



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

MCPB
Item #
5/8/08



MEMORANDUM

DATE: April 28, 2008

TO: Montgomery County Planning Board

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

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

REVIEW TYPE: Pre-preliminary Plan Review

APPLYING FOR: Minor Subdivision of Parcel 840 Liber 9700, Folio 616

PROJECT NAME: Allnut Property

CASE #: 720060530

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT

LOCATION: The northwest quadrant of the intersection of Sugarland Road and Montevideo Road

MASTER PLAN: Preservation of Agriculture and Rural Open Space

APPLICANT: Benoni Allnut, Jr.

ENGINEER: Benning & Associates

FILING DATE: March 15, 2006

HEARING DATE: May 8, 2008

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 1 lot for 1 one-family residential dwelling unit.
- 2) The applicant must dedicate 40 feet of right-of-way from the centerline of Sugarland Road along the property frontage of Lot 1 as shown on the preliminary plan.
- 3) Record plat to include a note as follows: "The lot shown hereon is being created under a Maryland Agricultural Land Preservation Foundation Easement Program for the use of the property owner and child of the owner."
- 4) Record plat to include a note as follows: "The initial building permit for construction of a one family residence on Lot 1 must be issued only in the name of the owner of that lot as identified by this plat."
- 5) The deed, conveying ownership of the lot, shall be only in the name of the child/owner as detailed in Condition #3.
- 6) Prior to recordation of the plat, the applicant must obtain a release from the Montgomery County Department of Economic Development. Said release shall include a copy of the plat drawing.
- 7) The applicant shall submit a final forest conservation plan to M-NCPPC staff for review and approval prior to recordation of the lot.
- 8) Final approval for wells and septic system must be obtained from Montgomery County Department of Permitting Services, Well and Septic prior to recordation of lot.
- 9) The applicant must coordinate with the Rustic Roads Advisory Committee prior to recordation of plat to determine final location of the proposed driveway.
- 10) At the time of record plat application, the applicant must provide verification to MNCPPC staff of the availability of a TDR for the proposed lot.
- 11) Prior to recordation of plat, the applicant must record a covenant in the land records of Montgomery County on parent tract that confirms density has been taken for 1 lot.
- 12) The applicant must comply with the Montgomery County Department of Public Works and Transportation (MCDPWT) letter dated April 23, 2008 unless otherwise amended.
- 13) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION (Attachment A – vicinity map)

The Subject Property, identified as Parcel 840, is located in the northwest quadrant of the intersection of Sugarland Road and Montevideo Road. The site contains 229.8 acres. The Property is zoned RDT and is surrounded by property zoned RDT. Existing onsite environmental features include forest, a farm pond, stream buffer and wetland buffer. The Property is located in the Dry Seneca Creek Watershed, a use I-P watershed.

The Property is subject to a Maryland Agricultural Land Preservation Foundation (MALPF) easement agreement that was entered into by Benoni Allnut, Sr. on February 4, 1985 (Attachment B – MALPF easement agreement). Details of this easement are discussed later in this report.

PROJECT DESCRIPTION (Attachment C – proposed plan)

The applicant proposes to create 1 lot that is 1 acre in size and located in the southwest portion of the property with frontage on Sugarland Road. The farm remainder will remain unplatted. Sugarland Road is an exceptional rustic road requiring 40 feet of right-of-way dedication from the centerline. A single driveway will serve the new dwelling unit. The lot is to be served by a sand mound septic system and private well. To create the smallest possible lot, septic requirements are being met within easements on adjacent land. A septic easement for Lot 1 is proposed on Parcel 840. Access to the lot is proposed via a private driveway from Sugarland Road.

ANALYSIS AND FINDINGS

Section 50-35A(a)(8) requirements

The proposed lot is 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 50-35A(a)(8) in that only 1, one-acre lot is proposed. However, staff is bringing this application before the Planning Board to ensure compliance with other requirements established by the State of Maryland, which are discussed below.

Maryland Agricultural Land Preservation Foundation (MALPF) Easement Program

On February 4, 1985 Benoni Allnut, Sr. and his wife, Sarah Allnut, entered into an agricultural preservation easement agreement with the state of Maryland to preserve the agricultural capacity of 229 acres of the family's land in perpetuity. The agricultural preservation easement agreement

is a result of the Maryland Agricultural Land Preservation Foundation Easement Program. The agreement, with regard to subdivision of the subject property into lots, specifies the following in the covenants, conditions, limitations and restrictions section on page 3 of the document:

Subject to the reservations hereinafter contained, the Grantors covenant, grant and relinquish the following rights:

(1)(a) The right to develop or subdivide the above described land for industrial, commercial, or residential use or purpose; provided, however, the Grantors reserve as a personal covenant only and one not intended to run with the land, the right to convey one acre or less upon written application to the Agricultural Land Preservation Foundation, to themselves or to each of their children for the purpose of constructing a dwelling for that child's personal use; however, the Grantors may not convey more than 1 acre or less at a maximum density of not more than 1 acre for each 20 acres or portion thereof, not to exceed 10 lots of one acre or less, on the land herin described; the Grantors shall pay the state for the release of the easement or for the benefit of conveying, free of the easement restrictions at the price per acre that the state paid the Grantors for the grant of the easement...

Since the minor subdivision provisions of the Subdivision Regulations don't specifically include the creation of such a lot; staff is presenting this pre-preliminary plan to the Board for approval.

