



**Preliminary Plan, Rolling Stone, 120110430**

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**Staff Report Date: 2/24/12**

**DESCRIPTION**

**Preliminary Plan No. 120110430: Rolling Stone.**

The conversion of one outlot into one record lot for one (1), one family detached residence; located on the north side of Bonifant Road, approximately 1,300 feet (1/4 mile) west of the intersection with Notley Road; R-200 zone; 0.68 acres (29,600 s.f.), Cloverly Master Plan area.

*Staff recommendation: Approval with conditions*

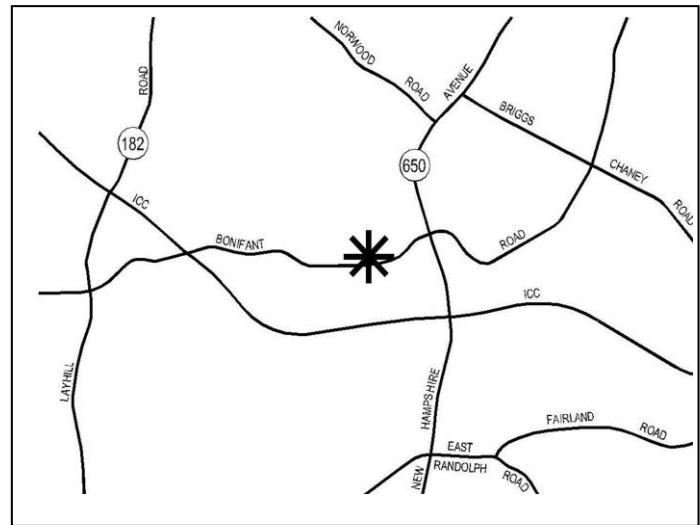
**Applicant:** Bonifant Road Joint Venture

**Application Date:** 7/7/11

**SUMMARY**

This application is a request to convert a 29,600 sq. ft. outlot into a buildable lot in the R-200 zone. Outlot A - Rolling Stone, was created by Preliminary Plan 11986082 which requested six lots, however; because of traffic limitations at the time of approval in 1987, only five lots were approved to stay under certain trip generation “de minimus” thresholds of that era. Outlot A, the sixth “lot”, was approved, but was given the outlot designation to restrict the issuance of building permits until the traffic issues could be resolved. The traffic moratorium was lifted in the 1990’s. A previous application to convert the outlot to a lot was denied by the Planning Board due to concerns about erosion, flooding and a stormwater management waiver. This application is new, and meets all current review criteria.

Access to the property is through a shared drive from Bonifant Road. Three, one family detached homes already share the driveway. The lot will be served by public water and sewer that exists in the area. Concerns about stormwater runoff and the use of the shared driveway have been raised during the application process by local residents. The site has an approved stormwater concept that addresses runoff from the new home but that also addresses some of the existing erosion problems caused by offsite runoff. The existing driveway was designed and intended to provide access to the outlot but existing users of this driveway have expressed concern that the owner(s) of the outlot have not contributed towards maintenance and upkeep of the pavement. Staff views this as a civil matter between property owners.



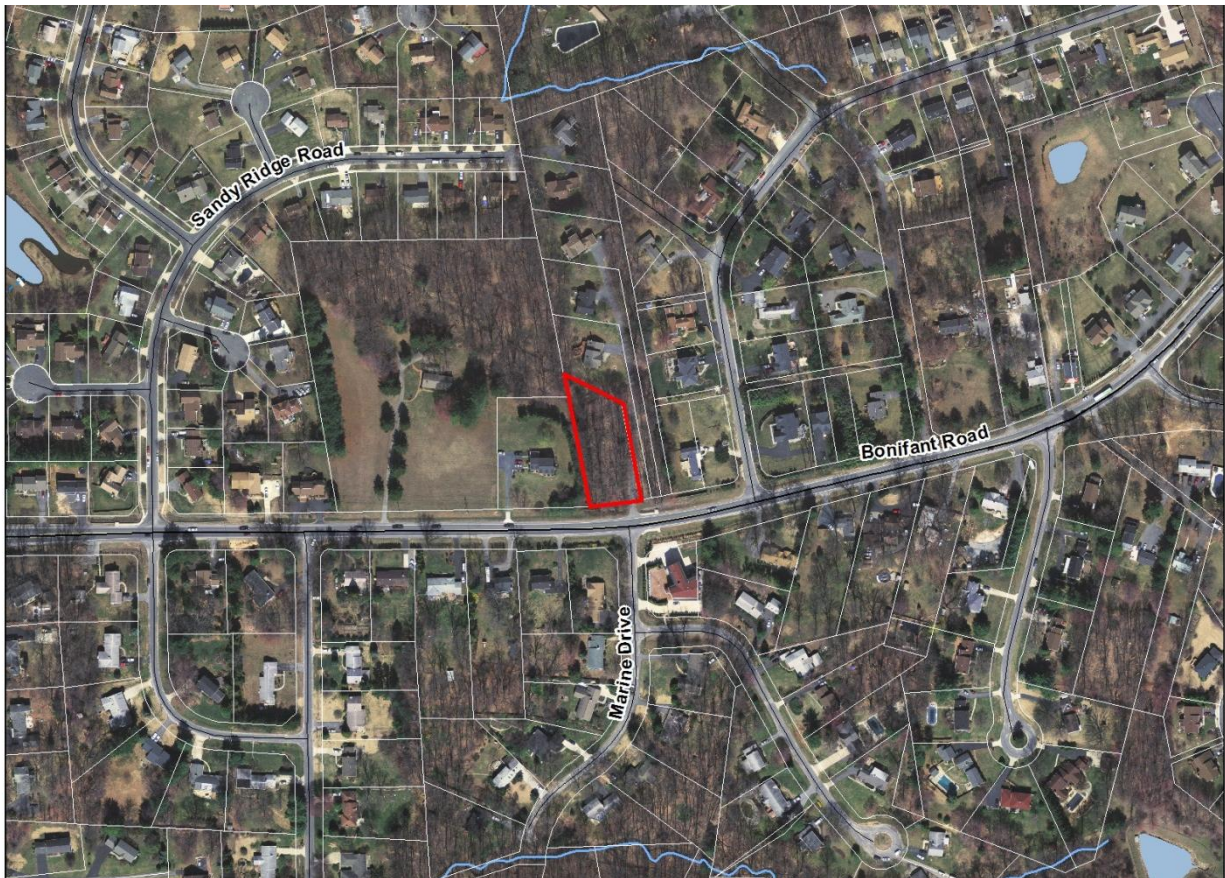
## RECOMMENDATION

Approval, subject to the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated October 12, 2011. The applicant must meet all conditions prior to Montgomery County Department of Permitting Service's (MCDPS) issuance of sediment and erosion control permit(s), as appropriate. Conditions are as follows:
  - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
  - b. The Final Sediment Control Plan must be consistent with the final limit of disturbance as approved by M-NCPPC Planning Department Staff and as shown on the approved Final Forest Conservation Plan.
  - c. M-NCPPC Planning Department Staff review and approval of a Certificate of Compliance Agreement prior to use of an offsite forest mitigation bank to satisfy the forest mitigation planting requirements.
2. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated, May 24, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
3. The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated, December 30, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
4. The Applicant must comply with the conditions of the Montgomery County Department of Fire and Rescue Services (MCFRS) letter dated, December 30, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
5. Prior to issuance of a building permit, the Applicant must make a school facilities payment to the MCDPS at the elementary school level.
6. Any building permit for one-family residences that are issued pursuant to this preliminary plan must show that the building is to be built in substantially the same location and orientation as shown on the certified preliminary plan.
7. The new record plat must show necessary easements.

## SITE DESCRIPTION

The subject property, "Subject Property" or "Property" is 0.68 acres (29,600 s.f.) in size and is located on the north side of Bonifant Road, approximately ¼ mile (1,300 ft.) east of the intersection with Notley Road or 0.6 miles west of New Hampshire Avenue, in the Cloverly Master Plan area. The zoning of the Property is R-200. The Property slopes from its highest point along Bonifant Road down towards the rear (north) where a storm drain easement conveys runoff to the north and west. Runoff from Bonifant Road and properties to the south of Bonifant Road are released on to the Property and flow across it to

