

## Item 6 - Correspondence

**From:** [Michele Rosenfeld](#)  
**To:** [MCP-Chair](#)  
**Cc:** [Fuster, Marco](#); [Dickel, Stephanie](#)  
**Subject:** Subdivision 620190130: 2710 Washington Avenue, PB Agenda Item No. 6 (July 29)  
**Date:** Tuesday, July 27, 2021 10:09:02 AM  
**Attachments:** [2021.07.26 2710 washington ave.testimony letter.signed.pdf](#)

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Chairman Anderson:

Please accept the attached letter into the record for Planning Board Item 6 on this week's agenda.

Additionally, I would ask that you approve up to 10 minutes of time for me to testify on behalf of the 6 abutting property owners that I represent. I appreciate that you are flexible with speaking times, but wanted to formally ask for additional time as there are several issues we want to raise. My clients have consolidated their testimony into one submission, and authorized me to speak on behalf of all of them.

Respectfully submitted,

Michele Rosenfeld  
The Law Office of Michele Rosenfeld LLC  
1 Research Court  
Suite 450  
Rockville MD 20850  
301-204-0913 (direct)  
[rosenfeldlaw@mail.com](mailto:rosenfeldlaw@mail.com) (email)  
[michelerosenfeldllc.com](http://michelerosenfeldllc.com) (website)





July 27, 2021

Casey Anderson, Chairman  
Montgomery County Planning Board  
2420 Reddie Drive  
Wheaton MD 20902

RE: 2710 Washington Avenue, Administrative Subdivision 620190130  
July 29, 2021 MCPB Agenda Item No. 6

Dear Chairman Anderson and Commissioners:

On behalf of my clients Avi and Karen Alpert, 2700 Abilene Drive; Jan and Gerald Feldman, 8038 Ellingson Drive; Gloria and Edwin Hege, 2702 Abilene Drive; Elliot Minberg and Carol Rest-Minberg, 8040 Ellingson Drive; Joshua Singer and Jenilee Keefe Singer, 8036 Ellingson Drive; and Al and Donna Tanenbaum, 2707 Abilene Drive,<sup>1</sup> please accept this letter into the record and consider the following testimony in connection with the above-referenced subdivision.

### **Summary**

We ask that the Board deny the application because the ingress/egress easement provided across Outlot A is defective. The proposed new Lot 141 does not have frontage on a public street, but rather relies on an access easement across Outlot A – which will be owned by a third party and not the future owner of proposed Lot 141. The Outlot A Easement fails to provide legally sufficient access for the following reasons:

1. The Easement references, but does not include, “Exhibit A” which is used in part to identify the property subject to the Easement. See Attachment 2.
2. While the Grantor affirmatively warrants that she will not interfere with construction of the driveway within the Easement, she does not offer the same assurance to a future owner with respect to future use or maintenance of the Easement. Attachment 2, para. 3. This raises a meaningful question as to whether proposed Lot 141 in fact “will be served by a private driveway” as required by the Subdivision Code § 50.4.3.C.1.b.i.

For these reasons the Outlot A Easement fails to provide the evidence necessary to establish that proposed Lot 141 will be served by a driveway as required by the Subdivision Code and we ask that the Board deny the subdivision accordingly.

If the Board decides to approve the subdivision, we request that it amend staff’s proposed conditions in the following manner (specific proposed text to follow):

1. Outlot A and Lot 141 both must be subject to site plan review;
2. A Forest Conservation variance has not yet been filed and must return for Planning Board approval;
3. Side yard building setback limits should be included, consistent with the plans filed with the Fire Marshal; and
4. Operational limits regarding noise should be added.

In support of these changes, please be advised that all of my clients about the Site and have significant concerns about the proposed subdivision. In particular, the last formal submission by the Applicant

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<sup>1</sup> Their respective property locations are shown on Attachment One.

included retaining walls approximately 18' tall along the northern and eastern boundaries, requiring extensive excavation. The current plan, which is intended to reduce the size of the retaining walls, is essentially a sketch that does not provide the detail necessary to confirm the height, length or final location of the remaining retaining walls needed to create the desired building pad. Nor does the pending plan address the significant planned tree removal - as there is not yet an approved preliminary forest conservation plan and no variance has yet been filed – and the plan materially changes the layout that was approved in connection with the stormwater management plan previously reviewed and approved by DPS.<sup>2</sup> As a result the application before the Board lacks sufficient detail for approval based solely on conditions to be satisfied in future submissions.

