

May 31, 2024

Jason Sartori, Director  
Maryland-National Capital Park and Planning Commission  
2425 Reddie Drive  
Wheaton, Maryland 20902

Re: Natural Resources Inventory/ Forest Stand Delineation (“NRI/FSD”) No. 420240850  
for Persimmon Tree Subdivision

Dear Planning Director Sartori:

On behalf of our client, Hamid Shirazi, the owner of the property located at 9810 Newhall Road and an adjacent strip of unaddressed land (collectively, the “Property”), the purpose of this letter is to request reconsideration of Planning Staff’s previous determinations regarding the presence of an intermittent stream on the Property and, as necessary, a hearing before the Planning Board on this issue pursuant to Section 22A-20 of the Montgomery County Code. As discussed more fully below, in support of their position, Staff has provided nothing more than conclusory statements, whereas the Maryland Department of the Environment (“MDE”) and two independent experts have submitted detailed information contesting the classification of the stream as intermittent. As such, the preponderance of the evidence supports the conclusion that the drainage area on the Property should not be considered an intermittent stream, and we request your verification of the same.

By way of background, shortly after Mr. Shirazi began occupying the Property with his family during the summer of 2022, he began noticing significant stormwater runoff from Newhall Road onto his Property during rain events. To resolve the issue, he contacted the County, and the service request was responded to by both the Department of Permitting Service’s Right of Way Division and Department of Transportation inspectors. Both suggested that while they could build a swale to convey the water runoff adjacent to the road, the handling of any water running onto adjacent properties is the responsibility of the adjacent landowners. Mr. Shirazi therefore engaged a professional engineer to design a solution for conveying water through the Property. In December 2022, Mr. Shirazi obtained Sediment Permit No. 288894 from the Montgomery County Department of Permitting Services covering the installation of an 18-inch drainage pipe within the unaddressed parcel along the western portion of the Property, which pipe was installed that same month.

On October 3, 2023, Mr. Shirazi filed Concept Plan No. 520240040, entitled 9312 Persimmon Tree Road, a copy of which is attached hereto as Exhibit “A” (the “Concept Plan”), and related NRI/ FSD No. 420240850 (“NRI”) in connection with his purchase of an adjacent property and intended resubdivision to create three new buildable lots. During review of the NRI, disagreement arose between Staff and Mr. Shirazi’s landscape architect regarding whether the channel that was piped by Mr. Shirazi in 2022 constituted an intermittent stream requiring protection. To resolve the situation, Staff requested that Mr. Shirazi’s consultants obtain MDE’s opinion for a final determination. MDE thereafter visited the site both on December 21, 2023 and January 5, 2024 for a site evaluation. Ultimately, MDE issued a letter on January 5, 2024 finding, in relevant part, “[a] small amount of flow was present on December 21. A review of precipitation records indicated that there had been rainfall during the days leading up to this visit. A subsequent visit on January 5 confirmed that there was no flow from the drainage pipe, therefore indicating that the flow seen on December 21 was likely due to precipitation rather than groundwater influence. Based on these field conditions, MDE does not consider the drainage pipe a Water of the State.” The letter marks the outfall of the pipes as “stormwater only drainage feature.” A copy of this letter is attached as Exhibit “B”.

Despite this determination from an independent agency, as requested by Staff, on February 12, 2024 Staff issued a “Notice of Requirements” declaring the piped drainage area an intermittent stream and calling for restoration of the stream and associated stream valley buffer. To support its position, Staff made general reference to “[f]ield data, documentation (video and pictures), and other Forest Conservation Plan Exemptions nearby” as well as “[t]opographic, hydrologic, and soil maps, Geographic Information Systems (GIS) and fine-resolution Light Detection and Ranging (LIDAR),” without providing any specifics of how such information supported its position. Additionally, and of particular note, the letter explains that “an intermittent stream will usually have baseflow during the winter” without acknowledging MDE’s determination that there was no flow observed on January 5, 2024, a winter month.

