THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item # 12

9-26-02

MEMORANDUM

DATE: September 20, 2002

TO: Montgomery County Planning Board

VIA: Joseph R. Davis, Chief, Development Review Division
FROM: A. Malcolm Shaneman, Supervisor, Development Review Division:

REVIEW TYPE: Preliminary Plan Application

PROJECT NAME: Armenian Youth Center
CASE NO. 1-00009

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: Rural Cluster

LOCATION: Northwest Side of Darnestown Road Approximately 2000 feet North of Seneca
VICINITY: Darnestown

APPLICANT: Armenian Youth Center of Washington

SUBMITTED: August 8, 1999
HEARING DATE: September 26, 2002

STAFF RECOMMENDATION: Approval, Subject to Conditions

BACKGROUND

Prior Preliminary Plan Submission and Public Hearings

On February 27, 1987, the Armenian Youth Center of Greater Washington, submitted an application for the approval of a preliminary plan of subdivision of for a forty-four (44) area parcel of property on the side of Darnestown Road (MD 28) west of Seneca Road. The property is located in the Rural Cluster zone. The application proposed to create (7), six (6) lots for single family dwelling units and one (1) lot for the house of worship.

The Planning Board held two hearing on this application the first on July 27, 1989 and the second on July 27, 1995.

The preliminary plan application, when initially filed, in March of 1987 requested approval of six residential lots and two outlots. The outlots were proposed to be the subject of a future application requesting a lot for a church and a lot for elderly housing. This application was first presented to the Planning Board on July 27, 1989. At this public hearing, several important issues were identified and discussed by staff, Board members, and adjacent property owners.
The first issue identified by staff, concerned the outlots for future development. Concern was expressed with whether a development plan for the entire site should be presented as one to consider in their entirety such issues as the adequacy of the open space and the relationship between the proposed uses and the adjacent low density residential development.

Second, staff was concerned with the applicant's proposal to utilize the required cluster open space (then proposed to be shared by the church and the six residences), for recreational uses associated with the proposed church. The staff expressed concern with the use of the open space associated with the residential component and whether such use would undermine the requirements set forth in the Zoning Ordinance. Specifically the open space associated with the cluster development should benefit those residents and not to be overtaken by church recreational uses.

The third issue raised concerned whether the residential open space could be used by the applicant for septic area associated with the church. The application proposed septic fields serving the church to run under the designated open space. In 1989 the Board members suggested that the open space be controlled by a Homeowner's Association comprised of residents of the six residential lots in accordance with the Zoning Ordinance.

The Board was opposed to the applicant's piecemeal approach to development of this site. In the initial subdivision application, development approval was requested for only the residential component with review of the church use later. The Board determined that it was unable to make the findings necessary to grant or deny approval of a cluster proposal without being presented with a proposal for the property in total. (The applicant stated at the meeting that an elderly housing proposal was being deleted).

The applicant requested the Planning Board defer action on the application to provide additional time to adequately address the problems identified at that hearing.

On July 27, 1995 the preliminary plan application was brought back to the Planning Board for public hearing. In response to Planning Board and community concerns, the applicant revised the plan to show the location of the proposed church, the required stormwater management facilities as well as the open space. The revised plan, presented to the Planning Board proposed an open space area adjacent to the six proposed residential lots. The open space area will be owned by a homeowners association. The septic fields for the proposed church are now located on the proposed church lot. The applicant proposed dedication to M-NCPPC of an additional 2 acre of land area immediately adjoining the existing local park. This area is proposed for a future expansion of the parking lot.

The proposed residential lots, Lots 101-106, range in size from 1.5 and 2.0 acres. The residential lots will be provided vehicular access via an extension of existing Indian Run Drive. The proposed church site fronts on MD Rt. 28 and has direst access to that right of way. The septic areas for the residential lots are self-contained within each of those lots. The extensive septic area required for the church is shown on the church lot. This is a major change because the septic area was previously shown on the open space required for the residential lots and was viewed by the Board as an inappropriate use of the residential open space at the prior hearing. After reviewing the modified plan and receiving testimony from staff, the applicant and interested parties the Planning Board approved the preliminary plan application.

CURRENT PRELIMINARY PLAN SUBMISSION

Proposal

The applicant has submitted this new application for preliminary plan approval for the house of worship due to the fact that the old application for that portion of the site has expired. The applicant failed to record the portion of the site that was to accommodate the construction of the house of worship and the area of proposed park dedication. The residential portion including the six (6) lots and an open space parcel was recorded by plat in May 1997. The preliminary plan plans validity period expired in January 1999.

The current preliminary plan application was submitted in September 1999. The applicant has been working to refine the sewage disposal system with the Department of Permitting services and has been working with staff on the disposition of the open space previously represented as Home Owners Association (HOA) property. The applicant had transferred the property to the HOA but retained final authority and control of the uses allowed on the site through a leasing and management agreement. This control was in conflict with the Planning Board's previous approval. The staff and applicant have meet several times regarding this issue and have agreed that a revision to the recorded covenants must be submitted for review prior to the final record plat being recorded. The revision to the covenants will transfer all rights and control to the HOA that currently own the property.

The preliminary plan application for the house of worship has remained constant with the prior approval. Some slight modifications to the septic reserve areas have been depicted to reflect current reviews and the area of park dedication has been redefined to better accommodate the future expansion of the parking facility

RECOMMENDATION: Approval, Subject to the Following Conditions:

(1) At least one-hundred and twenty (120) days prior to the recordation of plat, applicant to submit to the AYC Homeowners Association an agreement to rescind the Leasing and Management Agreement dated January 15, 1998 with a copy to the Commission's Legal Staff. The applicant must submit a signed agreement or affidavit that the AYC HOA failed to return executed agreement within ninety (90) days of receipt of precision agreement

(2) Prior to recording of plat, applicant to submit a final landscape plan for technical staff review. Landscape plan to provide additional buffer areas along the northwest and southeast property lines adjoining the existing residential development

(3) Final record plat to include the area of park dedication and property for the house of worship. Both areas to be recorded simultaneously

(4) Conditions of Department of Permitting Services approval of the stormwater management concept date June 7, 2002

(5) Final access and improvements, as required to be approved by MDSHA prior to issuance of building permit

(6) All road right of way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Potomac Subregion Master Plan, unless otherwise designated on the preliminary plan

(7) Dedication of Darnestown Road (MD 28) as shown on preliminary plan

(8) Record plat to provide a landscape buffer/open space easement area of .66 acres (28,750 square Feet) along the northwest property line

(9) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Bord opinion. Prior to that date a final record plat must be recorded for all the property delineated on the approved preliminary plan, or a request for an extension must be filed

