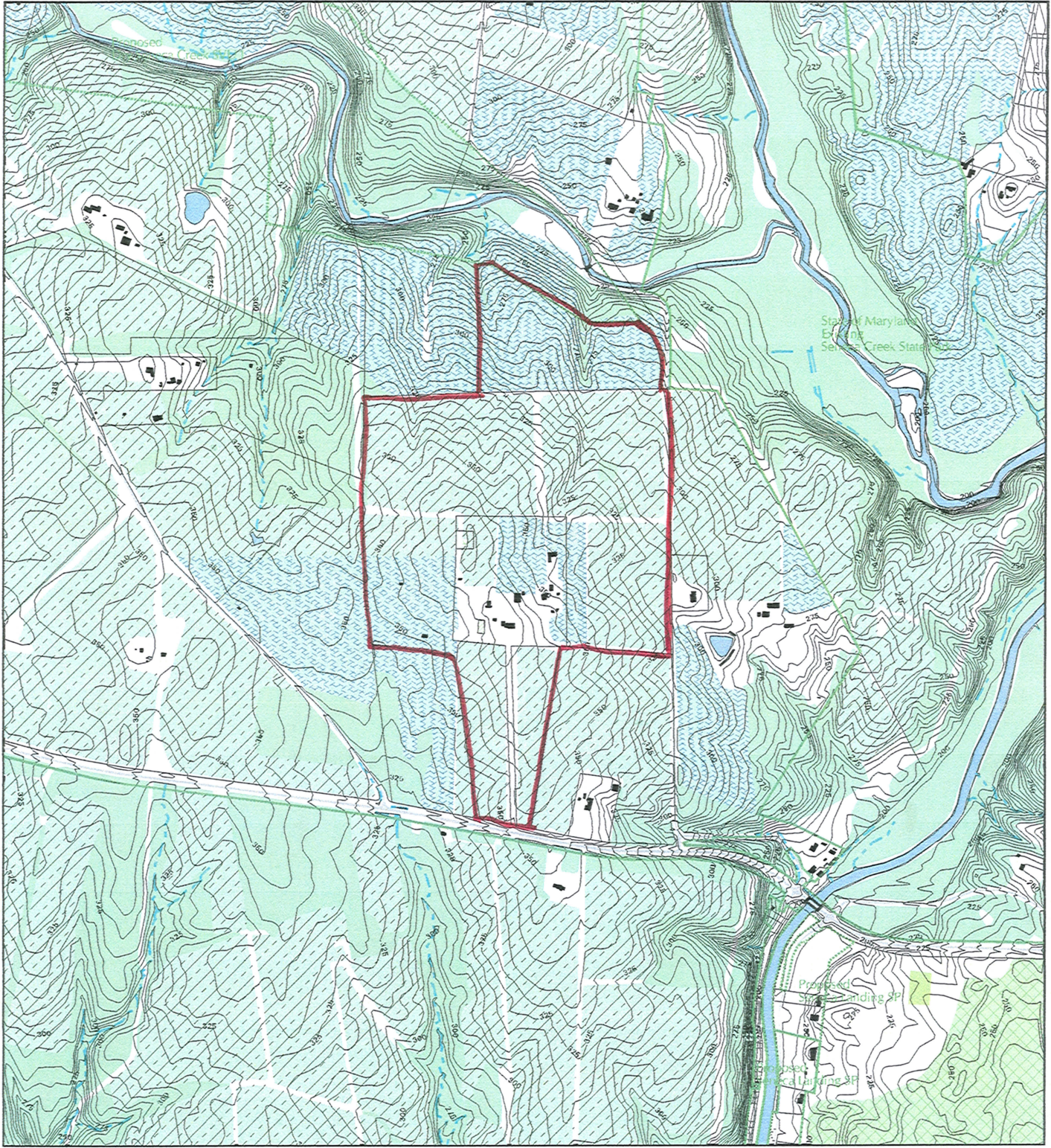
Attachment E – APAB Plan Approval

[Attachment F – Historic Preservation Commission Recommendation](#)

TABLE 1: Plan Checklist and Data Table

Plan Name: Kiplinger Property				
Plan Number: 719980210				
Zoning: RDT				
# of Lots: 2				
# of Outlots: 0				
Dev. Type: Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval on the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sf	43,560 sf is minimum proposed	EH	2/8/07
Lot Width	125 ft.	Must meet minimum	EH	2/8/07
Lot Frontage	25 ft.	Must meet minimum	EH	2/8/07
Setbacks				
Front	50 ft. Min.	Must meet minimum	EH	2/8/07
Side	20 ft. Min./ ft. total	Must meet minimum	EH	2/8/07
Rear	35 ft. Min.	Must meet minimum	EH	2/8/07
Height	50 ft. Max.	May not exceed maximum	EH	2/8/07
Max Resid'l d.u. or Comm'l s.f. per Zoning	7 as per base zone	2 lots	EH	2/8/07
MPDUs	Not required	0	EH	2/8/07
TDRs	2 Must be available	2 available	EH	2/8/07
Site Plan Req'd?	No		EH	2/8/07
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street	Yes		EH	2/8/07
Road dedication and frontage improvements	N/A		EH	2/8/07
Environmental Guidelines	N/A		Staff memo	Required for lot recordation
Forest Conservation	Exempt			
Master Plan Compliance	Yes		EH	2/8/07
Agricultural Preservation Advisory Board	Yes		Agency Comments	2/1/06
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management	N/A		EH	2/8/07
Water and Sewer (WSSC)	N/A		EH	2/8/07
Well and Septic	Yes		Agency Comments	Required for lot recordation
Local Area Traffic Review	N/A		EH	2/8/07
Fire and Rescue	N/A		EH	2/8/07

KIPLINGER PROPERTY (719980210)



Map compiled on February 12, 2007 at 1:04 PM | Site located on base sheet no - 218NW17