Given the conflicting information, Mr. Shirazi then engaged two independent experts to evaluate the stream: Michael Klebasko of Wetland Studies and Solutions, Inc., a well-known and well-respected environmental expert who does a significant amount of work in Montgomery County, and Bob Zarzecki of Soil and Environmental Consultants, Inc., a recognized expert in stream classifications who has played a significant role in developing objective standards for such classifications. Both experts evaluated the drainage channel in question and reached independent conclusions that the channel was, at best, ephemeral, and not an intermittent stream.

More specifically, Mr. Klebasko’s Report, an updated copy of which is attached as Exhibit “C”, states that upon their field visit the “...channel contained no base flow..., generally lacked sinuosity..., contained fibrous roots and upland vegetation in bottom of the channel, and contained non-hydric soils... Furthermore, the channel did not contain blackened or decayed leaf matter, well-sorted sediments, streambed forms, frequent flow marks, algae covered or water-stained rocks, obligate wetland vegetation, natural levees, a defined floodplain, or evidence of stream

biota, all of which are typically absent in ephemeral streams according to the [Montgomery County] Environmental Guidelines. Using the criteria presented in the Environmental Guidelines, it is WSSI professional opinion that the stream channel is unquestionably ephemeral.”

Similarly, Mr. Zarzecki’s Report, a copy of which is attached as Exhibit “D”, concludes “that there are no potential streams on Mr. Shirazi’s properties, and that the drainage south of his properties contains an ‘ephemeral’ stream starting at the outlet end of the recently installed pipes and extending at least 200’ to the south. The first 77-80 feet...is clearly ‘ephemeral’ with no evidence of an ‘intermittent’ stream....Based on our observations of this drainage to the south (well beyond Mr. Shirazi’s properties), it appears to become at least an “intermittent” stream somewhere between Logan Drive and Avenel Farm Drive, which is consistent with how the channel is shown on the 1995 soil survey and MDE use-class tributary mapping.”

In response to the submission of these expert reports, Staff issued a one-page supplemental letter on May 1, 2024 summarily rejecting the expert analysis without any supporting rebuttal analysis, and again referencing the same general information quoted above as the basis on which it was making its determination. In this letter Staff again references, without providing specifics, “other environmental applications, such as Tree Save Plans and FC exemptions...[that] have validated the existence and extent of an intermittent stream within [the subject] property and adjacent properties.” At the conclusion of this letter, Mr. Shirazi is threatened with initiation of a Notice of Violation or other enforcement action should he not consent to the classification of the stream as intermittent.

In response to Staff’s assertion that nearby environmental approvals supported the classification of the stream as intermittent, Mr. Shirazi and his consultants conducted an evaluation of nearby NRI/ FSD approvals and found that the three most proximate to the Property all showed no stream in the immediate area. Two along Logan Drive did show an intermittent stream proximate to those properties, but that conclusion *is fully in accordance with Mr. Zarzecki’s findings, quoted above, that an intermittent stream does exist near Logan Drive.* Contrary to Staff’s apparent assertions, however, the existence of an intermittent stream near Logan Drive is in no way conclusive of the fact that an intermittent stream exists further north on Mr. Shirazi’s Property. A diagram depicting these approvals in relation to Mr. Shirazi’s Property is included below for your ease of reference.

