

BOARD OF APPEALS

December 20, 2023

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

AP2023-047: An appeal was filed by Martin & Nicole Boese for a special exception to establish a second single-family dwelling on a parcel improved with a dwelling and a variance from the required 50 ft. side yard setback for residential use lots when the lot is 5 acres or greater in size to 15 ft. for East property line for proposed single-family dwelling. An additional variance request from the required 50 ft. side yard setback to 16 ft. for the constructed accessory structure. The property is owned by the appellant and located at 14005 Misty Glen Lane, Hagerstown, Zoned Agricultural Rural. **The special exception to establish the second single-family dwelling was DENIED, therefore the variance was not applicable. The variance from the required 50 ft. side yard setback to 16 ft. was GRANTED.**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than December 11, 2023. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Jay Miller, Chairman

Board of Zoning Appeals



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Martin & Nicole Boese
816 Dewey Avenue
Hagerstown MD 21742

Appellant: Martin & Nicole Boese
816 Dewey Avenue
Hagerstown MD 21742

Property Location: 14005 Misty Glen Lane
Hagerstown, MD 21742

Description Of Appeal: Special exception to establish a second single-family dwelling on a parcel improved with a dwelling and a variance from the side yard setback of 50 ft. for residential use lots of 5 acres or greater in size to 15 ft. for the East property line for proposed single-family dwelling. Variance from the required 50 ft. side yard setback to 16 ft. for constructed accessory structure.

Docket No: AP2023-047

Tax ID No: 09017712

Zoning: A(R)

RB Overlay: No

Zoning Overlay:

Filed Date: 10/17/2023

Hearing Date: 12/06/2023

Appellant's Legal Interest In Above Property: **Owner:** Yes

Lessee: No

Other:

Contract to Rent/Lease: No

Contract to Purchase: No

Previous Petition/Appeal Docket No(s):

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 4.5 & 5A.7 (4.)

Reason For Hardship: Irregular shape of existing lot

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling

Proposed Use: Second Single Family Dwelling

Previous Use Ceased For At Least 6 Months:

Date Ceased:

Area Devoted To Non-Conforming Use -

Existing:

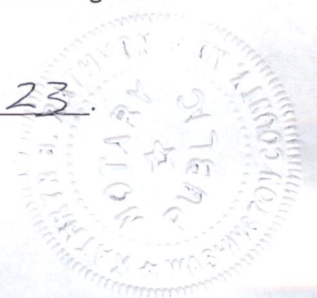
Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Appellant Signature

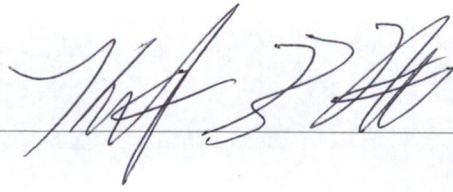
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 16 day of November, 2023.



Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires



Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2023-047

State of Maryland Washington County, To Wit:

On 10/17/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick, Seibert & Associates Inc and made oath in due form of law as follows:

Frederick, Seibert & Associates Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 12/06/2023, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 11/21/2023 and will remain until after the above hearing date.

Frederick, Seibert & Associates Inc

Sworn and subscribed before me the day and year first above written.

Notary Public

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Seal

My Commission Expires

December 6, 2023

Board of Zoning Appeals
c/o Katie Rathvon, Zoning Coordinator
Division of Planning & Zoning
747 Northern Avenue
Hagerstown, MD 21742

Re: AP2023 - 047 - 14005 Misty Glen Lane, Hagerstown, MD

Dear Board Members:

Please accept the within letter and attachments as additional materials in support of the above referenced appeal filed by Martin and Nicole Boese for (i) a Special Exception and Side Yard Setback Variance (50' to 15') to establish a second, single-family dwelling; and (ii) Side Yard Setback Variance (50' to 16.7') for an accessory structure, both on the subject property located at 14005 Misty Glen Lane (Tax Map 26, Parcel 417) (the "**Property**").

Property Info.

The Property is located on the north side of Leiters Mill Road just west of Leitersburg. Although not part of the subdivision itself, the Property is directly adjacent to the row of twelve (12) homes which comprise Section A of Mill Village. The Property's western boundary adjoins the +/- 5.5 ac. property owned by Mr. and Mrs. Chuckla that stretches down to the Antietam Creek and the one-lane bridge.

The Property is zoned Agricultural (A) and was created in 2005 as part of the five (5) lot Misty Glen subdivision pursuant to that certain Preliminary / Final Plat (Lots 1-5) recorded among the Land Records of Washington County as Plat No. 8326-8330 (collectively, the "**Plat**"), a copy of which is attached hereto as **Exhibit A**.

