



Freeman Property, Administrative Subdivision Plan No. 620190140

JS Jeffrey Server, Planner Coordinator, UpCounty Planning, Jeffrey.Server@montgomeryplanning.org, 301-495-4513

SP Sandra Pereira, Supervisor, UpCounty Planning, Sandra.Pereira@montgomeryplanning.org, 301-495-2186

PB Patrick Butler, Chief, UpCounty Planning, Patrick.Butler@montgomeryplanning.org, 301-495-4561

Completed: 7-16-2021

Description

Request to create two lots for one existing single-family detached dwelling unit and one new single-family detached dwelling unit.

Location: Sugarland Road, 1,200 feet northeast of Sugarland Lane

Master Plan: 1980 *Agricultural and Rural Open Space Master Plan*

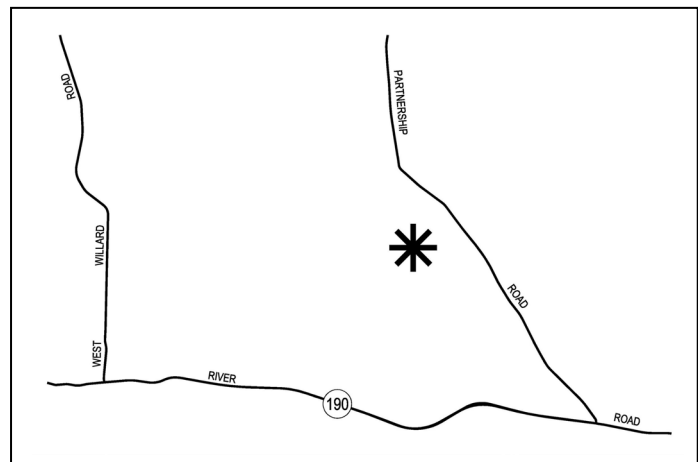
Zone: R-200

Property Size: 7.65 acres

Applicant: Benning & Associates, Inc.

Acceptance date: December 24, 2019

Review Basis: Chapters 22A and 50



Summary

- Staff recommends Approval of the Administrative Subdivision Plan, with conditions.
- The Application conforms with the minor amendment to Conditional Use Permit CU 16-15, which approved reducing the acreage of the Subject Property to 4.00 acres and allows up to two horses to be kept on the Property.
- The area containing the septic field, as well as a 10 ft. wide buffer, along Sugarland Road will be excluded from the 40-foot ROW dedication along the Property's frontage on Sugarland Road to allow for continued use of the system.
- No improvements are requested for Sugarland Road consistent with the exceptional rustic road designation of the road.
- Staff has received three community correspondence letters expressing concerns about this application and requesting a Public Hearing.

SECTION 1 - RECOMMENDATION AND CONDITIONS

Administrative Subdivision Plan No. 620190140: Staff recommends approval of the Administrative Subdivision Plan subject to the following conditions:

General Approval

1. This Administrative Subdivision Plan is limited to two lots for one existing single-family detached dwelling unit and one new single-family detached dwelling unit.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

Plan Validity Period

3. The Administrative Subdivision Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated July 8, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated January 7, 2020, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of MCDPS – Well and Septic Section in its letter dated May 13, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

8. The Planning Board has reviewed and accepts the recommendations of MCDPS, Fire Department Access and Water Supply Section in its letter dated March 29, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

9. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Preliminary Plan.

Environment and Noise

10. Forest Conservation

The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan (“FFCP”) No. 620190140, approved as part of this Administrative Subdivision Plan, including:

- a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
- b) Prior to recordation of the plat and the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention as specified on the approved Preliminary/Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
- c) Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- d) The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- e) The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.

Transportation

Existing Frontage Improvements

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate forty feet from the existing pavement centerline along the Subject Property frontage for Sugarland Road, except for areas encumbered by an existing

septic field and a 10-foot-wide buffer surrounding it. The Applicant must dedicate this area in the future if the existing septic field is removed or replaced.

Record Plats

12. There shall be no clearing or grading of the site prior to recordation of plat(s).

Easements

13. The record plat must show necessary easements.

Certified Preliminary Plan

14. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).

15. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of 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.

16. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a) Remove any area of right-of-way on all sheets currently encumbered by the existing septic field as well as a 10-ft wide buffer surrounding the field.
 - b) Update the data table to reflect what was approved by the Planning Board.
 - c) Revise the Conditional Use area to reflect the final lot sizes as shown on the Preliminary Plan dated July 8, 2021.

SECTION 2 – SITE LOCATION AND DESCRIPTION

Site Location

The property is identified as Parcel P914 on Tax Map CS 61, and is located on the south side of Sugarland Road, approximately 1,200 feet northeast of Sugarland Lane within the 1980 *Agricultural and Rural Open Space Master Plan* area (“Subject Property” or “Property”).



Figure 1 – Aerial View of the Subject Property

Site Vicinity

Surrounding properties are predominantly agricultural with single-family detached residential homes on large estate lots, farmhouses and farms, and unimproved parcels, all within the AR and R-200 Zones. The Subject Property is within a small enclave of R-200 zoned areas, identified as rural communities and comprised of seven properties with a total area of approximately 28 acres. This enclave is surrounded by AR-zoned farm properties. The Subject Property abuts residential properties to the east and west that are zoned R-200. To the south of the Subject Property abuts a 361-acre property that contains vast areas of forest, a number of streams and tributaries, and patches of farm areas. To the north, across Sugarland Road, is a 57-acre farm in the AR zone. In addition to the seven R-200 zoned properties, the greater area also consists of portions of seven AR zoned farm properties all differing in size.



Figure 2 – Zoning Map

Site Description

The Subject Property is a 7.65-acre parcel (333,234 sq. ft.) that is "trapezoidal" in shape. The Property currently includes a one-story single-family home with a basement, a two-story barn, a detached garage, a small chicken coop, and a shed. A gravel driveway provides access from Sugarland Road. There is an existing septic system near Sugarland Road that was installed in 2016. There are no sensitive environmental features on the property, which is surrounded on three sides by forest. The property fronts on Sugarland Road, which is designated an "Exceptional Rustic Road" under the *1996 Rustic Roads Functional Master Plan*. No known rare, threatened, or endangered species or habitats exist on the Subject Property. There are no designated historic sites on or near the Property.

SECTION 3 - APPLICATION AND PROPOSAL

Previous Approvals

Conditional Use 16-15

Conditional Use 16-15 was approved on September 23, 2016 for an equestrian facility for no more than four horses to be kept on the property for the personal use of the landowner and family. The equestrian facility entailed the construction of a two-story barn to house two horses. The landowner has only ever had two horses on the Property. The barn was constructed behind the existing single-family home and garage and set back from the property lines and neighboring single-family dwelling to the west. The equestrian facility was constructed solely to board horses for personal use and not for any public equestrian events. The property included two pastures and a compost area to the west of the barn. The compost area was provided to support a vegetable garden and the pastures. The Subject Property included seven existing parking spaces, with two in the garage and five in a gravel parking area. On September 1, 2020, a minor amendment was approved that reduced the conditional use area from 7.65

acres to 4.00 acres, in order to allow the Subject Property to be subdivided into two lots, and reduced the number of horses to no more than two horses to be kept on Lot 1.

Current Application

Administrative Subdivision Plan 620190140

The plan, designated as Administrative Subdivision Plan No. 620190140, Freeman Property (“Administrative Subdivision Plan” or “Application”), proposes to create two lots for one existing single-family detached dwelling unit, on 4.45 acres, and one new single-family detached dwelling unit, on 2.95 acres, from one parcel totaling approximately 7.65 acres along Sugarland Road. The remaining acreage will be dedicated for right-of-way along Sugarland Road. As conditioned, while Lot 1 exceeds the CU amendment area of 4.00 acres, the Applicant will update the final lot sizes with the Hearing Examiner’s office. Sugarland Road has been identified as an exceptional rustic road. While the existing single-family detached dwelling unit currently has an access driveway to Sugarland Road, the future single-family detached dwelling unit would include an additional access driveway to Sugarland Road. This Application subdivides one large residential parcel into two smaller residential lots. The proposed subdivision of the Subject Property into two lots facilitated an amendment to the original conditional use (Attachment 9) in order to maintain the conditional use for the lot containing the existing single-family dwelling unit, barn, and out-buildings. The creation of the two lots will continue to protect the existing environmental features of the Subject Property and the character of Sugarland Road as an exceptional rustic road.

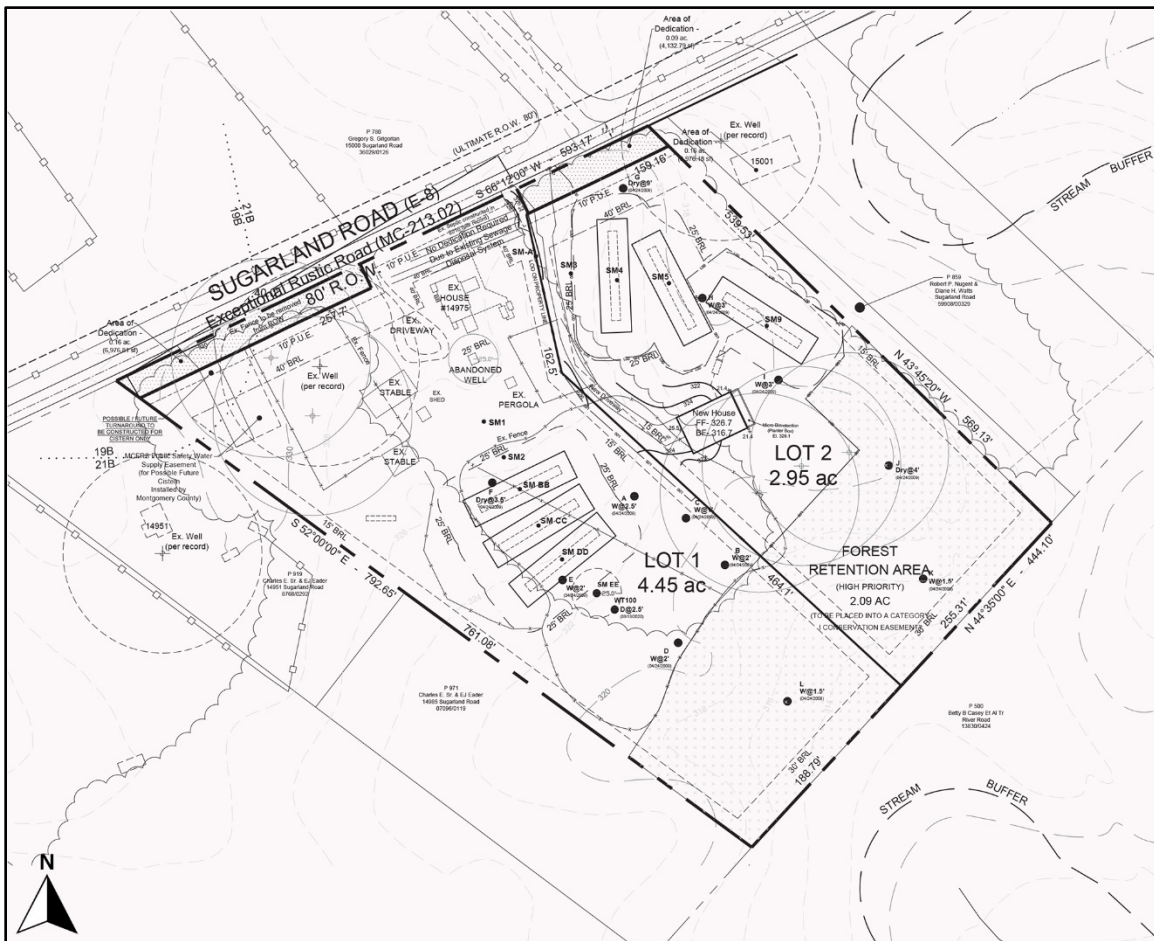


Figure 3 - Proposed Administrative Subdivision Plan

SECTION 4 - ANALYSIS AND FINDINGS, CHAPTER 50

Applicability, Section 6.1C

1. **The lots are approved for standard method development.**

The Application proposes two lots under the standard method of development in the R-200 zone.

2. **Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat.**

The Subject Property will utilize a new on-site private well and sand mound systems. The Application has been reviewed by MCDPS Well and Septic Section, who determined the proposed well and septic locations are acceptable as shown on the approved well and septic plan (Attachment 6).

3. **Any required road dedications and associated public utility easements are shown on the plat and the applicant provides any required improvements.**

As conditioned and discussed below, the Administrative Subdivision Plan will provide an additional 40-ft width of ROW dedication as measured from the centerline of the road in conformance with the Rustic Roads Master Plan recommendation for a total ROW of 80 ft. A small portion of this dedication area contains a portion of a recently installed septic field. The area containing the septic field, as well as a 10 ft. wide buffer, will not be dedicated for ROW to allow for continued use of the system. In the future, the Applicant must dedicate this area if the existing septic field is removed or replaced. Since the proposed lots are located along an exceptional rustic road, the Application is not required to construct a sidewalk along the frontage of Sugarland Road. Furthermore, the 2018 *Bicycle Master Plan* does not recommend any bicycle improvements to Sugarland Road.

4. **The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat.**

As conditioned and discussed below, the requirements for adequate public facilities have been met.

5. **Forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.**

The Application satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Additionally, the Application satisfies the stormwater management requirements of Chapter 19.

Technical Review, Section 4.3

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot sizes, widths, shapes and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type (Single-Unit Living) contemplated for the Property.

Table 1 - Development Review Table

| R-200 Zone | Required | Proposed Lot 1 | Proposed Lot 2 |
|------------------------------|--|---|---|
| Minimum Lot Area | 20,000 sq. ft. | 193,842 sq. ft. (+/-) (4.45 acres) | 128,592 sq. ft. (+/-) (2.95 acres) |
| Minimum Lot Frontage | 25 feet | 25 feet or greater | 25 feet or greater |
| Minimum Lot Width at B.R.L. | 100 feet | 100 feet or greater | 100 feet or greater |
| Maximum Lot Coverage | 25% | 25% or less | 25% or less |
| Min. Setbacks (for all lots) | | | |
| Front | 40 feet | 40 feet or greater | 40 feet or greater |
| Side street setback | 15 feet | 15 feet or greater | 15 feet or greater |
| Side | 12 feet (Sum of side setbacks is 25 feet) | 12 feet or greater (Sum of side setbacks 25 feet or greater) | 12 feet or greater (Sum of side setbacks 25 feet or greater) |
| Rear | 30 feet | 30 feet or greater | 30 feet or greater |
| Max. Building Height | 50 feet | 50 feet | 50 feet |
| Site Plan Required | No | No | No |

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan*

The Administrative Subdivision Plan substantially conforms to the 1980 *Agricultural and Rural Open Space Master Plan*. The Master Plan designates the area, which includes the Subject Property, as being one of several "Rural Communities and Villages" of the upper county (p. 38 of Master Plan) and confirms the R-200 zoning of the "historic rural settlements." The Subject Property is one of several properties clustered together and located along the south side of Sugarland Road. These properties are surrounded on all sides by AR-zoned land. The proposed subdivision of the Subject Property into two single-family lots is consistent with the R-200 zone and with the intent of the Master Plan to maintain the area as a "rural settlement." Sugarland Road was designated as an "exceptional rustic road" by the 1996 *Rustic Roads Functional Master Plan* and identified as having "pastures, and horse farms with silos, visible on both sides of the road" (p. 152 of the 1996 *Rustic Roads Master Plan*). While there is not a direct mention of any specific scenic views or vegetation along this stretch of roadway, the Subject Property proposes to retain the existing buildings, including horse barns, which supports the Master Plan recommendations for this area. Only one new driveway is proposed for Lot 2 and there are not any improvements anticipated to Sugarland Road. The Application is consistent with the recommendations of the Master Plan and 1996 Rustic Roads Functional Master Plan by retaining the existing features of the Subject Property, such as the existing buildings, horse barns, and associated activities, providing limited improvements for access to-and-from the Property, and supporting the intent to maintain Sugarland Road as an exceptional rustic road. The creation of the

two lots will continue to protect the existing environmental features of the Subject Property and the character of Sugarland Road as an exceptional rustic road.

3. *Public Facilities will be adequate to support and service the area of the subdivision.*

Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

Existing Facilities

The Subject Property is along Sugarland Road, identified as an Exemptional Rustic Road with an 80 ft. recommended ROW. Much of the length of road exists as prescriptive ROW only. The road itself maintains a rustic condition, with narrow, variable pavement typically falling below 20 feet in width.

Proposed public transportation infrastructure

No improvements are requested for Sugarland Road in conformance with the intent of 50.4.E.5.c to maintain the road's rustic character.

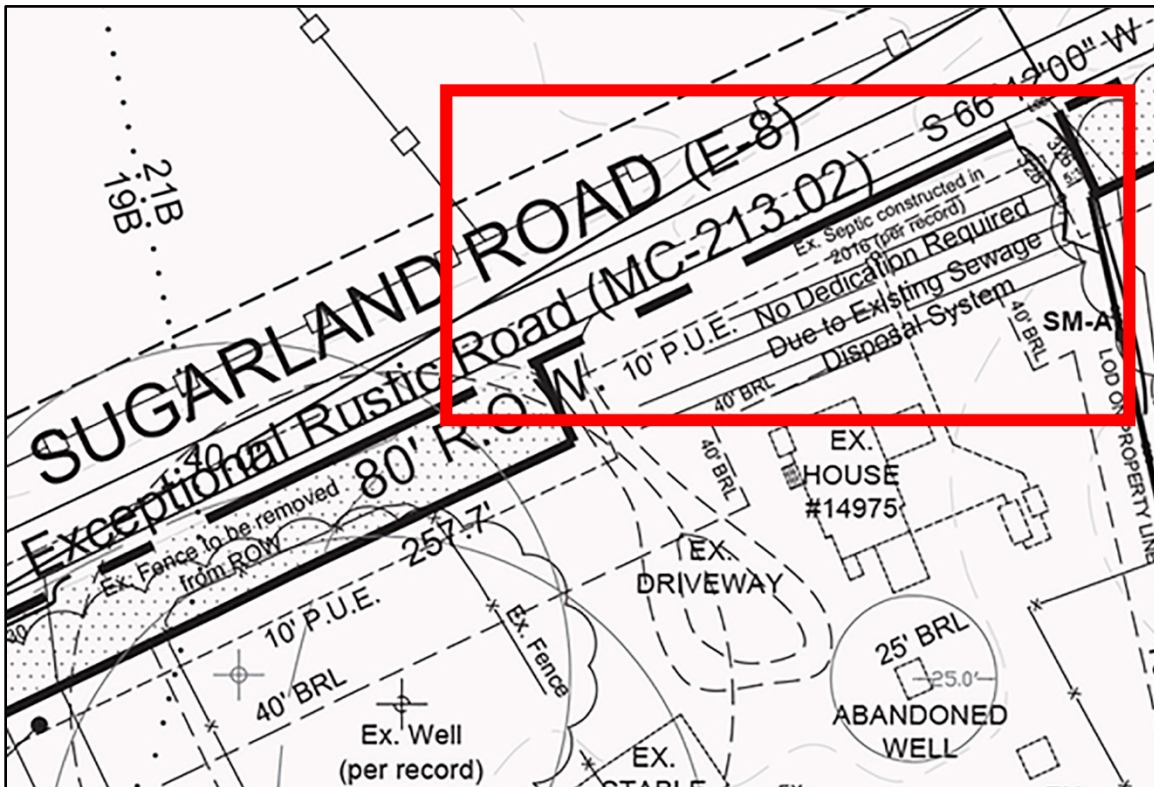


Figure 4 – Existing Location of Septic Field

As conditioned, the Applicant will provide a total of 40-ft width of ROW dedication as measured from the centerline of the road in conformance with the Rustic Roads Master Plan recommendation for a total ROW of 80 ft. A small portion of this would-be dedication area contains a portion of a recently (2016) installed septic field (outlined in red above). As conditioned, the area containing the septic field as well as a 10 ft. wide buffer will not be dedicated for ROW to allow the field to continue to be used. In the future, the Applicant must dedicate this area if the existing septic field is removed or replaced. Area dedicated for ROW otherwise cannot accept such constructed features. There will be

no detriment to Sugarland Road as the underground septic field does not impose any harm to the viewshed. The need for ROW for the road is primarily for the preservation of roadside features, which will overall be maintained.

Local Area Transportation Review (LATR)

The Applicant submitted a transportation statement that says the Plan for a 2-lot residential subdivision generates 50 or fewer additional peak-hour person trips; therefore, the Application is exempt from review under the LATR guidelines.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize a private well and sand mound septic system. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the proposed well and septic locations are acceptable as shown on the approved well and septic plan dated May 13, 2021 (Attachment 6).

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. The Application has received an approved Fire Access Plan based in the letter dated March 9, 2021 (Attachment 5).

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

School Adequacy Test

The Application is served by Poolesville ES, John Poole MS, and Poolesville HS. Based on the FY2022 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2 - Applicable FY2022 School Adequacy

| School | Projected School Totals, 2025 | | | | Adequacy Status | Adequacy Ceilings | | |
|----------------|-------------------------------|------------|---------------|-------------------|-----------------|-------------------|--------|--------|
| | Program Capacity | Enrollment | % Utilization | Surplus / Deficit | | Tier 1 | Tier 2 | Tier 3 |
| Poolesville ES | 539 | 513 | 95.2% | +26 | No UPP | 111 | 134 | 215 |
| John Poole MS | 468 | 406 | 86.8% | +62 | No UPP | 188 | 213 | 232 |
| Poolesville HS | 1,508 | 1,373 | 91.0% | +135 | No UPP | 315 | 437 | 663 |

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (“UPP”) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. Under the FY2022 Annual School Test, development projects approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in Table 2.

Based on the school capacity analysis performed, using the FY2022 Annual School Test, this Application is not subject to a Utilization Premium Payment.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied.*

The Subject Property is subject to Chapter 22A of the County code.

Natural Resource Inventory / Forest Stand Delineation

The Natural Resource Inventory / Forest Stand Delineation (“NRI/FSD”), Plan No. 420191060, for the Subject Property was approved on February 19, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Lower Dry Seneca Creek watershed, a Use I-P stream. The Subject Property is 7.65 acres in size and contains 4.41 acres of high priority forest. There are two existing specimen trees, ST-7 and ST-9, that are 30” Diameter Breast Height (“DBH”) or greater on the Subject Property. One is located within the identified forest stand and the other is located outside of the forest adjacent to the existing horse stable and paddock area. There are no streams, seeps, springs, wetlands or other sensitive environmentally features on the Subject Property.

Preliminary / Forest Conservation Plan

The Application satisfies all of the applicable requirements of the Forest Conservation Law (“FCL”), Montgomery County Code, Chapter 22A, and is in compliance with the Montgomery County Planning Department’s Environmental Guidelines. As required by Chapter 22A, an FFCP was submitted with this Application. The total net tract area for forest conservation purposes is 7.39 acres which includes the Subject Property of 7.65 acres, minus roadway dedication of 0.26 acres. The property is zoned R-200 and is classified as High Density Residential (HDR) as defined in Section 22A-3 of the FCL and as specified in the Trees Technical Manual, Table 2. The Subject Property contains 4.41 acres of forest. The Applicant proposes to remove 2.32 acres of forest and retain 2.09 acres of forest. This results in a total reforestation requirement of 0.00 acres. All retained forest will be protected by being placed into a Category I Conservation Easement (Figure 5).

There are 2 specimen sized trees on the Subject Property, Trees ST-7 and ST-9. Tree ST-7 is located in the retained forest on Lot 2 and ST-9 is located between the existing stable and the septic sand mounds on Lot 1. Tree ST-7 is well outside of the proposed limits of disturbance (“LOD”) for Lot 2. There is no proposed construction on Lot 1 with this Application, so there are no impacts to Tree ST-9. Since neither specimen tree is proposed to be impacted with this Application, no tree variance request is required for these 2 trees.

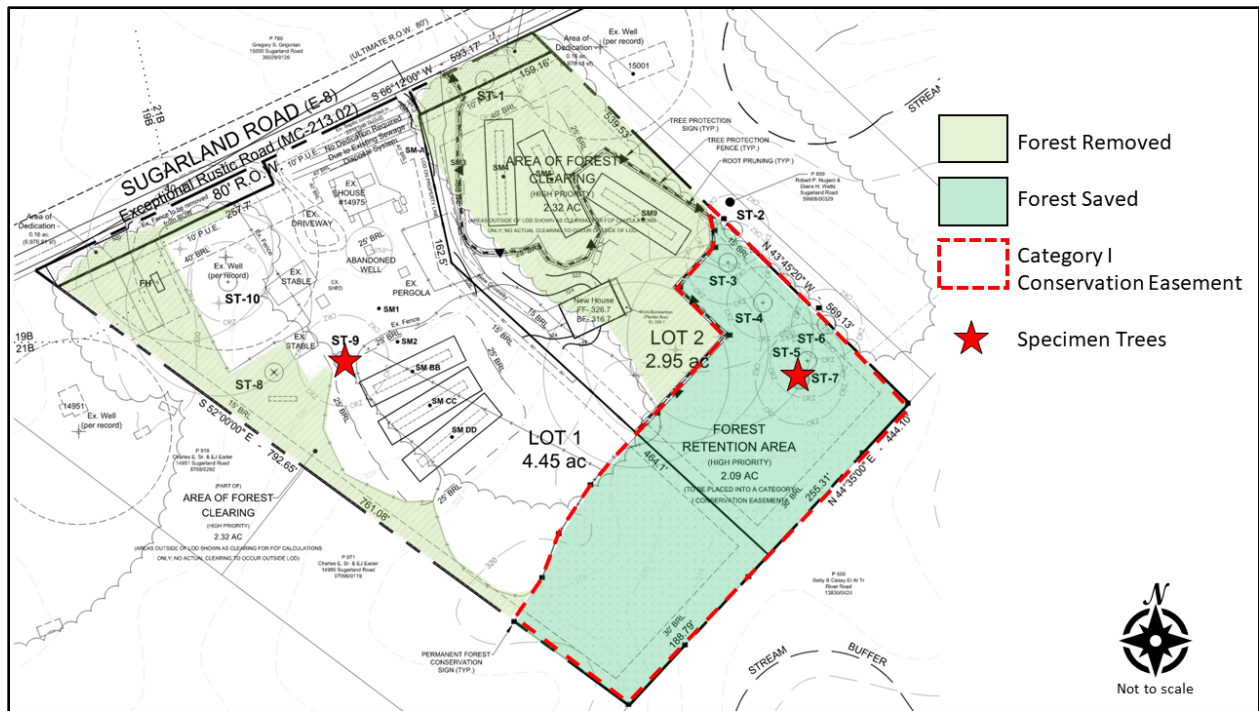


Figure 5 – Forest Conservation Allocations

5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.

The Administrative Subdivision Plan received an approved stormwater plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on January 7, 2020 (Attachment 4). The Application will meet stormwater management goals through the use of a planter box and non-rooftop disconnect.

6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

The Application is in conformance with the conditions of Conditional Use 16-15 and associated minor amendment.

SECTION 5 - COMMUNITY CORRESPONDENCE

The Applicant has met all proper signage and noticing requirements for the Preliminary Plan Application. As of the date of this report, Staff received community correspondence from three neighboring residents regarding this Application (Attachment 10). The correspondence received requested a Public Hearing and expressed concerns about the 80-foot ROW along Sugarland Road, potential destruction and damage to the hedgerows and habitat along Sugarland Road, preservation of the existing forest stand, possible drainage and runoff issues from the Subject Property, the proposed location for a new driveway at Lot 2, and discrepancies related to measurements, policy, and easements. The Application was reviewed by the Rustic Roads Advisory Committee, received an approval letter (Attachment 9), and also reviewed in detail by OZAH during the minor amendment to Conditional Use 16-15, which was also approved (Attachment 8). In reviewing the citizen correspondence, Staff has concluded that the Application as proposed, and the implementation of all applicable code requirements adequately addresses the concerns raised in the correspondence.

SECTION 6 - CONCLUSION

The Administrative Subdivision Plan meets the technical requirements of Section 50.4.3 of the Subdivision Regulations, the applicable requirements of Section 50.6.1.C, Forest Conservation Law in Chapter 22A, the Montgomery County Planning Department's Environmental Guidelines, and the stormwater requirements of Chapter 19. The lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the 1980 *Agricultural and Rural Open Space Master Plan*. Access and public facilities will be adequate to serve the proposed lots, and the Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

ATTACHMENTS

- Attachment 1 - Statement of Justification
- Attachment 2 - Administrative Subdivision Plan Composite
- Attachment 3 - Forest Conservation Plan Composite
- Attachment 4 - MCDPS Stormwater Management Approval Letter, January 7, 2020
- Attachment 5 - MCDPS Fire Department Access and Water Supply Approval Letter, March 9, 2021
- Attachment 6 - MCDPS Well and Septic Approval Letter, May 13, 2021
- Attachment 7 - MCDOT Approval Letter, July 8, 2021
- Attachment 8 - CU 16-15 (Minor Amendment) Hearing Examiner's Report & Decision, September 1, 2020
- Attachment 9 - RRAC Approval Letter, February 5, 2021
- Attachment 10 - Citizen Correspondence

Benning & Associates, Inc.

Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240

November 18, 2019

Mr. Richard Weaver, Chief
Planning Area 3
Montgomery County Planning Department of M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Statement of Justification for Freeman Property (MNCPPC #620190140)

Dear Mr. Weaver,

This statement accompanies an Administrative Subdivision Plan Application for the subject property. The property consists of a parcel which is 7.42 acres in size according to survey records. The property is located within the R-200 zone and is proposed to be subdivided into 2 lots. The owner's residence which is located on the property with an address of 14975 Sugarland Road is planned to remain on proposed Lot 1. Existing outbuildings including small horse barns and other smaller buildings are also proposed to remain on Lot 1.

