



Granby Woods, Preliminary Plan, 11981058A

Cathy Conlon, Supervisor, DARC catherine.conlon@montgomeryplanning.org, 301.495.4542

Mark Pfefferle, Chief, DARC mark.pfefferle@montgomeryplanning.org, 301.495.4730

Completed: 08/30/13

Description

Request to modify a road covenant that was executed as a condition of recording a subdivision record plat. This item was brought to the Planning Board on December 6, 2012, where staff presented the details of the request with a recommendation for approval, and the Board heard testimony from the applicants and other interested parties. After discussion, the Board determined that they needed additional information about the history of the case and potential road costs, so action was deferred to give staff time to provide it. They also recommended that the parties consider retaining legal counsel before the hearing reconvened.

Summary

Staff recommendation: **Approval**

- Partial release from the terms of a recorded covenant for future right-of-way dedication and road construction to relieve the affected property owners from the obligation to pay for future construction of the road.
- The Preliminary Plan (No. 119810580) and subsequent record plats were approved by the Planning Board with no conditions specific to roadway reservation, dedication, or requirement for construction.
- The continued obligation for right-of-way dedication will provide the opportunity for construction of a connecting roadway to adjacent property should such a roadway be needed as part of a future subdivision.

Supplemental Information

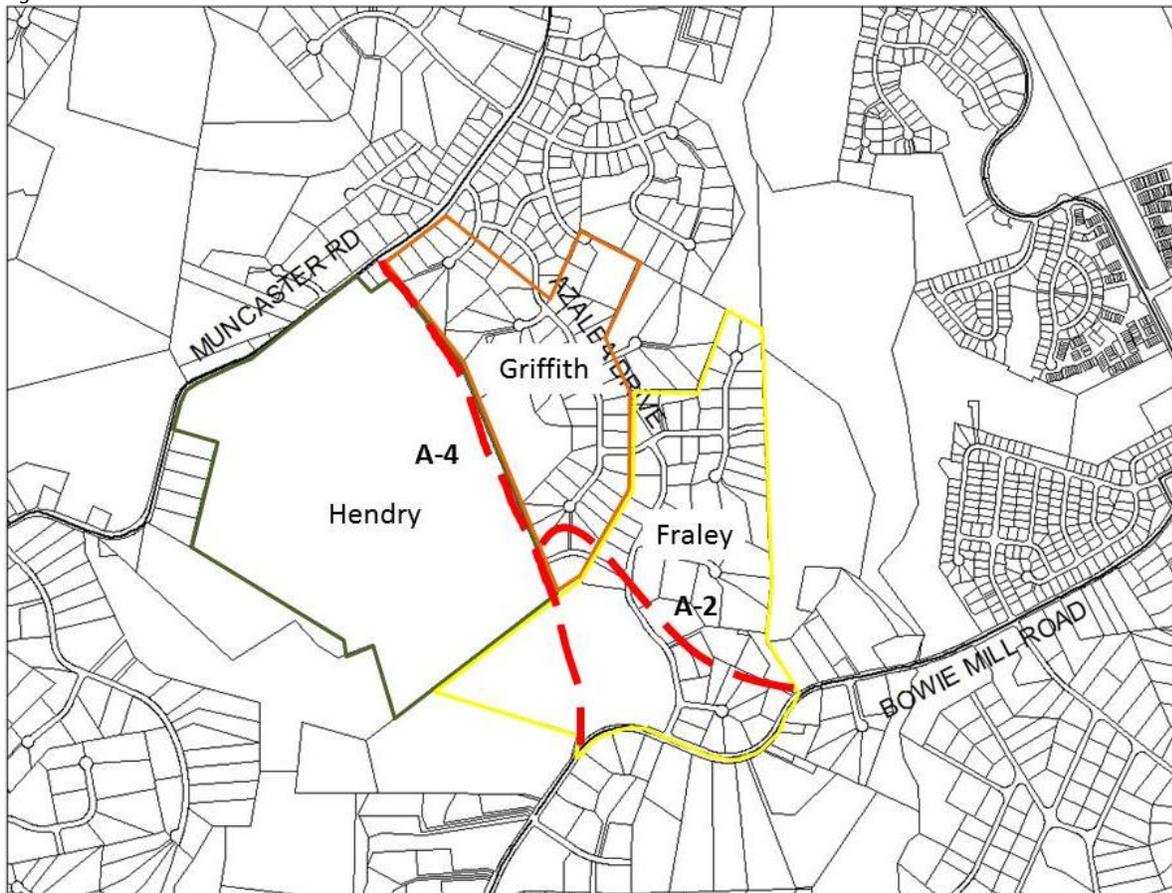
History of Previous Approvals

As indicated in the attached staff report from the original hearing (Attachment A), staff determined that the previous action on the Granby Woods preliminary plan did not include requirements for the reservation, dedication or future construction of the roadway covered by the subject covenant. That determination was based on the conditions of the previous approval and the subdivision layout included on the signed preliminary plan. The Board asked staff to retrieve the minutes and tapes from the original hearing on the subdivision to determine if they contained any evidence that the previous Board

specifically opted not to require the subject road. Unfortunately, they don't provide anything conclusive. The tape of the March 17, 1983 hearing indicates that the previous Board acted without discussion to approve the preliminary plan with the conditions as recommended by staff. Likewise, action was taken on August 15, 1985 to approve the plat as part of the consent agenda without any discussion.

Staff did, however, uncover some additional information in the record of the adjacent subdivision, Fraley's Addition to Granby Woods, Preliminary Plan No. 119810610. The two subdivision applications were received at the same time and initially reviewed at the same Subdivision Review Committee meeting. They related to one another because they were both affected by planned arterial roads that existed in the Upper Rock Creek master plan at that time (see Figure 1). The combination of those planned arterials, designated A-2 and A-4, created a connection between Muncaster Road and Bowie Mill Road through the three farms that existed (Hendry, Griffith, and Fraley).

Figure 1



These roads were removed from the master plan by amendment prior to approval of the two Granby Woods subdivisions, but the approval of the Fraley's Addition plan does indicate that the subject neighborhood road was specifically required as an alternate road connection between the three farms. At the hearing for Fraley's Addition, the staff specifically pointed out to the Board that they were recommending the road connection, however, while the conditions of approval (Attachment 2) and staff's presentation specifically refer to a connection to the "street approved as part of Preliminary Plan

No. 1-81058”, the record of that subdivision does not indicate that it was. Instead, staff’s conclusion continues to be that the requirement was placed on the plan by staff during the record plat process. The following timeline summarizes staff’s complete finding of the history:

Granby Woods Timeline

30 MAR 1981 – SUBDIVISION REVIEW COMMITTEE MEETING

1-81058 – Granby Woods, 52 lots, R-200 zone

1-81061 – Granby Woods, Fraley Addition, 102 lots, RE-2C & R-200

Road discussion limited to full-width dedication of master plan road A-4 (road along the Hendry property boundary)

17 MAR 1983 – Board Approval of 1-81058 for 53 lots

Only road condition was dedication for Muncaster Road. Staff made a brief presentation stating the project size, location and proposed conditions; Board had no questions; applicant chose not to speak; no other testimony and the Board approved 5-0 without further discussion.