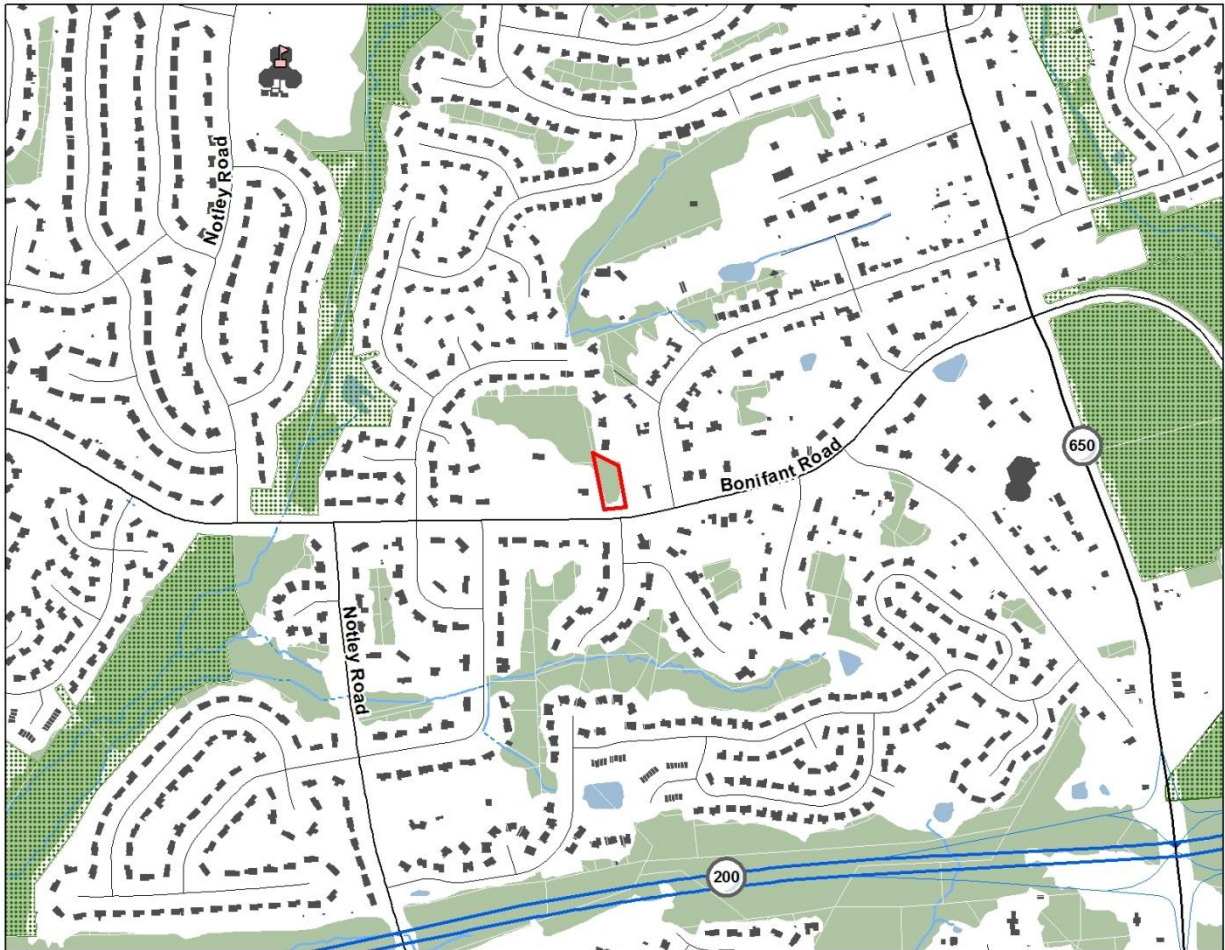


reach the storm drain easement. The site is almost completely forested, except for the south eastern corner where the entrance to the shared driveway is located.

Single family homes in the R-200 Zone surround the Property, including the subdivisions of Rolling Stone to the north and west, North Salem Village to the east, and North Sherwood Forest to the south. Bonifant Road is also lined with similar single family homes. Much of the surrounding development was constructed in the 1960's through the 1980's.

The Property is within the Northwest Branch watershed which is designated as a Use IV stream system. There are no sensitive environmental features on the Property; however, the drainage flowing across

the Property has begun to erode channels into the landscape. This is addressed further in the environmental review section of this report.



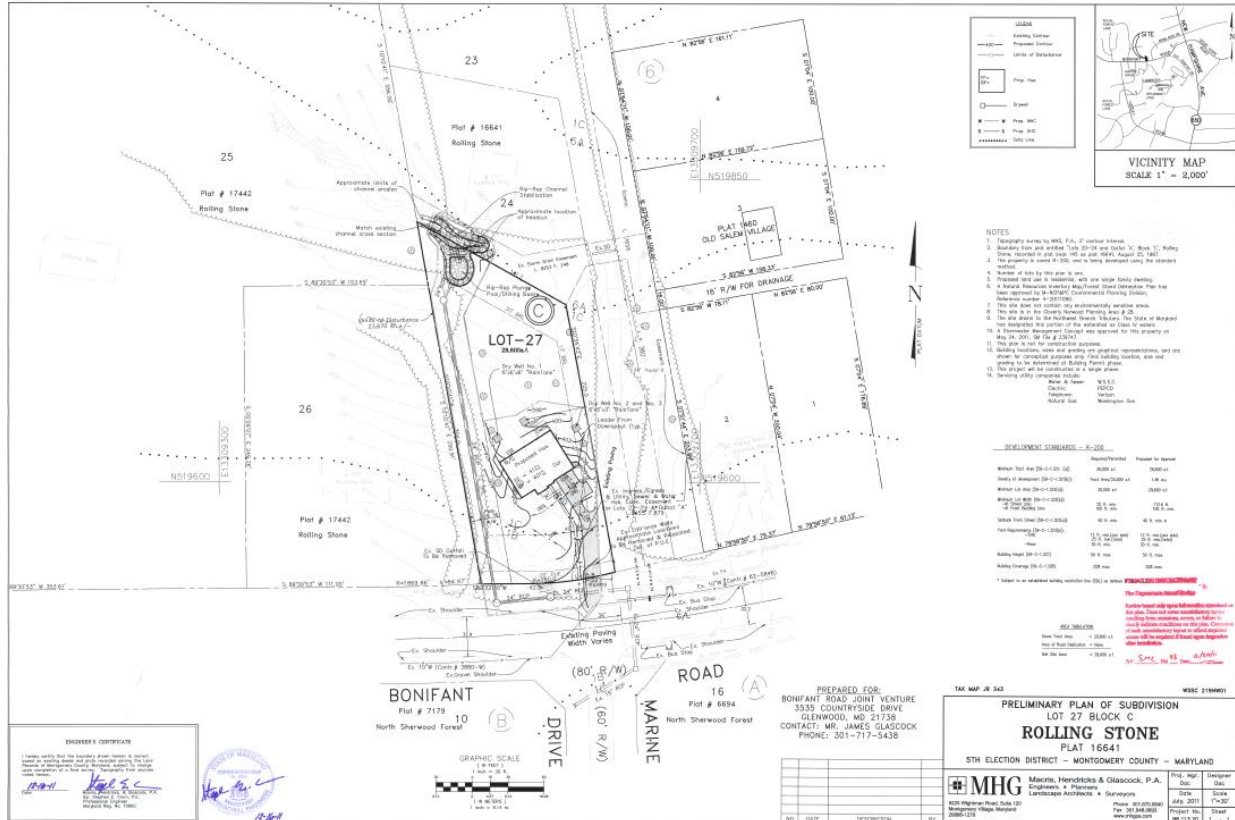
## PROJECT DESCRIPTION

This Preliminary Plan application requests to convert Outlot A – Rolling Stone into a buildable lot to allow a building permit for one, one-family detached house. This new residence will share an existing common driveway, currently shared by three other one-family detached houses. These other three lots were approved with the Subject Property under the original Rolling Stone approval; the driveway was located and designed to provide shared access for the Subject Property and the other lots. This existing shared driveway currently runs along the eastern edge of the Property, connecting to Bonifant Road. Water and sewer lines exist along Bonifant Road and other utilities are currently available.

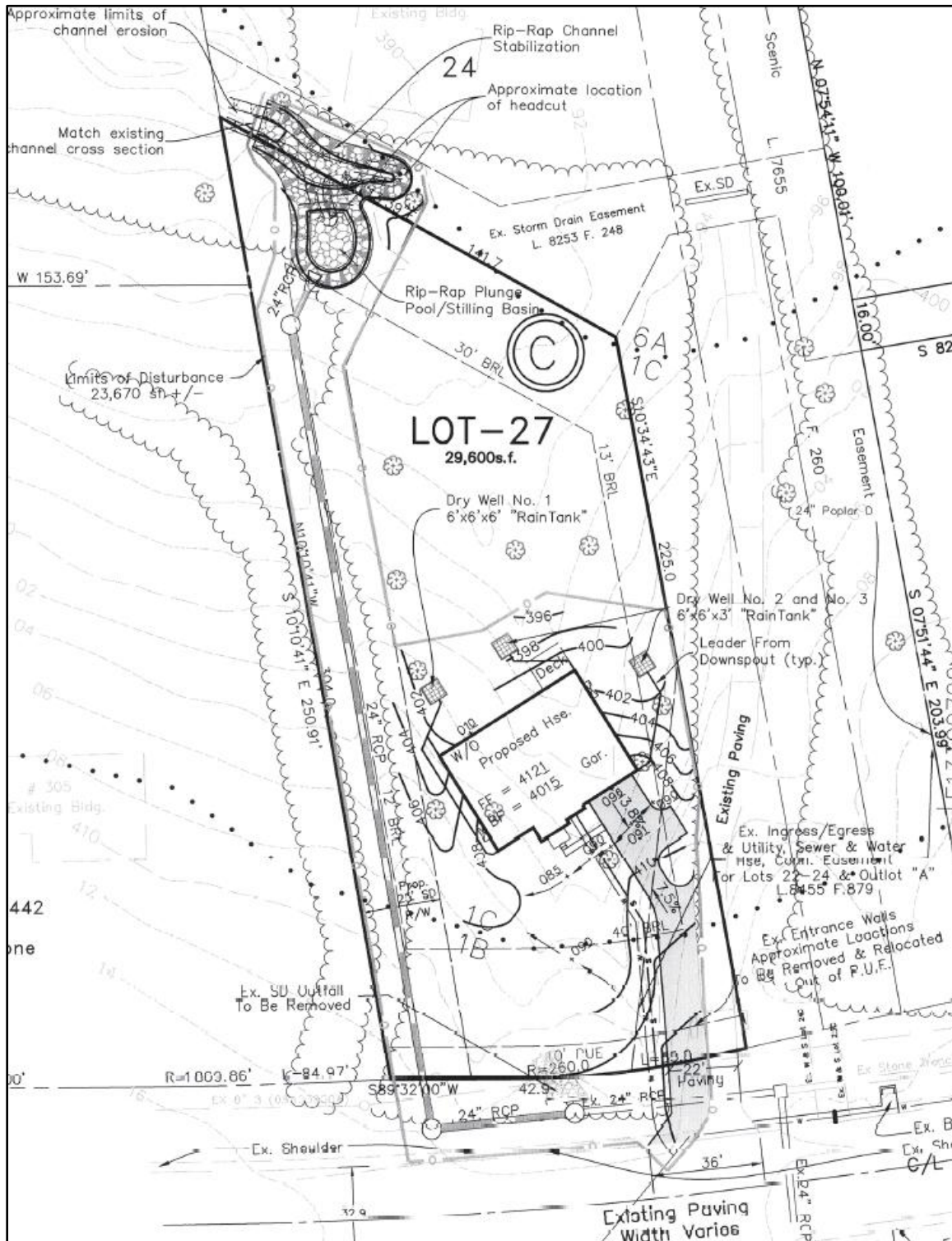
As mentioned, a storm drain easement was established along the northern border of the Property at the request of Montgomery County and is shown on the existing record plat. The easement is partially located on the adjacent lot to the north. The channel within this easement has become eroded due to offsite runoff from upstream developments. The approved stormwater management concept provides