Regarding the required findings of Chapter 50.4.2.D for approval of an Administrative Subdivision Plan, please note the following:

the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;

The proposed new lots meet or exceed all development standards required in the R-200 zone. In fact, the proposed new lots are significantly larger in size and dimension than the minimum standards of the R-200 zone due to the requirements for on-site wells and septic systems. The proposed new lots are regular in shape with adequate frontage along Sugarland Road.

the preliminary plan substantially conforms to the master plan;

The subject property lies within the area governed by the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space. The Master Plan designates the area which includes the subject parcel as being one of several "Rural Communities and Villages" of the upper county (page 38). The 1980 Master Plan reconfirmed the

existing zoning of these "historic rural settlements" as R-200. The subject parcel is one of 6 or 7 parcels clustered together and located along the south side of Sugarland Road west of Partnership Road. This cluster of parcels is surrounded on all sides by land which is zoned AR. The subject parcel is one of the larger parcels in the area zoned R-200.

The proposed subdivision of the subject property into 2 single-family lots consistent with R-200 zoning standards is consistent with the intent of the Master Plan to maintain the area as a "rural settlement".

Sugarland Road has been designated as an "exceptional rustic road" by the Rustic Roads Functional Master Plan (December 1996). In the area of the subject property, the road is identified as having "pastures, and horse farms with silos, visible on both sides of the road (page 152 of the Rustic Roads Master Plan). There is no mention of any specific scenic views or vegetation along this stretch of roadway.

As noted earlier, the subject plan proposes to retain the existing buildings including horse barns on the site which add to the character of the area. Only one new driveway entrance is proposed to serve the new home on Lot 2 which is to be set back several hundred feet from the road. No improvements to Sugarland Road are anticipated in this rural area of the County. However, in the event that Montgomery County decides to install a fire protection cistern in this area of the County, an easement for the cistern and an adjacent turnaround area are being provided on Lot 1 in the northwest corner of the site.

The proposed subdivision plan is consistent with the intent of the Rustic Roads Functional Master Plan in that the existing features of the site including horse barns and related activities are to remain on the site. In addition, only limited improvements for access to the site or as required by the County are proposed. The plan supports the intent to maintain Sugarland Road as a rustic road.

public facilities will be adequate to support and service the area of the subdivision;

Existing roads are available to provide ingress and egress from the proposed lots. Sugarland Road is a public roadway owned and maintained by the County. For emergency service, the nearest fire and rescue operation is 7.4 miles from the site at 19801 Beallsville Road (UMCVFD). Public utilities are available except public water and sewer service. The lots are proposed to be served by private wells and septic systems.

all Forest Conservation Law, Chapter 22A requirements are satisfied;

Forest Conservation Law requirements are being met by the retention of on-site forest. No new planting is required. A certain amount of forest is proposed to be cleared for the development of the homesite on proposed Lot 2 and other areas too small to be suitable for retention on proposed Lot 1 are also shown as clearing. However, an area of high priority forest is proposed to be placed into a category one conservation easement on both lots to meet retention requirements. The area to be retained is contiguous with a large area of existing forest on an adjacent farm property which is likely to be retained.

all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied;

Stormwater management for the project is to be addressed by utilizing Environmental Site Design (ESD) practices such as bio-swailes and micro bioretention areas.

CONCLUSION

The Administrative Subdivision Plan application as presented is consistent with the requirements and recommendations of all applicable master plans and is in compliance with all zoning and subdivision standards for development within the R-200 zone. Based upon the information provided, we respectfully request approval of this application.

Sincerely,

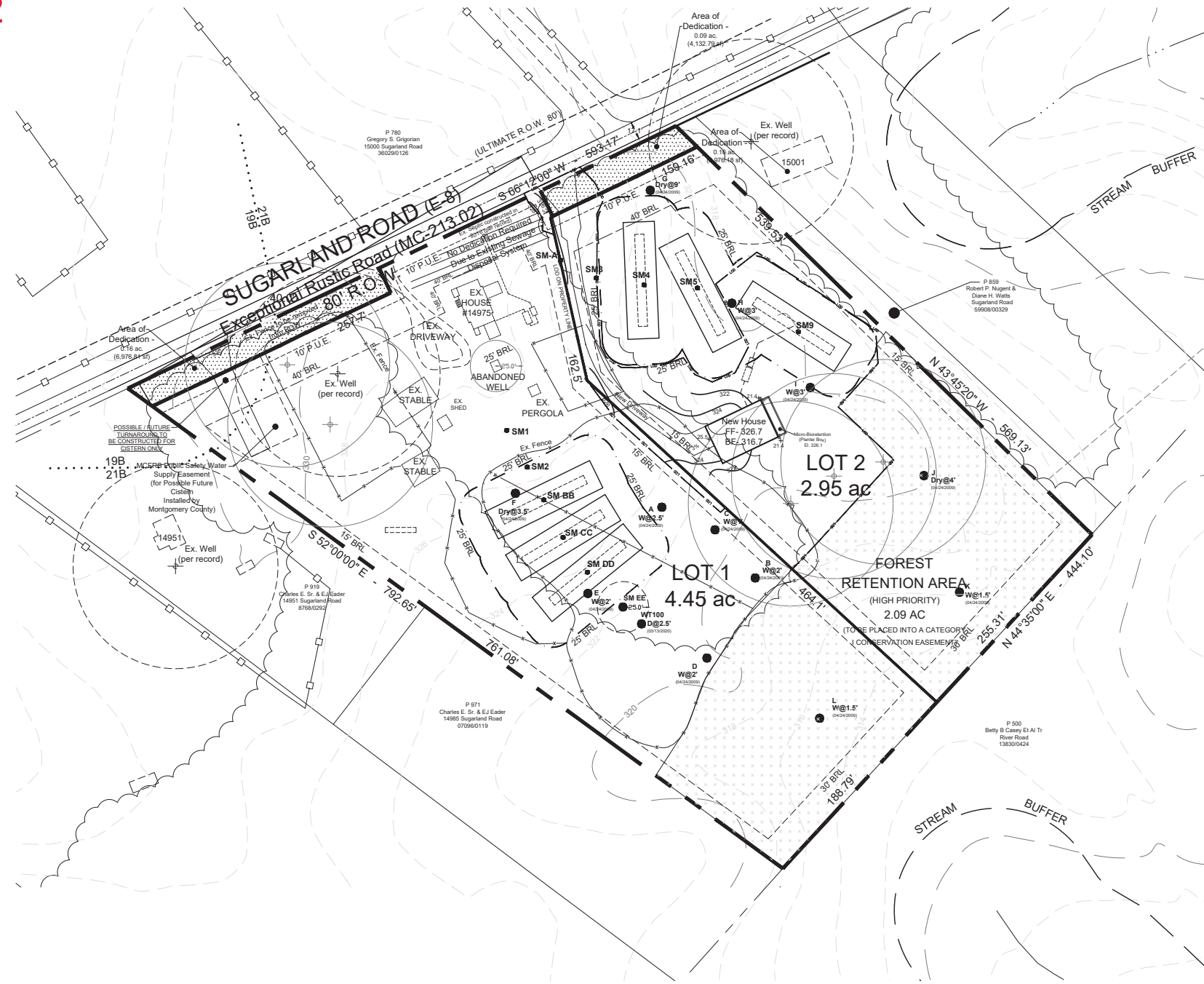
A handwritten signature in black ink, appearing to read 'David W. McKee', with a stylized, cursive style.

David W. McKee

Attachment 2

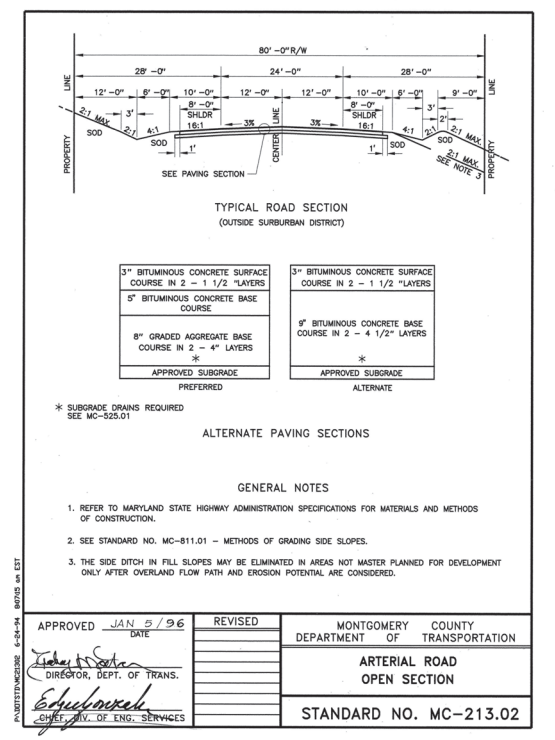
LEGEND:

| | |
|---------------------------|---------------|
| BUILDING RESTRICTION LINE | 15' BRL |
| EXISTING BUILDING | [Symbol] |
| EXISTING FENCE | [Symbol] |
| PROPOSED HOUSE | [Symbol] |
| PROPERTY LINE | N 67°04'00" W |
| LIMITS OF DISTURBANCE | 10' |
| PROPOSED WELL | [Symbol] |
| EXISTING WELL | [Symbol] |
| PROPOSED SANDMOUND | SM1 |
| 25' SAND MOUND BRL | 25' |
| EXISTING CONTOUR | 25' |
| PROPOSED CONTOUR | 30' |
| SEPTIC TANK / PUMP | [Symbol] |
| SOIL SERIES DIVIDE | 15' |
| NEW LOT LINE | [Symbol] |
| EXISTING CANOPY | [Symbol] |



ZONING STANDARDS:

| ZONE: R-200 | Req. | Lot 1 | Lot 2 |
|----------------------------|---------------------|-----------------------|-----------------------|
| Lot Size | 20,000 sf | 193,814.7 sf | 128,591.5 sf |
| Front Setback | 40' | 40' | 40' |
| Side Setback | 12' min., 25' total | 15', 30' total | 15', 30' total |
| Rear Setback | 30' | 30' | 30' |
| Building Height | 40' Max. | 40' Max. | 40' Max. |
| Lot Coverage | 25% Max. | 25% Max. (2.0% Shown) | 25% Max. (1.9% Shown) |
| Lot Width @ Building Line | 100' | 367.1' | 151.2' |
| Lot Width @ Front Lot Line | 25' | 429.2' | 159.1' |



- GENERAL NOTES**
- REFER TO MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.
 - SEE STANDARD NO. MC-811.01 - METHODS OF GRADING SIDE SLOPES.
 - THE SIDE DITCH IN FILL SLOPES MAY BE ELIMINATED IN AREAS NOT MASTER PLANNED FOR DEVELOPMENT ONLY AFTER OVERLAND FLOW PATH AND EROSION POTENTIAL ARE CONSIDERED.

| | | |
|-------------------------------|--------|------------------------------|
| APPROVED <u>JAN 5 / 96</u> | REVISD | MONTGOMERY COUNTY |
| DATE | | DEPARTMENT OF TRANSPORTATION |
| <i>[Signature]</i> | | ARTERIAL ROAD |
| DIRECTOR, DEPT. OF TRANS. | | OPEN SECTION |
| <i>[Signature]</i> | | STANDARD NO. MC-213.02 |
| CHIEF, DIV. OF ENGR. SERVICES | | |

Revisions

| | |
|------------|--|
| 03/09/2021 | |
| 05/27/2021 | |
| 07/08/2021 | |
| | |
| | |



date: 11/18/2019
scale: 1" = 50'

Benning & Associates, Inc.
Land Planning Consultants
14975 Sugarland Road
Cathetersville, MD 20837
(301) 944-0240



ADMINISTRATIVE SUBDIVISION PLAN
FREEMAN PROPERTY
14975 Sugarland Road (P914 - Tax Map CS61)
Montgomery County, Maryland



Professional Certification:
I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed landscape architect registered to practice in the State of Maryland.

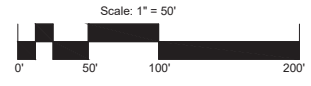
[Signature] 07/08/2021 04/20/2022
Signature Date Exp. Date

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. I also hereby certify to the accuracy and location of the water table and percolation tests shown on this Plan.

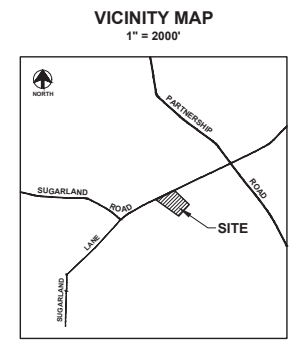
[Signature] #10850 07/08/2021 04-03-2022
Signature Professional Land Surveyor Date Exp. Date



- NOTES:**
- AREA OF PROPERTY - 7.65 ACRES (333,234 SF)
 - EXISTING ZONING: R-200
 - NUMBER OF LOTS SHOWN - 2
 - AREA TO BE DEDICATED TO PUBLIC STREET - 0.25 ac. (11,100.6 SF)
 - AREA REMAINING IN LOTS - 7.4 ac. (322,408.15 SF)
 - SITE TO BE SERVED BY ON-SITE WELL AND SEPTIC SYSTEMS.
 - EXISTING SEWER & WATER SERVICE CATEGORIES: S-6, W-6
 - LOCATED IN LOWER DRY SENECA CREEK WATERSHED (USE I-P).
 - PROPERTY LOCATED ON TAX MAP CS61; WSSC SHEETS 219NW18 & 220NW18.
 - UTILITIES TO BE PROVIDED BY: Verizon, Allegheny Power.
 - THE EXISTING HOUSE ON LOT 1 IS TO REMAIN.
 - THE EXISTING SEPTIC SYSTEM ON LOT 1 IS TO REMAIN.
 - SOURCE OF TOPOGRAPHY: M-NCPPC TOPOGRAPHIC SHEETS 219NW18 & 220NW18



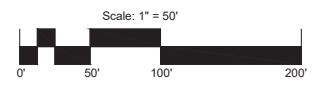
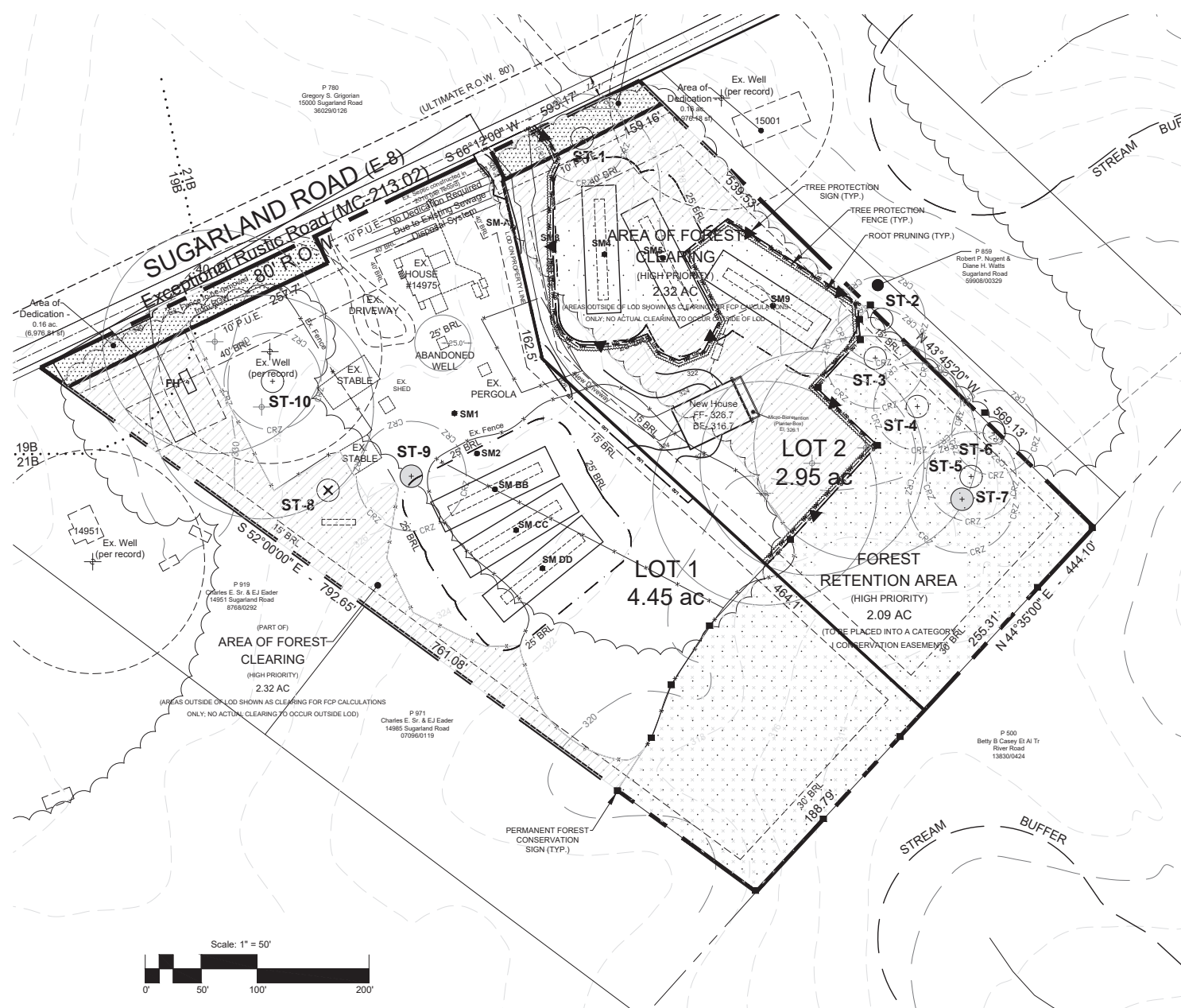
Prepared for:
Jennifer Freeman
14975 Sugarland Road
Poolesville, MD 20837
(301) 377-4267



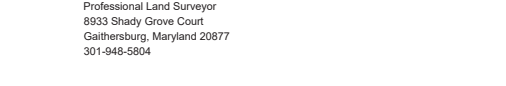
Attachment 3

LEGEND:

| | |
|------------------------------------|--|
| CANOPY COVERAGE | |
| CRITICAL ROOT ZONE | |
| DRYWELL | |
| EXISTING BUILDING | |
| FOREST TO BE CLEARED | |
| FOREST RETENTION AREA | |
| LIMITS-OF-DISTURBANCE | |
| ON-SITE FOREST | |
| PERMANENT FOREST CONSERVATION SIGN | |
| PROPERTY LINE | |
| PROPOSED CONTOUR | |
| ROOT PRUNING | |
| SIGNIFICANT TREE | |
| SIGNIFICANT TREE TO BE REMOVED | |
| SPECIMEN TREE | |
| SPECIMEN TREE TO BE REMOVED | |
| SOILS SERIES DIVIDE | |
| STREAM | |
| STREAM BUFFER | |
| SUPER SILT FENCE | |
| TREE PROTECTION FENCE | |
| TREE PROTECTION SIGN | |
| BUILDING RESTRICTION LINE | |
| EXISTING FENCE | |
| PROPOSED WELL | |
| EXISTING WELL | |
| PROPOSED SANDMOUND | |
| 25' SANDMOUND BRL | |
| NEW LOT LINE | |



- NOTES:**
- AREA OF PROPERTY - 7.85 ACRES (333,234 SF)
 - EXISTING ZONING: R-200
 - NUMBER OF LOTS SHOWN - 2
 - AREA TO BE DEDICATED TO PUBLIC STREET - 0.25 ac. (11,100.6 SF)
 - AREA REMAINING IN LOTS - 7.4 ac. (322,406.15 SF)
 - SITE TO BE SERVED BY ON-SITE WELL AND SEPTIC SYSTEMS.
 - EXISTING SEWER & WATER SERVICE CATEGORIES: S-6, W-6
 - LOCATED IN LOWER DRY SENECA CREEK WATERSHED (USE LP)
 - PROPERTY LOCATED ON TAX MAP CS61; WSSC SHEETS 219NW18 & 220NW18.
 - UTILITIES TO BE PROVIDED BY: Vertecor, Allegheny Power.
 - THE EXISTING HOUSE ON LOT 1 IS TO REMAIN.
 - THE EXISTING SEPTIC SYSTEM ON LOT 1 IS TO REMAIN.
 - SOURCE OF TOPOGRAPHY: M-NCPPC TOPOGRAPHIC SHEETS 219NW18 & 220NW18
 - ON-SITE TREE LOCATIONS FROM A FIELD SURVEY BY: Thomas A. Maddox, Professional Land Surveyor, 8933 Shady Grove Court, Gaithersburg, Maryland 20877, 301-948-5804



- FCP NOTES:**
- The Limits-of-Disturbance may be adjusted in the field to save adjacent trees.
 - All tree protection and stress reduction measures are intended to be completed within the limits of the property. Locations of symbols shown on plan for graphics located by the utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter 36A of the Montgomery County Code.
 - A Forest Conservation Tree Variance will be required when a sand mound must be constructed for Lot 1.

FOREST CONSERVATION WORKSHEET
Freeman Property

| | |
|--|------|
| NET TRACT AREA: | |
| A. Total tract area ... | 7.85 |
| B. Land dedication acres (parks, county facility, etc.) ... | 0.00 |
| C. Land dedication for roads or utilities (not being constructed by this plan) ... | 0.25 |
| D. Area to remain in commercial agricultural production/use ... | 0.00 |
| E. Other deductions (specify) ... | 0.00 |
| F. Net Tract Area ... | 7.39 |

LAND USE CATEGORY: (from Trees Technical Manual)
Input the number "1" under the appropriate land use, limit to only one entry.

| | | | | | | | |
|--|------|------|------|------|------|------|--|
| | ARA | MDR | IDA | HDR | MPD | CIA | |
| | 0.00 | 0.00 | 0.00 | 1.00 | 0.00 | 0.00 | |

G. Afforestation Threshold ... 0.15 x F = 1.11
H. Conservation Threshold ... 0.20 x F = 1.48

EXISTING FOREST COVER:

| | |
|---|------|
| I. Existing forest cover ... | 4.41 |
| J. Area of forest above afforestation threshold ... | 3.30 |
| K. Area of forest above conservation threshold ... | 2.93 |

PROPOSED FOREST CLEARING:

| | |
|--|------|
| N. Total area of forest to be cleared ... | 2.32 |
| O. Total area of forest to be retained ... | 2.09 |

PLANTING REQUIREMENTS:

| | |
|--|------|
| P. Reforestation for clearing above conservation threshold ... | 0.58 |
| Q. Reforestation for clearing below conservation threshold ... | 0.00 |
| R. Credit for retention above conservation threshold ... | 0.61 |
| S. Total reforestation required ... | 0.00 |
| T. Total afforestation required ... | 0.00 |
| U. Credit for landscaping (may not exceed 20% of SF) ... | 0.00 |
| V. Total reforestation and afforestation required ... | 0.00 |

MISS UTILITY
Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. The excavator must notify all public utility companies with underground facilities in the area of proposed excavation and have those facilities located by the utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter 36A of the Montgomery County Code.

SIGNIFICANT TREE CHART

| TREE NUMBER | BOTANICAL NAME | COMMON NAME | SIZE (D.B.H.) | TREE CONDITION | COMMENTS | STATUS | STRESS REDUCTION |
|-------------|-----------------|------------------|---------------|-----------------|--|---------------|---|
| ST-1 | Quercus rubra | Northern Red Oak | 26.5' | Moderate - Poor | Basal rot, cavity with decay in root collar, dead broken lower limbs, tree has been pruned, co-dominant leaders, adventitious limbs | To remain | Tree protection sign, tree protection fence, tree protection sign |
| ST-2 | Quercus alba | White Oak | 25.6' | Moderate | With Pines by vines growing on trunk, basal response growth, possible decay, phototropic lean in trunk, dead broken lower limbs, multiple vine species climbing trunk, multiple hangers, partially felled adjacent tree leaning on tree, co-dominant leaders, adventitious limbs | To remain | Tree protection sign, tree protection fence, tree protection sign |
| ST-3 | Quercus rubra | Northern Red Oak | 29.3' | Moderate | Adventitious limbs, broken dead limbs with decay, co-dominant leaders | To remain | Tree protection sign, tree protection fence, tree protection sign |
| ST-4 | Quercus alba | White Oak | 25.9' | Moderate | Phototropic lean, response wood growth in lower trunk, broken dead limbs with decay, adventitious limbs, co-dominant leaders, adjacent to old road bed | To remain | |
| ST-5 | Quercus rubra | Northern Red Oak | 28.8' | Poor | Multi-stem, leader is actively falling, open visible vertical crack with decay and sap rot, major basal rot, co-dominant leaders, broken dead limbs and a leader with decay | To remain | |
| ST-6 | Quercus alba | White Oak | 25.3' | Poor | Fence pole and wire fence is embedded in tree trunk, this tree seems to be located on the property line, broken dead limbs with decay, co-dominant leaders, adventitious limbs, possible basal rot | To remain | |
| ST-7 | Quercus rubra | Northern Red Oak | 32.0' | Moderate | Adjacent to old road bed, several small cankers on root collar, gall on root collar, 5% visible grinding node, adventitious limbs, broken dead limbs with decay, co-dominant leaders | To remain | |
| ST-8 | Quercus species | White Oak | 29.8' | Dead | | To be removed | Tree to be flush cut and stump left in place. |
| ST-9 | Quercus alba | White Oak | 32.7' | Moderate | Adventitious limbs, birchhose hanging from upper trunk, hangers, broken dead limbs with decay | To remain | |
| ST-10 | Quercus rubra | Northern Red Oak | 28.9' | Moderate | Adventitious limbs, broken dead limbs with decay, co-dominant leaders | To remain | |

Professional Certification:
I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed landscape architect registered to practice in the State of Maryland.
Anna Owen Wilson 07/08/2021 04/20/2022
Signature Date Exp. Date

PRELIMINARY / FINAL FOREST CONSERVATION PLAN

| ACREAGE OF TRACT | ACREAGE OF TRACT REMAINING IN AGRICULTURAL USE | ACREAGE OF ROAD AND UTILITY R.O.W. NOT TO BE IMPROVED | ACREAGE OF EXISTING FOREST | ACREAGE OF EXISTING FOREST RETENTION | ACREAGE OF TOTAL FOREST CLEARED | LAND USE CATEGORY | CONSERVATION THRESHOLD - 20% | AFFORESTATION THRESHOLD - 15% | FOREST WITHIN WETLANDS TO BE RETAINED | FOREST WITHIN WETLANDS TO BE CLEARED | FOREST WITHIN WETLANDS TO BE PLANTED | FOREST WITHIN 100-YEAR FLOODPLAIN TO BE RETAINED | FOREST WITHIN 100-YEAR FLOODPLAIN TO BE CLEARED | FOREST WITHIN 100-YEAR FLOODPLAIN TO BE PLANTED | FOREST WITHIN STREAM BUFFER TO BE RETAINED | FOREST WITHIN STREAM BUFFER TO BE CLEARED | FOREST WITHIN STREAM BUFFER TO BE PLANTED | FOREST WITHIN PRIORITY AREAS TO BE RETAINED | FOREST WITHIN PRIORITY AREAS TO BE CLEARED | FOREST WITHIN PRIORITY AREAS TO BE PLANTED | STREAM BUFFER - LINEAR FEET | STREAM BUFFER - AVERAGE WIDTH |
|------------------|--|---|----------------------------|--------------------------------------|---------------------------------|--------------------------|------------------------------|-------------------------------|---------------------------------------|--------------------------------------|--------------------------------------|--|---|---|--|---|---|---|--|--|-----------------------------|-------------------------------|
| 7.85 AC | 0.00 AC | 0.25 AC | 4.41 AC | 2.99 AC | 2.32 AC | HIGH DENSITY RESIDENTIAL | 1.45 AC | 1.09 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0.00 AC | 0 | 0 |

Revisions

| | |
|------------|--|
| 03/09/2021 | |
| 07/08/2021 | |
| | |
| | |
| | |
| | |



date: 11/18/2019
scale: 1" = 50'

Bonnig & Associates, Inc.
Landscape Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-6240



PRELIMINARY / FINAL FOREST CONSERVATION PLAN
FREEMAN PROPERTY
14975 Sugarland Road (P914 - Tax Map CS61)
Montgomery County, Maryland

DEVELOPER'S CERTIFICATE - LOT 1 and Lot 2

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 02070010 including financial bonding, forest planting, maintenance and all other application agreements.

Developer's Name: _____
Contact Person or Owner: _____
Address: 14975 Sugarland Road, Poolesville, MD 20837
Phone # and Email: 301-377-4267
Signature: _____



DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Hadi Mansouri
Acting Director

January 7, 2020

Mr. David McKee, PE
Benning and Associates, Inc.
8933 Shady Grove Court
Gaithersburg, MD 20877

Re: **COMBINED STORMWATER MANAGEMENT
CONCEPT/SITE DEVELOPMENT
STORMWATER MANAGEMENT PLAN** for
14975 Sugarland Road
Preliminary Plan #: TBD
SM File #: 285015
Total Concept Area: 142,350 square feet
Parcel(s): 914
Watershed: Seneca Creek

Dear Mr. McKee:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via a planter box and non-rooftop disconnect.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to



255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850 | 240-777-0311
www.montgomerycountymd.gov/permittingervices

David McKee, PE
January 7, 2020
Page 2 of 2

reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Jean Kapusnick at jean.kapusnick@montgomerycountymd.gov or 240-777-6345.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: jak

cc: N. Braunstein
SM File # 285015

ESD: Required/Provided 666 cf / 666 cf
PE: Target/Achieved: 1.0"/1.0"
STRUCTURAL: 0.0 cf
WAIVED: 0.0 ac.



**Department of Permitting Services
Fire Department Access and Water Supply Comments**

DATE: 29-Mar-21
TO: Joshua Maisel - benninglandplan@aol.com
Benning and Associates
FROM: Marie LaBaw
RE: Freeman Property
620190140

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **09-Mar-21** .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.