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

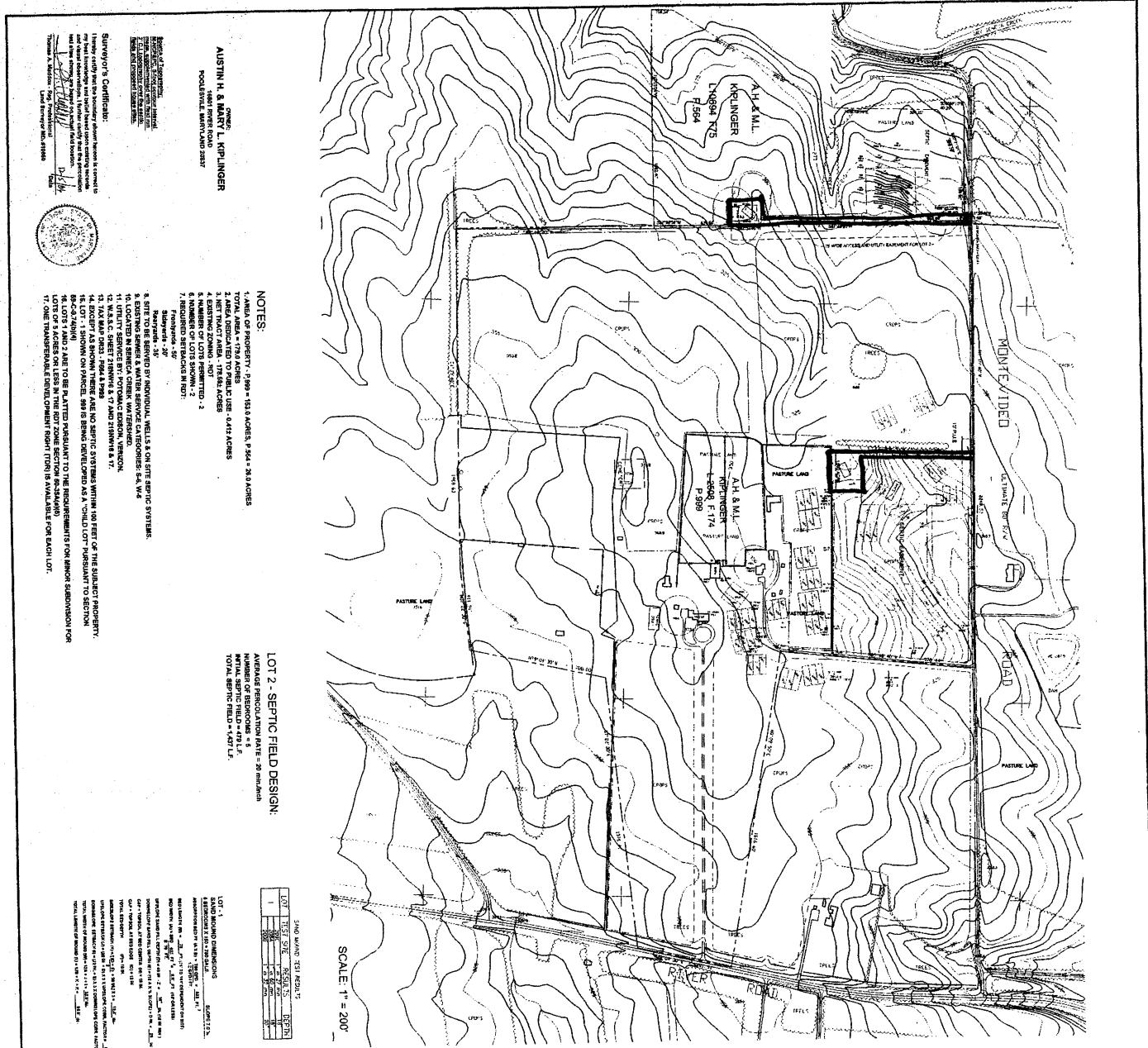


N



0 1200

1 inch = 1200 feet
1 : 14400



AUSTIN H. & MARY T. KRPLINGER
 PO BOX 100000
 MONTICLIDE, MARYLAND 20857

OWNER:
 AUSTIN H. & MARY T. KRPLINGER

PROJECT:
 SEPTIC FIELD DESIGN

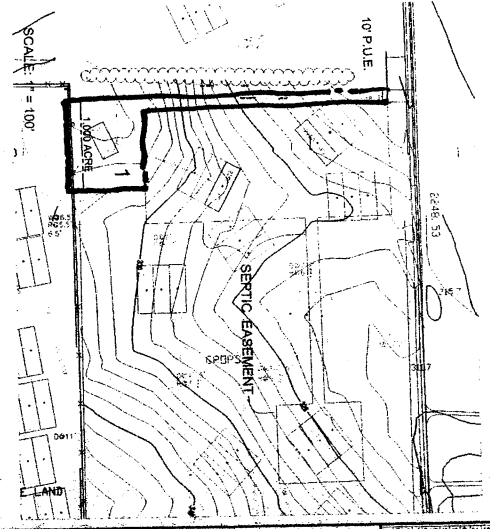
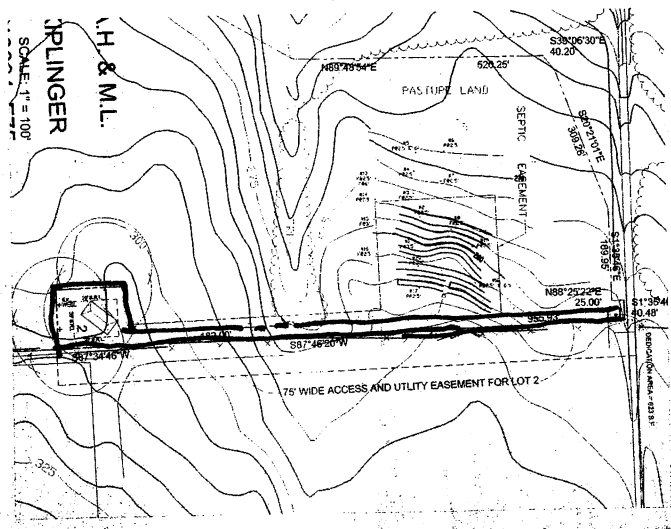