The specific requested amendments and the supporting grounds are detailed as follows:

**1. Site Plan Review** The staff is recommending that Outlot A be subject to site plan review as a condition of preliminary plan approval. Site plan review for Lot 141 also is called for at the same time. While ordinarily Lot 141 would not be subject to site plan review, as a result of the staff-recommended change to the proposed subdivision the final location, length and height of the retaining walls necessary to achieve a buildable lot are not shown on the current plan. While the new layout is an improvement over the last one, we are very concerned about the lack of detail in the current plan and site plan review is called for under these circumstances because:

1. This lot can only be developed with highly unusual ingress/egress through an Outlot A, owned by a third party and not by the owner of Lot 141;
2. Both Outlot A and Lot 141 require retaining walls in order to achieve a useable building pad; and
3. Staff is recommending that Outlot A undergo site plan review, consequently concurrent site plan review of Lot 141 will not be prejudicial to the Applicant.

Accordingly, we ask that Condition No. 4, Condition No. 10 and Condition No. 25.b be revised as follows:<sup>3</sup>

**Condition No. 4.** Prior to issuance of the first building permit, the Applicant must obtain site plan approval for Lot 141 concurrently with an amendment to Site Plan 819840640 ~~must be approved~~ to reflect the ultimately proposed features within Lot 141 and Outlot A (such as but not limited to the paving and walls) in addition to the necessary 5-foot wide sidewalk extensions for Abilene Drive.

**Condition No. 10.** The use of retaining walls for grading purposes must be minimized where possible. Any retaining wall that is proposed should use a tiered layout to minimize visual impact and enhance stability and must be located and implemented in a manner so that the wall can be constructed, maintained and/or replaced entirely from within the subject property ("Site") and/or Outlot A as applicable. Any retaining walls within the Outlot and Lot 141 will be evaluated as part of the site plan for Lot 141 and the Site Plan amendment associated with Outlot A.

**Condition No. 25.b.** Include the following note: *Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-*

<sup>2</sup> "The SWM Concept Approval reflecting the current layout and a comprehensive Forest Conservation variance have not been submitted at this time . . ." Staff Report p. 1 last bullet.

<sup>3</sup> Proposed new text is identified by red underlined text; proposed deleted text is identified by red strikeout text.

site parking, site circulation, and sidewalks shown on the Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review for Lot 141 and Outlot A issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

**2. Planning Board Review of Forest Conservation Plan** A forest conservation variance is required because of the proposed impacts to, and removal of, specimen trees. The variance request has not yet been filed.<sup>4</sup> While the staff report correctly notes that the variance must be approved before record plat, according to the Forest Conservation Law a variance must be approved by the Board and not by staff. Section § 22A-21(2) of the Forest Conservation Law says that “The Planning Board must find that the applicant has met all requirements of this [variance] Section before granting a variance.” As a variance application can be considered concurrently with the site plan, Board review will ensure compliance with the law and not create any hardship for the applicant.

**Condition No. 14.** ~~Prior to Certification of the Administrative Subdivision Plan, the Applicant must submit and receive M-NCPPC Staff Prior to building permit on Outlot A and Lot 141, the applicant must obtain Planning Board~~ approval of a revised Preliminary/Final Forest conservation plan and variance request as applicable. The revised FCP must also address the removal of invasive species and the planting of supplemental native species.

**3. Building restriction lines** We ask that Condition No. 13 be amended to reflect the 30’ setback from adjacent single-family dwellings relied upon to justify Fire/Rescue approval:<sup>5</sup>

**Condition No. 13.** The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:

- a. A 127’ minimum side building restriction line (BRL) for the south side of Lot 141 as shown on the Certified Administrative Subdivision Plan.
- b. 15-foot minimum side BRL for the north side of Lot 141.
- c. Any residential structure on Lot 141 shall be set a minimum of 30’ from any adjacent single family dwelling.

**4. Construction Noise** Given the proximity of the new construction to the surrounding existing single-family homes, we request that the Board adopt the following condition:

**New Proposed Condition:** Construction Noise generated as part of the work authorized under the County Issued permits shall have a maximum sound level of 90dBA as measured at the property line between the hours of 7 am and 5 pm. At all other times including weekends and Federal Holidays, the site noise generated must comply with County Noise Ordinance limits. Use of chain saws, jackhammers, vibrator rollers and similar repetitive sound and vibration generating equipment shall be limited to between the hours of 9 am and 3 pm. Dump Trucks shall not slam tailgates when off-loading material.

