



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

MCPB
Item #
10/16/08



MEMORANDUM

DATE: October 3, 2008

TO: Montgomery County Planning Board

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

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

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Subdivision of Parcel 606 into two lots and one outlet

PROJECT NAME: Miller Property
CASE #: 120061190
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RC
LOCATION: On the north side of Darnestown Road (MD 28), approximately 860 feet northeast of Turkey Foot Road.

MASTER PLAN: Potomac

APPLICANT: Guelda Carol Miller
ENGINEER: Benning and Associates.

FILING DATE: June 5, 2006
HEARING DATE: October 16, 2008

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots, one outlet for potential future development, and one open space parcel.
- 2) The applicant must comply with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable. Conditions include but are not limited to:
 - a) Applicant to begin reforestation during the first planting season after issuance of the first sediment control permit.
 - b) Applicant to install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easement in Outlot A and along the FCE on Lot 2.
 - c) Applicant to install permanent split-rail fencing along Category I Forest Conservation Easement on Lot 3 and Outlot 1.
 - d) Applicant to submit a final forest conservation plan consistent with Section 109-B of the Forest Conservation Regulations.
 - e) Applicant to submit and implement an invasive species management plan for forest stand E, as identified on the approved NRI/FSD, as part of the final forest conservation plan.
- 2) Record plat must reflect Category I easements as shown on the approved preliminary forest conservation plan.
- 3) The record plat must contain a note stating that Outlot 1, as currently shown on the plan, may be converted to a buildable lot only upon a finding by the Planning Board that acceptable frontage is available.
- 5) The record plat must contain a note stating that, "The land contained hereon lies within an approved cluster development. Subdivision or resubdivision except as provided for Outlot 1, as shown on the approved preliminary plan, is not permitted and development of the land is permitted only in accordance with the land uses indicated on the approved preliminary plan."
- 6) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 7) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 8) The applicant must comply with the conditions of the MCDPS stormwater management concept approval dated September 28, 2007.
- 9) The applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated September 25, 2007.
- 10) The applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (DOT) letter dated June 12, 2006, unless otherwise amended.

- 11) The applicant must comply with the approval conditions of the Building/Fire Code Modification Advisory Committee letter signed by Michael T. Hamilton, Assistant Fire Marshall, dated June 12, 2007.
- 12) Prior to the issuance of any building permit the applicant must make the applicable School Facilities Payment to MCDPS.
- 13) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board resolution.
- 14) Other necessary easements must be shown on the record plat.