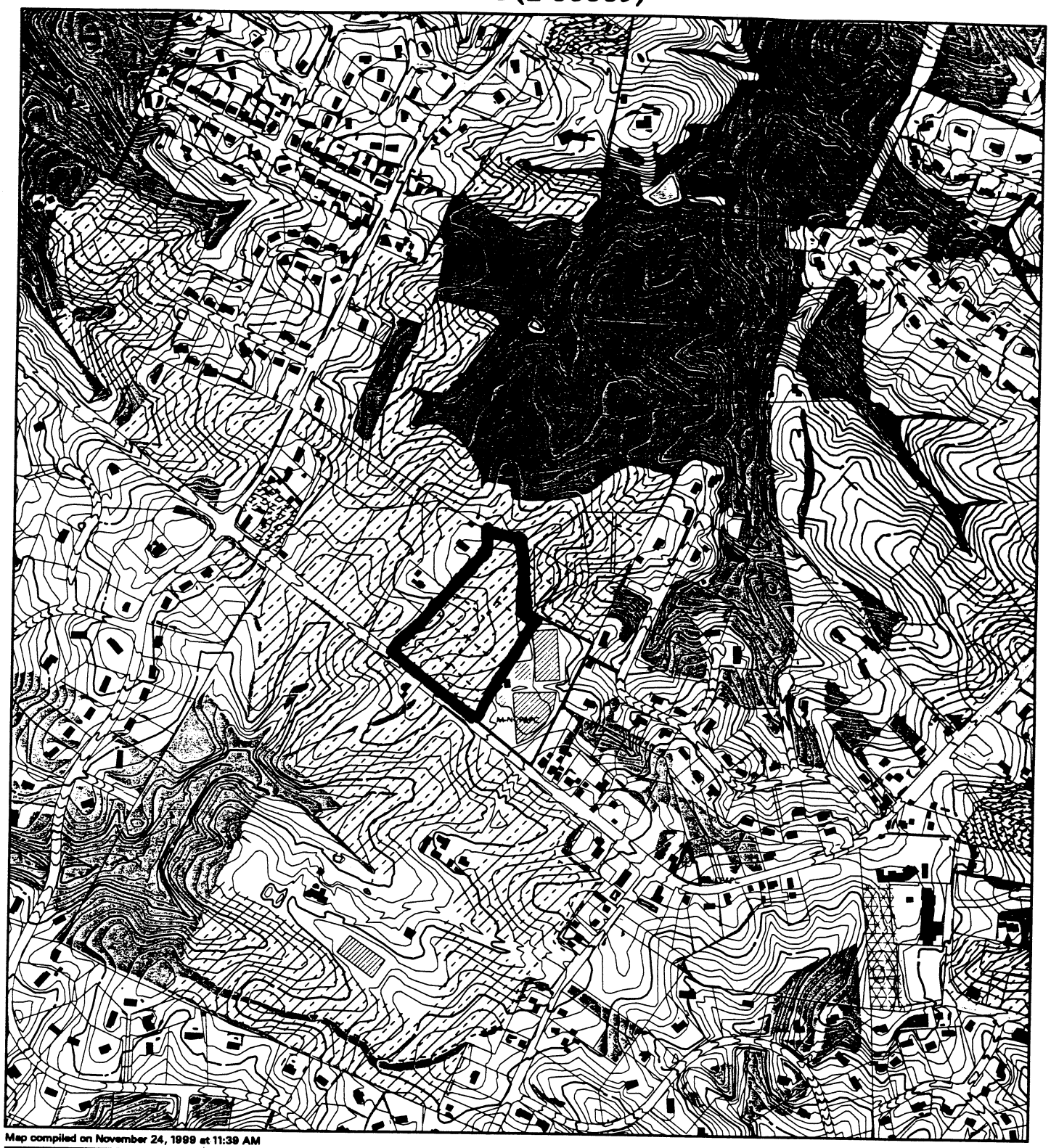
(10) The Adequate Public Facilities (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Bord opinion

(11) Other necessary easements

ATTACHMENTS

VICINITY MAP FOR

ARMENIAN YOUTH CENTER (1-00009)



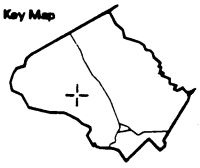
Map compiled on November 24, 1999 at 11:39 AM

NOTICE

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. -

Key Map



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RESOURCES FOR ACTION

Research & Technology Center

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M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

SEWAGE DISPOSAL SYSTEM DESIGN FOR CHURCH,

Projected Peak Daily Flow - 6,500 gpd

Average Percolation Test Rate - 22 min./inch
Loading Rate Per Montgomery County Regulations - 0.20 gpd/sf
Total Initial Trench Area Required - 6,500 gpd / 0.20 gpd/sf = 32,500 sf
Total Initial Trench Length (5' of Stone) - 32,500 lf

Effluent Disposal by Low Pressure Distribution System
Initial System W/4 Disposal Cells - 3,250 lf / 4 = 812 lf/cell
Initial System - 10 trenches/cell @ 81.2 lf/ trench

Three (3) Reserve Systems Shown W/4 Cells Each
Reserve Trench Length - 3,250 lf per Reserve System

Treatment System -
Minimum Capacity - 2 x 6,500 gal = 13,000 gal
Provide 3 - 5,000 gal septic tanks
(tanks to be connected in series - last tank
compartmentalized to provide for effluent pump station)

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARY SHOWN, HEREON IS CORRECT TO MY BEST KNOWLEDGE AND BELIEF BASED UPON EXISTING RECORDS AND VISUAL OBSERVATIONS.

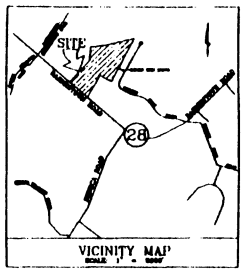
DATE
6/3/88

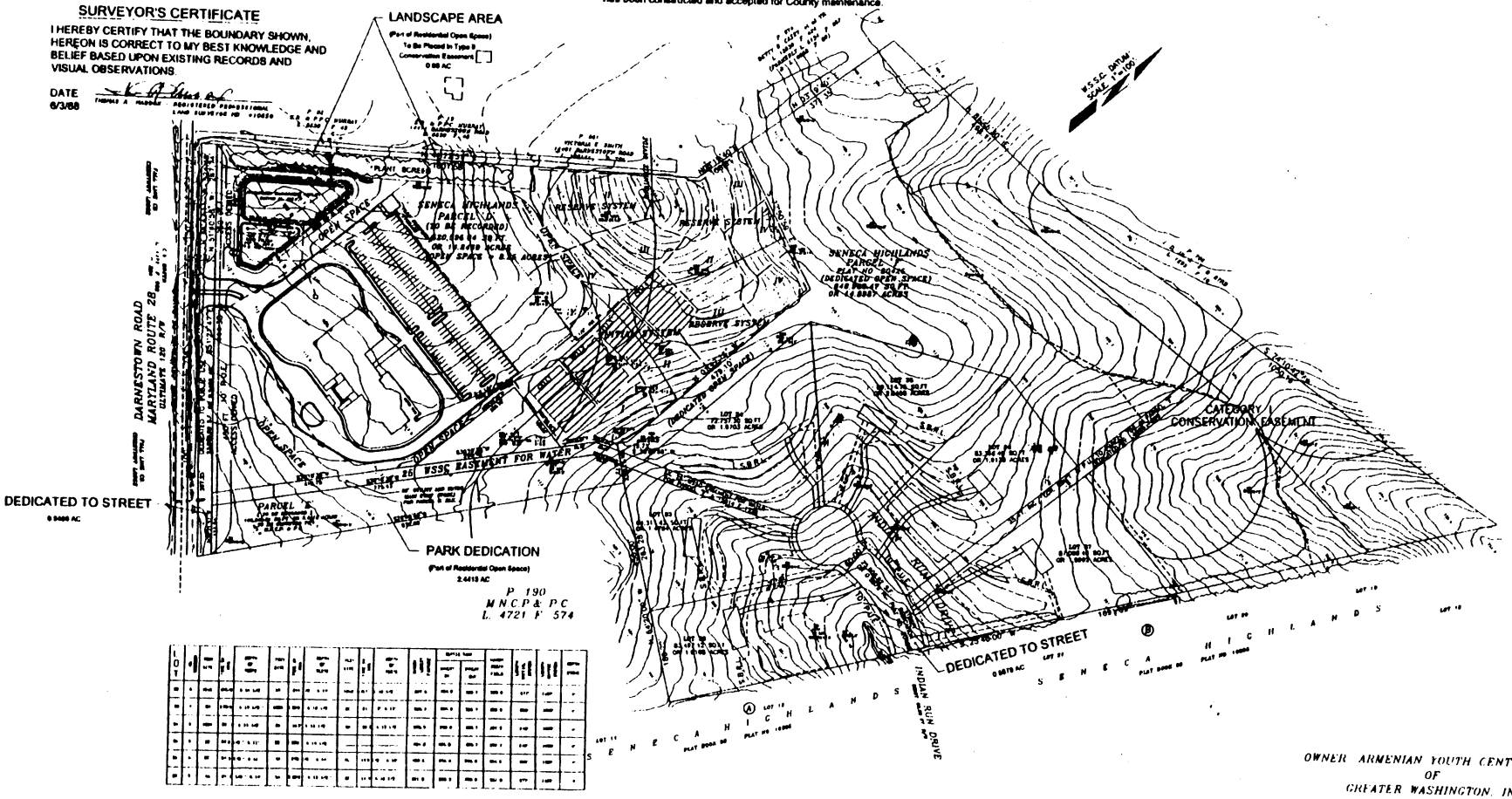
GENERAL NOTES (updated 2/12/01):