<sup>4</sup> “A comprehensive Forest Conservation Plan and associated variance request which address the current layout have not been submitted at this time . . .” Staff Report p. 10.

<sup>5</sup> See Staff Report Attachment A (Agency Letters): July 14, 2021 Revised letter to Fire Marshall from O’CL, p. 2, last paragraph.

**Conclusion**

We request that the Board deny the application for lack of adequate access, or alternatively to adopt the requested amendments to the staff's recommended conditions of approval to ensure that the subdivision satisfies the standards of the zoning, subdivision and forest conservation laws. These comments do not waive my clients' ability to raise issues in subsequent proceedings that may be of concern.

Sincerely,

*Michele McDaniel Rosenfeld*

Michele McDaniel Rosenfeld

Attachments

Tanenbaum: 2707 Abilene

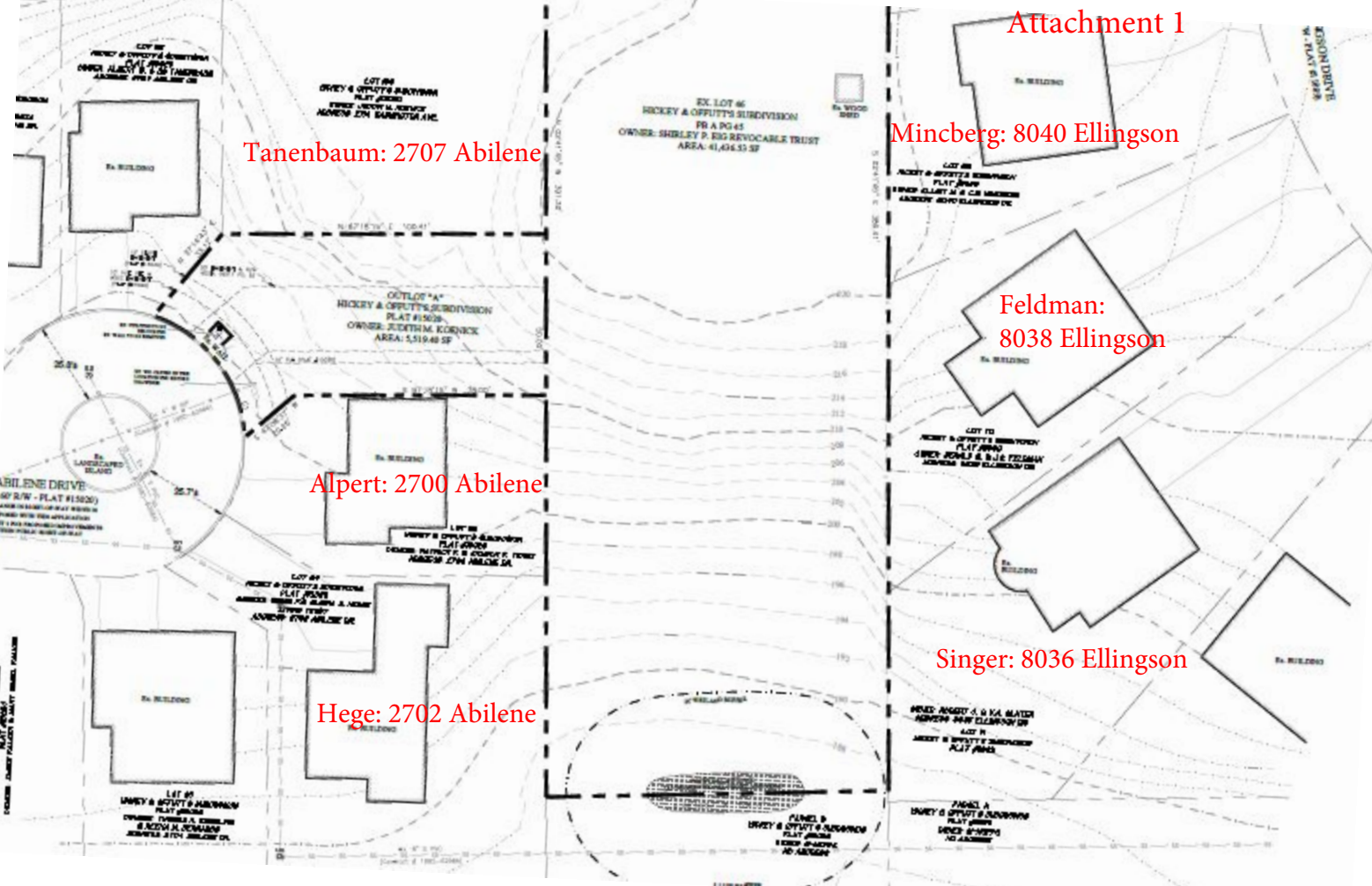
Mincberg: 8040 Ellingson

Feldman: 8038 Ellingson

Alpert: 2700 Abilene

Singer: 8036 Ellingson

Hege: 2702 Abilene



EASEMENT OR RIGHT-OF-WAY FOR ACCESS TO PROPERTY

FOR AN IN CONSIDERATION of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **JUDITH M. KOENICK** ("Grantor") hereby grants and conveys to **THE SHIRLEY P. EIG REVOCABLE TRUST**, ("Grantee"), its successors and assigns, a perpetual, non-exclusive right of way and easement ("Easement") in, under, upon, about, over and through the property described on the attached Exhibit "A", hereto and incorporated herein by reference ("Property").

1. Grant. The Grantor grants unto the Grantee, its successors and assigns the right to lay, construct and maintain utilities and a permanent street or road of at least 20 feet in width in, under, upon, about, over and through Outlot A, as shown on the Plat entitled "Hickey & Offutt's Subdivision, Lots 83 thru 106, Outlot 'A' and Parcels 'B' and 'C'", which Plat is recorded among the Land Records of Montgomery County, MD, as Plat No. 15020 easement for the purpose of ingress, egress and utilities to Abilene Drive, from Lot 46, Hickey and Offutt's Subdivision (Plat Book A, Page 45) and any re-subdivision(s) thereof.

