

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

MCPB  
10/25/01  
Item #7

**MEMORANDUM**

**DATE:** October 12, 2001  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning *JC*  
**FROM:** Sue Edwards, Team Leader, I-270 Corridor *SE*  
Bill Landfair, AICP, for the Department of Park and Planning

**REVIEW TYPE:** Local Map Amendment  
**APPLYING FOR:** Change in zoning from RE-2C to R-200  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**MASTER PLAN:** Gaithersburg Vicinity Master Plan

**CASE NUMBER:** G-789  
**APPLICANT:** Johnson Enterprises  
**LOCATION:** NW Quadrant Darnestown Road and Quince Orchard Road

**FILING DATE:** February 5, 2001  
**PLANNING BOARD:** October 25, 2001  
**PUBLIC HEARING:** November 6 and 7, 2001

---

**STAFF RECOMMENDATION:** DENIAL of the rezoning application for the following reasons:

1. There has been no substantial change in the character of the neighborhood to warrant the proposed rezoning.
2. There is no evidence of mistake in the current zoning.

**PROPOSAL DESCRIPTION**

The applicant requests a change in zoning from the RE-2C Zone to the R-200 Zone for parts of two parcels of land totaling 32.9306 acres located northwest of the intersection of Darnestown Road (MD 28) and Quince Orchard Road (MD 124), Gaithersburg.

The applicant's stated grounds for rezoning from one Euclidean Zone to another is based on the Change – Mistake Rule in Maryland. Under this rule, in order to overcome the presumption of correctness of original and comprehensive zoning, there must be demonstrated strong evidence of mistake in the last sectional map amendment that classified the subject property to its existing RE-2C zoning or a substantial change in the character of the neighborhood since the date when the sectional map amendment was adopted by the District Council sufficient to justify the rezoning request.

If the rezoning application for the R-200 Zone is approved, the subject property is proposed to be developed with a cluster development of approximately 66 single-family homes in conjunction with 14 single-family homes on the adjacent land zoned RE-2C. If the rezoning is denied, a development of 24 single-family homes is proposed for all of the land described above (61.7650 acres) under the RE-2C standards (Preliminary Plan No. 1-01058).

**A. Description of Property:** The subject property is located northwest of the intersection of Darnestown Road and Quince Orchard Road. The property is irregular in shape and comprised of parts of two parcels totaling 32.9306 acres. The parcels are identified as P700 and P554, Tax Map ES 563 (Tax Account No.'s 06-001-00395698 and 06-001-00395654). The property is improved with several storage buildings related to the applicant's nearby retail nursery business. The topography includes significant forest area, two ephemeral streams, and steep slopes. An easement bisecting the eastern half of the site provides access for the adjacent Thurgood Marshall Elementary School. Access to the subject property is provided from McDonald Chapel Drive, Pueblo Road, and an extension of Copen Meadow Drive.

**B. Defined Neighborhood:**

1. Definition: The neighborhood must be defined so that the Change and Mistake issues can be analyzed. The staff defines the neighborhood as bounded on the north by Pepco transmission lines; on the east by Quince Orchard Road and Longdraft Road; on the south by Darnestown Road; and on the west by Riffle Ford Road. This neighborhood includes the Smokey Glen Area Zoning Plan defined by the 1985 Gaithersburg Vicinity Master Plan.
2. Uses: The defined neighborhood is predominantly residential in character. It also contains commercial and institutional land uses. Adjoining the subject property to the north is Seneca Creek State Park and the Thurgood Marshall Elementary School (bound on two sides by the subject property). Adjoining to the east and southeast is the Orchard Hills residential subdivision in the R-200 Zone. Adjoining to the south is an 18 acre vacant parcel owned by the applicant and the Willow Ridge subdivision, both located in the R-

200 Zone. To the west is the remaining 28.8344 acres of land owned by the applicant that would be developed with single-family homes in the RE-2C Zone in conjunction with development of the subject property. Further to the west is the 91-acre Smokey Glen Farm (a private recreation area operating by special exception) in the RE-2C Zone. Other uses in the neighborhood include a small commercial center fronting on Darnestown Road in the C-1 Zone containing a Safeway grocery store, video store, and dry cleaners. Adjacent to this center is an Amoco service station and the Johnson's Flower and Garden Center in the C-1 Zone. Other uses in the neighborhood include the Ridgeview Middle School.

**C. Intended Use and Approval Procedures:** The applicant is under contract to sell the subject property to Winchester Homes, Inc. who would like to build a cluster development containing approximately 66 single-family homes in the R-200 Zone and 14 single-family homes on the adjacent land owned by the applicant zoned RE-2C. The original rezoning application proposed to rezone the entire 61.7650 acre tract to the R-200 Zone and develop approximately 85 single-family homes. This proposal was revised in August to reflect the smaller area now proposed for rezoning. The applicant is also proceeding with a preliminary plan of subdivision for development of 24 single-family homes in the existing RE-2C Zone in the event the rezoning is not granted. That preliminary plan (No. 1-01058) is currently scheduled for Planning Board review on November 8, 2001.

Based on the submitted concept plan (a non-binding document), the applicant has illustrated how the development might be configured to address the environmental constraints of the property and achieve compatibility with the adjacent residential subdivisions. New roads in the development would interconnect with the adjacent subdivisions via McDonald Chapel Drive, Pueblo Road, and an extension of Copen Meadow Drive. Moderately Priced Dwelling Units (MPDUs) would be provided in accordance with chapter 25A of the County Code. When MPDUs are included in a development, the optional method of development is permitted to facilitate their construction. This method permits an increase in density above what is allowed under the standard method of development. As such, if the rezoning is approved, the maximum potential development of the larger tract of land (61.7650 acres) is 91 dwelling units. In addition to the rezoning application, other approval procedures include site plan review and subdivision approval by the Planning Board.

**D. Zoning History:**

Comprehensive Zoning:

- a. 1986 Gaithersburg Vicinity Sectional Map Amendment G-502: R-200 Zone to RE-2C Zone

- b. 1974 Gaithersburg Vicinity Sectional Map Amendment F-805: R-200 (formerly R-R) Zone confirmed
- c. 1958 County-wide Comprehensive Zoning: R-R Zone mapped

**E. Master Plan Recommendation:**

- 1. Land Use: One-family residential
- 2. Base Zoning: RE-2C

**F. Public Facilities:**

- 1. Water and Sewer Service:
  - a. Service Categories: Water Category W-1 and Sewer Category S-1 (Source: M-NCPPC, Environmental Planning)
  - b. Water and Sewer Service: Water lines abut the subject property with no water main extensions required to provide service. Local service is deemed adequate and the impacts from rezoning are considered negligible. A sewer line abuts the property and program-sized sewer mains are not required to serve the site. Interceptor capacity is deemed adequate and the rezoning will not significantly impact the system (Source: WSSC Development Services Group)
- 2. Roadways:
  - a. Darnestown Road (MD 28): Classified as a major highway with six lanes and a master plan right-of-way of 120 feet. This highway provides access from the I-270 interchange to the western boundary of the planning area. This highway is currently under reconstruction to upgrade from four to six lanes divided from Riffle Ford Road to Great Seneca Highway. The Maryland State Highway Administration (SHA) project is to be completed by the end of FY 2003.
  - b. Quince Orchard Road (MD 124): Classified as a major highway with four to six lanes and a master plan right-of-way of 120. This highway provides access from the I-270 interchange to the southern boundary of the planning area. This highway exists as a four-lane divided and has a traffic signal at its intersection with McDonald Chapel Drive.

- c. Riffle Ford Road: Classified as an arterial road with four lanes and a master plan right-of-way of 80 feet. This road connects MD 118 (Germantown Road) to the north and Darnestown Road to the south.
  - d. Longdraft Road: Classified as an arterial road with four lanes and a master plan right-of-way of 80 feet. This road connects MD 117 (Clopper Road) to the north and Quince Orchard Road to the south.
  - e. McDonald Chapel Drive: A two-lane road with a 50-foot right-of-way. This road provides access to the site, Thurgood Marshall Elementary School, and Orchard Hills subdivision from a signalized intersection with Quince Orchard Road.
  - f. Copen Meadow Drive: A two-lane road with a 50-foot right-of-way. This road provides access to the site and the Willow Ridge subdivision from Darnestown Road.
2. Schools: The subject property is located in the Quince Orchard cluster and is served by Thurgood Marshall Elementary School, Ridgeview Middle School, and Quince Orchard High School. Based on the maximum allowed density, development would generate 37 elementary school students, 12 middle school students, and 13 high school students. The Annual Growth Policy (AGP) is the mechanism that regulates development approval with regard to adequacy of school facilities. The current AGP indicates that adequate space exists in the Quince Orchard cluster to permit subdivision approval.

## **ANALYSIS**

**A. Change in the Character of the Neighborhood:** In order to establish change in the character of the neighborhood there must be substantial evidence that changes have occurred in that neighborhood since the last comprehensive zoning of the property sufficient to justify reclassification to the category requested.

It is the position of staff that the applicant has not met this burden of proof.

The applicant's claim of change in the character of the neighborhood is based in large part on the construction of the Thurgood Marshall Elementary School following the last sectional map amendment. The applicant states that "public schools are important community facilities that often are the cornerstone of planning recommendations" and yet the "1985 Gaithersburg Vicinity Master Plan"

does not designate a school site anywhere in the neighborhood. The applicant contends that the location of the school in an area designated for "Low-Density Residential Uses" has important land use implications and is a significant factor in determining the character of the neighborhood. As such, the introduction of an institutional use with substantial lot coverage and activity generation is a significant factor in determining the character of a neighborhood.

The staff disagrees with the applicant's position that because the master plan does not show a "Proposed School" designation in the neighborhood, the location of the public school in this area designated for "Low-Density Residential Use" is a factor with important land use implications. Staff believes that while public schools are important community facilities, the opening of the elementary school in 1993 does not constitute a substantial change in the character of the neighborhood. The addition of the school to the neighborhood has not altered the master plan goals and objectives. The adjacent Orchard Hills and Willow Ridge subdivisions developed in accord with their recommended R-200 Zoning. Construction of the school was a logical consequence of that residential development. The nearby commercial center in the C-1 Zone has also developed as recommended. No development has occurred that was not anticipated by the master plan. Staff disagrees with the viewpoint that allowed institutional uses that serve residential areas such as schools alter a neighborhood's residential character.

In addition, the applicant states that the construction of the school brought about the extension of public water and sewer service to the subject property as well as the connection of McDonald Chapel Drive to Pueblo Road resulting in the linkage through the subject property of neighborhoods zoned R-200. Staff finds that the development of public improvements such as water and sewer services is a foreseen consequence of the last sectional map amendment and does not result in a change in character of the neighborhood. While the construction of public improvements not contemplated at the time of the last comprehensive zoning has been accepted as evidence of change in previous rezoning cases, these improvements generally related to highways, not smaller roads, and were considered in conjunction with other changes to justify rezoning.

In further support of its argument for change, the applicant notes that the "inventory of developable land in Montgomery County is being depleted" and that recognized concepts such as "Smart Growth" encourage development in areas where there is existing infrastructure such as roads, water and sewer service, and schools. As such, the applicant contends that cluster development at "reasonable R-200 densities" is more in the public interest than development on land in the RE-2C Zone. Staff does not support this "Smart Growth" argument since it does not relate to change in character of the neighborhood. The subject property is located on the western edge of the Gaithersburg Vicinity Master Plan area and is not centrally located to transit and other services which are important

in higher density zones. This property is not located in a Priority Funding Area, as defined by Montgomery County and the State Office of Planning.

**B. Mistake in the Application of Zoning:** Mistake in the application of zoning may be shown in two ways under Maryland law. The first is where there has been an actual mistake in the depiction of the zoning by the District Council. The other way is where it can be demonstrated that there are facts that, had they been known at the time the existing zoning was applied, would have resulted in a different zoning of the subject property.

Staff finds that there is no evidence of a mistake in the comprehensive zoning and that the existing RE-2C Zone is the appropriate zone for the subject property.

The applicant quotes from the master plan that down zoning the subject property from R-200 to RE-2C was intended to “reflect environmental concerns and to respect environmentally sensitive areas.” The applicant cites Figure 18 from the Master plan titled “Smokey Glen Area – Environmentally Sensitive Areas” which indicates the extent to which the tract of land that includes the subject property contains environmentally sensitive areas such as forest, erodible soils, steep slopes (both hydraulically adjacent and hydraulically remote slopes), wetlands, streams and associated buffers. The applicant recently studied Figure 18 and believes that it shows approximately 41 acres of environmentally sensitive areas. In comparison, the applicant concludes that the property contains only 13 acres of environmentally sensitive areas based on the recently approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD). The difference in these two plans is the fact that current environmental guidelines only recommend protection of hydraulically adjacent slopes with limits on how far the buffers can extend while the 1983 Guidelines recommend protection of hydraulically adjacent and remote slopes.

The applicant contends that of all the properties in the “Smokey Glen Area” of the master plan, only the tract of land that includes the subject property and the adjacent Smokey Glen Farms were down zoned to the RE-2C classification (although the applicant states the Staff Draft recommended down zoning of all R-200 zoned land within the study area). The applicant summarizes its argument by stating that the down zoning of the subject property was predicated on the protection of environmental features. The applicant believes that had the District Council known that only 13 acres of the tract was overlaid with environmentally sensitive areas, it is reasonable to believe that the Council would not have down zoned the property and would have left it in the R-200 Zone as it did with 163 acres of adjacent land.

Staff verifies that the applicant’s statement regarding 41 acres of environmental sensitive areas is accurate based on Figure 18 and standards used for the 1985 Gaithersburg Vicinity Master Plan which were based on the 1983 Staff

*Guidelines for the Protection of Steep Slopes and Stream Valleys* to protect all slopes greater than 25 percent within 200 feet and greater regardless of proximity to stream buffers. This was the only protection mechanism in existence at the time. Staff also agrees that the current NRI/FSD contains 13 acres of environmentally sensitive areas based on today's environmental standards.