1. Area of property - 43.7444 ac
2. Existing zoning - Rural Cluster (RC)
3. No. of lots permitted - 8
4. No. of lots shown - 7 (6 residential lots; 1 church lot)
5. Open space required @ 60% - 26.24664 ac
6. Open space shown - 26.25 ac (see open space notes)
7. Site to be served by public water and on-site septic systems
8. Required setbacks:
   a. Frontyard - 50'
   b. Sideyards - 17' min, 35' total
   c. Rearyard - 35'
9. Stormwater management provided on-site for proposed church
10. Original Preliminary Plan approved by Planning Board on 7/27/95
11. Residential lots with street dedication recorded by plat on 5/23/97 (M-NCPPC Plat Book 603, Plat 99)
12. Existing property owner is Armenian Youth Center of Greater Washington, Inc. Liber 7076 Folio 3
13. Indian Run Drive with approved grade establishment # 10892 has been constructed and accepted for County maintenance.

OPEN SPACE NOTES:

1.	Gross tract area -	43.7444 acres
2.	Total open space required - 43.7444 x 60% =	26.2466 acres
3.	Open space provided (residential portion).	
	a. HOA Parcel 'F' (recorded) -	14.8987 acres
	b. Park Dedication (Parcel E) -	2.4413 acres
	c. Landscape Area (on Parcel D) -	0.66 acres
4.	Total Residential Open Space Provided -	18.00 acres
5.	Additional open space provided (church portion) -	8.25 acres
6.	Total open space shown -	26.25 acres





OWNER ARMENIAN YOUTH CENTER OF GREATER WASHINGTON, INC.
L. 7076 F. 3

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PRELIMINARY PLAN
ARMENIAN YOUTH CENTER
OF
GREATER WASHINGTON, INC.
MONTGOMERY COUNTY, MARYLAND

SCALE 1 INCH = 100 FEET
DATE
REVISED APRIL 30 2002

Date of mailing: December 20, 1995

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

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan No.: 1-87080
Name of Plan: Armenian Youth Center
Date of Hearing: July 27, 1995

Action: **APPROVAL**, subject to conditions. (Motion to approve made by Commissioner Aron, seconded by Commissioner Holmes, with a vote of 4-1. Commissioners Aron, Richardson, Baptiste, and Holmes voting in favor of the motion; Chairman Hussmann voting against the motion).

INTRODUCTION

On February 27, 1987, THE ARMENIAN YOUTH CENTER OF GREATER WASHINGTON, INC., submitted an application for the approval of a preliminary plan of subdivision of property in the Rural Cluster zone. The application proposed to create (7) seven lots on 43.70 acres of land. The application was designated Preliminary Plan 1-87080.

On July 27, 1989 and on July 27, 1995, Preliminary Plan 1-87080 was brought before the Montgomery County Planning Board for public hearing. At the public hearings, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence and the public Preliminary Plan, the Montgomery County Planning Board finds, Preliminary Plan 1-87080 to be in accordance with the purposes and requirements of Maryland Code Ann., Article 28 (*The Regional District Act*) and Chapter 50, Montgomery County Code, as amended (*The Subdivision Regulations*) and approves Preliminary Plan 1-87080, subject to the conditions set forth below.

Planning Board Hearings

The subject preliminary plan application was initially filed in March of 1987 requesting the approval of six residential lots and two outlots. The outlots were proposed to be the subject of a future application requesting a lot for a church and a lot for elderly housing. The application was first presented to the Planning Board on July 27, 1989. At this public hearing, several important issues were identified and discussed by staff, Board members, and adjacent property owners.

The first issue identified by staff, concerned the outlots for future development. Concern was expressed with whether a development plan for the entire site should be presented as one to consider in their entirety such issues as the adequacy of the open space and the appropriate relationship between the proposed uses and the adjacent low density residential development.

Second, staff was concerned with the applicant's proposal to utilize the required cluster open space (then proposed to be shared by the church and the six residences), for recreational uses associated with the proposed church. The staff expressed concern with the use of the open space associated with the residential component and whether such use would undermine the requirements of the Zoning Ordinance that open space be provided on a "parcel for common open space" [emphasis added].

The third issue raised concerned whether the residential open space could be used by the applicant for septic area associated with the church. The application proposed septic fields serving the church to run under the designated open space.

Finally, an issue was raised concerning possible access through the subject site for two properties to the north: P-706; and P-606.

Board members discussed the application, recognizing that clustering of residential lots in the Rural Cluster Zone is justified by the provision of related open space. Board members suggested that the open space be controlled by a Homeowner's Association comprised of residents of the six residential lots in accordance with the Zoning Ordinance. Board members also determined that open space must be provided in a specific, defined parcel and not as space surrounding buildings.

The Board was opposed to the applicant's seemingly piecemeal approach to development of this site. In the initial subdivision application, development approval was requested for only the residential component with review of the church use later. The Board determined that it was unable to make the findings necessary to grant or deny approval of a cluster proposal without being presented with a proposal for the property in total. (The applicant confirmed at the meeting that an elderly housing proposal was being deleted).

The applicant defended the proposed plan, stating that the proposed open space would be made available to the six residential lots. The applicant was willing to have "shared use" of the open space. Noting that such arrangements existed in another rural cluster development (a shared stable use), the applicant suggested that the proposal satisfied cluster open space requirements.

Neighbors testified in opposition to the application expressing concerns noted in the above discussion, as well as identifying storm water problems. Adjacent property owners objected to the intensity of the church use and the perceived incompatibility of a large church along the frontage of MD Rt. 28, which is designated as a state scenic highway.

After discussing a motion to deny the application, the Board decided to grant the applicant's request to defer the application to address the problems identified.

SUBJECT PROPERTY

The subject property is located on the northeast side of Darnestown Road (MD Rt. 28) adjacent to Darnestown Local Park and at the terminus of Indian Run Drive (connecting to an adjacent subdivision), in the Darnestown-Travilah area (see Attachment 1, Tax Map). The intersection of Seneca and MD Rt. 28 is approximately 2,000 feet to the southeast of the property. Indian Run Drive will provide access to the residential units in the northeast of the property. The church will be located in the southwest area of the property. The cluster open space will be adjacent to those two lots. The applicant will dedicate approximately 2.3 acres immediately adjacent to the Darnestown Local Park, allowing for the expansion. (See Attachment II, Preliminary Plan).

