



Minor Subdivision (Record Plat), Cliftonbrook, 220111050



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Mark Pfefferle, Acting Chief, Mark.Pfefferle@montgomeryplanning.org, 301.495.4730

description

Cliftonbrook

- 17221 Pinebrook Drive
- Existing outlot containing 27,516 square feet
- Rural Cluster (RC) zone, Sandy Spring- Ashton Master Plan
- Request to convert the existing outlot into a buildable lot to accommodate one single-family dwelling through the minor subdivision process

summary

The Subdivision Regulations contain a specific provision, in Section 50-35A, which allows a property owner to convert an outlot into a building lot without requiring the submission of a Preliminary Plan. This Minor Subdivision provision, found in Section 50-35A(a)(2), contains requirements that the application must meet in order for staff to review and recommend approval of a plat to the Planning Board on its Consent Agenda. The subject application proposes to convert an outlot, originally recorded in 1965, into a building lot pursuant to the aforesaid Minor Subdivision procedure. Staff's review of the proposal and the historical documentation associated with the property does not support a minor subdivision application.

Staff recommends **denial of the Minor Subdivision application.**

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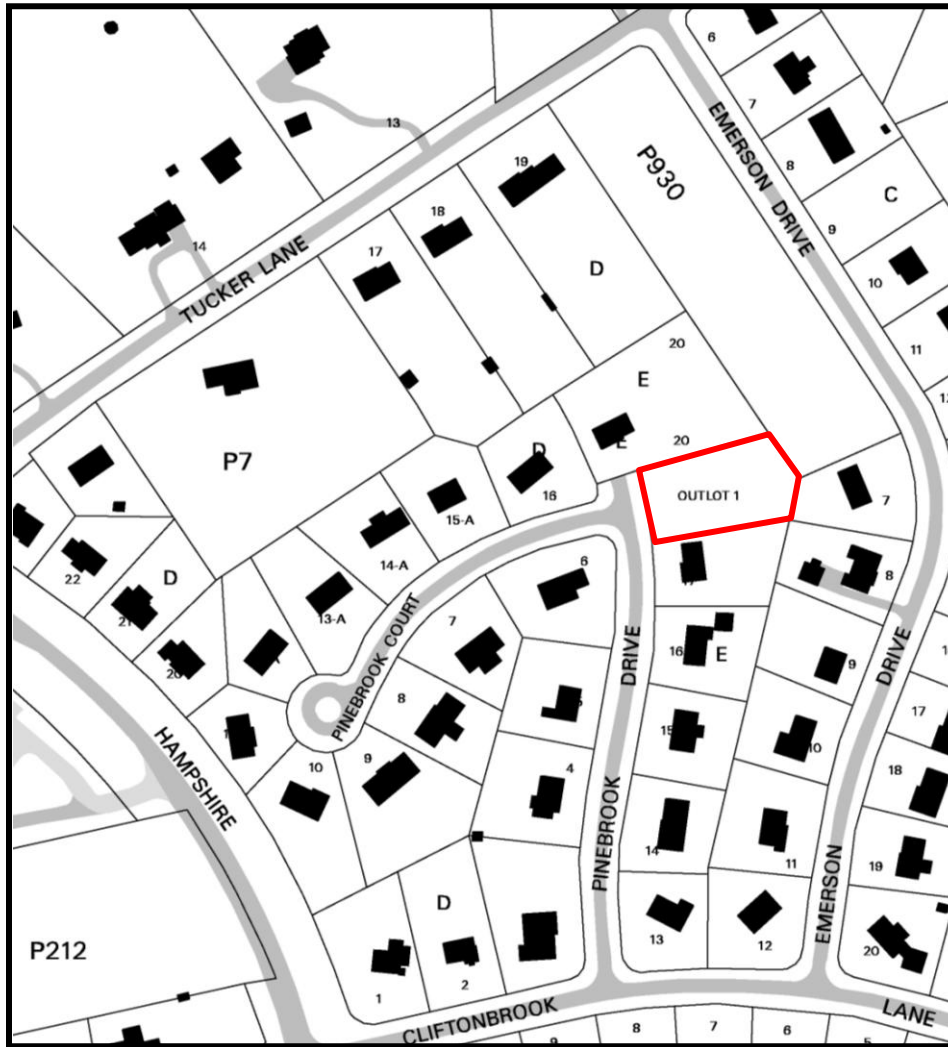
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SECTION 1: SITE CONTEXT AND HISTORY

SITE DESCRIPTION

The subject property is located on the east side of Pinebrook Drive at the intersection of Pinebrook Court and is shown as Outlot 1, Block E in the Cliftonbrook subdivision on plat number 7661 (Attachment A). The property is approximately 27,500 square feet in size, zoned Rural Cluster (RC), and is located in the Sandy Spring-Ashton Master Plan area. As is the case with most outlots, the property is unimproved; the immediate area surrounding the property is characterized by single-family residences developed under R-R zoning standards. R-R has since been renamed R-200 and has a minimum lot size of requirement of 20,000 square feet.



Vicinity Map

PROJECT DESCRIPTION

The application proposes to take an existing outlot and convert it to a recorded lot under the minor subdivision process. The proposed lot (Lot 21; Attachment D) would be approximately 27,500 square feet and would contain 1 one-family detached dwelling. The proposed lot cannot meet the zoning standards of the RC zone and is proposed for approval using the zoning standards that were in place when the outlot was recorded in 1965. The lot has access to public water supply, and proposes an onsite septic system. The lot has public street frontage along Pinebrook Drive, and driveway access would be located in this area.

BACKGROUND

The subject site, Outlot 1, is actually a portion of Preliminary Plan application number 1-64204, entitled Cliftonbrook submitted by the same applicant, and property owner, of this current application. The preliminary plan was approved by the Planning Board on or about October 27, 1964 and consisted of 4 lots on 5.3 acres of land located in the R-R zone. Subsequent to the approval of said plan, the subdivision plat for the approved 4 lots (Lots 17-20) and Outlot 1 (being the subject site) was approved by the Planning Board and ultimately recorded in the Land Records of Montgomery County as plat 7661 on January 22, 1965. Single-family residences were constructed on lots 17-20 soon thereafter, while the subject outlot has remained vacant since the Subdivision Regulations specifically forbid construction of a dwelling as follows:

Section 50-20. Limits on issuance of building permits

...(b) A building permit must not be approved for the construction of a dwelling or other structure, except a dwelling or structure strictly for agricultural use, which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot,...

Zoning History

At the time of original subdivision the subject outlot was zoned R-R. In 1973 the property was rezoned from R-R/R-200 to Rural with the adoption Sectional Map Amendment (SMA) F-926. In 1980, SMA G-293 rezoned the property from Rural to Rural Cluster (RC), its current zoning classification. The RC zone requires a minimum lot size of 5 acres per main structure (i.e. single-family dwelling). However, the Zoning Ordinance contains certain “grandfathering” provisions, described in Section 59-C-9.71 and Section 59-C-9.73 (Attachment E), respectively, to accommodate existing platted lots and “lots” created by deed. Both of the aforesaid provisions exempt such properties from the area and dimensional requirements of the current zone, and instead allow them to use the zoning requirements that were applicable prior to their rezoning.