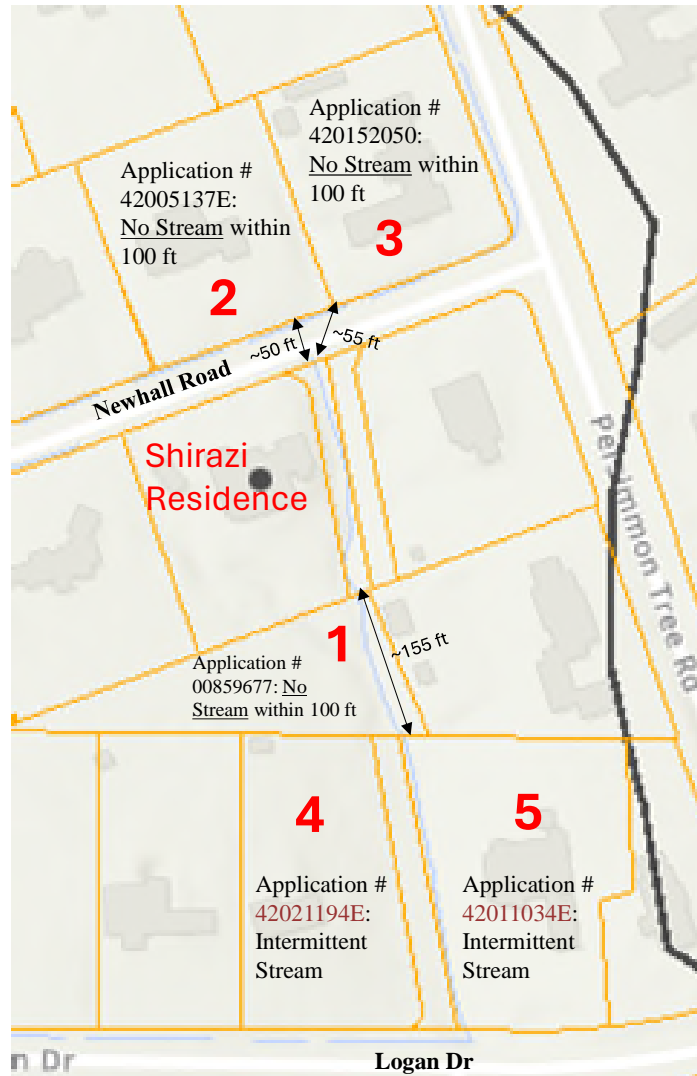


Figure- Approved NRIs Surrounding the Property.

Additionally, in response to Staff’s May 1<sup>st</sup> letter, both Mr. Zarzecki and Mr. Klebasko have provided supplemental information further supporting their conclusions and disputing the validity of Staff’s position. Mr. Klebasko added new content to his report further explaining the justification of his assessment of the stream using the County’s Environmental Guidelines. Mr. Zarzecki’s May 30, 2024 supplemental letter, attached hereto as Exhibit “E”, notes the central issue in this dispute is that the County has no standardized “methods and standards” for a detailed stream delineation other than just definitions and characteristics of the stream types noted in Appendix E of the County’s “Environmental Guidelines”. To highlight this issue and to counter Staff’s general reference to topographic, hydrologic, and soil maps, GIS and LIDAR, Mr. Zarzecki’s letter identifies four approved NRIs in the vicinity of the Property with mappings

depicting the potential presence of a stream no different than the mapping available for Mr. Shirazi's Property, and yet the stream is not classified as an intermittent stream in those cases. He then concludes Staff's position on the presence of an intermittent stream on the Property, in the absence of a detailed delineation report, is arbitrary.

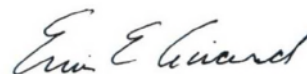
Based on the above and attached information, and the lack of any detailed information supporting Staff's conclusion, we request your independent review of the evidence on this issue and, if necessary, further consideration by the Planning Board. In accordance with the law, in making your determination you should be guided by the weight of the evidence, which we believe must clearly result in the conclusion that the drainage area on Mr. Shirazi's property is, at best, an ephemeral stream and most certainly not an intermittent stream. As explained more fully above and in the attached materials, this conclusion is supported both by MDE and two reputable independent experts on the subject, whose persuasive analysis has not been refuted by Staff in any substantive way.

Finally, as you can imagine, the engagement of experts to analyze this issue and myself to pursue this appeal has not come without significant expense to Mr. Shirazi. While other property owners may not have the means or incentive to attempt to refute a directive by Staff to reflect a certain stream classification within their property, the impact of Staff's determination in this instance is particularly weighty and impactful. Not only would the classification of the stream as intermittent require the removal of the existing pipe and establishment of a buffer, reintroducing to the Property the very runoff problems that Mr. Shirazi had attempted to solve with the installation of the pipe, but the extent of the buffer would essentially preclude the realization of the single family housing shown in the Concept Plan. The associated stream buffer would reduce the buildable area to the point that it would be impossible to achieve the new lots shown in the Concept Plan.

Thank you for your consideration of this information. We would be happy to set a time to discuss further if that would be helpful to you. We look forward to hearing from you.

Sincerely,

**Miles & Stockbridge, P.C.**



Erin E. Girard

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cc: Hamid Shirazi  
Robert Kronenberg  
Patrick Butler  
Ariel Zelaya