DISCUSSION AND FINDINGS

Following due notice, Preliminary Plan 1-87080 was presented to the Planning Board for further hearing on July 27, 1995. At the hearing the Board incorporated the record of the July 27, 1989 proceeding and received additional testimony and evidence. In response to Planning Board and community concerns, the applicant revised the plan to show the location of the proposed church, the required stormwater management facilities as well as the open space.

The revised plan, presented to the Planning Board proposed an 18 acre open space area adjacent to the six proposed residential lots. The area will be owned by a homeowners association comprised of the 6 residential lots. This open space parcel contains the 60% open space required in the Rural-Cluster Zone. The septic fields for the proposed church are now located on the proposed church lot. The applicant proposed dedication to M-NCPPC of an additional 2 acre area immediately adjoining the existing local park. In addition, the 7.95 acres of open space required for the church lot is proposed to be provided on the church lot.

The proposed residential lots, Lots 101-106, range in size from 1.5 and 2.0 acres. The residential lots will be provided vehicular access via an extension of existing Indian Run Drive (see Attachment 2). The proposed church site (Lot 107) fronts on MD Rt. 28 and includes 13.25 acres of land. A total of 83 parking spaces are shown to the rear of the church. This parking is slightly more than the 75 spaces (minimum number) required to accommodate a church with a seating capacity for 250 to 300 persons. Access for the church will be from MD Rt. 28.

The septic areas for the residential lots are self-contained within each of those lots. The extensive septic area required for the church is shown on the church lot. This is a major change because the septic area was previously shown on the open space required for the residential lots and was viewed by the Board as an inappropriate use of the residential open space.

In its testimony before the Board, staff concluded that the revised preliminary plan meets the open space requirements as contained in both the Zoning Ordinance and the Subdivision Regulations. Staff calculated that

the statutorily required percentage of "common open space" (to serve the residential component of the project). Staff recommended that the preliminary plan must be revised to clearly show that at least 60% of the church lot will be designated for and maintained as open space to meet the open space requirements of the Rural Cluster Zone.

Adjacent property owners opposing this decision, Steven and Pamela Murray, through their attorney, Stanley Abrams, Esq., suggested that the preliminary plan does not comply with the purposes of the Rural Cluster Zone and that the proposed septic area for the church cannot be located on the church lot within the area designated open space area.

In a letter to the Planning Board, Mr. Abrams identified five points of opposition to the proposed development. The points were reiterated in testimony before the Planning Board and are set forth below:

The proposed use of open space areas for septic system disposal on the church lot (Lot 107) is still contrary to the holding in the Brinklow decision in GLP Development v. M-NCPPC (unreported 7/31/90, by the Maryland Court of Special Appeals).

The Murrays assert that the proposed use of open space areas for septic system disposal on the church lot (Lot 107) remains contrary to the Board's past practice and policy.[1]

In the GLP decision, the Court affirmed the Planning Board denial of a subdivision plan, reflecting the placement of underground septic pipes on adjacent property in the Rural Cluster Zone, and found that such a use was not a permitted use in that zoning district to serve an adjacent commercially zoned property. The Murrays contend that in the current application submittal, the 18 acres of open space dedicated to the 6 residential lots, are dissimilar to the 9.08 acres that are delineated as open space for the church lot. The Murrays believe that the septic fields for the church occupy a substantial portion of the 9.08 open space acreage provided for Lot 107.

They suggested that not only is the open space associated with the church site not separately delineated, but that it still is being used to support septic system facilities. The Murrays believe that Sections 59-C-9.51 and 9.52 of the Montgomery County Code, preclude the placement of the church septic fields on the church open space.

The Board found that its policy, explained in the Brinklow/GLP decision and affirmed by the Court, precluded placement of underground septic pipes serving commercially zoned property on property zoned Rural Cluster. The Board determined that allowing septic fields in the Rural Cluster Zone would facilitate a larger commercial development than would be

[1] The Murray's refer to the Court of Special Appeals' July 31, 1990 unreported decision in GLP Development v. M-NCPPC which affirmed the Planning Board's denial of the placement in agricultural zoned land of septic field serving commercially zoned property. The Board determined that use of agricultural land to house septic fields for commercial property would facilitate a larger commercial development than anticipated by the zone and by the applicable master plan.

possible if the septic fields serving the commercial development were maintained on the commercially zoned site. Use of the Rural Cluster land in this manner is not permitted by the Zoning Ordinance and was inconsistent with the Sandy Spring/Ashton plan.

Earlier versions of Preliminary Plan 1-87080 reflected church septic fields in residential open space. The applicant has modified the plan to show a single lot for the church and 6 residential lots. The church lot is 60% open space and utilizes its own space for its own septic fields. The residences will also have a homeowner's association to own and manage its separately calculated open space.

The open space area for the residential units must be conveyed to the homeowner's association -- not merely "dedicated", as proposed by this preliminary plan.

In their second point of opposition, the Murrays contend that the open space area for the residential units must be conveyed to the homeowner's association--not merely "dedicated", as proposed by this preliminary plan.

The Murrays claim that the open space areas are not part of residential Lots 101-106, and therefore, a "dedication" should not be permissible. They assert that the purpose of requiring outright conveyance of open space to a homeowners or property owners association, as opposed to dedication, is to afford residential lot owners ownership and control over the common open space. Finally, they conclude that the only instance where something less than outright ownership is permitted is where the open space may be provided by easement on the residential lot so that the lot owner maintains control over the open space area.

The Murrays fear that dedication (and not transfer) of the open space allows the Church to own and control the residential open space. They are concerned that the Church may use this open space for its activities, or for the development of a Phase II Community Building.

Condition 4 proposed by the Planning Staff, and adopted as a condition of this approval requires creation of a homeowners association with governing documents submitted and approved by the M-NCPPC. Not-withstanding, the creation of open space for purposes of the Rural Cluster zone is governed by Section 59-C-9.53(d) which permits recordation of open space as either:

(1) A parcel for common open space;

(2) An outlet; or

(3) An open space easement on a residential lot, provided that the area is clearly delineated and its reservation as open space is clearly stated on the record plat in the land records of Montgomery County.

The current proposed plan does not reflect the entirety of development for the property; consequently, the Board cannot address the full

impact of the cluster development, either on adjacent properties or upon the retention of scenic vistas (Sec. 59-C-9.53(g)(3)).

The Murrays believe that the Applicant reduced it's proposed development in order to avoid the need to obtain from the Montgomery County Council an amendment of the Ten Year Sewer and Water Plan for installation of an 11,000 gallon per day septic system. They suggest that the Church has future, undisclosed plans for an additional free-standing community building.

The initial plan which showed the Phase 1 development as the Church, parish hall, ancillary office and classrooms. It showed Phase 2 as a "community building" for which there is no information on the current plan. The Murrays are particularly concerned that a future community building will be placed behind or along-side what is the proposed parking area on the current plan, in very close proximity to their common property line.

However, the plan presented to the Board encompasses the entirety of the site. The conditions of approval proposed by the Planning staff, and adopted by the Board in this approval, require execution of an agreement between the Applicant and the M-NCPPC limiting development to a House of Worship and other uses as shown on the plan approved and described in the Applicant's July 21, 1995 traffic statement.

Additions or changes to the plan as proposed necessitate revision of this preliminary plan with notice to all adjacent and confronting property owners. Changes or modifications would necessitate regulatory resubdivision of the lots approved herein as well as compliance with the applicable provisions of the Montgomery County Code.