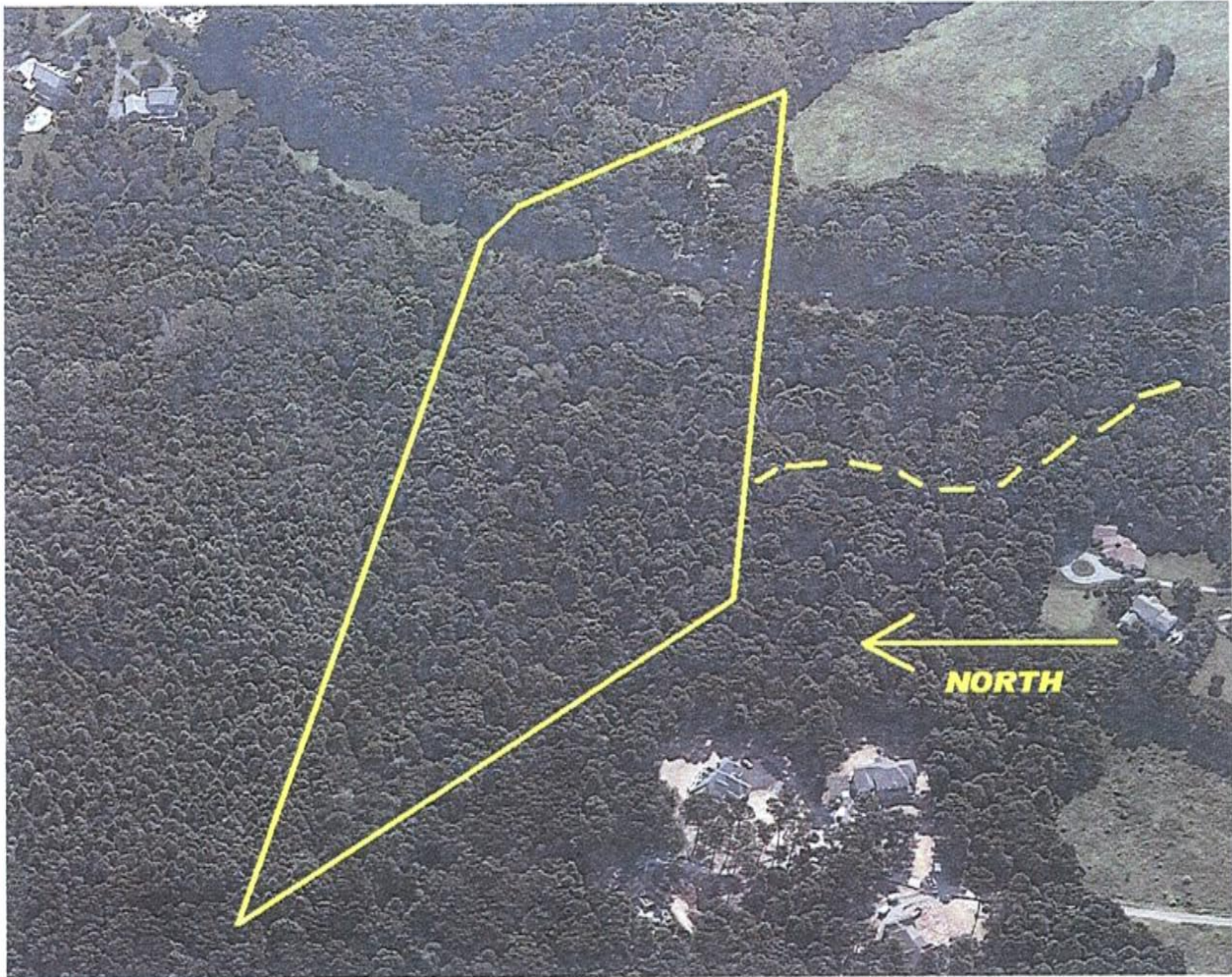
SITE DESCRIPTION (Attachment A – Vicinity Map)

The 16.11-acre property, shown below and in Attachment A, is located on the north side of Darnestown Road (MD 28) between Masonwood Drive and Turkey Foot Road. The property is landlocked, having no point of contact with a public street. Access to the property is from Darnestown Road via an approximately 3,300-ft long driveway which traverses private property within an easement.

The site includes 13.20-acres of existing forest. There is a tributary to the Great Seneca Creek (Use I-P) that bisects the site. Currently, there are no existing structures on the site. A 75-foot wide Colonial pipeline right-of-way runs north to south on the eastern 1/3 of the property within proposed Outlot A.

PROJECT DESCRIPTION (Attachment B – Proposed Plan)

The applicant is seeking to subdivide the property into two buildable lots of 5.4 acres and 2.4 acres, one outlot and an open space parcel. Because under Section 50-29(a)(2) of the Subdivision Regulations the Board may only approve up to two lots without frontage on a public street, the application is limited to two lots. Since additional density is allowed under the zone, the applicant proposes to create Outlot 1 as an unbuildable lot. Outlot 1, as it is now identified, will remain unbuildable until such a time that the County's laws regarding frontage change, or provisions are added to allow private streets in the RC zone. At that time, the Board would need to determine if adequate frontage exists for the outlot and/or that a private road could be approved for frontage. Staff does not recommend that the outlot be converted by the minor subdivision process since specific findings need to be made by the Planning Board that could not be accomplished solely by review of a record plat. Outlot A, the second proposed outlot, is 5.57-acres and will be reserved as rural open space to help satisfy the 60% open space requirement for this property within the Rural Cluster zone using the optional cluster method of development. The remainder of the open space will be protected with an open space easement on the private lots. Outlot A will be platted as an open space "parcel" at the time of record plat.



ANALYSIS AND FINDINGS

Master Plan Compliance

The Potomac Subregion Master Plan supports the retention and reconfirmation of existing zoning for all developed, underdeveloped, and undeveloped land in the Subregion, except for those sites specifically recommended for change in the Plan. The Plan does not specifically identify the subject property, and therefore recommends that RC zoning be maintained and is appropriate for the site. The proposed application has been reviewed by jurisdictional agencies, and it has been determined that the proposed use will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Plan. Staff finds the proposed application substantially conforms to the Potomac Subregion Master Plan in that it is consistent with residential development in the RC zone.