This is an application to create 1 lot through minor subdivision that was previously approved by MALPF Board of Trustees on December 19, 1989 but never recorded. The lot was granted to the property owner (Benoni Allnut, Sr.) for a one-family dwelling unit for his child (Benoni Allnut, Jr.). Due to various circumstances, including septic limitations on the Property, the lot right was never constructed and officially released from the MALPF easement. In 1991, the fee interest title was conveyed entirely to Benoni Allnut, Jr. Rights retained within the easement for child lots are reserved specifically for the Grantor of an easement and those rights do not run with the land and do not convey with the transfer of title to a new owner. Since the lot was not officially created prior to a change in title, the Agricultural Preservation Advisory Board (APAB) and MALPF Board of Trustees has, upon the request of Benoni Allnut, Jr., reevaluated the request to create the child lot Benoni Allnut, Sr. originally sought. By memo dated April 1, 2008, the Department of Economic Development confirmed that the MALPF Board of Trustees approved the size and location of the child lot in accordance with a recommendation of approval from the APAB (Attachment D – department of economic development memorandums). In this instance, the MALPF Board of Trustees has chosen to honor the original request for a lot for the child of the property owner because the lot was reviewed and approved prior to the change in title.

Relationship to the Agricultural and Open Space Master Plan (Attachment E – community based planning memorandum)

The Agricultural and Rural Open Space (AROS) Master Plan establishes agriculture as the preferred use for land in the RDT zone. Pre-preliminary plan lot configurations in the RDT zone should promote the continued use of the property for agricultural purposes. For this plan, a 228.8-acre farm operation will be maintained on Parcel 840, the house to be built on the new lot

will be occupied by the owner of the property, and the offspring will occupy the existing farmhouse, fostering intergenerational transfer of farming operations. The proposed lot is as small as practical to preserve a critical mass of farmland. The proposed pre-preliminary plan conforms to the recommendations for preservation of agricultural uses, which are included in the Agricultural and Rural Open Space Master Plan.

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 229.8-acre property is therefore eligible for 9 residential lots. This 1 lot proposal is in conformance with the allowable density per Section 59-C-5.3 of the Zoning Ordinance. The APAB has approved the size and location of the proposed lots, and determined that there is an adequate number of TDR's available to accommodate the lot.

The lot 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.

Environment

This plan is in compliance with the Montgomery County Environmental Guidelines for protection of environmentally sensitive areas. The applicant submitted a forest conservation plan that was approved by Environmental Planning staff on April 17, 2008.

Citizen Correspondence and Issues

The owner of the parcel located directly west of the proposed lot, Mr. Robert Ladd, raised concerns over the location of the proposed septic field and its proximity to his drinking well at the April 11, 2006 APAB meeting. The proposed location meets health regulations which require that disposal fields must not be located within 100 feet of an existing well. As of the date of this report, no additional citizen concerns have been brought to the attention of 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 1985 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 map