The Murray property will be adversely impacted by the stormwater management element of the subject preliminary plan.

The Murrays are concerned that the current plan provides for a large stormwater management retention facility adjacent to their property, with what appears to be a release pipe from the pond directing water to their property. They believe that the stormwater management component of this plan has been conditionally approved by the Montgomery County Department of Environmental Protection, contingent upon their granting a permanent drainage easement. The Murrays have not been approached about granting such an easement, and are unwilling to do so. Given their refusal to grant the required permanent easement, the Murrays assert that the preliminary plan should only be approved with an independent stormwater management plan.

Currently, the Department of Environmental Protection's approval of the applicant's stormwater management plan requires a permanent drainage easement from the Murrays (which they do not wish to grant). This contingent stormwater management approval does not preclude the Board's regulatory approval of the preliminary plan, pursuant to Section 50-35. Assuming compliance with other regulatory requirements the Board has incorporated the Department of Environmental Protection contingency into the conditions of Planning Board approval. From a practical standpoint,

the applicant will be unable to proceed to record plat until all conditions of approval are met.

The proposed plan does not meet the guidelines for Cluster Option development in the Rural Cluster Zone (Sec. 59-C-9.53) or the purposes of the Cluster Option provisions.

The Murrays assert that the plan for cluster development does not indicate an arrangement of residential development so as to reduce, as much as possible, any nuisance, jeopardy or conflict between uses with the tract and those in relation to adjoining or nearby property, particularly the Murrays' property in order to demonstrate compatibility with existing adjacent, and in close proximity, to the Murrays' property, when the placement could occur at more remote distances anywhere within the confines of this 43-acre parcel, reflects a failure of compliance with the Zoning Ordinance. The bulk of the development is, in the Murray's view, placed directly in front of the Murray's home, and their home will face into the proposed large building and parking area without separation by a public street, buffer or landscape separation.

Furthermore, the Murrays contend that the plan of cluster development, under Zoning Ordinance requirements, must show how scenic vistas are being preserved or enhanced, and reflect an arrangement which has considered the visual impact of the development on those vistas. They believe that the subject plan fails in this regard. They push that the scenic vistas of this property are not enhanced by the location of an extremely large sized building, close to the MD Rt. 28 frontage, which they state, if anything, blocks vistas of a large majority of this site. They claim that one does not obtain a feeling of open space with this type of building configuration.

The Murrays further suggest that the sitting of the church/parish all is solely related to gaining maximum visibility from MD Rt. 28, and has nothing to do with enhancing or preserving scenic vistas. Further, they believe that significant scenic vistas would be "lost, obliterated or substantially diminished in value due the cluster development" proposed here. They claim that this may not be the case if the resident component were "flipped" with the church lot so that the Murrays would be faced with compatible residential uses, as opposed to a large, intensely utilized facility such as proposed by the applicant.

Section 59-C-9.53 outlines the factors that may be considered by the Planning Board is reviewing a plan proposing cluster development. This section allows the Planning Board, in the exercise of its collective judgment, to determine whether a cluster development should be approved.

For these reasons, Mr. and Ms. Murray brought opposition to the plan, and urged the Planning Board disapprove the subject preliminary plan.

The Board considered the several concerns expressed on behalf of Mr. and Mrs. Murray as well as the planning and legal staff's response to the concerns. As explained above, the Planning Board believes the five

concerns expressed by the Murrays have been appropriately addressed through the conditions imposed with this Opinion.

The Board further notes that the questions of compliance with Section 59-C-9.53 is a determination properly made by the Board. The Planning Board recognizes that the construction of a church, or any structure has some effect upon previously undeveloped land. However, the plan before the Board proposes development of only 6 home and 1 church.

The Board finds that plan, as modified by the conditions imposed herein provides an arrangement of residential development that offers the maximum reasonable protection for the open space required under the zone. The vast undeveloped acreage of land, with its untouched natural foliage, that exist between the required open space and the Darnestown Local Park, sufficiently maintain the scenic vistas of this particular area. Due to the required open space, the dedicated land, and the preserved park, approximately, 26 of the 43 acres of land will remain intact and will be preserved in an undeveloped state.

The Board finds the development provides an arrangement of residential development that reduces, as much as possible any nuisance, jeopardy or conflict between the residential land and any on site and nearby agricultural uses and that the plan is compatible with existing development in this area. The plan provides for 6 new homes that blend easily into an existing neighborhood of similar character and zone. Placement of the homes as shown on the plan will allow the minimum clearing of trees, grading, stream disturbance or similar dislocations of the natural environment.

A house of worship is a constitutionally protected and a permitted use in any zone. The proposed cluster development creates 7 lots, including one for the church. The lots must all meet the required setbacks within the zone, and the plan must have approved septic fields as well as the statutorily required open space. This arrangement creates site restrictions that constrict the size of the church structure in a manner greater than would a non-cluster development on this site.

The citing the church as proposed, is a superior plan than what might be achieved by reversing the sites of the houses and the church. In the presently proposed location, the church meets the Board's preference of giving the church parishioners access to MD Rt. 28, rather than encouraging traffic to drive through the existing neighborhood. There is approximately 150 feet between the church and MD Rt. 28, which gives the site a recessed placement, thus adding to beneficial arrangement of this plan.

As discussed above, the plan provides the open space for both the church lots and the residential lots. The open space for the residential lots will be deeded to a newly created homeowners association.

There is approximately 2,250 feet of open space and parkland between the driveway to the church off MD Rt. 28, and the MD Rt. 28 and Seneca Road intersection. The Board finds that this open land will sufficiently maintain the scenic vistas, and that the requirement of the 60% open space,

will more than provide for the necessary preservation of trees and foliage, which are so critical to the disputed scenic vistas.

Based upon the testimony, evidence and exhibits presented as well as the contents of the preliminary plan file, the Planning Board finds the preliminary plan as modified, to be in accordance with the Montgomery County Code as well as Maryland Code Ann., Article 28 and approves the plan, subject to the following conditions:

(1) Prior to the recording of plats, the Applicant must enter into an agreement with the Planning Board to limit development to a House of Worship and associated uses as outlined in the applicant's traffic statement dated July 21, 1995.

(2) Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation (as part of the preliminary plan). The Applicant shall meet all conditions prior to recording of plats or MCDEP issuance of sediment and erosion control permit, as appropriate.

(3) Revise the residential open space delineated on preliminary plan to delete the 30' panhandle proposed along the northwest property line of the House of Worship lot (Lot 107). This area should be incorporated into Lot 107.

(4) Record plat to reference the 18-acre open space parcel associated with the 6 residential lots. Parcel is to be conveyed to the Homeowner's Association (HOA). The HOA documents must be submitted technical staff review and approval prior to recording of plats.

(5) Delineate area encompassing the 60% open space required for Lot 107.

(6) Provide minimum 30' wide landscaped buffer strip along the northwest property line to provide a wooded buffer between House of Worship and adjacent residential developments.

(7) Prior to recording of plats, submit for technical staff approval a landscape and lighting plan to provide buffers as outlined in condition #5 and screening along Darnestown Road (MD Rt. 28).

(8) Dedication of an area of approximately 2.4 acres for future expansion of the Darnestown Local Park. Technical Staff approval of exact area and location prior to recording of plats.

(9) Record plat to reflect delineation of a conservation easement over the areas of tree preservation and afforestation.

(10) Access and improvements as required and approved by MDSHA.