- NOTES:**
1. AREA OF PROPERTY: 1.999 ± 0.013 ACRES, 9,394 ± 24.0 V.A. ACRES
 2. AREA DEDICATED TO PUBLIC USE: 0.412 ACRES
 3. NET TRACT AREA: 1.582 ACRES
 4. NUMBER OF LOTS PERMITTED: 2
 5. NUMBER OF LOTS SHOWN: 2
 6. NUMBER OF ACRES IN LOT: 0.999 ± 0.007
 7. TOTAL ACRES IN LOT: 0.999 ± 0.007
 8. SITE TO BE SERVED BY INDIVIDUAL WELLS & ON SITE SEPTIC SYSTEMS.
 9. EXISTING SEWER & WATER SERVICE CATEGORIES: SA, WA
 10. LOCATED IN SEWER SERVICE AREA: MONTICLIDE, VIRGINIA.
 11. M.A.C. SHEET 1899A & 17 AND 2199A & 17.
 12. M.A.C. SHEET 1899B & 17 AND 2199B & 17.
 13. M.A.C. SHEET 1899C & 17 AND 2199C & 17.
 14. LOT 1 SHOWN ON PARCEL 999 IS BEING DEVELOPED AS A CHILD LOT PERMISSIVE TO SECTION 86-C-2(A)(4).
 15. LOT 1 SHOWN ON PARCEL 999 IS BEING DEVELOPED AS A CHILD LOT PERMISSIVE TO SECTION 86-C-2(A)(4).
 16. LOT 1 SHOWN ON PARCEL 999 IS BEING DEVELOPED AS A CHILD LOT PERMISSIVE TO SECTION 86-C-2(A)(4).
 17. ONE TRANSFERABLE CREWMENT RIGHT (TOR) IS AVAILABLE FOR EACH LOT.

LOT 2 - SEPTIC FIELD DESIGN:
 AVERAGE PERCOLATION RATE = 20 min./inh
 NUMBER OF ROOMS = 4
 TOTAL SEPTIC FIELD = 4,527 L.F.

LOT	TEST	PERCENT	DEPTH
1	1	25	18"
1	2	25	18"
1	3	25	18"
1	4	25	18"
1	5	25	18"
1	6	25	18"
1	7	25	18"
1	8	25	18"
1	9	25	18"
1	10	25	18"
1	11	25	18"
1	12	25	18"
1	13	25	18"
1	14	25	18"
1	15	25	18"
1	16	25	18"
1	17	25	18"
1	18	25	18"
1	19	25	18"
1	20	25	18"

LOT 1 - SEPTIC FIELD DESIGN:
 AVERAGE PERCOLATION RATE = 20 min./inh
 NUMBER OF ROOMS = 4
 TOTAL SEPTIC FIELD = 4,527 L.F.



A.H. & M.L. KRPLINGER
 SCALE: 1" = 100'

SCALE: 1" = 100'

PRE-APPLICATION PLAN
KRPLINGER PROPERTY
 Montgomery County, Maryland

THOMAS A. MADDOX
 PROFESSIONAL LAND SURVEYOR
 8903 SHADY GROVE COURT
 GAITHERSBURG, MD 20877
 (301) 991-8992 BR (301) 936-0812

date: May, 2004
 scale: as indicated



THIS PLAN IS THE PROPERTY OF THOMAS A. MADDOX, PROFESSIONAL LAND SURVEYOR, AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THOMAS A. MADDOX, PROFESSIONAL LAND SURVEYOR.



Montgomery County Government

OFFICE OF THE COUNTY ATTORNEY
Executive Office Building
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850-2589

ATTACHMENT C

TELEPHONE
Area Code 301
217-2600

February 1, 1989

Howard M. Smith, Clerk
Circuit Court for Montgomery
County, Maryland
Courthouse
Rockville, Maryland 20850

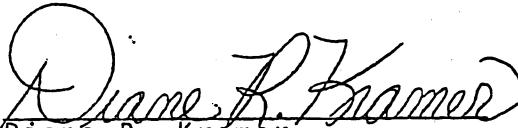
Dear Mr. Smith:

Please record the attached document on behalf of
Montgomery County, Maryland, and waive the usual recording fee.

Thank you for your attention to this matter.

Very truly yours,

CLYDE H. SORRELL
COUNTY ATTORNEY


Diane R. Kramer
Associate County Attorney

DRK:sg
2P
Attachment



Montgomery County Government

February 12, 1990

Austin H. Kiplinger
Mary Louise Kiplinger
16801 River Road
Poolesville, Maryland 20837

File No. 3-89

Dear Mr. & Mrs. Kiplinger:

Enclosed, you will find a copy of the recorded Deed of Agricultural Preservation Easement pertaining to your farm. Please keep this document along with the other important information associated with your farm.

It has been a pleasure working with you and I look forward to working with you in the future.

Please call me at 217-2345 if you have any questions and thank you for your support in preserving some of Montgomery County's finest farmland.

Sincerely,

A handwritten signature in cursive script that reads "Jeremy V. Criss".

Jeremy V. Criss
Planning Specialist
Farmland Preservation

cc: Timothy W. Warman

Enclosures

A:138.M

Office of Economic Development

Executive Office Building, 101 Monroe Street, Suite 1500, Rockville, Maryland 20850, 301/217-2345, TTY 301/279-1083

④

DEED OF AGRICULTURAL
PRESERVATION EASEMENT

This Deed of Agricultural Preservation Easement is sold, granted, and conveyed on this 22nd day of December, ¹⁹⁸⁹ by Austin H. and Mary Louise Kiplinger (Grantors) and Montgomery County, Maryland (Grantee) for the purpose of forever preserving the agricultural production capability of the subject property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

WITNESSETH:

MISC I
SUBTOTAL TL -00
CASH TL -00
#712570 C008 R04 J11:1
12/28/89

By authority of Montgomery County Code 1984, as amended, Chapter 2B and Executive Regulations No. 20-88AM, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use.

The Grantors are the sole owners in fee simple of the farm property (Property) described in Exhibit A, attached to and made part of this Easement, which consists of 326.38 acres of land, together with buildings and other improvements.

The Property is eligible land located in the Rural Density Transfer, Rural, or Rural Cluster Zone, or is an approved State or County agricultural preservation district.

The Grantors desire to sell an agricultural preservation easement to the Grantee to restrict the Property to agricultural use.

All holders of liens or other encumbrances upon the Property have agreed to release or subordinate their interests in the Property to this Deed of Agricultural Preservation Easement, and to refrain forever from any action that would be inconsistent with its preservation purposes.