Public Facilities

Roads and Transportation Facilities

The proposed lots do not generate more than 3 additional vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation or Policy Area Mobility Reviews. Access to the site is from an existing driveway, site distance is adequate at its intersection with MD 28. Staff finds the local road and transportation network to be adequate for the proposed development

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Schools are operating within acceptable standards at the middle and high school levels, but elementary schools are operating between 105-120% of capacity. Therefore, a school facilities payment will be required prior to issuance of building permits for the proposed dwelling units. Other public facilities and services, such as police stations, firehouses and health services, are currently operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. The lots will be served by private on-site well and septic systems.

Environment

Environmental Buffers

A Natural Resource Inventory/Forest Stand Delineation was submitted for the subject site and approved by staff on October 2, 2007. The site contains a use Class I-P stream that drains directly to the Great Seneca Creek after flowing off-site for approximately 4,000 feet. The site contains 9.07-acres of stream valley buffer (SVB) with 8.04-acres of that buffer being forested. All SVBs are proposed to be placed into a Category I Forest Conservation Easement with the exception of two areas. One area is that portion of the SVB that runs across the Colonial Pipeline right-of-way and the second area is where the proposed access driveway runs through the SVB. There are no wetlands on-site, however; the property does contain a moderate amount of steep slopes and steep slopes on highly erodible soils associated with the stream channel. Staff finds that the existing encroachments into the stream buffers are unavoidable and will be sufficiently offset by the open space being preserved outside the buffers in the rural open space. Therefore, staff finds that the application satisfies the *Environmental Guidelines* with regard to stream protection.

Forest Conservation

There are 13.20-acres of existing forest on this property. The forest is characterized into six different stands (Stands A-F) based on forest association and topographic locations. The overstory structure in each forest stand is dominated by a mixture of Tulip Tree (*Liriodendron*

tulipifera), Red Maple (*Acer rubrum*), White Oak (*Quercus alba*) and Scarlet Oak (*Quercus coccinea*) depending on the forest stand. The lower understory is typically dominated by a mixture of Pignut Hickory (*Carya glabra*), Black Cherry (*Prunus serotina*), Flowering Dogwood (*Cornus florida*), Eastern Red Cedar (*Juniperus virginiana*) and to a lesser extent Black Gum (*Nyssa sylvantica*) and Sycamore (*Platanus acerifolia*). The shrub layer contains Barberry (*Berberis sp.*), Greenbriar (*Smilax sp.*), Spicebush (*Lindera benzoin*), Mountain Laurel (*Kalmia latifolia*) and multiple exotic species. Five of the six forest stands contain from 1% to 5% non-native invasive species. Forest Stand E contains 25% invasive species. To help control the spread of non-native invasive species a condition of approval for the preliminary forest conservation plan requires the applicant to submit and implement an invasive species management plan for Forest Stand E as part of the final forest conservation plan.

There are thirty-two (32) trees 24" diameter breast height (DBH) or greater in size located on the subject site or within the first 100 feet of the adjoining properties. These trees range in size from 24.8" DBH up to 41" DBH. Eleven (11) of these trees are listed in good condition with nine (9) in moderate condition and twelve (12) in poor condition. Six (6) of these trees are located off-site and twenty-three (23) are located along the proposed alignment of the access driveway. Of the 32 significant sized trees twenty-three (23) are recommended for removal with nine (9) trees to be retained.

The subject site lies within the agricultural resource area under the Forest Conservation Law, and pursuant to Section 22A-12(f), the retained forest must meet the applicable conservation threshold. Of the 13.20 acres of existing forest on site, the plan indicates the removal of 4.70-acres of forest and the retention of 8.50 acres. The applicable conservation threshold for this site is 7.63 acres. This project meets the requirements of 22A-12(f) by saving more forest than the conservation threshold, however; there is still a 0.31 acre forest planting requirement to compensate for the proposed clearing. The applicant is proposing to plant 0.83 acres on-site to meet this requirement. Both the 0.83 acres of forest plantings and the 8.50 acres of retained forest will be placed in a Category I Forest Conservation Easement (FCE).