***** Water supply easement *****



MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

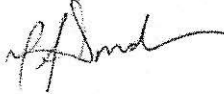
Isiah Leggett
County Executive

Richard R. Bowers
Fire Chief

MEMORANDUM

May 13, 2010

TO: Dave McKee, Benning & Associates, Inc

FROM: Assistant Chief Mike Donahue, Acting Fire Marshal 

SUBJECT: Request for exception from providing a professional engineer's seal on development plan submittals

I am in receipt of your March 31, 2010 memorandum requesting an exception from providing a professional engineer's seal on development plan submittals. Given the parameters set forth in the memorandum, I find your request acceptable. Benning & Associates, Inc may submit development plans with a landscape architect's certification instead of a professional engineer's seal in all cases that do not require an engineered solution.

Office of the Fire Marshal

101 Monroe Street, 12th Floor, Rockville, Maryland, 20850-2589 240/777-2470, FAX 240/777-2465

Serving with dedication, courage and compassion

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
Fax: 301-948-0241
E-mail: benninglandplan@aol.com

To: Assistant Chief Mike Donahue – Engineering Section, Office of the Fire Marshal /
Montgomery County Fire & Rescue Service

From: David McKee

Date: March 31, 2010

Re: Exception from Engineer's Seal

Dear Chief Donahue,

I am contacting you regarding our recent discussions about the requirement to provide an engineer's seal on plans prepared by this office. Our office has been preparing plans which address fire department access and water supply for several years since your office began participating in Development Review Committee meetings and commenting on subdivision plans. The professionals in our office include land planners and landscape architects with recognized expertise in all site planning and land planning matters. It is our request that an engineer's seal not be required at the planning stage for our projects unless specifically warranted for certain engineering matters.

You are aware that many of our subdivision projects involve the use of shared driveways which are located in rural areas of the County and are of low overall lot density. The information provided on our Preliminary Plans and Fire Department Access Plans for these and other projects is related to the planimetrics of where a driveway is to be located, where the turn-around is to be located, how wide the driveway will be, turning radii, etc. At the project planning stage, these are not matters which require any special certification.

In addition, our plans show the location of nearest water supply and/or a proposed location for new water supply (i.e. new fire hydrant or location for cistern). If a new hydrant is needed, WSSC plans will be required later (after subdivision approval) and these plans and any associated calculations are done by a subcontracted civil engineer at the appropriate time. Our plans (Preliminary Plan, Fire Department Access Plan) do not offer information such as hydraulic calculations - just the planimetrics of where a hydrant or cistern is needed based upon the location of the nearest water supply.

When preparing plans for review by your office, it is not our intention to request any waivers or exceptions from load bearing requirements or from water supply standards. Furthermore,

it is our expectation that load bearing requirements must be met and that a geotechnical analysis is needed prior to construction of any Fire Department access lane. We suggest that a note added to plans prepared by our office will indicate the following:

The paved all-weather Fire Department access lane shown on this plan is to be constructed to meet load-bearing requirements for Fire Department apparatus. The new paved driveway must be constructed to meet MCDOT tertiary road standards (MC 210.01) unless an alternative design is provided which meets Fire Department requirements. For any alternative design, an engineer's certification that load bearing standards are met must be provided prior to issuance of the Use & Occupancy permit.

I hope you find the information in this letter informative and helpful. The purpose of this letter is to establish an understanding between our offices which will help facilitate the review and approval of plans prepared by this office. If anything further is needed in the regard, please feel free to contact me at your earliest convenience.

Sincerely,



David W. McKee,
State of Maryland Licensed Landscape Architect

EASEMENT AND SUBORDINATION AGREEMENT

THIS EASEMENT AND SUBORDINATION AGREEMENT (“**Easement**”) is made by and among Jennifer Freeman, and their successors, heirs and assigns (collectively referred to as “**Grantor**”) and MONTGOMERY COUNTY, MARYLAND (“**County**”) (the Grantors and the County are collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, Grantor desires to subdivide a parcel of land conveyed by Kerry M. White to Jennifer freeman by deed dated February 1, 2016 and recorded among the Land Records of Montgomery County, Maryland in Liber 51577 at Folio 146; and

WHEREAS, all of the above-named parcels of land are hereinafter collectively referred to as the “Property”; and

WHEREAS, Grantor intends to subdivide the Property into 2 lots and record a subdivision record plat among the Land Records of Montgomery County, Maryland after this Easement is recorded; and

WHEREAS, the Property is not served by public water; and

WHEREAS, by this Easement, Grantor wishes to grant the County an easement over a portion of the Property, as is more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto and made a part hereof (“**Easement Area**”), for the installation, maintenance, use, operate, and training on and with an underground MCFRS Public Safety Water Supply Cistern (“**Cistern**”) to provide a ready water supply in the event of a fire; and

WHEREAS, by this Easement, Grantor wishes to grant the County an easement for access to the Easement Area, to install, maintain, and train on and with the Cistern and to outline the rights and responsibilities of the Parties with respect to the Easement Area.

WITNESSETH

NOW THEREFORE, in consideration of the approval of the subdivision record plat for the Property, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree to the following terms:

1. Grantor hereby grants to the County and its successors and assigns, a perpetual Easement over, across, and under the Easement Area to construct, install, inspect, maintain, rehabilitate, use, train, and operate and abandon the Easement Area and Cistern.

2. The Easement granted herein shall be located in the Easement Area, more particularly described in **Exhibit A** hereto and depicted in **Exhibit B**, and which will be depicted and labelled as the “MCFRS Public Safety Water Supply Easement” on the subdivision record plat.

3. During the term of this Easement, Grantor acknowledges and agrees that (a) Grantor must not obstruct or permit anyone else to obstruct the County’s construction, installation, inspection, maintenance, rehabilitation, use, operation, training on and with, or abandonment of the Cistern; (b) Grantor must not erect or permit anyone else to erect a fence, wall, or other permanent structure within the Easement Area; and (c) Grantor must not plant or permit anyone else to plant any trees or shrubs within the Easement Area without the County’s prior written consent. Should the County order any improvement in whole or in part to be removed from the Easement Area, such removal shall be at the expense of Grantor, and Grantor will save the County harmless from any expenses incurred therefrom.

4. Grantor grants the County and its successors and assigns a right of ingress and egress to the Easement Area via the Property to install, construct, reconstruct, modify, alter, maintain, repair, replace, upgrade, inspect, monitor, operate, use, train on and with, and abandon the Easement Area and Cistern and its appurtenances. Except in the case of an emergency, the County will provide not less than six (6) days prior notice to Grantor before exercising its right of ingress and egress to the Easement Area. Grantor agrees that the failure to timely object after receiving notice from the County constitutes consent to ingress and egress within the timeframe specified in the notice.

5. The County’s right to install, construct, reconstruct, modify, alter, maintain, repair, replace, upgrade, inspect, monitor, operate, use, train on and with, and abandon the Easement Area and Cistern and its appurtenances is subject to appropriation. Further, the grant of this Easement does not obligate the County to maintain or restore the surface of the Easement Area, unless the Easement Area is disturbed during the installation, construction, reconstruction, modification, alteration, rehabilitation, maintenance, repair, replacement, upgrade, inspection, operation, use, training on and with, or abandonment of the Easement Area and Cistern and its appurtenances, in which case, the County will re-grade the Easement Area and cover it with grass seed and straw or an equivalent material to permit the grass seed to germinate.

6. No covenant or agreement contained in this Easement shall inure to the benefit of any party other than Grantor and the County and the Parties’ respective heirs, successors and assigns.

7. All of the covenants, agreements, and conditions contained in this Easement run with the land and shall inure to the benefit of and be binding upon the Parties and their respective heirs, successors and assigns.

8. Grantor specially warrants fee simple interest in the Property and agrees to execute, acknowledge, and deliver to or for the County such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any right created hereunder.

9. In the event of any breach, or threatened breach, of this Easement by any Party hereto, the non-defaulting party shall have the right to any remedy available at law or in equity, including but not limited to, injunctive relief and specific performance. The Parties acknowledge and agree that the venue for any legal action under this Easement is the Circuit Court for Montgomery County, Maryland.

10. This Easement constitutes the entire agreement between the Parties and may not be modified or amended, except by an instrument in writing signed by the Parties.

11. Grantors shall record this Easement among the land records of Montgomery County, Maryland at their own expense.

12. This Easement shall be governed and construed in accordance with the laws of the State of Maryland and the laws of Montgomery County, Maryland.

13. Any forbearance by either the County or Grantor in exercising any right or remedy afforded under this Easement or by law shall not be a waiver or preclude the exercising of any such right or remedy. A waiver of any right or remedy by any Party must be specifically set forth in writing.

14. By accepting this Easement, the County does not waive governmental immunity. In any event, the County's liability under this Easement is subject to and limited by the provisions, types of liability, notice requirements and maximum amounts established in the Local Government Tort Claims Act; Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. I, Sec. 5-301, *et seq.* (2013 Repl. Vol.) and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-5A-02 (2013 Repl. Vol.), (together the "**County Indemnification Statutes**"), all as amended from time to time. Any obligation under this Easement is subject to and contingent upon Grantor, and Grantor's heirs, successors and assigns, providing notice of any and all claims upon which the Party will rely in the manner required by the County Indemnification Statutes. A Party's failure to provide timely notice of any claim precludes the Party from pursuing the claim. The provisions of this Paragraph do not create any rights or causes of action in any third parties or increase the County's liability above the caps provided in the County Indemnification Statutes, as applicable.

15. If the County undertakes an affirmative act to abandon this Easement, it will abandon it in a manner that complies with all applicable laws, and thereafter will file a Termination of Easement among the land records of Montgomery County.

16. Grantor acknowledges and agrees that the Easement Area is at least 25 feet from any septic field serving any portion of the Property.

17. The Effective Date of this Easement is the date that it is recorded among the Land Records of Montgomery County, Maryland.

IN WITNESS WHEREOF, Grantor executed this Easement under Seal on the dates indicated below.

WITNESS:

GRANTOR

By: _____ (SEAL)
[name]

MONTGOMERY COUNTY, MARYLAND

By: _____
Diane Schwartz Jones, Director
Department of Permitting Services

APPROVED FOR FORM AND LEGALITY

By: _____
Charles L. Frederick Date
Associate County Attorney

(JURATS ON FOLLOWING PAGES)

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY THAT on this _____ day of _____, 2016, before the subscriber, a Notary Public in and for the aforesaid County and State, personally appeared _____ in his/her individual capacity, well known to me (or satisfactorily proven) to be person whose name is subscribed to the within instrument and did acknowledge the foregoing Easement and Subordination Agreement (“Easement”) to be his own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY THAT on this _____ day of _____, 2016, before the subscriber, a Notary Public in and for the aforesaid County and State, personally appeared **DIANE SCHWARTZ JONES, Director of the Department of Permitting Services**, well known to me (or satisfactorily proven) to be person whose name is subscribed to the within instrument, who did acknowledge that she, having been properly authorized, executed on behalf of Montgomery County, Maryland in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATION:

I HEREBY CERTIFY that the foregoing instrument was prepared by me or under my supervision and that I am a member in good standing of the Bar of the Court of Appeals of Maryland.

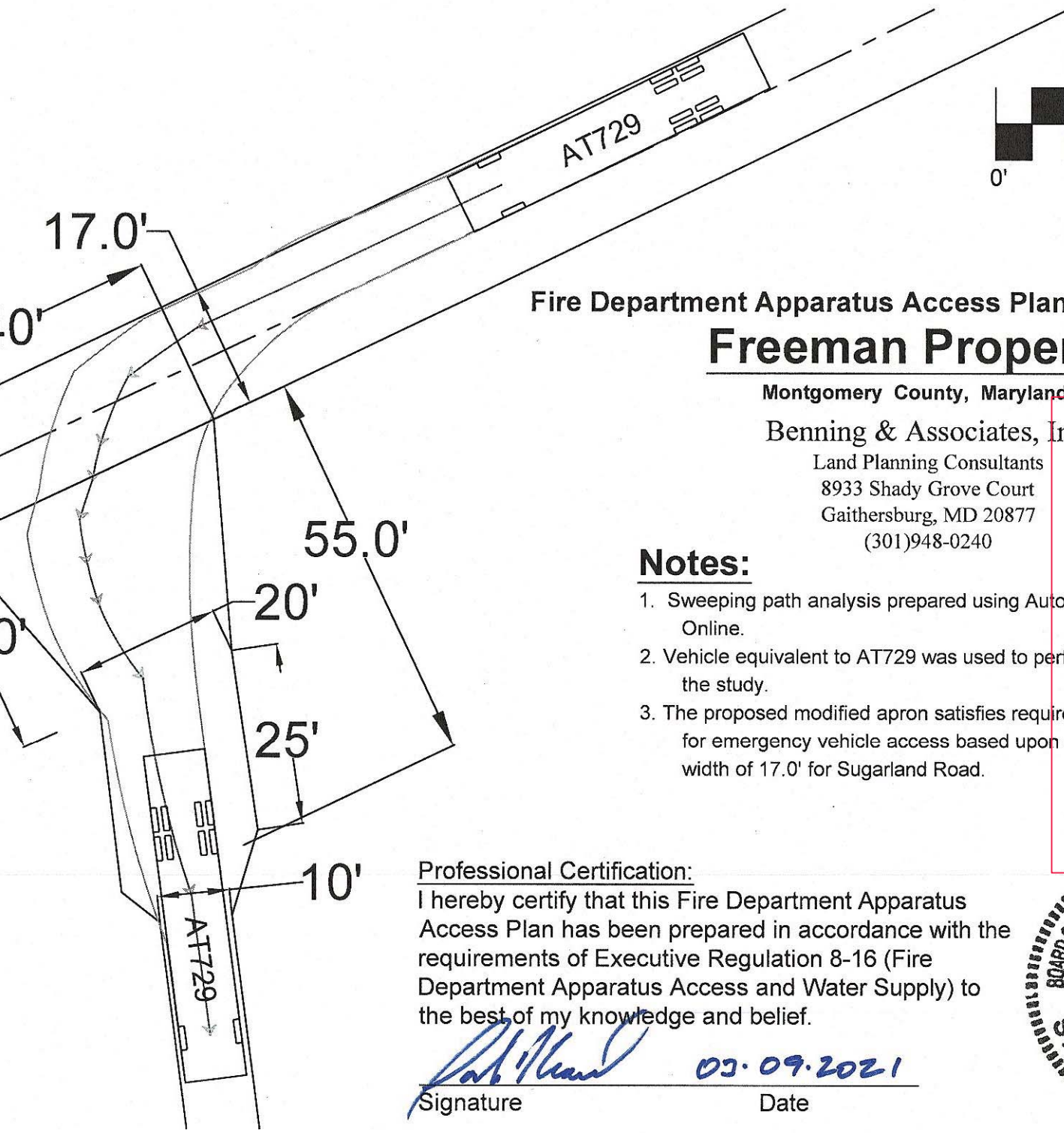
Charles L. Frederick

AFTER RECORDATION, RETURN TO:

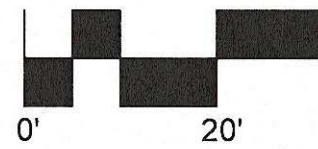
Montgomery County, Maryland
Office of the County Attorney
101 Monroe Street, Third Floor
Rockville, MD 20850
Attn: Charles L. Frederick

EXHIBIT A
(Legal Description of the Property)

EXHIBIT B
(Legal Description of the Easement Area)
(metes and bounds)



Scale: 1" = 20'



Date: 02/03/21

Fire Department Apparatus Access Plan - Autoturn Freeman Property

Montgomery County, Maryland

Benning & Associates, Inc.

Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240

Notes:

1. Sweeping path analysis prepared using Autoturn Online.
2. Vehicle equivalent to AT729 was used to perform the study.
3. The proposed modified apron satisfies requirements for emergency vehicle access based upon a road width of 17.0' for Sugarland Road.

Professional Certification:

I hereby certify that this Fire Department Apparatus Access Plan has been prepared in accordance with the requirements of Executive Regulation 8-16 (Fire Department Apparatus Access and Water Supply) to the best of my knowledge and belief.

[Handwritten Signature]

03.09.2021

Signature

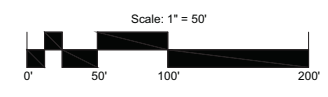
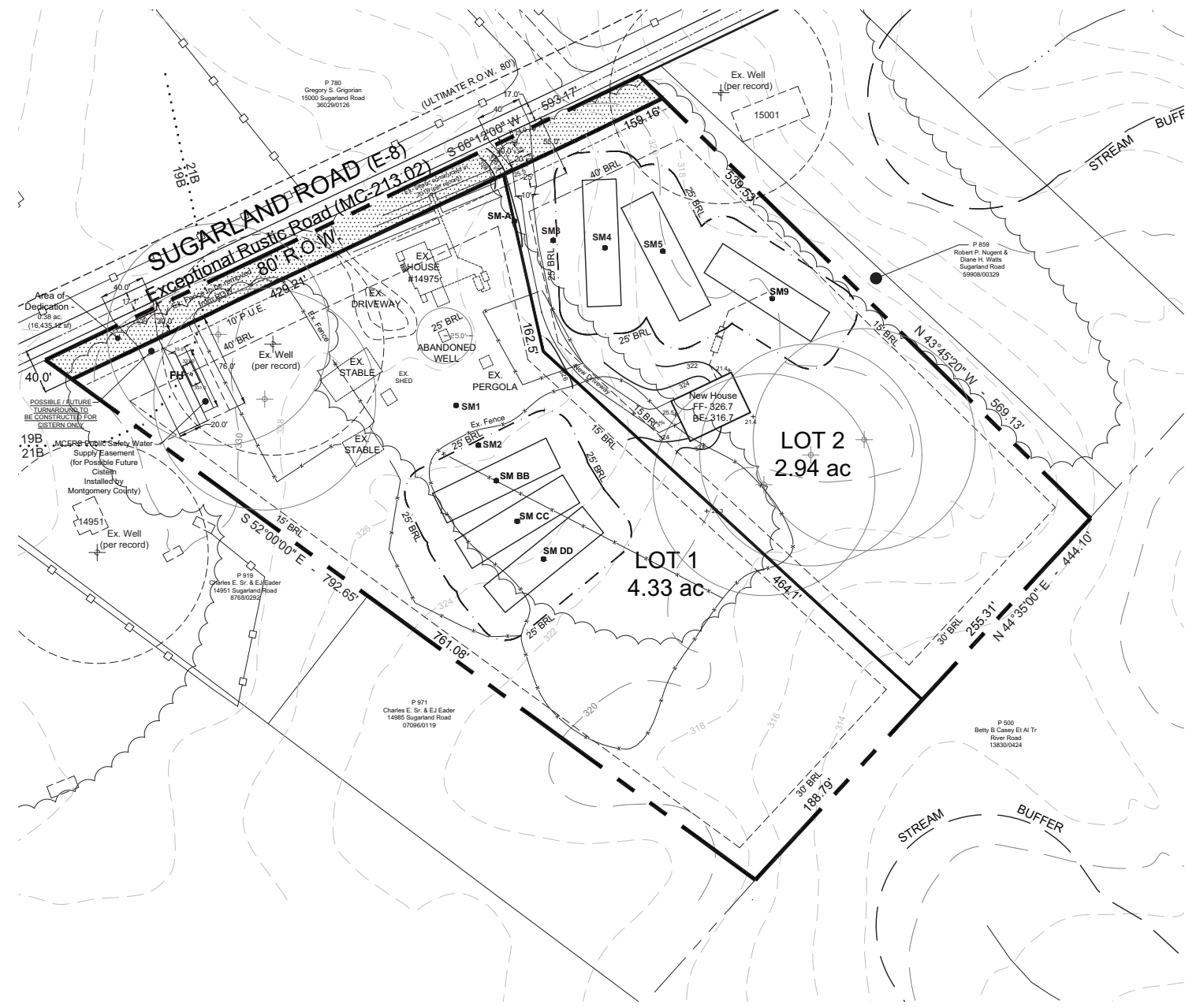
Date

clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation.

BY: *S.M.C.* FM: 43 DATE: 3/29/2021



- LEGEND:**
- BUILDING RESTRICTION LINE 15' BRL
 - EXISTING BUILDING
 - EXISTING FENCE
 - PROPOSED HOUSE
 - PROPERTY LINE N 67°04'00" W
 - LIMITS OF DISTURBANCE
 - PROPOSED WELL
 - EXISTING WELL
 - PROPOSED SANDMOUND SM1
 - 25' SAND MOUND BRL
 - EXISTING CONTOUR
 - PROPOSED CONTOUR
 - SEPTIC TANK / PUMP
 - SOIL SERIES DIVIDE
 - NEW LOT LINE
 - EXISTING CANOPY



FIRE DEPARTMENT APPARATUS ACCESS & WATER SUPPLY NOTES:

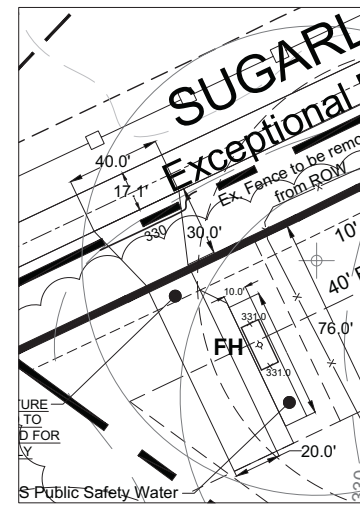
- The purpose of this plan is to address requirements of Executive Regulation 8-16 (Fire Department Apparatus Access and Water Supply) as appropriate for the proposed subdivision.
- Proposed lot 1 is an existing home with an existing individual driveway that will provide fire department access.
- Proposed lot 2 is to be accessed by way of a proposed individual driveway. Sugarland Land Road is an existing exceptional rural rustic road and is only 17' wide at the proposed driveway location. A modified driveway apron must be provided to be compliant with Fire Department Apparatus Access, this will also serve as an operational area. The apron must be constructed to withstand an 85,000 pound fire department apparatus. The modified driveway apron must be constructed at the time the residence is constructed on this property.
- Water supply requirement yo be met by providing an on-site MCFRS Public Safety Water Supply Easement for possible future 30,000 gallon cistern with Dry Hydrant. Materials and installation to be provided by Montgomery County Fire and Rescue. Easement to be recorded in the Land Records of Montgomery County and must be shown on the Record Plat.
- If no public safety improvements are made on an easement within 10 years after the easement is first recorded in the land records:
 - The Fire Marshal may renew the easement for one additional ten-year term. The grantor of the easement must be notified in writing at least 60 days before the easement is renewed; or
 - The Fire Marshal must release the easement.



Professional Certification:
 I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed landscape architect registered to practice in the State of Maryland.
 Signature: *Robert P. Nugent* Date: 03/09/2021 Exp. Date: 04/20/2022

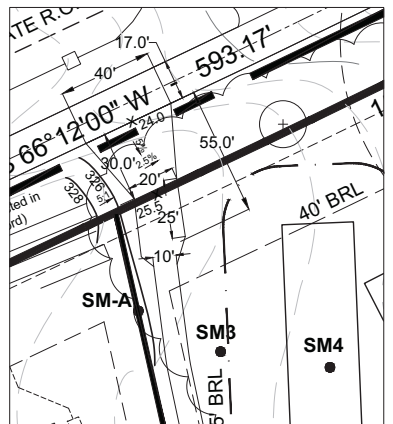
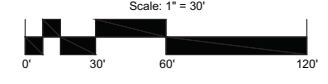
NOTES:

- AREA OF PROPERTY - 7.65 ACRES (333,234 SF)
- EXISTING ZONING: R-200
- NUMBER OF LOTS SHOWN - 2
- AREA TO BE DEDICATED TO PUBLIC STREET - 0.38 ac. (16,435 SF)
- AREA REMAINING IN LOTS - 7.27 ac. (316,812 SF)
- SITE TO BE SERVED BY ON-SITE WELL AND SEPTIC SYSTEMS.
- EXISTING SEWER & WATER SERVICE CATEGORIES: S-6, W-6
- LOCATED IN LOWER DRY SENECA CREEK WATERSHED (USE I-F)
- PROPERTY LOCATED ON TAX MAP CS61: WSSC SHEETS 219NW18 & 220NW18.
- UTILITIES TO BE PROVIDED BY: Verizon, Allegheny Power.
- THE EXISTING HOUSE ON LOT 1 IS TO REMAIN.
- THE EXISTING SEPTIC SYSTEM ON LOT 1 IS TO REMAIN.
- SOURCE OF TOPOGRAPHY: M-NCPPC TOPOGRAPHIC SHEETS 219NW18 & 220NW18

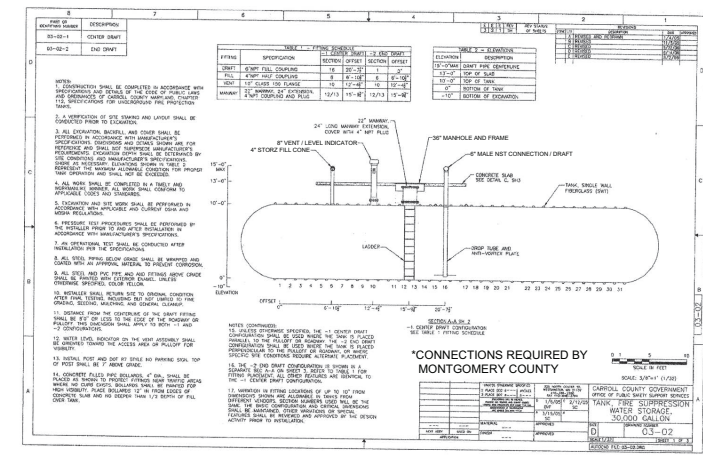


DETAIL VIEW - WATER SUPPLY WITH MODIFIED DRIVEWAY APRON (MODIFIED DRIVEWAY APRON) SCALE: 1" = 30'

- Notes:**
- The proposed driveway aprons are modified from standard DFRS Modified Driveway Apron dimensions to account for the reduced width of Sugarland Road.
 - Pavement section to be in accordance with MCDOT standard residential driveways.



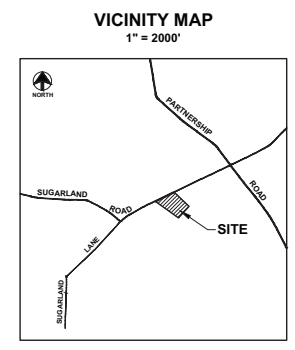
DETAIL VIEW - NEW DRIVEWAY TO SERVE LOT 2 (MODIFIED DRIVEWAY APRON) SCALE: 1" = 30'



- FRICITION LOSS CALCULATIONS-**
- Static Head (Hydrant Elev. =332.7) - (Drop Tube Invert Elev. = 318.4) = 14.3'
 - Friction Head -
 Drop Tube & Suction Pipe Length: 14.3'
 90° Ell: 1 x 18.92' = 18.92'
 Total = 33.22'
 33.22' I.f. 6" Galv. Pipe x 0.0086 I.f. = 0.29'
 - Total Head = 14.6'

| TANK ELEVATION TABLE | |
|----------------------|--|
| ELEVATION | DESCRIPTION |
| 331.2 | EXISTING GRADE AT PROPOSED TANK SITE |
| 331.0 | PROPOSED CONCRETE SLAB ELEVATION |
| 332.7 | PROPOSED DRAFT PIPE CENTERLINE ELEVATION |
| 328.0 | PROPOSED TOP OF TANK ELEVATION |
| 318.0 | PROPOSED BOTTOM OF TANK ELEVATION |
| 317.2 | PROPOSED BOTTOM OF EXCAVATION ELEVATION |

FIRE CODE ENFORCEMENT
 Fire Department Access Review
 Review based upon information contained on this plan. Does not cover satisfactory layout resulting from omissions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation.
 BY: *S.M.C.* PH: 43 DATE: 3/29/2021



Prepared for:
Jennifer Freeman
 14975 Sugarland Road
 Poolesville, MD 20837
 (301) 377-4267

Revisions

| | |
|------------|--|
| 03/09/2021 | |
| | |
| | |
| | |
| | |



date: 01/07/2020
 scale: 1" = 50'

Breming & Associates, Inc.
 Land Planning Consultants
 10000 Greenleaf Road
 Gaithersburg, MD 20877
 (301)948-0240



FIRE DEPARTMENT APPARATUS ACCESS PLAN
 (ALTERNATIVE COMPLIANCE)
FREEMAN PROPERTY
 14975 Sugarland Road (P914 - Tax Map CS61)
 Montgomery County, Maryland



DEPARTMENT OF PERMITTING SERVICES


Marc Elrich
County Executive

Mitra Pedoeem
Director

M E M O R A N D U M

May 13th, 2021

TO: Joshua Penn, Lead Reviewer
Development Review
Maryland National Capital Park and Planning Commission

FROM: Heidi Benham, Manager 
Well and Septic Section
Department of Permitting Services

SUBJECT: Administrative Subdivision : Freeman Property
620190140

This is to notify you that the Well & Septic Section of MCDPS approved the administrative subdivision plan received in this office on April 12th, 2021.