Attachment B – MALPF easement agreement

Attachment C – proposed plan

Attachment D – department of economic development memorandums

Attachment E – community-based planning memorandum

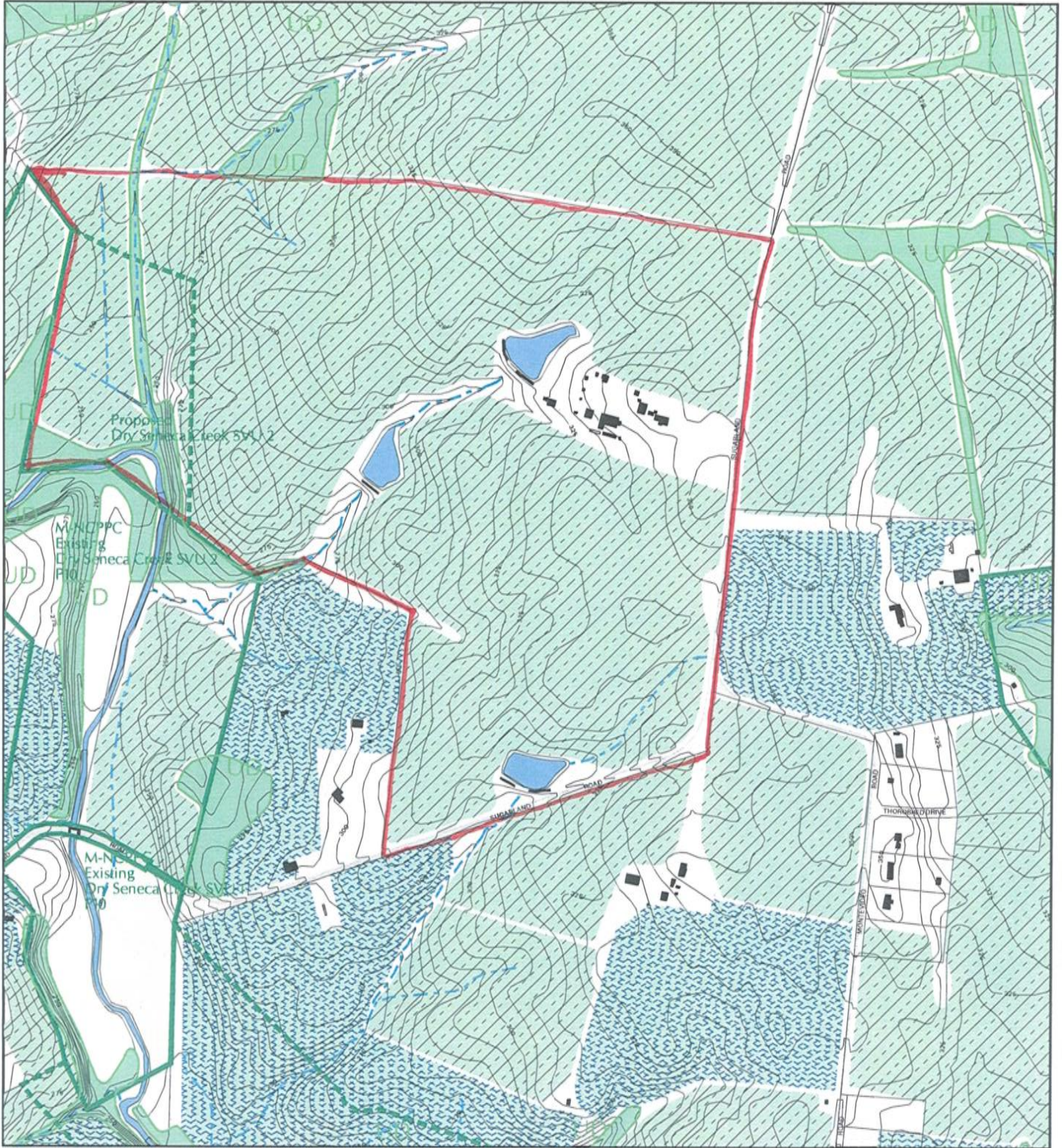
Attachment F – agency correspondence

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Allnut Property				
Plan Number: 720060530				
Zoning: RDT				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Minor Subdivision				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	43,560 sf is minimum proposed	EG	4/16/08
Lot Width	125 ft.	151.5 ft. is minimum proposed	EG	4/16/08
Lot Frontage	25 ft.	151.5 ft. is minimum proposed	EG	4/16/08
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	EG	4/16/08
Side	20 ft. Min./40 ft. total	Must meet minimum ¹	EG	4/16/08
Rear	35 ft. Min.	Must meet minimum ¹	EG	4/16/08
Height	50 ft. Max.	May not exceed maximum ¹	EG	4/16/08
Max Resid'l d.u. or Comm'l s.f. per Zoning	9 as per base zone	1 lot	EG	4/16/08
MPDUs	Not required		EG	4/16/08
TDRs	1 must be available	1 available	EG	4/16/08
Site Plan Req'd?	No		EG	4/16/08
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	EG	4/16/08
Road dedication and frontage improvements		Yes	Agency letter	4/23/08
Environmental Guidelines		Yes	Staff memo	4/21/08
Forest Conservation		Yes	Staff memo	4/21/08
Master Plan Compliance		Yes	Staff memo	4/21/08
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		N/a	EG	4/16/08
Water and Sewer (WSSC)		N/a	EG	4/16/08
10-yr Water and Sewer Plan Compliance		N/a	EG	4/16/08
Well and Septic		Yes	Agency letter	Required for lot recordation
Local Area Traffic Review		N/a	EG	4/16/08
Fire and Rescue		Yes	Agency letter	4/10/06
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.

ALLNUTT PROPERTY (720060530)



Map compiled on March 30, 2006 at 8:35 AM | Site located on base sheet no - 220NW17