SECTION 2: MINOR SUBDIVISION

DISCUSSION AND ANALYSIS

In 1997, the District Council passed legislation to create the minor subdivision provisions, 50-35A of the Subdivision Regulations, which permit certain minor subdivisions, which would otherwise require a full preliminary plan review, to go directly to record plat. In particular related to this application is Section 50-35A(a)(2), which reads as follows:

Conversion of an Outlot into a Lot. An outlot may be converted into a lot under the minor subdivision procedures provided:

- a. The outlot is not required open space or otherwise constrained so as to prevent it from being converted into a buildable lot;*
- b. There is adequate sewerage and water service to the property, which may be either public service and/or approved private septic system/private well;*
- c. All applicable requirements and/or agreements that may be relevant, in accordance with provisions for adequate public facilities, as contained in Section 50-35(k) and the Annual Growth Policy, are satisfied prior to the recordation of the plat;*
- d. All applicable conditions and/or agreements applicable to the original subdivision approval creating the outlot will also apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement or building restriction lines; and*
- e. If the outlot is located within a special protection area, as shown on an approved and adopted master plan, all applicable special protection areas requirements and guidelines, including approval of a water quality plan, are satisfied prior to recordation of the plat.*

An outlot may be incorporated into an adjoining lot resulting in a larger lot without having to satisfy Subsections (a) and (b) above.

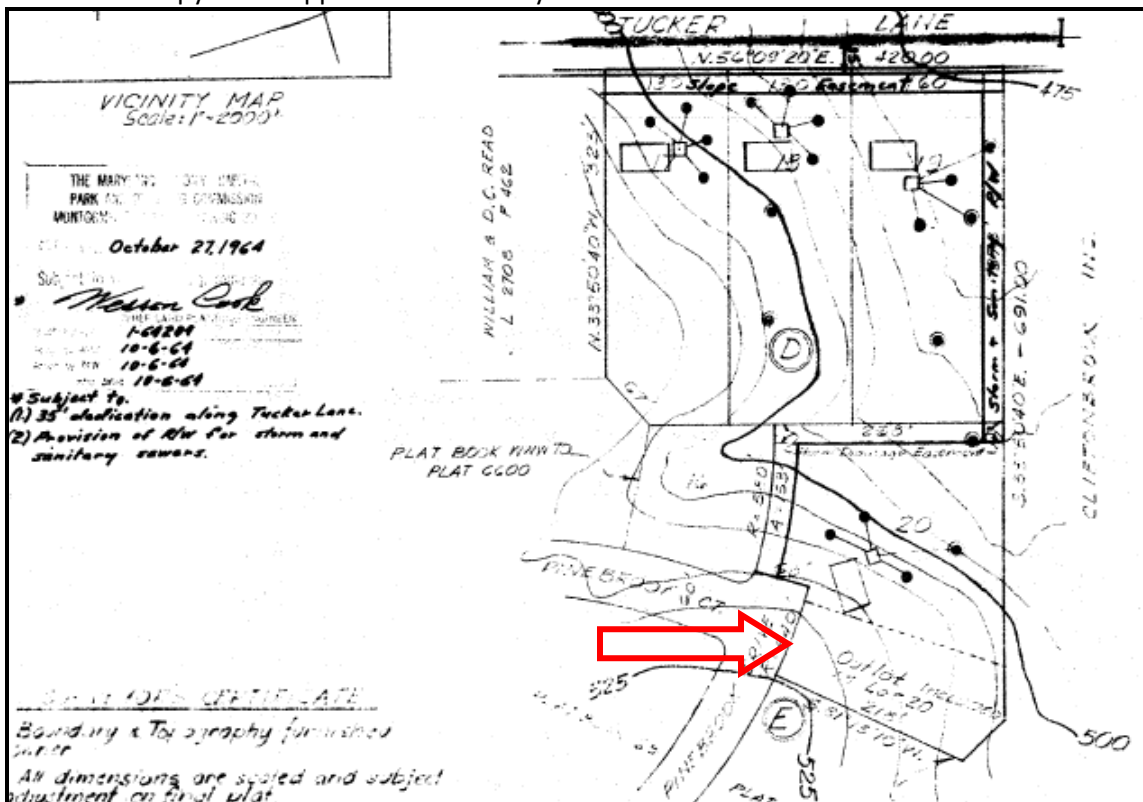
In order to process a minor subdivision, staff (and ultimately the Board as part of a consent agenda approval item) must determine that application complies with all of the items noted above. This procedure was put into place to allow an "outlot" which had been evaluated as a potential lot by the Board during the preliminary plan process to be converted to a building lot without having to submit a new, or amended, preliminary plan. Among the items that would typically necessitate the recording of an outlot, in lieu of a lot, are lack of septic approval, or an adequate public facilities (APF) limitation such as insufficient public sewer/water capacity or traffic capacity that existed at the time of the preliminary plan approval. Upon resolution of the outstanding item(s), the applicant would only need to submit a new record plat application in order to change the recorded outlot into a lot.

In other situations, an outlot may be recorded to facilitate a potential land transfer, or as required open

space area, or some other indeterminable reason. Outlots created in this manner, which have not been reviewed as potential lots by the Board, are not to be considered for conversion into a lot under the minor subdivision process.

When evaluating the merits of whether or not a specific outlot can be converted into a lot using the minor subdivision process, staff relies on the conditions and reports associated with the original preliminary plan approval. Often it is explicitly clear as to why a piece of property was recorded as an outlot, and the ability to qualify as a minor subdivision can be fully substantiated. However, there are instances, where there is no opinion/resolution or staff report, and background information pertaining to the preliminary plan is limited. These cases can be especially ambiguous as to why an outlot was created in the first place and staff is forced to analyze varying aspects of the plan and any other documentation in the file in order to make a determination.

In this particular case, the preliminary plan was approved by the Board in 1964 and the file associated with the plan is expectedly sparse. However upon researching the plan file, there are two items which, in staff's opinion, provide sufficient evidence that the subject outlot was not reviewed as a potential building lot. The first item is a copy of the approved Preliminary Plan which shows the outlot as "included in Lot 20."



Approved Preliminary Plan 1-64204

Additionally, while the plan contains graphic representations of each proposed house and the required onsite septic disposal area for the 4 building lots that were considered for approval at the time, there is no indication of any proposed house or associated septic area for the subject outlot on the plan.

Furthermore the second item, a copy of the application for a preliminary plan (Attachment B), indicates that the applicant only proposed four (4) building lots on 5.3 acres of land as a part of this application. Four

lots were approved by the Board, and they currently contain single-family residences. There is no documentation in the available record as to why the final record plat for the subdivision did not include the outlot area in Lot 20, as shown on the plan, but instead, platted the area as Outlot 1.

In a letter dated June 28, 2011 (Attachment C), the applicant's counsel provides justification for why the subject application should be allowed to proceed as minor subdivision. The applicant's counsel asserts that two prior letters from M-NCPPC (included in Attachment C) had already authorized the conversion of the subject outlot into a building lot pursuant to Section 50-35A(a)(2).

The first from M-NCPPC staff to the applicant, dated November 9, 1998, states:

"The purpose of this letter is to inform you that the sketch plan submitted for the conversion of an outlot into a buildable lot has been approved for submission."

The second letter from MNCPPC to the applicant's consultant, dated December 27, 2005, states;

"It is my finding that Outlot1 in Block "E" does qualify for a minor subdivision process under Section 50-35A(a)(2) of the Subdivision Regulation(s), provided that all other requirements are met for that particular section."

Applicant's counsel also contends prior M-NCPPC staff had already determined the property does qualify to use the grandfathering provisions of the RC and Rural zones, and therefore can apply the development standards of the R-R/R-200 zone, as stated in staff's letter:

"Staff has determined that the property is eligible for the construction of one single-family residential dwelling under the grandfathering provisions of Section 59-C-9.73 of the Montgomery County Zoning Ordinance."