The preliminary forest conservation plan does not show any house footprints within 30 feet of the forest conservation easement or the stream valley buffer; however, the preliminary plan establishes the building envelopes, not the specific building locations. The builder has the flexibility to locate each residence anywhere within the building envelope. If a house or any house feature is constructed at or near the environmental buffer, there would be inadequate yard space which might encourage the homeowner to enter the conservation easement area to create a useable backyard area. In order to clearly delineate the forest conservation easement staff recommends a preliminary plan condition requiring the applicant to install split-rail fencing along the easement on Lot 3 and Outlot 1. Additionally, staff recommends permanent forest conservation easement signage along the easement line contained within Outlot A and on Lot 2. With the conditions cited above, staff finds that the application complies with Chapter 22A, the Montgomery County Forest Conservation Law.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. The proposed lots will meet the dimensional requirements for area, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Findings for Lots Without Frontage

This application proposes only two lots, both without frontage, and as discussed above, the plan proposes one outlot (Outlot 1) that may be re-platted as a lot in the future, only after a finding by the Planning Board that it has appropriate frontage. This finding could only follow amendments to either the Zoning Ordinance, Road Code or Subdivision Regulations which now prohibit or limit the number of lots without frontage and the use of private streets in the RC zone. For this application, in order for the two proposed lots to be approved without frontage the Planning Board must make specific findings pursuant to Section 50-29(a)(2) – Lots to Abut a Public Street, which reads as follows:

“Except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands. In multi-family and town house development, not subdivided into individually recorded lots, the board may approve more than two (2) lots or buildings on private roads or drives, provided there is adequate access from such roads or drives to a public street, as above.”

In staff's opinion, this is an exceptional circumstance whereby a property has been land locked due to a failure of surrounding subdivisions to provide sufficient land to construct a public street. Rather, adjacent subdivisions and plats granted continuation of an easement which had long served the property. The easement language has been modified recently to allow extension of public utilities along with the required pavement. Based on the approval from the Department of Fire and Rescue, signed June 12, 2007 by the Assistant Fire Marshall, the applicant has received approval for adequate fire access. The proposed 12 foot wide private driveway, with the addition of “Driveway Pull Offs”, will be adequate for emergency vehicles and other public services. Creating lots without frontage in this particular location will not inhibit further subdivision since

surrounding properties are already developed or are held in public ownership as parkland. In addition, the proposed development does not exceed the creation of two (2) lots without frontage. For these reasons, staff finds the preliminary plan complies with Section 50-29 (a)(2) of the Subdivision Regulations and supports the application as proposed.

Citizen Correspondence

This preliminary plan application pre-dated requirements for pre-submission meetings and site posting, but adjacent and confronting property owners and local civic and homeowners associations did receive written notice that the application had been filed. The same individuals, and others who asked to become parties of record during the review, also received written notice of the Planning Board hearing date. As of the date of this report, no written correspondence has been received.

CONCLUSION

As set forth above, the proposed lots meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and comply with the recommendations of the Potomac Subregion Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