⑤ PM

1990 DEC 28 AM 11: 14

1990 DEC 28 AM 11: 14

Now, therefore, for the reasons given, and in consideration of the sum of ONE MILLION, ONE HUNDRED THIRTY ONE THOUSAND, EIGHT HUNDRED AND THIRTY DOLLARS (\$1,131,830) paid by Grantee to Grantors, the sufficiency and receipt of which Grantors hereby acknowledge, and of their mutual covenants contained herein, the Grantors voluntarily sell, grant and convey to the Grantees, and the Grantees voluntarily accept, a perpetual Agricultural Preservation Easement on the Property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B, consisting of those rights described in this Easement, exclusively for the purpose of preserving and forever maintaining the agricultural production capability of the Property.

1. Prohibited Acts -- Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants enumerated below. They also authorize the Grantees to enforce these covenants in any manner permitted by law or equity. However, unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Easement relieves them of any obligation or restriction on the use of the Property imposed by law.
2. Subdivision of Property -- The Grantors relinquish the right to subdivide the Property for industrial, commercial, or residential use or purpose except as provided below.
 - a. The Grantor reserves as a personal covenant only and one not intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater upon written application to the Grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.

- b. The Grantor shall pay the Grantee for the release of the easement on the lot used for constructing a dwelling for Grantor's or his child's use the price per acre that the Grantee paid the Grantor for the grant of easement.
 - c. The Grantor may not create lots at a density greater than one per twenty-five (25) acres of the Property, nor may the total number of lots exceed ten (10).
 - d. The Grantor retains the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres. The land on which the tenant house is constructed may not be subdivided or conveyed to any persons and the tenant house may not be conveyed separately from the original parcel.
 - e. The Grantor shall notify the Grantee if the land is subdivided for agricultural use to permit the Grantee to determine whether such subdivision violates any of the covenants, conditions, limitations, or restrictions contained herein.
3. Construction of Buildings and Other Structures -- The construction or reconstruction of any building or other structure, except those existing on the date of this Easement or previously approved by the Grantee, is permitted only in accordance with this paragraph.
- a. Fences - Fences for, or related to, agricultural production, may be built anywhere on the Property without limitation.
 - b. Agricultural Buildings -- Buildings and other structures to be used solely for, or related to, agricultural production,

including the sale of farm products raised primarily on the Property, but excepting any dwelling, may be built anywhere on the Property, without the permission of the Grantees.

4. Dumping Material -- The Grantor will not dump ashes, sawdust, bark, trash, rubbish or any other material on the Property, however, the Grantor reserves the right to dump any material which is generated on the farm during regular agricultural operations.

5. Soil, Water and Forestry Conservation Plans
 - a. The Grantor shall within five (5) years of the settlement date cause the above described land to be managed in accordance with an approved agricultural soil and water conservation plan so as to promote the agricultural capability of the land; and shall within five (5) years of the settlement date manage any woodland in accordance with an approved Forest Resource Management Plan; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees in accordance with an approved Forest Resource Management Plan to insure that the agricultural character of the land will not be altered by diminishing its productive capability. (See addendum No. 1)

 - b. The Grantor shall implement all soil conservation and water quality practices that are required within a soil conservation plan, within five years of the easement settlement date. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. The plan must be updated at least every ten (10) years. Revisions to the schedule of implementation may be made as approved by the

Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within five years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.

c. All references to Plan approvals, means approval by the applicable government agencies.

6. Mining -- The mining or extraction of soil, sand, gravel, rock, fuel or any other mineral substance, using any method that disturbs the surface of the land, are prohibited without the advance written permission of the Grantees. The Grantees shall give such permission within a reasonable time, unless they determine that the proposed mining or extraction will diminish or impair the agricultural production capability of the Property. However, nothing in this Easement shall be interpreted to prevent Grantors or any third party holding subsurface mineral rights to remove such minerals, including coal, oil and gas, by methods that do not disturb the surface of the land, and to construct facilities necessary for the removal of such minerals; provided however, that any third party holding subsurface mineral rights shall take no action or otherwise cause the agricultural production capability of the Property to be diminished.

7. Rights Retained by Grantors -- As owners of the Property, the Grantors retain the right to perform any act not specifically prohibited or limited by this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

Further, the Grantor retains the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products;

the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the land above described.

8. Responsibilities of Grantors Not Affected -- Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantees, or in any existing obligation of the Grantors as owners of the Property. The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law; and the Grantees shall have no obligation for the upkeep or maintenance of the Property, or assume any liability for personal injury or property damage occurring on the Property. The Grantors hold the Grantee harmless from and shall defend the Grantees against any claim, loss, damage, costs including reasonable attorney's fees, injury, death, property damage or other matter relating to or arising from or occurring on or about the Property.

9. Enforcement -- The Grantees shall have the right and responsibility to prevent and correct violations of the terms of this Deed. With reasonable advance notice to the Grantors, the Grantees may enter the Property for the purpose of inspecting for violations. If the Grantees find what they believe is a violation, they may at their discretion take appropriate legal action. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Property, the Grantees shall give the Grantors written notice of the violation and thirty (30) days to

correct it, before filing any legal action. If a court with jurisdiction determines that a violation exists or has occurred, the Grantees may get an injunction to stop it or to require the Grantors to restore the Property to its condition prior to the violation, and the Grantors shall reimburse the Grantees for all their enforcement expenses, including but not limited to reasonable attorney's fees. The failure of the Grantees to discover a violation or to take immediate legal action shall not bar them from doing so at a later time.

10. Termination of Easement -- If, at least twenty-five (25) years after the date of this Easement, the Grantee determines that conditions on or surrounding the Property have changed so much that it becomes impossible for the Property to be used for agricultural production, as provided by Montgomery County Code 1984, as amended, Chapter 2B-13, (Bill No. 56-87 enacted February 16, 1988) the Grantee may, upon payment by the Grantors to Grantees of a sum equal to the difference between the fair market value of the property without an easement and the value with the easement at that time, terminate the easement created by this Deed. If this Easement is terminated through the exercise of eminent domain by governmental authority, the Grantees shall be entitled to compensation therefore in an amount equal to the present value of this Easement at the time of condemnation.