Staff does believe that an outlot which had been reviewed by Board as a potential lot, and is determined by staff and the Board to comply with the requirements for conversion of an outlot to a lot, should be able to meet the standards in effect when the preliminary plan was approved. However, the interpretation of a zoning history or other item in a letter from M-NCPPC staff does not preempt the actual review of a submitted application, nor does it preempt the Planning Board's authority to approve or deny a particular record plat application. More relevant to the specifics of this case is whether or not the property qualifies to be re-platted as a building lot using the minor subdivision process.

The applicant's counsel additionally states that a "preliminary plan review is a redundant process in this case." If the Board had considered the subject property as a potential building lot during the original preliminary plan process, then the aforesaid assertion might be true. However, in this case, it is questionable whether all of the findings associated with a preliminary plan review had been appropriately made. Considerably uncertain is whether Outlot 1 is in accordance with the general provisions for lot design Section 50-29(a)(1), which states:

Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated in order to be approved by the board.

Staff is unwilling to make such a determination in a case where the outlot is approximately 20,000 square feet smaller than the any of lots which appear on the same subdivision plat and the creation of the outlot is unclear.

Because there is no evidence in the file to indicate that Outlot 1 was ever analyzed, by the Board, as a potential building lot, the minor subdivision process to convert the outlot into a buildable lot is not appropriate. Instead, staff recommends the submittal of a Preliminary Plan of subdivision.

NOTIFICATION

There is no requirement for notification to an adjoining or confronting property-owner for a submission of, or for a Board action on, a record plat application. Notification of this item has been accomplished in the form of posting of this item on the Agenda of the Commission website more than 10 days in advance of the hearing date.

CONCLUSION

Without any substantial evidence that the subject outlot was considered as a potential building lot under the original Preliminary Plan approval, staff cannot support the minor subdivision application and recommends denial pursuant to Section 50-35A(a)(2).

ATTACHMENTS

Attachment A - Recorded Subdivision Plat from 1965

Attachment B - Application for Preliminary Plan 1-64204

Attachment C - June 28, 2011 letter (with corresponding attachments) from applicant's counsel

Attachment D - Submitted Record Plat drawing

Attachment E - "Grandfathering" provisions of RC and Rural zone from Chapter 59

DEPARTMENT OF HEALTH
MONTGOMERY COUNTY, MARYLAND
Approved 4 Jan 65
Ray P. ...
Health Officer

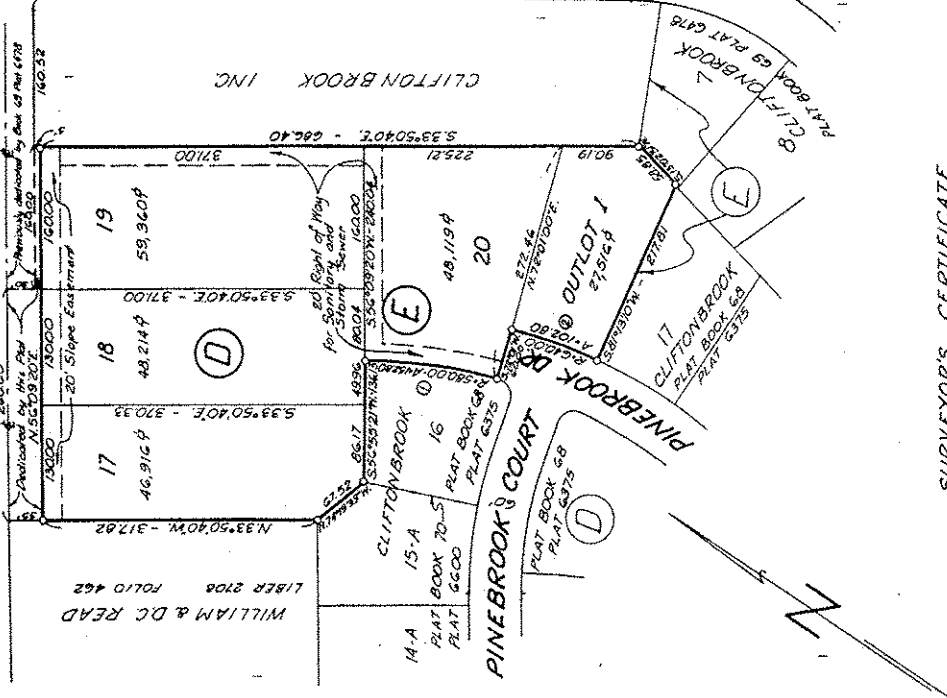
COMPUTED LINES
DRAWN
CHECKED
EXAMINED

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING BOARD
Approved January 15, 1965
James J. ...
Secretary-Treasurer

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF PUBLIC WORKS
Approved JAN 24 1965
As to road and street grades
By Richard ...
Dep. Dir. Public Works

PLAT NO 7661

TUCKER LANE



OWNERS' DEDICATION

We, Joseph Pietanza, Jr. and Alberta Marie Pietanza, his wife, owners of the property, shown hereon, hereby adopt this plan of subdivision, dedicate the streets to public use, establish the minimum building restriction lines, establish the easements shown hereon for the construction, reconstruction, operation, maintenance, repair and inspection of sanitary sewers and for storm sewers and grant to Montgomery County, Maryland, a slope easement, 20 feet wide, adjacent, contiguous and parallel to Tucker Lane, said slope easement to be extinguished after all required public improvements, including sidewalks have been completed and accepted for maintenance by Montgomery County.

There are no suits of action, leases, liens or trusts on the property included in this plan of subdivision except a certain deed of trust and all parties in interest, thereto have below indicated their assent.

December 22, 1964

Joseph Pietanza, Jr.
JOSEPH PIETANZA, JR.

Alberta Marie Pietanza
ALBERTA MARIE PIETANZA

Witness
WITNESSES

Witness
WITNESSES

Witness
WITNESSES

Witness
WITNESSES

Witness
WITNESSES

Witness
WITNESSES

CURVE DATA	
RADIUS	ARC
1	380.00
2	102.80

SURVEYOR'S CERTIFICATE

I hereby certify that the plat hereon delineated is correct, that it is a subdivision of all the land conveyed by Cliftonbrook, Inc. a Maryland Corporation to Joseph Pietanza, Jr. and Alberta Marie Pietanza, his wife by deed dated Nov. 29, 1964 and recorded December 3, 1964 among the Land Records of Montgomery County, Maryland in Liber 3299 Folio 572 and that iron pipes marked thus have been set where indicated. The total area dedicated to public use by this plat is 9800 sq. ft.

December 23, 1964

W. Frederick Gore
W. FREDERICK GORE, REGISTERED
LAND SURVEYOR, Md. No. 3014

FILED
JAN 22 1965

**PART OF BLOCKS D & E
CLIFTONBROOK
OLNEY ELECTION DISTRICT #8
MONTGOMERY COUNTY, MARYLAND
SCALE: 1"=100
DECEMBER, 1964**

RECORDED:
SEYBOLT GORE & NEWQUIST
CIVIL ENGINEERS AND LAND SURVEYORS
8024 RAMSEY AVENUE
SILVER SPRING, MARYLAND

PLAT NO.:

File No. 1-67204

APPLICATION FOR APPROVAL OF PRELIMINARY SUBDIVISION PLAN

(To Be Submitted in Duplicate to the Montgomery County Planning Board)

The undersigned hereby applies for approval by the Montgomery County Planning Board of the accompanying preliminary subdivision plan and certifies the information supplied herewith to be correct.