Approved with the following reservations:

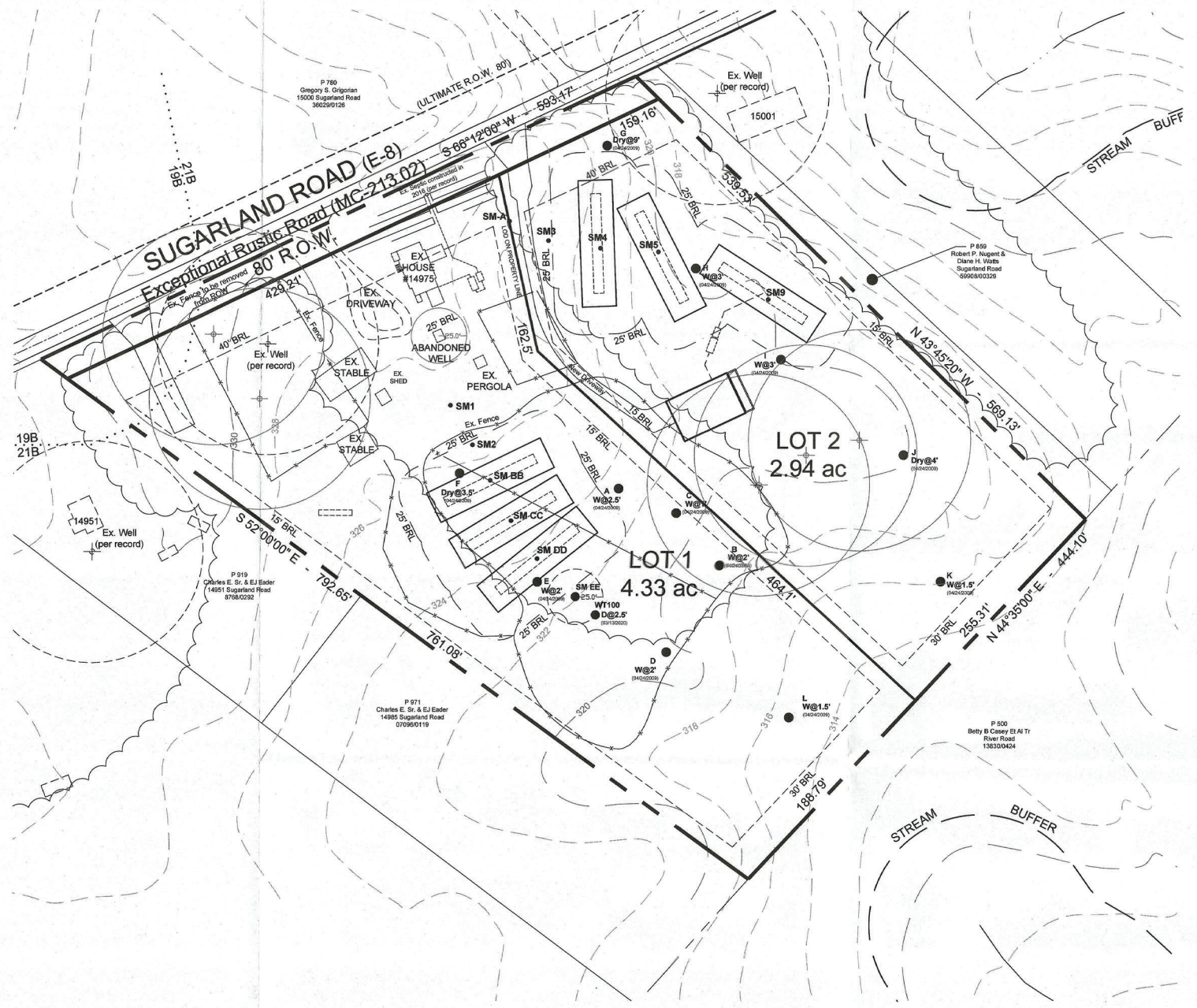
1. The record plat must show the wells and sand mound septic reserve areas as they are shown on this plan.
2. All lots to use sand mounds. Prior to approval of any permits for the lots, all sand mound areas must be fenced with 4-foot high orange construction fencing along the 25' SBRL which must remain in place until all construction has been completed.
3. Any physical disturbance or compaction of a sand mound site could render that site non-functional and therefore negate this approval.

If you have any questions, please contact Heidi Benham at (240) 777-6318.

Cc: Benning & Assoc.

LEGEND:

| | |
|---------------------------|---------------|
| BUILDING RESTRICTION LINE | 15' BRL |
| EXISTING BUILDING | [Symbol] |
| EXISTING FENCE | [Symbol] |
| PROPOSED HOUSE | [Symbol] |
| PROPERTY LINE | N 67°04'07" W |
| LIMITS OF DISTURBANCE | LD |
| PROPOSED WELL | [Symbol] |
| EXISTING WELL | [Symbol] |
| PROPOSED SAND MOUND | SM1 |
| PROPOSED SAND MOUND BED | [Symbol] |
| 25' SAND MOUND BRL | [Symbol] |
| EXISTING CONTOUR | 254 |
| PROPOSED CONTOUR | 362 |
| SEPTIC TANK / PUMP | [Symbol] |
| SOIL SERIES DIVIDE | 399 |
| NEW LOT LINE | [Symbol] |
| EXISTING CANOPY | [Symbol] |



- NOTES:**
1. AREA OF PROPERTY - 7.85 ACRES (333,234 SF)
 2. EXISTING ZONING: R-200
 3. NUMBER OF LOTS SHOWN - 2
 4. AREA TO BE DEDICATED TO PUBLIC STREET - 0.38 ac. (16,435 SF)
 5. AREA REMAINING IN LOTS - 7.27 ac. (316,681.2 SF)
 6. SITE TO BE SERVED BY ON-SITE WELL AND SEPTIC SYSTEMS.
 7. EXISTING SEWER & WATER SERVICE CATEGORIES: S-6, W-6
 8. LOCATED IN LOWER DRY SENECA CREEK WATERSHED (USE I-P).
 9. PROPERTY LOCATED ON TAX MAP CS61; WSSC SHEETS 219NW18 & 220NW18.
 10. UTILITIES TO BE PROVIDED BY: Verizon, Allegheny Power.
 11. THE EXISTING HOUSE ON LOT 1 IS TO REMAIN.
 12. THE EXISTING SEPTIC SYSTEM ON LOT 1 IS TO REMAIN.
 13. SOURCE OF TOPOGRAPHY: M-NCPPC TOPOGRAPHIC SHEETS 219NW18 & 220NW18

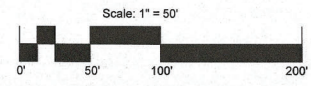
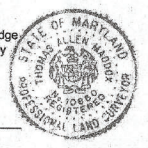
- SANDMOUND PLAN NOTES:**
- 1) THE PURPOSE OF THIS PLAN IS TO OBTAIN APPROVAL FOR THE SANDMOUND AREAS PROPOSED ON THE SUBJECT PROPERTY.
 - 2) THE TAG NUMBER FOR THE EXISTING WELL IS MO-94-1608.
 - 3) ALL WELL AND SEPTIC DISPOSAL AREAS WITHIN 100' OF THE SUBJECT PROPERTY HAVE BEEN SHOWN PER AVAILABLE RECORDS

SANDMOUND DESIGN DATA: PARCEL 914

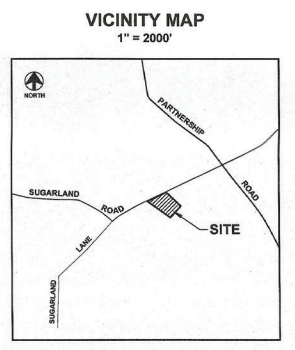
| SANDMOUND | # BEDROOMS | TIME (MIN.) | DESIGN RATE | SLOPE | ABSORPTION BED AREA | TOTAL MOUND DIMENSION |
|-------------|------------|-------------|-------------|-------|---------------------|-----------------------|
| LOT 1 SM-BB | 6 | 40 MPI | 900 GPD | 2% | 9.0' x 90.0' | 26.6' x 113.6' |
| LOT 1 SM-CC | 6 | 40 MPI | 900 GPD | 2% | 9.0' x 90.0' | 26.6' x 113.6' |
| LOT 1 SM-DD | 6 | 60 MPI | 900 GPD | 4% | 9.0' x 90.0' | 30.6' x 114.1' |
| LOT 2 SM-4 | 6 | 48 MPI | 900 GPD | 4% | 9.0' x 90.0' | 30.6' x 114.1' |
| LOT 2 SM-5 | 6 | 22 MPI | 900 GPD | 6% | 9.0' x 90.0' | 31.8' x 114.6' |
| LOT 2 SM-9 | 6 | 21 MPI | 900 GPD | 4% | 9.0' x 90.0' | 31.2' x 114.4' |

SANDMOUND NOTES:
A. SAND MOUNDS (non-easement):
 "The sand mound septic area(s) shown on this plan are intended for the initial and future use of the dwelling to be served. It is imperative that all the sand mound sites be protected from physical damage until such time, if ever, that the property is served by a public sewer system. There must be no disturbance of the native soil, including but not limited to compaction, grading, cut or fill, etc., for the area of the mounds and the area within 25 feet of each mound. Any such disturbance may render the septic approval of the lot void; or may revoke the property owner's ability to expand the use of the property. Each sand mound site must be maintained with an approved vegetative cover such as grass, wild flowers, or a leafy groundcover. No trees or shrubs are allowed. (In cases where sand mounds have been approved on wooded sites, the trees must remain undisturbed until such time that the sand mound needs to be constructed. At that time, the trees must be cut flush with the ground surface and the stumps allowed to remain.) Vehicle traffic over the mound sites is to be limited to mowing equipment only."
 "Sand mound (reserve) sites located on agricultural land may continue to be farmed using typical best management practices, including tillage."
 All approved sandmound sites shall be sufficiently protected from grading or other disturbance through the installation of orange tree protection fencing (or other approved material) around the perimeter of each sandmound site by the developer. Installation of the protective fencing must be completed by the developer and inspected by the Well and Septic Section (MCDPS) prior to approval of any permits for the lot(s). The fencing must remain in place until construction on the property is completed.

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. I also hereby certify to the accuracy and location of the water table and percolation tests shown on this Plan.
 Signature: [Signature] #10850
 Professional Land Surveyor Date: 03/09/2021 Exp. Date: 04-03-2022



MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF PERMITTING SERVICES
 APPROVED
 WITH RESERVATION
 WITHOUT RESERVATION
 DATE: 5/13/21 DIRECTOR: [Signature]
 Well and/or Erosion Disposal Permits will be Released Only After Record Plat Approval by Maryland National Capital Park and Planning Commission
 # 620190140



Prepared for:
Jennifer Freeman
 14975 Sugarland Road
 Poolesville, MD 20837
 (301) 377-4267

Revisions

| | |
|------------|--|
| 03/09/2021 | |
| 04/08/2021 | |
| | |
| | |
| | |



date: 03/02/2021
 scale: 1" = 50'

Bennings & Associates, Inc.
 Land Planning Consultants
 8931 Study Grove Court
 Gaithersburg, MD 20877
 (301) 984-0240



WELL & SEPTIC PLAN
FREEMAN PROPERTY
 14975 Sugarland Road (P914 - Tax Map CS61)
 Montgomery County, Maryland

WSSC GRID 220NW18
 TAX MAP CS61
 M-NCPPC FILE NO. 620190140
 SHEET 1 OF 1



DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher R. Conklin
Director

July 8, 2021

Mr. Jeffrey Server, Planner Coordinator
UpCounty Planning Division
The Maryland-National Capital
Park & Planning Commission
2425 Reedie Dr.
Wheaton, MD 20902

RE: Administrative Plan No. 620190140
Freeman Property

Dear Mr. Server,

This letter replaces MCDOT's Preliminary Plan letter dated June 24, 2021.

We have completed our review of the Administrative subdivision Plan with a date of March 11, 2021 in e-plans. A previous plan was reviewed by the Development Review Committee at its January 21, 2020 meeting. We recommend approval for the plan based to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

Significant Plan Review Comment

1. Per the Agricultural and Rural Open Space Master Plan, Sugarland Road is classified as an Exceptional Rustic Road (E-8) with a right-of-way of 80-feet. Per plat #13208 the existing right of way is 70-foot. The applicant shall provide all land necessary to accommodate 40-foot from the existing pavement centerline along the Subject Property frontage for Sugarland Road, except for areas encumbered by existing septic field and a 10-foot-wide buffer surrounding it or as needed per Highway Services.
2. The proposed driveway shall conform to Montgomery County Standard MC-301.01.
3. Wells and septic systems cannot be located within the right of way nor slope or drainage easements.

Office of the Director

101 Monroe Street 10th Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX

www.montgomerycountymd.gov

Located one block west of the Rockville Metro Station

4. At or before the right-of-way permit stage, the existing permanent structures (columns and fence) along Sugarland Road should be removed from the right-of-way.
5. The Forest conservation Easement is not allowed to overlap any other easement, including but not limited to slope and grading easements.
6. **Sight Distance:** Prior to DPS approval of the record plat, the applicant will need to submit an updated Sight Distances Evaluation certification form, for the existing and proposed driveway, which clarifies the impact of the utility pole located within the vicinity of Lot 1 and whether of grading at driveway of Lot 2 has been completed to achieve a minimum of 150-feet of sight distance in each direction.
7. **Storm Drain Analysis:** Note that the distance to the nearest public storm drain system is 3000-feet. Therefore, no improvements are needed to the downstream public storm drain system for this plan.
8. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
9. Posting of a right-of-way permit bond is a prerequisite to DPS approval of the record plat. The right-of-way permit will include, but not necessarily be limited to, the following improvements:
 - a. Permanent monuments and property line markers, as required by Section 50-4.3(G) of the Subdivision Regulations.
 - b. Erosion and sediment control measures as required by Montgomery County Code 19-10(02) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.

Thank you for the opportunity to review this Administrative Subdivision plan. If you have any questions or comments regarding this letter, please contact myself for this project at brenda.pardo@montgomerycountymd.gov or (240) 777-7170.

Sincerely,

Brenda M. Pardo

Brenda M. Pardo, Engineer III
Development Review Team
Office of Transportation Policy

Mr. Jeffrey Server
Administrative Plan No. 620190140
July 8, 2021
Page 3

cc: Correspondence folder FY 2021

| | | |
|-------|----------------|----------------------------|
| cc-e: | Joshua Maisel | Benning & Associates, Inc. |
| | Atiq Panjshiri | MCDPS RWPR |
| | Sam Farhadi | MCDPS RWPR |
| | Mark Terry | MCDOT DTEO |
| | Rebecca Torma | MCDOT OTP |

| | |
|---|----|
| 6. Motivations of Ms. Freeman and the County | 40 |
| III. FINDINGS OF FACT AND CONCLUSIONS OF LAW | 42 |
| A. Governing Law | 42 |
| B. Analysis of Minor Amendment | 47 |
| C. Subdivision Issues | 54 |
| IV. CONCLUSION AND DECISION | 61 |

I. STATEMENT OF THE CASE

A. Zoning Ordinance Regulations Governing Amendments to Conditional Uses

An overview of the Zoning Ordinance provisions governing the approval of a conditional use amendments helps to place the procedural history of this case in context.

The Zoning Ordinance has different procedures for approval of amendments to conditional uses depending on whether the amendment has a “minor” and “major” impact on the surrounding area. A minor amendment is one that, “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Zoning Ordinance*, §59.7.3.1.K.1.2.a. Applications for minor amendments may be approved administratively by the Hearing Examiner. If approved, the Hearing Examiner’s decision must be sent to the “applicant, ... the Planning Board, DPS, the Department of Finance, all parties entitled to notice at the time of the original filing, and current abutting and confronting property owners.” *Zoning Ordinance*, §59.7.3.1.K.2.a. Any party may object to the grant of the minor amendment by filing written reasons within 15 days of the administrative decision. *Id.*, §59.7.3.1.K.2.b. An objection triggers a public hearing on whether the amendment should be considered as a “minor” or a “major” amendment. *Id.* If the Hearing Examiner determines the application is minor, it may be approved administratively without additional review.

A major amendment is one that “changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Id.*, §59.7.3.1.K.1.a. If the Hearing Examiner determines that the amendment is major, the application must follow the same review process as an original conditional use. Even then,

however, review is limited to the proposed modification and “to those aspects of the conditional use that are directly related to those proposals”. *Id.*, §59.7.3.1.K.1.

B. Procedural History of this Application

Hearing Examiner approved Ms. Jennifer Freeman's application for a conditional use for an equestrian facility under Section 59.3.2.4.B.2 of the Montgomery County Zoning Ordinance (Zoning Ordinance) on September 26, 2016. *Hearing Examiner's Report and Decision*, CU 16-15, Application of Jennifer Freeman, September 26, 2016 (Hearing Examiner's Report.) The subject property consists of 7.65 acres in the R-200 Zone and is situated at 14957 Sugarland Road, Poolesville, Maryland. Exhibit 1.¹ T. 15.

In January 2020, Ms. Freeman applied for a minor amendment to her conditional use. The amendment sought to reduce the conditional use area from 7.65 acres to 4 acres so that she could subdivide the property into two lots. Under the amendment, the conditional use area would be limited to the lot on which she would continue to reside. Exhibit 28. The Hearing Examiner referred the Ms. Freeman's application to Staff of the Montgomery County Planning Department (Planning Staff or Staff) for a recommendation on whether they considered the amendment to be minor or major under the Zoning Ordinance. Exhibit 23. Planning Staff, on January 29, 2020, determined that the amendment was minor. Exhibit 31. Because the area of the conditional use would be reduced, Staff recommended reducing the number of horses that could be kept on the property from a maximum of 4 to a maximum of 3.

The Hearing Examiner asked Ms. Freeman to show the compost facility on the plan submitted. Exhibits 32, 33. Ms. Freeman did so and informed the Hearing Examiner that she agreed to a condition limiting the number of horses to 3. Exhibit 33. After receiving the revised

¹ The exhibits in the original case are included in this record with the same exhibit number assigned in the original case.

plan, the Hearing Examiner issued an Order approving the minor amendment on April 13, 2020. Exhibit 33. Within 15 days of issuing the Order, OZAH received an objection to the approval from Mr. Greg Grigorian, who owns the property directly across Sugarland Road from the subject property. Exhibit 35.

On May 1, 2020, Dr. Carol Rae Hansen, also weighed in opposing the application. She informed OZAH that she is the “County’s designated letter, email, and telephonic contact of record for the Sugarland Forest Citizens in [sic] Association.” Exhibit 37. She alleged that she has “ample documentation” of “deficiencies in procedure, measurements, precedents, regulatory law and overarching County regulations and policy on properties located on an Exceptional Rustic Road with ample forested land.” *Id.*

On May 14, 2020, OZAH issued notice of a public hearing to be held on June 22, 2020, on whether the amendment considered major or minor. Exhibit 39. The same day, Mr. Grigorian sent OZAH an email stating that Dr. Hansen would like to testify as an individual and on behalf of the Sugarland Forest Citizen’s Association and forwarded a link to testify at legislative hearings from the County Council’s website. He also advised OZAH that Dr. Hansen might have a “proxy” to testify on behalf of neighbors. Exhibit 40. Dr. Hansen followed up with an email to OZAH Staff stating that she had been unable to sign up to testify because she’d unsuccessfully tried the link on OZAH’s website twice. Exhibit 42. The Hearing Examiner responded that (1) OZAH does not have a form to sign up to testify at hearings in advance, (2) that its proceedings are quasi-judicial (*i.e.*, testimony is taken under oath and subject to cross-examination) and therefore it does not accept “proxy” testimony, and (3) that a non-attorney cannot represent an organization because that is considered unauthorized practice of law under State law. The Hearing Examiner informed Dr. Hansen that they would accept Dr. Hansen’s testimony as an individual and provided Dr.

Hansen with instructions on how to access the public hearing from OZAH's website. The Hearing Examiner reminded Dr. Hansen that the sole issue at the public hearing would be whether Ms. Freeman's proposed amendment would have minor or major impact under Section 7.3.1.K. of the Zoning Ordinance. Exhibit 43.

On May 15, 2020, the Hearing Examiner referred the objections from those in opposition to Staff for review. Exhibit 48. Staff responded that it still considered the proposed amendment to be minor. (*Id.*).

Dr. Hansen disagreed with Staff's comments. She informed the Hearing Examiner that Planning Staff's "stocking rates" for horses were inaccurate. She had consulted with Jeremy Criss, Director, Montgomery County Office of Agricultural Services, who had sent her the same statute relied upon by Staff. Exhibit 52. Dr. Hansen asserted that the horse stocking rates in the most recent iteration of the Zoning Ordinance would allow up to 7 horses on the property. *Id.*

In order to clarify the issue prior to the hearing, the Hearing Examiner explained to Dr. Hansen that the conditional use area proposed in the amendment was only 4 and not 7 acres and that the balance of the existing property would no longer be covered by the conditional use. Therefore, the maximum number of horses that could be on-site under the Zoning Ordinance, if approved, would be four: 2 horses for the first two acres and one for each additional acre. *Zoning Ordinance*, §59.3.2.4.B.1.a. The Hearing Examiner also attached a copy of the minor amendment conditional use plan and her 2016 Report and Decision approving the original conditional use. Exhibit 51.

Ms. Freeman filed a pre-hearing statement on May 22, 2020. Exhibit 53. Attached as an exhibit was an updated Nutrient Management Plan approved by University of Maryland Extension Service. Exhibit 53(a).

On June 16, 2020, Dr. Hansen queried OZAH Staff on whether there would be an online “test” of the virtual public hearing in advance of the scheduled date because she had been asked to participate in this test before in an “online conference event”. She also requested the names of all parties who would be participating in the hearing. OZAH Staff informed Dr. Hansen that they do not convene a “test” in advance because they do not know who would be parties until the day of the hearing. Exhibit 58.²

On June 18, 2020, Ms. Freeman submitted a Conservation Plan, including a Maryland Pasture Condition Score Sheet for all of the pasture areas on the 7.65 acre property, approved by the Montgomery County Soil Conservation District. Exhibit 59.

Shortly before the public hearing, Dr. Hansen submitted written comments she had addressed to the Planning Department, dated January 13, 2020, that relate to Ms. Freeman's subdivision plan.³ Exhibit 61. Dr. Hansen and Mr. Grigorian submitted written comments urging the Hearing Examiner to leave the application “on the table” until a decision on the subdivision application. Exhibits 62-64.

The June 22nd hearing proceeded as scheduled via Microsoft Teams. Ms. Freeman testified in support of the application and Mr. Grigorian and Dr. Hansen appeared in opposition. Those in opposition challenged the Applicant's testimony that she had been instructed by government agencies to amend the conditional use prior to a decision on her subdivision plan. The Hearing Examiner left the record open to explore whether this could be documented by the Planning Department. T. 134-144. In order to “clarify” the issues in this proceeding, the Hearing Examiner

² OZAH's hearings are open to the public and any person that wishes to testify is automatically made a party to the proceeding. *OZAH Rules*, 3.1. Due to the COVID-19 pandemic, OZAH is currently conducting its hearings remotely via Microsoft Teams. OZAH's website is designed to enable anyone wishing to testify to join online either by clicking a link or by phoning in.

³ Dr. Hansen used this letter as the basis of her testimony at the June 22, 2020, public hearing. T. 52-53, 72-73, 78-79, 81, 87, 94.

also asked Ms. Freeman to submit a revised conditional use plan that did not contain all of the details relating to the subdivision. T. 117-118.

At the end of the public hearing, the Hearing Examiner set deadlines for submission of additional information and comments from Planning Staff and the parties. She asked Planning Staff to provide any documentation they had regarding the need to amend the conditional use before the subdivision approval by June 29, 2020. She asked Ms. Freeman to submit the revised conditional use site plan by July 3, 2020. She gave the parties until July 3, 2020 to comment on any information provided by Staff, and set the deadline for Ms. Freeman's final comments on July 7, 2020. T. 141-144.⁴

After the public hearing, Ms. Freeman asked to be able to respond further to Dr. Hansen's written submission dated January 13, 2020, with her final comments due on July 7, 2020. Exhibit 67. The Hearing Examiner asked her to submit any additional comments on June 29, 2020, so those in opposition would have an opportunity to respond. *Id.*

On June 25, 2020, Ms. Freeman requested an extension of the June 29th deadline due to a family emergency. Exhibit 68. Both Mr. Grigorian and Dr. Hansen agreed to the extension, but requested extensions of their deadlines for various reasons. On June 29, 2020, the Hearing Examiner revised the schedule for post-hearing submissions as follows (Exhibit 71, italics in original):

1. *Monday, July 6, 2020*: Ms. Freeman must submit any additional comments and may submit a revised conditional use plan removing subdivision-related structures and markings.
2. *Monday, July 12, 2020*: Dr. Hansen and Mr. Grigorian must submit their comments.
3. *Monday, July 19, 2020*: Final comments from Ms. Freeman must be submitted.

⁴ Mr. Grigorian opted to leave the hearing due to another meeting. The Hearing Examiner sent him an email with the deadlines the day of the hearing. Exhibit 65.

Ms. Freeman timely filed the submission required of her on July 6, 2020. Exhibit 72. As requested by the Hearing Examiner, this included a revised conditional use plan that eliminated all items related to the subdivision. Exhibit 72(c). The Hearing Examiner asked Ms. Freeman to (1) clarify whether a fenced areas shown on the revised plan would be used for the equestrian facility, and (2) show where existing fencing would be realigned to conform to the boundary of the conditional use area if approved. Ms. Freeman submitted both items. Exhibit 73, 74.

Dr. Hansen then requested an extension of her filing deadline. Exhibit 78. With the consent of the parties, the Hearing Examiner granted the extension request, requiring Mr. Grigorian's and Dr. Hansen's comments by July 20, 2020, and Ms. Freeman's final responses by August 3, 2020. Exhibit 82.

On Friday, July 17, 2020 (at 4:44 p.m.), Dr. Hansen emailed OZAH Staff informing them that she was "locked out" of OZAH's Exhibit List. Exhibit 83. OZAH Staff informed her the same day that they could forward the exhibit list, but had removed the exhibits from the public hearing link because they had to prepare for the next remote hearing. The following Monday, at 3:08 p.m., Dr. Hansen informed OZAH that she would be filing her statement late in the day because "I am waiting for answers from two County officials to questions that arose as a result of my inquiries first raised on June 25, and reiterated on July 10, and then again on July 15." Exhibit 84. Later that afternoon (at 3:48 p.m.), OZAH Staff received another email requesting the exhibit list because "all that came up...was a list of the documents, not the documents themselves." Exhibit 86. OZAH Staff indicated that they were unable to forward all 82 exhibits, but could forward specific exhibits. OZAH Staff forwarded the specific exhibits requested. *Id.* The Hearing Examiner informed Dr. Hansen that submission deadlines were typically 5:00 p.m., and asked Dr. Hansen to request an extension with a copy to Ms. Freeman. Dr. Hansen (at 4:29 p.m.) did submit

a request to extend her deadline to 11:59 p.m. on July 20, 2020, with a copy to Ms. Freeman, noting (Exhibit 86):

This time was NOT specified on any document that I received, and since I had three times before submitted material up until 11:59 p.m. on the date specified, I assumed with justification that I should be accorded the same previously-applied time, with no prohibition against receiving material on the correct date, but after 5:00 p.m.. You should also note that both Mr. Grigorian and I found that Ms. Johnson had removed documents from the OZAH website before the Hearing Process was completed, with *NO advance notice to those of us who needed to use those 82 documents*. Please note that I had to ask twice for them to be emailed to me for me to download, and that earlier Ms. Johnson had even removed from the website the application form for requesting participation in the June 22 hearing the previous Wednesday, while telling us that the deadline was Thursday, with, if I recall correctly, **no specific time of the day**. You will note that Mr. Grigorian also submitted documents after a non-specific 5:00 p.m. deadline.

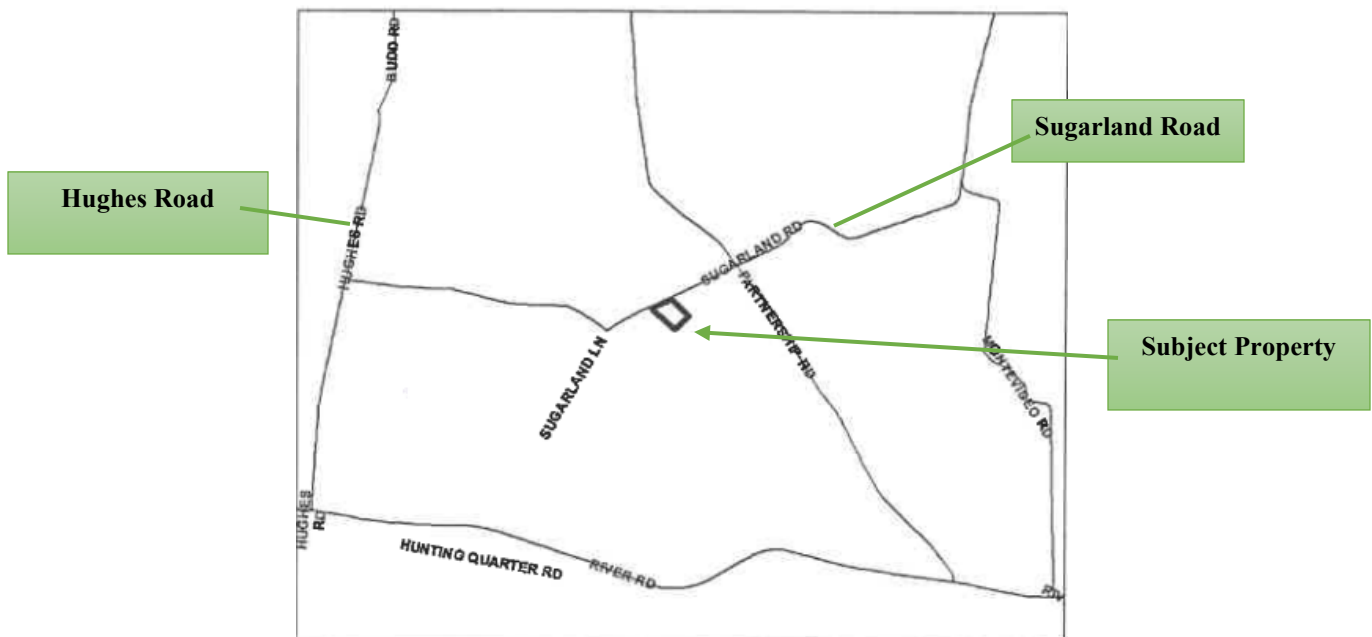
Ms. Freeman agreed to the extension request. Soon after (at 4:52 p.m.), Dr. Hansen sent an email to OZAH informing them that “page 10 of the transcript is missing.” Exhibit 87. The Hearing Examiner sent her the page, noting that the transcript had at all times been posted on OZAH's website. Exhibit 87.

Ultimately, Dr. Hansen submitted additional comments on July 20, 2020, at 11:57 p.m. Exhibit 91. She followed up with more comments on July 21, 2020, at 12:17 a.m. (Exhibit 92). The Hearing Examiner did not accept because they were filed the day after the deadline specified in the scheduling order. Mr. Grigorian filed his final comments on July 20, 2021. Exhibits 88. Ms. Freeman filed her response on Monday, August 3, 2020. Exhibit 93. Mr. Grigorian filed responses to Ms. Freeman's submission, and the Hearing Examiner informed him that no further filings were permitted under the scheduling order. Exhibit 94. Mr. Grigorian's responses were not admitted into the record and the record closed with Ms. Freeman's comments on August 3, 2020.