Signed Preliminary Plan Drawing did not include Outlot D.

17 MAR 1983 – Database indicates record plats were submitted for 1-81058 (do not have copies)

19 APR 1984 – Board Approval of 1-81061 for 63 lots

Recommended road conditions included dedication along Bowie Mill Road. At the Board hearing, staff orally added conditions denying access to Bowie Mill Road and the condition,

“Eleanor Street to extend through Lot 40, Block C to Griffith property to line up with street approved as part of Preliminary Plan 1-81058.”

Plan drawing indicates that the location of Lot 40, Block C roughly corresponds to where Outlot D is located. Hearing tape indicated that staff pointed out the location of the road and that it roughly followed the location of the master plan road that had been deleted. Board approved 5-0 including the large lot for the existing historic home, with the conditions recommended by staff.

15 AUG 1985 – Record Plat for Lots 29-42, Block B and Outlots B & D approved by the Board
Staff stated that all plats were in order; approved as a consent item, no Board discussion (no hearing exhibit of the actual plat available).

13 MAR 1986 – Record Plat for Lots 29-42, Block B and Outlots B & D recorded in the Land Records with the notation: “Outlot D (subject to recorded covenants)”

20 NOV 1986 – Board Approval of 1-81061R for 63 lots with revised conditions.

Recommended road conditions changed to: dedication along Bowie Mill Road; limited access to Bowie Mill for one shared driveway; and the new condition, “Griffith Farm Road and Fraley Street to line up with streets approved as part of Preliminary Plan No. 1-81058.”

Plan drawing indicates that Fraley Street is the now existing Little Spring Road abutting Outlot D.

3 APR 1987 – Covenant for future dedication of right of way and construction of road recorded in the County Land Records.

Estimated Road Costs

The Board also asked staff to provide an estimate of the cost for the subject road. We consulted with MCDPS staff who review road permits and bonding and they gave us an estimate of approximately \$100,000; \$40,000-50,000 for engineering and grading, and \$50,000-60,000 for construction costs. In their professional judgment, based on general knowledge of the site and without benefit of any engineering plans, they believe this estimate to be reasonable.

Conclusion

For the reasons specified in the previous staff report (Attachment A), staff continues to recommend that the Board approve a partial release and amendment to the existing road covenant which removes the obligation from the affected property owners to pay for the road.

MCPB
Item No. 9
Date: 12-06-12

Granby Woods, Preliminary Plan, 11981058A

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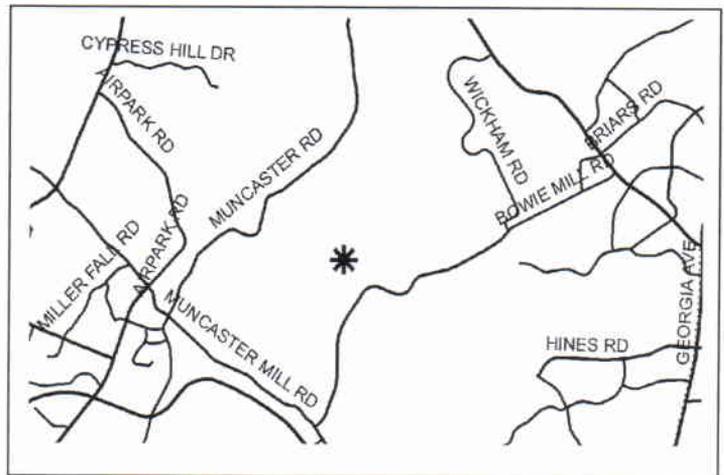
Completed: 11/21/12

Description

Request to modify a road covenant that was executed as a condition of recording a subdivision record plat; Applies to Lots 35, 36, 37 and Outlot D, Block B in the Granby Woods subdivision; Located on Azalea Drive, approximately 600 feet southwest of its intersection with Griffith Farm Road; 5.65 acres; RE-1 Zone; Upper Rock Creek Master Plan.

Review Basis: Chapter 50

Applicants: John and Debra Wayne, John Krawiec and Allyson Koncke, and Mandana and Abdul Ali Logmanni ("Applicants")



Summary

Staff recommendation: **Approval**

- Partial release from the terms of a recorded covenant for future right-of-way dedication and road construction to relieve the affected property owners from the obligation to pay for future construction of the road.
- The Preliminary Plan (No. 119810580) was approved by the Planning Board with no conditions specific to roadway reservation, dedication, or requirement for construction.
- The subject road covenant applies to an outlot that was not included in the preliminary plan, but rather, added as part of the record plat review. It is inappropriate to make a significant change to an approved subdivision at the record plat stage.
- The continued obligation for right-of-way dedication will provide the opportunity for construction of a connecting roadway to adjacent property should such a roadway be needed as part of a future subdivision.

RECOMMENDATION

Approve a partial release from, and amendment to, an existing covenant for future right of way dedication and road construction.

SITE DESCRIPTION

The affected property consists of two recorded residential lots, a part of a third that has been resubdivided by deed, and a recorded outlet in the RE-1 zone (Lot 35, part of Lot 36, Lot 37 and Outlet D, Block B). Together they comprise approximately 5.65 acres and are located at the terminus of Azalea Drive southeast of Muncaster Road in the Upper Rock Creek Master Plan area (Figure 1). They were created as part of the Granby Woods Preliminary Plan (Plan No. 119810580) which was approved by the Planning Board in 1983 pursuant to the conditions specified in the Opinion dated March 22, 1983 (Attachment A).