Name of Proposed Subdivision Cliftonbrook
(See "A" over)

Lots & Blocks Nos. 17, 18, 19 and 20, Block D

Location: Montgomery No. 8
(See "B" over) (Town or Locality) (County) (Election Dist.) (Special Tax. Area)

Geographical Location On Tucker Lane east of Colesville Road

Zoning RR Existing Proposed No. of Lots Proposed: 4 Fee \$19.00
(See "C" over)

Proposed Sanitary Facilities W.S.S.C. Septic System
(Water) (Sewage Disposal)

Owner Joseph Pietanza - Contract Purchaser 924-4990
(See "D" over) (Name) (Telephone No.)

3904 Weller Road, Wheaton, Maryland
(Address)

Title Citation (Last recorded conveyance):

Grantor _____ Date of Conveyance _____
Grantee _____ Land Records Reference _____

Area of Tract as Conveyed 5.3[±] Area Included on Plan 5.3[±]

Existing Legal Encumbrances:
Rights-of-Way None known Easements _____
Other None known

Existing Covenants _____

Engineer:
Name Seybolt, Gere & Nequist Telephone No. Jr 9-1111
Address 8404 Ramsey Avenue, Silver Spring, Md.

Note any further proposals or unusual conditions affecting the property:
(If additional space is needed, use reverse side)

Signature of Owner: Joseph Pietanza Date September 14, 1964
Seybolt, Gere & Nequist, Agent

Be sure the owner's name and address are on your tracing.

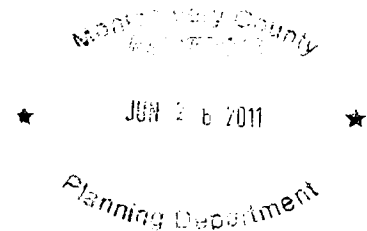


THE LAW OFFICE OF
**Michele
Rosenfeld** LLC

June 28, 2011

VIA HAND DELIVERY

Stephen J. Smith
Regulatory Coordination Section
Development Applications &
Regulatory Coordination
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20910



RE: Outlot 1: Cliftonbrook Subdivision

Dear Mr. Smith:

I am writing on behalf of my client Mr. Joseph Pietanza, Jr., owner of Outlot 1 in the Cliftonbrook Subdivision ("Outlot"). I am responding to your electronic mail communication dated June 1, 2011 to Mr. John Sekerak advising him that staff is now of the opinion that the Outlot does not qualify for conversion to a "lot" under the Minor Subdivision procedures of the Subdivision Regulations.¹ The only issues are whether the Outlot is "grandfathered" with respect to its size and whether it is a candidate for the Minor Subdivision review process.

A. Introduction.

The Outlot is 27,516 square feet. When platted in 1965 the Outlot was zoned R-R and met the minimum lot size of 20,000 square feet. In 1973 the property was rezoned to the Rural Zone, and in 1983 it was rezoned again, this time to the Rural Cluster Zone (together "Rural Zones"). Both of the Rural Zones have a minimum 5-acre lot size requirement. Both of the Rural Zones have "grandfathering" provisions that address certain recorded properties that were smaller than 5 acres when the Rural Zones were

¹ Montgomery County Subdivision Regulation 50-35A. See Attachment One (June 1, 2011 Smith email).

adopted.² These grandfathering provisions will be collectively referenced hereinafter as the "Record Plat Grandfather Clauses." As explained in detail in prior correspondence, the Outlot is grandfathered pursuant to the Record Plat Grandfather Clauses. In addition, the Outlot is grandfathered because it was created by a deed executed before June 4, 1974, and deeded lots predating adoption of the Rural Zones also are grandfathered.³ The deed-related grandfather clauses of the Rural Zones will be collectively referenced hereinafter as the "Deeded Lot Grandfather Clauses."

Staff has twice confirmed to Mr. Pietanza in writing that the Outlot can be converted to a "lot" under the Minor Subdivision review process. In reliance on Staff's representations, Mr. Pietanza has spent considerable time and money seeking approval of a Minor Subdivision. Only after taking the final step in the process - submission of a record plat - did Staff advise Mr. Pietanza that they no longer considered the Outlot subject to Minor Subdivision review under the applicable grandfathering provisions and instead would require submission of a full preliminary plan application.

In light of the fact that the Outlot is grandfathered under the Record Plat Grandfather Clauses and/or the Deeded Lot Grandfather Clauses, the record plat should be submitted to the Planning Board for review and approval in accordance with the Minor Subdivision provisions of the County's Subdivision Regulations.

B. Planning Staff Twice Confirmed In This Case That The Outlot Is "Grandfathered" For Purposes Of Minor Subdivision Review And Staff Should Adhere To Those Representations In This Case.

Staff in the former Development Review Division ("Staff") twice confirmed to Mr. Pietanza in writing that the Outlot qualifies for conversion to a record lot under the Minor Subdivision Approval process.⁴ Staff *expressly confirmed* that "Staff has determined that this property is eligible for construction of one (1) single-family residential dwelling under the grandfathering provisions of Section 59-C-9.73 of the Montgomery County

² Montgomery County Zoning Ordinance § 59-C-9.71(a) (Rural Zone); Montgomery County Zoning Ordinance § 50-C-9.73(b)(1) (Rural Cluster Zone). The Montgomery County Zoning Ordinance will be referenced hereinafter as the "Zoning Code."

³ See Zoning Code § 59-C-9.71(b) (Rural Zone); Zoning Code § 59-C-9.73(b)(2) (Rural Cluster Zone).

⁴ Attachment Two (November 9, 1998 letter from Development Review staff confirming process for converting Outlot to lot through Minor Subdivision review); Attachment Three (December 27, 2005 letter from Development Review staff)

Zoning Ordinance.”⁵ Before confirming for the second time that the Outlot qualifies for Minor Subdivision review, Staff analyzed a detailed zoning history of the Outlot and the specific text of the Record Plat Grandfather Clauses.⁶ Nothing in that zoning history has changed, nor has Staff questioned its accuracy. In other words, there is no factual basis that justifies Staff’s complete reversal in its position – it was and remains properly grandfathered under the Zoning Code and should be reviewed as a Minor Subdivision.

C. Preliminary Plan Review Is A Redundant Process In This Case.

Staff has asserted that a preliminary plan would be required to address planning issues before the Board.⁷ It is difficult to see what planning-related issues would be left unaddressed through the Minor Subdivision review process. The Minor Subdivision Approval process allows for conversion of an outlot to a lot if:

- a. The outlot is not required open space or otherwise constrained.
The Outlot was not established as open space for the original subdivision nor is it subject to any other constraints on use.
- b. There is adequate water and sewerage service to the property.
The Outlot is served by public water and has been approved for septic.
- c. All applicable adequate public facilities requirements and agreements (“APF”) have been satisfied.
The subdivision was not subject to any APF requirements, nor would this single lot be subject to any new APF conditions.
- d. All original applicable conditions and agreements creating the outlot will be applicable to the new lot.
The Outlot would be subject to all applicable conditions and agreements creating the Outlot through conditions imposed on the record plat.

⁵ Attachment Three.

⁶ Attachment Four (December 7, 2005 letter from John Sekerak, Jr. detailing zoning history of Outlot).

⁷ Attachment One.