Attachment A – Vicinity Map
Attachment B – Proposed Plan

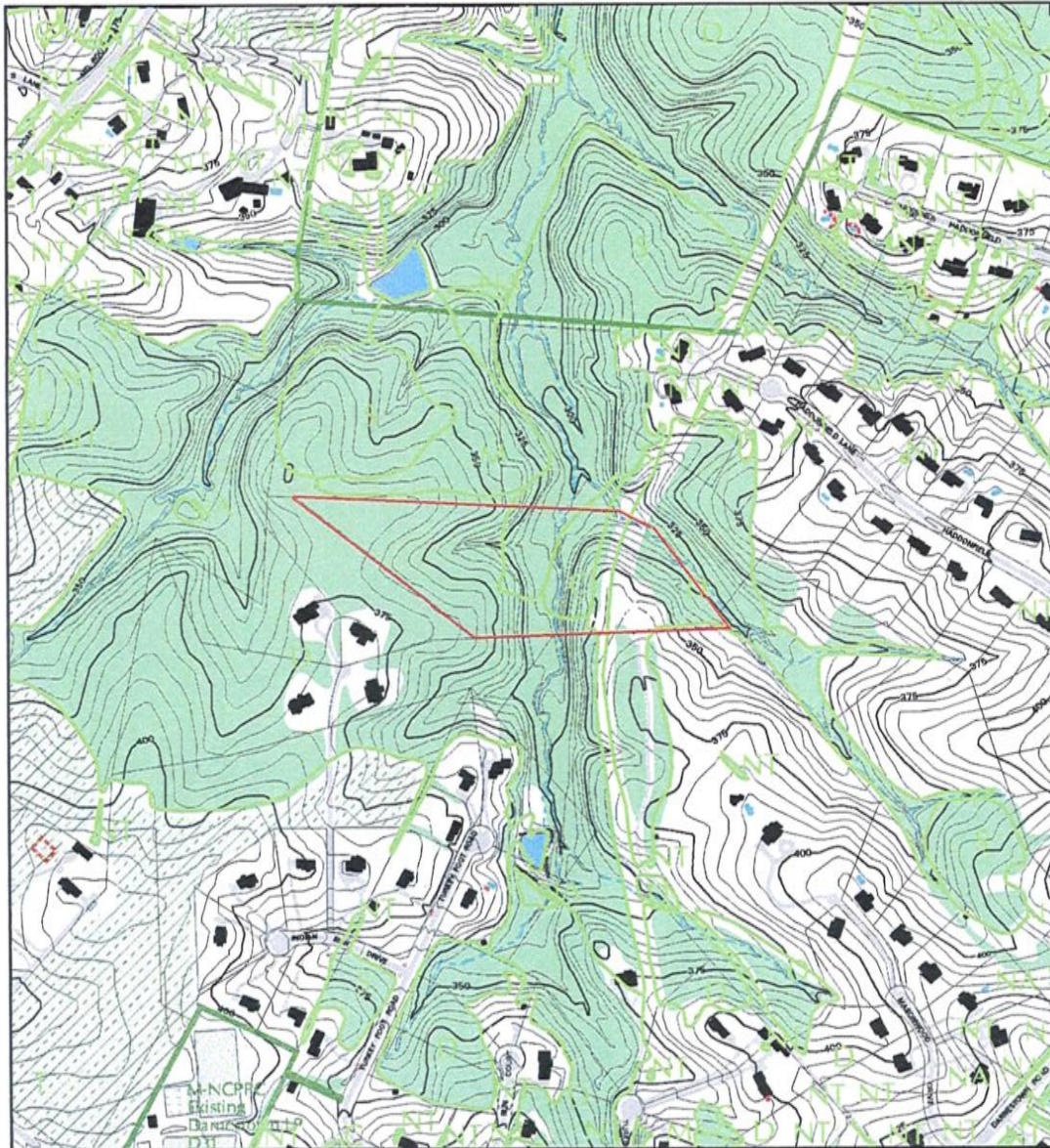
Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Miller Property				
Plan Number: 120061190				
Zoning: RC				
# of Lots: 2				
# of Outlots: 2				
Dev. Type: Cluster				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	104,544 sq. ft. is minimum proposed	RW	10/3/08
Lot Width	150 ft.	160 ft. is minimum proposed	RW	10/3/08
Lot Frontage	25 ft.	0 ft. is minimum w/ PB findings	RW	10/3/08
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	RW	10/3/08
Side	20ft. Min./40 ft. total	Must meet minimum ¹	RW	10/3/08
Rear	35 ft. Min.	Must meet minimum ¹	RW	10/3/08
Height	50 ft. Max.	May not exceed maximum ¹	RW	10/3/08
Rural Open Space	60% of net tract	Must meet minimum ²	RW	10/3/08
Max Resid'l d.u. or Comm'l s.f. per Zoning	3 dwelling unit	2 dwelling unit	RW	10/3/08
MPDUs	No			
TDRs	No			
Site Plan Req'd?	No			
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		No (Waiver)	RW	10/3/08
Road dedication and frontage improvements		N/a		6/12/06
Environmental Guidelines		Yes	Staff memo	9/24/08
Forest Conservation		Yes	Staff memo	9/24/08
Master Plan Compliance		Yes	RW	10/3/08
Other (i.e., parks, historic preservation)			RW	10/3/08
Stormwater Management		Yes	Agency letter	9/28/07
Water and Sewer (WSSC)		No	RW	10/3/08
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	
Well and Septic		Yes	Agency letter	9/25/07
Local Area Traffic Review		N/a	Staff memo	
Policy Area Mobility Review		N/a	Staff memo	10/3/08
Transportation Management Agreement		No	Staff memo	10/3/08
School Cluster in Moratorium?		No	PB RW	10/3/08
School Facilities Payment		No	PB RW	10/3/08
Fire and Rescue		Yes	Agency letter	6/12/07

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

² As determined by MNCPPC at the time of record plat.

