



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
9/30/10



MEMORANDUM

DATE: September 17, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: Erin Grayson, Senior Planner (301)-495-4598 *EG*
erin.grayson@mncppc-mc.org
Development Review Division

REVIEW TYPE: Pre-Preliminary Plan of Subdivision

APPLYING FOR: 1 lot for 1 one-family detached dwelling unit

PROJECT NAME: Hungerford Property

CASE #: 720080110

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT

LOCATION: On Martinsburg Road, approximately 4000 feet southeast of Wasche Road

MASTER PLAN: Agriculture & Rural Open Space

APPLICANT: Catherine Hungerford

ENGINEER: CAS Engineering

FILING DATE: December 27, 2007

HEARING DATE: September 30, 2010

RECOMMENDATION: Binding Planning Board approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 1 lot for 1 one-family detached residential dwelling unit.
- 2) The Applicant must dedicate right-of-way for Martinsburg Road along the property frontage to provide a total of 40 feet from the centerline as shown on the preliminary plan.
- 3) The Applicant must submit a final forest conservation plan for review and approval by MNCPPC Environmental Planning Staff prior to submission of a record plat. The final driveway location with approved site distance must be reflected on the final forest conservation plan.
- 4) The forest conservation plan and record plat must reflect a Category I easement over all areas of stream valley buffer and forest conservation.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS), Well and Septic Section approval dated June 23, 2010. These conditions may be amended by MCDPS, provided they do not conflict with other conditions of the preliminary plan approval.
- 6) The Applicant must satisfy provisions for access and improvements as required by the Montgomery County Department of Transportation (MCDOT) prior to issuance of access permits.
- 7) At the time of record plat application, the Applicant must provide verification to MNCPPC staff of the availability of a TDR for the proposed lot.
- 8) The Applicant must verify that the National Park Service agrees with the final property boundary prior to approval of the record plat.
- 9) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION

The Hungerford Property, “Property” or “Subject Property”, contains approximately 14.03 acres zoned RDT on Martinsburg Road, approximately 4000 feet southeast of Wasche Road. The Property was recorded by deed in 1979 and is a parcel. Property zoned RDT surrounds the Subject Property. The C&O Canal, under the jurisdiction of the National Park Service, is located west of the Property. Beyond the C&O Canal is the Potomac River, and the Property lies within the Potomac River Direct Watershed (Use I-P). Allegheny Power right-of-way is located along the Property’s eastern border. The site is currently undeveloped and consists almost entirely of forest, which is depicted on the following page. The 12.14 acres of forest on the Property is considered high priority forest for retention. Wetland areas and 100-year floodplain are located along the western boundary of the site. A small portion of a stream is located in the northwest corner of the Subject Property.