2. This Easement shall run with the land.

3. No Interference. Grantor shall not interfere with the Grantee's construction of such permanent street or road within the Easement.

4. Amendment. This Easement shall be amended only by a written and recorded instrument signed by the parties or the then current owner of the Property and the Easement.

5. This Easement shall be binding upon and inure to the benefit of the parties successors and assigns, heirs, beneficiaries and personal representatives.

6. Governing. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

SIGNED on this the 18<sup>th</sup> day of October, 2018.

Judith M. Koenick

Judith M. Koenick

MONTGOMERY COUNTY, MD

APPROVED BY AGJ

NOV 27 2018

\$ 0.00 RECORDATION TAX PAID  
\$ NTA TRANSFER TAX PAID

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56917, p. 0063, MSA\_CE63\_56874. Date available 11/30/2018. Printed 07/26/2021.

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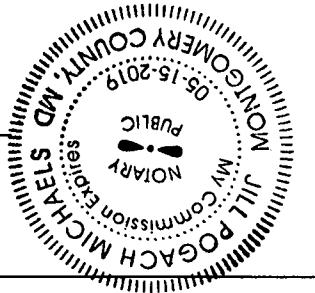
STATE OF Maryland

COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Judith M. Koenick, Grantor, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



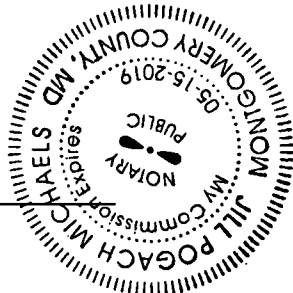
STATE OF Maryland

COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Shirley P. Eig, Trustee of the Shirley P. Eig Revocable Trust, Grantee, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



Prepared by: Jill Pogach Michaels, Esq.



**State of Maryland Land Instrument Intake Sheet**  
 Baltimore City    County: \_\_\_\_\_  
 Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.  
 (Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Circuit Court Recording Validation