II. FACTUAL BACKGROUND

A. Original Conditional Use Approval

In 2016, the Hearing Examiner granted a conditional use to operate an equestrian facility for Ms. Freeman's entire 7.65 acre property. A map from the Planning Staff Report in the original case shows the property's general location (Exhibit 24, below). An aerial photograph of the property from the same Report is on the following page.



The Hearing Examiner approved the conditional use application for an equestrian facility with up to three horses, although at the time, Ms. Freeman stated she would have only two horses on the property. Conditions imposed on the approval included the following (*Hearing Examiner's Report*, p. 27):

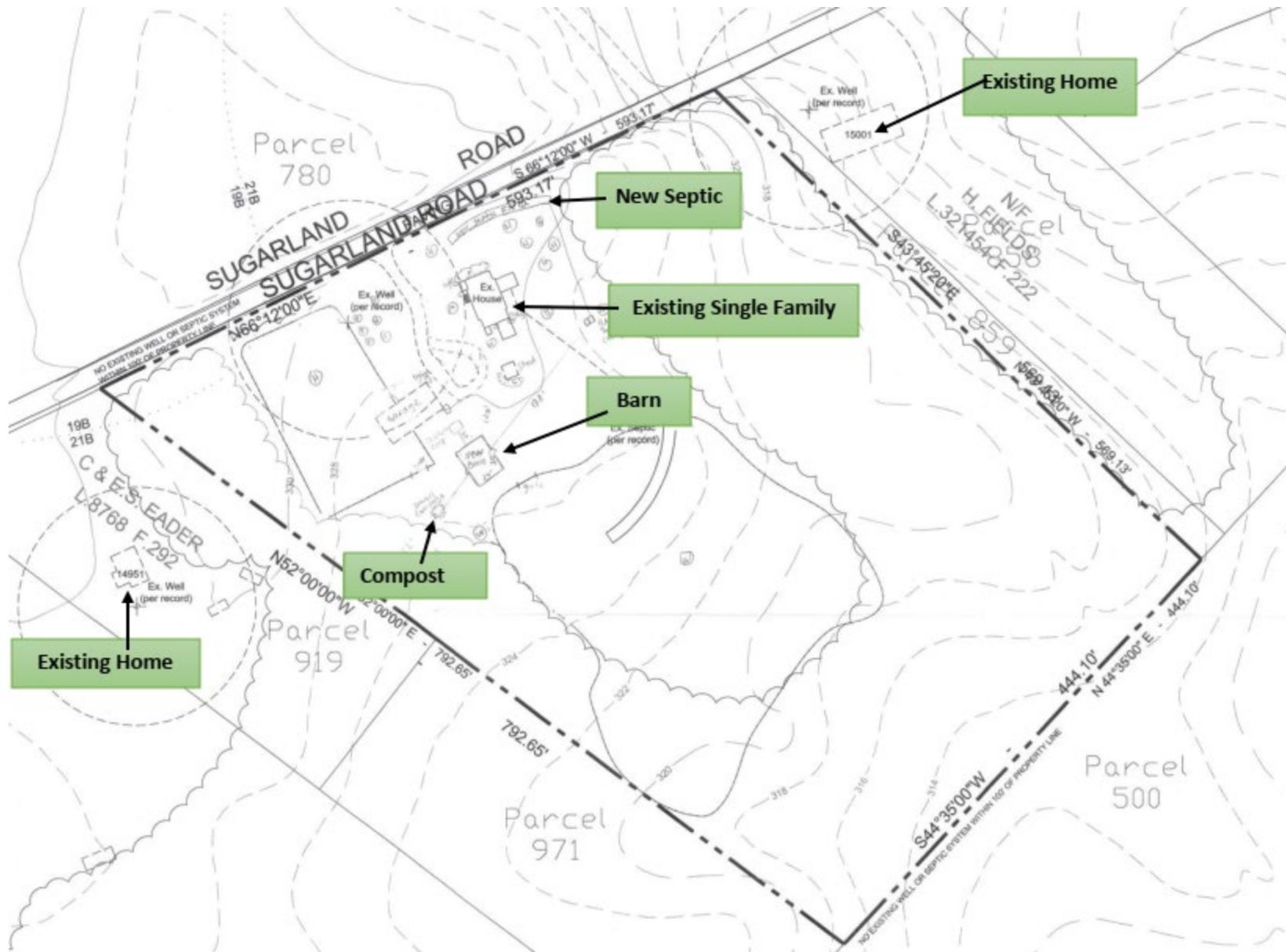
2. Physical improvements for the equestrian facility are limited to those shown on the Conditional Use Site Plan filed on July 28, 2016 (Exhibit 18(a)).
3. No more than four horses may be kept on the property.
4. All horses on site must belong to the owner(s) of the property.



**Aerial Photograph of Existing 7.65-Acre
Property (Exhibit 24)**

5. The Applicant must not rent out any of the horses in the equestrian facility.
6. No equestrian events may be held on the property.
7. No identification sign may be placed on the property.
8. The owner of the property must satisfy the state requirements for nutrient management concerning animal waste.

The original conditional use site approved by the Hearing Examiner is reproduced from the Hearing Examiner's Report (*Id.*, p. 8) on the next page.



B. Proposed Amendment

The Applicant's sole modification to the original approval is to reduce the size of the conditional use area from 7.65 acres to 4 acres, which reduces the amount of pasture within the conditional use area by 15%. No other changes are proposed. Ms. Freeman explains (Exhibit 28):

The reason for this minor amendment request is due to my plans for Administrative Subdivision of the plot which is 7.65 acres into two lots (4.0 acres and 3.3 acres). I will keep ownership of both lots with no planned changes to either property for the foreseeable future.

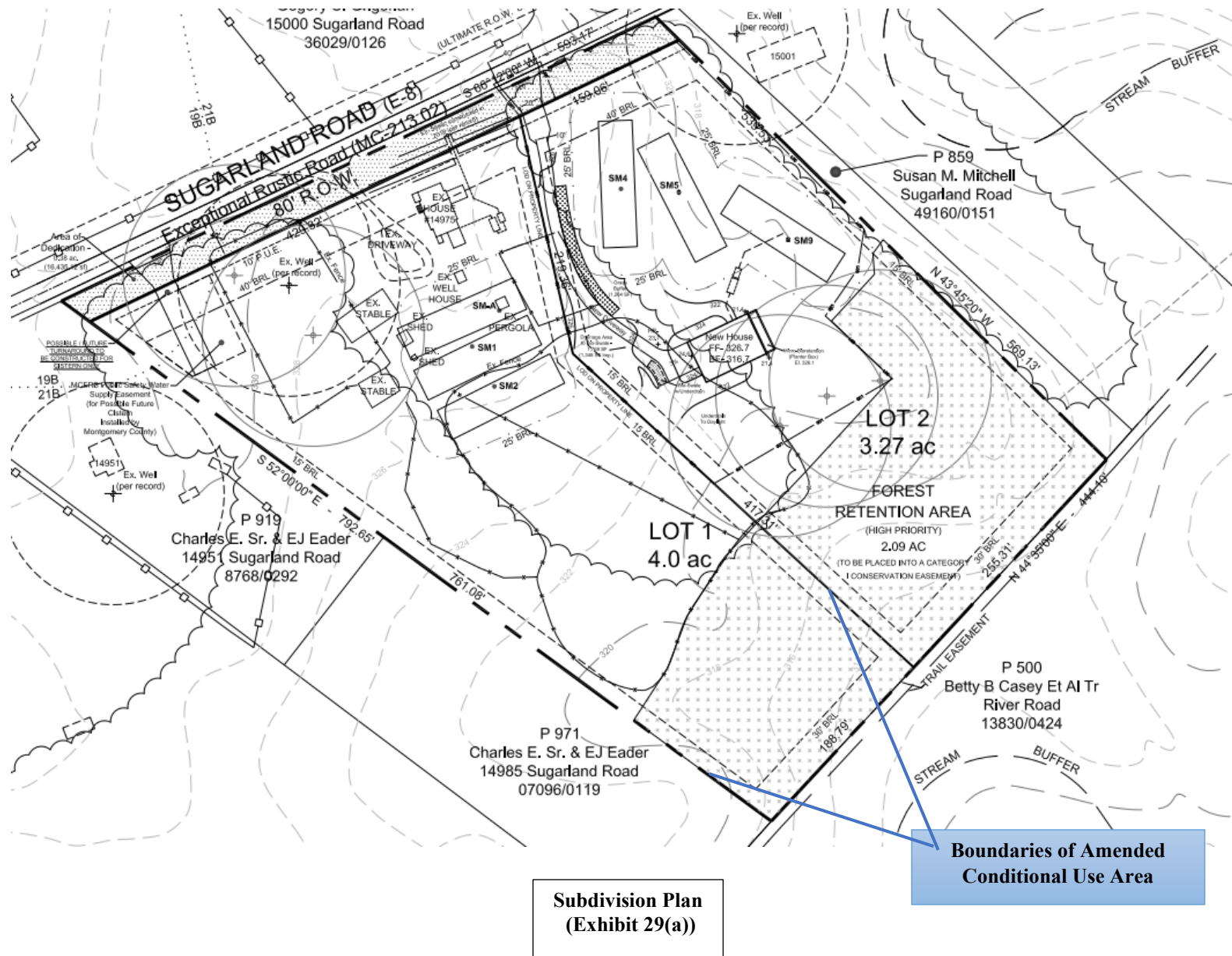
The current barn for the horses, the small manure/compost pile and approx. 85% of the pasture for the horses will remain on the 4 acre lot. This same 4 acre lot also includes my house, and other minor outbuildings which will continue in use as they have been.

The proposed new lot is to the east of the current lot where we live, therefore, the barn and the compost are far on the other side of the property, away from the proposed new building site.

I have no plans to make any changes to the use of the property from how it is currently being used today. The only change is that administratively/on paper, there would be about a 15% decrease in the open pasture area for the horses. However, I still plan to keep only 2 horses, and the remaining acreage of pasture and paddocks is more than enough to provide for the two horses I have.

The conditional use site plan originally submitted for the minor amendment was (apparently) the preliminary plan of subdivision submitted to the Planning Department. Exhibit 29(a). An excerpt of the Subdivision Plan is shown on the next page.

Ms. Freeman testified that she has taken steps to maintain what has been good farm management. She originally had a nutrient management plan approved for the entire 7.65 acres. Recently, she obtained an approved addendum for the four acres proposed for the conditional use. T. 15. The plan shows that she has a high rating in all categories of the assessment, including the



health of the pasture, lack of erosion, and soil life quality. T. 15; Exhibit 53(a). The addendum to the Ms. Freeman's nutrient management plan was approved by the Agricultural Nutrient Management Program of the University of Maryland Extension Service on May 21, 2020. Exhibit 53(a). The Nutrient Management Plan shows the fields on the property (Exhibit 53(a), below):



Ms. Freeman submitted a Soil and Water Conservation Plan approved by the Montgomery County Soil Conservation District (USDA Natural Resources Conservation Service.) Exhibit 59. The Conservation Plan's stated objective is to (Exhibit 59(f)):

...identify specific Best Management Practices (BMPs) which, if implemented, will reduce the environmental impact of the operation while improving the productivity of the land.

The secondary objective of the plan is to assist the operator in meeting the minimum requirements to qualify for cost-share assistance in the installation of listed practices. This plan does not guarantee eligibility but is a prerequisite, along with other qualifying documentation, in order to enroll in reimbursement programs through State and County Government.

The approved Conservation Plan found that (*Id.*):

Pasture fields should be periodically renovated to ensure that cover is maintained and to produce high-quality forage. Fields 2, 3, and 4a have received an above-average pasture condition score and with proper management should not require additional reseeding for several years. Field 1 may require seeding sooner due to a depleted forage condition.

The Conservation Plan shows the fenced pasture on Ms. Freeman's current property with the acreage of each pasture listed (Exhibit 59(e), below):⁵



Ms. Freeman testified that her pastures received excellent scores and that the high ratings in all categories of the assessment -- health of the pasture, lack of erosion, and soil life quality.

⁵For convenience and clarity in this Report, the Hearing Examiner will refer to the different pastures by the numbers assigned in the Conservation Plan above.

The ratings support the conclusion that there is no negative impact as to how she manages the farm and can continue to support the animals, the land, water, and trees with the great care that she has shown since she moved to the property. T. 15-16. Ms. Freeman explained that Field 3 received lower scores than her other pastures because it is a "sacrifice field". T. 29. Forage there is purposefully kept low because both of her rescue horses are "easy keepers", which means that she has to watch their weight.⁶ The field lets the horses exercise and still maintain a healthy weight. The forage there is intended primarily to prevent erosion. T. 28. Ms. Freeman also submitted a letter from her the veterinarian who treats her two horses. He wrote (Exhibit 55):

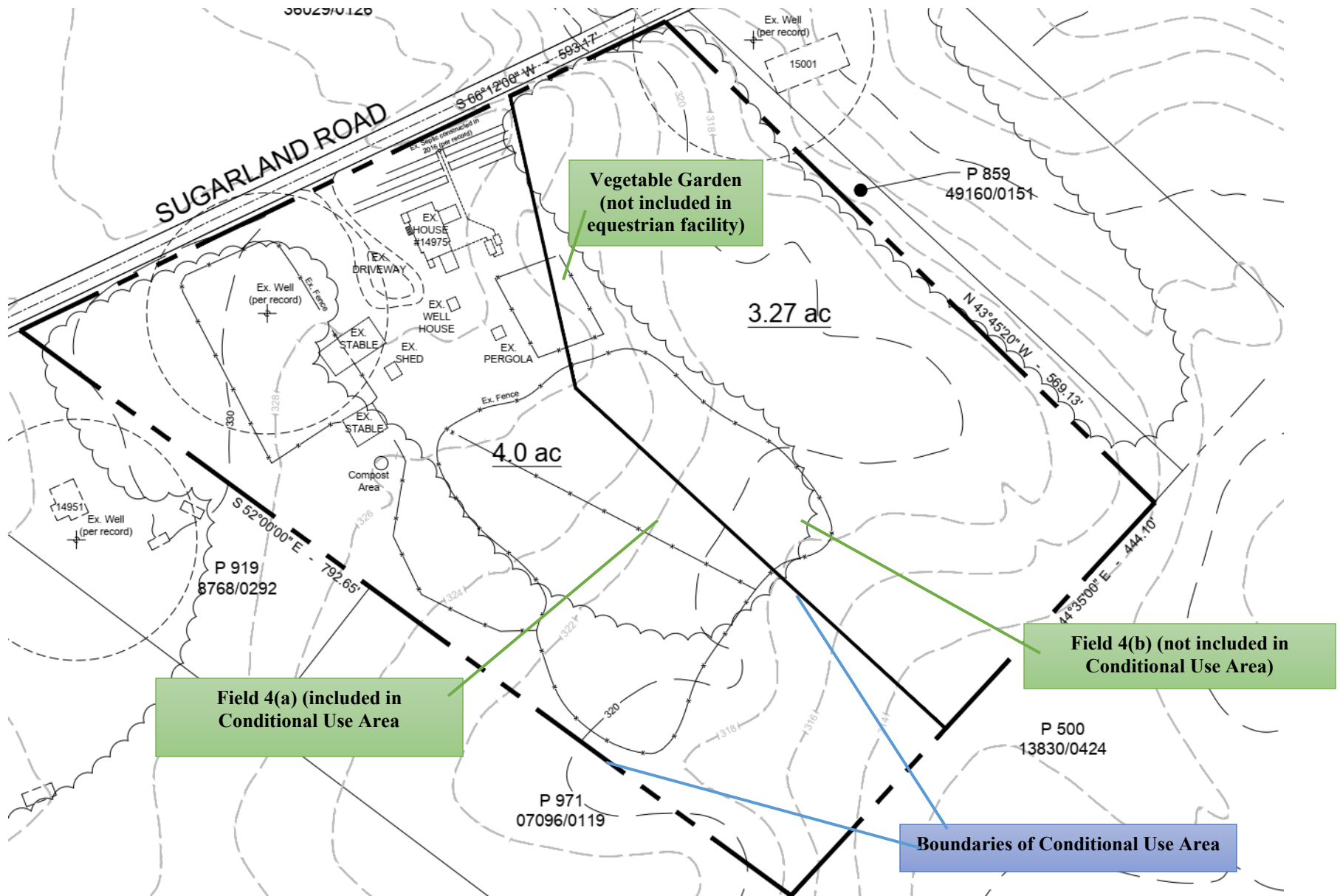
Jennifer is a caring and competent horse owner. Both her horses are in good body condition and are well managed at her home on Sugarland road, Poolesville, Maryland.

Jennifer's property provides more than enough pasture for the wellbeing of both horses.

Ms. Freeman testified that she has had no complaints about the conditional use until she applied for a subdivision to create two lots. After that, complaints started coming about having an excessive animal load on the property, manure spreading, forest destruction, destruction of migratory bird habitats, overusing the Poolesville aquifer and various other issues. T. 14. She believes that she has addressed the concerns, including updating her nutrient management plan and obtaining a conservation pasture management plan. She believes that the complaints arise because of the subdivision approval rather than her conditional use. T. 15.








The Hearing Examiner asked Ms. Freeman to submit a revised conditional use plan with the information needed for the subdivision (Exhibit 72(c), on the next page).

⁶ In comments received after the public hearing, Ms. Freeman states that one of her horses is blind, and therefore should not be removed from the property without a significant reason. Exhibit 94.



Revised Conditional Use Site Plan
for Minor Amendment
Exhibit 72(c)

LEGEND:

| | |
|------------------------|--|
| EXISTING BUILDING |  |
| EXISTING ON-SITE FENCE |  |
| PROPERTY LINE | |
| EXISTING WELL |  |
| EXISTING CONTOUR |  |
| SEPTIC TANK / PUMP |  |
| CONDITIONAL USE LIMIT |  |
| EXISTING CANOPY |  |

**Legend for Revised Conditional Use Site Plan
(Exhibit 72(c), above)**

The area straddling the conditional use boundary is a vegetable garden that is not used for the equestrian facility conditional use. Exhibits 76, 77. At the Hearing Examiner's request, Ms. Freeman submitted a copy of the condition use plan showing the location of proposed fencing to conform the boundaries of the minor amendment (Exhibit 74, below):



C. Staff Comments on the Minor Amendment Application

Due to the evolving concerns expressed by the opposition in this case, the Hearing Examiner sought Staff's recommendation on the application three times during this amendment process. After the initial application for the minor amendment was filed, she referred it to Staff for their expert opinion on whether it constituted a major or minor amendment under Section 59.7.3.1.K of the Zoning Ordinance. Exhibit 30. Staff responded (Exhibit 31):

It's my professional opinion that the proposed modification falls within the definition of a minor amendment to the existing conditional use provided that Condition #3 of the Zoning Hearing Examiner's report of September 23 [sic], 2016, Page 27, is amended to read as follows:

3. No more than ~~four~~ three horses may be kept on the property.

Staff also recommends that Condition #2 of the ZHE report shall be revised to reflect the changes shown on the proposed amended plan.

After Mr. Grigorian objected to the Hearing Examiner's initial approval (Exhibit 46, summarized in II.Part D of this Report), the Hearing Examiner asked Staff to review the application again in light of the opposition's concerns (Exhibit 46). Staff determined again that the application was minor (Exhibit 47):

Staff's Findings:

- An equestrian facility is an agricultural use that is allowed in the R-200 Zone with an approval of a conditional use application. The Zoning Code (Section 59.1.4.2 defines Conditional Uses as follows:

***Conditional Use:** A use that must meet the conditional use standards in Division 3.2 through Division 3.7 and requires approval by the Hearing Examiner, under the findings in Section 7.3.1. In zoning codes effective before October 30, 2014, a conditional use was referred to as a special exception.*

- When the application was filed originally back in 2016, the Subject Property comprised of 7.65 acres of land, and therefore could accommodate up to seven horses. However, the Applicant was requesting to keep only two horses. Staff recommended to restrict the number of horses to four, in case the applicant wishes to increase the number of horses at some future time. With the current proposal for

4-acre property, the applicant can have four horses on the property. Staff has recommended to amend the condition of approval to restrict the number of horses to three. The applicant maintains then and now that she only plans to keep two horses. If the applicant wishes to proffer to restricting the number of horses to only two, staff will not object to such a condition.

- At the time of the original application in 2016, our Environmental staff reviewed the environmental conditions on the property as well as the environmental resources and found that the proposed equestrian facility to be consistent with the Environmental Guidelines. The Application did not propose any development, clearing or grading activities that generate the need for a sediment control permit on the Conditional Use site. Therefore, the property was not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code. The proposed amendment which results with a reduction of about 15% of the pasture area is not likely to change this finding so long that there will not be clearing or grading activities on the four-acre portion of the property that is the subject of the proposed amendment. The Property is not within a Special Protection area
- Adequacy of the septic system was established in 2016, at the time of the original application. At the time, a new septic system was being installed to replace the old system that was not found to meet standard to accommodate the proposed equestrian facility. Consequently, the applicant obtained the necessary permit from the Montgomery County Department of Public Services, Well and Septic Section and was working with the Department on the installation of the system. The new septic system has since been completed and is now operational. The proposed amendment will not affect the functionality of the septic facility that is currently on the property.
- Regarding the nutrient system, pursuant to Section 59-3.2.4.B.1.c, meeting or addressing County and State nutrient management, water quality, and soil conservation standards is required for equestrian facilities that keep or board more than 10 horses. Therefore, the Applicant is not required “to have a nutrient management plan prepared by a Maryland certified nutrient management consultant.” as suggested by Mr. Grigorian.
- Regarding the “significant number of chickens and rabbits which are currently kept at the Subject Property by the Applicant (but were not mentioned in her application)”, Staff ‘s review is limited to the proposed Conditional use to allow an equestrian facility for two horses. The animals and poultry mentioned as part of the existing farm use that is permitted by right in the Zone, therefore, restriction on the animals mentioned would be outside the scope of the Conditional Use review process.

Staff review of the pending application is limited to only the proposed amendment of the approved conditional use plan. The intended subdivision of the property is a separate procedure that requires a Preliminary Plan of Subdivision application

review process with a final action and decision to be taken by the Montgomery County Planning Board. At this point, the Conditional Use application review staff has no knowledge of the possible outcome of the Preliminary Plan review process. However, Mr. Grigorian and Dr. Hansen could participate in the Preliminary Plan Subdivision review process as interested parties or *parties of record* when the application is filed at the Planning Department. (Emphasis in original).

At the public hearing, both Mr. Grigorian and Dr. Hansen questioned Ms. Freeman’s testimony that Planning Staff had advised her she needed to modify the conditional use before the Planning Board could decide on the subdivision plan. T. 132, 138. The Hearing Examiner asked Staff if they could document that advice. Exhibit 81. Staff provided a copy of agency comments from the Development Review Committee (DRC) meeting held for the subdivision. *Id.* Included among the comments were the following (*Id.*; highlighting in original):

| | | | |
|----------------------|---|---------------------|---|
| AREA MASTER PLAN | Joshua Penn joshua.penn@montgomeryplanning.org | Revisions Requested | Conditional USE still active CU16-15 and uses the entire property as justification for approval. Preliminary plan can not be approved if it would cause the CU to become non-conforming. CU needs to be abandoned or amended. Master plan has no specific comments about this property, however the MP does list this a the Rural Community of Sugarland and has specific recommendations on pages 71 and 72 that will need to be addressed. |
| ZONING & ENFORCEMENT | Melissa Goutos Melissa.Goutos@montgomerycountymd.gov | Revisions Requested | Conditional use shall be abandoned or modified prior to approval. Please provide documentation. Please note that the existing house will be nonconforming if it is within the 40' BRL |

Staff interpreted the comments to mean (*Id.*):

...If the subdivision review resulted in a change that affects some elements of the amended CU, the Applicant will have to return back to OZAH to amend the CU Plan again.

D. Community Opposition and the Applicant’s Responses

Dr. Hansen and Mr. Grigorian believe the conditional use amendment should be either (1) deferred until after the subdivision approval, (2) dismissed, or (3) denied,. While their objections are wide-ranging, the primary one is that approval of the minor amendment is premature because too much is unknown about impact of the subdivision plan. They also believe that approval of the conditional use amendment implicitly supports approval of the subdivision plan. Dr. Hansen

warned that, if this plan is approved, it will constitute a massive taking and neighbors will have to bring suit. She doesn't think the County wants a suit. T. 89. Her neighbors will not bring suit if this application is deferred until after the subdivision is reviewed or if this case is considered a major amendment that will be denied. T. 89.

Ms. Freeman believes that the testimony and evidence presented by those in opposition demonstrate a "clear pattern of false claims" that evolve each time an issue is addressed. Exhibit 93. She explains (*Id.*):

First, the primary claim was that my pets were draining and contaminating the the Poolesville aquifer and therefore Mr. Grigorian's water was at times 'a drip'. False.

Next, Dr. Hansen stated that my subdivision maps were all wrong and there were numerous inconsistencies that could not enable a decision to be made about the Conditional Use. False.

The next claim from both parties was that I don't have enough or adequate acreage or pasture for the horses. False.

Following this, came the claim from both parties that there is no need to get the Conditional Use amended prior to continuing with the subdivision process. False.

The detailed issues raised by those in opposition, and Ms. Freeman's responses are set out below.

1. Need for a Nutrient Management Plan

a. Opposition Concerns. Mr. Grigorian initially objected because he was concerned about runoff polluting the Potomac. According to him, the reduced conditional use area would "host not only the proposed number of horses, but also a significant number of chickens and rabbits which are currently kept at the Subject Property by the Applicant (but were not mentioned in her application)." *Id.* Mr. Grigorian asserted that the nutrient management plan was necessary because Ms. Freeman spreads manure from her horses, chickens and rabbits around the property.

He believes that the plan would ensure this would be done “responsibly” and in accordance with State requirements. Exhibit 35.

b. Applicant's response. The Applicant provided an updated Nutrient Management Plan for the proposed conditional use area. Exhibit 53.

2. Number of Horses Permitted

1. Opposition's Concerns. Dr. Hansen initially disagreed with Staff's assessment that the amendment would allow a maximum of four horses on the property. She believed that up to seven horses could be housed on the property. Exhibit 51. She supported that by providing the County regulation setting the “stocking rate” for horses. The regulation she forwarded was the Zoning Ordinance section governing this case. After the Hearing Examiner explained that the Zoning Ordinance would not permit seven horses on the property because the conditional use area would be reduced to 4 acres, Dr. Hansen did not raise this issue at the public hearing. Exhibit 51.

Dr. Hansen renewed her claim after the public hearing for different reasons. According to her, a “decision” has been made by the Planning Department to put 2.09 acres on the southeast corner of proposed Lot 1 into a Forest Conservation easement. Thus, Dr. Hansen argues, this acreage is “out of her [Ms. Freeman's] control and she does not have sufficient acreage to support her two horses. Exhibit 91.

2. Applicant's response. The Applicant contends that the Zoning Ordinance measures the maximum number of horses permitted by the size of the conditional use area. All of the pasture within the conditional use area is outside the Forest Conservation Easement shown on the subdivision plan. She further points out that only .78 acres of the proposed Forest Conservation Easement is located within the conditional use area shown on Exhibit 72(c). Exhibit 93, pp. 7-8.

3. Amount and Quality of Pasture

1. *Opposition Concerns.* Both of those in opposition contend that there won't be enough pasture to support Ms. Freeman's two horses if this minor amendment is granted. According to Mr. Grigorian, the pasture shown on the aerial photograph in the Conservation Plan will be cut in half if the conditional use is approved. T. 56-57. In his closing statement, Mr. Grigorian states there is "quantitative support" for Ms. Freeman's representation that the pasture will be reduced by only 15%. Exhibit 88. Mr. Grigorian believes that the right-of-way and improvements such as a cistern and access turnaround, will reduce the amount of pasture further. *Id.*

Dr. Hansen alleged that the Conservation Plan demonstrated that Ms. Freeman's pasture scores were low. She testified that there is only .78 acres of pasture because "everything else is covered by trees." T. 40. According to her, the "consistent position" of the Department of Agriculture recommends two full acres per horse, with full feed in the morning and night. When the lower-rated pastures are subtracted from the total pasture, the area of pasture is well below the requirements "asked for" by the Department of Agriculture. T. 35-36. She also believes that the Conservation Plan demonstrates that the pastures are not healthy and have lower scores of 1, 2 and 3. T. 36.

2. *Applicant's Response.* Ms. Freeman points to the aerial photograph in the Conservation Plan (on page 17 of this Decision), that lists the acreage of all pastures on the entire 7.65 acre property. If one subtracts the acreage that will be outside of the proposed conditional use area, she believes the Conservation Plan demonstrates that only 15% of the total will be lost.

Ms. Freeman states that a "simple glance" at the subdivision map demonstrates that the turnaround and cistern do not overlap with the pasture land. She adds (Exhibit 93):

... I have been told that the building of such a fire/rescue cistern is quite a low possibility of ever happening as it would need to be funded by the county and this

would certainly not be a priority that the county would use funds for such a cistern. However, if it ever were to be built, this would be of benefit to all the neighbors as it would be the nearest water source for fire extinguishing.

She further responds that the amount of right-of-way that encroaches into Field 1 (as marked on the Conservation Plan) is only 0.12 acres or 528 square feet. According to her, she has much more available pasture within the 4-acre conditional use area should she need it. At present, she does not need the additional acreage due to her horses eating habits. She points to the Addendum to the Nutrient Management Plan that shows that acreage of both fenced and unfenced pasture amounts to 2.11 acres “just on the 4 acre area.” Exhibit 93.

Ms. Freeman testified that her pastures have more acreage than apparent on one of the aerial photographs from the Conservation Plan. Trees cast shadows in the aerial photograph, making it appear that the open areas are smaller than they actually are. Her pastures have 75%-80% open sunlight. There is a small area in the back corner that has some trees but also grass. The aerial photograph from the original staff report more accurately shows the amount of open area because it was taken in winter. T. 54-55.