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



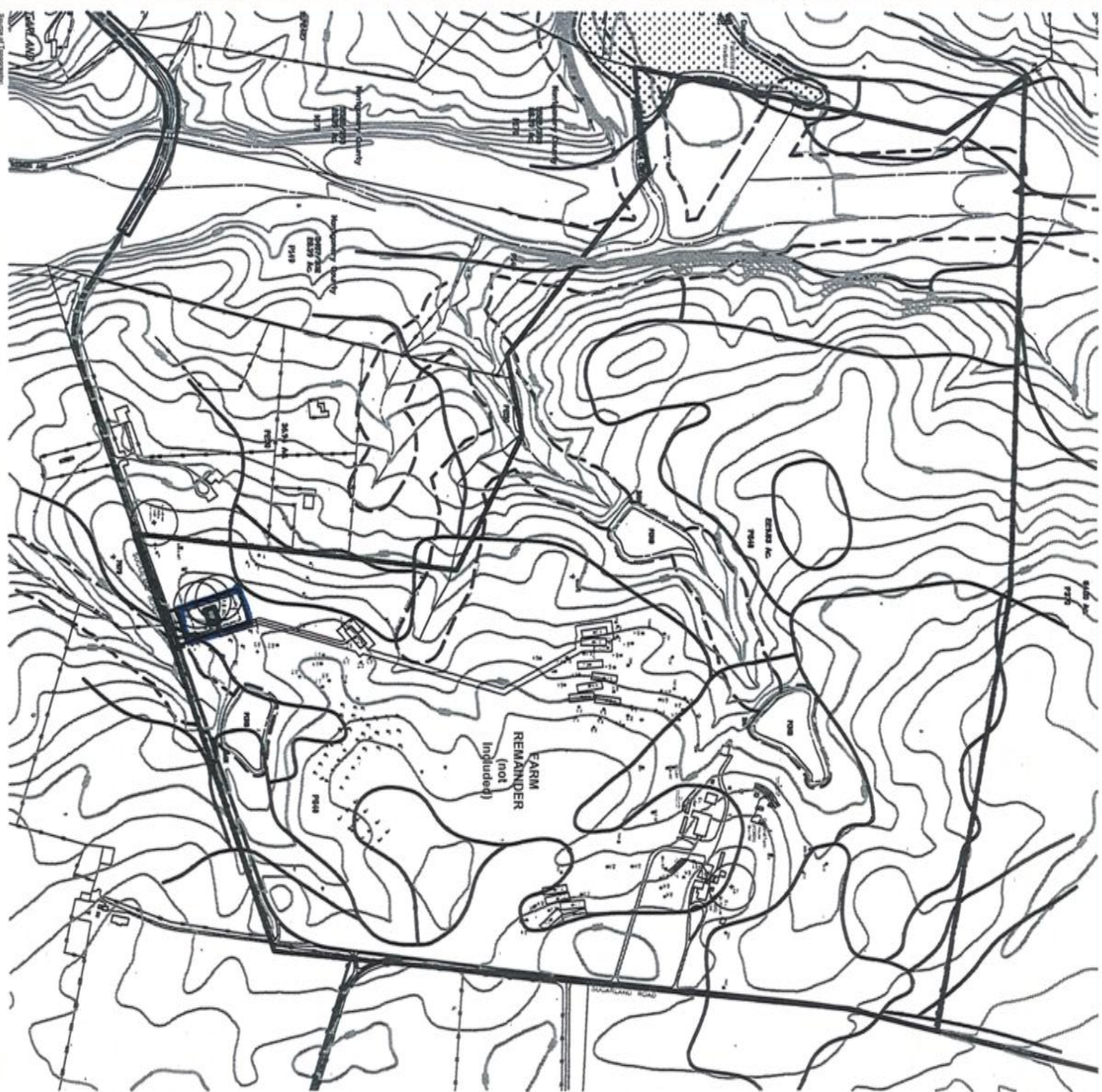
N



Research & Technology Center

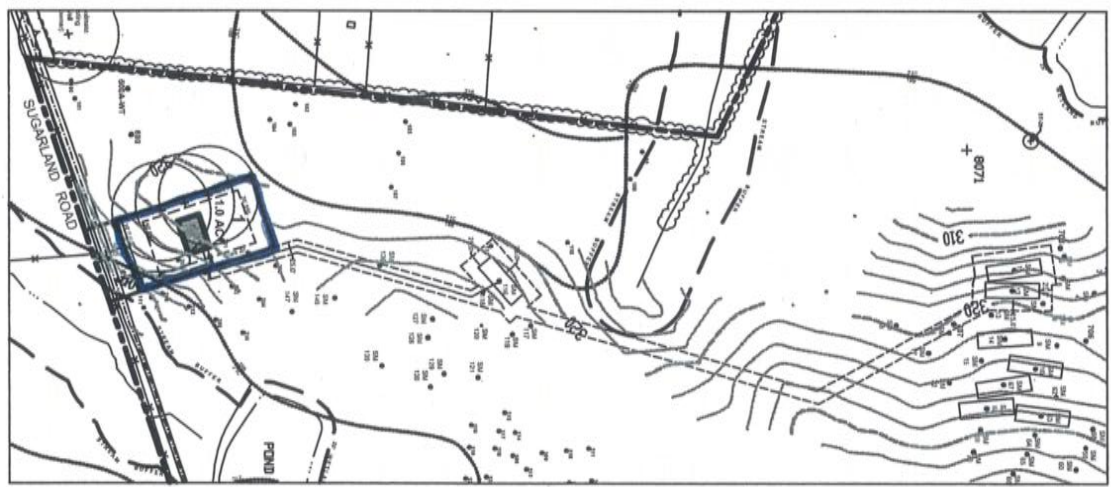


1 inch = 800 feet
1 : 9600



NOTES:

1. AREA OF PROPERTY - 23.83 AC
2. EXISTING ZONING - R01
3. NUMBER OF LOTS PROPOSED - 1 (By Minor Subdivision)
4. AREA DEDICATED TO STREETS - 0.45 AC
5. AREA IN LOT - 1.9 AC
6. AREA OF PROPOSED SUBDIVISION - 23.83 AC
7. SITE TO BE SERVED BY WELLS & ON-SITE SEPTIC SYSTEMS
8. EXISTING SEWER & WATER SERVICE CATEGORIES: S-4, W-6
9. LOCATED IN DRY SENeca CREEK WATERSHED (CLASS P)



NOTE:
 OF THE FOOT CONTAINING INTERNAL TOPOGRAPHY.
 THOMAS A. MARCOX, PROFESSIONAL LAND SURVEYOR
 8833 SHADY GROVE COURT
 GAITHERSBURG, MARYLAND 20877
 301-944-0804

Benoni D. JR. & M. Allnut
 Registered L.P.
 15000 Rockledge Road
 P.O. Box 1000
 DRIEBACH, MD 21037
 410-326-4544



"MINOR SUBDIVISION"

PRE-APPLICATION PLAN
ALLNUTT PROPERTY
 Montgomery County, Maryland

B&A
 Benning & Associates, Inc.
 Land Planning Consultants
 8011 Shady Grove Court
 Gaithersburg, MD 20877
 301-944-0000

date: February 2006
 scale: 1" = 200'



DATE	2/2/06
SCALE	1" = 200'
PROJECT	ALLNUTT PROPERTY
CLIENT	BENONI D. JR. & M. ALLNUTT
DESIGNER	BENONI D. JR. & M. ALLNUTT
CHECKED	BENONI D. JR. & M. ALLNUTT
DATE	2/2/06

Sheet 1 of 2

LIBER 6648 FOLIO 287

DGS file 15-03-83-01

THIS DEED OF EASEMENT, made this 4th day of February, 1985, by and between BENONI D. ALLNUTT III and SARAH R. ALLNUTT, his wife, parties of the first part, Grantors; and THE STATE OF MARYLAND to the use of the MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION OF THE DEPARTMENT OF AGRICULTURE, party of the second part, Grantee, and containing covenants intended to be real covenants running with the land.