Because of the difference in standard employed then and now, the ultimate calculations for environmentally sensitive areas are different. If we employed the same standard from 1983 today we would continue to find approximately 41 acres of environmentally sensitive areas on the property. Even under today's standards, however, staff is convinced that the District Council would uphold the existing RE-2C zone. Staff finds that the District Council, at the time of the last comprehensive zoning, did not fail or refuse to take into account existing facts. The assumption upon which the zoning was established has not proven to be erroneous over time.

During the master plan process, the Planning Board devoted considerable discussion to the appropriate land use and zoning for the Smokey Glen Area. It should be noted that the adjacent Orchard Hills and Willow Ridge subdivisions were not considered environmentally sensitive and were confirmed for the R-200 Zone. The other rationale for confirming the existing zoning for those communities was that the character of the area had already been determined.

In 1986, at the Gaithersburg Vicinity Sectional Map Amendment public hearing (SMA No. G-502), the owner of the subject property expressed opposition to the recommended RE-2C Zone. The owner testified that the existing R-200 Zone should be retained for the property since the environmental concerns could be met by R-200 cluster. The owner asserted that the property did not have the serious environmental problems found on the adjacent Smokey Glen Farm property. The Planning Board had the owner's testimony before it and still recommended to the District Council that the RE-2C Zone be mapped on the sectional map amendment based on the environmental assessment that had been made.

The District Council carefully considered the sectional map amendment and the recommendations of the Planning, Housing, and Economic Development (PHED) Committee and supported the RE-2C Zone for the subject property with a finding that the zone better meets the following environmental objectives:

- Provides significantly greater open space area
- Significantly reduces the density of development adjacent to existing wildlife habitat areas within the Seneca Creek State Park
- Affords greater protection for the Long Draft Branch stream system without relying heavily on structural controls by virtue of having lower associated volumes of stormwater runoff and non-point source pollution



**C. Transportation Issues:** The subject property is located in the North Potomac Transportation Policy Area. The applicant has prepared a traffic study to determine the impact of residential development resulting from the rezoning. As part of that study, the applicant has proposed to make the following roadway improvements.

1. Construction of an exclusive right-turn lane for westbound MD 28 at the intersection of Darnestown Road, Riffle Ford Road, and Seurat Drive.
2. Upgrade existing McDonald Chapel Road within the subject property to the Montgomery County secondary road standard and dedicate the right-of-way as a public street.

Staff agrees with the conclusion of the traffic study that the proposed rezoning and development of the subject property with the roadway improvements noted above would not have an adverse impact on the surrounding roadway network.

Three local intersections were identified as critical intersections to be affected by development of the subject property and were examined to determine whether they meet the applicable congestion standard of 1,525 Critical Lane Volume (CLV) for the North Potomac Policy Area. The CLV impacts of the proposed development on these intersections were analyzed and are summarized in the following Table.

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour								
	Existing		Background		Total*		Total**	
	AM	PM	AM	PM	AM	PM	AM	PM
Darnestown Road/Riffle Ford Road/Seurat Drive	1231	1688	816	1768	818	1771	818	1520
Darnestown Road/Copen Meadow Drive/Brier Rock Drive	1295	1475	757	854	770	870	770	870
Darnestown Road/Quince Orchard Road	1275	1195	1320	1250	1336	1271	1336	1271

\*Total development conditions without proposed roadway improvements

\*\*Total development conditions with proposed roadway improvements

As shown in the preceding table, all existing intersections analyzed are currently operating at acceptable CLVs (CLV standard is 1,525) except the PM peak hour condition at the Darnestown Road/Riffle Ford Road/Seurat Drive intersection. Under the background development (developments approved but not built) condition with inclusion of the State Highway Administration's Darnestown Road reconstruction project, the unacceptable condition at the Darnestown Road/Riffle Ford Road/Seurat Drive intersection during the PM peak hour continues. Under the total development conditions, the unacceptable condition at this intersection identified under the existing and background development conditions further deteriorates without the roadway improvements. The applicant proposed roadway improvement at this intersection, i.e., construction of an exclusive right-turn lane on westbound Darnestown Road, and with this improvement, the intersection will operate at an acceptable congestion standard (below CLV of 1,525).

Based on the FY 01 AGP staging ceiling capacity, there is sufficient capacity available for the housing developments (1,319 housing units as of September 30, 2001) in the North Potomac Policy Area.

#### Site Access and Circulation

As shown on the concept plan, three access points to the property could be provided: one from McDonald Chapel Road, one from Pueblo Road, and one from the extension of Copen Meadow Drive. If developed in accordance with the plan, the internal roadways and pedestrian circulation system could be adequate. Staff believes that the connection to Copen Meadow Drive would facilitate efficient local traffic circulation and does not anticipate that connection would encourage excessive non-local traffic to use the road as a shortcut between Darnestown Road and Quince Orchard Road.

The existing McDonald Chapel Road within the subject property, a private street, was built as a substandard two-lane roadway, i.e., 20-foot wide pavement without sidewalks, to provide access to Thurgood Marshall Elementary School. If the rezoning were approved, this roadway would have to be upgraded to the County's secondary residential street standard with dedication of right-of-way as a public street. These issues would have to be addressed as part of the subdivision review by the Planning Board.

**D. Environmental Issues:** The subject property has a number of environmental constraints that limit development and are impacted by the rezoning. These include streams, steep slopes, wetland, severely erodible soils, poorly drained soils, and flood plains. Runoff from the property flows to four separate drainage areas. Staff questions whether adequate on-site stormwater management facilities can be provided that are capable of accommodating the

density allowed by the R-200 Zone without significantly encroaching into the stream buffer. Streams in this watershed require a minimum 100-foot buffer that must increase if hydraulically adjacent to steep slopes and erodible soils.

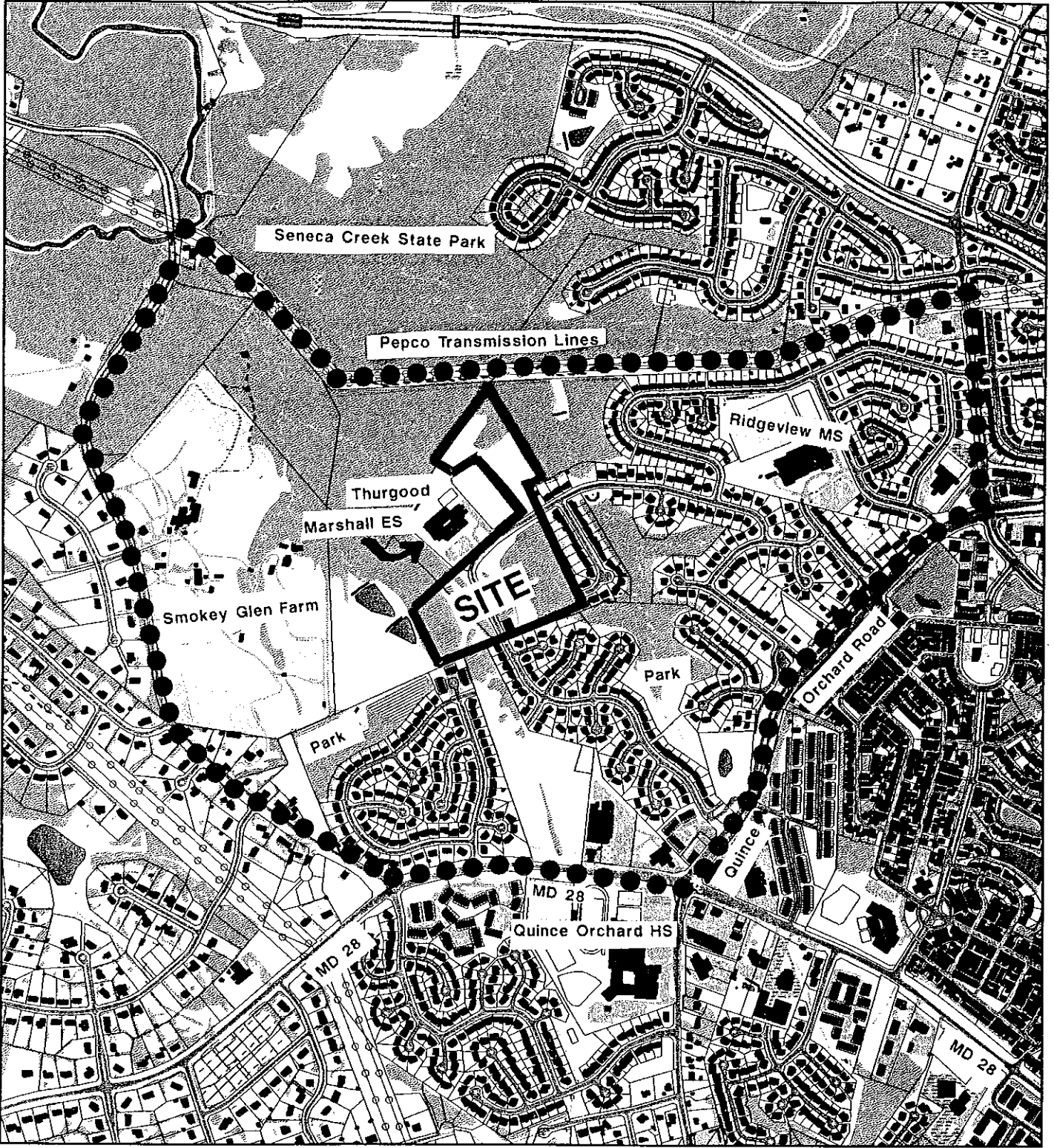
The environmentally sensitive areas shown in the 1985 Gaithersburg Vicinity Master Plan were based primarily on steep slopes and erodible soils. The soils were determined by using the 1961 Soil Survey of Montgomery County, Maryland. Topographic maps were used to determine the percent slope for the Master Plan. At that time, staff also relied upon the *Staff Guidelines for the Protection of Steep Slopes and Stream Valleys* approved in 1983 that protected hydraulically adjacent slopes greater than 25% within 200 feet of the stream bank. A number of steep slopes were included in the Master Plan's sensitive areas that are not hydraulically adjacent.

**E. Citizen Concerns:** Staff has heard from representatives of the Orchard Hills and Willow Ridge Homeowners Associations as well as from numerous residents in the surrounding neighborhood. These groups and citizens have registered their opposition to the rezoning and believe that the applicant has failed to meet the legal burden under the Change – Mistake Rule. In addition, other concerns include the proposed development's impact on the local school system, the environmental impact related to stormwater management, the impact on traffic circulation through the adjacent subdivisions, and the impact on the existing quality of life in the neighborhood.

**G. Conclusion:** The Change – Mistake Rule is the only basis for rezoning a property to a Euclidean zone in Maryland. Staff cannot find that there has been a substantial change in the character of the neighborhood to warrant the rezoning or that there is strong evidence of mistake in the sectional map amendment's implementation of the existing zoning of the subject property.

The applicant has failed to meet its burden of proof to overcome the strong presumption of validity that attaches to the comprehensive zoning. It remains the position of staff that the existing RE-2C Zone is the appropriate zone for the subject property. For these reasons, staff recommends denial of the rezoning application.

Attachments



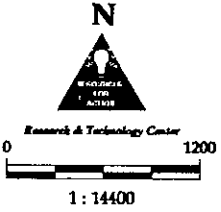
Map compiled on October 17, 2001 at 3:48 PM | Site located on base sheet no - 222NW12

**NOTICE**

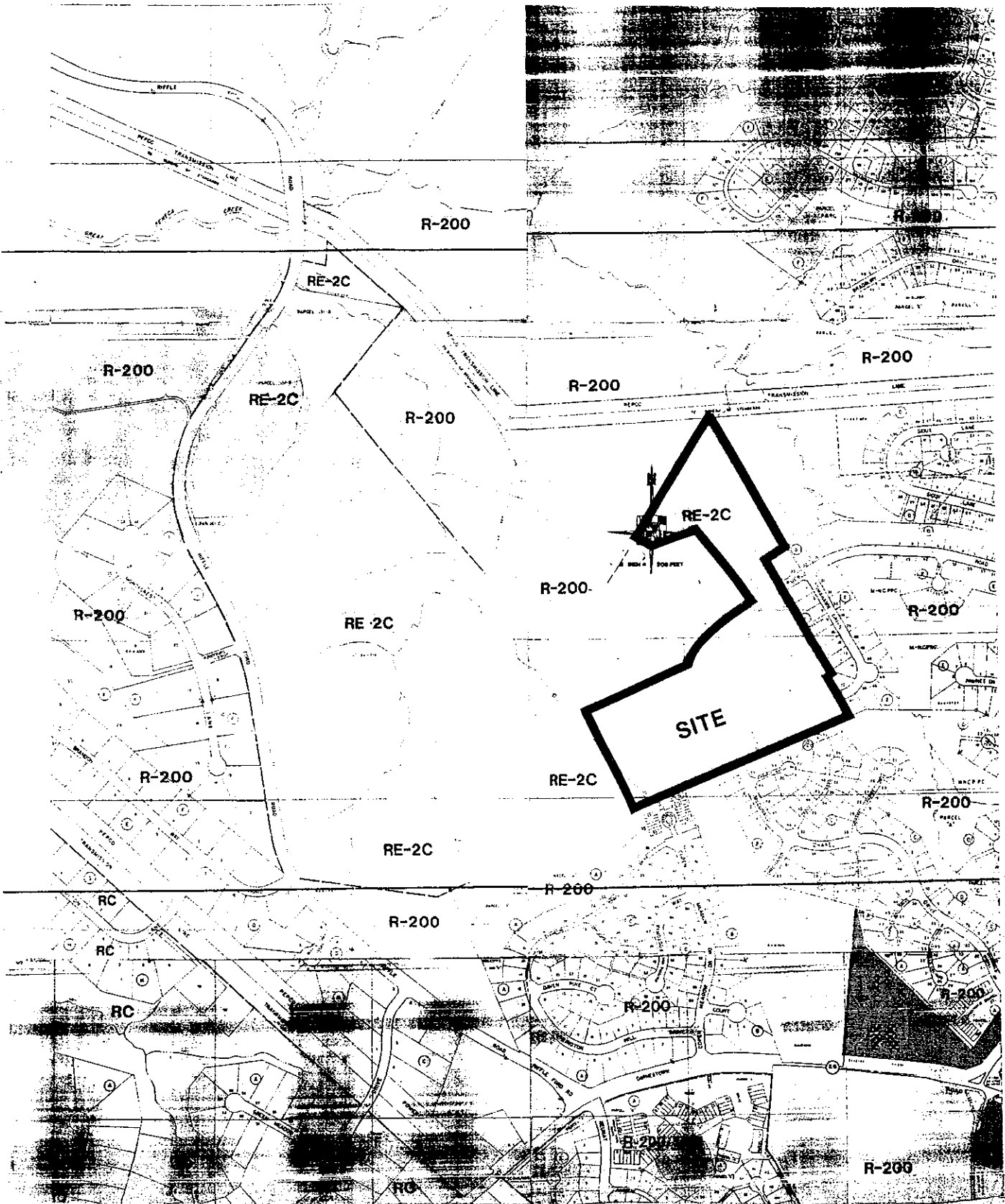
The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map other than for general planning purposes is not recommended. - Copyright 1998