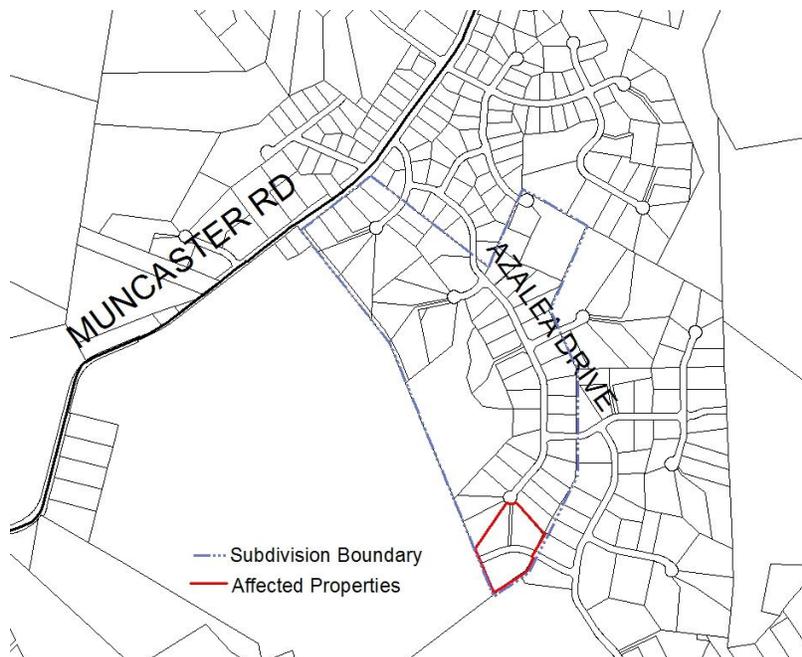


Figure 1

All of the lots are developed with one-family residential dwellings and associated structures. They are accessed from Azalea Drive by private driveways, one of which utilizes an easement through a second outlet (Outlet B, Block B) and across Outlet D (Figure 2).



Figure 2

PROJECT DESCRIPTION

Background

This item stems from discussion between staff and the affected lot owners that has been ongoing for several years. It concerns the lot owners request to be released from a road construction covenant that was imposed upon the subject lots as part of recording the plat that created them. This covenant arose from changes in the lot configuration that were made as part of the county's review of the record plat, and from an agreement by the developer to provide for construction of a future road if it was needed.

As approved by the Planning Board in 1983, the preliminary plan created 53 lots on 110 acres of land. The lots were to be served by extension of existing roads (Azalea Drive and Willow Oak Drive) that were created by a subdivision plat recorded in 1960. On the approved preliminary plan the three subject lots were shown as two radial and one pipestem lot at the end of the cul-de-sac for Azalea Drive (Figure 3).



Figure 3

This approved configuration was subsequently changed by the record plat. Although staff could not find any records from the preliminary plan file or the plat approval that reveal the basis for the change, it was likely because the original review overlooked a master plan recommendation for the road as an arterial connection from Bowie Mill Road to another arterial that ran along the property boundary between the Hendry and Griffith farms. These two arterial roads were removed from the new master plan that was adopted in 1985 when the plat was recorded, but staff had decided as part of a second preliminary plan for property to the east of the subject plan that was also being reviewed that accommodations still needed to be made for possible extension of a road. To provide the connection, a road was created on the adjacent application (Granby Woods – Fraley Addition, Preliminary Plan No. 119810610) that extended to the lots involved in the current case (Figure 4). Also, the property owner to the west of this subdivision provided a copy of a 1920 agreement recorded by the original property owners in this area which references the establishment of an access right-of-way from his property across adjoining land to what is now Bowie Mill Road. Since this agreement preceded the subdivisions, plats could not have been recorded that were not consistent with the agreement.

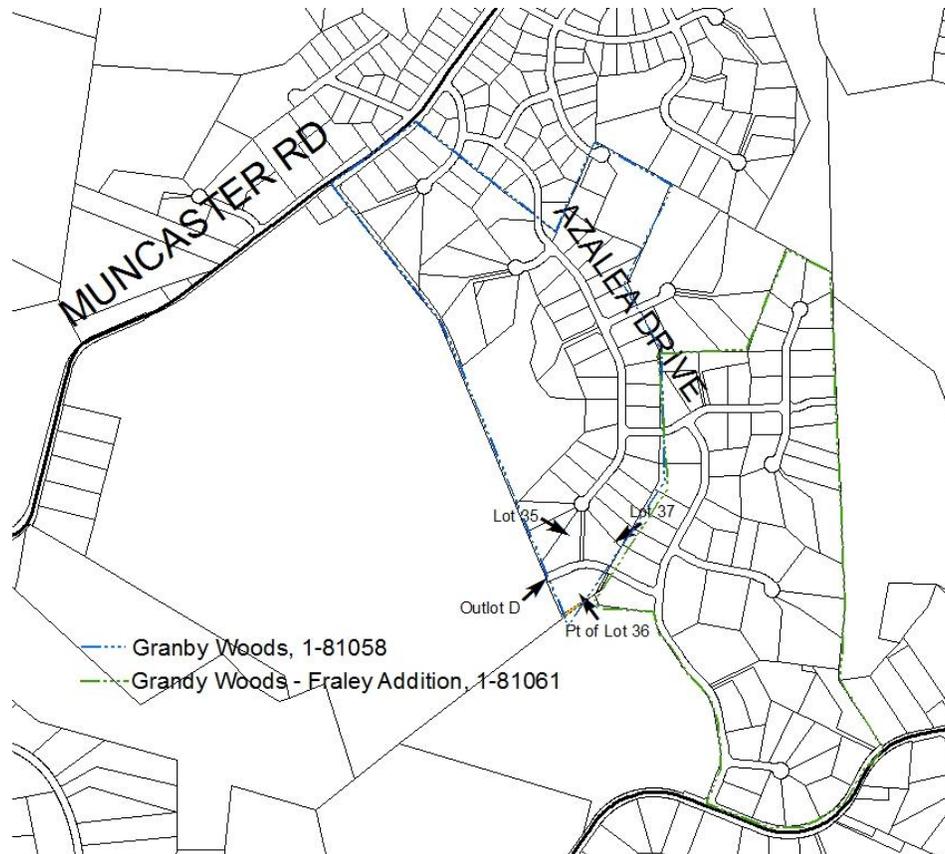


Figure 4

Because the approved Grandy Woods subdivision did not accommodate this road, it appears that the approval of the record plat was conditioned upon the developer modifying the configuration of the approved lots and providing a new outlot that could be used to create a future road. In addition, a covenant was required to be recorded to provide for future dedication of Outlot D for a right-of-way,

and future construction of the road (Attachment B). Under the terms of that covenant, the road construction must be paid for in equal shares by the owners of Lots 35, 36 and 37.