MISC. 36.00
MISC. 1.50
SUBTOTAL 37.50
CHECK 37.50
#00616 C850 R02 T15:40
FEB 7 85

WITNESSETH:

WHEREAS, Title 2 of Subtitle 5 of the Agriculture Article, Md. Ann. Code, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

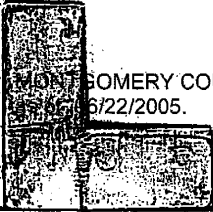
WHEREAS, by authority of Agriculture Article, Section 2-504(3), Md. Ann. Code, the Agricultural Land Preservation Foundation may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantors own the hereinafter described tract or parcel of land located in an agricultural preservation district established pursuant to Agriculture Article Section 2-509, Md. Ann. Code, and desires to sell an agricultural preservation easement to the Grantee to restrict that land to agricultural use.

NOW, THEREFORE, in consideration of the sum of TWO HUNDRED FIFTY-TWO THOUSAND FIFTY-NINE and 98/100 DOLLARS, (\$252,059.98), of which \$84,019.83

216.00
1.50
150.00

ACCOUNT NUMBER 33636



LIBER 6648 FOLIO 288

is being paid at this time, the receipt whereof is hereby acknowledged, with the balance, plus interest, payable in future installments as agreed, the Grantors, for themselves, their heirs, personal representatives and assigns, and the survivor of them, his or her heirs, personal representatives and assigns, do grant and convey to the State of Maryland to the use of the Agricultural Land Preservation Foundation of the Maryland Department of Agriculture, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tract or parcel of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

ALL THAT TRACT or parcel of land in the 3rd Election District of Montgomery County, State of Maryland, described in a deed dated August 24, 1895 as recorded in the Montgomery County Land Records in Liber 49, folio 486; saving and excepting therefrom 9,477 square feet, more or less conveyed to the Board of County Commissioners of Montgomery County by a deed dated December, 1931 as recorded in the aforesaid Land Records in Liber 534, folio 278; also saving and excepting 36.8 acres, more or less, conveyed to Robert D. Ladd, et ux, by a deed dated June 17, 1964 as recorded in the aforesaid Land Records in Liber 3237, folio 361.

The net acreage intended to be subject to this Deed of Easement being 229.1454 acres of land, more or less.

BEING part of the land acquired by the Grantors herein by a deed dated December 1, 1982 as recorded among the aforesaid Land Records in Liber 6013, folio 650.

TOGETHER WITH all improvements thereupon, and the rights, alleys, ways, easements, privileges, appurtenances and advantages belonging or appertaining thereto.

AND the Grantors covenant for and on behalf of themselves, their heirs, Personal Representatives, successors and assigns, with the Grantee, its successors and assigns to do and refrain from doing upon the above described land all and any of the various acts hereinafter set forth, it being the intention of the parties that the said land shall be preserved

LIBER 6648 FOLIO 289

solely for agricultural use in accordance with the provisions of Agriculture Article, Title 2, Subtitle 5, Md. Ann. Code, and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the above described land and are to be deemed and construed as real covenants running with the land.

COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

A. Subject to the reservations hereinafter contained, the Grantors covenant, grant, and relinquish the following rights:

- (1) (a) The right to develop or subdivide the above described land for industrial, commercial, or residential use or purpose; provided, however, the Grantors reserve as a personal covenant only and one not intended to run with the land, the right to convey one acre or less upon written application to the Agricultural Land Preservation Foundation, to themselves or to each of their children for the purpose of constructing a dwelling for themselves or that child's personal use; however, the Grantors may not convey more than 1 acre or less at a maximum density of not more than 1 acre for each 20 acres or portion thereof, not to exceed 10 lots of one acre or less, on the land herein described; the Grantors shall pay the State for the release of the easement or for the benefit of conveying, free of the easement restrictions at the price per acre that the State paid the Grantors for the grant of the easement; and the further right to construct, subject to the approval of the Agricultural Land Preservation Foundation, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house for each 100 acres. The land on which a tenant house is constructed may not be subdivided or conveyed to any persons. In addition, the tenant house may not be conveyed separately from the original parcel. The Grantors shall not-

LIBER 6648 FOLIO 290

ify the Grantee if the land is subdivided to permit the Grantee to determine whether such subdivision violates any of the covenants, conditions, limitations or restrictions contained herein;

- (b) The right to subdivide the above described land for any purpose except upon written approval of the Agricultural Land Preservation Foundation;
 - (c) Before any conveyance is made pursuant to paragraph (1)(a) above, the owner shall agree with the Agricultural Land Preservation Foundation not to subdivide any land conveyed. This agreement shall be recorded among the land records of the County or Counties where the land is located and shall bind all future owners; and
 - (d) On request to the Foundation, an owner may exclude from the easement restrictions 1 acre per each single dwelling, which existed at the time of the sale of the easement, by a land survey and recordation provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the Agricultural Land Preservation Foundation not to subdivide each acre excluded. This agreement shall be recorded among the land records of the County or Counties where the land is located and shall bind all future owners.
- (2) The right to erect, display, place or maintain signs, billboards, or outdoor advertising displays on the land herein described; provided, however, the Grantors reserve the right to erect signs not exceeding 4 feet x 4 feet for each of the following purposes:
- (a) To state the name of the property and the name and address of the occupant;
 - (b) To advertise any home or ancillary occupation consistent with the purposes of this easement subject to the approval of the Grantee; and

LIBER 6648 FOLIO 291

(c) To advertise the property's sale or rental.