11. Interpretation -- This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its preservation purpose. If the Grantor has any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land, he may submit a written request to the Grantee for consideration and approval of such use.

12. Perpetual Duration --The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantees shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.
13. Gender -- Any masculine term used in this Easement shall include the female gender.
14. Remedies -- Grantee may enforce this easement using any remedies available at law or in equity, including but not limited to specific enforcement and injunctive relief.
15. Severability -- If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.

To Have and To Hold, this Deed of Agricultural Preservation Easement unto the Grantee, their successors and assigns, forever.

In Witness Whereof, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

Witness:

Kathryn V. Robey

A. H. Kiplinger

Austin H. Kiplinger
Austin H. Kiplinger, Grantor

Mary Louise Kiplinger
Mary Louise Kiplinger, Grantor

Sidney Kramer
Sidney Kramer, County Executive
Montgomery County, Maryland

[ACKNOWLEDGEMENTS ATTACHED]

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY OK
DATE 12/22/89

District of Columbia

ACKNOWLEDGEMENTS

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

Personally appeared before me Austin H. Kiplinger on this 19 day of December, 1989, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of his knowledge and belief, and that the execution of said Deed is his free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Kathryn V. Robey
Notary Public
My commission expires: October 31, 1993

District of Columbia

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

Personally appeared before me Mary Louise Kiplinger on this 19 day of December, 1989, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of her knowledge and belief, and that the execution of said Deed is her free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Kathryn V. Robey
Notary Public
My commission expires: October 31, 1993

COUNTY OF MONTGOMERY
STATE OF MARYLAND SS:

Personally appeared before me Sidney Kramer on this 22nd day of December, 1989, and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of this Deed of an Agricultural Preservation Easement is his free act as County Executive.

Suzanne G. Coates
Notary Public
My commission expires: 7/90

Exhibit A Attached

Exhibit A
Legal Description of Property
Subject to Agricultural Preservation Easement
Conveyed by
Austin H. Kiplinger, Grantor
Mary Louise Kiplinger, Grantor
To Montgomery County

<u>Property Tax Account No.</u>	<u>Liber/Folio (Attached)</u>	<u>Acreage</u>
37714	2506/174 5716/805	153.32
1599595	5716/801	40.19
37725	5716/798	19.93
39600	1044/319 7340/171	36.20
37736	3962/269 6767/832 7324/865	37.00
1751794	5247/724 5815/391 8450/010	39.74
<u>Total</u>		<u>326.38</u>

Subordination Agreement

This is an agreement made this 13 day of December, 1989, by and between The Riggs National Bank of Washington, D.C. (NAME OF LENDER) (Mortgagee), and Austin H. and Mary Louise Kiplinger (LANDOWNERS, Husband and wife, Mortgagors).

Whereas, Mortgagee is holder of a mortgage in the amount of \$ \$410,000.00, dated Sept. 20, 1988, recorded in the land records of Montgomery County, State of Maryland, at Book 8492, Pages(s) 498; and

Whereas, Mortgagors intend to convey to the County of Montgomery, an Agricultural Preservation Easement, which will restrict to agricultural use the land which is pledged as collateral securing the said mortgage; and

Whereas, the County requires, pursuant to Montgomery County Code 1984, as amended, Chapter 2B, as a condition of accepting the responsibilities that accompany the said Agricultural Preservation Easement, that all prior liens and other encumbrances be subordinated to said Easement:

Now, Therefore, it is agreed as follows:

1. Mortgagee's mortgage from Mortgagors, in the amount of \$ 410,000.00, dated Sept. 20, 1988, and recorded in the land records of Montgomery County, State of Maryland, at Book 8492, Page(s) 498, and all of Mortgagee's right, interests, claims and privileges under said mortgage, shall be and hereafter continue and remain, in all respects and for all purposes, subordinates to the provisions of the Agricultural Preservation Easement conveyed by Mortgagors to the County of Montgomery, and recorded in the land records of the County, State of Maryland on this date.

2. No action of any nature whatsoever by the Mortgagors with respect to said mortgage shall extinguish, or in any way affect, the said Agricultural Preservation Easement.

3. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and to the County of Montgomery as third-party beneficiary acting in reliance hereupon, and to their respective successors and assigns.

In Witness Whereof, the parties hereto, intending to be legally bound thereby, have set their hands and seals the date first above written.

Witness:

RIGGS NATIONAL BANK

[Signature]

By:

[Signature]
NAME OF LENDING OFFICER
"Mortgagee"

G. Thomas Doye

Kathryn V. Robey

Austin H. Kiplinger
Austin H. Kiplinger, LANDOWNER
"Mortgagors"

A. H. Kiplinger

Mary Louise Kiplinger
Mary Louise Kiplinger, LANDOWNER
"Mortgagors"

CITY OF WASHINGTON

STATE (DISTRICT) OF DELAWARE COUNTY OF _____, to wit:

On this 13 day of March, 19 89, before me, a Notary Public, in and for the State and County aforesaid, personally appeared G. Thomas Doye Notary Public of THE RIGGS NATIONAL BANK OF WASHINGTON, D.C. and acknowledged that the foregoing is the act and deed of said Bank and that he is authorized to execute the foregoing on behalf of said Bank.

My Commission Expires:

Scarlette P. Gaines
Notary Public, D.C.
My Commission Expires
March 31, 1992

[Signature]
Notary Public

~~STATE OF MARYLAND, COUNTY OF~~ District of Columbia, to wit:

On this 19 day of December, 19 89, before me, a Notary Public in and for the State and County aforesaid, personally appeared AUSTIN H. KIPLINGER and MARY LOUISE KIPLINGER, and acknowledged that the foregoing is their act and deed.

My Commission Expires: October 31, 1993

Kathryn V. Robey
Notary Public

0371Z

CERTIFICATE OF PREPARATION

This is to certify that the within instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.