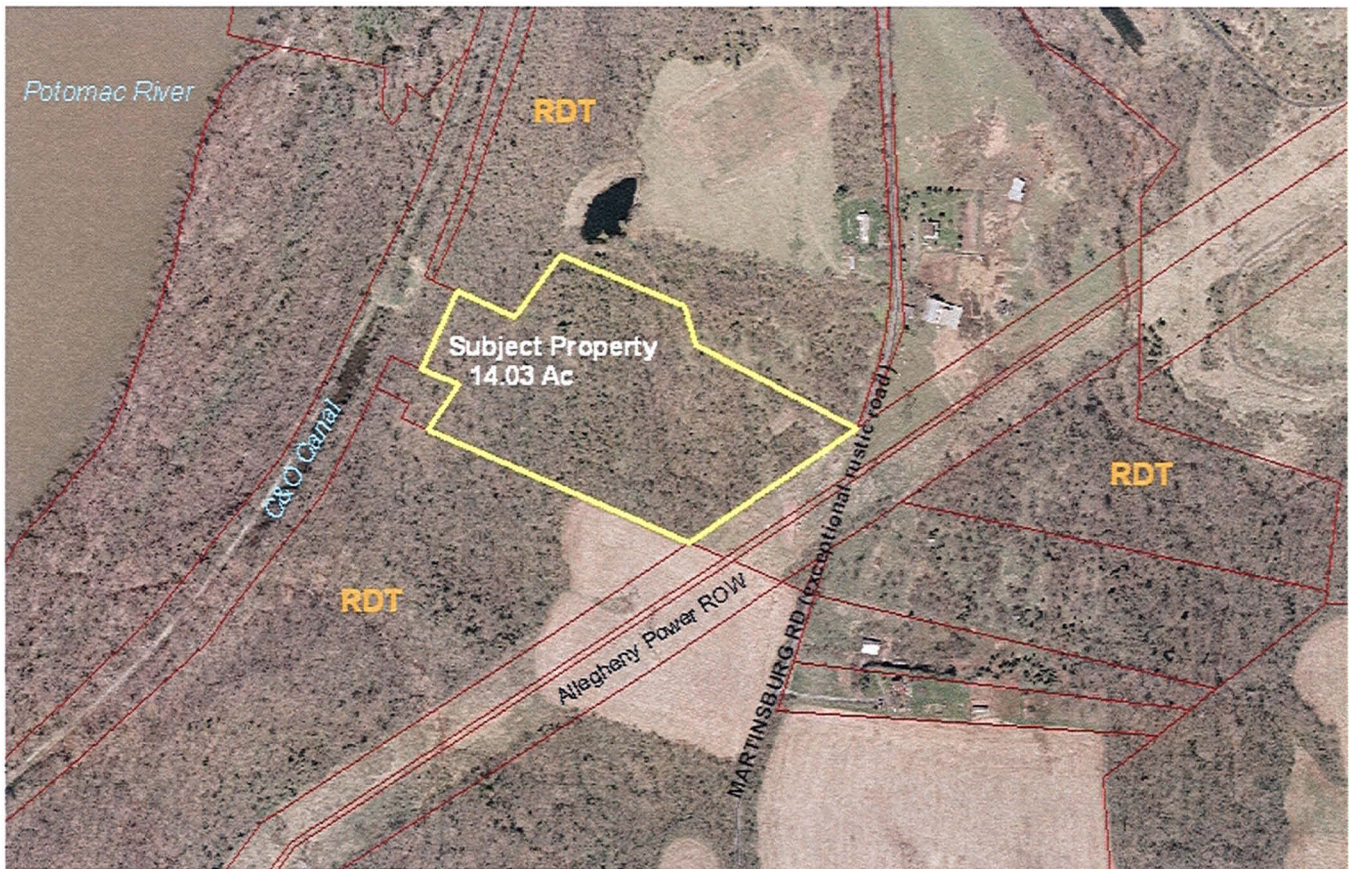


Figure 1: Aerial Vicinity Map

PROJECT DESCRIPTION

The Applicant proposes to record the parcel as 1 lot, approximately 14.03 acres in size, to accommodate future construction of a one-family detached dwelling unit on the eastern half of the Property. The dwelling unit will be served by a private well and standard septic system. The Well and Septic section of MCDPS approved the well and septic field locations on June 23, 2010. A private driveway from Martinsburg Road is proposed for access to the new dwelling unit. From Martinsburg Road, the driveway traverses Allegheny Power right-of-way for approximately 25 feet before reaching the Subject Property. Allegheny Power informed the Applicant in a letter dated October 14, 2009 that driveway access through the right-of-way will be permitted subject to standard conditions and requirements. A Category I forest conservation easement covering roughly 70% of the site will be proposed as part of the final forest conservation plan to protect the high priority forest on the site.

Section 50-35(8) requirements

The proposed lot is to be platted pursuant to Section 50-35A(a)(8) of the Subdivision Regulations. This section establishes the ability to plat up to five (5) lots in the RDT zone through the minor subdivision process after Planning Staff *or* Planning Board approval of a pre-preliminary plan. Applications for minor subdivision under Section 50-35A(a)(8) must meet the following criteria:

- a. Written approval for a proposed septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section prior to recordation of the plat;
- b. Any required street dedications along the frontage of the proposed lot(s) must be shown on the record plat;
- c. An easement must be recorded for the balance of the property noting that density and TDR's have been utilized for the new lots. Reference to this easement must be reflected in the record plat for the lots;
- d. Lots created in the RDT zone through the minor subdivision procedure must not exceed an average lot size of five (5) acres in size unless approved by the Planning Board in the review of a pre-preliminary plan of subdivision; and
- e. Forest conservation requirements must be satisfied prior to recording of the plat.