- (3) The right to dump ashes, sawdust, bark, trash, rubbish or any other material; provided, however, the Grantors reserve the right to dump any material which is for regular agricultural use.

The Grantors reserve 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 said above described land; and all other rights and privileges not hereby relinquished, including their right of privacy.

B. And the parties, for themselves, their heirs, Personal Representatives, successors and assigns, further covenant and agree as follows:

- (1) The Grantors shall manage the above described land in accordance with sound agricultural soil and water conservation practices so as to promote the agricultural capability of the land; and shall manage any woodland in accordance with sound forestry practices; however, the Grantors reserve the right to selectively cut or clear cut from time to time trees which will not alter the agricultural character of the land or diminish its productive capability.

- (2) The Grantee or its authorized representative shall have the

LIBER 6648 FOLIO 292

right to enter on the above described land from time to time for the sole purposes of inspection and enforcement of the easement, covenants, conditions, limitations and restrictions herein contained; provided, however, that the Grantee shall have no right to inspect the interior of any structures on the above described land.

- (3) That if the easement or any covenant, condition, limitation or restriction herein contained is violated or breached, the Grantee may after due notice to the Grantors, their heirs, Personal Representatives, successors or assigns, institute an action in equity to enjoin, by ex parte, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such violation or breach; to recover damages; and to take such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions herein contained.
- (4) If the Grantors have any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land they may submit a written request to the Maryland Agricultural Land Preservation Foundation for consideration and approval of such use.
- (5) That this easement does not grant the public any right of access or any right of use of the above described land.
- (6) That nothing herein contained shall relieve the Grantors, their heirs, Personal Representatives, successors and assigns of the obligation to pay real estate taxes.

LIBER 6648 FOLIO 293

(7) That this easement shall be in perpetuity, or for so long as profitable farming is feasible on the Grantors' land and may be released only by the Grantee as provided in Agriculture Article Section 2-514, Md. Ann. Code.

AND the Grantors further covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed and that they will warrant specially the property interest hereby conveyed; and that they will execute such further assurances of the same as may be required.

AS WITNESS the hand and seal of the Grantors.

WITNESS:

Jacob D. Allnut Benoni D. Allnut III (SEAL)
BENONI D. ALLNUTT III

Sarah R. Allnut Sarah R. Allnut (SEAL)
SARAH R. ALLNUTT

STATE OF MARYLAND, COUNTY OF Exton, To Wit:

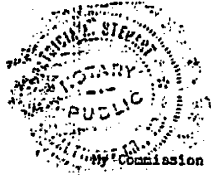
I HEREBY CERTIFY that, on this 11th day of February, 1985, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared BENONI D. ALLNUTT III and SARAH R. ALLNUTT, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within Deed of Easement and acknowledged that they executed the same for the purposes therein contained and in my

- 7 -

LIBER 6648 FOLIO 294

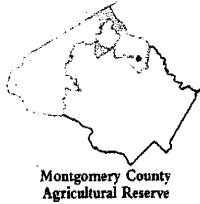
presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.



William C. Stewart

Notary Public



DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Pradeep Ganguly, Ph.D.
Director

April 1, 2008

Memorandum:

To: Cathy Conlon, Supervisor

From: John P. Zawitoski, Director of Planning and Promotions
Department of Economic Development

Subject: Preliminary Plan #7 20 060530 Allnutt Property

Please accept this correspondence as a follow up to our exchange of emails on March 21, 2007 regarding the Status of the Agricultural Preservation Advisory Board's review of the Ben Allnutt child lot request on his home farm encumbered by a Maryland Agricultural Land Preservation Foundation (MALPF) Easement. This correspondence details the chain of events and approvals that have taken place since the APAB made the request to DRC on March 29th, 2006 to delay action on the pre-preliminary until the APAB in consultation with the MALPF had been completed.

I apologize for not following up with you on this preliminary plan and I should have provided you with an update to ensure the loop of information was closed. From our perspective the issues the APAB have been addressed and the applicant can proceed towards achieving the development regulations for approving the lot. This includes scheduling a hearing before the Planning Board.

If there is any other information you may require, please do not hesitate to contact me. I can be reached at 301-590-2810.

Summary of Events surrounding Preliminary Plan #7 20 060530

On March 29, 2006, I contacted James Conrad, Executive Director of the MALPF, via phone to seek guidance on the entitlement issue. From this conversation, it was conveyed that a precedent already existed by which the entitlement to a child lot was granted, when the ownership of the encumbered property changed from father to son, or from father to daughter. Mr. Conrad went on to state that when the lot exclusion is exercised, it would be subject to the new language which would prohibit the transfer for a period of 5 years. Furthermore, from his perspective, the main issue that needed to be resolved was the lot location issue. In essence, was there a new location and was the new location considered to be a substantive change to what had been previously approved? Zawitoski informed Mr. Conrad that the APAB would take up these issues with the landowner and provide recommendations.