# JOHNSON PROPERTY



SCALE: T= 200'  
NAD 83/91

**LEGEND**



STATE OF MARYLAND  
L. 5129 F. 301

STATE OF MARYLAND  
L. 4769 F. 703

THURGOOD MARSHAL  
ELEMENTARY SCHOOL  
LIBER 10063 FOLIO 254

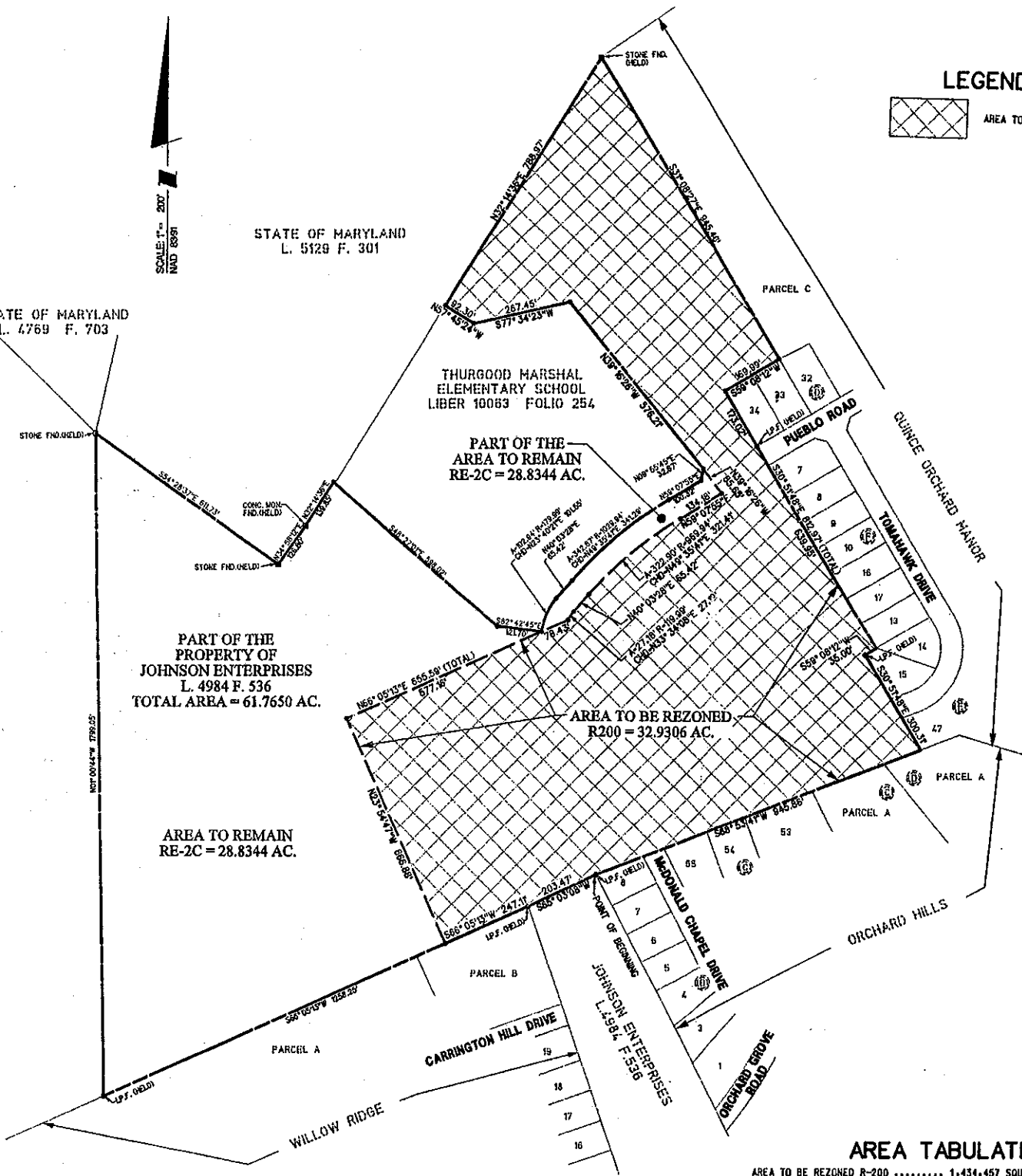
PART OF THE  
AREA TO REMAIN  
RE-2C = 28.8344 AC.

PART OF THE  
PROPERTY OF  
JOHNSON ENTERPRISES  
L. 4984 F. 536  
TOTAL AREA = 61.7650 AC.

AREA TO BE REZONED  
R200 = 32.9306 AC.

AREA TO REMAIN  
RE-2C = 28.8344 AC.

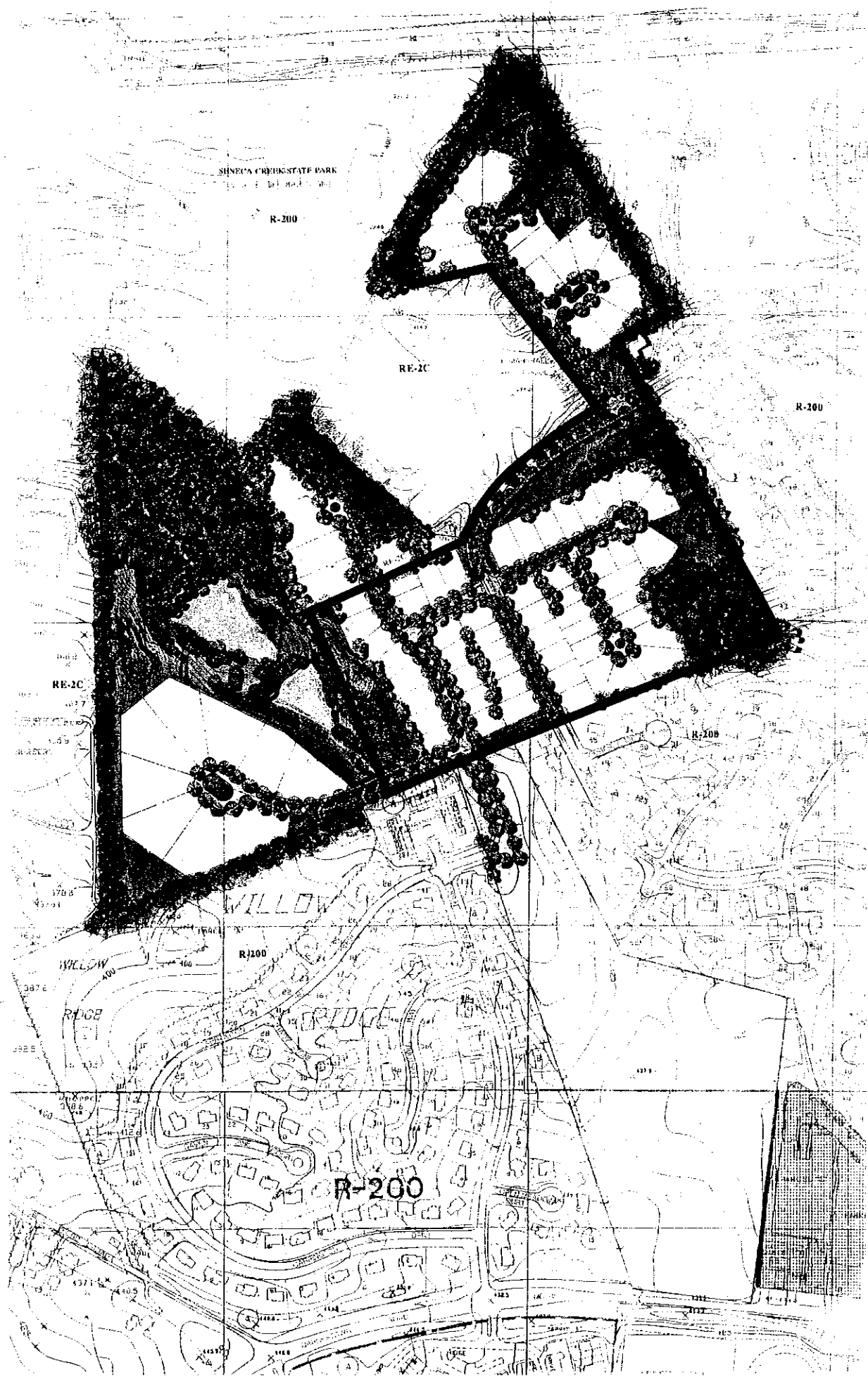
G. B. & B. B. SWIFT  
L. 2498 F. 369



**AREA TABULATION**

AREA TO BE REZONED R-200 .....	1,434,457 SQUARE FEET OR 32.9306 ACRES
AREA TO REMAIN RE-2C .....	1,256,027 SQUARE FEET OR 28.8344 ACRES
TOTAL AREA SHOWN ON THIS PLAT ....	2,690,484 SQUARE FEET OR 61.7650 ACRES

**JOHNSON PROPERTY  
REVISED IDENTIFICATION PLAT**



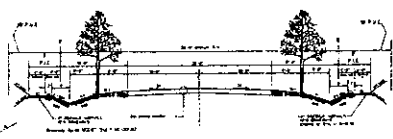
**NOTES:**

Tract Area: 61.7650 Acres  
 Existing Zoning: RE-2C  
 Proposed Zoning: RE-2C - R-200 Combined Cluster, C-1 226b  
 Proposed Development:

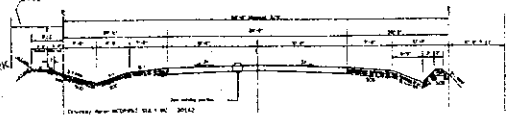
	Developed Yield	Proposed
RE-2C	26,434 Ac	0.1, 0.2, 0.3 - 14.4 Ac
R-200	32,000 Ac	2.14 Ac
<b>TOTAL</b>	<b>58,434 Ac</b>	<b>2.24 Ac</b>

Moderately Pruned Dwelling Units:  
 Required: 12.5% = 14.4 Ac  
 Proposed: 14.4 Ac

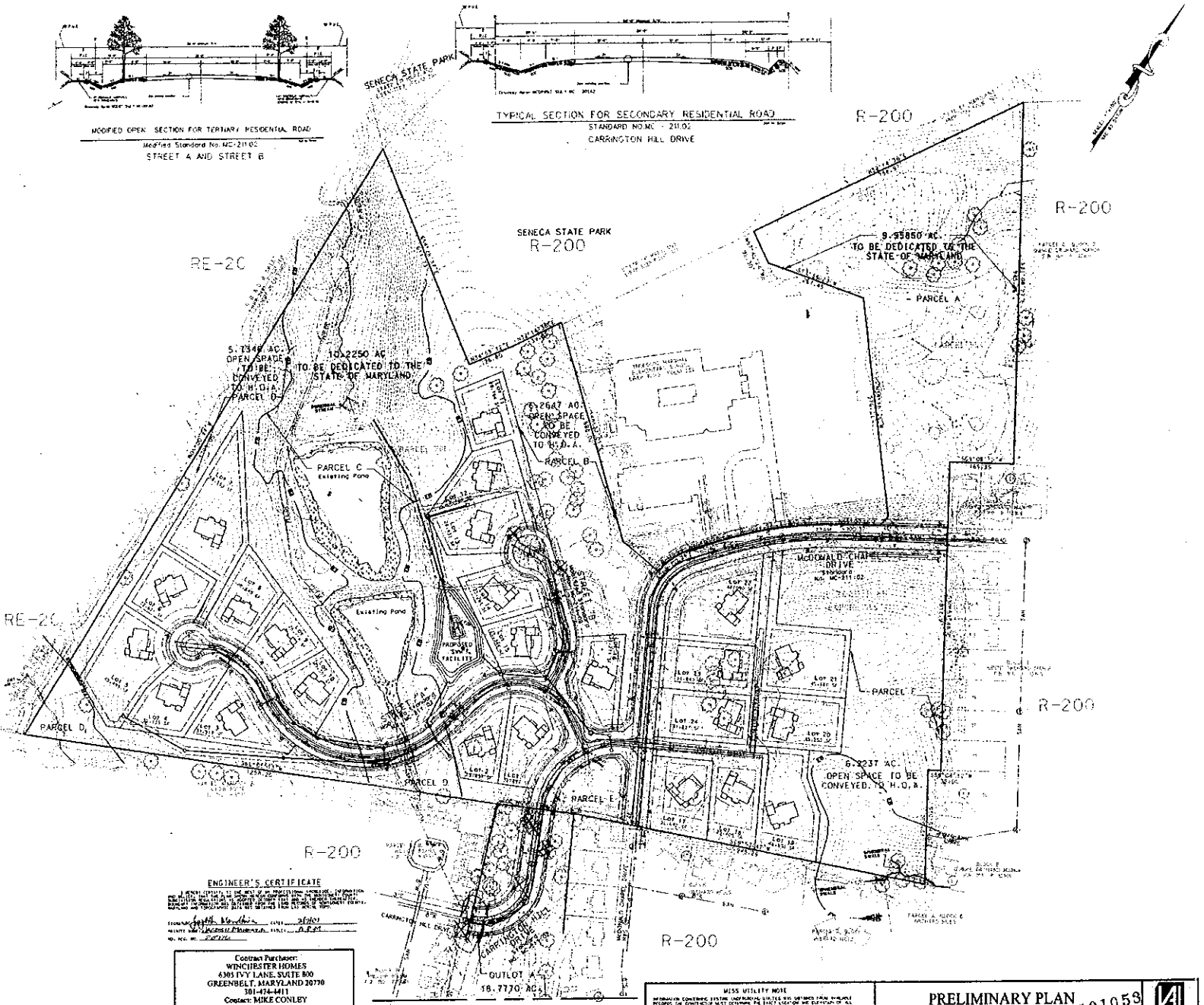




MODIFIED OPEN SECTION FOR TERTIARY RESIDENTIAL ROAD  
 Modified Standard No. MC-21102  
 STREET A AND STREET B



TYPICAL SECTION FOR SECONDARY RESIDENTIAL ROAD  
 STANDARD NO. MC - 21102  
 CARRINGTON HILL DRIVE



**ENGINEER'S CERTIFICATE**  
 I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT AND THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF MARYLAND.  
 MICHAEL J. WILSON, P.E.  
 MONTGOMERY COUNTY, MARYLAND  
 No. 10,000,000