In her post-hearing comments, Ms. Freeman further stated that she has “far more than enough open high-quality pasture for the horses, as evidenced by the Conservation Plan, and the Nutrient Management Plan, and supplemented by the statement from my vet and my own testimony under oath.” Exhibit 72.

3. Impact on the Sole Source Aquifer

a. Opposition Concerns. Another of Mr. Grigorian's concerns was the impact of the subdivision on the aquifer that feeds most wells in the community. Mr. Grigorian felt that Ms. Freeman must demonstrate that an aquifer providing water supply to the area has enough capacity to support the proposed use to maintain horses, agricultural, and “existing and planned

improvements.” Exhibit 35. Mr. Grigorian stated, “any property owner wanting to load up their property with animals beyond the number permitted by the zoning code should be required to present written evidence that the common aquifer can support the otherwise prohibited use. I can personally attest to the fact that on numerous occasions during the past 10 years I have had a mere trickle of water coming from my faucets.” *Id.* The Poolesville area and everything to the north and west of it relies on the Piedmont Sole Source Aquifer for its water supply. Therefore, he believes that preserving the safety and potability of the water is very important. T. 96-97.

Dr. Hansen asserted that there have been previous spills of petroleum distillate on Ms. Freeman's property. A former owner (now deceased) was unable to use the property for a year because the well and septic fields were contaminated by a leaking underground fuel tank. It took her a year to find a safe water source because she wanted to have two horses as well. T. 97-98.

From her visits when the former owner was alive, Dr. Hansen knows that there was subterranean water leakage into the basement due to a high water table. When the former owner returned to the home, she was able to renovate and put a stackable washer and dryer by the back door. That was also part of the reason that the former neighbor was unable to “do anything” with her buildings and the barn footings were wet and unstable. T. 98. In Dr. Hansen's opinion, it's unlikely that Ms. Freeman will be able to place appropriate well and septic facilities on the property. T. 98. Dr. Hansen believes that Ms. Freeman has already recognized this because Ms. Freeman has already had to construct remedial devices that may well exhaust capacity on the property. T. 99.

Dr. Hansen believes there is a lot of standing water on the property. She does not know how Ms. Freeman will direct that water because she does not have the 8% grade required. The

water will drain onto adjacent properties, potentially sending contaminants onto those properties.
T. 100.

b. Applicant's Response. The Applicant asserts there is no evidence to support Dr. Hansen's claim that there is subterranean leakage on the property. She states, "[f]or Dr. Hansen to make such a claim about this property, I would request evidence." Exhibit 72(a). Ms. Freeman further states (Exhibit 72(a)):

This previous owner is now deceased and lived on the property more than 10 years ago. It is unclear how this has any relevance to the issue of the Conditional Use, if in fact it is even true. Further, there are no signs or evidence of any residual negative affect about some oil spill that may or may not have happened on my property more than a decade ago.

She repeats this point in her closing comments. Exhibit 93. She states (*Id.*):

Water on my property is not contaminated and never has been as long as I've been here. I have no knowledge of any of the allegations about contamination that Dr. Hansen claims. It is false that Dr. Hansen claims that I have found the drinking water to be contaminated.

Ms. Freeman does not believe that the number of animals on the property is excessive for properties in the Ag Reserve. Exhibit 53. She lists her animals as follows (Exhibit 53):

- I have 13 chickens (usually about 12 over the last 3 years) and my daughter has 2 pet bunnies, Beena and Bun-Bun. Last year, Mrs. Grigorian asked us to take their bunny, Snowy, too so now we have 3, including Mrs. Grigorian's bunny. I assume she asked me to take their bunny based on her knowledge of how well I care for all of our animals. The chickens and bunnies combined drink about 3 gallons of water every 5-6 days. I have no further plans to increase the number of chickens or pet bunnies.
- We have 1 indoor cat.
- We have two rescue horses (which are technically ponies) meaning they produce a bit less waste and use a bit less water than larger horses.
- I live here alone (with my daughter ½ the week) so in terms of human usage of water and septic, even this is substantially lower than if 4 people lived in this 2 bedroom house. The new septic system has been functioning perfectly since it was installed about 4 years ago.
- The number of additional animals on the property is within the allowed levels for the Zoning Code.

4. Approval of the Minor Amendment is Premature and Will Support Approval of the Subdivision

a. Opposition's Position. The primary thrust of the opposition's position is that the Hearing Examiner cannot approve the conditional use because there are too many issues outstanding in the subdivision approval (which are set out in the next subsection of this Report). Both Mr. Grigorian and Dr. Hansen believe that approval of the minor amendment could have a "detrimental impact" on the willingness of the Planning Board to consider changes to the subdivision. T. 66. Mr. Grigorian believes that the conditional use approval will be presented as supporting the subdivision in its current form. T. 67. In his opinion, there has already been an administrative investment in the layout of the subdivision plan. *Id.*

To illustrate the uncertainties regarding the subdivision, he believes that Ms. Freeman must place a fence on along the boundary of the proposed 4-acre conditional use area. If she doesn't, the horses could violate the amended conditional use by wandering into the proposed Lot 2. The subdivision, however, could change the lot line between Lots 1 and 2 and make this condition superfluous. T. 122. In his opinion, it was an error for government agencies to state that the minor amendment to the conditional use had to be approved prior to the subdivision plan. The decision on the conditional use shouldn't be made based on an agency error. T. 62.

Dr. Hansen believes that the unknowns related to this application are caused by the Planning Staff actions. Planning Staff did not require a full forest "floor" review, a full assessment under the Rustic Roads Functional Master Plan, or an opinion by the Rustic Roads Advisory Committee because she assumed that they would not need to do any of those things or add a sediment and erosion control requirement. Staff assumed there would be no need for a prohibition on grading and soil removal because they existed in 2016. According to Dr. Hansen, that

assumption is false because the conditional use plan submitted was designed for the subdivision and didn't even correct the inaccuracies that existing on the subdivision plan. T. 71-72.

In his closing comments, Mr. Grigorian. reiterates this argument. He asserts again that the Hearing Examiner cannot approve the conditional use because she does not know "with certainty" the final impact of the subdivision (Exhibit 88):

The H.E. is on actual notice of the applicant's planned changes to the property and has received copies of applicant's filed subdivision plans. The pendency of those changes renders it an impossibility for the H.E. to conclude with any certainty whether or not the amendment will change the nature, character or intensity of the CU to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

Mr. Grigorian interprets the DRC's comments about the need to obtain an amendment to the conditional use before approval of a subdivision plan to mean that the original conditional use should be abandoned rather than modified. Instead, according to him, the DRC comments are a "mere suggestion" that the conditional use should be modified. This suggestion, he continues, should not give the Hearing Examiner "cover" for inappropriately approving a conditional use for a "hypothetical lot based on what is essentially non-existent, or at least rapidly changing set of facts and assumptions." Exhibit 88.

Dr. Hansen agrees that the Hearing Examiner cannot approve the conditional use without knowing the outcome of the subdivision approval. She has a Ph.D. in political science; she is aware that old, wealthier counties like Montgomery County tend to fractionalize decision-making between different agencies. T. 70. She has both jurisdictional and bureaucratic concerns about the minor amendment to the conditional use. She stated (T. 70):

And after all my reading of all of this testimony and taking into account administrative law, as well as county law, as well as state law, as well as law that pertains to jurisdictions that encompass the District of Columbia and Maryland, it seems to me that your office, even though you're trying idly to do this, can't really do what – make a decision on a minor or a major amendment, and that you can

categorize this Freeman applications either way, leaving you with one of three options.

Either leaving it on the table, which was the solution that I offered in the testimony that I submitted by 4:00 p.m. last Thursday, or have it voluntarily withdrawn by Ms. Freeman or the third option, which may be least attractive to everyone potentially is that you can categorize it as a major amendment.

In her closing statement, Dr. Hansen asserts that the Hearing Examiner's failure to dismiss, deny, or defer the conditional use amendment "locks" the parties into a "forced march" to approval of the subdivision. *Id.* Until Ms. Freeman retracts her statement that she filed the amendment to achieve the subdivision approval, any argument that the two matters are not related is "false". *Id.* Exhibit 91(a).

2. *The Applicant's Response.* The Applicant believes that the DRC comments are clear that she is required to obtain the minor amendment to the conditional use before the Planning Board may approve her subdivision plan. Exhibit 93. She also states that one of her rescue horses is blind and would not adopt easily to moving to another location if she abandoned the conditional use. *Id.*

5. Opposition Concerns Regarding the Subdivision

Dr. Hansen submitted a letter she had written to the Planning Department objecting to the subdivision plan. Exhibit 61. The letter formed the basis of much of her testimony at the public hearing in this case. *See, e.g.,* T. 72, 73, 75, 78, 81, 87, 89, 94, 107.

a. Tree Clearing and Impact on Rustic Road

1. *Opponent's Concerns.* Mr. Grigorian believes that the subdivision plan calls for substantial forest clearing trees on both lots, potentially impacting the Potomac River. He disagreed with Staff's determination that the amendment is minor, referencing the Forest Conservation Plan submitted in Ms. Freeman's subdivision case, which, according to him, "clearly indicates" that a substantial portion of the new 3.27-acre lot (*i.e.*, proposed Lot 2) would be cleared.

Exhibit 50. It will remove a lot of trees along Sugarland Road, which is one of only 19 exceptional rustic roads in Montgomery County. T. 61-62. He testified that there is a notation on the forest conservation plan for the subdivision that states, "Trees to be cleared." Exhibit 88. Mr. Grigorian is less concerned with the potential forest clearing on proposed Lot 1 than Lot 2. On both lots, the forest should only be cleared as needed. T. 65.

In his closing arguments, Mr. Grigorian alleged that the "significant tree" inventory from the subdivision plan was flawed because, "at least to the naked eye", there are large trees visible from the street that are not shown on the inventory. Exhibit 88. He believes that it is relevant to the conditional use because it will impact drainage, and thus will affect the environmental impact of the use. *Id.*

Dr. Hansen professes that the subdivision plats submitted by Ms. Freeman are "inaccurate, not corrected, does not portray accurately the hedgerow habitat, the mature forest, the intermediate forest, and the secondary forest." T. 92. Dr. Hansen believes that Ms. Freeman's property holds 70% of the protected forest along Sugarland Road. About 55% of the forest is located on proposed Lot 1. T. 92-93. The Sugarland community has learned that it may have to defend tree preservation through lawsuits. A Mr. Faud El-Hibri attempted to clear four forests in order to operate a polo field 23 hours a day. The community hired a tree expert and measured every tree. Two County Staff people were subsequently fired. In Montgomery County, there is a "good ol' boy" assumption that you can take down any tree you want to. There were two County Planners who spoke with Ms. Freeman and encouraged her to protect those trees formally, which Ms. Freeman refused to do. This gives the community the idea that something underhanded is going on. She believes that County planners told her that the subdivision plan was not updated and corrected to preserve the trees, which has not occurred. T. 94.

The subdivision is flawed because the forest clearing on Ms. Freeman's property and completely decimate the hedgerow habitat. She took pictures of the "decimation" that occurred when Comcast began to clear the habitat and forwarded them to the Planning Department. She never received a response. Therefore, she's communicated her concerns about the subdivision to Leslie Saville of the Planning Department. T. 96.

If, as Dr. Hansen believes, the County's ulterior motive is to establish an "Outer Beltway", and the conditional use and subdivision are approved, the last intact section of major forest on Sugarland Road, an exceptional Rustic Road, will be torn down during migratory bird nesting season. This will cause an environmental organization, such as the Audobon Society, to sue the County. With the trees torn out, there may be no road buffer, no filtration, and the aquifer may be contaminated.

She is also concerned about legal expenses for the neighbors. She testified, "The minute this is passed, this goes right into the land sale issue for all of us. And that becomes a taking." T. 87. She told of the time when Comcast came and tore down trees on either side of the road. Finally, Comcast agreed that the adjacent property owners owned to the mid-point of the road. The County fined Asplundh, the tree removal company, because most of the employees who drive the trucks are not American citizens and have no legal right to work in this County. They cannot read the forestry or Pepco maps prepared by their foresters, which marked the areas not to be touched. The surrounding property owners sued Comcast to prevent them from entering their properties. T. 88-89.

2. *Applicant's Response.* In her Pre-Hearing Statement, Ms. Freeman acknowledges that the Forest Conservation Plan contains a note about possible tree clearing on the western side of proposed conditional use area (proposed Lot 1). Exhibit 53. She explains (*Id.*):

...these trees are **not** going to be cleared. I discussed this issue with Jeff Server and Doug Johnson at M-NCPPC on 5/22/20 who explained to me that the law reads such that there are only two possibilities to designate existing forest – either To Be Cleared, or it is to be put into an Easement. It apparently can't just be left as forest [on the subdivision plan] without further designation. However, to alleviate concern about this treed area, I have discussed with my Planners about adding a Note onto the plans that would further clarify that this treed area would not be cleared – along the language of:

Area to be Cleared
Ac
(this area shown as clearing for forest conservation
worksheet purposes only;
This area is not proposed to be cleared at
This time and is not within the project LOD)

There is no need for any clearing (or grading) of any forest on the 4 acre lot, nor do I have any desire to take any trees down. I would be comfortable if the Hearing Examiner added language to this effect into the Minor Amendment decision – that there will be no clearing or grading and that the tree buffer, as it currently stands, will remain intact on the 4-acre lot.

Ms. Freeman's engineer submitted also commented "[n]ot all of the trees designated as "clearing" will be actually cleared. However, this matter and the matter of any changes along Sugarland Road will be vetted during the subdivision review process." Exhibit 72(b).

b. Impact of the Right of Way

Dr. Hansen interprets the subdivision plan as establishing an 80-foot right of way southeast of centerline of Sugarland Road on Ms. Freeman's property. She testified that the right-of-way shown on the subdivision plan will constitute a "massive taking" that will destroy several other homes along Sugarland Road. She accuses the County of planning an "outer beltway" along Sugarland Road. She contends that the County has chosen this route because friends of the County Executive live in the other possible alignment for the Outer Beltway. T. 71, 79; Exhibit 91.

In Dr. Hansen's opinion, many adverse impacts on the neighborhood stem from the 80-foot right-of-way as she interprets it. Ms. Freeman's house sits entirely within the 80-foot

easement, so if the subdivision is approved, her entire house is gone. T. 74. When the Hearing Examiner pointed out that the house shown on the plan did not sit within the right-of-way dedication, Dr. Hansen testified that "somebody's moved her house". T. 74. According to her, if you measure 80 feet from the road, Ms. Freeman's house sits within the 80 feet. *Id.* She believes that every house along Sugarland Road is within the 80-foot easement, which is why this amendment should not be approved. T. 74-75. That was error that was supposed to have been fixed in the subdivision plan. T. 75. She believes that it would be a major impact if every house along Sugarland Road lost half the house, particularly for those families with children. *Id.* Most of the houses along Sugarland Road, including hers, are within the right-of-way. In response to questions from the Hearing Examiner, Dr. Hansen testified that she had never surveyed the property because she didn't need to. T. 74-76.

Dr. Hansen asserted that there is no prescriptive easement for the public on Sugarland Road because it predates the formation of Montgomery County. Therefore, she and neighbors own to the middle of the road. In response to questions from the Hearing Examiner, she acknowledged that the public uses the road for travel. T. 77.

Dr. Hansen believes that the subdivision plan leaves open the possibility that there will be a second 80-foot right-of-way on the northern side of Sugarland Road. In her opinion, the Master Plan in this case sets a right-of-way of 13-15 feet. She does not know where the 80-foot requirement comes from. T. 78.

If the 80-foot right-of-way is extended along Sugarland Road, there will also be a taking of part of Sugarland Forest Community Church, which is a national and State registered historic structure. She believes that the subdivision sets the precedent for doing a "massive taking of an exception rustic road, which has been 12-15 feet wide since 1996. T. 79-80.

In her opinion, an 80-foot right-of-way would bring commercial interests to Sugarland Road. Not only would this damage the hedgerow habitat, it will damage the fragile underground water diversion that is intended to occur along these roads to filter dangerous chemical runoff. Harmful chemicals are dispersed from vehicles and County anti-ice trucks among other items. T. 91-92.

Dr. Hansen testified that she knew the subject property well because she had been very close friends with “two owners back.” T. 69. She also knew the property from when she was getting her doctorate in political science at Harvard. Everyone at Harvard was “agog” at the “world set-aside program for agricultural land in the only country on the planet that actually routinely paved over a prime farmland.” T. 69. Dr. Hansen testified that the conditional use plan submitted is not consistent with the Rural Roads Functional Master Plan because, according to Dr. Hansen, it will destroy the hedgerow habitat along Sugarland Road. T. 90. She served on the historic district board for the upcounty for 12 years and was tasked with documenting all 12 roads proposed for rustic designation. She measured the hedgerow habitat and trees on both sides of these rows. The 80-foot right-of-way is inconsistent with preserving the hedgerow habitat, which in her opinion is a vital component of a rustic road. The habitat is important to migratory birds because it provides shelter and food. T. 90-91.

In her closing arguments, Dr. Hansen stated she “stands by” her testimony that the right-of-way will be 80 feet southeast of the centerline of Sugarland Road. Exhibit 91. Because the subdivision plan establishes an 80-foot easement, Dr. Hansen believes that the entire plan is not to scale because it shows that Ms. Freeman's home is outside of the 80-foot right-of-way. But, she testified, Ms. Freeman's home is only 50 feet from Sugarland Road. T. 81. Dr. Hansen postulates

that the subdivision plan establishes a stream valley buffer near every house on Sugarland Road that borders the Casey property (adjoining to the southeast.) T. 82.

2. *Applicant's Response.* The Applicant submitted a letter from David W. McKee, a principal of the engineering firm that prepared the subdivision plan. Exhibit 72(b). Mr. McKee states that subdivision plan dedicates only a 40-foot right of way southeast of the centerline of Sugarland Road along Ms. Freeman's property. The subdivision plan references an 80-foot right of way because that is the "ultimate" right-of-way that includes both sides of Sugarland Road. *Id.* Mr. McKee points out that the 40-foot right-of-way on Ms. Freeman's property is noted on the plan. The subdivision plan includes a detail for County standard MC-213.02, which is a standard for open-section roadways with a right-of-way width of 80 feet. According to Mr. McKee, the road cross-section detail on the subdivision plan also shows that the total 80-foot right-of-way is divided equally on both sides of the centerline. Mr. McKee states that the 80-foot ultimate right-of-way is designated by the "Master Plan for Sugarland Road." *Id.*

d. Miscellaneous Issues Regarding the Subdivision

Another problem with the subdivision, according to Dr. Hansen, is that it shows a septic facility within the right-of-way, which she believes contravenes established County procedures. T. 80.

Dr. Hansen also noted that the subdivision plan sets up a trail easement property abutting the southeast (rear) side of Ms. Freeman's property where none currently exists. If the minor amendment is approved, it will cause a taking the adjoining property owned by the Caseys and properties along where the trail could be extended to the northeast and southwest. T. 82. She also believes it establishes a stream buffer on the adjacent property. T. 82-83.

She has consulted with the management of the Casey property. She consults with them often because there is a lot of illegal hunting and joyriding there. There have been car stripping rings and open air drug markets. She has had to close 14 open air drug markets since 1992. If the trail easement is recorded, it will open up the rear of all of the properties along Sugarland Road to dangerous activities and permit illegal hunters, joyriders, birders, and potential criminals, particularly on the Casey property. T. 86. According to Dr. Hansen, there has been a "fair amount" of "nefarious" property damage in the area. She has had to install an alarm system. People using illegal trails have stolen a tremendous amount of ferrying equipment. There is a lot of illegal activity now; if a formal trail system is established, this will become a "major transit point" for illegal activities. T. 85-86.

2. *Applicant's Response.* The Applicant's engineer states (Exhibit 72(b)):

Our plan denotes the location of an existing trail based upon observations made in the field. The designation was not intended to propose a new trail easement. We observed signs indicating a trail in the location shown. However, upon contact with a representative of the Casey property and further research, we plan to remove the trail from all future plans. Public records do not indicate a trail easement exists in the area.

* * *

In accordance with M-NCPPC policy, we are required to depict the location of stream and stream buffer areas within 100 feet of a property which is proposed for subdivision. The depiction of stream buffer areas on properties to the northeast and southeast of the site is for this reason only. Since only the Freeman property is included in the subdivision application, the depiction of stream buffer areas on neighboring properties has no bearing on the use of the adjacent properties by the owner's of those properties.

e. Subdivision's Impact on Well on Adjacent Property

Mr. Grigorian believes that another issue with the subdivision stems from the location of the sand mounds that are directly upgrade from the adjoining property to the east. The

subdivision proposes to build sand mounds very close to a well head on that adjoining property.
T. 65.

6. Motivations of Ms. Freeman and the County

a. Opposition Concerns. Dr. Hansen finds Ms. Freeman “disingenuous” when she states that she does not intend to sell the lot in the foreseeable future. This leads Dr. Hansen to question whether “excessive pressures” have been “brought to bear” on “breaking” the Ag Reserve and increasing development. Exhibit 91(a). In her closing arguments, Dr. Hansen also posits that Sugarland Road is the most likely candidate for an “Outer Beltway” because individuals close to the County Executive live in other potential locations. She suggests that the Hearing Examiner place the amendment “on the table” and take it off the table when the Planning Board approves the subdivision application. *Id.*

Dr. Hansen believes that Ms. Freeman is subdividing the property to sell the second lot in the short-term. She argues that Ms. Freeman would not have had a “mystery man”, that used “spyware” to listen to the remote hearing on the conditional use. The “mystery man”, according to her, is a title attorney, an insurance broker, and an attorney specializing in “Agricultural Preservation, Land Use, and Zoning Law...” *Id.* She believes that Ms. Freeman’s representation she will not develop in the “foreseeable future” is a misrepresentation under oath. *Id.*

Dr. Hansen does not know whether bureaucratic inertia, corrupt business practices, worry about Ms. Freeman’s financial state, or an Outer Beltway is driving the Hearing Examiner’s refusal to table the conditional use application. *Id.* In her opinion, the Functional Master Plan for Rustic Roads (Rustic Roads Plan) legally preempts the 1980 Preservation of Agricultural and Rural Open Space Plan (1980 Plan). She urges consideration of language she asserts is in the 1980 Plan section on the Preservation of a Rural Village “whose nature, character, or intensity of the conditional use

is changed to such an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Id.* If the Hearing Examiner grants this conditional use, she is “just playing into the hands of the farmer-developers, who intend to destroy the Ag Reserve with ‘a thousand cuts’ like Ms. Freeman’s Sub-Division.” *Id.*

Like Dr. Hansen, Mr. Grigorian also questions Ms. Freeman’s motives in subdividing the property. He believes that Ms. Freeman is planning to sell the lot in the short term. *Id.* He finds signs on her lawn stating “We Will Rise” and “A Good Neighbor is a Priceless Treasure” to be “disingenuous.” *Id.* Instead, he accuses Ms. Freeman of “gaslighting” her neighbors by refusing to listen to their concerns. *Id.* He charges that, “[t]he applicant is a profiteer, just like any for-profit developer, and should (and will) be treated as such.” *Id.* According to him, the applicant’s statement that the lot is for her daughter is “completely incongruous” with an email sent to him in December, 2019. Mr. Grigorian reproduced excerpts from the email in which Ms. Freeman cited personal reasons for selling the lot.

2. *Applicant’s Response.* Ms. Freeman found it “extremely inappropriate” for Mr. Grigorian to have made her personal reasons for possibly selling the lot in the future a matter of public record and asked the Hearing Examiner to strike the information from the record.⁷ She accused Mr. Grigorian of “cherry-picking” excerpts from her email and quoted other portions in which she stated that her dream was to be on the property for a very long time. Exhibit 99.

Ms. Freeman denies knowing the “mystery man” identified by Dr. Hansen who attended the remote hearing on her conditional use amendment. *Id.*

⁷The information disclosed is not protected from disclosure by law. As set forth *infra*, the Hearing Examiner does not find Ms. Freeman’s motivations subdividing or selling the property relevant to the application for a minor amendment to a conditional use. Therefore, she does not repeat the accusations in this Decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The primary argument of those in opposition is that the Hearing Examiner cannot approve the minor amendment to the conditional use because she knows of the pending subdivision, but does not know its outcome. Therefore, the argument goes, the Hearing Examiner cannot know whether the conditional use amendment is major or minor until the subdivision and its impacts are decided. The opposition's second premise is that approval of this minor amendment somehow supports or forces the Planning Board to approve the subdivision.

A. Governing Law

The Hearing Examiner finds both arguments both factually and legally flawed. The short answer is that a condition of approval of the minor amendment will restrict the Applicant to the improvements shown on the conditional use site plan (Exhibit 72(c) with the fence realigned as shown on Exhibit 74. If anything on the 4-acre conditional use area changes due to the subdivision, Ms. Freeman must return to the Hearing Examiner to amend the plan. Changes to proposed Lot 2 do not affect the amendment requested here because Ms. Freeman is removing the conditional use from that area. Therefore the impact on the surrounding area from her conditional use amendment is definitively known, regardless of the outcome of the subdivision plan.

The longer answer reveals that the opposition's arguments have no foundation in Maryland law or the factual evidence in this record. Contrary to Dr. Hansen's contention that a multi-agency approval process for land development is reserved to "older, wealthier" counties, it is well established in Maryland that local governments control land development through three separate functions: planning, zoning and subdivision regulations. *Coffey v. Maryland-National Capital Park & Planning Com.*, 293 Md. 24, 27 (1982); *Board of County Commissioners of Cecil County v. Gaster*, 285 Md. 233, 246 (1979); *Miller v. Forty West Builders, Inc.*, 62 Md. App. 320, (1985);

Mayor & Council of Rockville v. Rylyns Enters., 372 Md. 514, 529-530 (2002); *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 688-89 (2007). While these functions have a common goal to achieve the County's policies for land development, each is distinct, governed by separate legislative authority, and often administered by separate agencies. *Surina*, 400 Md. at 690.

The Court of Appeals has recognized the different purposes and different standards governing zoning and subdivision regulations:

There are three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations. The need for subdivision regulations as a part of that planning is well illustrated by the case here. As it is put in 4 R. Anderson, *American Law of Zoning* § 23.03 (2d ed. 1977), '[Z]oning ordinances are not calculated to protect the community from the financial loss which may result from imperfect development. Some of these purposes are sought through the imposition of subdivision controls.' *Id.* at 47. 4 A. Rathkopf, *The Law of Zoning and Planning Ch. 71 § 2* (4th ed. 1979), gives reasons for subdivision control:

Planning enabling acts and the requirements for plat approval are based upon the realization that homes are no longer generally constructed one at a time for individual owners, resulting in a gradual development which can be controlled by zoning ordinances and local health, building, plumbing, and electrical codes alone. Vacant lots suitable for single homes in already developed communities have all but disappeared. The great increases in population and the unprecedented demand for homes has necessarily resulted in opening up undeveloped land in outlying areas, and the development thereof by large numbers of homes which may be said to be built all at one time. Where such development takes place without restriction other than zoning restrictions, it is the developer who designs the community in respect to the number, length, width, condition, and location of streets. The developer also determines where the newly arrived inhabitants of the community shall reside, without consideration of the necessity for, or existence of, schools, fire protection, parks, playgrounds, and other public facilities. If subdivisions develop too rapidly, or before the community is ready for the added burdens which an increased population imposes, and without adequate control, the result too often is the creation of deteriorating neighborhoods which create a blight upon the community and a drain upon the municipal purse. [*Id.* at 71-6 -- 7.]

Coffey v. Maryland-National Capital Park & Planning Com., 293 Md. 24, 27-28 (1982). Zoning, as opposed to subdivision, performs other purposes:

Zoning ordinances...do not create lots. Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements.

Friends of the Ridge v. Balt. Gas & Elec. Co., 352 Md. 645, 650-651 (1999). Without legislative authority incorporating the standards of one process into the other, an agency may not exercise the authority vested by an enabling act in another agency. *West Montgomery County Citizens Assn. v. Md.-National Capital Park & Planning Com.*, 309 Md. 183, 522 A.2d 1328 (1987)(Planning Board could not assign zoning densities through Master Plan because it did not have legislative authority to zone).

The Montgomery County Zoning Ordinance and the subdivision regulations govern two different functions and have different standards for approval of applications. *Compare, Zoning Ordinance*, §59.7.3.1.E.1 and *Montgomery County Code*, §59.4.2.D. For this reason, a zoning approval like a conditional use does *not* dictate the outcome of a subdivision application. In fact that opposite is true:

If planning boards had no alternative but to rubber-stamp their approval on every subdivision plat which conformed with the zoning ordinance, there would be little or no reason for their existence. While planning and zoning complement each other and serve certain common objectives, each represents a separate municipal function and neither is a mere rubber-stamp for the other...(Citations omitted.)

Coffey, 293 Md. at 27-28.

Maryland courts have been clear that zoning requirements should be met before approval of a subdivision application. The Court of Appeals instructs:

A subdivider, seeking approval of a subdivision plat, must first meet applicable zoning regulations and then must comply with state and county subdivision regulations. Thus, where a preliminary plat indicates on its face that it is violative of zoning ordinances, the denial of approval of the plat will be sustained. (Citations omitted).

Miller v. Forty W. Builders, Inc., 62 Md. App. 320, 334-35 (1985). Both the DRC comments in the subdivision case and Planning Staff's comments in this case correctly acknowledge the well-established relationship between the subdivision process and this conditional use (Exhibit 47):

Staff review of the pending application is limited to only the proposed amendment of the approved conditional use plan. The intended subdivision of the property is a separate procedure that requires a Preliminary Plan of Subdivision application review process with a final action and decision to be taken by the Montgomery County Planning Board. At this point, the Conditional Use application review staff has no knowledge of the possible outcome of the Preliminary Plan review process. However, Mr. Grigorian and Dr Hansen could participate in the Preliminary Plan Subdivision review process as interested parties or *parties of record* when the application is filed at the Planning Department.