- e. Any master-planned special protection area limitations must be satisfied prior to recordation of the plat.

The Outlot is not subject to special protection area limitations.

In addition, there are no other “preliminary plan” considerations implicated in this case. There are no road dedication issues or master plan compliance issues. The lot size, width, shape and orientation are appropriate for the location considering all of the lots on Pinebrook Drive, Pinebrook Court and Edmonson Drive. From a practical standpoint, preliminary plan review is a costly and time-consuming redundancy from a procedural *and* a substantive point of view and, given Staff’s prior representations, demanding that Mr. Pietanza start an entirely new review process is simply prejudicial to the Applicant in the form of unnecessary expense and delay.

D. The Outlot Is Grandfathered As A Deeded Lot Predating The Rural and Rural Cluster Rezonings And Qualifies For Minor Subdivision Even If Staff Concludes It Does Not Qualify Under The Record Plat Grandfather Clauses.

The Outlot is eligible for Minor Subdivision review as a grandfathered deeded lot.⁸

The approved Preliminary Plan shows that the Outlot was indicated by note as “included in Lot 20” at the time of the original preliminary plan.⁹ However it was approved by the Planning Board and recorded as a separate Outlot just 3 months later. The lot was additionally created by deed as a separate parcel in December, 1971.¹⁰ The Deeded Lot Grandfather Clauses exempt from the 5-acre minimum lot size of the Rural Zones “a lot created by deed executed on or before” the approval date of their respective sectional map amendments. The Rural Zone expressly states “A lot created by deed executed on or before June 4, 1974” is grandfathered. The Rural Cluster zone grandfathers deeded lots created before the approval date of the “most recent sectional map amendment” (*i.e.*, 1980). Under these grandfathering provisions the Outlot is eligible for Minor Subdivision review *regardless of* Staff’s conclusion with respect to the grandfathering status of the Outlot under the Record Plat Grandfather Clauses and the pending record plat should be processed accordingly.

⁸ See Deeded Lot Grandfather Clauses: Zoning Code § 59-C-9.71(b) (Rural Zone); Zoning Code § 59-C-9.73 (Rural Cluster Zone).

⁹ Attachment Five (October 1964 Preliminary Plan).

¹⁰ Attachment Six (December 16, 1971 Deed, Liber 4161 folio 541).

E. Conclusion

From a legal point of view, the Outlot qualifies for Minor Subdivision review and approval under the Record Plat Grandfather Clauses and/or the Deeded Lot Grandfather Clauses. From an equitable point of view, Mr. Pietanza exercised due diligence in seeking Staff's direction on what process to follow, and it simply would be inequitable to require him now to undergo full-blown preliminary plan review after he relied on Staff's prior representations. And from a practical point of view, in this case there is no public benefit to be gained from the preliminary plan review process – all of the substantive elements of preliminary plan review either have been addressed through prior subdivision reviews (e.g., road dedication). Accordingly, the record plat that has been submitted should be finalized and submitted to the Planning Board for review and approval under the Minor Subdivision review process.

I will call you early next week to schedule a meeting with Mr. Pietanza, Ms. Conlon and Mr. Pfefferle to further discuss this application and the applicable grandfathering provisions. Thank you for your further consideration of this matter.

Sincerely,


Michele Rosenfeld

Attachments:

1. Attachment One: June 1, 2011 Stephen Smith email
2. Attachment Two: November 9, 1998 letter from Development Review staff confirming process for converting Outlot to lot through Minor Subdivision review
3. Attachment Three: December 27, 2005 letter from Development Review staff
4. Attachment Four: December 7, 2005 letter from John Sekerak, Jr., detailing zoning history of Outlot
5. Attachment Five: October, 1964 Preliminary Plan
6. Attachment Six: December 16, 1971 Deed, Liber 4161 folio 541

Cc: Mark Pfefferle, Acting Division Chief, DARC
Ms. Cathy Conlon, Master Planner Supervisor, DARC
Mr. John Carter, Division Chief, Area Three
Ms. Carol S. Rubin, Associate General Counsel
Mr. Joseph Pietanza, Jr., RIBA Land Corporation
Mr. John Sekerak, Jr., Greenhorne & O'Mara, Inc.

SEKERAK, John

From: Smith, Stephen [Stephen.Smith@mncppc-mc.org]
Sent: Wednesday, June 01, 2011 5:26 PM
To: SEKERAK, John
Cc: Conlon, Catherine
Subject: RE: Cliftonbrook 220111050

John,

Following up on our discussion at our office last Thursday (and my telephone discussion with the applicant last Friday). I have had further conversation with Staff here and we have come to the conclusion that this does NOT qualify as Minor Subdivision pursuant to Section 50-35A(a)(2), Conversion of an Outlot into a Lot.

In this case, since the original subdivision plan, Preliminary Plan 1-64204, was submitted and approved by the Board for the creation of 4 lots, on 5+ acres. We cannot find that the conversion of this approximately 27,000 SF outlot (Outlot 1) is consistent with the original preliminary plan approval, as four lots originally approved by the Board have been platted 17-20, Blocks D/E (Plat 7661). As such it apparent that the subject outlot was never evaluated by the Board as a potential future lot at the time, and in fact, the approved Preliminary Plan has this outlot (area) as to be included in the overall Lot 20.

There is also a question whether a recorded outlot (as opposed to lot) actually meets the "grandfathering" provisions of both Section 59-C-9.73 for the Rural Cluster (RC) zone and Section 59-C-9.71 for the Rural zone as would be necessary for the Board to approve a resubdivision for this property. While I don't believe it was the intent of the grandfathering language to explicitly exclude an outlot, a strict reading of the definitions/language in the Zoning Ordinance can raise the question.

I understand that on two occasions, 1998 and 2005, prior Commission staff has indicated, at least conditionally, that the subject outlot could qualify as a minor subdivision. I certainly can appreciate the effort on your (and the applicant's) part to obtain staff's perspective of the development process for this land in advance of taking on an arduous and costly septic approval process. Having said that, the issue of conformance (or lack thereof in this case) with original plan approval is one that is too significant for current staff to dismiss. It is Staff's opinion that a Preliminary Plan would be required to flush these and any other issues that had not been previously considered by the Board for this particular site.

If you have any questions please let me know,
Steve

Stephen J. Smith
Regulatory Coordination Section
Montgomery County Planning Department
(301)-495-4522
Email: Stephen.Smith@mncppc-mc.org

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

**THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

*8787 Georgia Avenue
Silver Spring, Maryland 20910-3760*

November 9, 1998

Joe Pietanza
Riba land Corporation
808 Montrose Avenue
Laurel, MD 20707

Re: Outlot 1
Cliftonbrook

Dear Mr. Pietanza:

The purpose of this letter is to inform you that the sketch plan submitted for the conversion of an outlot into a buildable lot has been approved for submission.

I have enclosed the original sketch plan for your review. Upon submission of the Record Plat application, be sure to include a copy of the approved sketch plan, as a part of the Minor Subdivision package.

If you need to contact me for next available lot numbers give me a call at (301) 495-4527.