ADDENDUM NO. 1

The purchase price for said Agricultural Preservation Easement shall be ~~\$3,500/acre totaling \$1,131,830 (1 acre subtracted for each dwelling)~~. The terms of payment will consist of three installments which are as follows:

1. Payment on settlement date totaling	\$ 554,596.70
2. Payment made 6 months from settlement date totaling	554,596.70
3. Payment made within 24 months from settlement date contingent upon Soil Conservation District Certification that the Soil Conservation and Water Quality Plan has been implemented.	<u>22,636.60</u>
Total Purchase Price	\$1,131,830.00

0371Z

Origins/Governing Provisions for the Montgomery County Preservation Easement Program

Montgomery County's Agricultural Easement Program has its origin in Chapter 2B of the Montgomery County Code entitled "Agricultural Land Preservation" and in the Agricultural Article of the Annotated Code of Maryland, Title 2, Subtitle 5. The governing body for County Agricultural Easements is the Agricultural Preservation Advisory Board ("APAB"), pursuant to Section 2B-2 of the Montgomery County Code.

The APAB's duties and responsibilities include the following:

- "(1) To advise the county governing body with respect to the establishment of state and county agricultural districts and the approval of purchases of easements by the foundation within the county;
- (2) To assist the county governing body in reviewing the status of state and county agricultural districts and land under easement;
- (3) To advise the foundation concerning county priorities for agricultural preservation;
- (4) To promote preservation of agriculture within the county by offering information and assistance to farmers with respect to establishment of state and county agricultural districts and purchase of easements; and
- (5) In addition to those duties prescribed by state law, the board should:
 - a. Delineate areas of productive agricultural land in the county.
 - b. Recommend to the county executive procedures for mediation or arbitration of disputes as to values of easements being considered for purchase by the county.
 - c. Review and make recommendations to the governing body on regulations proposed for state and county agricultural districts, and perform other duties as may be assigned by the county council or county executive.
 - d. Prepare and/or review recommendations to the governing body with regard to county policies and programs for agricultural preservation.
 - e. Cooperate with the planning board, the cooperative extension service and the soil conservation district in carrying out its responsibilities."

For land to be encumbered with a Montgomery County Agricultural Easement, it must be "Eligible Land" as defined in Chapter 2, Section 2B-7 of the County Code. The County Code authorizes the County to purchase an easement without establishing an agricultural district if land is in the RDT Zone, Rural Zone, or Rural Cluster Zone; The county is not permitted to purchase an easement under Chapter 2B of the county Code if further development of such land is already precluded by another easement.

The Kiplinger Property is zoned RDT and the development of the property is not precluded by any other easement. The Kiplinger Property, containing 179 acres, could be developed in accordance with RDT zone and preliminary plan standards, yielding 7 residential lots.

In accordance with the authority vested in Montgomery County by Chapter 2B of the Montgomery County Code, Montgomery County acquired an Agricultural Preservation easement by Deed dated February 1, 1989 recorded among the land records of Montgomery County. That Deed constitutes the only restriction on the development of the Subject Property that is in addition to the generally applicable County Code requirements.



AGRICULTURAL PRESERVATION ADVISORY BOARD

February 1, 2006

Corbin M. Wilkes
1729 H. Street, N.W.
Washington, D.C. 20006

Re: Plat Locations for Child Lot Request

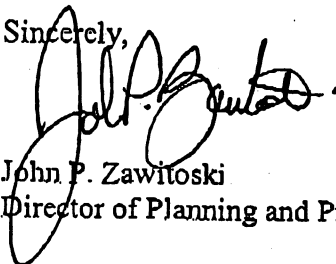
Dear Mr. Wilkes: ^{Corbin}

Thank you for the correspondence dated January 30, 2006 in which you provide an update and map for the locations of the lots for both Todd and Knight Kiplinger. After reviewing the most recent alignment of the lots on the map provided, we feel that the locations proposed are not drastically different from the lot locations previously approved by the APAB. Therefore, by way of this correspondence, please consider this letter an endorsement by the board for the proposed lot locations as indicated on the attached map.

Naturally, we will be happy to accompany you and your designated representatives before any meeting of the Maryland National Capital Park and Planning Commission's (MNCPPC) Development Review Committee (DRC) as the lots proceed through subdivision.

Thank you for your time and patience and if you have any questions please call me at (301) 590-2831.

Sincerely,



John P. Zawitoski
Director of Planning and Promotions

Attachments:

January 30, 2006 correspondence
Lot Location Map

Corbin M. Wilkes
1729 H Street, NW
Washington, DC 20006

30 January 2006

Mr. John Zawitoski
Director of Planning and Promotions
Department of Economic Development
Montgomery County Maryland
18410 Muncaster Road
Derwood, MD 20855

RE: Final Plat Location of 2 Lots

Dear John:

Enclosed is the final plat location for the two (2) sons' lots shown on the same tax map previously used. You will note that lot #2, Todd Kiplinger's lot, is in the same location as the attachment to your letter to Austin Kiplinger dated December 2, 2005. As we discussed, we were able to get satisfactory percolation tests on lot #1, Knight Kiplinger's lot, as shown in the same tax map, but this lot is now closer to the tenant house and farm buildings, and farther away from lot #2. Extensive perc tests were done over several years for a location of lot #1 closer to lot #2 on the Levi parcel, but we were not successful.

Please confirm that the final plot location for lots #1 and #2 are satisfactory to the APAB. We will then ask Tom Maddox, our surveyor and engineer, to complete the detailed work to apply for the required subdivisions for these two lots.

Thank you for your continuing assistance with this matter.