With respect to subparagraph (a), MCDPS approved the proposed well and septic plan on June 23, 2010. With respect to (b), dedication for Martinsburg Road is shown on the preliminary plan in accordance with the required right-of-way for Martinsburg Road. For provision (c), the Applicant must provide Staff with information verifying a TDR is available at the time of record plat, and the Applicant has submitted a forest conservation plan that is under review that will satisfy provision (e). The proposed lot size, however, does exceed five (5) acres so this pre-preliminary plan must be approved by the Planning Board, not by Staff, in accordance with subparagraph (d) above.

Relationship to the Agricultural and Open Space Master Plan

The Agriculture and Rural Open Space (AROS) Master Plan does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding preservation of farmland and rural open space. The master plan recommends that this area maintain lower densities for the protection of agriculture, environmental features, and residential use of a rural character. The pre-preliminary plan complies with the master plan goals in that it contributes to the area's low density character, protects environmental features via a Category I forest conservation easement that will cover approximately 70% of the site, and the lot does not create further fragmentation within the zone.

Roads and Transportation Facilities

The proposed lot and associated uses do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area Transportation Review. Martinsburg Road, in this location, is classified as an exceptional rustic road. The

required right-of-way is 80 feet. The Applicant must dedicate approximately 20 feet along the Property boundary for 40 feet from the centerline, which is shown on the preliminary plan. Neither roadway improvements nor a sidewalk is required along the Property frontage. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed private improvements.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling unit. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. The school cluster in which the Subject Property lies is not currently in moratorium. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. Development on the site will be served by standard well and septic systems.

Environment

This plan is in compliance with the Montgomery County Environmental Guidelines for protection of environmentally sensitive areas. The Applicant is required to submit a final forest conservation plan to Environmental Planning staff which must be approved prior to record plat submission.

Compliance with the Subdivision Regulations and Zoning Ordinance

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision. Pursuant to Section 59-C-9.74(b)(2), the Subject Property is exempt from the area and dimensional requirements of the RDT zone because it is a lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the Property to the Rural Density Transfer Zone. The Property as it exists today was created by deed in 1979 and the sectional map amendment took place on January 6, 1981. As a result, the Property must comply with the area and dimensional requirements of the Rural zone provisions in place in 1979. The lot was reviewed for compliance with the Rural zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1.

Citizen Correspondence and Issues

The Applicant notified adjacent and confronting property owners as well as community groups and civic associations of the Application submission to MNCPPC, as required. This Application pre-dates the requirements for sign posting on the Property and a pre-submission meeting. A representative on behalf of the adjacent neighbor to the north expressed concerns regarding the septic field locations on the Subject Property and the presence of a scenic easement. This

neighbor is concerned that the proposed septic fields will drain downhill to the west and north towards a pond located on his property and negatively impact water quality. The septic field locations are 630 feet from the pond and approved well locations are in between the septic fields and pond. MCDPS was made aware of these concerns and based on soil quality approved both the well and septic locations. The soil in this area is moderately deep, well drained, and moderately permeable. The site is also heavily forested between the limits of disturbance for the septic fields and the pond. This neighbor also believes that a scenic easement is located on the Subject Property. The National Park Service also believes the Subject Property encroaches onto a 1 acre tract of land that includes this same scenic easement, conveyed by William Trundle to the Chesapeake and Ohio Canal Company in 1836. Surveys conducted by the Applicant and submitted to the National Park Service challenge the claim that the application encroaches on any scenic easement. An agreement between the Applicant and National Park Service must be reached before a record plat can be approved by MNCPPC and MCDPS.