Contract Particulars:  
 WINCHESTER HOMES  
 6303 IVY LANE, SUITE 800  
 GREENBELT, MARYLAND 20770  
 301-774-4411  
 Contact: MIKE CONLEY

Sheet No.	1 of 1
Scale	1" = 40'
Date	10/10/20
Project No.	101053
Client	WINCHESTER HOMES
Engineer	MICHAEL J. WILSON, P.E.
Checker	MIKE CONLEY
Recorder	MIKE CONLEY
Plotter	MIKE CONLEY
Printer	MIKE CONLEY



**MISS UTILITY NOTE**  
 ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE LOCATION, DEPTH AND CHARACTER OF ALL UTILITIES SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND COORDINATING WITH ALL UTILITIES COMPANIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES FROM DAMAGE DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIRING ANY UTILITIES DAMAGED DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND COORDINATING WITH ALL UTILITIES COMPANIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES FROM DAMAGE DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIRING ANY UTILITIES DAMAGED DURING CONSTRUCTION.

**ELECTRONIC FILE DISCLAIMER**  
 THIS DOCUMENT CONTAINS INFORMATION THAT IS UNCLASSIFIED AND IS BEING RELEASED TO THE PUBLIC. IT IS THE POLICY OF THE NATIONAL ARCHIVES TO MAKE AVAILABLE AS MUCH INFORMATION AS POSSIBLE. HOWEVER, SOME INFORMATION MAY BE WITHHELD FROM PUBLIC RELEASE IF IT IS DETERMINED THAT SUCH INFORMATION IS EXEMPT FROM PUBLIC RELEASE UNDER THE PROVISIONS OF THE FOIA. IF YOU BELIEVE THAT THIS INFORMATION IS EXEMPT FROM PUBLIC RELEASE, PLEASE CONTACT THE NATIONAL ARCHIVES AT (301) 837-2000.

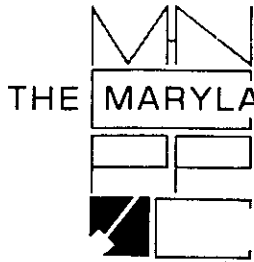
**PRELIMINARY PLAN 101053**

**JOHNSON PROPERTY**  
 Parcels 70, 700, 954 & 554  
 6th (Darnestown) ELECTION DISTRICT  
 MONTGOMERY COUNTY, MARYLAND

PROJECT NO. 101053

# PENDING PRELIMINARY PLAN





October 15, 2001

MEMORANDUM

TO: Bill Landfair, Zoning Analyst  
Community-Based Planning Division

VIA: Sue Edwards, Team Leader, I-270 Corridor Team *Sue*  
Community-Based Planning Division

FROM: Nellie Shields Maskal, Planner *NSM*  
Community-Based Planning Division

SUBJECT: Zoning Application No. G-789, Johnson Enterprises Property,  
Gaithersburg Vicinity Master Plan

---

**RECOMMENDATION: DENIAL**

Staff recommends that this application be denied because it is not in conformance with the land use recommendations of the Gaithersburg Vicinity Master Plan. The existing RE-2C Zone was applied in 1986 by comprehensive zoning to implement the Master Plan recommendation.

**BACKGROUND**

The Johnson Enterprises property is located north of MD 28, near Seneca Creek State Park, in the southwest quadrant of the Gaithersburg Vicinity Master Plan Area. See Figure 1. The surrounding neighborhood consists of Thurgood Marshall Elementary School and Orchard Hills and Willow Ridge Subdivisions (all built after the adoption of the 1985 Master Plan). Also located in the neighborhood are Smokey Glen Farm, Johnson's Flower and Garden Center, and several neighborhood parks.

The Johnson property consists of 61.5 acres and is under contract for sale to Winchester Homes, Inc. This application is a request, by Winchester Homes, Inc., for reclassification of a 32.9-acre portion of the property from the existing RE-2C Zone to the R-200 Zone. The property was rezoned in 1986 to the RE-2C Zone in accord with the recommendations of the 1985 Gaithersburg Vicinity Master Plan. See Figures 2 and 3.

## ANALYSIS

The property is located within the Smokey Glen Study Area of the 1985 Gaithersburg Vicinity Master Plan Area. The Master Plan states:

"The Plan recommends two-acre lots and changing the zoning from the R-200 Zone to RE-2 Zone [and RE-2C Zone]. One area is located west of Longdraft Road near Marmary Road. It is characterized by an established neighborhood of single-family homes on wooded lots...The second area proposed for lowered density is located northeast of Riffle Ford Road and adjacent to Seneca Creek State Park. It contains the Smokey Glen Farm and generally vacant land interspersed with scattered single-family homes. Since 1958, Smokey Glen Farm has functioned as a private recreation area, providing outdoor parties for large groups. This area contains a significant amount of environmentally sensitive land with floodplains, steep slopes, and erodible soils. Several tributaries of Great Seneca Creek are located in this area.

The Plan recommends reducing the permitted density to one unit per two acres under the RE-2C Zone. Clustering is strongly encouraged to protect the environmentally sensitive areas. The western portion of this area probably could be served by a gravity sewer line parallel to the existing force main easement.

The Plan recommends development guidelines for the environmentally sensitive areas to help assure the compatibility of the development to surrounding uses: These guidelines should include, but not necessarily be limited to, the following:

Stormwater management issues will be addressed at the time of subdivision.

Mature wooded areas should be protected, wherever possible. Natural vegetation should remain along all streams.

Development should be clustered away from streams, steep slopes, severely erodible soils, poorly drained soils, floodplains, and other environmentally sensitive areas.

Development should be setback or otherwise buffered to prevent traffic noise impacts from MD 28 and Quince Orchard Road.

Detached homes should be adjacent to existing detached homes."

During the Gaithersburg Vicinity Master Plan process, the Planning Board devoted considerable discussion to the appropriate land use and zoning for this area. It should be noted that, the adjacent areas (Willard Ridge and Quince Orchard Manor) were not considered environmentally sensitive and were confirmed as half-acre residential. The Master Plan confirmed the R-200 Zone for this area since the character of this area had already been determined by proposed development.

In 1986, at the Gaithersburg Vicinity Master Plan Sectional Map Amendment Public Hearing (SMA #G-502), the property owner expressed opposition to the recommended RE-2C Zone. The property owner testified at the SMA Public Hearing that the existing R-200 be retained for the property since the environmental concerns could be met by R-200 cluster. The property owner asserts that the subject area does not have the serious environmental problems found on the property to the west (Smokey Glen Farm Recreational Area).

The County Council carefully considered the SMA and the recommendations of the Planning, Housing, and Economic Development (PHED) Committee and supported the recommended RE-2C Zone for the subject property since the RE-2C Zone better meets the following environmental objectives:

Provides significantly greater park dedication/open space area.

By virtue of having lower associated volumes of stormwater runoff and non-point source pollutant generation, it affords greater protection for the Long Draft Branch stream system without relying as heavily upon structural controls.

Significantly reduce the density of development adjacent to existing wildlife habitat areas.

For the above reasons, the Johnson property as well as other properties in the Smokey Glen Study Area were reclassified from the R-200 Zone to the RE-2C Zone.

According to the applicant, subsequent to the last comprehensive rezoning in 1986, Montgomery County Public Schools acquired 12 acres of land from the Johnson Enterprises property to construct Thurgood Marshall Elementary School. Staff does not support the applicant's position that since the Master Plan does not show a "proposed school" designation anywhere in the Smokey Glen Farm Area, the location of a public school in this area designated for "Low -Density Residential Use" is a factor with important land use implications.

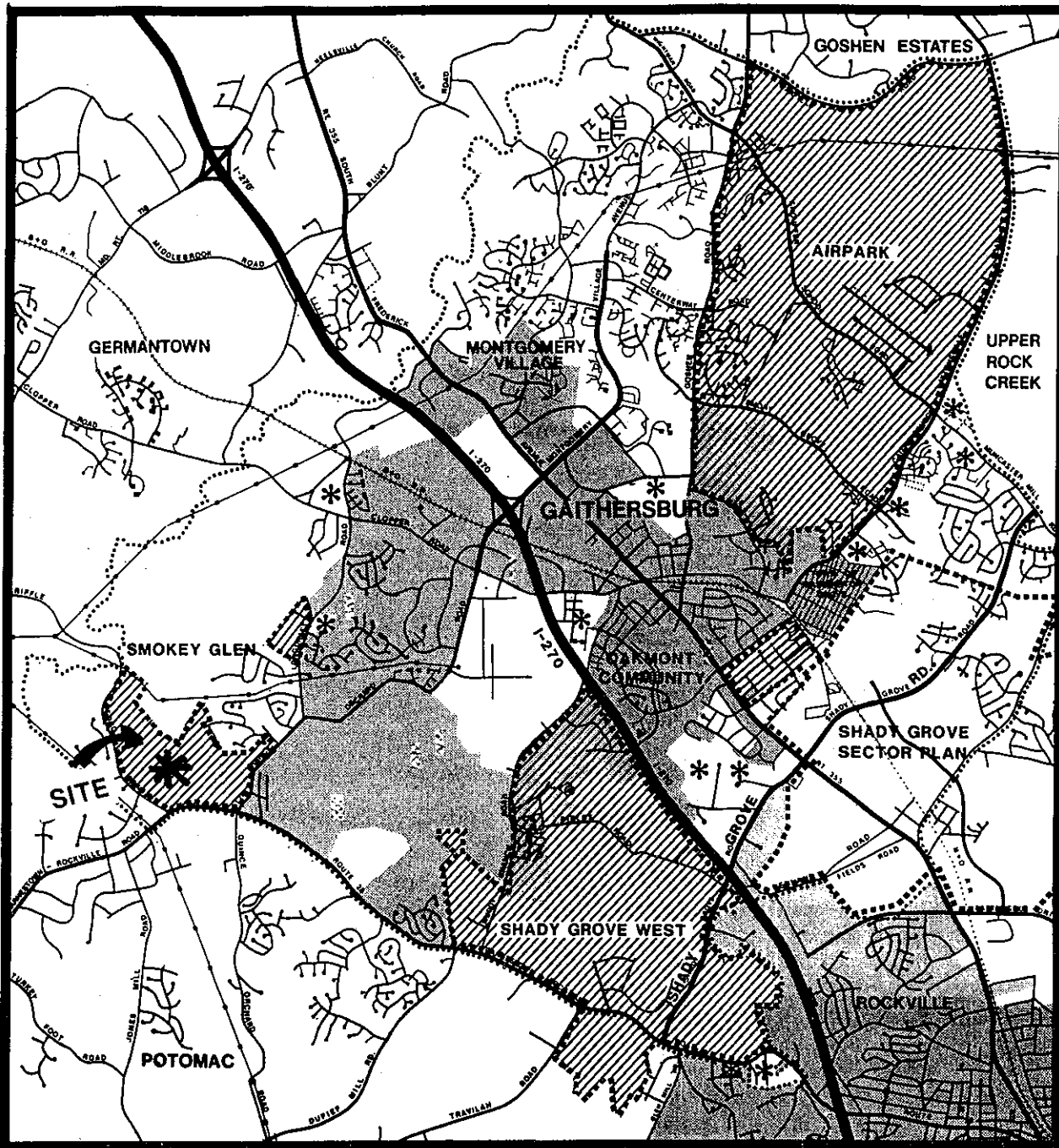
Staff believes that while public schools are important community facilities that often are the cornerstone of planning recommendations, the opening of Thurgood Marshall Elementary School, in 1993, does not justify a substantial change in the character of the neighborhood since the last comprehensive zoning to justify the reclassification of the subject property. The addition of an elementary school to the neighborhood has not altered the Master Plan goals and objectives. The Orchard Hills and Willow Ridge Subdivisions have developed in accord with the recommended R-200 Zone. In addition, the Safeway and bank have developed in the proposed C-1 Zone area as recommended. No change in character has occurred that was not intended by the Master Plan.

Finally, staff does not support the "Smart Growth" initiative raised by the applicant. The subject property is located on the western edge of the Gaithersburg Vicinity Master Plan Area and is not centrally located to transit and services.

It remains the position of staff that the RE-2C Zone is appropriate for the subject property and that it is in the general public interest to protect the area. Finally, staff would like to emphasize that the required procedures were followed during the comprehensive rezoning of this area. The decision was reasonable and was based upon sufficient evidence as discussed above. The Master Plan decision was based on a lengthy review period (five years) of the Gaithersburg Vicinity Planning Area, which involved the public through forums, workshops, public hearings, and worksessions. See Figure 4.