stormwater management for the new home and it also requires the Applicant to construct a pipe to capture runoff that now flows uncontrolled from Bonifant Road, across the Property, to the storm drain easement. To address the erosion, the stormwater management concept approval requires the Applicant to construct a rip rap outfall and basin at the end of the new pipe to slow the velocity of the runoff and to stabilize existing erosion.

### Preliminary Plan



**Lot Detail**



### **Project History**

The Subject Property was approved under **Preliminary Plan 119860820** on February 26<sup>th</sup>, 1987. That plan consisted of six (6) lots on 3.41 acres of land. Because of traffic constraints identified in the Eastern Montgomery County Policy Areas much of the eastern county was essentially in a traffic moratorium including this subdivision. However, certain provisions in the Annual Growth Policy at that time allowed for small developments that generated “de minimus” levels of traffic to be approved. For Preliminary Plan 119860820, no more than five “buildable” residential lots could be approved under the trip generation calculations at that time. This preliminary plan approved six lots with the Subject Property as one of the six and identified as an outlot to restrict issuance of a building permit. Subsequent Annual Growth Policy updates recognized that the moratorium was lifted and that outlots created under Planning Board approval could be considered for development.

**Preliminary Plan 119940250** was filed on September 30<sup>th</sup>, 1993 requesting the conversion of Outlot A to a buildable lot. Due to the continuing traffic moratorium, the application did not advance to the Planning Board until August 10<sup>th</sup>, 1995. The plan received technical approval from review agencies, however, it was deferred by the Planning Board because of questions regarding the then more common, issuance of a stormwater waiver by Montgomery County. The Board was not able to support the plan because of concerns raised by local residents about flooding and erosion. After submission of additional information on the nature of the stormwater waiver, the plan was re-heard on February 6<sup>th</sup>, 1997 and the Planning Board ultimately denied the application because of continued concerns about the lack of stormwater management.

The case was appealed to the Circuit Court **Civil Action 174618**, heard on February 4<sup>th</sup>, 1998. The opinion was rendered in August of 1998 upholding the action of the Planning Board.

### **ANALYSIS AND FINDINGS**

#### **Conformance to the Master Plan**

The proposed conversion of Outlot A into a buildable lot does not conflict with the policies set forth in the Cloverly Master Plan of maintaining one-family residential development in the area. The Property is located within the Suburban Communities section of the Cloverly Master Plan in the Naples Manor and Stonegate Neighborhood, which recommends retaining the existing residential zoning and development patterns. Outlot A is part of a six lot subdivision created in preliminary plan 11986082, where five lots were recorded and developed and the remaining lot was placed into an Outlot. The use of this Property for residential purposes is in conformance with the Cloverly Master Plan.

#### **Public Facilities**

**Roads, Transportation and Pedestrian Facilities** -The proposed lot does not generate 30 or more vehicle trips during the morning or evening peak-hours, therefore, the application is not subject to a Local Area

Transportation Review. The Policy Area Mobility Requirement (PAMR) guidelines for the Cloverly policy area require no mitigation of new peak hour trips. The application satisfies LATR and PAMR requirements.

The lot will have adequate access to a public street. No additional dedication for the public right-of-way is required. The existing shared driveway is 11 feet wide and will be widened to 22 feet wide from the access point at Bonifant Road, north to beyond the access point of the proposed lot. The driveway widening is required to accommodate the Fire Marshal's comments pertaining to the maneuverability of fire equipment.

The Montgomery County Department of Transportation is requiring that a sidewalk be constructed along the Property frontage and has recommended that the Planning Board require an offsite connection of that sidewalk within the public right-of-way to connect to the bus shelter located opposite Marine Drive. Staff advises that a sidewalk was recently constructed in this location and that it is shown on the Preliminary Plan drawing. This recommendation from MCDOT has therefore, been addressed.

### **Other Public Facilities and Services**

Staff finds that all other public facilities and services are available and will be adequate to serve the proposed dwelling unit. Water and sewer mains front the site along Bonifant Road. The Washington Suburban Sanitary Commission has determined that local transmission and treatment capacity is adequate to serve the proposed unit. All utilities, including Verizon, Washington Gas, PEPCO, and cable providers have indicated that local service is available and adequate for the proposed unit. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Polices currently in effect. The application is within the Paint Branch High School cluster where there is a School Facilities Payment required at the elementary school level. This payment will need to be made at the time of building permit.

### **Environment**

**Environmental Guidelines** - The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) # 420110190 for this Property was approved on March 3<sup>rd</sup>, 2011. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Property has 0.51 acres of moderate priority forest on site which is 75% of the total site. There are 4 trees, 30 inches and greater in diameter at breast height (DBH), and two other trees that are located immediately offsite, west of the northwest corner of the Property. There are 14 trees between 24 inches and 30 inches DBH on, or adjacent to the Property. The site's topography is generally sloping downhill from south (along Bonifant Road) to north, with a natural drainage swale formation in the middle of the Property also running north/south. There are no intermittent or perennial streams, no mapped 100-year floodplains, nor any wetlands or environmental buffers on, or immediately adjacent to the site. There is a small area of steep slopes in the southeastern portion of the Property, near the existing shared driveway. There are



no highly erodible soils on the site. The Property is located within the Northwest Branch watershed, which is classified by the State of Maryland as Use IV waters. The 2003 update of the "Countywide Stream Protection Strategy" (CSPS) (Montgomery County Department of Environmental Protection) identifies this part of Northwest Branch as having "fair" stream quality.

**Forest Conservation** - As required by the County Forest Conservation Law (Section 22A of the County code), a Preliminary Forest Conservation Plan (PFCP) for the project was submitted with the Preliminary Plan (Attachment 1). The PFCP includes an additional 0.08 acres of offsite disturbance within the public right-of-way for the construction of a storm drain along Bonifant Road and for stabilization measures for the offsite ephemeral channel located within the storm drain easement along the north boundary of the Property.

The PFCP proposes to remove all of the existing 0.51 acres of forest for the construction of a house, driveway improvements, and stormwater management features. In addition, the construction includes the extension of an existing storm drain along Bonifant Road that currently outfalls onto the Subject Property. The storm drain will be extended through the Property to the storm drain easement area where a rip-rap outfall, plunge pool and stilling basin will also be constructed. The storm drain extension is necessary for the site to be developed and the purpose of the outfall and stilling basin is slow water velocity and to alleviate existing erosive conditions within this ephemeral channel. To accommodate the removal of forest for development of this Property, there is a 0.39 acre forest planting requirement that will be met in an offsite forest mitigation bank.

Staff finds that, with recommended conditions of approval, the proposed project is in compliance with the Montgomery County Environmental Guidelines and the Forest Conservation Law.

**Forest Conservation Variance** - Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires no impact to trees that: measure 30 inches or greater, DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance from the law. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

Variance Request - The Applicant submitted a variance request in a letter dated April 29, 2011. The Applicant proposes to remove three (3) trees that are 30 inches and greater, DBH, and to impact, but not remove, two (2) others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law (Attachment 2).