MILLER PROPERTY



Map compiled on September 30, 2008 at 12:34 PM | Site located on base sheet no - 221NW14

NOTICE

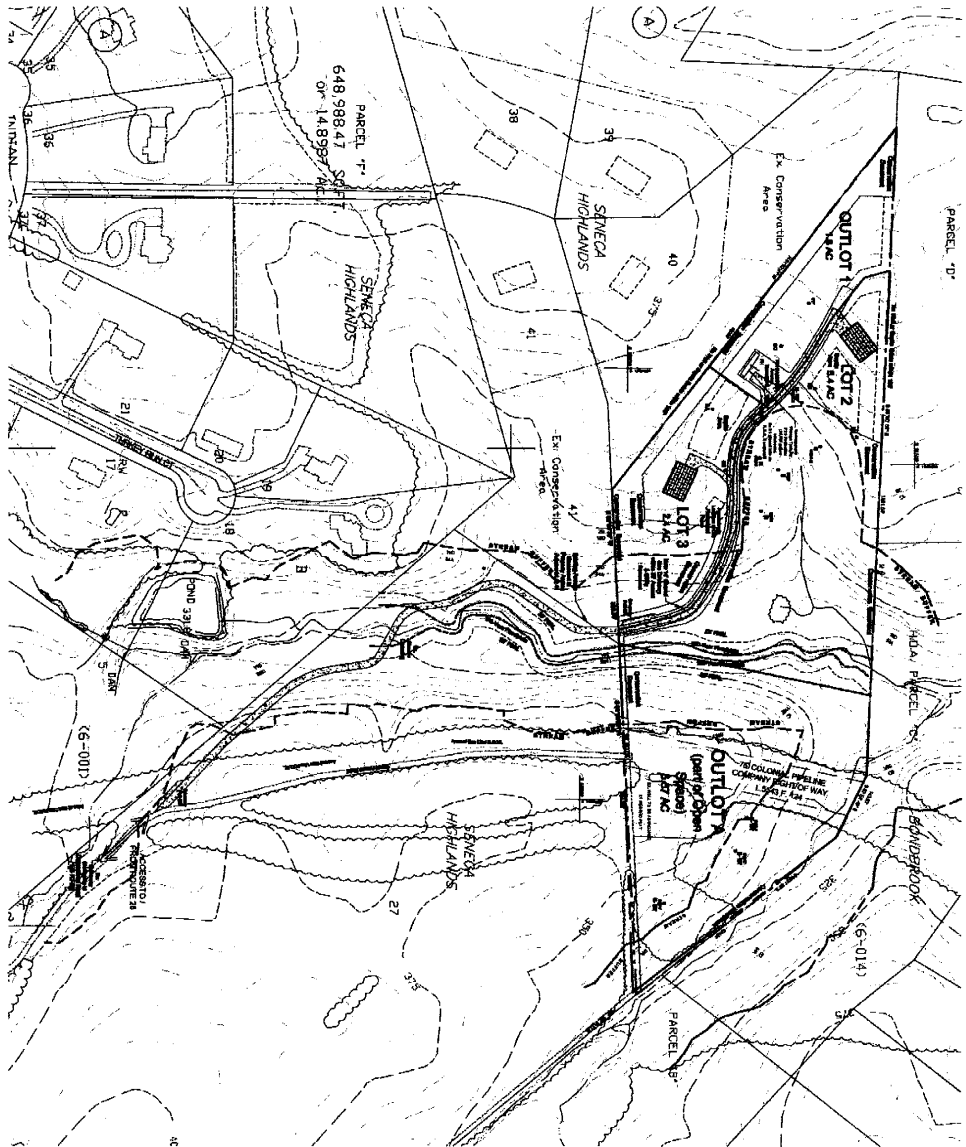
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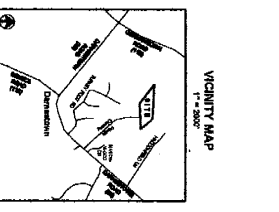
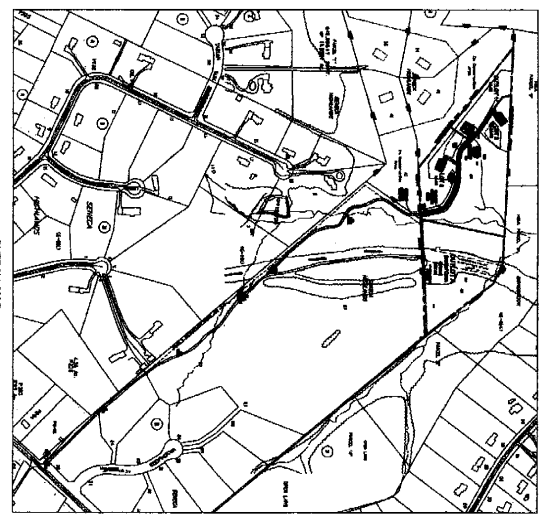
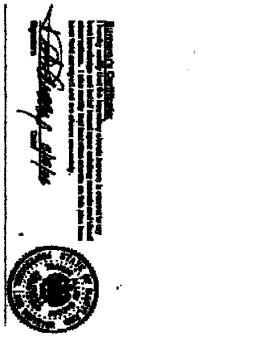
MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3700