NSM:ha: g:\maskal\may24.doc  
Attachments

FIGURE 1



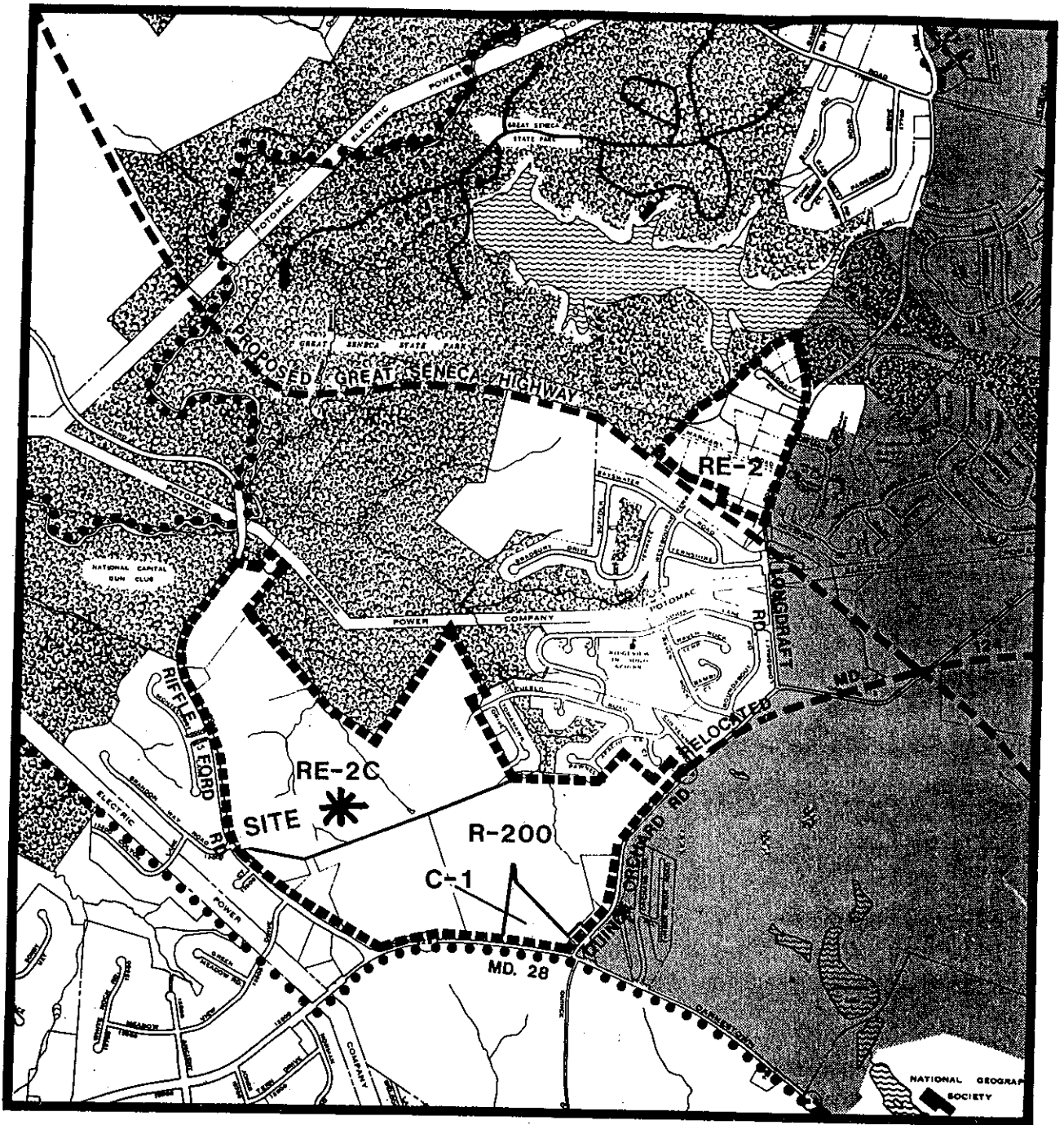
## MAJOR STUDY AREAS

- ..... Planning Area Boundary
- Municipalities
- ▨ Study Areas
- \* Non-Contiguous Parcels (see text)


APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN  
Montgomery County Maryland


January, 1985





**SMOKEY GLEN AREA ZONING PLAN**

- ..... Planning Area Boundary
-  Municipalities
- ▣ Study Area Boundary
- - - - Proposed Highway

**APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN**  
 Montgomery County Maryland 

January, 1985


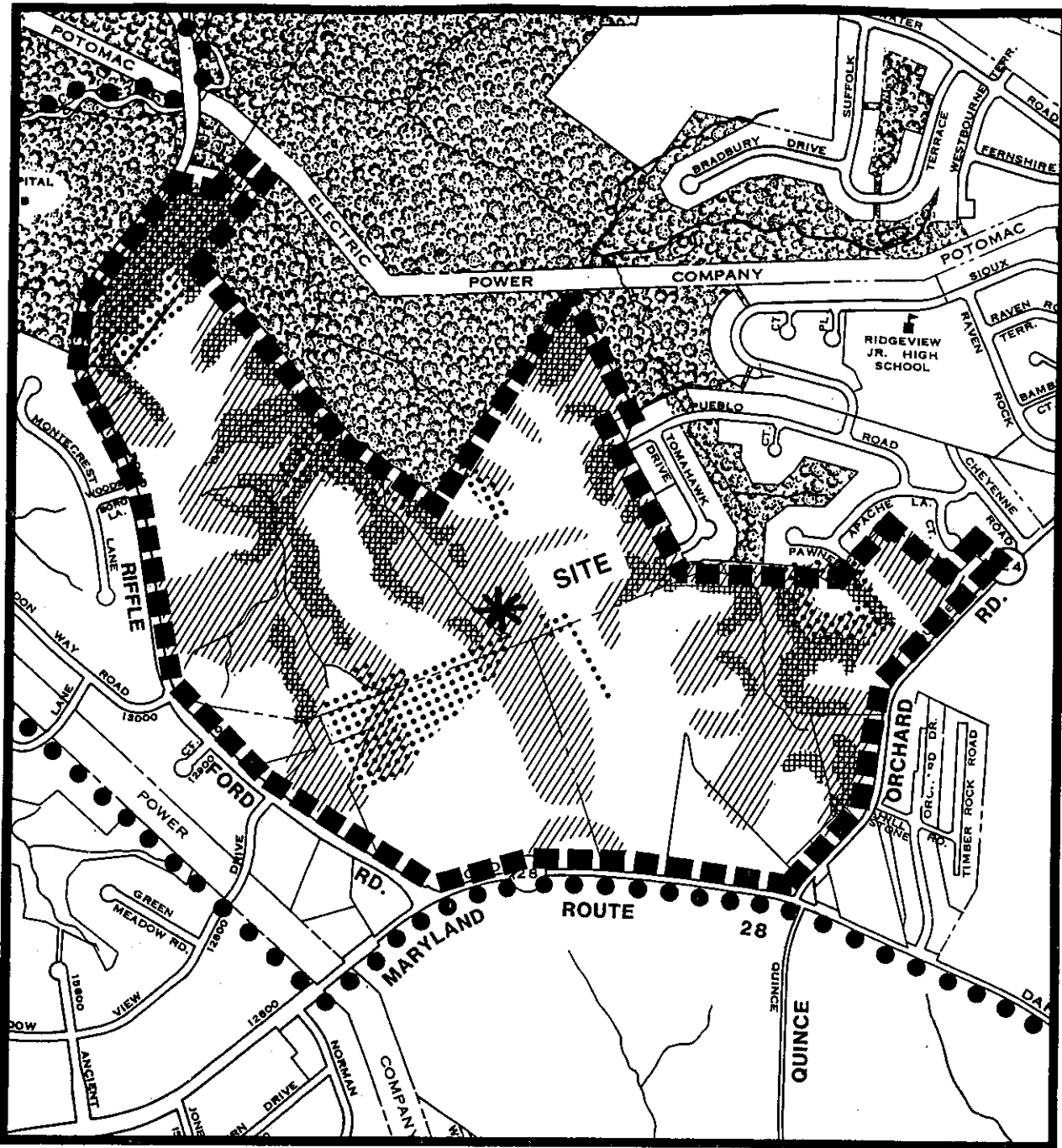
 **NORTH**

FIGURE 3



## SMOKEY GLEN AREA- ENVIRONMENTALLY SENSITIVE AREAS

- Analysis Area Boundary
- ~~~~~ Stream
- ..... Wooded Areas
- ////// Soils (erodible & alluvial)
- XXXXXX Steep Slopes
- ..... Planning Area Boundary

**APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN**  
Montgomery County Maryland

January, 1985



APPENDIX 1

GAITHERSBURG VICINITY MASTER PLAN PROCESS SUMMARY

<u>PURPOSE</u>	<u>EVENT</u>	<u>ACTIVITY</u>
Public forums, and meetings with business organizations and community groups to identify and discuss issues.	Joint Issues Forum 10/25/79	Staff gathers and organizes data and issues.
	Community Facilities Forum 10/21/80	
	Emory Grove Village Tenants Assoc. 11/5/80	
	Joint Housing Forum 11/13/80	
	Joint Retail & Employment Forum 12/9/80	
	Deer Park/Oakmont/Walnut Hill Area Residents 3/1/81	
	Suburban Maryland Home Builders Assoc. 4/15/81	
	Community Housing Resources Board 4/23/81	
	Washingtonian Tower Condo. Inc. 5/12/81	
	I-270 Corridor Employers Group 5/14/81	
	Montgomery Village Foundation 5/18/81	
	Joint Transportation Forum 5/27/81	
	Joint Transportation Follow-up Workshop 6/10/81	
	Staff analyzes data and issues and prepares Staff Draft Plan.	
<u>STAFF DRAFT PLAN</u>		
Opportunities for public participation.	Open House 11/21/81	Staff analyzes issues and concerns raised, and prepares draft responses.
	Public Forum 12/1/81	
	Planning Board Worksessions & Revisions 12/7/81 through 1/18/83	
	Planning Board Approval	
<u>PRELIMINARY DRAFT PLAN</u>		
Opportunities for public participation.	Planning Board Public Hearing on Preliminary Draft 4/5/81 and 4/6/81	Staff analyses and responds to issues and concerns raised.
	Planning Board Worksessions & Revisions 4/81 to 7/83	
	Planning Board Approval August 5, 1983	
<u>FINAL DRAFT PLAN</u>		
Opportunities for public participation.	County Council Public Hearing on Final Draft	Staff analyzes and responds to issues and concerns raised.
	County Council Worksessions	
	County Council Approval	
	Planning Commission Adoption	





October 10, 2001

MEMORANDUM

TO: Bill Landfair, Community Based Planning Division

VIA: Mary Dolan, Environmental Planning Division *MD*

FROM: Seekey Cacciatore, Environmental Planning Division *SC*

SUBJECT: Zoning Application No. G-789  
RE-2C to R-200  
Johnson Property located at the northwest quadrant  
Quince Orchard Road and Darnestown Road

The Environmental Planning staff has reviewed the zoning application referenced above. Staff recommends **denial** of this zoning application for the following reason:

- **Existing geology and hydrology constrains development and limits opportunities for stormwater management.** A stormwater management concept plan was deemed unacceptable and a revised plan has been requested for the R-200 zone. Stormwater management for the proposed 24 lots under the RE-2C zone has been difficult to achieve on-site. Providing stormwater management to accommodate between 24-150 lots, as allowed under the R-200 zone, seems questionable.

Natural Resources

The Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) (#4-01130) has been submitted and approved. The applicant has submitted a preliminary forest conservation plan in conjunction with preliminary plan 1-01058, development of this same site under the RE-2C zone, which will come to the Planning Board in the near future. Regardless of the zone, the applicant must submit a final forest conservation plan prior to release of sediment and erosion control permit.

At present there are 31.5 acres of forest on the entire 81.7 acre property. Of the 32.9 acres addressed in the zone change request approximately 20 acres are forested. It will be necessary to clear the majority of these 20 acres for development under the R-200 zone.

There is a perennial stream that flows northwest across the western portion of the 81.7 acre property. This stream flows through two existing farm ponds that are surrounded by wetlands. Some structural stabilization of the dams and removal of the woody vegetation will be necessary for safety reasons. In addition, two ephemeral streams are located on the property. Streams in this watershed require a minimum 100-foot buffer that must extend to include hydraulically adjacent steep slopes and erodible soils.

The environmentally sensitive areas as shown on page 18 of the 1985 Gaithersburg Vicinity Master Plan were based on erodible soils and steep slopes. Soils were determined using the 1961 Soil Survey of Montgomery County, Maryland. At that time, the soil survey delineated three different soil series. The most significant soil series found on the property was the Manor series. The 1961 soil survey describes the Manor series as excessively well drained, typically found on slopes ranging from 3-45%, with a moderate to severe hazard of erosion based on the percent slope. Hydric soils are also found on the site. Compared to the 1961 soil survey, the 1995 soil survey uses a different nomenclature and soil descriptions also differ. However, the physical characteristics of the soils on-site have not changed. The predominant soil on the property remains well-drained with severe hazard of erosion.

Topographic maps were used to determine the percent slope for the 1985 master plan. At the time of the 1985 master plan M-NCPPC staff used the 1983 *Staff Guidelines for the Protection of Steep Slopes and Stream Valleys* that protected hydraulically adjacent (near stream) slopes greater than 25% within 200 feet of the stream bank and hydraulically remote slopes (those not adjacent to a stream buffer). Moreover, the 1983 Guidelines state that Use I streams with drainagesheds less than 50 acres are considered to be environmentally sensitive if they exhibit one or more of the following: 1) good stream quality (includes good or better base flow, stable stream channels and good biological diversity), 2) major stands of mature hardwoods, 3) unique vegetation or wildlife or, 4) wetlands. The 2000 *Environmental Guidelines* state that development on hydraulically remote slopes may be approved on a case-by-case basis, where the developer can demonstrate that "...stormwater management, sediment and erosion control and soil stabilization ....can be satisfactorily addressed." Staff believes that the applicant has not satisfactorily addressed these important issues.

The applicant states in the pre-hearing statement that with the implementation of the *Environmental Guidelines* and adoption of the Forest Conservation Law the same environmental benefits shall be secured through downzoning regardless of zone. This is true for implementation of the *Environmental Guidelines* as stream, wetland and floodplain buffers and requirements for steep slopes and erodible soils remain the same. However, the statement is not true for implementation of the forest conservation requirements. Under the RE-2C zone the afforestation and conservation thresholds are 20% and 25%, respectively. Yet, under the R-200 zone these percentages drop to 15% and 20%, respectively. This means reforestation requirements are reduced under the R-200 zone.

Finally, a memo (attached) dated November 8, 1985, regarding a previous zoning change request of this same property states that the RE-2C zone should remain in place because the RE-2C zone better meets the following environmental objectives:

- Provides significantly greater open space area (by virtue of the zone);
- Significantly reduces the density of development adjacent to existing wildlife habitat areas within the Seneca Creek State Park (by virtue of the zone);
- Affords greater protection for the Long Draft Branch stream system without relying heavily on structural controls by virtue of having lower associated volumes of stormwater runoff and non-point source pollution (by virtue of the zone).

Environmental planning staff continues to support these environmental objectives.

#### Stormwater Management

This site is located in the Lower Long Drought tributary of the Great Seneca Creek watershed, a Use I watershed. The *Countywide Stream Protection Strategy* (CSPS) assesses the Lower Long Drought tributary as having good stream conditions and good habitat conditions, labeling it as a Watershed

## Protection Area.

Runoff from this undeveloped property flows to four separate drainage basins. Regardless of zone, the applicant needs to provide stormwater management facilities to ensure that runoff is sent to a control structure within each basin. The Maryland Stormwater Management Design Manual requires "that the annual recharge from post-development mimics the annual recharge from pre-development conditions." Thus, the more intensely a site is developed, the less likely it is for post-development recharge conditions to mimic pre-development conditions.

Stormwater management (SWM) plans have been submitted to the Department of Permitting Services (DPS) for development under both zones. Currently, DPS has deemed the SWM concept plan as unacceptable under the R-200 scenario. On the other hand, DPS has provisionally approved a SWM concept plan in conjunction with preliminary plan 1-01058, under the RE-2C zone. Stormwater management for the proposed 24 lots under the RE-2C zone has been difficult to achieve on-site due to the percent slope, number of drainage areas and amount of imperviousness. Providing on-site stormwater management facilities that are capable of accommodating stormwater runoff generated from over 24 lots, as allowed under the R-200 zone, seems questionable.

Approval of the proposed SWM concept plan under any development plan requires a favorable ruling from the Maryland Department of Environmental and U.S. Army Corps of Engineers for use of the existing ponds as a stormwater management facility. Even with a favorable ruling from both agencies the capacity of these ponds for quantity control is limited and an additional quantity control structure maybe necessary for more intense development. Stormwater quality control will need to occur within the property but outside the ponds.

## Water and Sewer

Community water and sewer are available to this site (W-1 & S-1).

## Environmentally Sensitive Design

Regardless of zone and density, the following environmentally sensitive design aspects should be considered: innovative wastewater technologies, water efficient landscaping (native species), renewable energy sources, construction waste management, the use of certified wood products, recycled material, energy efficient appliances and lighting, and natural lighting. Additional sensitive design should include appropriate citing of the house (i.e., south facing) and vegetation strategically placed to provide shade in the summer and insulation during the winter. Moreover, homeowner association (HOA) control of lawn care and green space could reduce the amount of fertilizer used, thereby reducing the amount of nutrients reaching the streams on the way to the Chesapeake Bay. Use of organic fertilizer is strongly recommended when necessary.

MEMO



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

November 8, 1985

TO: Lyn Coleman, Community Planning North

VIA: Jorge A. Valladares, Chief  
Environmental Planning Division *JAV.*

FROM: John Galli, Environmental Planner *JG.*

SUBJECT: Johnson Enterprises Property (78.6 acres), Gaithersburg  
Vicinity Sectional Map Amendment, Request to be Upzoned  
from RE-2C to R-200C

Recommendation: Retain the present RE-2C zoning.

Background

The subject property, which consists of 92.8 acres, is located on Darnestown Road (Md. Rte 28) immediately west of the Quince Orchard Road (Md. Rte 124) intersection in Gaithersburg, Maryland (Figure 1). The applicant has requested that a 78.6 acre portion of the property be upzoned from RE-2C to R-200C and as such has submitted a Schematic Development Plan (SDP) for staff review.<sup>1</sup> As part of its analysis staff field surveyed the subject site. Listed below is an approximate breakdown of the site's existing land uses:

oak-hickory-poplar forest	-	13.1 acres
young hardwoods	-	13.3 acres
brush/old field	-	24.4 acres
ponds/wetland areas	-	3.2 acres
tree nursery	-	11.2 acres
horse pasture	-	<u>13.4 acres</u>
Total		78.6 acres

It should be noted that the subject area is essentially bisected by a ridge. Also, while the entire site ultimately drains to the Long Draft Branch of Great Seneca Creek only the western portion contains a flowing stream. This small unnamed

1/ The front 14.2 acres of the property were not included in the request.

Class I tributary presently includes two small farm ponds which appear to be in good structural condition. In addition, because of the wide diversity in land uses/vegetative communities and its proximity to Seneca Creek State Park the subject site is presently a haven for wildlife. Topographically, the site exhibits highly varied terrain with slopes ranging in grade from five to 30 percent.

On-site soils include Manor (MdB<sub>3</sub>, MdC<sub>3</sub>, MdD<sub>3</sub>), Glenelg (GhB<sub>2</sub> and GhB<sub>3</sub>), and Glenville (GmB) silt loam soils. Typically, both the Manor and Glenelg soils are well-drained and moderately deep to deep in nature. Conversely, the Glenville soils, which comprise a very small portion of the site, are poorly drained. This is mainly due to the presence of a fragipan layer.

#### Staff Analysis - Discussion

Staff in an effort to determine what the potential environmental impacts associated with RE-2C and R-200C development would be, compared and contrasted associated imperviousness, uncontrolled runoff, uncontrolled nonpoint source pollutant generation, and associated clearing and grading. Results of the analysis are summarized in Tables 1-4.

As seen in Tables 1 and 2 the higher percentage of imperviousness associated with R-200C development would result in a 53.3 percent increase in uncontrolled stormwater runoff over the RE-2C zone. It is also important to note that these higher runoff volumes are more likely to be in concentrated form. Thus, the necessity of employing structural SWM/storm drainage controls would be greater with R-200C development. Of particular concern to staff is the potential increase in storm flows draining, via three swales, to the adjacent Quince Orchard Manor subdivision. In staff's opinion, R-200C development, by virtue of its higher associated runoff volumes, would be more likely to create off-site erosion/storm drainage problems than would RE-2C development.

Regarding uncontrolled non-point source pollutant generation (Table 3), R-200C development would unsurprisingly generate significantly more pollutants than would RE-2C development. Furthermore, it should be noted that the two existing Johnson Enterprises Property farm ponds presently receive stormwater runoff from the adjacent developing Copenhagen Property subdivision. As these ponds were never originally designed for water quality control, their ability to satisfactorily remove additional pollutants generated by a developed contributory drainage area is questionable. Also, as the pollutant removal efficiency of wet ponds and other water quality BMP's is not 100 percent, it can be assumed that R-200C development has a higher potential for negatively impacting the receiving stream system than does RE-2C development.

As seen in Table 4, R-200C development would require significantly more clearing and grading of the site than would RE-2C development. This is attributable to the larger development envelope associated with the proposed R-200C development as well as the greater intensity of required grading within the envelope.<sup>2</sup> Therefore, in staff's opinion the potential for erosion/sedimentation problems is greater with R-200C development.<sup>3</sup> In addition, the ability to retain valuable existing wildlife habitat would also be less.

### Conclusion

Because of its environmental setting and character, staff recommended, as part of the Smokey Glen Study area analysis, that the Johnson Enterprises Property be zoned RE-2C. While the applicant's R-200C SDP is an environmentally sound proposal it is staff's opinion that the existing RE-2C zone better meets the following environmental objectives:

- provides significantly greater park dedication/open space area;
- by virtue of having both lower associated volumes of stormwater runoff and nonpoint source pollutant generation, it affords greater protection for the Long Draft Branch stream system without relying as heavily upon structural controls;
- significantly reduces the density of development adjacent to existing wildlife habitat areas.

Therefore, staff recommends that the existing RE-2C zoning be retained. If you should have any questions please call.

FJG:JAV:el

Attachment(s)

cc: N. Baig  
M. Banach  
S. Federline

-----  
2/ Staff estimates that the proposed R-200C development envelope is 45.7 acres versus 32.7 acres for RE-2C.

3/ Staff estimates that RE-2C development could provide 45.9 acres of park area versus 32.9 acres for R-200C.

Table 1. Associated Imperviousness (Percent)

<u>RE-2C</u>	<u>R-200C</u>
9.0	15.0

Table 2. Estimated Uncontrolled Runoff for the 2-Year Frequency Storm (cfs)\*

<u>Existing</u>	<u>RE-2C</u>	<u>R-200C</u>	<u>Percent Increase R-200C vs RE-2C</u>
14.8	24.6	37.7	53.3

Table 3. Estimated Uncontrolled Nonpoint Source Pollutant Generation (lbs/yr)\*

<u>Pollutant</u>	<u>Existing</u>	<u>RE-2C</u>	<u>R-200C</u>	<u>% Increase R-200C vs RE-2C</u>
BOD	1,165.0	1,729.2	1,965.0	13.6
Total P	17.8	62.9	78.6	25.0
Total N	286.3	487.3	597.4	22.6
Extractable Pb	1.8	11.0	20.4	85.5
Extractable Zn	2.8	14.1	21.2	50.5
Sediment	4.7	8.6	11.8	37.2

\* Sediment is in tons/yr.

Table 4. Estimated Clearing and Grading (acres)

<u>RE-2C</u>	<u>R-200C</u>	<u>%Increase R-200C vs RE-2C</u>
21.4	36.6	71.0

20879



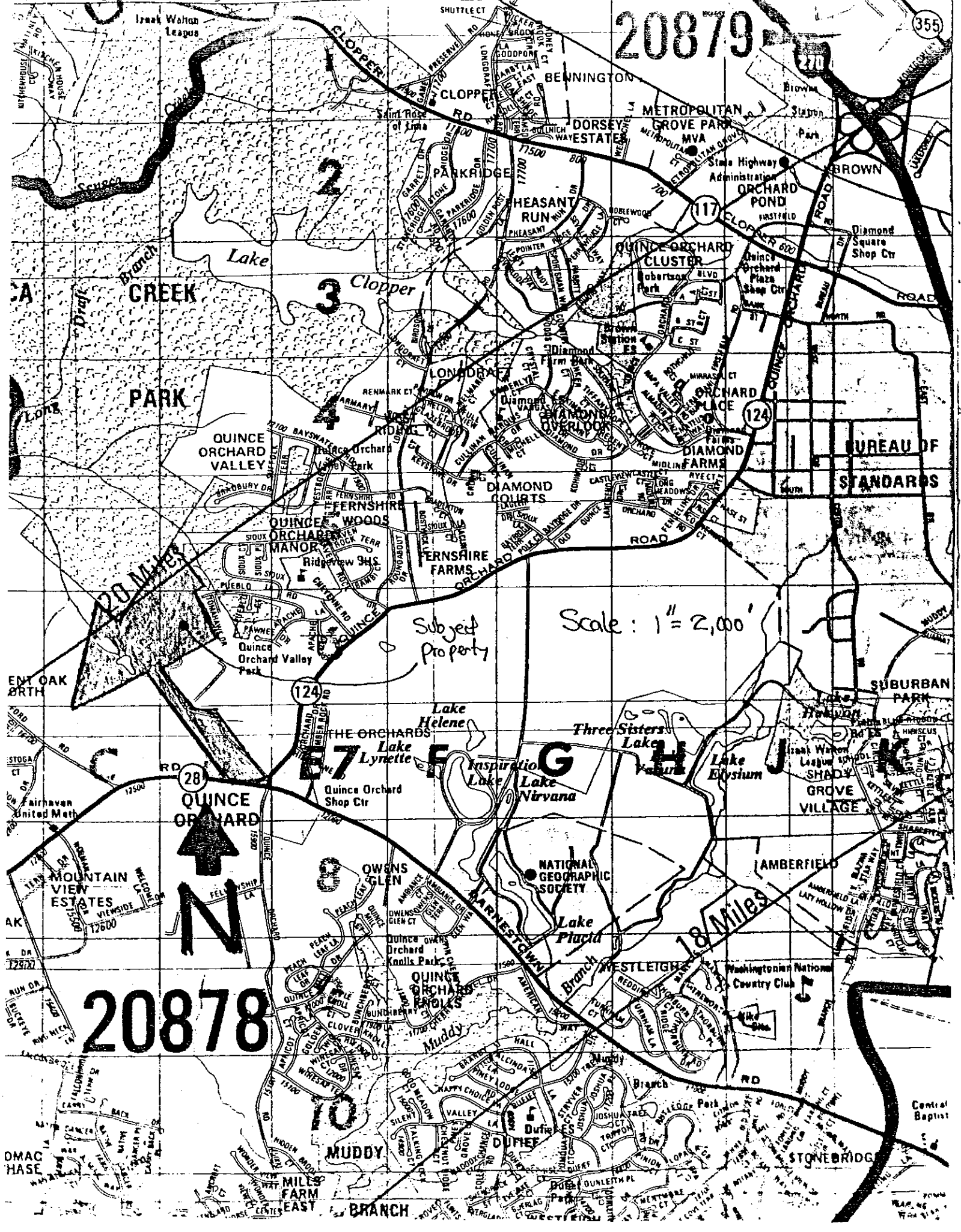
Subject Property

Scale: 1" = 2,000'

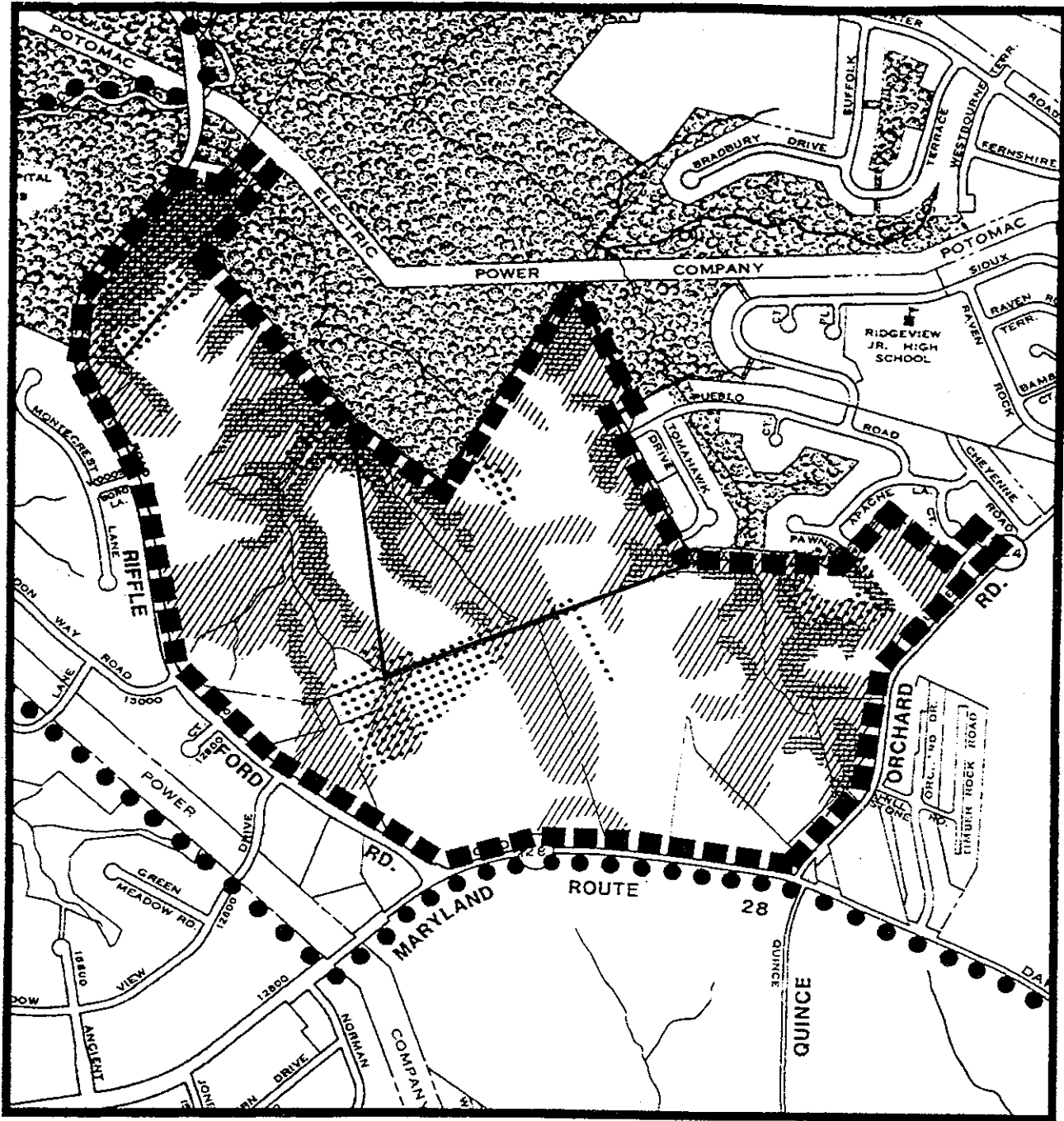


20878

1.8 Miles







# SMOKEY GLEN AREA- ENVIRONMENTALLY SENSITIVE AREAS

- Analysis Area Boundary
- ~~~~~ Stream
- ..... Wooded Areas
- ////// Soils (erodible & alluvial)
- ===== Steep Slopes
- ..... Planning Area Boundary

APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN  
 Montgomery County Maryland

January, 1985



Fig. 18

**STAFF GUIDELINES FOR THE PROTECTION OF  
SLOPES AND STREAM VALLEYS**

**Prepared by  
Environmental Planning Division**

**Montgomery County Planning Board  
3737 Georgia Avenue  
Silver Spring, MD 20907**

**April 1983**

## L INTRODUCTION AND OBJECTIVE

Accelerated land surface and stream channel erosion and deposition constitute two of several major interrelated problems confronted in watershed development. Erosion and sedimentation exist at natural background levels even in the complete absence of human activities; however, it becomes a problem of varying severity as human activities modify the natural landscape. Of special concern is the disturbance of steep slopes, especially those adjacent to or in close proximity to streams or drainage courses, and the disturbance or modification (or both) of natural stream channels. Over the years, it is increasingly evident that the disturbance/modification of these areas is contributing heavily to the accelerated degradation of our water resources. The unfortunate alteration of these areas has been, and continues to be, a commonly occurring event, exacerbating watershed erosion/sedimentation, water quantity, and water quality problems. Consequently, guidelines were developed to help meet the following watershed management objectives:

- maintain biologically viable and diverse streams throughout a watershed;
- maintain or improve the water temperature regimen/water quality of stream(s);
- complement on-site erosion/sediment control measures by employing natural vegetative buffers which filter and trap sediment;
- protect hydraulically adjacent steep slopes areas;
- reduce nonpoint source pollutant loading of streams; and
- provide wildlife habitat, open space, or both, along stream valleys;

The guidelines contained herein are intended to bring uniformity, consistency, and improvement of the quality of environmental review in the regulatory review process. Every effort was made to develop guidelines which are simple, effective, provide maximum flexibility, and are easy to administer.

It is expected that these guidelines will significantly help in mitigating many of the previously-stated, negative environmental impacts associated with present construction practices. Furthermore, these guidelines will enable the staff to uniformly review plans under the regulations for subdivision and site plan review. It is also recognized that prior actions or policies of other agencies may not always allow the fulfillment of the preceding watershed management objectives.

## II. WATERSHED AND STREAM VALLEY PROTECTION

The principles underlying the recommended guidelines are interrelated with the concept of comprehensive watershed/stream valley management and protection.

As a result, guidelines were intentionally developed to address many of the problems and opportunities encountered in watershed development. The recommendations presented herein center upon the concerted and systematic employment of the following management strategies:

- the establishment of slope guidelines which address both slope gradient and proximity to stream channels;
- the employment of stream buffers, the widths of which reflect both the stream's Maryland Water Resources Administration water use class and the gradient of adjacent slopes;
- the strict adherence of land-disturbing activities to the U.S. Soil Conservation Service erosion and sediment control guidelines; and
- the provision of stormwater management facilities, storm drainage systems, septic fields, etc. . . which respect the integrity of the natural stream systems.

### III. EXCEPTIONS TO GUIDELINES

It should be emphasized that the guidelines contained herein are for the formulation and presentation of staff recommendations to the Planning Board, who may then choose to accept, reject, or modify these recommendations on a case-by-case basis. Exceptions to the guidelines will be given by the staff on a case-by-case basis when it can be demonstrated that safety, County road standards, storm-drainage, storm-water management, erosion and sediment control, engineering, design or planning issues can be satisfactorily addressed to benefit the environment, the general public, or both. Furthermore, staff are receptive to other ideas and techniques that enhance environmental compatibility. It is also recognized that engineered improvements of stream channels may, at times, be necessary.

### IV. CLASSIFICATION OF SLOPES

Slopes are systematically classified as being either 1) near stream or hydraulically adjacent, or 2) hydraulically remote.

This classification system serves as the basis for the establishment of two sets of recommended guidelines, one dealing with hydraulically-adjacent slopes (section VII) and one dealing with hydraulically remote slopes (section VIII). Furthermore, the guidelines are designed to provide greater control/protection of the more environmentally sensitive, hydraulically adjacent, steep slope areas.<sup>1</sup> The general procedure for reviewing development proposals with respect to slope guideline applicability is outlined in section V. For a glossary of terms see Appendix A.

---

1 The term "near stream" refers to the area lying within 200 feet of a stream's bank, which is considered to be the most environmentally sensitive/critical portion of the stream valley.

2 A slope which has a gradient equal to or greater than 25 percent will be considered steep. Percent slope is defined as: 
$$\frac{\text{Vertical Rise in Feet}}{100 \text{ ft. Horizontal Run}} \times 100\%$$

## VI. ENVIRONMENTAL SENSITIVITY TEST

Class I or IV perennial streams having a drainageshed area of less than 50 acres are considered to be "environmentally sensitive" if they,<sup>3</sup> or their near stream area, presently exhibit one or more of the following natural features:

- good stream quality (i.e., good-excellent base flow, a stable stream channel network, and good biological diversity);
- major stands of mature hardwoods;
- unique vegetation or wildlife habitats, or
- wetlands

If a stream is determined to be "environmentally sensitive," the hydraulically-adjacent guidelines will be applied. Conversely, if a stream is determined not to be "environmentally sensitive," the hydraulically-remote guidelines will be applied.

## VII. RECOMMENDED GUIDELINES FOR HYDRAULICALLY ADJACENT SLOPES

- 1) No building/structure will be permitted within 25 feet of the 100-year ultimate floodplain (existing subdivision regulation). Also, no building/structure will be permitted in stream valley buffers. For smaller streams, stream valley buffers may be larger than the 100-year ultimate floodplain.
- 2) Septic fields are prohibited on slopes greater than 25% (State Department of Health and Mental Hygiene regulation).
- 3) Septic fields shall be set back a minimum of 100 feet from all perennial streams.
- 4) Stream buffers shall be provided in accordance with Table I.

---

<sup>3</sup> Sources of information may include published inventories/studies, printed maps, or actual field inspection. The employment of the 50-acre criterion may require that measurements be made determining the cut-off point along the subject stream(s) that has 50 acres of drainage (See Appendix "D").

### VIII. RECOMMENDED GUIDELINES FOR HYDRAULICALLY REMOTE SLOPES

- 1) Septic fields are prohibited on slopes greater than 25% (State Department of Health and Mental Hygiene regulations).
- 2) In general, clearing or grading on slopes in excess of 25 percent is strongly discouraged. However, development of these areas may be approved on a case-by-case basis, where the developer can demonstrate that safety, County road standards, storm drainage/stormwater management, erosion and sediment control, engineering, design, and planning issues are satisfactorily addressed.
- 3) All clearing and grading activities shall strictly adhere to the Soil Conservation Service guidelines pertaining to erosion and sediment control. Furthermore, it is strongly recommended that phased clearing and grading be employed whenever/wherever feasible. In some cases, phased clearing and grading may be required for plan approval.

AGENDA DATE: OCTOBER 25, 2001  
AGENDA ITEM: 7

LAW OFFICES

## MILLER, MILLER & CANBY

CHARTERED

200-B MONROE STREET  
ROCKVILLE, MARYLAND 20850

(301) 762-5212  
FAX (301) 762-6044

JAMES R. MILLER, JR.\*  
PATRICK C. MCKEEVER  
JAMES L. THOMPSON  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
JOSEPH P. SUNTUM  
MAURY S. EPNBR  
SUSAN W. CARTER  
SUZANNE L. ROTBBRT  
ROBERT E. GOUGH  
MICHAEL G. CAMPBELL  
JON W. LUTHER  
\*OF COUNSEL

October 19, 2001

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

RE: Zoning Application No. G-789,  
Application of Winchester Homes, Inc.;  
(Johnson Property)

Dear Mr. Holmes and Members of the Planning Department:

Next Thursday, the Board will review the Staff Report and Recommendation on Zoning Application No. G-789, a request by Winchester Homes, Inc. to rezone 32.93 acres of land known as "the Johnson property" from the RE-2C to the R-200 zone. Because of the limited amount of time for the applicant to explain to you next Thursday why the property should be rezoned, Winchester would like for you to consider the following brief written comments as a precursor to our more formal presentation to you next week.

Basically, Winchester seeks to restore the R-200 zoning that the property carried prior to adoption of the 1985 Gaithersburg and Vicinity Master Plan and the subsequent (1985) comprehensive rezoning.

For your information, we have attached the following excerpts from the Master Plan:

1. Pages 50 and 53 from the section entitled "Smokey Glen Study Area"

Please note the references in the text of the plan, particularly the third and sixth paragraphs on page 50, to the fact that the basis for the downzoning is due to "... environmental concerns and to respect environmentally sensitive areas." (second paragraph). In the sixth paragraph, it is stated that the area of the property sought to be rezoned by Case No. G-789 contains "... a significant amount of environmentally sensitive land with floodplains, steep slopes, and erodible soils."

2. Figure 17

The area sought to be rezoned is outlined in yellow on Figure 17. Please note that adjacent property to the south was recommended in the Plan to remain in the R-200 classification.

3. Figure 18

Again, the area sought to be rezoned is outlined in yellow.

This Figure shows the “environmentally sensitive areas” on the subject property (downzoned by the 1985 sectional map amendment) and adjacent properties to the south (left in the R-200 zone).

We have calculated the area of the Johnson property (total of 61 acres) that is designated in Figure 18 as “environmentally sensitive areas” to be 41± acres.

The gist of the Applicant’s request for rezoning is that the areas designated on Figure 18 as having “steep slopes” and “soils (erodible and allovia)” are grossly overestimated. For instance, certain soil types that are unsuitable for building when located on steep slopes are shown as “environmentally sensitive” when no steep slopes are nearby. Moreover, soils considered in Figure 18 as “environmentally sensitive” are classified in the current Soils Survey Map as being acceptable for new construction activity.

To demonstrate the exaggerated nature of Figure 18, and the information considered by the Planning Board and County Council in 1985, please be advised that a recent Natural Resources Inventory/Forest Stand Delineation approved by the Technical Staff shows that only 13± acres of the subject property is devoted to “environmentally sensitive areas” as classified in M-NCP&PC’s Environmental Guidelines.

In summary, in 1985 adjacent properties which had already embarked on the development process were allowed to retain their R-200 zoning. The subject property was, however, downzoned based on faulty information. We recognize that master planning is done on a “macro scale.” But the information shown on Figure 18 is not the result of mismapping, but rather a mischaracterization of the environmental sensitivity of the designated features. **It is the Applicant’s contention that had more realistic information been available to the Planning Board and County Council in 1985, the property would not have been downzoned.** That is, there was a “mistake” in the 1985 rezoning of the property from R-200 to RE-2C.