CONCLUSION

The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and complies with the recommendations of the Functional Master Plan for Preservation of Agriculture and Rural Open Space. Access and public facilities will be adequate to serve the proposed lot, and the Application has been reviewed by the applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the Application with the conditions specified above is recommended.

Attachments

Attachment A – Agency Correspondence

Attachment B – Citizen Correspondence

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Hungerford Property				
Plan Number: 720080110				
Zoning: RDT- Rural Standards apply per 59-C-9.74(b)(2)				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Standard				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	Must not be less than 5 acres	acres	EG	9/1/10
Lot Width	300 ft.	ft. is minimum proposed	EG	9/1/10
Lot Frontage	25 ft.	ft. is minimum proposed	EG	9/1/10
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	EG	9/1/10
Side	20 ft. Min./40 ft. total	Must meet minimum ¹	EG	9/1/10
Rear	35 ft. Min.	Must meet minimum ¹	EG	9/1/10
Height	50 ft. Max.	May not exceed maximum ¹	EG	9/1/10
Max Lot Coverage	10%		EG	9/1/10
TDRs	1 must be available		EG	9/1/10
Site Plan Req'd?	No		EG	9/1/10
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	EG	9/1/10
Road dedication and frontage improvements		Yes	Agency letter	1/29/08
Environmental Guidelines		Yes	Staff memo	1/28/08
Forest Conservation		Required prior to record plat	EG	9/1/10
Master Plan Compliance		Yes	EG	9/1/10
Other (i.e., parks, historic preservation)				
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Required at sediment control	Agency comments	1/25/08
Water and Sewer (WSSC)		N/a	EG	9/1/10
10-yr Water and Sewer Plan Compliance		N/a	EG	9/1/10
Well and Septic		Yes	Agency letter	6/23/10
Local Area Traffic Review		N/a	Staff memo	1/28/08
Policy Area Mobility Review		N/a	Staff memo	1/28/08
Transportation Management Agreement		No	Staff memo	1/28/08
School Cluster in Moratorium?		No	EG	9/1/10
School Facilities Payment		No	EG	9/1/10
Fire and Rescue		Yes	Agency letter	3/30/10
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.

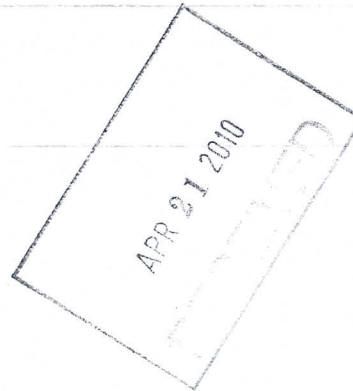


FIRE MARSHAL COMMENTS

DATE: 30-Mar-10
TO: Eric Tidd - eric@casengineering.com
CAS Engineering
FROM: Marie LaBaw
RE: Hungerford Property
720080110

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **24-Mar-10** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.





DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid Joyner
Director

MEMORANDUM

June 23, 2010

TO: Cathy Conlon, Development Review,
Maryland National Capital Park and Planning Commission

FROM: Carla Reid, Director
Department of Permitting Services 

SUBJECT: Status of Pre-Application Concept Plan: Hungerford Property
7-20080110

This is to notify you that the Well & Septic Section of MCDPS approved the subject plan on June 23, 2010.

Approved with the following reservations:

1. The record plat must be at the same scale as the Pre-Application plan, or submit an enlargement of the plat to match the Pre-Application plan.

If you have any questions, please contact Kim Beall at (240) 777-6315.

cc: CAS Engineering
File



E.G.

DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

January 29, 2008

Arthur Holmes, Jr.
Director

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Pre-Preliminary Plan No. 7-20080110
Hungerford Property

Dear Ms. Conlon:

We have completed our review of the above-referenced pre-preliminary plan. We recommend submission of a preliminary plan, along with appropriate supporting information, which addresses the following comments:

1. Necessary dedication for Martinsburg Road in accordance with the master plan.
2. Wells and septic systems cannot be located within the right of way or easements.
3. Martinsburg Road is classified as a "exceptional rustic" under Section 49-78 of the Montgomery County Code. As such, every effort must be made to preserve the existing topographic features, including man-made improvements and vegetation.