Trees to be removed

Tree Number	Species	DBH (Inches)	Status
1	Silver Maple	30	Fair/Good condition; house, driveway and utility connections
2	Tuliptree	30	Good condition; house construction, lot grading
11	Tuliptree	32	Poor condition; tree almost dead, hazardous

Trees to be affected but retained

Tree Number	Species	DBH (Inches)	CRZ Impact	Status
6	Tuliptree	32	20%	Fair/Good condition; minor lot grading
13	Tuliptree	36	15%	Good condition; offsite; stormwater improvements, stabilization

The Applicant has offered the following justification of the variance request:

*(1) Describe the special conditions peculiar to the Property which would cause the unwarranted hardship;*

Response (MHG April 29, 2011) - *“The subject property consists of a single parcel with a total tract area of 0.68 acres on Bonifant Road. The property currently is undeveloped; the proposed use is a single family residence. A moderate-priority forest of 0.51 acres exists on site, with no wetlands, floodplains or stream valley buffers on the property.*

*The proposed house has been located on the property to be consistent with the law and compatible within the neighborhood. Of the five trees impacted, two of them are to be saved (tree #6 & #13). Tree #6 is located in the center of the property and impacting this tree could not be avoided given the small size of the lot and the large size of the tree and its critical root zone; nonetheless, the impacts are negligible and the tree will be saved. Tree #13 is offsite and will be impacted by stormwater improvements to help control erosion but impacts have been minimized. In saving trees #6 and #13, they will receive stress reduction measures that will be administered by a certified arborist. Of the three trees to be removed, one of the trees (tree #11) is in poor condition and almost dead and efforts to save the tree were not deemed necessary. The other two trees to be removed (trees #1 & #2) are along the existing driveway at the front of the property and impact cannot be avoided. In order to protect the trees and forest cover in the back of the property the house was moved forward as much as possible*

*given the needed grading for the house and driveway. Shifting the house toward the back of the lot would result in removing another specimen tree (tree #6) and would not result in any fewer specimen trees removed and would possibly result in more specimen trees to be removed. Given the small size of the lot and the distribution of these trees across the property, it is not possible to build a house without removing them.”*

Development on the Property is constrained by existing site conditions including the existing shared driveway, existing storm drain outfall on the property along Bonifant Road, and the drainage swale that traverses through the center of the Property. In order for the Property to be developed, this storm drain must be redirected and extended through the site. In addition, the Property is oriented in a fairly narrow, linear configuration and contains numerous large trees scattered throughout. These existing conditions and development requirements including stormwater management have limited the ability to avoid removal and impact to specimen trees. There are three specimen trees on the lot that will need to be removed as part of site construction.

Trees #1 (30” Silver Maple) and #2 (30” Tulip Poplar) are located just outside of the alignment of the proposed driveway and near the location of the proposed house. Substantial damage to the Critical Root Zone (CRZ) would occur during construction. The location of the house was selected in the front of the Property to site the house at a higher elevation, and to minimize impacts to additional large tree located in the rear portion of the Property. The location of the driveway cannot be moved because the access is forking off of an existing shared driveway that was designated in the original approval as the means of ingress and egress to the Property . Tree # 11 (32” Tulip Poplar) is in poor condition with trunk cavities and deadwood and has been determined to be a hazard if not removed. Substantial impact to this tree’s CRZ will occur during relocation of the storm drain.

Two additional specimen trees (# 6 - 32” Tulip Poplar, #13 - 30” Tulip Poplar) will have lesser impacts during construction of the stormwater management devices toward the rear of the Property but they can be protected. It is recommended that stress reduction measures be administered by a certified arborist and the trees be saved.

Staff has reviewed this application and based on the existing conditions on the Property, staff agrees that there is an unwarranted hardship.

*(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

*Response (MHG April 29, 2011) - “The subject property lies within the neighborhood of other residential properties. The proposed use is compatible with the surrounding properties and with the established zoning (R-200). The inability to remove specimen trees would make it virtually impossible to construct a residence that would meet zoning regulations and be compatible with the neighborhood. This creates significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by neighboring and/or similar properties not subject to this variance requirement.”*

The proposed removal and impacts to the subject trees are due not only to the construction of the proposed house, but to the construction associated with required stormwater management, stabilization of an existing eroded swale, and relocation of an existing storm drain outfall needed to accommodate any development on the Property. Further, since this outlot was created in response to traffic limitations in the 1980's, there was an expectation that it would be eligible for development once the traffic limitations were addressed. Staff has reviewed the application and agrees that enforcing the rules of the variance provision would deprive the landowner of rights commonly enjoyed by others.

*(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

Response (MHG April 29, 2011) - *"A Stormwater Management Concept has been submitted for the property. Once reviewed and approved, this Concept will confirm that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site."*

The applicant has an approved stormwater management concept plan from DPS (letter dated May 24, 2011) that incorporates Environmentally Sensitive Design (ESD). Currently, the site and adjacent down gradient properties are experiencing erosive conditions due to uncontrolled runoff. The applicant's stormwater management concept approval includes a condition to provide safe conveyance of storm flows draining to and from this Property. In addition, there are no impacts or removals of trees located in any stream buffer. Staff has reviewed the application and agrees that State water quality standards will not be violated or that a measurable degradation in water quality will not occur.

*(4) Provide any other information appropriate to support the request.*

Response (MHG April 29, 2011) - *"A copy of the Preliminary Forest Conservation Plan has been provided as part of this variance request. The proposed removal of the three specimen trees, a 30 inch caliper Silver Maple, a 30 inch caliper Tulip Poplar, and a 32-29 inch Tulip Poplar, as well as the impact to a 32 inch and a 30 inch Tulip Poplar are indicated on the plan."*

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the applicant as disturbance to the specified trees are due to the development of the site. The 0.68-acre Property is fairly narrow in its configuration, is almost entirely forested, and contains numerous large trees located throughout the

Property. These trees and their critical root zones lie within the developable area of the site. One of the three trees proposed to be removed was determined to be in poor condition and is currently a hazard. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this applicant. The proposed development activities that result in the impacts to trees subject to the variance requirement are within the existing developed area of the site. Staff has determined that the removal and impacts to the trees subject to the variance requirement cannot be avoided. Therefore, staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, including the existing storm drain outfall and drainage swale, and the number and locations of the large trees.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing and proposed site design and layout on the Subject Property, and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The granting of this variance request will not result in the removal or impacts of any trees located within the environmental buffer, wetland, or special protection area. The Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable and conditionally approved it in a letter dated, May 24, 2011. This plan addresses stormwater management for the proposed house as well as stabilization of eroding channels. Therefore, staff believes that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions – The three trees proposed for removal in this variance request are located within the existing forest and their removal is accounted for in the forest clearing calculations. The PFCP results in a planting requirement of 0.39 acres which the Applicant proposes to satisfy offsite. Staff does not recommend additional mitigation for the removal of trees that are accounted for in the forest clearing calculations. There is minimal disturbance within the critical root zones of two trees, but they are excellent candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist. On August 10, 2011, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Attachment 3).

Variance Recommendation - Staff recommends that the variance be granted.

**Stormwater Management** - The stormwater management concept was approved by the Montgomery County Department of Permitting Services on May 24<sup>th</sup>, 2011 (Attachment 4). Stormwater management for the proposed house will be provided onsite through three dry wells located to the rear of the house. The storm drain that now releases runoff at the highest point of the Property along Bonifant Road will be piped to the County storm drain easement at the lowest elevation of the Property. The end of the pipe will receive an enhanced rip-rap outfall with plunge basin. This structure is designed to address the erosion in the County storm drain easement which has the potential to negatively impact the residential structure on adjacent Lot 24. According to MCDPS staff, the development of the Property offers an opportunity to control runoff from Bonifant Road and to address the erosion that is now occurring within the storm drain easement between the Property and Lot 24. MCDPS staff acknowledges that erosion of the channel further downstream is a continuing problem, however; the Subject Property cannot provide any solutions to that problem. The Application has met all applicable stormwater requirements; the concept approved on May 24, 2011 complies with Chapter 19 of the County Code.

#### **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 lot size, width, shape and orientation are appropriate for the location of the subdivision as was the finding when the original application was reviewed and approved by the Planning Board. The lot is designed in such a way to meet all other requirements of the Subdivision Regulations, including access, frontage, adequacy of public facilities, conformance to Master Plan recommendations, and protection of sensitive environmental features.

The lot was reviewed for compliance with the dimensional requirements of the R-200 zone as specified in the Zoning Ordinance. The lot meets all the dimensional requirements for area, frontage, width, and setbacks in that zone. The application has been reviewed by MCDPS - Zoning who have recommended approval of the plan.

Section 50-32 – *Special controls for environmentally sensitive areas. (Attachment 5)*

Section 50-32(a) *Stream Valley and floodplains* requires that the Planning Board .... “*must, when it deems necessary for the health, safety, comfort or welfare of the present and future populations of the regional district and necessary to the conservation of water, drainage, and sanitary facilities, restrict subdivision for development of any property which lies within the one-hundred-year floodplain of a stream or drainage course.*”

As discussed in the Environmental section of this report, there are no environmentally sensitive features such as streams, wetlands, or 100 year floodplains where the Board might apply the Environmental Guidelines, or otherwise find it necessary to restrict development. The majority of the stream channel is on adjacent Lot 24 within the storm drain easement. A small portion of the channel meanders on to the Subject Property and will be located in the storm drain easement proposed under this application. The proposed house location is to be within the limits of disturbance shown on the forest conservation plan and essentially restricted to the southern half of the proposed lot, well away from the existing storm drain easement to the north. Other than applying a new storm drain easement to the new pipe and outfall, Staff does not believe any additional restrictive measures are needed to protect the drainage course or the health, safety, comfort or welfare of those in the regional district. Further, the development of this Property affords the County an opportunity to have the developer make drainage improvements that may not otherwise be possible if left as a CIP project.

Section 50-32(b) *Unsafe Land*, requires the Board to .... “*restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.*”

According to the approved Natural Resources Inventory (NRI), the channel is ephemeral and only flows in response to rain events. While an attempt to locate a house within such a drainage channel would certainly be unwise, the proposed house location shown on the preliminary plan drawing is well away from the channel and the house will not be in danger of flooding under any imaginable scenario. The easement that is applied to the pipe and channel by this plan, forbids any structures within it. Staff finds that the subdivision creates no unsafe conditions and that no further restrictions should be applied to the proposed lot.