Very truly yours,

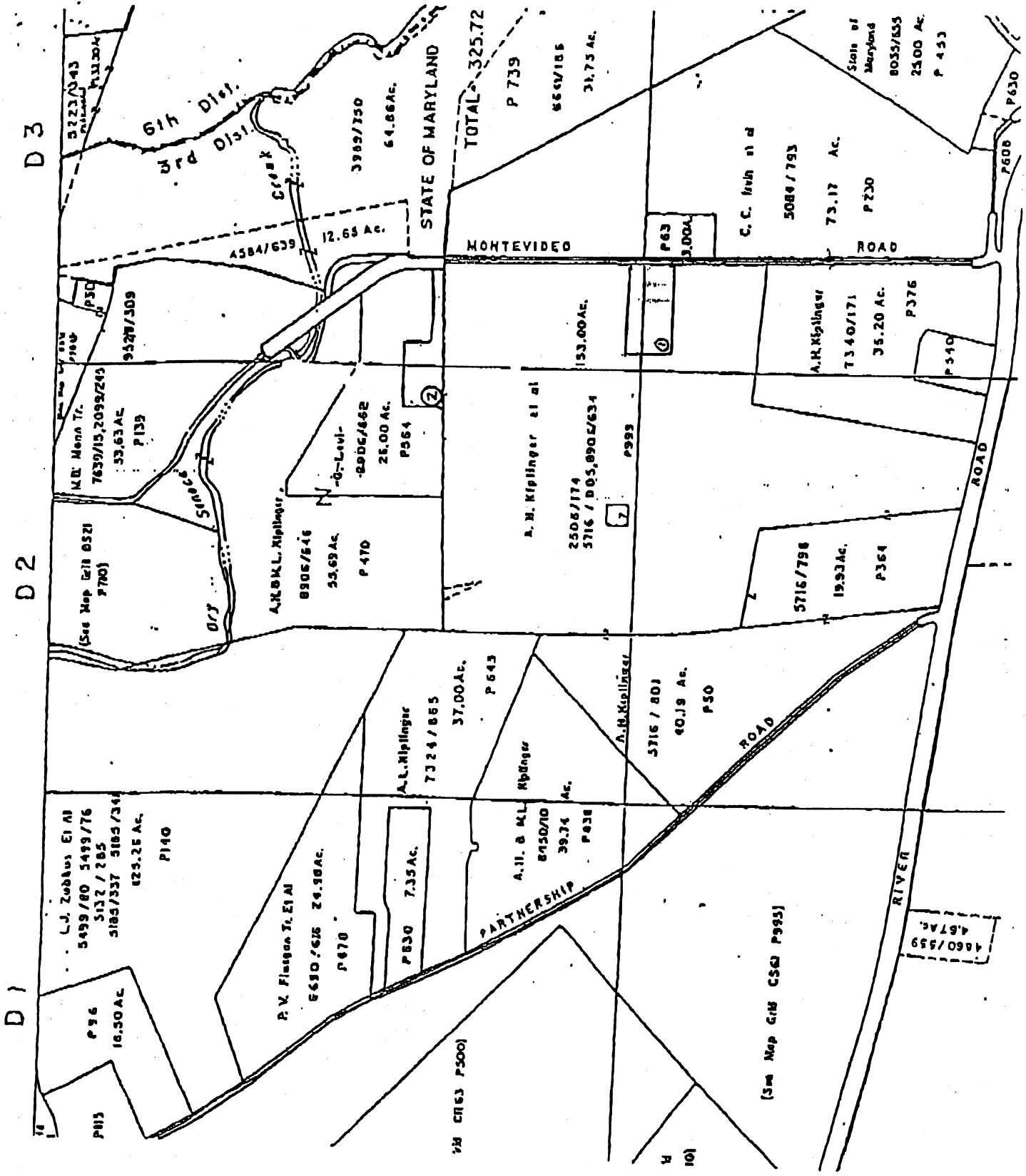


Corbin M. Wilkes

Enclosures: (2)

Final plot
Attached plot to December 2, 2005 letter

Prepared by Tom Maddox - 1/25/06



23/2



DEPARTMENT OF ECONOMIC DEVELOPMENT

Douglas M. Duncan
County Executive

December 2, 2005

David W. Edgerley
Director

Mr. Austin Kiplinger
16801 River Road
Poolesville, Maryland 20837

Re: Status of Children's Lot Request

Dear Mr. Kiplinger: ^{Austin}

This correspondence will serve to update your properties file regarding the children's lots you are pursuing for your sons Todd and Knight Kiplinger on your AEP easement property holdings. As you are aware, on June 1, 1999, the Montgomery County Agricultural Preservation Advisory Board (APAB) reviewed your request to create two (2) one (1) acre children's lots on your 326.38 acre farm encumbered by a County Agricultural Easement property.

Over the months that followed, it became evident that obtaining two approved septic absorption fields plus the reserved back up fields were going to be somewhat problematic on the home farm. It was at this time, you then made a second request to the APAB to consider moving one of the lots from the home 326.38 acre farm property, to the adjacent Gerda Levi property which is also encumbered by a County AEP easement and is now owned by Mr. Kiplinger. The APAB in recognizing the challenges you were having, requested staff to assist you in working through legal channels to pursue this option.

Under this option, the use of the Levi property for one of the Children's lots, would be utilized and in return, Mr. Kiplinger would forgo the right to one (1) of the (2) two reserved rights on the home farm. After discussing this approach with the County Attorney's Office, we obtained concurrence that this could be accomplished. At this time, Mr. Kiplinger proceeded with obtaining approved septic absorption fields one (1) for the home farm and one (1) on the Levi tract.

During the summer of 2004, Mr. Kiplinger learned that in addition to the obtaining approvals for the new septic absorption fields, the County would also require that three (3) reserved ("back-up") septic absorption fields be identified for each existing dwelling on the property before subdivision would be approved for the son's lot. This added significant delays to the children's lot project. In October of 2005, we learned Mr. Kiplinger had obtained the final County approvals for the required reserved septic absorption fields for the existing dwellings as well as the proposed septic absorption fields for the two children's lots.

Agricultural Services Division

18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823 • FAX 301/590-2839

24

This letter acknowledges the approval from the APAB regarding the proposed location of these lots as outlined on the attached tax map. The APAB was very encouraged over your efforts to cluster these lots on your easement property holdings and it is the opinion on the APAB that the proposed two (2) children's lots, one (1) on P999 and one (1) on P564 will have a minimal impact on your agricultural operation. The APAB has reviewed your file and has determined a sufficient number of TDRs have been retained on both parcels to accommodate the proposed children's lots.

With receipt of this letter, you are hereby given permission to pursue approval of your proposed two (2) one (1) acre children's lots with Maryland National Capital Park and Planning Commission (MNCPPC). As I understand the situation, you have already been working with the Department of Permitting Services (DPS) to obtain the approvals for the septic absorption fields.

If these agencies require the size and/or location of the lots be changed significantly, the APAB reserves the right to reevaluate the new size and location.