In 1989, a preliminary plan amendment was filed (Plan No. 11981058R) by the subsequent owner of Lot 36 and Outlot D requesting abandonment of the future road. The request was based on that applicant's argument that the road was not needed to facilitate a subdivision of the adjacent property. The application was reviewed by the county's interagency Development Review Committee and minutes from that meeting indicate that they did not support the request because they believed environmental constraints on the adjacent property would likely necessitate extension of the future road. The plan was never brought to the Planning Board and the application expired. The current amendment has been filed by owners of all the lots adjoining the future right-of-way who believe that they are being unfairly burdened with the requirement to build the future road and have requested that the Planning Board modify the existing covenant to relieve them of this responsibility.

ANALYSIS AND FINDINGS

The Applicants' request for modification of the existing covenant is justified. Although there is a definite possibility that a road will need to be created in the future to access the adjacent, undeveloped Hendry property; the cost of the road should not be borne by the owners of the three lots in Granby Woods. If the need for the road had been identified in a timely manner as part of the review for the Granby Woods preliminary plan, construction would have been required as part of the overall development with the cost being distributed across the 53 lots. That is how the existing portion of the road in the adjacent Fraley's Addition to Granby Woods was provided, and that is what is required by the Subdivision Regulations which states in Section 50-24(a) that, "...roads, streets, alleys, sidewalks and pedestrian ways, with appurtenant drainage, street trees, and other integral facilities, in each new subdivision must be constructed by the *subdivider or developer* (emphasis added) as specified in the road construction code..."

The requirement to build subdivision roads should be based upon what is needed to serve the lots being created. There is no nexus to require contributions toward a future road from the two Granby Woods lots (Lots 35 and 37) that will not get any vehicular access to it. Although the third lot (Lot 36, now part of Lot 36) will ultimately be forced to have access from the future road, the cost of the road would be too great for it alone to bear. However, it is owned in concert with Outlot D which is required to be dedicated at no cost for use by any future subdivision. This burden constitutes a sufficient contribution by the owners of Lot 36 toward the provision of any needed road. This is also in accordance with the Subdivision Regulations which states in Section 50-25(c) that, "A tract proposed for subdivision into parcels larger than normal building plots and intended for future subdivision rather than immediate development shall be divided so as to allow for future opening of streets and such further logical subdivision as can be foreseen." This language does not require that roads for adjacent subdivisions be built, but rather, that lots be created so that such connections are not prevented.

CORRESPONDENCE AND ISSUES

Notice was given for this limited amendment to adjacent property owners and neighborhood civic and homeowners associations ten days prior to a previously scheduled hearing on September 20, 2012. That hearing was postponed because a complaint was filed, and staff acknowledges, that notice of the filing of the application had not been previously sent. The previous hearing was postponed to give sufficient

time for interested parties to review the request. Re-notice for the new hearing was sent at least ten days prior to the scheduled date. In response to the application, staff was contacted by Mr. William Hendry, the owner of the adjacent property that would utilize a road built within Outlot D. He strongly objects to releasing the owners of the subject lots from their obligation to pay for the future road primarily because they all purchased their lots with knowledge of the requirement, and they had the opportunity to negotiate the terms of their purchase to address it. While staff agrees, we continue to recommend approval of the requested modification because placing the obligation to construct the road on these three lots, rather than all the lots in the subdivision, was not appropriate.

Although the county Department of Transportation's approval is not required for the Board to modify the existing covenant, staff has had verbal discussions with staff there about this amendment. It is their opinion that releasing lots 35 and 37 from their obligation to construct the road is justified because they would not have vehicular access to it. They suggested that the Board may want to consider retaining an obligation for lot 36 to make a future contribution equal what it would potentially cost to extend a driveway from the current terminus of the stubbed road to their house because they will use the future road for access. As previously stated, we believe the lot 36 owners' obligation to dedicate land for the road at no cost constitutes a sufficient contribution toward the provision of any needed road.

CONCLUSION

Subdivision of land is required to be preceded by the Planning Board's approval of a preliminary plan that delineates the lot and street layout. Per Section 50-37(b)(1) of the Subdivision Regulations, a record plat must not be approved "unless it complies with the preliminary plan as approved by the Board; except, that the board may allow for minor modifications in the plan which, in its opinion, do not alter the intent of its previous approval." The addition of a new road right-of-way was not a minor modification of the approved plan, and it was inappropriate to include it on the record plat without an amendment to the preliminary plan. Further, that amendment should have included a Board decision about any obligations for construction of the future road. The Applicants' request for relief from the existing road covenant is justified because requiring them to pay for a future road is unreasonable given that two of the lots in question will not benefit from its construction, and the cost for the third lot alone is too great. As such, staff recommends that the Board approve a partial release and amendment to the existing covenant which removes the obligation from the affected lot owners to pay for the road. Such relief will require the cost of the road to be borne as part of subdividing the adjacent property, but it does not take away the benefit to a future subdivider of getting the land for the road at no cost. The Board's legal staff has drafted a document which revises the existing covenant, and it is attached to this report (Attachment C). With the Board's approval this document would be executed and provided to the affected property owners for recordation in the Montgomery County Land Records.

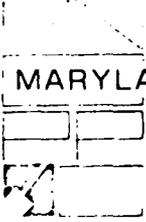
ATTACHMENTS

Attachment A – Planning Board Opinion

Attachment B – Existing Road Covenant

Attachment C – Draft Partial Release and Amendment to the Road Covenant

Attachment D – Correspondence



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-81058
NAME OF PLAN: GRANBY WOODS, GRIFFITH ADD.

On 03-09-81, WILEY G. GRIFFITH, submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 53 lots on 110.00 ACRES of land. The application was designated Preliminary Plan 1-81058. On 03-17-83, Preliminary Plan 1-81058 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-81058 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-81058, subject to the following conditions:

1. Dedication along Muncaster Road (120' right-of-way) in accordance with master plan
2. 100 year flood plain and 25 foot building restriction line to be shown on record plat
3. Necessary slope and drainage easements

Date of Mailing: March 22, 1983

LIBER 7623 FOLIO 861

2616787, 2616798, 2616801, 2616823, 2616903, 2616914, 2616991, 2616765, 2616776, 2616934, 2616934, 2616936, 2616867, 2616878, 2616930

COVENANT FOR FUTURE DEDICATION OF RIGHT OF WAY AND CONSTRUCTION OF ROAD

THIS COVENANT, made this 12th day of March, 1986, by MARILYN NEWMAN AND JEAN GRIFFITH,

WITNESSETH THAT:

WHEREAS, Marilyn Newman and Jean Griffith, hereinafter referred to as "Covenantors", have presented to Maryland-National Capital Park and Planning Commission for approval a plat for recordation of Outlots "B" and "D", Lots 29 through 42, Block "B", Granby Woods, pursuant to approved Preliminary Plan of Subdivision, which contains as a part of said proposed Subdivision Outlot "D", which is intended to be reserved for construction of a public road connecting the adjacent Hendry and Fraley properties; and

WHEREAS, as a condition to approval of said Plat for recordation, the Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, has required the Covenantors to reserve Outlot "D" for future dedication and to agree to construct within Outlot "D" a secondary street to Montgomery County specifications, all when called for by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board or Montgomery County, Maryland; and all at Covenantors' expense, which may be charged or assessed against the abutting subdivision lots, which will be created by recordation of said Plat; said lots being Lots 35, 36 and 37, Block "B", Granby Woods.