Always the best of regards,


Raymond L. Nix

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

**THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

December 27, 2005

John Sekerak, Jr., ASLA, AICP
Greenhorn & O'Mara, Inc.
20410 Century Boulevard
Suite 200
Germantown, MD 20874

Re: Cliftonbrook , Plat # 191-01; Outlot 1 Block E, ; Tax Map
JT561

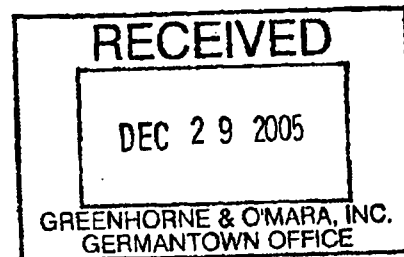
Dear Mr. Sekerak:

I have reviewed the information supplied by you with regards to the above referenced property. It is my finding that Outlot 1 in Block "E" does qualify for minor subdivision process under Section 50-35A (a)(2) of the Subdivision Regulation provided that all other requirements are met for the particular section. The information provided also indicates that this outlot was created and recorded in the Montgomery County land record at the time when the zoning classification was RR, which allowed a minimum lot size of 20,000 square feet. Since being created, the property has been re-zoned to Rural and then to the current RC zone. Staff has determined that this property is eligible for construction of one (1) single-family residential dwelling under the grandfathering provisions of Section 59 -C-9.73 of the Montgomery County Zoning Ordinance.

If you have any questions regarding this transmittal, please contact me at 301/495-4623.

Sincerely,


Taslima Alam



GREENHORNE &



O'MARA, INC.

VISIONS. SOLUTIONS.

GENERAL CIVIL
TRANSPORTATION
RESOURCE MANAGEMENT
GEOGRAPHIC SCIENCES

December 7, 2005

Ms. Cathy Conlon
Maryland-National Capital
Park & Planning Commission
Development Review Division
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Cliftonbrook Outlot 1, Block E

Dear Ms. Conlon:

Greenhorne & O'Mara, Inc. (G&O) represents Mr. Joseph Piatanza, the property owner for the above referenced outlot in the Rural Cluster (RC) zone. Mr. Piatanza would like to convert this 27,516 s.f. outlot into a building lot for the construction of a single family, detached home. The purpose of this letter is to request confirmation by your office that the outlot can be converted to a building lot for reasons detailed below. We are aware that the property would need to be the subject of all the required percolation testing and subdivision approvals, however, prior to embarking on those expensive processes we wish to confirm the threshold issue that the subject property does qualify for the lot size "grandfathering" provisions of Section 59-C-9.73 of the Zoning Ordinance.

To assist in the review of this request, we have enclosed the following information:

- Plat Number 7661 for the subject property and various other plats for the lots in the surrounding neighborhood.
- Zoning map 223 NE 1 R
- October 16, 1998 letter from Mr. Joseph Piatanza
- November 9, 1009 letter from Mr. Ray Nix
- Property Deed Liber 4161, Folio 541
- Maryland Department of Assessment and Taxation Real Property Data Search
- Zoning Ordinance excerpt from 1958

These enclosures show that the subject property is in a neighborhood of record lots that vary in lot size as small as 20,000 s.f. All of the lots are currently zoned RC. Although there was no specific discussion regarding lot size, the enclosures also indicate that the property had previously been deemed eligible for conversion to a building lot by the Minor Subdivision process.

To demonstrate that the lot is exempt from the minimum net lot size requirements of the RC zone, we provide the following zoning chronology for the property:

- 1958 Amendment to the Zoning Map for the Regional District established the zone for the property as R-R.
- 1965 Plat Number 7661 titled "Cliftonbrook" recorded creating Outlot 1, Block E (the subject property)
- 1971 Deed recorded at Liber 4161, Folio 541 for the subject outlot previously recorded by plat
- 1973 Sectional Map Amendment (SMA) F-926 rezoned the property from R-R to Rural
- 1980 SMA G-293 rezoned the property from Rural to the current zone of RC

Section 59-C-9.73(b) provides the applicable terms of exemption from the minimum five acres lot size requirement of the RC zone as follows:

59-C-9.73. Exempted lots and parcels--Rural Cluster zone and Low Density Rural Cluster Development zone.

(a) Lots created for children in accordance with the Maryland Agricultural Land Preservation Program are exempt from these regulations.

(b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Cluster zone or Low Density Rural Cluster zone:

(1) A recorded lot created by subdivision, if the record plat was approved for recordation by the planning board prior to the approval date of the most recent sectional map amendment or local map amendment that included the lot.

(2) A lot created by deed executed on or before the approval date of the most recent sectional map amendment or local map amendment that included the lot.

The outlot was created by subdivision (1965) and confirmed by deed (1971) prior to the most recent SMA (G-293 in 1980) that reclassified the property to RC. The applicable zone immediately prior to the RC was the Rural zone.

In turn, Section 59-C-9.71 provides the terms of exemption from the minimum five acre lot size requirement of the Rural zone as follows:

59-C-9.71. Exempted lots and parcels--Rural zone.

The following lots are exempt from the area and dimensional requirements of section 59-C-9.4, but they must comply with the requirements of the zone applicable to them prior to their classification in the Rural zone.

(a) A record lot created by subdivision and recorded not later than July 1, 1975, where the application for a preliminary subdivision plan had been submitted to the planning board in accordance with section 50-34 of the subdivision regulations on or before June 4, 1974.

(b) A lot created by deed executed on or before June 4, 1974.

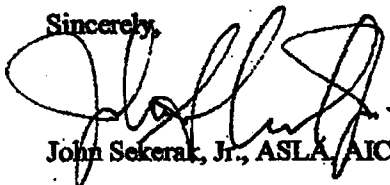
Ms. Cathy Conlon
December 7, 2005
Page 3 of 3

Again, the outlot was created by subdivision and confirmed by deed prior to the SMA (F-926 in 1973) that reclassified the property in the Rural zone. The applicable zone prior to the Rural was the R-R zone. The minimum lot size requirement for the R-R zone was 20,000 s.f. (see enclosed 1958 Zoning Ordinance excerpt), which is well below the 27,516 s.f. area of the subject property.

In summary, the "lot" was created prior to its classification in the RC zone and, in turn, prior to its classification in the Rural zone. This chronology validates the 27,516 s.f. lot size for the subject property.

Once you have had an opportunity to review this letter and the enclosed materials, and if you concur with the stated conclusions, please provide written confirmation of your concurrence. Please also provide reconfirmation of Mr. Nix's previous determination that the property may utilize this Minor Subdivision process. If you have any questions, require additional information, or would like to meet to discuss this request, please feel free to call at your earliest convenience.

Sincerely,



John Sekerak, Jr., ASLA, AICP

JS/mc

Enclosures: as stated

cc: Michele Rosenfeld, Esq., w/enclosures
Mr. Richard Weaver, w/enclosures
Mr. Joseph Piatanza, w/enclosures

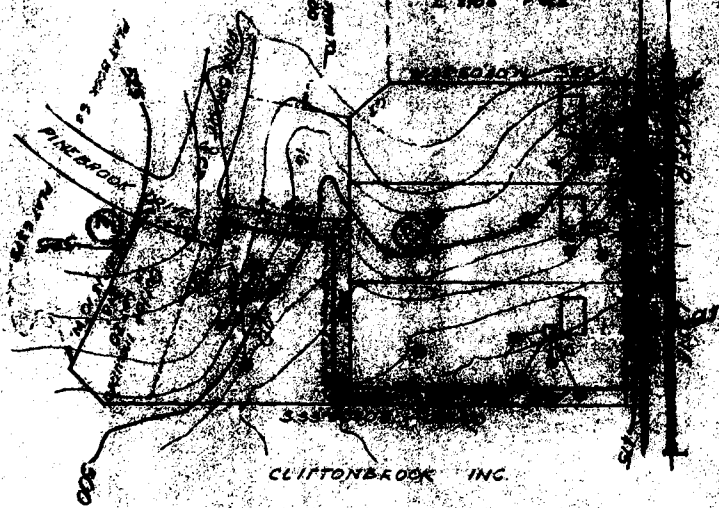
Attachment Five

SURVEYOR'S CERTIFICATE
Boundary & Topography furnished
by owner
At directions of stated and subject
to adjustment as find plat
September 8, 1964

W. H. ...
CLIFFTON BROOK, INC.

WATER AND SERVICE CANAL

Owner: ...