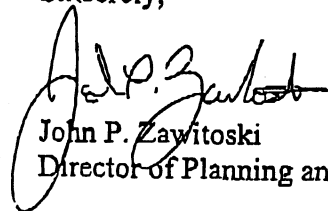
If you are going to proceed at this time on the creation of the two (2) one (1) acre children's lots, you should be aware of the following deadlines:

January 1, 2006 – Preliminary Plan Submitted to MNCPPC

Please be advised, that after MNCPPC approves the final record plat for these children's lots, you must obtain a release from this office that will be recorded among the land records of the County that lifts the easement encumbrance from the approved children's lots, before the final record plat can be recorded.

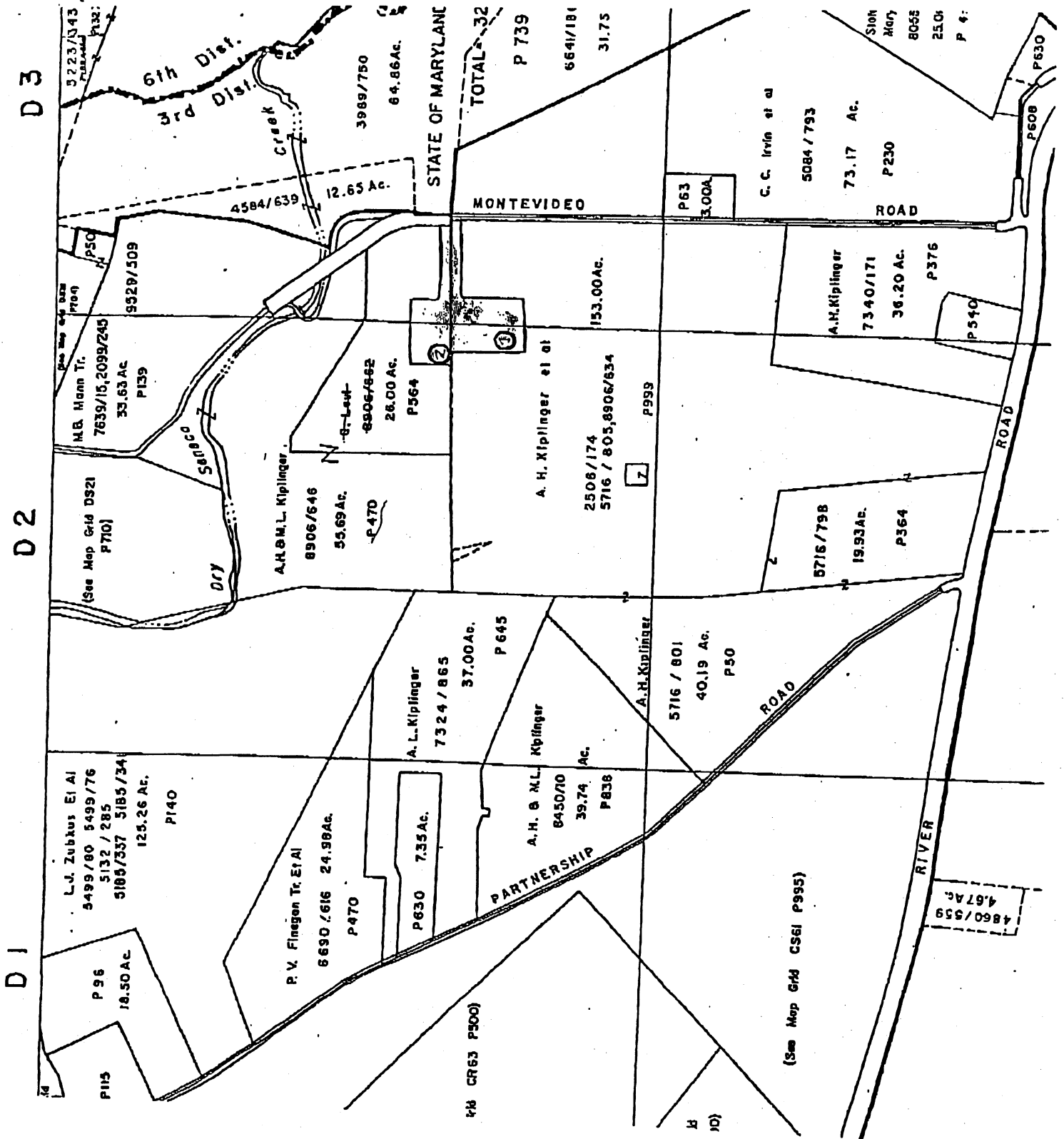
It is my hope this letter will help facilitate MNCPPC review and I will be available to meet with MNCPPC staff as the subdivision of the children's lots proceed forward. Thank you for your time and patience and if you have any questions please call me at (301) 590-2831.

Sincerely,



John P. Zawitoski
Director of Planning and Promotions

cc: Mr. Corbin Wilkes
File





HISTORIC PRESERVATION COMMISSION

Ike Leggett
County Executive

Julia O'Malley
Chairperson

March 16, 2007

Royce Hanson, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Hanson:

On Wednesday, March 16, 2007, the Montgomery County Historic Preservation Commission (HPC) reviewed a pre-preliminary plan (#719980210) for the subdivision of the 179 acres located at 16801 River Road in Poolesville. The subject property contains the identified *Master Plan Site #17/58, Montevideo*. The farmstead consists of a center hall, double-pile dwelling (1828), outbuildings, which include a 1906 barn, smokehouse, and icehouse, and the Peter family graveyard.

The subdivision proposes to create two (2), child lots, only one (1) of which will be located within the current historic environmental setting boundary. Please see attached map.

The HPC is recommending that the Planning Board support this proposed subdivision with the following Historic Preservation related conditions:

1. The environmental setting of this historic resource shall not be reduced. The new Lot 1 will remain included within the environmental setting boundaries, and therefore under the Historic Preservation Commission's review for new construction and major changes to the landscape, including tree removal. The environmental setting boundary will be clearly identified on the record plat.
2. Historic Preservation Commission will review the plans for any new buildings to be built on Lot 1.

If you have any questions, please feel free to contact Michele Oaks in the Historic Preservation Office.

Sincerely,

Julia O'Malley

Julia O'Malley, Chairperson
Historic Preservation Commission



Historic Preservation Commission • 8787 Georgia Avenue • Silver Spring, Maryland 20910 • 301/563-3400 • 301/563-3412 FAX