*NOTE: Said plat has now been recorded in Plat Book 137 at Plat 15862,

LAW OFFICE
MULLER, MULLER & CANDY
ATTORNEYS
300 B BALDWIN STREET
ROCKVILLE, MARYLAND
201 709-8212

6/17/82 -3 PM 3:38

177

LIBER 7623 FOLIO 862

NOW, THEREFORE, in consideration of the premises, approval of said Plat for recordation, and other good and valuable consideration, the Covenantors do hereby covenant and agree with Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, and Montgomery County, Maryland as follows:

1. That upon approval of Plat of Outlots "B" and "D", Lots 29 through 42, Block "B", Granby Woods, for recordation as a Plat of Subdivision, in the Plat Records of Montgomery County, Maryland the said Outlot "D" shall thereafter be reserved for Street Dedication and:

A. When called upon by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland, Covenantors or their heirs, personal representatives, or assigns, shall dedicate said Outlot "D" and necessary supporting easements as a public street.

B. When called upon by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland, Covenantors or their heirs, personal representatives, or assigns, shall construct at their expense, a public secondary street within said Outlot "D" to Montgomery County secondary street specifications.

2. All of the obligations of the Covenantors hereunder shall be a charge against and assessable by Montgomery County, Maryland against Lots 35, 36 and 37, Block "B", Granby Woods, in equal shares, i.e., one-third (1/3) to each lot.

LEA OFFICE
MILLER, MILLER & CANDY
CORPORATION
201 B WYNNE STREET
BETHESDA, MARYLAND
20814

LIBER 7523 FOLIO 863

3. These Covenants shall be binding upon and run with the land, Outlot "D", Lot 35, Lot 36, and Lot 37, Block "B", Granby Woods, perpetually, unless and until released by Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board or Montgomery County, Maryland, its successors or assigns.

IN WITNESS WHEREOF, the Covenantors have executed the foregoing Covenant for Future Dedication of Right of Way and Construction of Road on the date first above written.

Witness:

Marilyn Newman (SEAL)
MARILYN NEWMAN

Wendell Johnson

Jean Griffieff (SEAL)
JEAN GRIFFIEFF

STATE OF VIRGINIA, CITY OF CELESTINE, COUNTY OF CELESTINE, co-wit:

I HEREBY CERTIFY that on this 17th day of MARCH, 1988, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared MARILYN NEWMAN, known to me to be the person whose name is subscribed to the within instrument and did acknowledge the foregoing Covenant for Future Dedication of Right of Way and Construction of Road to be her act and deed for the purposes therein contained.

WITNESS my hand and seal the date above written.

Mark A. [Signature]
Notary Public

My Commission expires: MAY 17, 1990

LAW OFFICE
MALLER, MILLER & CANNY
CHARLOTTE
200 N. W. 10th STREET
MONTGOMERY, MARYLAND
410 752 8810



COVENANT FOR FUTURE DEDICATION OF RIGHT OF WAY AND CONSTRUCTION OF ROAD

THIS COVENANT, made this 12th day of March, 1986, by MARILYN NEWMAN
AND JEAN GRIFFITH,

WITNESSETH THAT:

WHEREAS, Marilyn Newman and Jean Griffith, hereinafter referred to as "Covenantors", have presented to Maryland-National Capital Park and Planning Commission for approval a plat* for recordation of Outlots "B" and "D", Lots 29 through 42, Block "B", Granby Woods, pursuant to approved Preliminary Plan of Subdivision, which contains as part of said proposed Subdivision Outlot "D", which is intended to be reserved for construction of a public road connecting the adjacent Hendry and Fraley properties; and

WHEREAS, as a condition to approval of said Plat for recordation, the Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, has required the Covenantors to reserve Outlot "D" for future dedication and to agree to construct within Outlot "D" a secondary street to Montgomery County specifications, all when called for by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland; and all at Covenantors' expense, which may be charged or assessed against the abutting subdivision lots, which will be created by recordation of said Plat*, said lots being Lots 35, 36 and 37, Block "B", Granby Woods.

*NOTE: Said plat has now been recorded in Plat Book 137 at Plat 15862,

NOW, THEREFORE, in consideration of the premises, approval of said Plat for recordation, and other good and valuable consideration, the Covenantors do hereby covenant and agree with Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, and Montgomery County, Maryland as follows:

1. That upon approval of Plat of Outlots "B" and "D", Lots 29 through 42, Block "B", Granby Woods, for recordation as a Plat of Subdivision, in the Plat Records of Montgomery County, Maryland, the said Outlot "D" shall thereafter be reserved for Street Dedication and:

A. When called upon by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland, Covenantors or their heirs, personal representatives, or assigns, shall dedicate said Outlot "D" and necessary supporting easements as a public street.

B. When called upon by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland, Covenantors or their heirs, personal representatives, or assigns, shall construct at their expense, a public secondary street within said Outlot "D" to Montgomery County secondary street specifications.

2. All of the obligations of the Covenantors hereunder shall be a charge against and assessable by Montgomery County, Maryland against Lots 35, 36 and 37, Block "B" Granby Woods, in equal shares, i.e., one-third (1/3) to each lot.

3. These Covenants shall be binding upon and run with the land, Outlot "D", Lot 35, Lot 36, and Lot 37, Block "B", Granby Woods, perpetually, unless and until released by Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, or Montgomery County, Maryland, its successors or assigns.

IN WITNESS WHEREOF, the Covenantors have executed the foregoing Covenant for Future Dedication of Right of Way and Construction of Road on the date first above written.

Witness:

Marilyn Newman (signature) (SEAL)
MARILYN NEWMAN

Diane L Thomson (signature)

Jean Griffith (signature) (SEAL)
JEAN GRIFFITH

STATE OF VIRGINIA, CITY OF FREDERICKSBURG, to-wit:

I HEREBY CERTIFY that on this 12th day of March, 1986, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared MARILYN NEWMAN, known to me to be the person whose name is subscribed to the within instrument and did acknowledge the foregoing Covenant for Future Dedication of Right of Way and Construction of Road to be her act and deed for the purposes therein contained.

WITNESS my hand and seal the date above written.