Since access will be from a road included in the Rustic Roads Program, we will need to inspect the impact of the subdivision on the rustic road. Stake and pavement mark the proposed driveway location(s) for MCDPW&T field check; contact Ms. Sarah Navid of Department of Permitting Services to schedule the field check.

4. Before recordation of the plat, submit a completed and executed sight distances evaluation certification form to MCDPS for their review and approval.
5. Coordinate with PEPCO for access to Martinsburg Road through their easement.
6. Revise the plan as necessary to meet the requirements of the Montgomery County Department of Permitting Services with regard to wells and/or septic systems.
7. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.

Division of Operations

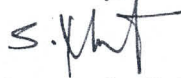
101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
240-777-6000 • 240-777-6013 TTY • 240-777-6030 FAX
www.montgomerycountymd.gov

Ms. Catherine Conlon
Pre-Preliminary Plan No. 7-20080110
Date January 29, 2008
Page 2

8. Please coordinate with Department of Fire and Rescue about their requirements for emergency vehicle access.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at sam.farhadi@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E.
Development Review Group
Traffic Engineering and Operations Section
Division of Operations

m:/subdivision/farhas01/pre-preliminary plans/ 7-20080110, Hungerford Property.doc

cc: Catherine Hungerford
Eric Tidd, CAS Engineering
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck, DPWT TEOS
Raymond Burns, MSHA
Preliminary Plan Folder
Preliminary Plans Note Book



Allegheny Power

an Allegheny Energy company

10802 Bower Avenue
Williamsport, MD 21795
(301) 790-6016

Email: psowers@alleghenypower.com

October 14, 2009

Eric B. Tidd, P.E.
Project Manager
CAS Engineering
108 West Ridgeville Blvd, Suite 101
Mt. Airy, Maryland 21771

Re: 20400 Martinsburg Road, Montgomery County, MD

The Potomac Edison Company, dba Allegheny Power, was contacted regarding construction of a new single family home to be located in Montgomery County, MD. As noted on your pre-application concept plan, the positioning of the driveway will involve crossing a portion of our right of way for Allegheny's 514 / Doubs to Loudoun 500 kV transmission line (Liber 3467, Page 82 of the Montgomery County Land Records). The concept plan showing the proposed site location was forward to and reviewed by our Transmission Engineering group.

It has been determined that the location as proposed will be permitted and Allegheny is willing to work with you to coordinate the final location of the driveway within our right of way.

However, in accordance with both the terms of the existing Right-of-Way agreement and Allegheny Power's practices and guidelines, the following general conditions and requirements should be noted in regard to construction projects involving our Right-of-Way:

- **Structures within the Right of Way.** No buildings or structures are permitted within the right of way. All trees, shrubbery, etc. must not exceed a mature growth height of 15 feet. Otherwise, they will be subject to trimming and/or removal by Allegheny.
- **Access to facilities.** Allegheny maintains unlimited access to our facilities. With our approval of the proposed plans, Allegheny reserves the right to use the proposed driveways for continued access to our transmission lines and structures.
- **Excavations near/within right of way.** No facility, excavation, or grading shall be within fifteen (15') feet of any wood pole or anchor guy or 25 feet from any lattice tower, steel pole structure, or foundation. No equipment shall be operated within twenty five (25') feet of any energized overhead conductor of the Company. A minimum ground clearance of thirty-three (33') feet shall be maintained under our lines and all equipment shall be operated in strict compliance with minimum OSHA clearance requirements for any energized overhead conductor of the Company.
- **Grade changes.** If there are any anticipated grade changes under the Company's conductors, a drawing or sketch showing the extent of fill (grading changes and approximate location in reference to our structures and right-of-way shall be submitted to the Company for its review and approval. Typically, we are okay with a grading change of +/- 2 feet without further investigation.