The continuation of the erosion in the channel downstream of the Property has been brought to the attention of MCDPS staff. The channel conveys drainage from the areas upstream of the Subject Property to a regional stormwater pond located approximately 1400 feet to the west. The upstream developments were approved for the most part without individual stormwater management located within each individual subdivision; rather, there is a reliance on the channel to convey the runoff to the regional pond. The channel is eroding due to the volume and velocity of water that it carries. Conversations with the staff of MCDPS reveal that there is nothing more that this Applicant can do on the Subject Property to alleviate downstream erosion.

Staff finds that the Preliminary Plan will not damage water drainage courses that might affect public health, safety and welfare and that the Preliminary Plan will not result in subdivision of unsafe lands.

#### **CITIZEN CORRESPONDENCE AND ISSUES (Attachment 5)**

This application was submitted and noticed in accordance with all Planning Board adopted procedures. The pre-submission meeting was held at the First Alliance Church at 14500 New Hampshire Avenue, Silver Spring, MD on March 10<sup>th</sup> 2011 at 6pm. At the meeting, the owner of adjoining lot 24 had several complaints regarding use and construction of the private driveway the applicant proposes using, as well as stormwater management and erosion issues.

In a letter dated July 22<sup>nd</sup> and received July 28<sup>th</sup>, 2011, Michael Makfinsky expressed concerns about the existing erosion problem that occurs on Outlot A. Mr. Makfinsky cited two previous documents that pertain to this Property, Montgomery Planning Board Opinion, Preliminary Plan 11994025 and Department of Environmental Protection, Permitting and Plan Review Section letter from May 31, 1996, both raising concerns about stormwater runoff and erosion. In the same letter, the concern over additional use of the existing shared driveway was raised, along with concerns about the new properties impact on underground utilities and utility disruption during construction.

The letter cites previous action by the Planning Board at which time the Board denied an application to convert the outlot to a buildable lot. Mr. Makinsky's letter seems to imply that because a decision was made to deny the change in the status of the outlot at that time, it cannot ever be taken up again as a regulatory matter. The letter asks what has changed with respect to this Property.

This application is a new application that has been reviewed by all agencies that comprise the Development Review Committee. The Property, can comply with all current regulations and laws with respect to the Cloverly Master Plan, the Zoning Ordinance and the Subdivision Regulations. In staff's opinion, there is nothing that would otherwise prevent this application from proceeding to the Planning Board for a public hearing.

The most significant change to this Property is that it is now required to have a stormwater management concept whereas, in the past, a waiver provision was available in the stormwater regulations. The waiver of stormwater appears to have been a significant issue that the Planning Board debated in the previous action under Preliminary Plan 119940250, which was denied by the Board.

With respect to stormwater management, Staff directed Mr. Mafinsky to the assigned stormwater management reviewer at MCDPS. Staff understands that Mr. Mafinsky and the DPS reviewer have been in contact with each other, however, it is not known if the proposed stormwater concept has addressed Mr. Mafinsky's concerns about this project. As mentioned previously in this report, there are concerns expressed by Mr. Mafinsky about the apparent lack of participation by the owner of the Subject Property with the upkeep of the shared driveway. Park and Planning has no role in the enforcement of any maintenance of private driveways and considers this a civil matter.

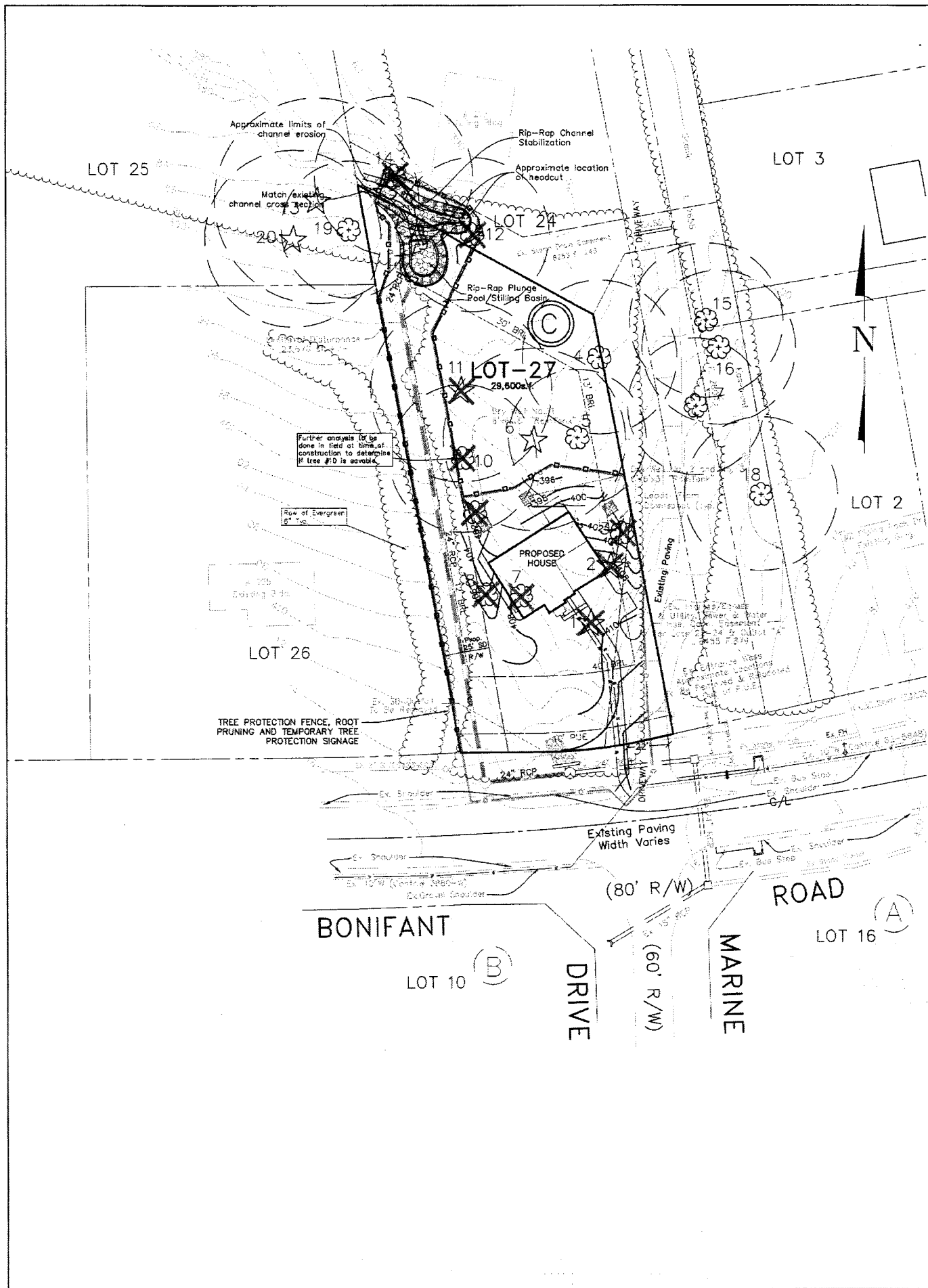


## **CONCLUSION**

The lot proposed by this preliminary plan meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the Cloverly 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**

- 1) Preliminary Forest Conservation Plan
- 2) Tree Variance Request
- 3) MCDEP Tree Variance Recommendation
- 4) MCDPS SWM Concept Approval
- 5) Section 50-32, Subdivision Regulations
- 6) Citizen Correspondence
- 7) Agency Approvals

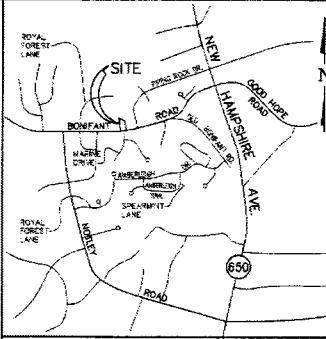


**FOREST CONSERVATION WORKSHEET**  
Rolling Stone

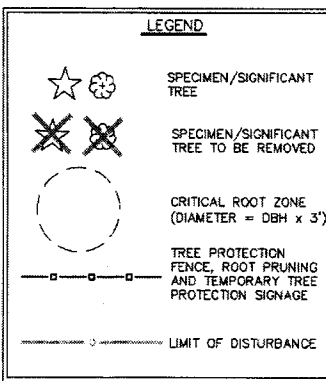
NET TRACT AREA:		
A. Total tract area		0.76
B. Land dedication acres (parks, county facility, etc.)		0.00
C. Land dedication for roads or utilities (not being constructed by this plan)		0.00
D. Area to remain in commercial agricultural production use		0.00
E. Other deductions (specify)		0.00
F. Net Tract Area		0.76
LAND USE CATEGORY: (from Trees Technical Manual)		
Input the number "1" under the appropriate land use, limit to only one entry.		
	ARA	MDR
	0	0
	IDA	HDR
	0	1
	MPD	GIA
	0	0
G. Afforestation Threshold	15%	x F = 0.11
H. Conservation Threshold	20%	x F = 0.15
EXISTING FOREST COVER:		
I. Existing forest cover		0.51
J. Area of forest above afforestation threshold		0.40
K. Area of forest above conservation threshold		0.36
BREAK EVEN POINT:		
L. Forest retention above threshold with no mitigation		0.22
M. Clearing permitted without mitigation		0.29
PROPOSED FOREST CLEARING:		
N. Total area of forest to be cleared		0.51
O. Total area of forest to be retained		0.00
PLANTING REQUIREMENTS:		
P. Reforestation for clearing above conservation threshold		0.09
Q. Reforestation for clearing below conservation threshold		0.30
R. Credit for retention above conservation threshold		0.00
S. Total reforestation required		0.39
T. Total afforestation required		0.00
U. Credit for landscaping (may not exceed 20% of 'S')		0.00
V. Total reforestation and afforestation required		0.39