Ben Allnutt was in attendance at the April 11, 2006 APAB meeting to answer questions raised by the APAB. Also in attendance was an adjacent landowner (Mr. and Mrs. Robert Ladd) whose property is protected by a County Agricultural Easement. The APAB reviewed the previously approved location and compared it to the new proposed location and found that there was a change in the location. While in the Board's opinion the change was not substantive, it nonetheless represented a change and they weighed the merits of the new location. The APAB felt that the new location represented a much better location as the proposal moves the lot from being located in the middle of a crop field, to a location tucked up along the southwest corner of the farm property. The APAB questioned Mr. Allnutt as to whether it was his intent to live in the house. Mr. Allnutt responded positively and indicated his son would most likely reside in the existing old farm house.

One other issue was raised by the adjacent landowner (Mr. Ladd). He was concerned about the impact of the proposed septic absorption field and the proximity to his drinking well. Health regulations require at a minimum a 100 foot set back for any disposal field from any existing well. The APAB informed Mr. Allnutt and his engineer, that if the lot location was approved, that as a requirement, all setback requirements as well as any potential impacts to Mr. Ladd's well would have to be addressed and mitigated.

On April 11, 2006, the APAB voted to recommend to the MALPF staff and the Board of Trustees if necessary, that the proposed new location represented a non substantive change and it also represented a better lot configuration as it mitigated potential farmland impacts. The APAB also went on record in support of the adjacent landowner to ensure that no negative impacts to his well for potable drinking water will occur as result of this child lot.

As a follow up to the APAB recommendation, I received a copy of written correspondence sent to Mr. Allnutt from the MALPF dated July 26, 2006 indicating the approval by the Board of Trustees on the relocation of the child lot in accordance with the recommendation of the APAB.

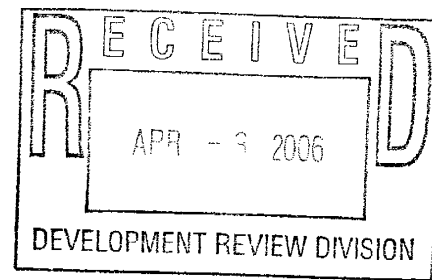
During the following months, Mr. Allnutt was working to achieve all the requirements necessary for obtaining approvals for well and septic. During this time, typically DED is disconnected from the process. Unless the landowner provides us updated information on a regular basis, we are naturally not aware of the timeline and progress that is made in obtaining these approvals as we are not part of the approval process.

I instructed Ben Allnutt to on June 7, 2007 to move forward with MNCPPC on the subdivision as all the requirements of both MALPF and the APAB had been addressed. It is my understanding that on June 13, 2007, Ben Allnutt instructed Josh Maisel of Benning & Associates to get started on the approvals from county agencies. On July 2, 2007, I also instructed Josh Maisel of Benning & Associates that all of the concerns on Ben Allnutt's request had been addressed and there would not be a need for any further approvals by the Agricultural Preservation Advisory Board.



DEPARTMENT OF ECONOMIC DEVELOPMENT

Douglas M. Duncan
County Executive



David W. Edgerley
Director

March 29, 2006

Memorandum:

To: Cathy Conlon, Acting Supervisor

From: John P. Zawitoski, Director of Planning and Promotions
Department of Economic Development

Subject: Preliminary Plan 720060530 Allnutt Property

Thank you for sending me the copy of the Development Review Committee's agenda for April 10, 2006. After reviewing the agenda, I discovered there is a property listed for subdivision that is protected by a Maryland Agricultural Land Preservation Foundation Easement (MALPF). Under the terms of the easement, the Grantor is entitled to certain rights for children to construct residences on the farm property.

On December 19, 1989, the MALPF Board of Trustees approved the creation of a 1 acre lot for Benoni D. Allnutt, Jr. The Agricultural Preservation Advisory Board (APAB) concurred and recommended approval of the lot for Benoni D. Allnutt, Jr. on January 9, 1990. Unfortunately, due to various circumstances the lot right was never constructed and officially released from the easement and then later, the fee interest title was conveyed entirely to Benoni D. Allnutt, Jr. and his wife Sarah.

As you are aware, rights retained within the easement for child lots are reserved specifically for the Grantor of an easement and those rights do not run with the land and do not convey with the transfer of title to a new owner. Given this lot right was not officially created before the change in title, there is some question as to whether an entitlement to the lot still exists for the exclusive use of Benoni D. Allnutt, Jr. In order to resolve this issue, we believe the MALPF Board of Trustees will have to review the unique circumstances surrounding this lot right and determine if the entitlement to the child lot is still valid. Therefore, I would recommend no formal approvals should be granted for this lot until we have had an opportunity to resolve this issue with the MALPF.

Agricultural Services Division

I hope the letter and supporting background information helps the DRC to understand the special circumstances involving this property and I hope you will assist me to ensure compliance of easement's covenants and restrictions. I will coordinate with the DRC and we will be available to answer any questions you may have regarding the easement and this issue. I will also bring this issue before the Agricultural Preservation Advisory Board and the MALPF Board of Trustees for the purpose of resolving the lot entitlement issue. If you have any questions or comments, I can be reached at 301-590-2831.

cc: Vickie Gaul, Assistant County Attorney
Jeremy Criss, Manager
APAB
File



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

April 21, 2008

To: Erin Grayson, Planner
 Development Review Division

From: Callum Murray, ^{CM} Team Leader, Potomac Subregion and Rural Area West
 Community-based Planning Division

Leslie Saville, Planner
 Community-based Planning Division

Subject: Allnut Property
 Pre-preliminary plan 7-200060530

Master Plans: Functional Master Plan for the Preservation of Agriculture and Rural Open Space
 in Montgomery County (1980)
 Rustic Roads Function Master Plan (1996)

The 229-acre Allnut property is a farm located on Sugarland Road, an Exceptional Rustic Road, in Poolesville. The property is guided by the Functional Master Plan for the Preservation of Agriculture and Rural Open Space (AROS) and the Rustic Roads Functional Master Plan (RRFMP). It is in the Rural Density Transfer (RDT) zone.