I believe this letter addresses those issues related to preliminary site plans for this project. If you should have any questions or require further verification concerning the above conditions, please contact me at (301) 790-6016 keeping in mind that since this project involves transmission right of way, all issues must be approved by a representative of the Transmission Engineering Group.

Sincerely,

A handwritten signature in black ink that reads "Patti Sowers". The signature is written in a cursive, flowing style.

Patti M. Sowers
Real Estate Representative



United States Department of the Interior

NATIONAL PARK SERVICE
C&O Canal National Historical Park
1850 Dual Highway, Suite 100
Hagerstown, Maryland 21740

IN REPLY REFER TO
L30 (CHOH)
Segment 15 - Tract 14-133
(PUR - 1 - Lock 26)

May 24, 2010

Mr. Eric B. Tidd, P.E.
Project Manager
CAS Engineering
108 West Ridgeville Boulevard
Suite 101
Mount Airy, Maryland 21771

Dear Mr. Tidd:

Thank you for contacting us regarding our review of your land survey on the Hungerford Property, located along Martinsburg Road in the Poolesville, Maryland area. The subject area in question does indeed appear to encroach into National Park Service lands, east of Lock 26. The area of encroachment involves the entire one-acre tract of land conveyed by William Trundle to the Chesapeake and Ohio Canal Company, Recorded June 9, 1836 in Deed Book, BS 7, Page 558, in Montgomery County.

Your client's legal description appears to have been derived from a more recent survey/deed that appears not to have referenced or considered historic documents deriving from title including our referenced deed (i.e. BS 7, Page 558). We suggest that you undertake a thorough title search from patent forward concerning your client's property.

The National Park Service is obligated to stand by the recorded deeds of acquisition by the Chesapeake and Ohio Canal Company, unless further undisputed evidence proves otherwise. Therefore, at this time we are not able to agree with your findings, nor are we able to approve of the finalization of your plat, as it stands currently. We regret any inconvenience this may cause you and your client. We do appreciate your concern and willingness to uphold the integrity of our historic public lands.

Thank you.

Sincerely,

Kevin D. Brandt
Superintendent

Grayson, Erin

From: mattdowns@downs-law.com
Sent: Tuesday, April 08, 2008 9:32 AM
To: Grayson, Erin
Subject: RE: MNCPP File # 720080110 - HUNGERFORD PROPERTY

Ms. Grayson,

We spoke on the telephone recently regarding your file number 720080110 and proposal.

My client, Jonathan Warner, is a neighbor of the subject property. He owns the parcel whose address is 20500 Martinsburg Road, which abuts the subject property on the north property line.

I write to convey my client's concerns about the proposal.

His first concern is with the proposed septic field placement and flow. The proposed septic field lies on a grade of about 20%, which slopes down to the west and north. There is a water pond on my client's property lying on the south-west corner of his property, abutting the north-west corner of the subject property. This pond is directly in the flow of that septic field and grade. The proposed septic field could seriously and negatively affect the water quality of that pond, with other consequences for the use of the pond, its marine life and surrounding vegetation.

My client's second concern is that there may be a scenic easement on the subject property. My client believes that there is a scenic easement on his property which was not revealed by a title search, suggesting it may have been incorrectly recorded. We are in the process of having the title company investigate more thoroughly. Similarly, a scenic easement on the subject property may have been recorded improperly so that a title search would not necessarily reveal it without further investigation.

Please note my client's concerns as you consider the proposal. In addition, please be so kind as to notify me of the date, time and place of the public hearing on this matter. Finally, please pass this to Gene Von Gunten at Montgomery County.

Thank you very much.

Matt Downs

Law Office of Matthew J. Downs
1016 S. Carolina Ave., SE
Washington D.C. 20003
202-546-4026
202-546-0969 (fax)

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

Subject:

From: "Grayson, Erin" <Erin.Grayson@mncppc-mc.org>

Date: Fri, April 04, 2008 12:02 pm

To: <mattdowns@downs-law.com>