**FOREST CONSERVATION TABLE**

DESCRIPTION	SIZE
Total Property Area	0.76 Acres
Total Off-site Disturbance	0.08 Acres
Total Tract Area	0.78 Acres
Forest Remaining in Agricultural Use	0.00 Acres
Road & Utility ROW (Submerged)	0.00 Acres
Existing Forest	0.51 Acres
Total Forest Retention	0.51 Acres
Total Forest Cleared	0.27 Acres
Land Use Category	High Density Residential: 15%
Afforestation Threshold	20%
Forest in Wetlands Retained	0.00 Acres
Forest in Wetlands Cleared	0.00 Acres
Forest in 100-year Floodplain Retained	0.00 Acres
Forest in 100-year Floodplain Cleared	0.00 Acres
Forest in Stream Valley Buffer Retained	0.00 Acres
Forest in Stream Valley Buffer Cleared	0.00 Acres
Forest in other Priority Areas Retained	0.00 Acres
Forest in other Priority Areas Cleared	0.00 Acres
Stream Valley Buffer Length	0 Feet
Stream Valley Buffer Avg. Width	0 Feet



VICINITY MAP  
SCALE 1" = 2,000'



THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
FOREST CONSERVATION PLAN  
SUBMITTED FOR PLANNING BOARD APPROVAL

File No. 12010930  
Signature: *James Glascock* Date: 10/12/11

**NOTES:**  
1. 0.08 acre of off-site disturbance added to tract area  
2. The Reforestation requirement of 0.39 acres will be met in an off-site Forest Mitigation bank.

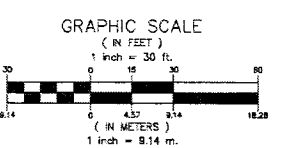
**TREE SUMMARY**

ID #	Common Name	Botanical Name	DBH	CRZ (s.f.)	CRZ (radius)	Conditions/Remarks
*1	Silver Maple	Acer saccharinum	30	6359	45	Fair/Good - sapsucker holes; REMOVE
*2	Tulip Poplar	Liriodendron tulipifera	30	6359	45	Good - P. Ivy; REMOVE
3	Tulip Poplar	Liriodendron tulipifera	27	5150	40.5	Fair/Good - leans; REMOVE
4	Tulip Poplar	Liriodendron tulipifera	27	5150	40.5	Good - codom @ base
5	Tulip Poplar	Liriodendron tulipifera	24	4069	36	Fair/Poor - topped
*6	Tulip Poplar	Liriodendron tulipifera	32	7235	48	Fair/Good - some canopy damage
7	Tulip Poplar	Liriodendron tulipifera	28	5539	42	Good; REMOVE
8	Tulip Poplar	Liriodendron tulipifera	26	4776	39	Good; REMOVE
9	Tulip Poplar	Liriodendron tulipifera	25	4416	37.5	Good; REMOVE
10	Tulip Poplar	Liriodendron tulipifera	26	4776	39	Good - connected @ base; REMOVE
*11	Tulip Poplar	Liriodendron tulipifera	32	7235	48	Poor - 1 bole topped, 1 bole cavity & damaged; REMOVE
12	Red Maple	Acer rubrum	27	5150	40.5	Fair/Good - poor root structure/eroded; REMOVE
*13	Tulip Poplar	Liriodendron tulipifera	36	9156	54	Good
14	Tulip Poplar	Liriodendron tulipifera	28	5539	42	Good - REMOVE
15	Tulip Poplar	Liriodendron tulipifera	27	5150	40.5	Good - codom @ 5'
16	Black Cherry	Prunus serotina	27	5150	40.5	Fair/Poor - leans, 1 bole broken @ 10'
17	Tulip Poplar	Liriodendron tulipifera	24	4069	36	Good
18	Tulip Poplar	Liriodendron tulipifera	27	5150	40.5	Good
19	Red Maple	Acer rubrum	24	4069	36	Good
20	Tulip Poplar	Liriodendron tulipifera	31	6789	46.5	Fair - crack/hollow/rot

Notes: Diameters are given for each trunk of multiple bole trees when division occurs below 4.5 feet. If major division occurs above 4.5 feet only the trunk diameter at 4.5 feet is given. Tree ID Numbers correspond to those assigned on the Natural Resource Inventory/Forest Stand Delineation Map. Tree sizes for trees 13 & 14 were approximated. \* Specimen tree

**QUALIFIED PROFESSIONAL CERTIFICATION**  
I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF EXISTING STATE AND COUNTY FOREST CONSERVATION LEGISLATION.  
DATE: 10/12/11  
FRANK C. JOHNSON  
RECOGNIZED AS QUALIFIED PROFESSIONAL BY MD. DEPT. OF NATURAL RESOURCES CDMAR 08.19.06.01

PREPARED FOR:  
BONIFANT JOINT VENTURE  
3535 COUNTRYSIDE DRIVE  
GLENWOOD, MD 21738  
CONTACT: MR. JAMES GLASCOCK  
PHONE: 301-717-5438



TAX MAP 219NW01 WSSC JR343

**PRELIMINARY FOREST CONSERVATION PLAN**  
LOT 27, BLOCK "C"  
**ROLLING STONE**  
5TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers • Planners  
Landscape Architects • Surveyors  
9220 Wightman Road, Suite 120  
Montgomery Village, Maryland 20886-1279  
Phone 301.870.0840  
Fax 301.948.0893  
www.mhga.com

Proj. Mgr. DAC	Designer GSH
Date 10/12/11	Scale 1" = 30'
Project No. 86.113.20	Sheet 1 of 1



April 29, 2011

Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Rolling Stone PFCP  
MNCPPC No. 420111090  
MHG Project No. 86.113.20

To Whom It May Concern:

On behalf of Bonifant Road Joint Venture, the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for the removal of three specimen trees and the impacting of two specimen trees, required by the revisions to the Maryland Forest Conservation Act, effective October 1, 2009, outlined in Senate Bill 666. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed removal or impact of the four trees over thirty inches in diameter would satisfy the variance requirements.

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property consists of a single parcel with a total tract area of 0.68 acres on Bonifant Road. The property currently is undeveloped; the proposed use is a single family residence. A moderate-priority forest of 0.51 acres exists on site, with no wetlands, floodplains or stream valley buffers on the property.

The proposed house has been located on the property to be consistent with the law and compatible within the neighborhood. Of the five trees impacted, two of them are to be saved (tree #6 & #13). Tree #6 is located in the center of the property and impacting this tree could not be avoided given the small size of the lot and the large size of the tree and its critical root zone; nonetheless, the impacts are negligible and the tree will be saved. Tree #13 is off-site and will be impacted by stormwater improvements to help control erosion but impacts have been minimized. In saving trees #6 & #13, they will receive stress reduction measures that will be administered by a certified arborist. Of the three trees to be removed, one of the trees (tree #11) is in poor condition and almost dead and efforts to save the tree were not deemed necessary. The other two trees to be removed (trees #1 & #2) are along the existing driveway at the front of the property and impact cannot be avoided. In order to protect the trees and forest cover in the back of the property the house was moved forward as much as possible given the needed grading for

the house and driveway. Shifting the house toward the back of the lot would result in removing another specimen tree (tree #6) and would not result in any fewer specimen trees removed and would possibly result in more specimen trees to be removed. Given the small size of the lot and the distribution of these trees across the property, it is not possible to build a house without removing them.

2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

The subject property lies within a neighborhood of other residential properties. The proposed use is compatible with the surrounding properties and with the established zoning (R-200). The inability to remove specimen trees would make it virtually impossible to construct a residence that would meet zoning regulations and be compatible with the neighborhood. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this variance requirement.

3. *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

A Stormwater Management Concept has been submitted for the property. Once reviewed and approved, this Concept will confirm that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site. A copy of the submitted plan is attached.

4. *Provide any other information appropriate to support the request.*

A copy of the Final Forest Conservation Plan has been provided as part of this variance request. The proposed removal of the three specimen trees, a 30 inch caliper Silver Maple, a 30 inch caliper Tulip Poplar, and a 32-29 inch Tulip Poplar, as well as the impact to a 32 inch and a 30 inch Tulip Poplar are indicated on the plan. Please let us know if any other information is necessary to support this request.

Please contact me via email, at [fjohnson@mhgpa.com](mailto:fjohnson@mhgpa.com), or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

August 10, 2011

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Rolling Stone Plan, DAIC 120110430, NRI/FSD application accepted on 1/10/2011

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

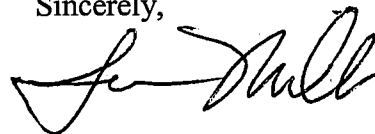
1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Acting Chief



## DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

May 24, 2011

Carla Reid  
Director

Mr. Stephen L. Wilde  
Macris, Hendricks & Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request  
for Rolling Stone Outlot A  
Preliminary Plan #: Pending  
SM File #: 239747  
Tract Size/Zone: 0.68 acres / R-200  
Total Concept Area: 0.68 acres  
Lots/Block: Proposed Lot 27/C  
Parcel(s): N/A  
Watershed: Northwest Branch

Dear Mr. Wilde:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable with conditions**. The stormwater management concept proposes to meet required stormwater management goals via ESD measures, which may include dry wells and disconnection of non rooftop impervious area.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. The safe conveyance of storm flows which drain to and from this property is of concern. Currently there are areas of erosion below the subject property which were most likely created by runoff from land which was previously developed. A condition of stormwater concept approval shall be the provision of non erosive flow conditions at the proposed storm drain outfall, as well as stabilization of the areas of active erosion within the existing public storm drainage easement below the subject property. Work in these areas will require a right-of-way permit. This work must precede any house construction on the subject property.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.



## DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

May 24, 2011

Carla Reid  
Director

Mr. Stephen L. Wilde  
Macris, Hendricks & Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request  
for Rolling Stone Outlot A  
Preliminary Plan #: Pending  
SM File #: 239747  
Tract Size/Zone: 0.68 acres / R-200  
Total Concept Area: 0.68 acres  
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Parcel(s): N/A  
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The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

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This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.



Attachment 5

**Sec. 50-32. Special controls for environmentally sensitive areas.**

- (a) ***Stream valleys and floodplains.*** The board must, when it deems necessary for the health, safety, comfort or welfare of the present and future population of the regional district and necessary to the conservation of water, drainage and sanitary facilities, restrict subdivision for development of any property which lies within the one-hundred-year floodplain of any stream or drainage course. "One-hundred-year floodplain" is defined as the area along a stream/drainage course, lake, or pond, which would experience inundation by stormwater runoff equivalent to that which would occur on the average of once in every one hundred years after total ultimate development of the watershed.
- (b) ***Unsafe Land.*** The board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.
- (c) ***Trees, Forests, and Environmentally Sensitive Areas.*** The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.
- (d) ***Restrictions - general.***
- (1) In addition to any requirement imposed under Chapter 22A, the proposed subdivision may be restricted under this Section by:
- a. deletion of or rearrangement of proposed lots, roads, utilities, and other facilities;
  - b. the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions;
  - c. requiring conservation easements, deed restrictions, or covenants over portions of lots or parcels to be recorded.
- (2) The deletion of proposed lots under subsection (c), should occur only if the board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long-term natural resource protection or to satisfy the requirements of Chapter 22A.

- (e) *Building restriction and land disturbance limit lines.*
- (1) **Building restriction line.** A building restriction line is a line designating an area in which development or building is restricted under this Section. A building restriction line must be used to designate floodplain, and other environmentally sensitive or unsafe building areas if the area is not shown on the plat as a right-of-way or easement in accordance with this Chapter.
  - (2) **Land disturbance limit line.** A land disturbance limit line is a line restricting land disturbing activities as defined in Chapter 19.
- (f) *Floodplain or unsafe land on part of a lot.* The board may permit, floodplain, or unsafe land to be platted as a part of a lot in which there is sufficient safe ground to erect a building or dwelling within the required setbacks of the zoning classification. In the event that such land is platted as a part of a buildable lot, there shall be placed on such platted lot a building restriction line which shall be located so as to provide at least a twenty-five-foot setback between any building and the unsafe areas and a greater setback where necessary to provide positive drainage between the building and unsafe area.
- (g) *Removal of building restriction line or land disturbance limit line.* A building restriction line or land disturbance limit line may be removed by the recording of a new plat approved by the Board if it finds that a subsequent change in conditions warrants the removal.
- (h) *Denial of a building permit.*
- (1) Except as provided under paragraph (2), a building permit must not be issued for development within any area for which building or land disturbance is restricted under this Section.
  - (2) This subsection does not apply to:
    - a. fences, agricultural structures, public utilities, or environmental management facilities or structures, approved by the Board or County; or
    - b. the issuance of building permits for the reconstruction or repair of single-family dwellings existing on September 1, 1971, and located within any one-hundred year floodplain which abuts a creek or other recess, cove, bay or inlet on the shore of a river.

- (i) *Regulations.* The board may use regulations adopted under Chapter 22A to administer this Section or adopt additional regulations under Method (2) and any other State law applicable to its rulemaking. (Mont. Co. Code 1965, § 104-21; Ord. No. 7-19, § 1; Ord. No. 8-41, § 2; Ord. No. 11-63, § 2; Ord. No. 12-16, § 1.)

**Editor's note**—Res. No. 9-280, introduced and adopted on June 19, 1979, recognized the authority of the Maryland Department of Natural Resources to regulate construction within the one-hundred-year floodplain.

**Sec. 50-33. Preapplication submissions.**

Subdivision applicants are authorized to submit informal preapplication plans, including location maps, sketch plans and such other information as is necessary, and seek advice from and confer with the planning staff, and if appropriate, the subdivision review committee and, in the case of major features, with the board, prior to formal submission of a preliminary plan. (Mont. Co. Code 1965, § 104-22; Ord. No. 8-92, § 1.)

**Sec. 50-33A. Alternative procedure for preapplication submission.**

- (a) *Filing and approval procedures.* If an applicant requests, in writing, the following alternative procedure for review of a preapplication submission shall be followed:
- (1) The applicant shall submit a concept plan concerning those major aspects of the submission on which a decision of the board is requested prior to preparation and submission of a preliminary plan. The concept plan may include, but shall not be limited to, the generalized layout of the subdivision; the location and classification of streets, public rights-of-way, easements, and dedications of land, the method of controlling erosion, sediment, and stormwater; the relationship to existing or planned subdivisions; the provisions for water and sewerage; and such other features or information as the applicant shall choose to submit or the board shall require in order to reach the decisions requested by the applicant. For concept plans involving proposed development under the cluster method of subdivision, the applicant shall provide sufficient information for the planning board to make a finding that the proposed development satisfies the requirements for cluster development as outlined in section 50-39(c)(1)(c).
  - (2) Upon receipt of the concept plan, the submission shall be referred to each or any of the public agencies which has a direct interest in any feature of the plan for its review and recommendations which shall be returned to the board in writing within thirty (30) days. Within the same period of time, the application shall also be placed on the agenda of the subdivision review committee for its review and advice.

Attachment 6

-----Original Message-----

**From:** Michael Makfinsky [mailto:Michael@makfinsky.com]  
**Sent:** Sunday, August 28, 2011 3:57 PM  
**To:** richard.weaver@montgomeryplanning.org  
**Subject:** RE: Review of Rolling Stone Preliminary Plan 120110430

[From Michael Makfinsky On 08-28-11] This is a resend // please acknowledge receipt //

Also - digital copies of hardcopy pictures provided to Mr. Brush are attached.

-----Original Message-----

**From:** Michael Makfinsky [mailto:Michael@makfinsky.com]  
**Sent:** Sunday, July 31, 2011 7:14 PM  
**To:** richard.weaver@montgomeryplanning.org  
**Cc:** Carol Rubin  
**Subject:** FW: Review of Rolling Stone Preliminary Plan 120110430

Dear Mr. Richard Weaver - this is in response to your request for a resend due to email troubles at MNCPPC.

Please note that I provided an entire set of updated hard-copy pictures to Mr. Richard Brush, MCDPS Manager, earlier in the process (as indicated in my letter). If Mr. Brush started a file, perhaps they are in the file.

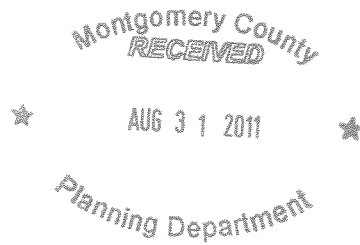
If those pictures have been lost, I can look into producing a CD copy.

Thank you, Mr. Weaver, for your interest in this matter.

Sincerely,

Michael Makfinsky

p.s. given the email troubles at MNCPPC, please confirm receipt of this email.



-----Original Message-----

**From:** Michael Makfinsky [mailto:Michael@makfinsky.com]

**Sent:** Friday, July 22, 2011 3:35 PM

**To:** carol.rubin@mncppc-mc.org

**Cc:** joshua.sloan@mncppc-mc.org

**Subject:** Review of Rolling Stone Preliminary Plan 120110430

To: Office of the General Counsel  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Ave.  
Silver Spring, MD 20910-3760

July 22, 2011

Subject: Rolling Stone Preliminary Plan 120110430

Dear General Counsel:

Please accept into the record as proof of an already legally adjudicated complaint against Preliminary Plan 120110430 (a.k.a. "Outlot A") the two enclosed Legal Documents:

- a. Montgomery Planning Board Opinion, Preliminary Plan Nr. 1-94025, which documents hearings held on February 6, 1997
- b. Department of Environmental Protection, Permitting and Plan Review Section letter of May 31, 1996 Re: Rolling (Lot 25, Block C) Preliminary Plan Nr. 1-94025

As the residents who live BELOW the low point of subject lot, my family and I have serious concerns about:

1. **Any further property erosion** from storm water that a removal of Outlot-A trees and vegetation will cause to this already "out-of-control" storm water system. Construction of a residence on Outlot-A will exacerbate the damaging impact of this failed storm water drainage system, since by removing the natural buffer that the vegetation provides, Outlot-A's abatement qualities go away. We have stated this to County Officials over the years, ever since my family and I took up residence at 217 Bonifant Rd. in the Summer of 1993. During the 217 Bonifant construction phase, the Bonifant Development company negotiated a waiver of the Maryland/Montgomery County storm water abatement compliance requirements. Bonifant Development Co. thereby reduced the costs of building the 217 Bonifant house, increasing the profit margin over the integrity and soundness of the 217 Bonifant Lot. Much erosion has taken place over the years.

The severe erosion at our property line with Outlot A has not once been improved by Bonifant Development Co. – this in spite of the findings documented in the two Legal Documents cited above (enclosed for the record).