An additional fact that lends support to this position is that subsequent to the 1985 rezoning, the Board of Education acquired 10+ acres of land (outlined on the attached exhibits) for an elementary school now used as the Thurgood Marshal Elementary School. Development of the school is evidence of two factors that support the requested rezoning:



1. Development can occur in this area (in a form of development less adaptable to environment features than the residences proposed by the applicant) without adverse environmental consequences; and
2. Introduction of an elementary school justifies a critical review of the rationale for the 1985 rezoning.

Thank you for your consideration of these preliminary comments. The Applicant and its representatives looks forward to meeting with you next Thursday to discuss these matters in more detail.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody Kline". The signature is written in a cursive, slightly slanted style. Above the signature, there is a thick, dark horizontal line that appears to be a scan artifact or a redaction mark.

Jody S. Kline

JSK:atr

CC: Bill Landfair  
Seekey Cacciatore  
Mark Pfefferle  
Ki Kim  
Mike Conley  
Phil Perrine  
Steve Tawes  
Wes Guckert  
Joe Devereux  
Kevin Fay, Esq.

## SMOKEY GLEN STUDY AREA

The Smokey Glen Study Area is located in the southwest quadrant of the Gaithersburg Vicinity Planning Area north of MD 28, near Seneca Creek State Park. Zoning recommendations for this area are shown in figure 17.

This Plan confirms the R-200 and C-1 Zones on two parcels fronting MD 28. The character of these parcels, 163 acres and 12 acres respectively, has already been determined by existing or proposed development. The Plan recommends additional C-1 zoning (6,300 square feet) for the parcel fronting MD 28 near Quince Orchard Road, adjacent to Suburban Trust Drive-In Bank. This would provide for improved traffic circulation and parking for the bank.

This Plan confirms residential land use for two other areas but recommends a lower density (one home per 2 acres) to reflect environmental concerns and to respect environmentally sensitive areas. (See figure 18.)

One area is located west of Longdraft Road near Marmary Road. It is characterized by an established neighborhood of single-family homes on wooded lots. The residential lots range in size from one-half to three acres. There are several unbuilt parcels. The recommended alignment of the proposed Great Seneca Highway passes along the southwest edge of this area.

The Plan recommends two-acre lots and changing the zoning from R-200 to RE-2. Development under the cluster provisions of the RE-2C Zone would be preferable, but does not appear to be feasible due to current ownership patterns. Mature trees should be protected wherever possible to maintain the natural beauty of the area and to provide protection against erosion, siltation, and reduction of water quality. Presently, this area is served by individual septic systems. It has potential for a separate community sewer system.

The second area proposed for lowered density is located northeast of Riffle Ford Road and adjacent to Seneca Creek State Park. It contains the Smokey Glen Farm and generally vacant land interspersed with scattered single-family homes. Since 1958, Smokey Glen Farm has functioned as a private recreation area, providing outdoor parties for large groups. This area contains a significant amount of environmentally sensitive land with floodplains, steep slopes, and erodible soils. Several tributaries of Great Seneca Creek are located in this area.

The Plan recommends reducing the permitted density to one unit per two acres under the RE-2C Zone. Clustering is strongly encouraged to protect the environmentally sensitive areas. The western portion of this area probably could be served by a gravity sewer line parallel to the existing force main easement.

The Plan recommends development guidelines for the environmentally sensitive areas to help assure the compatibility of the development to surrounding uses. These guidelines should include, but not necessarily be limited to, the following:

- Stormwater management issues will be addressed at time of subdivision proposal;
- Mature wooded areas should be protected, wherever possible. Natural vegetation should remain along all streams;

- Development should be clustered away from streams, steep slopes, severely erodible soils, poorly drained soils, floodplains, and other environmentally sensitive areas;
- Development should be setback or otherwise buffered to prevent traffic noise impacts from MD 28 and Quince Orchard Road; and
- Detached homes should be located adjacent to existing detached homes.

## LAND USE AND ZONING RECOMMENDATIONS FOR OTHER AREAS

### Oakmont Community

Oakmont is a community located to the southwest of the town of Washington Grove. Oakmont is somewhat unique in the Gaithersburg Vicinity Planning Area because many of the homes are relatively old and are situated on large lots. The Oakmont Special Study Plan, which is available separately, was adopted in 1982; the approved and adopted Land Use Plan for Oakmont is shown in figure 19.

### Non-Contiguous Parcels

Several properties outside the study areas are proposed for re-zoning. These properties are discussed in tabular form and are shown in Figure 20.

Because of its size (74 acres), the Washingtonian Industrial Park property merits a separate discussion. The Washingtonian Industrial Park area is "L" shaped and situated on both sides of the proposed alignment of I-370, east of I-270. (See figure 20.) It is bounded on the northwest and northeast sides by a stream valley which separates it from the Summit Hall and Rosemont communities. Part of the stream lies in the city of Gaithersburg's municipal park.

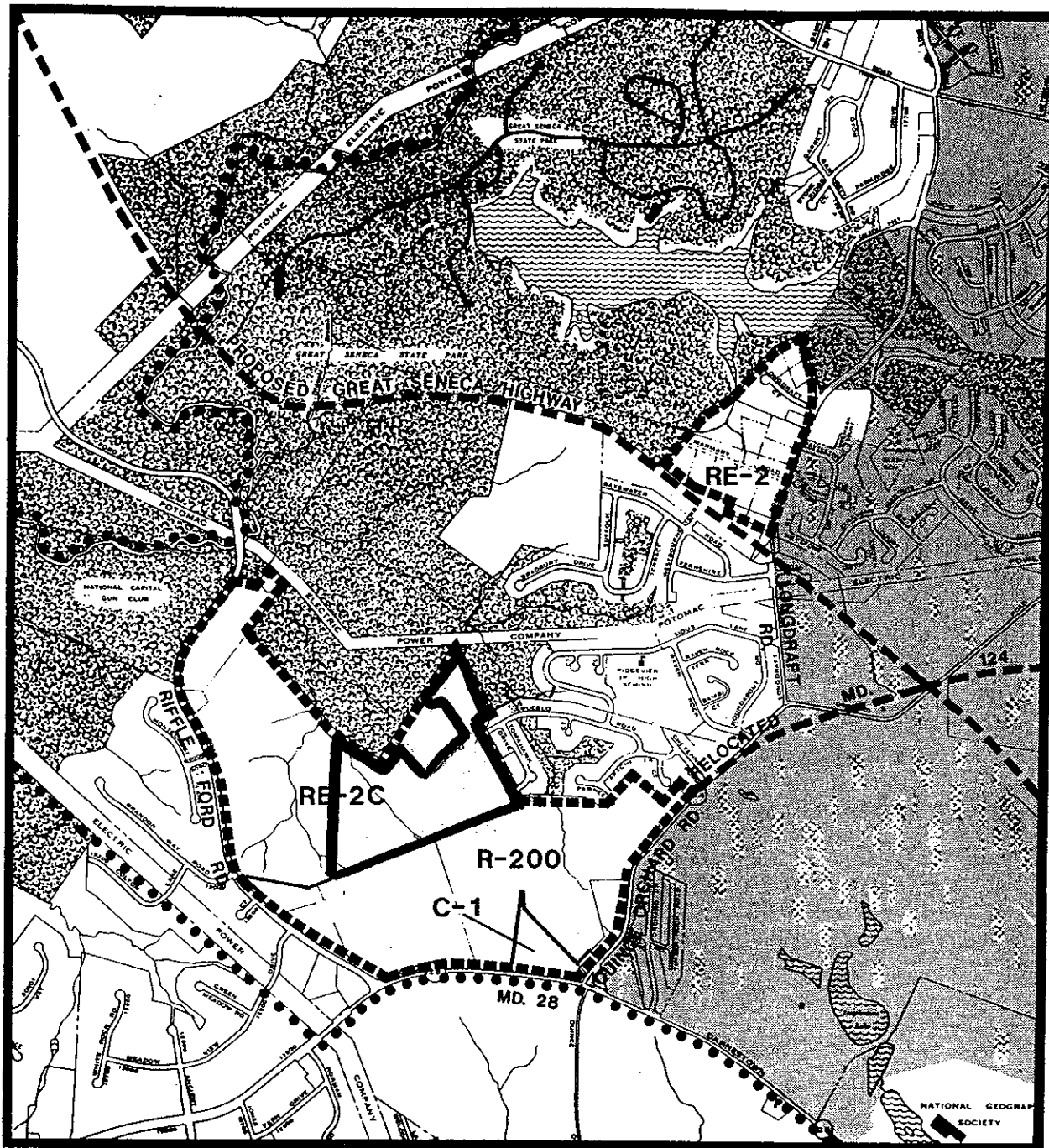
The only access to this parcel is from the south along Industrial Drive. The configuration of homes to the north of this property precludes access from that direction. The alignment for I-370 bisects the property,

The Plan recommends light industrial uses (I-4 Zone) for the majority of vacant land south and north of I-370. A band of R-200 zoning is retained on land adjoining existing residential development.

Other commercial/industrial zones which require site plan review (thereby allowing the Planning Board to review development plans for compatibility with adjoining residential development) would be appropriate here. These zones include O-M (moderate intensity office) and I-3 (industrial park). The staging chapter links rezoning to O-M or I-3 to the construction of certain roads.

### STAGING RECOMMENDATIONS FOR THE MD 28 CORRIDOR

A major concern throughout the Plan process has been traffic congestion along MD 28. MD 28 is currently at capacity and congested during rush hours. Although road improvements are programmed to provide more highway capacity, residents and various governmental jurisdictions fear that unless future development is staged very closely to highway availability, MD 28 will continue to experience unacceptable levels of service.



# SMOKEY GLEN AREA ZONING PLAN

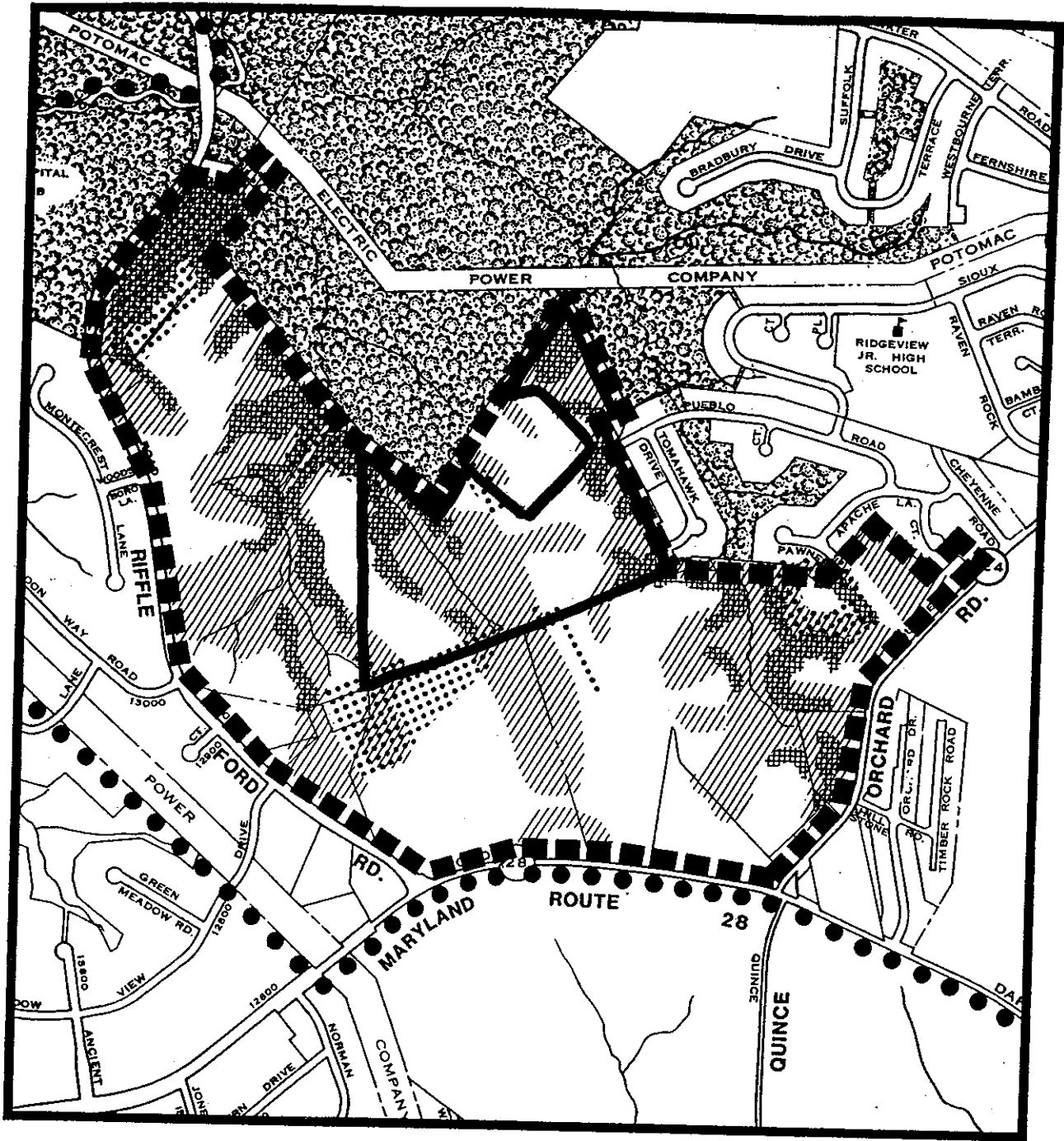
- ..... Planning Area Boundary
- Municipalities
- ▣ Study Area Boundary
- - - Proposed Highway

APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN  
 Montgomery County Maryland

January, 1985



Fig. 17



## SMOKEY GLEN AREA- ENVIRONMENTALLY SENSITIVE AREAS

- Analysis Area Boundary
- ~~~~~ Stream
- ..... Wooded Areas
- ////// Soils (erodible & alluvial)
- ▨ Steep Slopes
- ..... Planning Area Boundary

APPROVED & ADOPTED GAITHERSBURG VICINITY MASTER PLAN  
 Montgomery County Maryland

January, 1985



Fig. 18