Mr. Grigorian tortures the plain language of the DRC comments by interpreting them to mean that Ms. Freeman must abandon her conditional use in order to obtain the subdivision approval. The DRC comments plainly use the disjunctive "or" to separate two options—amending the conditional use *or* abandoning it.

Maryland courts make clear that the Hearing Examiner not only *may* decide the zoning issue prior to approval of the subdivision plan, but *should* do so, as Planning Staff advises. If the Planning Board approved the subdivision application before the minor amendment is approved, the property will immediately be in violation of the conditional use. If the Hearing Examiner cannot approve the minor amendment before consideration of the subdivision, Ms. Freeman is caught in a perpetual "Catch-22" and cannot proceed with either application.

Aside from the law, no fact in this record supports the opposition's argument that approval of this application somehow makes approval of the subdivision a *fait accompli*. Dr. Hansen posits unsupported theories that the County wants to make Sugarland Road an "Outer Beltway", or that "bureaucratic inertia" will cause the Planning Board or the Hearing Examiner to approve their respective applications. Mr. Grigorian believes that there is already an "administrative intent" to approve the subdivision. This type of pure speculation cannot create probative facts that make it true. Approval of the conditional use will restrict the *Applicant's* use of the property because she must conform to its terms. *Zoning Ordinance*, §59.7.3.1.L. It will not restrict the *Planning Board's* ability to make changes to the subdivision plan.

Mr. Grigorian argues that the initial conditional use site plan submitted (which was the subdivision plan) would be "recorded" and every notation outside of the subject property will become an "encumbrance" on neighboring properties. T. 83-84. The Hearing Examiner is unaware of any provision in County law requiring a conditional use approval to be recorded and the parties have not directed her to any. Similarly, the Hearing Examiner is unaware of any County or State law or regulation that makes off-site notations on a subdivision plan binding on other properties. Again, the parties have directed her to none. As indicated by the Applicant's engineer, these are notations of off-site conditions, *not* legal encumbrances on adjoining properties.

In his closing statement, Mr. Grigorian again urges the Hearing Examiner to consider the subdivision because she is on "actual notice" that changes are pending. Exhibit 88. The Hearing Examiner disagrees. The zoning approval is a prerequisite for the subdivision application and, even if the subdivision is approved, no changes may be made to the conditional use plan submitted for this application without further amending the conditional use.

If anything, it is the subdivision approval that is not ripe for review through this conditional use application. The decision on Ms. Freeman's subdivision application rests in the expertise of the Planning Board and the Hearing Examiner leaves it in their capable hands. The parties will have full opportunity to renew the concerns they've expressed in this proceeding during the Planning Board's hearing on Ms. Freeman's preliminary plan application.

B. Analysis of Minor Amendment

The Hearing Examiner returns to the Zoning Ordinance provisions that govern this decision. Upon review of this record, the Hearing Examiner finds that the amendment is minor, with the conditions of approval listed in Part IV of this Decision.

Of the many contentions in this case, the Hearing Examiner finds that the amendment will make only three changes to the existing conditional use: (1) the conditional use area will be reduced from 7.65 acres to 4 acres, (2) the existing amount of pasture will be reduced by 15%, and (3) the maximum number of horses that can be kept will be reduced from seven to four. All other operations will remain the same.

The reduction in the maximum number of horses permitted does not impact the surrounding area because Ms. Freeman has agreed to a condition of approval limiting the number of horses to two--the same she has had since the conditional use was established. If anything, the reduction of the maximum number of horses permitted will have less impact on the surrounding area.

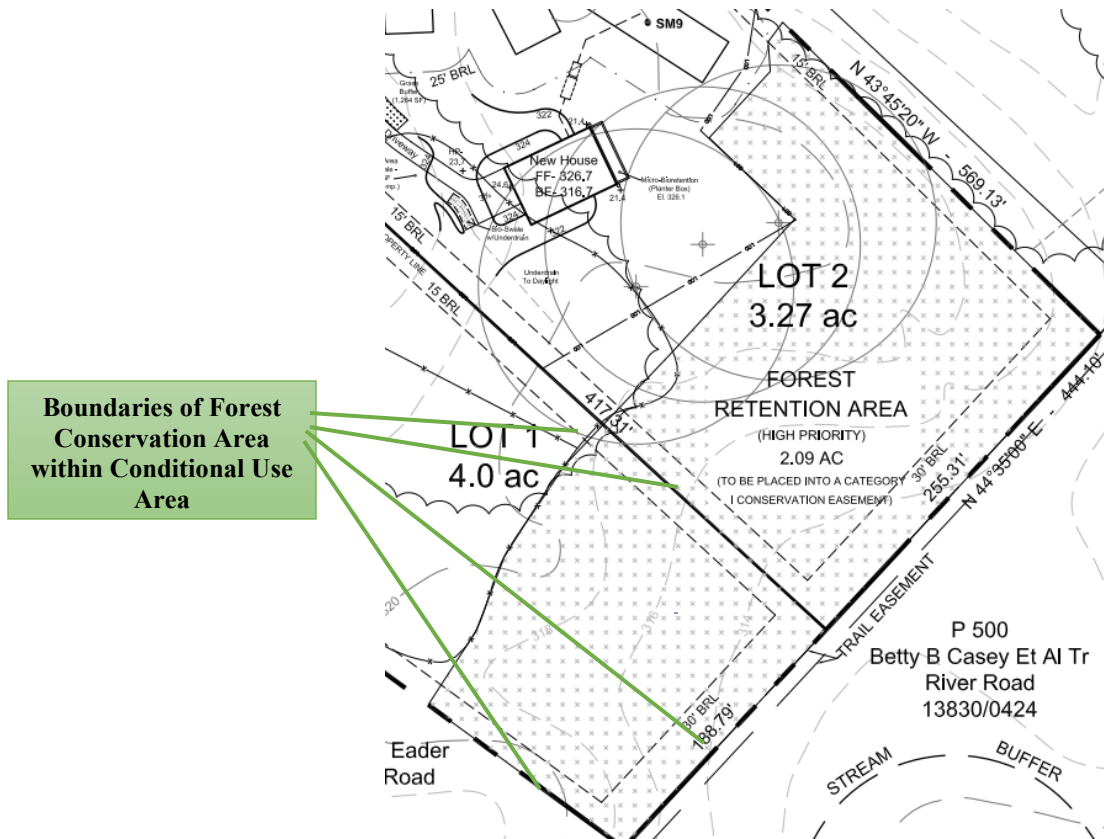
The Hearing Examiner finds that two horses fall well within the limits in the Zoning Ordinance. The Zoning Ordinance calculates the maximum number of horses for an equestrian facility by the "gross acreage" of the property. *Zoning Ordinance*, § 59.3.2.4.B.1.a. For two horses, the Zoning Ordinance requires a minimum of two gross acres. For three horses, the Zoning Ordinance mandates a minimum of one gross acre per horse. The proposed conditional use area

will be 4 acres, permitting a maximum of four horses on the property, which will be limited by condition to two horses.

There's no foundation for Dr. Hansen's argument that the Hearing Examiner should deduct from the gross acreage the 2.09 acres shown on the forest conservation easement. The Hearing Examiner is required to apply the "plain language" of the Zoning Ordinance, *Minh-Vu Hoang v. Lowery*, 469 Md. 95, 119 (2020), which clearly assesses the maximum number of horses by "gross acreage" rather than areas that may or may not be useable to the owner. Moreover, the subdivision plan has not yet been decided, so the testimony is speculative. Finally, Dr. Hansen's argument is factually wrong, as the subdivision plan makes clear that less than half the 2.09 acres of Forest Conservation easement lies within the conditional use area (Exhibit 29(a), excerpt on the next page). Whether the maximum number of horses is capped at 3 or 2, the minor amendment meets area requirements of the Zoning Ordinance for this conditional use.

The opposition also charges that the amount of pasture left in the 4-acre conditional use area is not enough to support two horses. The Hearing Examiner is not persuaded. As with many of the opposition's arguments in this case, this position plainly contradicts the documents in the record.

For properties less than 5 acres in the R-200 Zone that require a conditional use, the Applicant "must establish through a pasture maintenance plan, feeding plan, and any other documentation the Hearing Examiner requires, that the site contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the site." *Id.*, §59.3.2.4.B.2.c.ii. Mr. Grigorian first asserts that the amount of pasture would be reduced by half, rather than the 15% stated by Ms. Freeman, without providing a basis for his position. Even in his closing, he asserts



Excerpt from Subdivision Plan Depicting Forest Retention Area
 Exhibit 29(a)

that there is no “quantitative” evidence in the record to support Ms. Freeman’s assertion that pasture would be reduced by only 15%. This is simply incorrect. Ms. Freeman correctly points to the Conservation Plan, which lists the acreage of each field (shown on page 17 of this Report.) The Conservation Plan supports Ms. Freeman’s position that the pasture will be reduced by approximately 15%.⁸ Even with the sacrifice lot deducted from the total, the amount of pasture decreases by only 16%⁹.

⁸.43 ac. (Field 1) + .17 ac. (Field 3) + .90 ac. (Field 2) + .44 ac. (Field 4a) + .34 ac. (Field 4b) = 2.28 ac. Exhibit 59(e). .34 acres (Field 4b) divided by 2.28 (Total Pasture) = .149 or 15%.

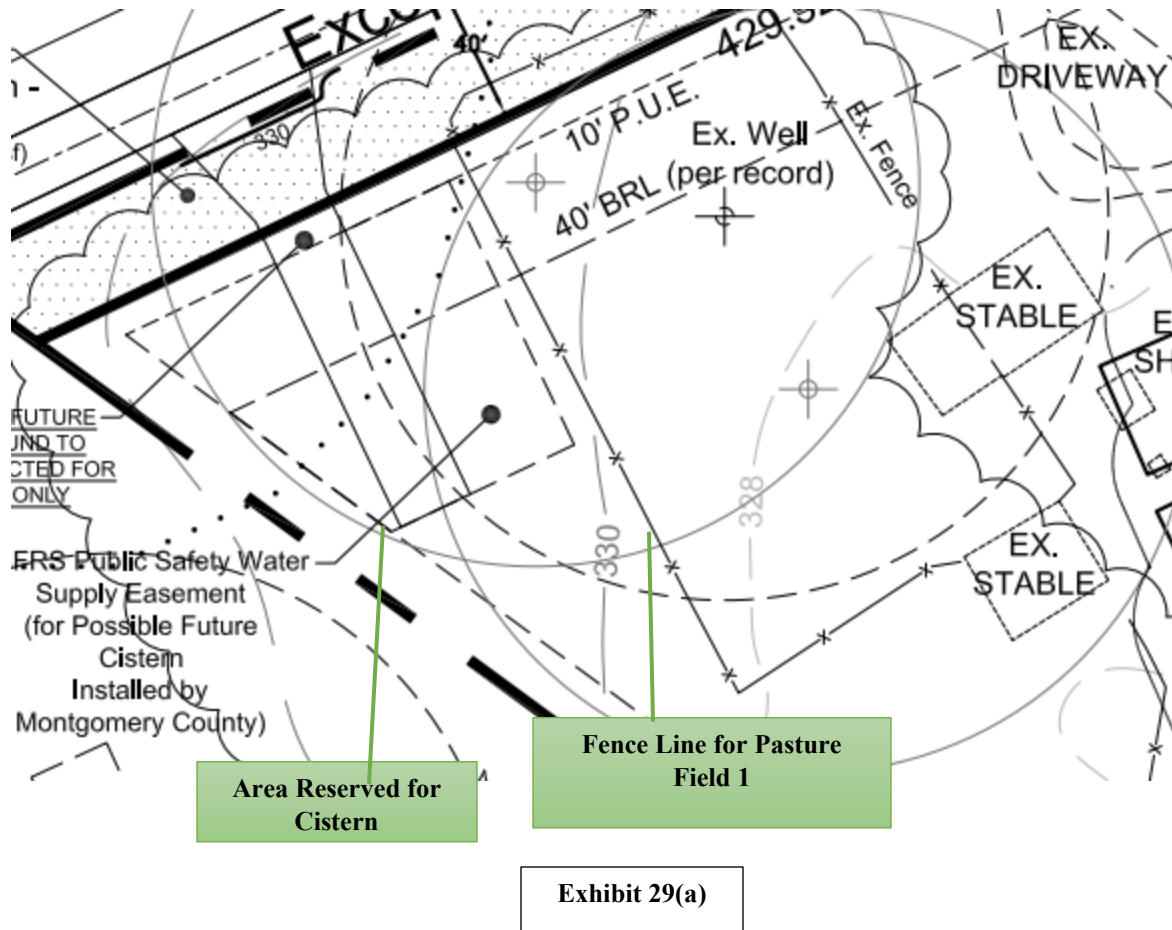
⁹2.28 acres (Total Pasture) - .17 acres (Field 3 or Sacrifice Lot)=2.11 acres (Total Pasture without Sacrifice Lot). .34 ac. (Field 4(b))/2.11 (Total Pasture Without Sacrifice Lot)=0.16.

Dr. Hansen believes the Conservation Plan shows that Ms. Freeman has only .78 acres of pasture because the rest is covered by trees. T. 40. Her testimony does not explain how she reached this conclusion. Another aerial photograph in the Conservation Plan, taken in the summer, contains trees that are casting shadows. Ms. Freeman suggested that this makes the pasture area less visible. Even that aerial photograph, however, clearly labels the areas considered pastures and the areas considered forest. Exhibit 59(d).

Mr. Grigorian further alleges that the size of pasture remaining after subdivision will be reduced due to the cistern and turnaround and right-of-way shown in the subdivision plan. While this is premature, as the subdivision hasn't been approved, it is obvious that the subdivision plan shows the cistern and turnaround located outside of Pasture Field 1 (Exhibit 29(a), on the next page).

The right-of-way does appear to encroach into Field 1, but Mr. Grigorian provided no specific information about how much land would be lost. Ms. Freeman states that it would be .012 acres or 528 square feet. Exhibit 93. Ms. Freeman also indicates that she can add additional pasture if and when the right-of-way is ever developed. This is supported by the Nutrient Management Plan.

Dr. Hansen also testified that Ms. Freeman's Conservation Plan assigned poor scores on the health of Ms. Freeman's pastures. The Conservation Plan flatly contradicts her testimony. It plainly rates the majority of the pasture above average. Exhibits 59(g), (h). The one pasture that received lower scores was the "sacrifice lot" (*i.e.*, Field 3), where the amount of forage is intentionally kept low for the health of the horses.



Dr. Hansen at one point in the hearing stated that the USDA recommends two acres per horse. T. 35-36. The Hearing Examiner does not find all of Dr. Hansen's unsupported assertions credible. The Nutrient Management Plan, Conservation Plan, and the letter from Ms. Freeman's veterinarian are from independent entities and demonstrate that the amount and health of the pasture on the 4 acres in the proposed conditional use area will be sufficient for the two horses that she will have. The Hearing Examiner finds from this record that the weight of evidence in this case supports a finding that amount of pasture remaining on the four-acre conditional use area will be sufficient to support two horses on the property.

Mr. Grigorian's initial objection expressed concerns about pollution drainage from the conditional use area and called for Ms. Freeman to obtain a nutrient management plan. This has

been addressed by Ms. Freeman, who submitted an amended Nutrient Management Plan Addendum for the 4-acre conditional use area. Exhibit 53. She has also submitted the Conservation Plan designed to minimize the environmental impact of the use by implementing approved management practices. Mr. Grigorian's further arguments relating to drainage stem from the subdivision plan. Based on this evidence before her, the Hearing Examiner finds that that drainage from the conditional use area will not will not adversely affect the surrounding area.

Another objection within the realm of a conditional use amendment is whether minor amendment will adversely affect the aquifer that feeds neighboring properties. Mr. Grigorian asserts that Ms. Freeman has "loaded up" the property with animals in "excess" of Zoning Ordinance requirements. He states that he has experienced low water pressure for the last 10 years.

The uncontroverted evidence demonstrates that, in addition to herself and her daughter, there are 13 chickens, 3 rabbits, and 2 horses on the property that would impact the draw on the aquifer. Ms. Freeman's nutrient management plan, the conclusions of which Mr. Grigorian does not challenge, addresses pollution from the animal waste. As far as water pressure, his 10-year tenure predates approval of the conditional use only 4 years ago. Mr. Grigorian does not provide evidence to correlate any relationship between the low water pressure he's experienced with the conditional use. Ms. Freeman stated that total water draw from the chickens and bunnies is around 3 gallons a week. Mr. Grigorian's position is entirely unsupported. A condition of approval will limit the number of horses to two, the same amount she has had since 2016. Moreover, Staff correctly advises that agriculture is a permitted use in the R-200 Zone, which does not regulate the number of animals on the property.

Dr. Hansen charges that petroleum distillate leaked on the property in the past and still remains in pockets . Her only basis for this is hearsay consisting of conversations from a now-

deceased former owner that is not available for cross-examination. Ms. Freeman denies that there is such leakage and states that the former owner lived on the property 10 years ago. As Ms. Freeman currently lives at the property and would be more familiar with current conditions, the Hearing Examiner finds that the weight of evidence does not support Dr. Hansen's contentions.

In the same vein, Dr. Hansen alleges that the property has a high water table and water leaks into Ms. Freeman's basement. For this reason, she believes that it will be impossible to construct buildings with stable footings and will impact the ability to provide well and septic. As Ms. Freeman has already constructed a new barn on the property (approved in the original conditional use) and does not propose additional structures on the four-acre area, the Hearing Examiner cannot glean whether this argument pertains to the subdivision or this conditional use. In any event, Ms. Freeman's still-standing barn contradicts Dr. Hansen's testimony and no one has reported that it has structural problems. During the original conditional use, the record showed that Ms. Freeman installed a new well and septic system on the property, approved by the Montgomery County Department of Permitting Services. Ms. Freeman reports this is working well. Again, Dr. Hansen's testimony is based on her visits to the same former owner mentioned above. The weight of evidence supports a finding that there will be no leakage from subterranean water on the subject property.

To allay Mr. Grigorian's concerns that Ms. Freeman's two rescue horses may wander outside of the proposed conditional use area, violating the conditional use, the Hearing Examiner imposes a condition of approval requiring Ms. Freeman to remove the fencing outside of the conditional use area and realign it as shown on Exhibit 74. Based on the weight of evidence before her, the Hearing Examiner finds that the proposed amendment to Ms. Freeman's original conditional use will not change the nature, character, or intensity of the conditional use to an extent that

substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.

C. Subdivision Issues

Even were the subdivision issues somehow before her, this record is bare of factual support for the oppositions' arguments that this application should be deferred due to the potential harm it presents. *See, Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296 (1975)(mere possibility, as opposed to probability, that feared conditions presently exist is insufficient to deny a conditional use.)

The "80-foot" right of way that Dr. Hansen believes will extend southeast of the centerline of Sugarland Road forms much of her opposition. She does not know why the subdivision shows an 80-foot right of way. Exhibit 91. She disagrees with the engineer's statement that it stems from the "County's Master Plan for Sugarland Road", which she claims does not exist. Exhibits 72(b), 91. For this reason, she urges that all of the engineer's comments be dismissed as a "misnomer."

Two master plans are applicable to this property: The 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (Agricultural Master Plan) and the 1996 Rustic Roads Functional Master Plan (Rustic Roads Master Plan). While the latter isn't formally titled the "Master Plan for Sugarland Road", it is a master plan for, or governing, Sugarland Road. The Rustic Roads Master Plan studied the roadway improvements, classifications, and the appropriate rights-of-way for rustic roads to maintain their rural character. *Rustic Roads Master Plan*, p. 3. Consistent with the statement of Ms. Freeman's engineer, the Rustic Road Master Plan recommends a *total* 80-foot right-of-way for Sugarland Road (*Rustic Road Master Plan*, p. 193, highlights supplied, below):

Roadway Classifications (cont.)

Table 4

| Master Plan Designation | Name | Limits | Minimum Right-of-Way Width |
|---------------------------------|-------------------------|---|----------------------------|
| Exceptional Rustic Roads | | | |
| E-1 | West Old Baltimore Road | Planning Area Boundary to Barnesville Road | 80' |
| E-2 | Hunting Quarter Road | | 80' |
| E-3 | Kingsley Road | Burnt Hill Road to Stringtown Road | 80' |
| E-4 | Martinsburg Road | Whites Ferry Road to north PEPCO entrance | 80' |
| E-5 | Montevideo Road | | 80' |
| E-6 | Mouth of Monocacy Road | C&O Canal to MD 28 Mt. Ephriam Road to bridge over Little Monocacy River | 80' |
| E-7 | River Road | Edwards Ferry Road to Whites Ferry Road | 80' |
| E-8 | Sugarland Road | Sugarland Lane to MD 107 | 80' |
| E-9 | Swains Lock Road | | 80' |
| E-10 | West Harris Road | | 80' |
| E-11 | Edwards Ferry Road | West Offutt Road to Canal | 80' |
| E-12 | Hoyles Mill Road | White Ground Road to Planning Area Boundary | 70' |

Rustic Roads Master Plan, p. 193 (highlighting supplied)

Thus, Ms. Freeman’s subdivision has *no impact* on the right-of-way established for Sugarland Road because it is established by the Rustic Roads Master Plan. The subdivision may dedicate the land for the right-of-way, but any subdivision along that portion of Sugarland Road would require the same right-of-way. There is no basis for the Hearing Examiner to reject a minor amendment to a conditional use because a pending subdivision conforms to the recommendations of the governing master plan. In fact, the opposite is true. *Zoning Ordinance*, §59.7.3.1.E.1.c.

Nor does anything in this record support Dr. Hansen’s surmise that the right-of-way extends 80 feet southeast of the centerline of Sugarland Road. Certified by a professional engineer, the subdivision plan clearly reflects the Rustic Road Master Plan’s recommendation for the “ultimate” or total right-of-way to be 80 feet and references the E-8 designation in the Plan. A measured distance on the subdivision plan shows that the right-of-way on the subject property

extends 40 feet from the centerline of the road into Ms. Freeman's property. The subdivision plan depicts the standard cross-section for this road's classification. The cross-section plainly shows that the centerline of Sugarland Road in the middle of the 80-foot right-of-way, half of which extends in both directions from the centerline. Excerpts from the subdivision demonstrating these points are shown on the below and on the following page (Exhibit 29(a)).

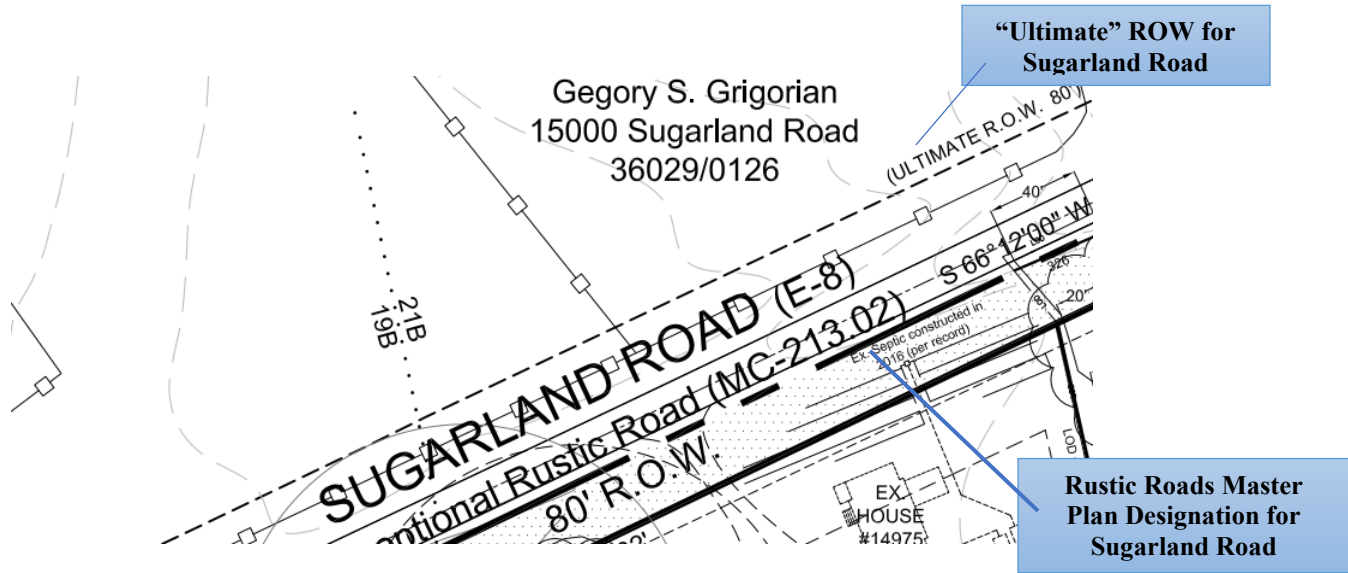


Exhibit 29(a)

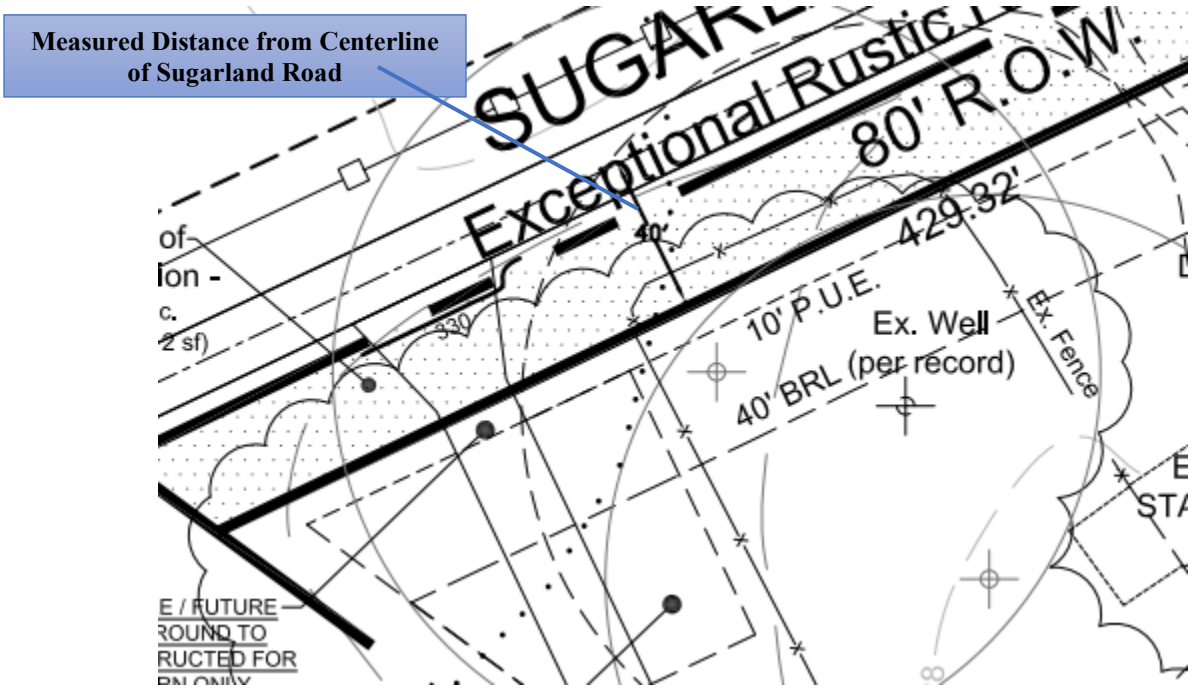
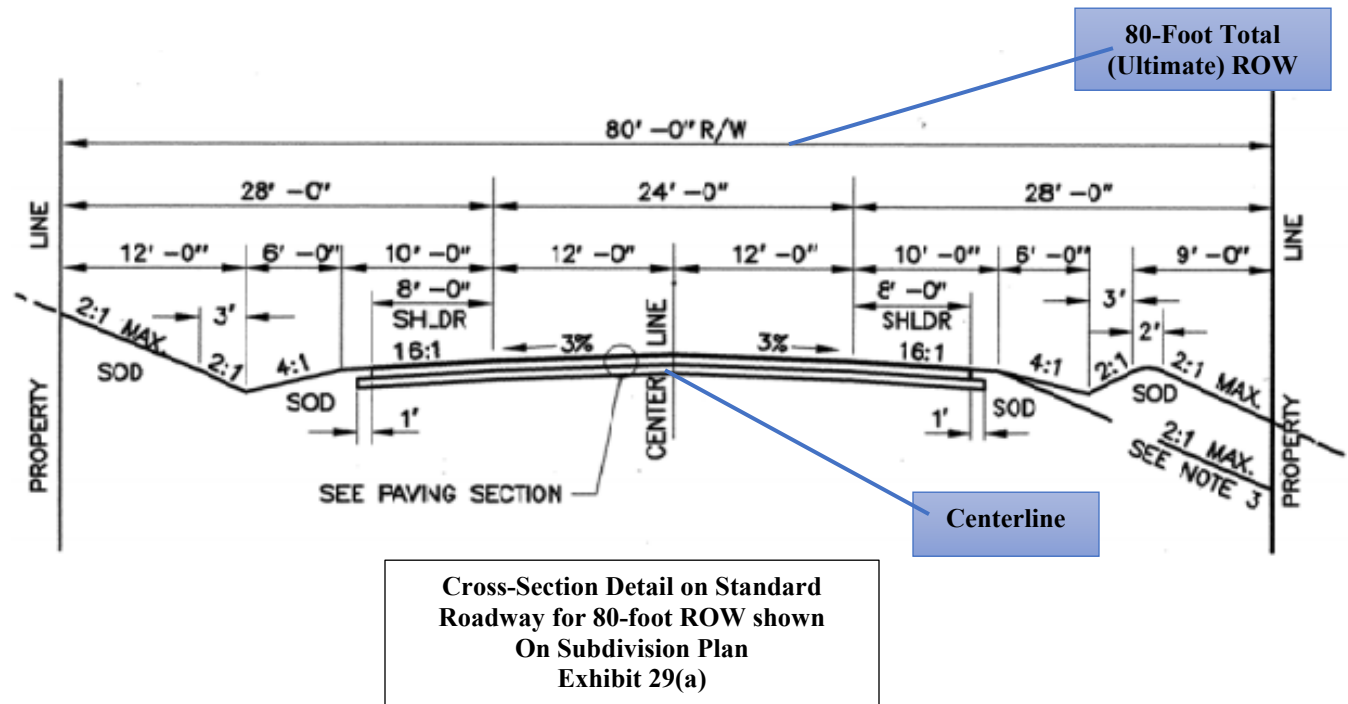


Exhibit 29(a)



Dr. Hansen is not a professional engineer. The Hearing Examiner finds the subdivision plan, certified by a professional engineer, has far more probative weight than Dr. Hansen's testimony, particularly as the right-of-way shown on the subdivision plan conforms to the recommendations of the Rustic Roads Master Plan. Weighing the evidence in the record, the Hearing Examiner finds that the right-of-way for Sugarland Road extends 40-feet southeast of the centerline of Sugarland Road.