Mark G ??????? (signature)
Notary Public

My Commission expires May 17, 1988

(seal)

Tax ID Nos. _____

PARTIAL RELEASE AND AMENDMENT OF COVENANT FOR FUTURE DEDICATION OF RIGHT OF WAY AND CONSTRUCTION OF ROAD

THIS PARTIAL RELEASE AND AMENDMENT OF COVENANT FOR FUTURE DEDICATION OF RIGHT OF WAY AND CONSTRUCTION OF ROAD ("Release") is made this ____ day of _____, 20__, by the current owners of those real properties recorded as Lots 35, 36, and 37, Block "B," in the Granby Woods Subdivision recorded among the Land Records of Montgomery County, Maryland at Plat 15862 in Plat Book 137 ("Covenantors") and the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Planning Board").

WHEREAS, a Covenant for Future Dedication of Right-Of-Way and Construction of Road, dated March 12, 1986, was recorded among the Land Records of Montgomery County, Maryland on April 3, 1987, in Liber 7623 at Folio 861 ("Covenant"), which burdened certain real property, more particularly described as Lots 35, 36, and 37, Block "B," in the Granby Woods Subdivision recorded among the Land Records of Montgomery County, Maryland at Plat 15862 in Plat Book 137 ("Property"). The Covenant is incorporated by reference and all capitalized terms shall have the same meaning in this Release, unless otherwise indicated; and

WHEREAS, pursuant to the Covenant, when requested by either The Maryland-National Capital Park and Planning Commission, the Planning Board, or Montgomery County, Maryland ("County"), the Covenantors are required to:

1. Dedicate Outlot "D" (as shown on the Granby Woods Subdivision plat) with necessary supporting easements, as public right-of-way to Montgomery County, Maryland; and
2. Construct within Outlot "D" a secondary public street, at Covenantors' expense, to Montgomery County specifications.

WHEREAS, the Covenantors are willing to provide the dedication of Outlot "D," if and when requested by either the Board or the County, but have asked for relief from the obligation to pay for construction of the road; and

WHEREAS, although the Granby Woods Subdivision plat indicates that Outlot "D" is subject to the Covenant, the Board approved Preliminary Plan No. 1-81058 (maintained as #119810580) with no conditions specific to the roadway reservation, dedication, or requirement for construction; and

WHEREAS, the Covenants are binding upon and run with the land, specifically, the Property, perpetually, unless and until released by The Maryland-National Capital Park and Planning Commission, the Board, or the County, its successors or assigns; and

WHEREAS, on _____, the Board found that because approval of the Preliminary Plan was not conditioned on the roadway reservation, dedication or construction, it approved Convenators' request.

WITNESSETH:

1. Covenantors, their successor in interest and assigns are hereby released from the obligation to construct or finance construction of the public street over Outlot "D."
2. All other terms and conditions of the Covenant remain valid, unchanged and in full force and effect.
3. The Covenant as modified herein shall be binding upon and run with the land, specifically including Outlot "D," Lots 35, 36, and 37, Block "B," in the Granby Woods Subdivision, perpetually, unless and until released either in whole or in part by The Maryland-National Capital Park and Planning Commission, the Planning Board, or the County.

WITNESS, the following signatures and seals on the day and year first above written.

WITNESS:

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION:

Patricia Coulihan Barney, Executive Director

State of Maryland
County of Prince George's

On this _____ day of _____, _____ before me, the undersigned individual, personally appeared Patricia Coulihan Barney, who acknowledged to be the Executive Director, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

AFTER RECORDING PLEASE RETURN TO:

Debra & John Wayne • 18401 Azalea Drive • 301-519-0131
Mandana & Abdul Logmanni • 18409 Azalea Drive • 301-740-1848
Anuj & Nina Kapur • 18405 Azalea Drive • 240-477-4537

Derwood, Maryland 20855

August 11, 2009

Mr. Royce Hanson, Board Chairman
Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Mr. Hanson,

This letter is in reference to the continued effort by myself and my neighbors to eliminate some of the terms of the existing the covenant, Liber 7623/Folio 861 attached to properties listed above. This request was originally proposed to staff several years ago, but it has not been brought forward to the Board. Therefore, we are again requesting the covenant be revised to remove the obligation by the homeowners to construct a road if a new development were built at the farm adjacent to these properties.

The existing covenant obligates the Convenantors to reserve an existing Outlot "D" for future dedication and to agree to construct within Outlot "D" a secondary street to Montgomery County specifications, all when called for by either Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board or Montgomery County, Maryland; and all at Convenantors' expense, which may be charged or assessed against the abutting subdivision lots, which will be created by recordation of said Plat; said lots being Lots 35, 36, 37, Block "B", Granby Woods and all additional language in the covenant relating to obligating the owners of Lots 35, 36, 37 for any expense.

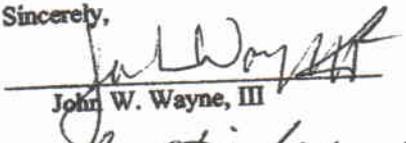
We request that the obligation to construct the road be removed from the affected property owners. Instead, the revision should require Outlot "D" to be dedicated to Montgomery County, Maryland for the road to be built by others.

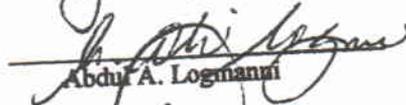
It is our understanding that the Montgomery County Planning Department staff shares the opinion this covenant as written may place an excessive obligation on the affected properties and should be removed upon a formal hearing by the Montgomery County Planning Board. We hereby request that such a hearing be scheduled as soon as possible.

Please be aware that 18405 Azalea Drive is currently under contract and is awaiting settlement, therefore between now and the formal hearing date, the property owners will change. Unfortunately, other potential contacts were withdrawn due to the uncertainty of this covenant.

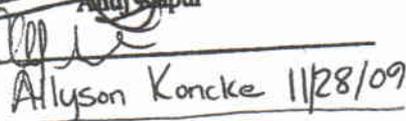
Enclosed you will find copies of all the deeds to the related properties. If you need any further information please contact Debra Wayne at 301-519-0131.