(11) Conditions of MCDEP stormwater management approval dated February 8, 1995. If the condition for drainage easement cannot be implemented, then prior to record plat, applicant must secure MCDEP approval of a revised concept that utilizes on site quantity and quality control, and removes the need for an easement on the adjacent property.

(12) Conditions of Health Department approval dated June 16, 1995 and reaffirmed July 16, 1995.

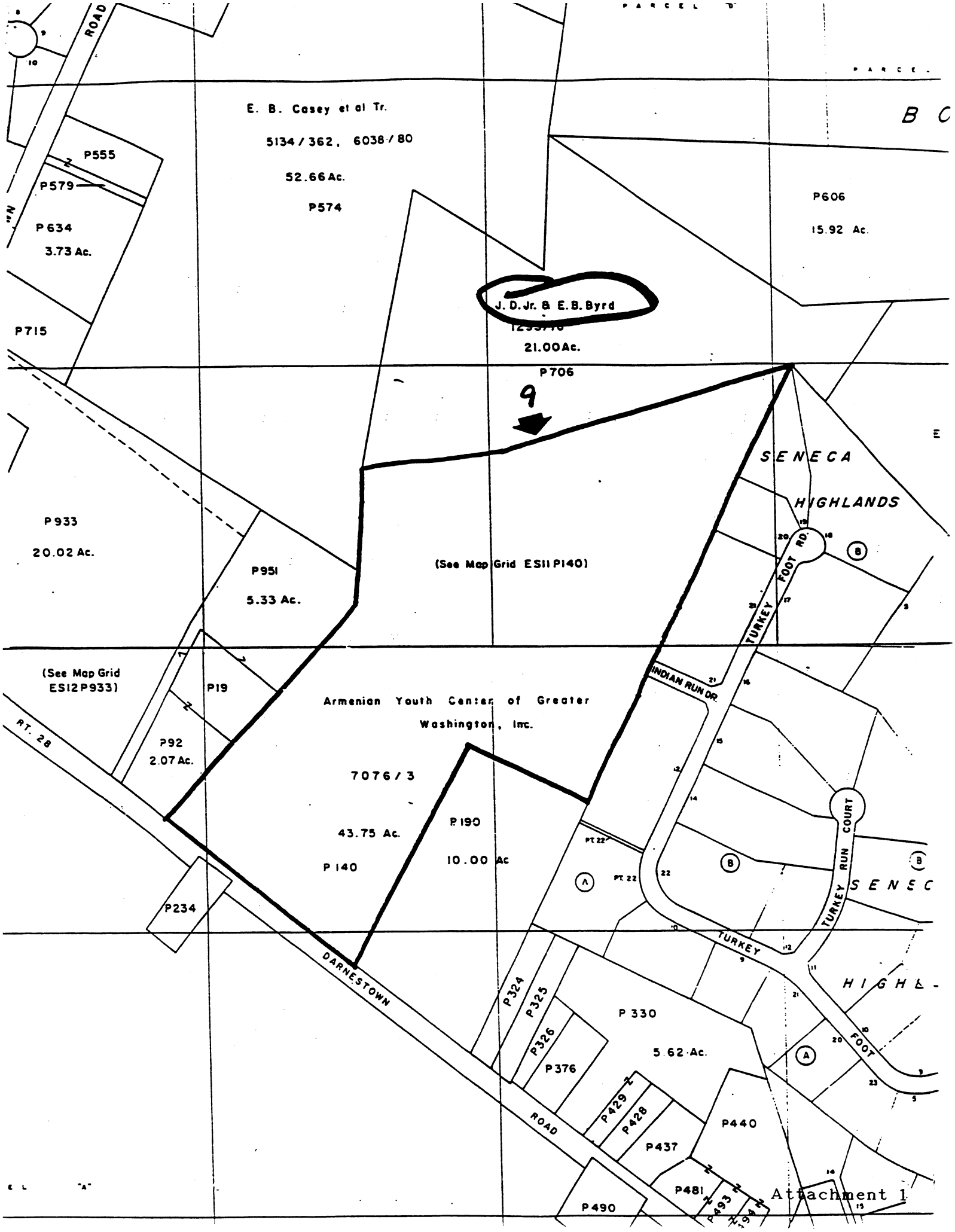
(13) Dedication of Darnestown Road (MD Rt. 28) 60' off center line and provide 60' right-of-way and termination of Indian Run Drive.

(14) Other necessary easements.

(15) Applicant to provide an ingress/egress easement to accommodate future access for Parcel 706. The location and width of this easement (and any related PUE) must be finalized prior to record plat submission and must be shown on the plat.

(16) This preliminary plan will remain valid until JANUARY 20, 1999. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

ATTACHMENTS (2)
g:opinions\armenian.op



Attachment 1

Attachment 2

Item # 12

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

M E M O R A N D U M

DATE: September 20, 2002

TO: Montgomery County Planning Board

FROM: A. Malcolm Shaneman
Development Review Division
(301) 495-4587

SUBJECT: Informational Maps for Subdivision Items on the Planning Board's Agenda for September 26, 2002.

Attached are copies of plan drawings for Items #01, #05, #08, #10, #11, #12. These subdivision items are scheduled for Planning Board consideration on September 26, 2002. The items are further identified as follows:

Agenda Item #01 - Preliminary Plan 1-99088
Arlington East

Agenda Item #05 - Preliminary Plan 1-02099
Silver Spring Square

Agenda Item #08 - Preliminary Plan 1-02094
Green Hills Subdivision

Agenda Item #10 - Preliminary Plan 1-03002
Manor Spring West

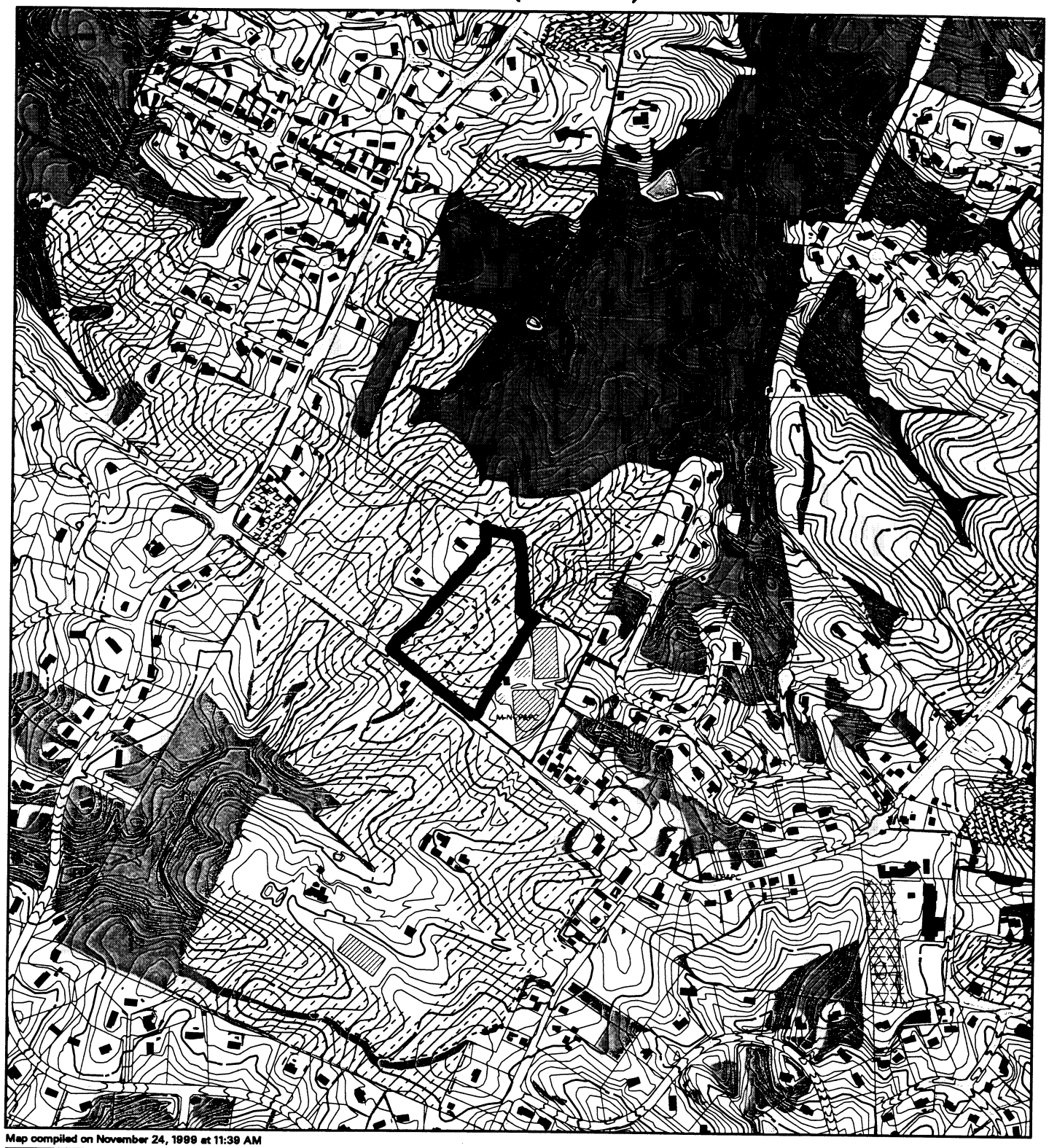
Agenda Item #11 - Subdivision Regulation Waiver SRW-03000
Arcola