With this finding, the probative value of Dr. Hansen's testimony that the right-of-way will result in various "takings" falls well short of the weight needed to defer or deny the conditional use amendment. Ms. Freeman's house clearly falls outside of the right-of-way on the subdivision plan. There is *no* evidence in this record that the other homes or the church mentioned by Dr. Hansen are inside the 40-foot right-of-way. The Hearing Examiner asked Dr. Hansen if she had surveyed the property. She responded that she had not because she did not need to. As Dr. Hansen

based her testimony on the assumption that the right-of-way would be twice the distance called for by the Master Plan and the subdivision plan, it has little probative value.

Neither is Dr. Hansen's assertion that the "hedgerow habitat" for migratory birds will be destroyed is not supported by probative evidence. Nothing in this record establishes where the hedgerow habitat lies in relation to the right-of-way or whether some habitat will remain even if the right-of-way is ever constructed. The probative value of Dr. Hansen's testimony is further undermined by the fact that she incorrectly assumed that the right-of-way extends 80 rather than 40 feet from the centerline of Sugarland Road.

In fact, there is little in this record to demonstrate that the full roadway cross-section shown on the subdivision plan will ever be constructed.¹⁰ The Agricultural Master Plan explains (*Agricultural Master Plan*, pp. 62-63):

Right-of-way requirements for roadways are generally based on the need to provide adequate width to accommodate typical ultimate paving cross sections plus abutting features such as sidewalks, drainage, and utilities. In most areas in the Agricultural Reserve and Rural Open Space, *the ultimate paving cross section may never be required*. However, the extra right-of-way should not be discarded because it can serve very important auxiliary needs.

If sufficient right-of-way is available as a result of dedication through the subdivision process, many highway safety projects can be accomplished without the cumbersome and expensive process of acquiring right-of-way. Safety projects which are particularly important on rural roadways, which would include reduction of crest vertical curves, straightening of horizontal curves, provision of shoulders and left turn storage lanes, drainage improvements and removal of roadside obstructions. Extra right-of-way is important when air quality and noise standards are in question. By having a wide right-of-way and minimum residential setbacks, the noise and air pollution impacts will be minimized. The additional house separation from the roadway provides the secondary benefits of opportunities for scenic setbacks and landscaping. (Underlining in original, italics supplied by the Hearing Examiner).

¹⁰ The Hearing Examiner does not have full agency comments on the subdivision plan in the record of this case.

Ms. Freeman relays that she was informed by Planning Staff that the cistern may not be needed, which is supported by a notation on the subdivision plan labelling the cistern as "MCFRS Public Safety Water Supply Easement (for *Possible* Future Cistern Installed by Montgomery County") (emphasis supplied by the Hearing Examiner.) Exhibit 29(a). Ms. Freeman states that the right-of-way won't be constructed until the second lot is sold, which she says will not occur in the foreseeable future. The full record of the subdivision plan is not before the Hearing Examiner. Even if the right-of-way was constructed tomorrow, however, this record doesn't factually support the oppositions' vision of the harms that will occur.

Ms. Freeman's response, however, generated much back-and forth between the parties about her ultimate intentions, culminating in an accusation that she is no different than a for-profit developer who will sell in the short-term, destroy the Agricultural Preserve and is not a good neighbor. Aside from its speculative nature, an individual's motives for subdividing property are not legally relevant to this decision. There is nothing in the Zoning Ordinance that puts personal motivations on trial along with a conditional use application.

Dr. Hansen also asserts that the subdivision plan establishes a taking by showing a trail easement and a stream valley buffer outside of Ms. Freeman's property. The Hearing Examiner finds that these are notations of existing conditions only, as indicated by Ms. Freeman's engineer, as the subdivision of one person's property may not legally impose encumbrances on another property. Further, the Applicant's engineer states that the notation of the trail will be removed from the subdivision plan.

One of Mr. Grigorian's primary objections to the subdivision plan is that trees will be cleared on the proposed Lot 2. He bases his belief that trees *will* be cleared on a notation on the Forest Conservation Plan that says "Trees to be cleared." Dr. Hansen alleges that the tree cover

on Ms. Freeman's existing 7.65-acre property amounts to 70% of all the tree cover on Sugarland Road, 55% of which is the conditional use area.

Ms. Freeman states that she does not plan to remove trees on the conditional use area. She acknowledges that a note on the Forest Conservation Plan exists, but explains that this designation only distinguishes the treed area outside of the forest conservation easement. Ms. Freeman's engineer reiterates that not all areas "designated as clearing will actually be cleared". The Forest Conservation Plan is not in this record. When or where trees should be retained and cleared on Lot 2 is speculative at this point and is a matter for the Planning Board. The evidence applicable to the conditional use indicates that trees in the conditional area will not be cleared by Ms. Freeman. Any clearing or grading for improvements to be constructed within the conditional use area would necessitate an amendment to this conditional use.

Dr. Hansen gives no reason for her contention that 70% of the forest on Sugarland Road is on Ms. Freeman's property or that 55% of that amount is on the conditional use area. Given the opposition's propensity to attack this application with virtually no probative evidence, the Hearing Examiner is reluctant to give these unsupported claims credence. Along the same lines, Mr. Grigorian's claims that the Forest Stand Delineation prepared for the subdivision fails to identify all specimen trees on the property. He bases this solely on the fact that he can see large trees on the property from across the road. Ms. Freeman refutes his contention, stating that only one specimen tree is located outside the proposed forest conservation easement and that her forest standand delineation was prepared by a professional arborist. The Hearing Examiner is skeptical that specimen trees can be eyeballed from across a road. Specimen trees are "a tree that is a particularly impressive or unusual example of a species due to its size, age, or any other trait that epitomizes the character of the species." *Guidelines for Environmental Management of*

Development in Montgomery County, January 2000. Not every “large” tree is a specimen tree. Mr. Grigorian does not purport to be a certified arborist and his undocumented testimony has little probative value, as does his testimony that the sand mounds on proposed Lot 2 will adversely impact a well on the adjoining property.

Thus, even were the Hearing Examiner required to consider the subdivision issues in conjunction with this minor amendment request, which she is not, there is little probative evidence that the harms alleged will occur and justify denial of this conditional use minor amendment.

This record is replete with conjecture about the County's motivations, the Hearing Examiner's motivations, Ms. Freeman's motivations, and the “mystery” man attending the remote public hearing in this case. In her closing statement, Dr. Hansen wants to know the “back story” behind this minor amendment application. The Hearing Examiner knows of no back story, nor does anything in the record reveal any. For that reason, the Hearing Examiner does not add to this lengthy Report by addressing these arguments.

IV. CONCLUSION AND DECISION

For the foregoing reasons, the Hearing Examiner hereby approves the application for a minor amendment to the conditional use approved in CU 16-15, Application of J. Freeman, to operate an equestrian facility at 14975 Sugarland Road, Poolesville, Maryland, subject to the following conditions:

1. All conditions of approval contained in the Hearing Examiner's Report and Decision dated September 26, 2016, remain in full force and effect except as modified by this Decision.
2. Condition No. 2 in the Hearing Examiner's Report and Decision dated September 26, 2016 is modified to read as follows:

Physical improvements for the equestrian facility are limited to those shown on the Conditional Use Site Plan filed on July 6, 2020 (Exhibit 72(c)), except that the fence around surrounding Pasture 4(b) shall be removed from outside the conditional use area and relocated to the alignment shown on Exhibit 74.

3. Condition No. 3 of the Hearing Examiner's Report and Decision dated September 26, 2016 is modified to read as follows:

No more than two horses may be kept on the property.

Issued this 1st day of September, 2020.



Lynn Robeson Hannan
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications,

requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION MEMORANDUM SENT TO:

Ms. Jennifer Freeman
Mr. Greg Grigorian
Dr. Carol Hansen
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Elsabett Tesfaye, Planning Department
Benjamin Berbert, Planning Department
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department



RUSTIC ROADS ADVISORY COMMITTEE



February 5, 2021

Josh Maisel
Benning & Associates, Inc.
8933 Shady Grove Court
Gaithersburg, MD 20877

Re: Administrative Subdivision Plan dated 12/14/2020, Freeman Property, 14975 Sugarland Road (exceptional rustic)

Dear Mr. Maisel:

Thank you for joining the Committee at our January 28 (virtual) meeting. The Committee reviewed the revised plan for this property showing removal of only 4 trees and a 10' wide driveway with a 40' wide apron where the driveway meets the road. This large driveway entrance has been required by Fire Department Access in the Zoning Division of the Department of Permitting Services based upon the turning radius of the largest fire equipment in the County.

The Committee voted to approve the plan as reviewed at this meeting, with the provision that if there is an opportunity to reduce the size of the driveway apron in the future prior to construction, the applicant will do so.

We greatly appreciated the time you and your client spent with the Committee and your responsiveness to our concerns regarding the initial plan. If you have any questions or wish to reach us for any reason, you may do so through our staff coordinator, Darcy Buckley, at Darcy.Buckley@montgomerycountymd.gov.

Sincerely,

Laura Van Etten, Chair

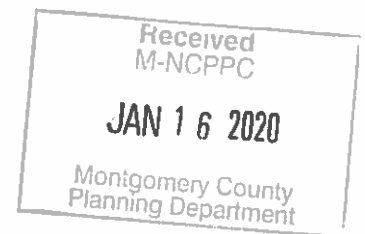
Committee Members: Dan Seamans, Robert J. Tworowski, Robert Wilbur, Lonnie Luther, Kamran Sadeghi, N. Anne Davies, Leslie Saville (M-NCPPC)



cc: Jennifer Freeman, property owner
Chris Van Alstyne, M-NCPPC
Atiq Panjshiri, DPS

Charles Eugene Eader, Sr. & E. Jerlean Eader
14941 Sugarland Road,
Poolesville, MD 20837
Home: 301-349-5158 – Cell: 301-221-1248

January 13, 2020



Development Applications and
Regulatory Coordination Division (DARC)
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: PLAN NO. 620190140 – FREEMAN POROPERTY – SUGARLAND ROAD, POOLESVILLE, MD 20837

We are writing (as adjoining property owners to the above referenced property) in opposition to the subdivision plan proposed for that property.

We are listing a number of issues which are of concern to us.

The plan shows an 80' right -of-way for Sugarland Road. This is a Rural Rustic Road and an 80' right-of-way is inconsistent with the provisions of the 1966 Exceptional Rustic Road plan. The deeds for properties which we own on Sugarland Road show either ownership to the shoulders of the road or to the center line of the road.

Much of the Hedge Row Habitat long the road has already been destroyed by tree trimming companies (hired by utility companies) who evidently have no professional training. This Hedge Row Habitat provides habitat for numerous species of wildlife. The development of the proposed property will further destroy this habitat. In addition, many of the trees on the property will have to be removed for construction of the residence, driveway and septic system on the property.

The drainage in this area is very poor and we are concerned the the fragile drainage systems in the area will be further compromised by the development of this property. The existing house on Lot 1 is served by a "holding tank" because the original septic system failed and the land is not suitable for a conventional system.

Thank you for your attention to this matter.

Respectfully submitted,


Charles E. Eader


E. Jerlean Eader

From: [Gregory Grigorian](#)
To: [Server, Jeffrey](#)
Subject: 14975 Sugarland Road Site Plan Application 620190140 - Objections
Date: Friday, January 17, 2020 12:50:40 PM

Jeffrey,

I am writing to you to register my objection to the Site Plan submitted by Benning & Associates on behalf of applicant Jennifer Freeman in connection with the above referenced Site Plan Application.

As set forth on the proposed Site Plan, Sugarland Road is a designated "Exceptional Rustic Road." The Rustic Road Program reserves the "Exceptional" designation for a small subset of the 96 +/- rustic roads in Montgomery County.

As with any Rustic Road under the program, consideration should be given to preservation of vegetation and trees adjacent to and along the road. With respect to an "Exceptional" Rustic Road, great weight should be given to any change of character to the road resulting from permanent clearing of such vegetation in connection with site development and new subdivisions. If creation of a subdivision is feasible without impact upon roadside vegetation and trees, then Site Plans should be designed with preservation of such trees as a primary consideration.

In this case, the Site Plan calls for the clearing of a 40' wide section of trees along Sugarland Road in order to make way for a new driveway. In addition, nearly the entire forest stand fronting Sugarland Road on the newly created parcel will be cleared due to the location of the proposed sand mounds (SM 4, SM5 and SM9) and the home building site.

Based on my review of the proposed Site Plan, the plan could have been drawn such that the new boundary line is 30' further west and the location of the new driveway could then be moved west so as to not require the clearing of any trees or vegetation along Sugarland Road.

In addition, in order to preserve the existing forest for as long as possible, the owners should covenant that SM9 would be used first, and that only in the event SM9 fails would they have the right to clear trees for SM5, and that only if SM5 fails would they have the right to clear trees for SM4. The Forest Conservation Easement should be extended to cover the entire forest as shown on the Site Plan, with an exception for clearing as necessary for the home site and sand mounds.

Since these changes are feasible, practical and would preserve the exceptionally rustic nature of Sugarland Road in a manner which is consistent with the goals of the Rustic Road program, these changes should be mandated by Park & Planning as a condition of approval of the Site Plan.

Please contact me at your convenience if you would like to discuss this matter by phone.

Best regards,

Greg

Gregory Grigorian

+1 202-747-1923 | direct

ggrigorian@sheppardmullin.com | [Bio](#)

SheppardMullin

2099 Pennsylvania Avenue, NW, Suite 100

Washington, DC 20006-6801

+1 202-747-1900 | main

www.sheppardmullin.com | [LinkedIn](#) | [Twitter](#)

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

From: [Gregory Grigorian](#)
To: [Saville, Leslie](#)
Cc: [Server, Jeffrey](#); [Caroline Taylor](#); carolraehansen@aol.com
Subject: FW: Freeman Subdivision
Date: Thursday, January 23, 2020 11:03:09 AM

Good morning Leslie. I've transferred this email thread to my work email address.

Thanks for letting me know about the Advisory Committee site visit and schedule change.

Regarding delivery of revised plans, David McKee of Benning does have my email so hopefully he will send them along.

As a side note, given the significant impact of this proposed subdivision on the rural character of Sugarland Road resulting from the potential deforestation of up to 2.32 acres of land along the road, this application is deserving of public discussion at a planning board hearing and should be taken off of the "administrative subdivision" track.

Residents along Sugarland Road purchased their homes knowing of, and placing an inherent value upon, the Exceptional Rustic Road designation of Sugarland Road. Therefore all of the residents along this road are impacted by changes to any part of the road, even if their properties are not directly adjacent to the subject property. Those residents and the greater community at large (which could arguably include the many bicyclists and horseback riders that regularly use Sugarland Road) deserve to be given notice of this subdivision application and their views should be heard in a public hearing.

I have copied Lead Reviewer Jeff Server to keep him in the loop regarding the delayed site visit and my request for a public hearing on this matter.

Jeff – If you need a more formal justification for the public hearing, let me know and I will provide more support for this.

Best regards,

Greg

Gregory Grigorian
+1 202-747-1923 | direct
ggrigorian@sheppardmullin.com | [Bio](#)

SheppardMullin
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006-6801
+1 202-747-1900 | main
www.sheppardmullin.com | [LinkedIn](#) | [Twitter](#)

From: [Saville, Leslie](#)

Sent: Wednesday, January 22, 2020 6:53 PM

To: [Caroline Taylor](#)

Cc: [GREG GRIGORIAN](#); [carolRaeHansen](#)

Subject: RE: Freeman Subdivision

Thanks, Caroline!

Greg and Carol –

The applicant and her team at Benning were here for DRC yesterday, and they sent an update a bit ago. The Benning team is amending the plan and I believe will be meeting with the fire marshal rep in the next day or so. Thus, the plans aren't ready for the rustic roads advisory committee review or even a site visit. The plan now is for them to gather info, revise the plans, then tell us when they're ready to meet (maybe in a couple of weeks?). Then they say they'll go to the RRAC meeting on Feb 27.

So I've cancelled the site visit and agenda item with the RRAC.

Does the Benning team have everyone's emails? If so, we can ask them to email the revisions when they have them. If they don't and you want me to give them your email address, let me know?

Thanks!

Leslie

From: Caroline Taylor <caroline@mocoalliance.org>

Sent: Tuesday, January 21, 2020 10:26 AM

To: Saville, Leslie <leslie.saville@montgomeryplanning.org>

Cc: GREG GRIGORIAN <ggrigorian@msn.com>; carolRaeHansen <carolraehansen@aol.com>

Subject: Fwd: Freeman Subdivision

Folks,

I thought it would be prudent to put you in touch with a staff member at planning area three. Leslie Saville will have more of an idea of how this process goes and what opportunities there are to affect improvement over the proposal.

I have found the provisions for roadside tree protection to be anemic at best but perhaps there is a way to encourage a more protective plan in this case.

Warmly,

C

Caroline Taylor, Executive Director

Montgomery Countryside Alliance
P.O. Box 24, Poolesville, Maryland 20837
301-461-9831
<http://mocoalliance.org/>

"Whether we and our politicians know it or not, Nature is party to all our deals and designs, and she has more votes, a larger memory, and a sterner sense of justice than we do." ~Wendell Berry

Begin forwarded message:

From: GREG GRIGORIAN <ggrigorian@msn.com>
Date: January 21, 2020 at 10:13:11 AM EST
To: "caroline@mocoalliance.org" <caroline@mocoalliance.org>
Subject: Freeman Subdivision

Just to be clear about what is at stake, below is a link to the drawing that the applicant Ms. Freeman submitted to the county showing the area of forest clearing. The area to be cleared is far beyond just the 40' opening for the driveway that I initially thought was being proposed. The applicant is seeking permission to clear the entire forest stand fronting Sugarland Road.

Interestingly, this is a drawing which was not provided by notice to the neighbors. I had to dig it up on the MNCPP eplan site. I'm sure once the community is informed of the massive clearing being proposed along the exceptionally rustic Sugarland Road they will be up in arms about this.

https://eplans.montgomeryplanning.org/UFS/26251/78598/10-FCP-620190140-001.pdf/10-FCP-620190140-001.pdf_V2/10-FCP-620190140-001.pdf

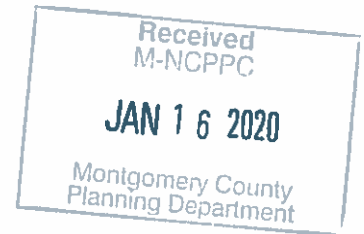
Shared via the [Google app](#)

Greg Grigorian
(917) 593-8141

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

Carol Rae Hansen, Ph.D., Spokesperson
SUGARLAND FOREST CITIZENS IN ASSOCIATION (SFCA)
Please contact the Registrar at 14921 Sugarland Road, Poolesville, MD 20837
Phone (301) 651-6622; Emergencies (301) 972-7833
director@equinetherapyassociates.com

Development Applications and Regulatory Coordination Division
Maryland-National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Avenue, Silver Spring, Maryland 20910-3760



January 13, 2020

Dear Sir and or Madam,

As a community association body set up in 1996 at the invitation of Montgomery County to improve communication between residents and the County's planners and administrators, we are shocked that Plan Number 620190140, a proposed R-200 subdivision of the Freeman Property on Sugarland Road, has been in process since at least April, 2019, with five detailed 3' x 5' planning documents produced by Benning and Associates, Inc. (BAI) between late May through November 19, 2019, yet the Sugarland Forest Citizens in Association received NO NOTICE of this proposal until a Notice of Application (NOA) was drafted by Benning and Associates (BAI) on December 27, 2019, mailed at some unknown date with an unfranked enveloped with no date, and received on December 31. Yet, despite paragraph TWO of the NOA, which states that "you may participate in this review by sending written comments 'AT ANY TIME'," the NOA also demands in paragraph THREE that "comments on the proposed plan are "due within 15 days of the mailing date (unknown) of this notice," although some nearby property owners received the letter on January 2 or 3, while most received nothing at all, yet aspects of this NOA can adversely affect the entire road! With five non-business weekend and Holidays (including New Years) encompassing that period, including Holiday travel, our Association still met that latter demand by calling Mr. Joshua Maisel today, January 13, alerting him that commentary was coming, we requested a hearing and offered some 1500 words of comment via your electronic response form on the County's website, and we have also drafted this letter, sent certified, signature receipt).

IN BRIEF, OUR COMMENTS OF GREAT CONCERN, INCLUDE, BUT ARE NOT LIMITED TO:

(1)

Please note that Ms. Freeman, the applicant, did NOT follow the mandatory instructions in the Development Applications in Montgomery County booklet, to wit (a) "before filing any development application, a property owner must (a) "hold meetings with the community": we are NOT aware of any such, and the Sugarland Road Citizens in Association were not invited to any, nor did she (b) "send written notice to abutting and confronting property owners and to homeowner and civic associations within a 1/2-mile radius, depending on application type." In addition, she did not (c) "schedule community meetings [for interested community members] to ask questions or express concerns." (d) After the applicant submitted a proposal for development, she did NOT follow your process by sending written notice to the community and all who had indicated interest. As such, (e) it appears that Montgomery Planning was premature in "accepting an application," as "all necessary documentation" was not submitted and complete," and "the community was NOT notified." (f) Interestingly enough, instead of the "Planning Board hearing date in accordance with the regulations" promised in the Development Applications in Montgomery County booklet, we are told in a Notice of Application by Benning and Associates, which has a financial interest in NO hearing, in their Notice drafted on December 27, 2019 that no hearing will be routinely held! The BAI state that "The Montgomery County Planning Board will NOT hold a public hearing on this application unless the planning director finds that any comment

is substantive enough to warrant a public hearing.” WE PROTEST THIS ARBITRARY and CAPRICIOUS ATTEMPT TO NEGATE OUR RIGHT TO A PUBLIC HEARING!

(2) This proposed subdivision asserts an 80 ft. easement (a TAKING) along Sugarland Road on the west side of the proposed subdivision of Ms. Freeman's property, which continues on the BAI map to the northeast towards Partnership Road and beyond, and to the southwest along Sugarland Road to Sugarland Lane, and thence, logically all the way to River Road, which currently does NOT EXIST, as many Sugarland Property Owners own up to the middle of the road or with some, to the edge of the roadway, predating the origin of Montgomery County in almost all cases, with NO EASEMENTS OF ANY SORT BY DEED ON THE SHOULDER OR INLAND, private or governmental.

(b) If recorded, or if a lien is placed on it, this might be construed as adversely taking valuable road frontage along EACH property along Sugarland Road.

(c) This proposed TAKING is illogical in the extreme, as it would encompass part or ALL of at least four homes, including the Freeman house, in close proximity to the proposed subdivided property. (Ours is set 69 ft. off the road!)

(3) The BAI map rendering is INCORRECT IN SCALE, AND THUS CREATES A FALSE IMPRESSION IN MANY LOCATIONS ON THE “COMBINATION SITE DEVELOPMENT PLAN/STORMWATER MANAGEMENT PLAN of 6/5/19, as well as ON THE ADMINISTRATIVE SUBDIVISION PLAN of 11/18/19, and no doubt the other three in the series, which we were NOT provided copies of! These two BAI renderings erroneously show, for example, that the Freeman original house as OUTSIDE (south-east of) the proposed 80' Taking Easement, but which, in reality is but 50' from Sugarland Road, thus putting it INSIDE the proposed 80' Easement!

(4) In addition, on the rear of the Benning and Associates rendering of the proposed Freeman subdivision on Sugarland Road, which borders the Casey property, a non-currently existing official TRAIL NETWORK EASEMENT is listed, which also continues on the map to the northeast and to the southwest, logically extended to Partnership Road on the north east and to River Road on the South West, encompassing all of Sugarland Road. Should this be registered, and a lien placed, this could be construed as a TAKING of the rear of each property as it confronts the large Casey parcels. Indeed, the owners of the Casey property, and many of their neighbors, have resisted the use of any openings between the trees by any unauthorized user(s) of these properties, calling for police intervention so as to secure against criminal trespass!

(b) Further, this plan proposal to be executed by Montgomery County includes creating a STREAM BUFFER along the rear of our Sugarland Road properties that boarder the Casey property to the south and east of the Freeman proposed subdivision, to be recorded, without our consent, and without our agreement to any financial participation, and without our agreement that such is needed.

(b) Finally, this TRAIL NETWORK TAKING, should it be recorded, would inordinately and dangerously open up the rear of all of our properties, as well as the wooded Casey property, to illegal trespassers, illegal hunters, to casual joyriders, hobbyists, potential criminals, and those inclined towards property destruction, and other nefarious activities. As the area already has attracted Soviet and Russian espionage dead drops, three car stripping rings in the past 27 years, at least two open-air drug marts, thieves at least several properties who have stolen car tags, trailer tags, trade equipment of considerable value, as well as a multitude of trespassers, this TRAIL NETWORK TAKING is of great concern!

5. Property owners along Sugarland Road and other Rustic and Exceptional Rustic Roads protected under the Rustic Roads Functional Master Plan have been forced to retain legal counsel to protect their property rights, most recently against commercial entities such as Comcast in

2017-2019, which would be emboldened by this assertion of a proposed 80 ft. Right of Way in the public records (e.g. land records).

NOTE these examples of Sugarland Road property owners who made successful Demands to Immediately and Permanently Cease and Desist from Further Acts of Trespass (which Comcast agreed to honor the property's integrity and to cease to trespass the day after receipt of these letters), which occurred in May and June of 2018:

"To assure that there is no confusion as to our clients' property line, the boundary line runs along the center of the existing roads. While, Comcast Parties can travel along the road as a public thoroughfare within the bounds of the roadway bed and for no other purpose, they do not otherwise have any rights to traverse onto the shoulders of the road for any purpose or otherwise enter or utilize any part of our Clients' property." And ...

"Our clients have alerted us to past acts by utility companies to record in the public records (e.g. land records) easements, rights of way and/or other documents purporting to give the applicable utility company rights to traverse onto and utilize a property owner's land which were not signed, acknowledged, agreed to or authorized by the landowner(s). On behalf of our clients, we hereby admonish Comcast Cable and all Comcast Parties from attempting to create or record any documents among the public records affecting the title to our clients' property(ies) or otherwise attempting to be the act or deed of our clients for any purpose. Any such act or attempted action will, among other things, be deemed to constitute intentional interference with our clients' property rights."

6. This proposed subdivision is INCONSISTENT WITH THE PARAMETERS OF THE 1996 MONTGOMERY COUNTY RUSTIC ROADS FUNCTIONAL MASTER PLAN. This section sketches out only the main parameters of the inconsistency, which will be fleshed out in great detail for the Hearing:

- (a) The Rustic "roads in the Agricultural Reserve ... [where the Freeman Property is located] exemplify the rural and agricultural character of the area... They are roads that have such unusual and pleasing character that preservation of these roads is highly desirable." It is NOT primarily a residential zone; property subdivision to pursue financial gain is inconsistent with preserving multi-generational farming families on a family farm or to preserve the agricultural character of the area.**
- (b) The Freeman property is BEYOND the historic boundaries of the Sugarland Forest Community, and is thus not appropriately sited in a R-200 designation.**
- (c) A 80 ft. ROW with resultant commercial interest is inconsistent with preserving Hedge Row Habitat, a vital component of the Rustic and Exceptional Rustic Roads legislation. These are to be preserved because they provide much-needed food shelter and protection.**
- (d) A 80 ft. ROW with resultant commercial interest is inconsistent with preserving the reasons that a Hedge Row Habitat are required: understory and major forest habitat to protect and nurture migratory birds in the two major East Coast flyways from the Arctic to the Antarctic, and to support local birds year around.**
- (e) A 80 ft. ROW with resultant commercial interest is inconsistent with protecting the fragile underground water diversion that is intended to be preserved along these roads to filter dangerous chemical run-off, including vehicular lead from a hundred years of vehicular use on this Road.**
- (f) The Freeman Subdivision plats by BAI follows an inaccurate, but sadly frequent, policy of developers, who neglect to portray protected Hedrow Habitat, mature forests, intermediate forests, and secondary forests, which currently encompass some 70% of**

the Freeman Property, and which must be preserved, as they are the SECOND LARGEST SEGMENT OF PROTECTED FOREST ON THE EXCEPTIONAL RUSTIC SUGARLAND ROAD! See Montgomery County's Forestry Law, the state of MD's Forestry Law, and the "Mature Tree Exception."

(7) The area around Poolesville sits atop one of only 11 Sole Source Aquifers in the United States, as such, the Planning Board needs to take into account the following:

- (a) Several major spills have already occurred on this property, the first of which were discovered by Ms. Nancy Dunn (deceased), a previous property owner, who was unable to utilize her property for nearly a year as the well and septic field was contaminated by a leaking underground diesel fuel tank as well as a leaking leaded gasoline tank.**
- (b) As a result of a high water table, subterranean leakage, and other factors, the basement of this house has always been damp, and unsuitable even for hosting a washer and dryer.**
- (c) As such, it is likely that appropriate water and septic resources are incompatible with this piece of property. We note that Ms. Freeman has already recognized this, and identified remedial policies that may well exhaust the capacity of this property.**
- (d) These and other items of concern in the community can be continued in a public hearing, as they affect us all!**