Staff finds the plan to conform to both Master Plans and the zoning requirements, and recommends approval of this plan. Additional information should be submitted to the Rustic Roads Advisory Committee to obtain an access permit.

This property is covered by a Maryland Agricultural Land Preservation Foundation (MALPF) easement, under which one child lot is permitted. As required by the easement program, the proposed lot size is 1.0 acre, and located so as to retain the greatest possible amount of contiguous farmland. The lot will be served by an onsite well and by a sand-mound on the parent property. In this proposal, the house to be built on the child lot will be occupied by the owner of the property, and the offspring will occupy the existing farm house; this is not anticipated by the MALPF program but is consistent with fostering intergenerational transfer of farming operations. The proposal has been reviewed and approved by MALPF and the Agricultural Preservation Advisory Board (APAB).

The proposal meets the requirements of the AROS Master Plan by preserving a critical mass of farmland. The proposed sand mound is consistent with the Planning Board's policy of allowing sand mounds for child lots recommended by the Board or under MALPF/AEP programs.¹ The proposal further meets the requirements of the RDT zone; two houses are proposed where a

¹ March 12, 2007 memo to Marilyn Praisner, President, Montgomery County Council, on Planning Board Recommendations regarding the Ad Hoc Agricultural Policy Working Group Report.

maximum of nine would be permitted by zoning, and the lot exceeds the 40,000 square foot minimum size. A Transferable Development Right (TDR) should have been retained for this lot at the time the MALPF easement was approved.

As noted above, the Allnutts property is located on Sugarland Road, an Exceptional Rustic Road, along the politicians road section; politicians roads were one-lane concrete roads almost always built to the gate of a person with political influence. The road appears on a map by 1837, and the Master Plan notes that the Allnutts have been in this vicinity since 1763. This is one of only two remaining politicians roads in the County, and this is one of the Significant Features of the road.

The Rustic Roads Advisory Committee (RRAC) met on April 1, just prior to the submission of the plan on April 4, 2008. Rather than delaying consideration of this plan, Sarah Navid, staff to the committee, recommends that the plan be approved, with a 40-foot dedication of right-of-way, and that a more detailed plan and photos of the site be provided to the committee for consideration prior to issuance of access permits. The plan should include the proposed location, width and material for the driveway, and elements that might impact the character of the roadway, such as proposed plantings or fencing. If a plan and photos can be provided by the next RRAC meeting on May 27, 2008, the RRAC will comment. The applicant, his land planning firm and staff have agreed to this.

M:\Murray\Ag\Allnutts 7-06053 042108.doc



DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

April 23, 2008

Arthur Holmes, Jr.
Director

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

RE: Pre-Preliminary Plan No. 7-20060530
Allnutt Property

Dear Ms. Conlon:

We have completed our review of the above-referenced pre-preliminary plan. We recommend following items to be addressed to MCDPS satisfaction prior to recordation of record plat:

1. Show all existing topographic details (paving, storm drainage, driveways adjacent and opposite the site, sidewalks and/or bikeways, utilities, rights of way and easements, etc.).
2. Necessary dedication for Sugarland Road in accordance with the master plan.
3. Storm drainage and/or flood plain studies, with computations. Analyze the capacity of the existing public storm drain system and the impact of the additional runoff.
4. Necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line. Also show revertible and perpetual easements.
5. Wells and septic systems cannot be located within the right of way or easements.
6. Submit a completed, executed MCDPW&T Sight Distances Evaluation certification form to MCDPS for their review and approval.
7. Revise the plan as necessary to meet the requirements of the Montgomery County Department of Permitting Services with regard to wells and/or septic systems.
8. Sugarland Road is classified as an "exceptional rustic road" under Section 49-78 of the Montgomery County Code. As such, every effort must be made to preserve the existing topographic features, including man-made improvements and vegetation.

Division of Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
240-777-6000 • 240-777-6013 TTY • 240-777-6030 FAX
www.montgomerycountymd.gov

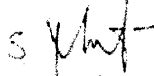
Ms Catherine Conlon
Pre-Preliminary Plan No. 7-20060530
Date April 23, 2008
Page 2

Since access will be from a road included in the Rustic Roads Program, we will need to inspect the impact of the subdivision on the rustic road. Stake and pavement mark the proposed driveway location(s) for MCDPS field check; contact Ms. Sarah Navid to schedule the field check.

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

Thank you for the opportunity to review this pre-preliminary plan. If you have any questions or comments regarding this letter, please contact me at sam.farhadi@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E.
Development Review Group
Traffic Engineering and Operations Section
Division of Operations

m:\subdivision\farhad\pre-preliminary plans\7-20060530_Alnutt_Property.doc

cc: Benoni D. & Sarah Alnutt III
David McKee / Joshua Maisel, Benning & Associates
Robert Harris, Holland & Knight
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck, DPWT TEOS
Pre-Preliminary Plan Folder
Pre-Preliminary Plans Note Book