Agenda Item #12 - Preliminary Plan 1-00009
Armenian Youth Center

Attachment

VICINITY MAP FOR

ARMENIAN YOUTH CENTER (1-00009)



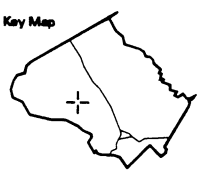
Map compiled on November 24, 1999 at 11:39 AM

NOTICE

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. -

Key Map



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RESOURCES FOR ACTION

Research & Technology Center

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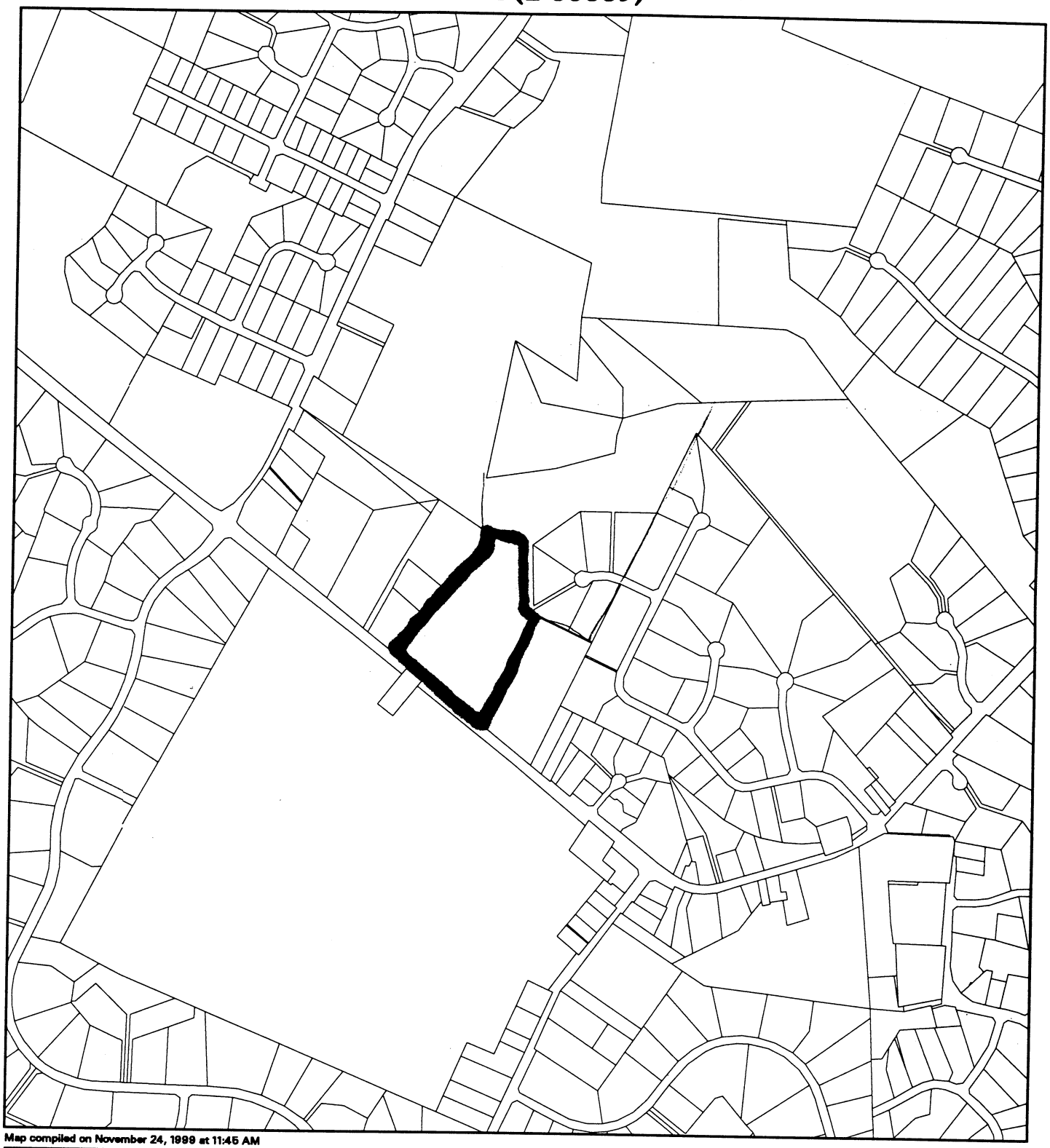
1 : 12000

M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

VICINITY MAP FOR

ARMENIAN YOUTH CENTER (1-00009)

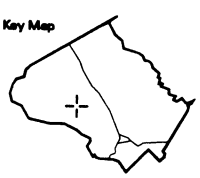


Map compiled on November 24, 1999 at 11:45 AM

NOTICE

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. -



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RESOURCES FOR ACTION

Research & Technology Center

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M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

SEWAGE DISPOSAL SYSTEM DESIGN FOR CHURCH;

Projected Peak Daily Flow - 6,500 gpd

Average Percolation Test Rate - 22 min./inch
Loading Rate Per Montgomery County Regulations - 0.20 gpd/sf
Total Initial Trench Area Required - 6,500 gpd / 0.20 gpd/sf = 32,500 sf
Total Initial Trench Length (5' of Stone) - 32,500 lf

Effluent Disposal by Low Pressure Distribution System
Initial System W/4 Disposal Cells - 3,250 lf / 4 = 812 lf/cell
Initial System - 10 trenches/cell @ 81.2 lf/ trench

Three (3) Reserve Systems Shown W/4 Cells Each
Reserve Trench Length - 3,250 lf per Reserve System

Treatment System -
Minimum Capacity - 2 x 6,500 gal = 13,000 gal
Provide 3 - 5,000 gal septic tanks
(tanks to be connected in series - last tank
compartmentalized to provide for effluent pump station)

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARY SHOWN, HEREON IS CORRECT TO MY BEST KNOWLEDGE AND BELIEF BASED UPON EXISTING RECORDS AND VISUAL OBSERVATIONS.