PREPARED BY
CLIFFTON BROOK, INC.
SOIL 7-1-60

...

THIS DEED

Attachment Six

MADE this 16TH day of December, 1971,

by and between JOSEPH PIETANZA, JR. and ALBERTA MARIA PIETANZA, his wife, parties of the first part, and REBA LAND CORPORATION, a Maryland Corporation, party of the second part:

WITNESSETH, that in consideration of the sum of Ten Dollars and other good and valuable considerations the said parties of the first part do grant and convey unto the party of the second part in fee simple, all that property situate in Montgomery County, State of Maryland, described as:

Lot numbered Twenty-four (24) in Block lettered "V" in the subdivision known as "CONNECTICUT AVENUE PARK" as per plat recorded in Plat Book 45, Plat No. 3415, among the Land Records of Montgomery County, Maryland.

DEC-16-71 PAID 2208 CLK.CT.M.C. — RTXACK 2.20
DEC-16-71 PAID 2209 CLK.CT.M.C. — STTACK 2.50

BEING the same property described in Liber 2931 folio 294

TOGETHER with the building(s) and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

DEC-16-71 PAID 2210 CLK.CT.M.C. DEB—ACK 5.50

AND the said parties of the first part covenant that they will warrant specially the property hereby conveyed; and that they will execute such further assurances of said land as may be requisite.

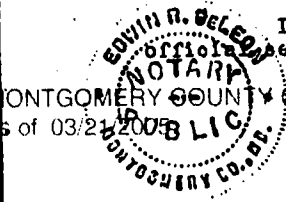
WITNESS their hands and seals.

Edwin R. De Leon (as to both) Joseph Pietanza Jr. (SEAL)
Alberta Maria Pietanza (SEAL)
ALBERTA MARIA PIETANZA

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

On this 16TH day of December, 1971, before me, the undersigned officer, personally appeared Joseph Pietanza Jr. and Alberta Maria Pietanza, satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they have executed the same for the purposes therein contained.

In witness whereof I have hereunto set my hand and official seal.



Edwin R. De Leon
Edwin R. De Leon Notary public, Md.
My Commission Expires 7/1/74

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) CASE NO. 89-411515-1000 p. 0543. Printed 03/21/2008 LIC

I HEREBY CERTIFY that the within instrument has been prepared under the supervision of JOHN A. CASTAGNA, an attorney duly admitted to practice before the Court of Appeals of Maryland.

John A. Castagna

CLERK'S OFFICE
MONTG. CO., MD.

9TH DEC 16 PM 2:56

D E E D 2038

FROM

JOSEPH PIETANZA, JR.
and
ALBERTA MARIA PIETANZA,
(spouse)

TO

RIBA LAND CORPORATION,
A Maryland Corporation.

Received for Record on
the 16th day of Dec.

1971,
at 2:55 o'clock P M,
and recorded in Liber

4161, Folio 541
at seq., one of the Land
Records of Montgomery County,
Maryland.

Howard M. Smith
Clerk

Please Mail to Grantee:
c/o Joseph Pietanza, Jr.
3904 Weller Road
Bethesda, Md. 20906

John A. Castagna
Attorney at Law
P.O. Box 302
Glenn Dale, Md. 20769

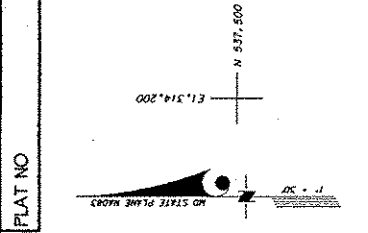
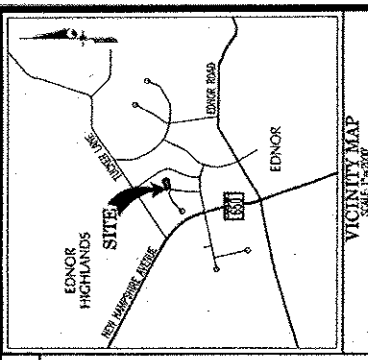
3904 - 3766

LIBER 4161 FOLIO 542

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-4119] HMS 4161 p. 0542. P. 1

Beckman, Carl
7-7-23423

THIS INSTRUMENT HAS BEEN FILED
IN MONTGOMERY COUNTY
RECORDS



PLAT NO

SURVEYOR'S CERTIFICATE

HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF THAT THE PLAT SHOWN HEREON IS CORRECT AND THAT IT IS A SUBDIVISION OF THE FOLLOWING PARCEL OR TRACT OF LAND:

ALL OF THAT PARCEL OR TRACT OF LAND SHOWN AS OUTLOT 1, BLOCK 'E' OF A PLAT OF SUBDIVISION TITLED "CLIFTONBROOK", RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, AS PLAT NO. 7481.

EXCEPTING THEREFROM THAT ONE PARCEL AS DESCRIBED IN THE SURVEYOR'S SEPARATE RECORD, ALL PROPERTY MARKERS SHOWN THEREON WILL BE SET AS DEDICATED HEREON IN ACCORDANCE WITH THE PROVISIONS OF SECTION 50-24(E) OF THE MONTGOMERY COUNTY CODE.

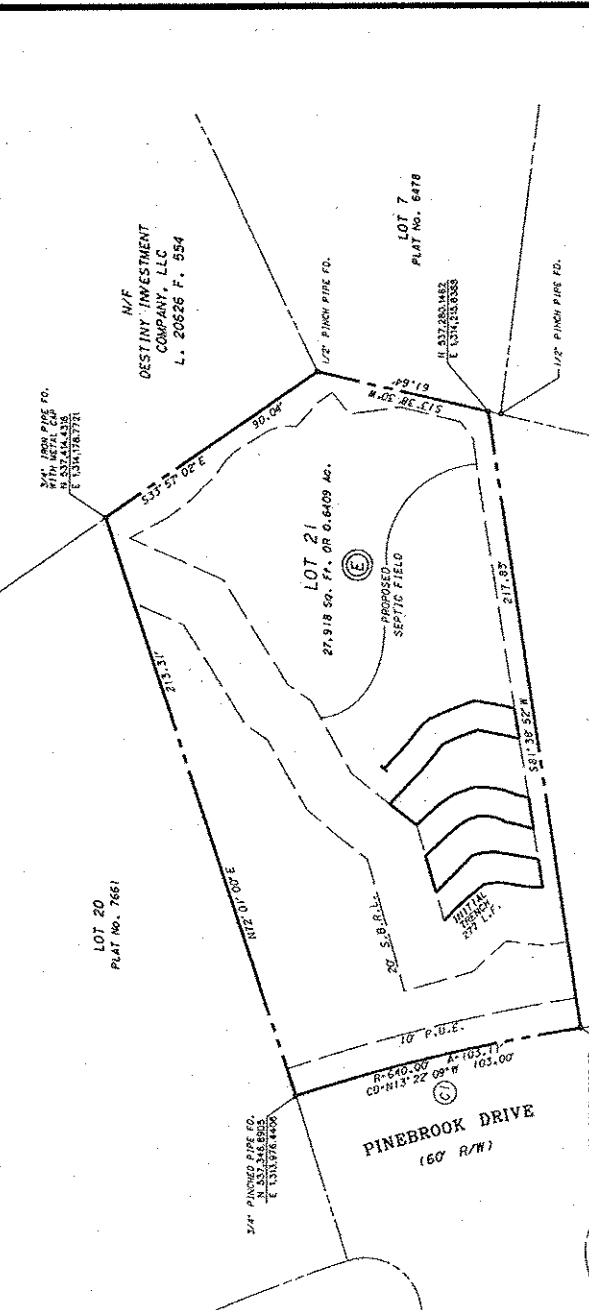
THE TOTAL AREA OF THIS PLAT OF SUBDIVISION IS 37.918 SQUARE FEET OR 0.6409 ACRES OF LAND, NONE OF WHICH IS TO BE DEDICATED TO PUBLIC USE.