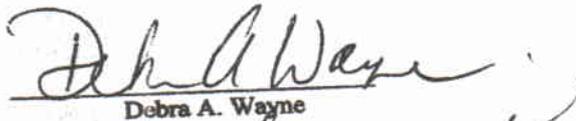
Sincerely,

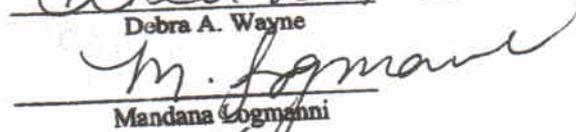

John W. Wayne, III

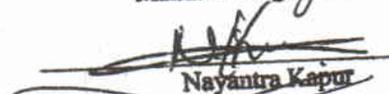

Abdul A. Logmanni

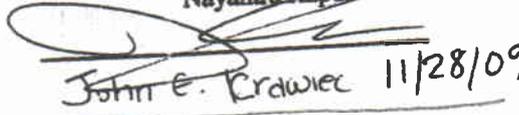

Anuj Kapur


Alyson Koncke 11/28/09


Debra A. Wayne


Mandana Logmanni


Nayantra Kapur


John E. Erdwies 11/28/09

11/28/2012

•••

Allyson Koncke
18405 Azalea Dr
Derwood, Maryland 20855

Montgomery County Planning Board
8787 Georgia Ave
Silver Spring, MD 20910

Re: Master Plan Upper Rock Creek

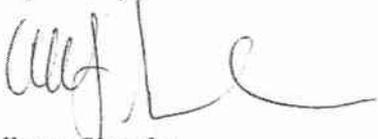
Dear Planning Board

I am writing in regards to Granby Woods Lots 35, 36, 37, Block B, 18405 Azalea Dr. my husband I bought this property back on October 30, 2009 as a short-sale. Little did I know what we were getting into with the possibilities of a road crossing the front of our property and the fact that we would have to pay (estimates range from \$250,000 - \$475,000) for the road to be built at no benefit to us as the home owners. Furthermore, when I was informed that we would be giving the land at no compensation, currently we maintain the land at roughly (\$500 per month). I strongly believe that if a developer wants to build a road they have a right; but I believe that we as home owners should be compensated for not only the land that will be used referenced on record as Lot D but the simple fact that it will diminish the property value.

I strongly urge consideration not only for the partial release of a recorded covenant and obligation to pay for future construction, but in addition to release of dedication of Outlot D dedicated at no cost for use of future subdivision.

Thank you in advance for your consideration on this topic, if you have any questions please feel free to contact me.

Respectfully,



Allyson Koncke
2407939239

November 28, 2012

Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Subject: Montgomery County Planning Department Document Entitled "Granby Woods, Preliminary Plan, 11981058A" dated December 6, 2012

Dear Ms. Carrier,

As the owner of Granby Farm LLC, I am writing to express my vehement opposition to the proposed modification of the road covenant that was executed as a condition of recording a subdivision record plat (Preliminary Plan # 1198105800). In shifting the obligation to pay for road construction on Little Spring Road to create access to Bowie Mill Road from the owners of Lots 35, 36 and 37 to our property, the Plan under consideration would destroy vested rights we have held in the property without any legal or equitable basis. Indeed, given that the owners of Lots 35, 36 and 37 obtained the property with full knowledge that they were assuming the obligation to pay for road construction, presumably at a reduced purchase price to reflect that duty, the Proposed Plan not only constitutes a wrongful taking, it constitutes an unwarranted windfall for the owners of Lots 35, 36 and 37. Such a wrongful taking does not satisfy rudimentary due process considerations. It also reflects gross overreaching on the part of the Commission in purporting to exercise its valid regulatory authority. Finally, the Proposed Plan is contrary to established Commission precedent given that in 1989, the Commission considered and rejected the very relief that is now being considered.

Relevant History

The Granby Farm LLC has benefited by an express right of way over the portion of the Little Spring Road at issue for more than a hundred years. *See* 1920 confirmatory document reflecting such an express right of way as of 1912, attached as Exhibit A.

On March 12, 1986, a covenant was prepared for submission to the Commission which required the construction of the remainder of the Little Spring Road at issue at the appropriate time.

That covenant burdened Mr. Griffith's land (which includes Lots 35, 36 and 37) with the cost of constructing the remainder of the Little Spring Road at issue. That covenant created vested rights running in favor of our property, and imposed obligations running to the Griffith property. The covenant specifically provided, *inter alia*:

- Recital 2: “Whereas as a condition of approval of said Plat for recordation... the Planning Board has required the reservation of outlot D... for future dedication . . . *and the assessment of costs against lots 35, 36 and 37.*”
- Sections 1A and 1B – “Covenantors or their heirs personal representatives and assigns, shall dedicate/construct at their expense . . .”
- Section 3 – “These covenants shall be binding upon and run with the land.”

The creation of this covenant was a precondition to the creation of Lots 35, 36 and 37. The Commission approved this covenant. Indeed, in doing so, the Commission expressly noted that absent Lots 35, 36 and 37 assuming this obligation, the recordation would not have been approved.

In November of 1989, the Commission considered the then owners of Lots 35, 36 and 37 application to modify the covenant to impose upon the Granby Farm LLC the obligation to assume the cost of the completion of Little Spring Road. The fact that such relief was sought, and the fact of my family’s opposition to such relief, is evidenced by the letter my father and Mr. Fraley wrote to the Commission, dated November 7, 1989, in which they referenced the “three parties, [the owners of Lots 35, 36 and 37] and the fact that they had purchased homes adjoining the Little Spring’s right of way . . . with full knowledge and at a reduced price in exchange for a commitment to build said road across the Griffith Farm sector.”

No such relief was granted. Indeed, the Commission did not even consider that the matter warranted a hearing.

Analysis

There is no legal or equitable justification for the relief sought herein by the owner of Lots 35, 36 and 37. The lot owners and their predecessors in title purchased their property with full knowledge of the existing covenants, given that they were expressly reflected in each of their title abstracts. Further, these homes were sold “at a reduced price” in exchange for the burdens referenced in the covenant. Presumably subsequent owners of the property also obtained the lots at discounted prices. Under these circumstances, there is no justifiable basis for now affording the lot owners a windfall in the form of deeds without such covenants.

In addition to being unjustified, the Proposed Plan is unlawful. The Commission lacks even colorable authority to destroy vested rights that have run with our property for more than 35 years -- since the public recordation of the covenants. This is particularly true, given that the parties have relied upon the rights and obligations established by the covenants. Thus, while perhaps the Commission could, within the exercise of its authority, release the covenants imposed upon the owners of lots 35, 36 and 37 and

assume such an obligation itself, it certainly cannot impose such an obligation upon an innocent third party.

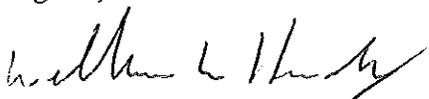
Despite these indisputable facts, the Staff Recommendation for the Preliminary Plan seeks to justify the action being proposed on the grounds that the original Preliminary Plan did not impose conditions specific to roadway reservation or cost of construction. This ignores the fact that there was no need for the Plan to address these issues because they were expressly provided for in the covenants themselves. It is noteworthy that at that point, the Commission in no way suggested that at some future date those covenants would be gutted.