DATE: 6/3/88

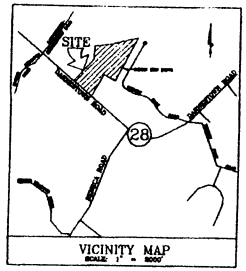
THOMAS A. HADDOX - REGISTERED PROFESSIONAL LAND SURVEYOR NO. #10436

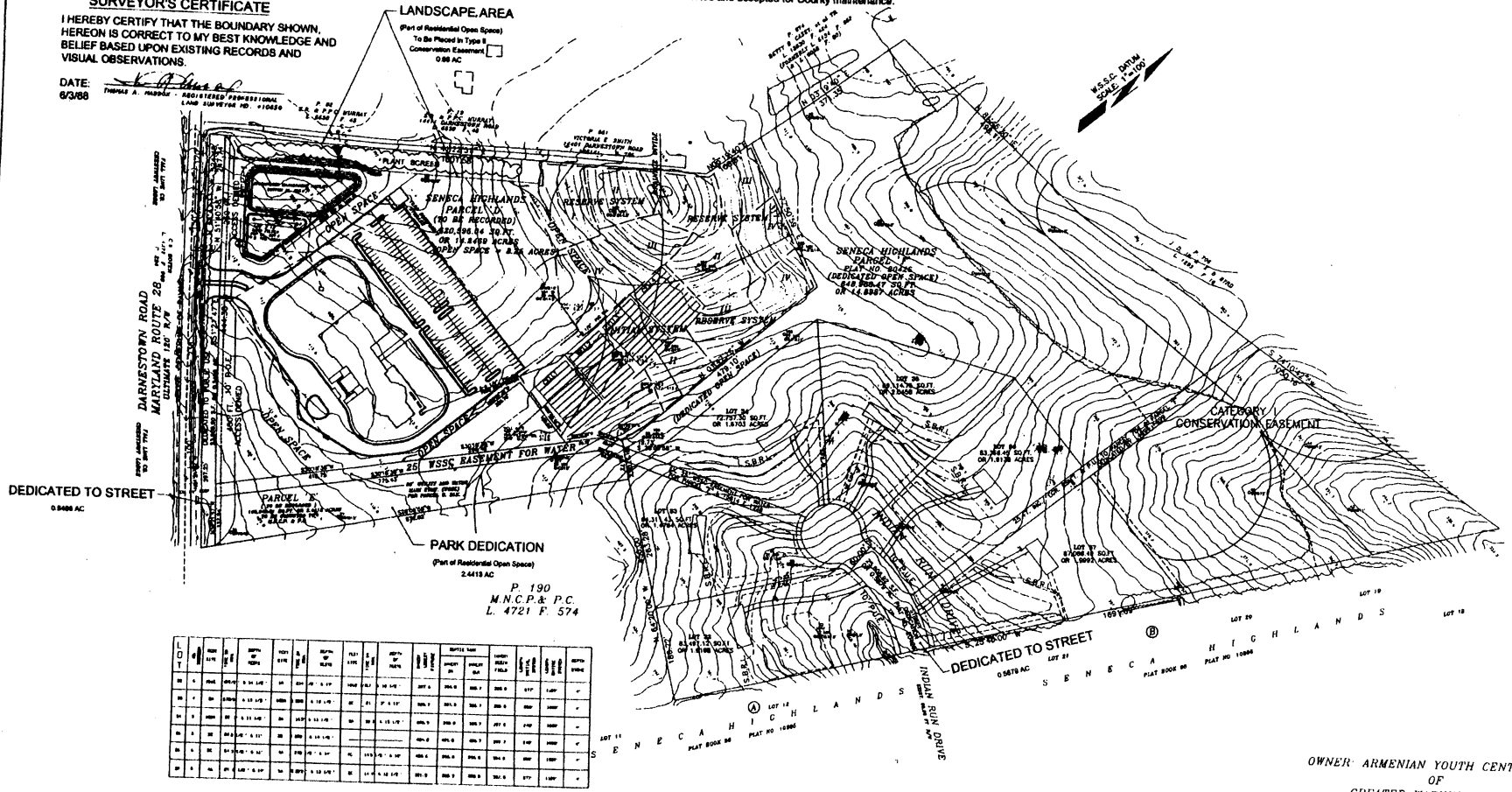
GENERAL NOTES (updated 2/12/01):

1. Area of property - 43.7444 ac
2. Existing zoning - Rural Cluster (RC)
3. No. of lots permitted - 8
4. No. of lots shown - 7 (6 residential lots; 1 church lot)
5. Open space required @ 60% - 26.24664 ac
6. Open space shown - 26.25 ac (see open space notes)
7. Site to be served by public water and on-site septic systems
8. Required setbacks:
   a. Frontyard - 50'
   b. Sideyards - 17' min, 35' total
   c. Rearyard - 35'
9. Stormwater management provided on-site for proposed church
10. Original Preliminary Plan approved by Planning Board on 7/27/95
11. Residential lots with street dedication recorded by plat on 5/23/97 (M-NCPPC Plat Book 603, Plat 99)
12. Existing property owner is Armenian Youth Center of Greater Washington, Inc. Liber 7076 Folio 3
13. Indian Run Drive with approved grade establishment # 10892 has been constructed and accepted for County maintenance.

OPEN SPACE NOTES:

1. Gross tract area - 43.7444 acres
2. Total open space required - 43.7444 x 60% = 26.2466 acres
3. Open space provided (residential portion):
   a. HOA Parcel 'F' (recorded) - 14.8987 acres
   b. Park Dedication (Parcel E) - 2.4413 acres
   c. Landscape Area (on Parcel D) - 0.66 acres
4. Total Residential Open Space Provided - 18.00 acres
5. Additional open space provided (church portion) - 8.25 acres
6. Total open space shown - 26.25 acres





LOT	AREA SQ.FT.	AREA AC.	WIDTH @ BRL	WIDTH @ RDWY	FLAG LOT	SEPTIC TANK				
						AREA SQ.FT.	AREA AC.	WIDTH @ BRL	WIDTH @ RDWY	
1	43,560	1.000	150'	150'		207.5	204.5	200.7	200.5	0.77
2	43,560	1.000	150'	150'		209.1	207.5	200.7	200.5	0.80
3	43,560	1.000	150'	150'		209.1	207.5	200.7	200.5	0.80
4	43,560	1.000	150'	150'		209.1	207.5	200.7	200.5	0.80
5	43,560	1.000	150'	150'		209.1	207.5	200.7	200.5	0.80
6	43,560	1.000	150'	150'		209.1	207.5	200.7	200.5	0.80

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SARKIS K. NAZARIAN
DEVEL. & CONSTR. CONSULTANT
9509 FALLS ROAD
POTOMAC, MARYLAND 20854
TEL (301) 299-2569
FAX (301) 983-1300

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240

PRELIMINARY PLAN
ARMENIAN YOUTH CENTER OF GREATER WASHINGTON, INC.
MONTGOMERY COUNTY, MARYLAND

SCALE: 1 INCH = 100 FEET
DATE:
REVISED: APRIL, 30 2002

OWNER: ARMENIAN YOUTH CENTER OF GREATER WASHINGTON, INC.
L. 7076 F. 3