CHRISTOPHER S. ADAMS
 PROFESSIONAL LAND SURVEYOR
 MARYLAND REGISTRATION NO. 21849

DATE: 03-22-2011

SUBDIVISION NOTES

- ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS AND REQUIREMENTS ASSOCIATED WITH ANY PROPERTY APPLICABLE BY THE MONTGOMERY COUNTY PLANNING COMMISSION OR REFERRED TO HEREIN BY THE PLAN OR ANY AMENDMENT THERETO AS APPROVED OR SUBSEQUENTLY APPROVED, THE DECISIONS OF THE PLANNING BOARD AND ARE AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
- THE PROPERTY SHOWN HEREON IS SUBJECT TO CHAPTER 22A OF THE MONTGOMERY COUNTY FOREST CONSERVATION MANAGEMENT PLAN AND APPROPRIATE AGREEMENTS PRIOR TO ISSUANCE OF A SEDIMENT CONTROL PERMIT.
- THIS APPROVAL OF THIS PLAT IS PREDICATED ON THE AVAILABILITY OF PUBLIC WATER.
- THIS PROPERTY IS ZONED RC (RURAL CLUSTER).
- THIS INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO REPLACE ANY OTHER REGULATORY OR USE, AND EVERY WATER RESTRICTION, THE OWNERSHIP OR USE OF THIS PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPLOT OR NOTE ALL MATTERS AFFECTING TITLE.
- TAX MAP REFERENCED: TAX MAP 000 J01.
- THIS PLAT WAS PREPARED IN ACCORDANCE WITH SECTION 50-23(A)(2) OF THE MONTGOMERY COUNTY CODE FOR MAJOR SUBDIVISIONS.
- SEPTIC BUILDING RESTRICTIONS ARE SUBJECT TO CHANGE UPON APPROVAL BY MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES, WELL AND SEPTIC DIVISION.



OWNERS' CERTIFICATE

WE, THE AREA LAND COOPERATION, AS OWNERS OF THE PROPERTY DESCRIBED HEREON HEREBY JOINTLY AND SEVERALLY ESTABLISH THE BUILDING RESTRICTION LINES AND DEDICATE THE STREETS TO PUBLIC USE.

FURTHER, WE GRANT TO THE PARTIES NAMED IN A DOCUMENT TITLED "DECLARATION OF TERMS AND CONDITIONS OF THE SUBDIVISION" AND TO THE SUCCESSORS OF SAID PARTIES, THE LAND INTERESTS OF MONTGOMERY COUNTY, MARYLAND, IN THESE NOTES, AT FORCE AND EFFECT FROM THE DATE OF RECORDING, SHOWN HEREON AS "OFF-DUTY", SUBJECT TO ALL CURRENT AND APPLICABLE REGULATIONS OF ALL FEDERAL, STATE AND LOCAL GOVERNING AGENCIES.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS, AGENTS AND ASSIGNS, WILL CAUSE ALL PROPERTY CORNER MARKERS AND ANY OTHER REQUIRED MONUMENTATION TO BE SET BY A REGISTERED MARYLAND LAND SURVEYOR IN ACCORDANCE WITH SECTION 50-24(E) OF THE MONTGOMERY COUNTY CODE.

THERE ARE NO RECORDED SUITS, ACTIONS AT LAW, LIENS, EASES, MORTGAGES OR TRUSTS AFFECTING THE PROPERTY INCLUDED IN THIS PLAT OF SUBDIVISION.

JOSEPH PRIZANZA, JR.
 PRESIDENT

DATE: _____

SUBDIVISION RECORD PLAT
CLIFTONBROOK
 LOT 21, BLOCK 'E'
 A RESUBDIVISION OF OUTLOT ONE, BLOCK 'E'
 ELECTION DISTRICT NO. 8
 MONTGOMERY COUNTY, MARYLAND

DATE: March, 2011

Scale: 1" = 30'

AREA TABLE

LOT 1	0.5409 AC.	OR	27,918 SQ. FT.
DEDICATION	0 AC.	OR	0 SQ. FT.
TOTAL AREA	0.5409 AC.	OR	27,918 SQ. FT.

20111050

FOR PUBLIC WATER SYSTEMS

Maryland National Capital Park & Planning Commission
 Montgomery County Planning Board

Approved: _____
 Chairman

Approved: _____
 Secretary/Treasurer

Approved: _____
 Director

PLA No. _____

GREENHORNE & O'MARA INC.
 GENERAL CIVIL - TRANSPORTATION - ENVIRONMENTAL - GEOSPATIAL SERVICES
 20410 CENTURY BOULEVARD, SUITE 200
 GIBBSFORD, MARYLAND 20894
 (301) 441-8282
 Fax No.

59-C-9.73. Exempted lots and parcels--Rural Cluster zone and Low Density Rural Cluster Development zone.

- (a) Lots created for children in accordance with the Maryland Agricultural Land Preservation Program are exempt from these regulations.
- (b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Cluster zone or Low Density Rural Cluster zone:
 - (1) A recorded lot created by subdivision, if the record plat was approved for recordation by the planning board prior to the approval date of the most recent sectional map amendment or local map amendment that included the lot.
 - (2) A lot created by deed executed on or before the approval date of the most recent sectional map amendment or local map amendment that included the lot.
 - (3) A record lot having an area of less than 5 acres created after the approval date of the most recent sectional map amendment or local map amendment that included the lot, by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.
 - (4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:
 - (i) The property owner can establish that he had legal title on or before the approval date of the most recent sectional map amendment that included the lot; and
 - (ii) This provision applies to only one such lot for each child of the property owner.

59-C-9.71. Exempted lots and parcels--Rural zone.

The following lots are exempt from the area and dimensional requirements of section 59-C-9.4, but they must comply with the requirements of the zone applicable to them prior to their classification in the Rural zone.

- (a) A record lot created by subdivision and recorded not later than July 1, 1975, where the application for a preliminary subdivision plan had been submitted to the planning board in accordance with section 50-34 of the subdivision regulations on or before June 4, 1974.
- (b) A lot created by deed executed on or before June 4, 1974.

(c) A record lot having an area of less than 5 acres created after June 4, 1974, by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number of lots which were replatted.

(d) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner; provided that the following conditions are met:

(1) The property owner can establish that he had legal title on or before June 4, 1974;

(2) This provision applies to only one such lot for each child of the property owner;
and

(3) The overall density of the property does not exceed one dwelling unit per 5 acres in any subdivision recorded as of October 1, 1981.