<b>1</b>	<b>Type(s) of Instruments</b>	<input type="checkbox"/> Check Box if addendum Intake Form is Attached.)							
	<input type="checkbox"/> Deed of Trust <input type="checkbox"/> Mortgage Lease <input type="checkbox"/> Other <u>Easement</u> <input type="checkbox"/> Other _____								
<b>2</b>	<b>Conveyance Type Check Box</b>	<input type="checkbox"/> Improved Sale Arms-Length [1]	<input type="checkbox"/> Unimproved Sale Arms-Length [2]	<input type="checkbox"/> Multiple Accounts Arms-Length [3]	<input type="checkbox"/> Not an Arms-Length Sale [9]				
<b>3</b>	<b>Tax Exemptions (if applicable) Cite or Explain Authority</b>	Recordation _____ State Transfer _____ County Transfer _____							
<b>4</b>	<b>Consideration and Tax Calculations</b>	<b>Consideration Amount</b>		<b>Finance Office Use Only Transfer and Recordation Tax Consideration</b>					
		Purchase Price/Consideration	\$ _____	Transfer Tax Consideration	\$ _____				
		Any New Mortgage	\$ _____	X (     ) % =	\$ _____				
		Balance of Existing Mortgage	\$ _____	Less Exemption Amount	- \$ _____				
		Other:	\$ _____	Total Transfer Tax	= \$ _____				
		Other:	\$ _____	Recordation Tax Consideration	\$ _____				
		Full Cash Value:	\$ _____	X (     ) per \$500 =	\$ _____				
				<b>TOTAL DUE</b>	<b>\$ _____</b>				
<b>5</b>	<b>Fees</b>	<b>Amount of Fees</b>	<b>Doc. 1</b>	<b>Doc. 2</b>	Agent: _____ Tax Bill: _____ C.B. Credit: _____ Ag. Tax/Other: _____				
		Recording Charge	\$ _____	\$ _____					
		Surcharge	\$ _____	\$ _____					
		State Recordation Tax	\$ _____	\$ _____					
		State Transfer Tax	\$ _____	\$ _____					
		County Transfer Tax	\$ _____	\$ _____					
		Other	\$ _____	\$ _____					
		Other	\$ _____	\$ _____					
<b>6</b>	<b>Description of Property</b> SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG		
			* 02946802					(5)	
			Subdivision Name		Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
			Location/Address of Property Being Conveyed (2)						
			* 2714 Washington Ave., Chevy Chase MD 20815						
			Other Property Identifiers (if applicable)						
		Residential: <input type="checkbox"/> or Non-Residential: <input type="checkbox"/>	Fee Simple: <input type="checkbox"/> or Ground Rent: <input type="checkbox"/>	Amount:					
		Partial Conveyance? <input type="checkbox"/> Yes <input type="checkbox"/> No	Description/Amt. of SqFt/Acreage Transferred:						
		If Partial Conveyance, List Improvements Conveyed:							
<b>7</b>	<b>Transferred From</b>	Doc. 1 – Grantor(s) Name(s)			Doc. 2 – Grantor(s) Name(s)				
		* Judith M. Koenicks							
		Doc. 1 – Owner(s) of Record, if Different from Grantor(s)			Doc. 2 – Owner(s) of Record, if Different from Grantor(s)				
<b>8</b>	<b>Transferred To</b>	Doc. 1 – Grantee(s) Name(s)			Doc. 2 – Grantee(s) Name(s)				
		* Shirley P. Eig Revocable Trust							
		New Owner's (Grantee) Mailing Address							
<b>9</b>	<b>Other Names to Be Indexed</b>	Doc. 1 – Additional Names to be Indexed (Optional)			Doc. 2 – Additional Names to be Indexed (Optional)				
<b>10</b>	<b>Contact/Mail Information</b>	Instrument Submitted By or Contact Person				<input type="checkbox"/> Return to Contact Person <input type="checkbox"/> Hold for Pickup <input type="checkbox"/> Return Address Provided			
		Name: * Larry M. Eig							
		Firm							
		Address: 17605 Sir Galahad Way, Ashton MD 20861 Phone: (301) 570-9285							
<b>11</b>	<b>Assessment Information</b>	<b>IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER</b>							
		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Will the property being conveyed be the grantee's principal residence?						
		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Does transfer include personal property? If yes, identify: _____						
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).						
		<b>Assessment Use Only – Do Not Write Below This Line</b>							
		Terminal Verification	Agricultural Verification	Whole	Part	Tran. Process Verification			
		Transfer Number	Date Received:	Deed Reference:		Assigned Property No.:			
		Year	20	20	Geo.	Map	Sub	Block	
		Land			Zoning	Grid	Plat	Lot	
		Buildings			Use	Parcel	Section	Occ. Cd.	
		Total			Town Cd.	Ex. St.	Ex. Cd.		
		REMARKS:							

Space Reserved for County Validation

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56917, p. 0065, MSA\_CE63\_56874. Date available 11/30/2018. Printed 07/26/2021.