ZONING STANDARDS	
ZONING DISTRICT	Res-C
Lot Size	1.0 ac
Front Yard Setback	10 ft
Side Yard Setback	5 ft
Back Yard Setback	10 ft
Maximum Building Height	35 ft
Maximum Building Footprint	10,000 sq ft
Maximum Lot Coverage	40%
Minimum Lot Area	1.0 ac
Minimum Lot Width	100 ft
Minimum Lot Depth	100 ft
Minimum Front Setback	10 ft
Minimum Side Setback	5 ft
Minimum Back Setback	10 ft
Minimum Front Setback	10 ft
Minimum Side Setback	5 ft
Minimum Back Setback	10 ft

- NOTES:**
1. AREA OF PROPERTY - 16.17 ACRES
 2. NUMBER OF LOTS - 100
 3. NUMBER OF LOTS SUBMITTED - 1 (1st lot per 1 set)
 4. NUMBER OF LOTS SHOWN - 2-1 (1st lot per 1 set)
 5. PROPERTY IS CURRENTLY LIMITED TO 2 LOTS TO COMPLY WITH REG. 63-01-02 OF THE SUBDIVISION REGULATIONS (i.e. not more than two (2) lots per acre)
 6. ONE OF A PRIVATE DRIVEWAY OR PRIVATE RIGHT-OF-WAY WERE THE 100 ON THE MAIN & OUTLOT 1 AS SHOWN IS INTENDED TO BE CONVERTED TO A LOT BY MINOR SUBDIVISION WHEN PRIVATE STREET BECOME PERMISSIBLE IN THE R-2 ZONE OR REG. 63-01-02 IS CHANGED TO ALLOW MORE THAN 2 LOTS ON A PRIVATE DRIVEWAY. 1.41 ac
 7. OPEN SPACE SHOWN - 11.2 ac (70%)
 8. CONSERVATION AREA - 1.41 ac (8.7%)
 9. CONSERVATION AREA - 1.41 ac (8.7%)
 10. CONSERVATION AREA - 1.41 ac (8.7%)
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 13. CONSERVATION AREA - 1.41 ac (8.7%)
 14. CONSERVATION AREA - 1.41 ac (8.7%)
 15. CONSERVATION AREA - 1.41 ac (8.7%)
 16. UTILITIES TO BE PROVIDED BY: Washington Gas, Verizon, PEPCO



PREPARED FOR:
 Gwendolyn C. Miller
 13800 Cedarhurst Road
 Silver Spring, MD 20904

PRELIMINARY PLAN
 MILLER PROPERTY
 Montgomery County, Maryland



date: May 2006
 scale: 1" = 100'



Sheet 1 of 1
Number
Scale
Date
Author
Check
Appr.