Finally, in addition to being contrary to both law and equity, the Proposed Plan is barred by the doctrine of *res judicata*. In 1989, the Commission considered the very relief sought here and rejected it. At that time, it implicitly recognized that it lacked the authority to transfer the costs associated with completing Little Spring Road from the owner of Lots 35, 36 and 37 to our property. Having properly considered and ruled on the issue at that time, the Commission may not now reverse course and attempt to exercise such authority.

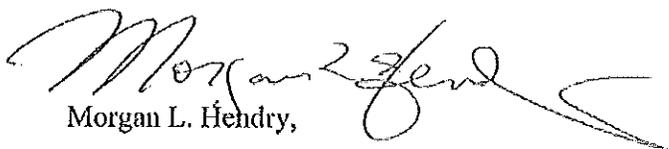
Conclusion

In light of the considerations set forth above, the Commission should again reject the relief being sought in the Proposed Plan.

Regards,



William W. Hendry,



Morgan L. Hendry,

Granby Farm LLC
18405 Muncaster Road
Derwood, MD 20855

November 7, 1989
18601 Muncaster Road
Derwood, Maryland

Maryland National Capital Planning Commission
Office of Subdivision and Review
Mr. Malcolm Shanerman

Dear Sir:

We would like to take this opportunity to confirm our opposition to the abandonment of Little Springs Road, as per our conversation in your office.

Little Springs Road is the compromise roadway designed to replace a much larger highway deleted from the 1968 Masterplan. A roadway deemed necessary by all of the emergency services as there will be no other connecting roadway between Granby Farm subdivision and greater Granby Woods. The three parties who purchased homes adjoining the Little Spring's right of way, did so with full knowledge and at a reduced price in exchange for a commitment to build said road across the Griffith Farm sector.

Mr. Fraley's sector of Little Springs Road is currently bonded and under construction. It should not be delayed for the sole benefit of these newly-arrived home owners to make an extra profit on the resale of their houses.

As for the Hendry property known as Granby Farm, in the Land Records of Montgomery County, any proposed subdivision sketch or plan presented by Tri-County Surveys on behalf of any third party is unsolicited, unauthorized, and certainly not satisfactory to the Hendry family.

In the event that Granby Farm should be subdivided, this proposed change prevents any access from this property to Granby Woods and Bowie Mill Road. Unnecessary additional expenses would be incurred if we were forced to develop without this right of way, it further denies me the right to develop my property as I wish. Property which I and my family have owned for one hundred years.

Thank you very much for your time and consideration of our position in this matter.

Sincerely yours,

M. Leland Hendry

Harry H. Fraley

*Copy of record, Montgomery County Court
Room, Rockville Md.
M. Leonard Hensley*

This deal made this first day of May in the year 1920, by Levin Thomas Fraley, and his wife parties of the first part and Thomas B. Brookes, widower, party of the second part, all of Montgomery County, in the state of Maryland.

Where as the party of the second part now has a right-of-way across the lands of the said Levin Thomas Fraley, which land was conveyed to the said Levin Thomas Fraley by Nicholes R Griffith and others by deed dated the second day of December, in the year 1912, and which is duly recorded in the records of the said Montgomery County Liber #230 Folio 449.

And where as some doubt has arisen as to the exact location of said right-of-way;

And where as it is the desire of the parties of the first part that the party of the second part shall have a right-of-way definitely located across said lands;

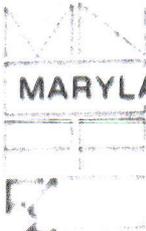
Now, therefore, in consideration of the relinquishment to the said Levin Thomas Fraley of any right-of-way or intrest in or to the lands above refered to by the parties of the second part and the further consideration of one dollar we the said parties of the first part do grant unto the party of the second part, his heirs and assigns, a right-of-way across the above mentioned lands and premises situate. lying and being in said Montgomery County in the state of maryland, said right-of-way being described as follows---

Beginning for the same at a point at the end of the fourth line of a conveyance from Nicholas R. Griffith and others to Levin Thomas Fraley for Lot numbered Two in the devision of the estate of the late Thomas Worthington and recorded in Liber J. A. #31 folio 466 etc., one of the land records of Montgomery County Maryland, and running thence with the fifth line of said conveyance south twenty two degrees forty five (45) minutes East, ten and two tenths (10.2) feet; thence across said lot in an Easterly direction seventy nine (79) perches more or less, to intersect the sixteenth line of the whole tract of land at the end of twenty nine and sixteen hundredths (29.16) perches thereon and thence with said line North thirty and eighty three hundredths (30.83) perches to a stonethence with the division line of Lots numbered two and three Northwesterly thirty (30) feet, thence at right angles to said line Southwesterly twenty (20) feet thence parallel with said division line thirty (30) feet to a point, thence parallel and twenty (20) feet west from said sixteenth line South twenty nine and six tenths (29.6) perches, Thence parallel and twenty (20) feet North from the second line Westerly seventy eight (78) perches to intersect the aforesaid fourth line, and then with it South twenty one (21) degrees forty-five (45) minutes East, ten and two tenths (10.2) feet to the place of beginning

And for and in consideration of the sum of one dollar, and the grant of the above discribed right-of-way, the said party of the second part does hereby release and convey unto the said Levin Thomas Fraley all right, tittle interest which said party of the second part now has in and to any right-of-way across the hereinbefore mentioned lands and premises of the said Levin Thomas Fraley other than the above granted right-of-way.

Witness
J. Forest Walker

Thomas B. Brookes
Levin Thomas Fraley



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-81061
NAME OF PLAN: GRANBY WOODS, FRALEY ADDITION.

On 03-09-81, HARRY H. FRALEY, submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 102 lots on 210.00 ACRES of land. The application was designated Preliminary Plan 1-81061. On 04-19-84, Preliminary Plan 1-81061 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-81061 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-81061, subject to the following conditions:

- ✓ 1. Dedication along Bowie Mill Road
(80' right-of-way)
- ✓ 2. Health Department letter of 4/18/84
- ✓ 3. Department of Transportation approval of intersections with Bowie Mill Road
- * 4. Record plat to show 100 year floodplain and 25 foot building restriction line
- ✓ 5. Necessary easements
- ✓ 6. No access to Bowie Mill Road except for existing house
- ✓ 7. Eleanor Street to extend through Lot 40, Block C to Griffith property to line up with street approved as part of Preliminary Plan 1-81058

Date of Mailing: April 27, 1984