The expenses that my family and I have borne over the years for erosion repairs include driveway maintenance, storm water drainage channeling maintenance, and, more seriously, continuous repairs to our house itself for damages caused by the shifting and settling of our lot's Southern terrain – where much of the Outlot-A erosion occurs. In a previous letter to the MCDPS Manager, Mr. Richard Brush, we provided recent photographs that document this erosion problem. We assume that Mr. Brush has made these photographs part of the Preliminary Plan file. If they have been lost, we can provide an additional copy as requested.

Our impression was that the Maryland-National Capital Parks and Planning Commission on July 31, 1997 definitively adjudicated that Outlot-A was not buildable, and are skeptical about what Bonifant Development Co. and its associate MHG said to us at the “Neighborhood Hearing” held in March of this year, that those findings are no longer valid because they only have a 15-year shelf life. If you can please provide the County Government's Legal Opinion on this statement, we would be appreciative.

So, what has changed, we asked Bonifant Development Co. and MHG at the Neighborhood Hearing last March? The new plans in fact concentrate all of the storm water that today runs naturally over Outlot A, where it is buffered and partially absorbed by robust vegetation, into a single point – that point being at the South-East corner of our property. This is the area MOST SEVERELY affected by erosion from Outlot-A. We also asked why Bonifant Development Co., as owners of Outlot-A, had not once contributed to remediating the erosion. We also asked why Bonifant Development Co. had not once contributed to the maintenance of the driveway and common areas over the years. We also asked why Bonifant Development Co. proposed to alter the Rolling Stone driveway that had been maintained by the three neighbors/users at 209, 213, and 217 Bonifant over the years, when Bonifant Development Co. has not contributed a dime to maintenance and upkeep of this now privately owned driveway and mailbox complex. The silence coming back from Bonifant Development Co. / MHG was deafening.

Bonifant Development Co. and MHG merely insisted that the DENIAL of the building permit (Document a.) had a legal shelf life of 15 years (? – no legal basis provided), and that the Bonifant Development Co. was looking to “close” on Outlot-A. We offered to buy Outlot-A for its fair market value if only to help them close out this last Bonifant Development holding, and sent them a written offer which they later rejected. They replied to us that they would consider and offer for \$280,000 for Outlot A, this in spite of the current tax assessment of approx \$14,000. The price that the Bonifant Development Co. demanded for Outlot-A is by far above and beyond market value, and was apparently intended to extort from us an exorbitant profit – a profit that the construction of a house would

obviously not yield. Our intent, all along, was to purchase Outlot A to then donate it to Montgomery County.

There are several other issues of concern that we and our Rolling Stone neighbors feel should be voiced:

**2. Driveway Use and Traffic Safety** – the Rolling Stone neighbors at Bonifant 209, 213, and 217 have been maintaining this private driveway since the development was established in the 1980's. AT NO TIME has the owner of Outlot-A contributed toward maintaining the pavement, nor toward common grounds maintenance, nor towards snow removal, or fallen tree removal, or other routine expenses required to maintain the safe ingress/egress at Rolling Stone Subdivision. The new plan for a home on Outlot-A shows yet ANOTHER convergence onto this already overcrowded single-lane private driveway that is now OWNED (presumably from Common Law Rights) by the three Rolling Stone neighbors. We believe that by joining another home to the already congested ingress/egress driveway there would be undue traffic congestion. This additional demand on the already overextended driveway will create an entirely new set of traffic safety hazards for the Rolling Stone Subdivision. The three existing homes are all 5/6-bedroom properties, averaging 3 vehicles per residence (as American families go). To add another 25% usage from 3 or 4 additional family vehicles PLUS all of the additional traffic from guests, and deliveries, and maintenance crews, and garbage removal, etc., and this single-lane driveway would be completely unsafe. In addition, the mail-box complex that's enclosed in the brick stanchions located at the driveway entrance serve the three existing houses, and were built and maintained with owner funds. Owners have not consented to their removal.

**3. Underground Sewage** – The Rolling Stone neighborhood houses at Bonifant 213, and 217 pump their sewage up to Bonifant Rd. These sewage conveyances run under the driveway and Outlot-A. Disruption to these sewage systems, which have proven costly to all owners, is unacceptable.

**4. Underground Electric** – The Rolling Stone neighborhood homes at Bonifant 209, 213 and 217 are all powered by underground lines. Disruption to these power lines, which have proven costly to all owners, is unacceptable.

**5. Underground Telephone and Cable Service** – The Rolling Stone neighborhood homes at Bonifant 209, 213 and 217 are all serviced by underground telephone and cable lines. Disruption to these lines, which have proven costly to all owners, is unacceptable.

6. **Construction Disruption** – It's unclear how construction activities on Outlot-A would proceed without entirely disrupting traffic safety at the Rolling Stone Subdivision.

**Recommendation:** that the Montgomery County Government uphold the earlier 1997 finding, declaring development of Outlot A "unsafe because of potential flooding".

Sincerely,

  
(MLM)

Michael L. Makfinsky and

Family

Commander, USN (Ret.)  
217 Bonifant Rd. / Silver

Spring, MD 20905

Cc: Development Review Div.  
MNCPPC  
8787 Georgia Ave.  
Silver Spring, MD 20910-3760





























Attachment 7

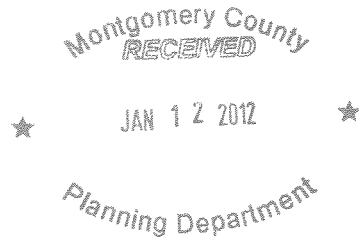
DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

December 30, 2011

Arthur Holmes, Jr.  
Director

Mr. Richard Weaver, Planner/Coordinator  
Area 3 Planning Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760



RE: Preliminary Plan #1-20110430  
Rolling Stone

Dear Mr. Weaver:

We have completed our review of the preliminary plan signed on July 6, 2011. This preliminary plan was reviewed by the Development Review Committee at its meeting on August 15, 2011. We recommend approval of the plan subject to the following comments:

- All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.
1. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
  2. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
  3. The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.
  4. Record plat to reflect a new reciprocal ingress, egress, and public utilities easement to serve the lots accessed by the proposed (widened) private common driveway.
  5. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan. Also homeowners' documents should establish each driveway user's (property owner's) rights & responsibilities with respect to use, maintenance, & liability of the common driveway.

**Division of Traffic Engineering and Operations**

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878  
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080  
trafficops@montgomerycountymd.gov

6. In accordance with Section 49-33(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision. Sidewalks are to be provided along the site frontage according to associated DOT standard street section unless the applicant is able to obtain a waiver from the appropriate government agency.
7. In accordance with Section 50-35(n) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to construct an off-site sidewalk along Bonifant Road to connect with the existing bus stop on the northeast corner of the intersection of Bonifant Road and Marine Drive (next to the site).
8. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
9. Relocation of utilities along Bonifant Road to accommodate the required roadway improvements shall be the responsibility of the applicant.
10. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
11. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
12. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
  - A. Across the Bonifant Road site frontage, construct five (5) foot wide concrete. Extend same (to connect to the existing bus stop) if required as an off-site amenity by the Montgomery County Planning Board.
  - B. Extend the enclosed public storm drain system from its current terminus on Bonifant Road down to the proposed "Rip-Rap Plunge Pool/Stilling Basin" within the existing storm drain easement. Design and construct this enclosed system and storm drain outfall in accordance with the MCDOT Storm Drain Design Criteria.
  - C. Reconstruct/widen the existing driveway apron as necessary to accommodate emergency vehicle access requirements.



**MONTGOMERY COUNTY, MARYLAND**  
 DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
 DEPARTMENT OF PERMITTING SERVICES

**SIGHT DISTANCE EVALUATION**

Facility/Subdivision Name: Rolling Stone Preliminary Plan Number: 1-20110430

Street Name: Bonifant Road Master Plan Road Classification: 80' R/W Arterial

Posted Speed Limit: 35 mph

Street/Driveway #1 (EXISTING) Street/Driveway #2 ( \_\_\_\_\_ )

Sight Distance (feet)	OK?	Sight Distance (feet)	OK?
Right <u>400'+</u>	<input checked="" type="checkbox"/>	Right _____	_____
Left <u>400'+</u>	<input checked="" type="checkbox"/>	Left _____	_____

Comments: Existing Driveway Access, located across from Marine Drive.

Comments: \_\_\_\_\_

**GUIDELINES**

Classification or Posted Speed (use higher value)	Required Sight Distance in Each Direction*
Tertiary - 25 mph	150'
Secondary - 30	200'
Business - 30	200'
Primary - 35	250'
Arterial - 40	325'
(45)	400'
Major - 50	475'
(55)	550'

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 6' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

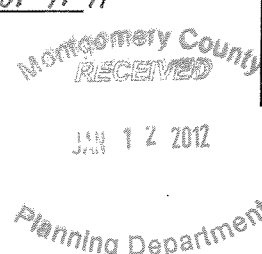
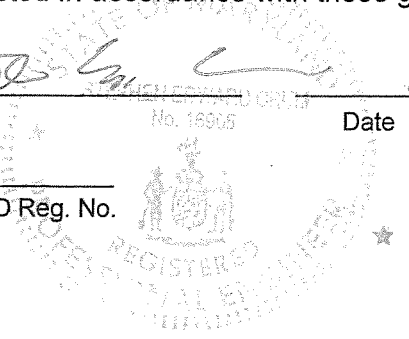
\*Source: AASHTO

**ENGINEER/ SURVEYOR CERTIFICATE**

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

[Signature] 01-11-11  
 Signature Date

16909  
 PLS/P.E. MD Reg. No.



**Montgomery County Review:**

Approved

Disapproved:

By: [Signature]

Date: 12/30/11