Although the Property is +/- 14 ac. in size, as can be seen on Sheets 1,3 & 5 of the Plat, the majority is unusable due to the presence of +/- 10 ac. of Sensitive Area including Forest Retention, Floodplain and Stream Buffer Areas as well as a portion of Antietam Creek itself. See also the "Washington County Zoning Review Map," a copy of which is attached hereto as **Exhibit B**.

The impact of this large Sensitive Area is magnified by the Property's distinct tapered, pie-shaped configuration. Again, as can be seen on the Plat and County Review Map,

the Sensitive Area inhibits the use of the widest portions of the Property to the rear leaving only the narrowest +/- 4 ac. portion of the Property closest to Leiters Mill Road for use and improvements by the property owner.

Lastly, further hindering the use of this Property is the presence of a 15' wide access lane and reciprocal easement to the Chuckla property which can be seen on Sheet 3 of the Plat and which bisects the Property's already narrow frontage area along Leiters Mill Road.

Specific Requests

Variances:

As shown and described on the Plat, specifically Note 5, the Minimum Side Yard Setback applicable to the Property in 2005 was 15'. This actually remains the general requirement in the Agricultural (A) zoning district for single-family dwelling units.

However, in 2009 certain "Special Provisions" were added to the Agricultural (A) zoning district one of which (#4) provided as follows:

Side yard setbacks for residential use lots shall be a minimum of 50 ft. for lots five (5) acres or greater in size.

The rationale for this separate, more onerous side yard setback requirement lots five (5) acres or larger, is unclear and may violate the fundamental statutory requirement of "uniformity" within a zoning district. See MD Code, Land Use, § 4-201, a copy of which is attached hereto as **Exhibit B**.

Nonetheless, because the +/- 14 ac. Property is technically larger than 5 ac., even though only +/- 4 ac. is useable, the applicants have requested a variance from the "Special Provision" 50' Side Yard Setback requirement for the purpose of allowing an accessory, pole-barn structure and a second dwelling unit on the Property.

Variance for Accessory Structure (50' to 16.7')

As shown on the "BZA Exhibit" prepared by Frederick Seibert & Associates, Inc., a copy of which is attached hereto as **Exhibit C**, with regard to the accessory, pole-barn structure the specific variance requested is from 50' to 16.7'.

As shown and labeled as "Prev. Prop. Shed" on the additional "BZA Exhibit" prepared by FSA attached hereto as **Exhibit D**, the 30' x 40' pole barn was initially planned, proposed and permitted (but never started) in a location on the northwest side of the Property behind the primary residence.

However, due to (i) the severe topography dropping down toward the floodplain area of Antietam Creek at an 8% slope; and (ii) close proximity of the septic reserve area, the location of the pole barn was moved to the southeast side of the Property.

Mistakenly assuming the location was compliant with an applicable 15' side yard setback requirement, the contractor Pioneer Pole Builders, Inc. commenced construction.

Footer inspections for the building were conducted without any objection to the new location. However, during a subsequent inspection the structure's new location was identified by County personnel as being in violation of the 50' "Special Provision" setback even if compliant with the general 15' requirement.

As such, in order to remedy this situation, the property owners have requested the subject variance to 16.7'.

Variance for Second Dwelling Unit

The same "Special Provision" 50' side yard setback requirement also presents an impediment to the property owners' proposed Second Dwelling Unit, also shown and labeled as "Proposed Dwelling" on the FSA "BZA Exhibit" attached hereto as **Exhibit C**. Specifically, the request is for a variance from 50' to 15' from the same eastern boundary of the Property as the accessory, pole-barn structure.

As the Board is well aware, variance standards require the applicants to demonstrate two (2) things: (i) uniqueness of the property; and (ii) practical difficulty or unreasonable hardship.

Unique and Unusual

As described in the seminal case of *Cromwell v. Ward*, 102 Md.App. 691, 694-95 (1995): "The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature or surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon the property."

It is self-evident that in this case the tapered, pie-shaped configuration of the Property is unique and unusual in a manner different from the nature of the surrounding properties. Moreover, as clearly illustrated by the FSA "BZA Exhibit" attached as **Exhibit C** such uniqueness causes "Special Provision" 50' side yard setback requirement to disproportionately impact the Property. An impact magnified by the presence of +/- 10 acres of Sensitive Areas encumbering the widest portion of the Property and a pre-existing 15' access lane and easement across the narrow portion of the Property.

Practical Difficulty

As a dimensional rather than use variance, it is the “practical difficulty” standard which is applicable and Section 25.56(A) of the Zoning Ordinance sets forth the criteria for finding practical difficulty:

1. Strict compliance would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and
3. Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

In this case, requiring strict compliance with the “Special Provision” 50’ side-yard setback requirement would render conformance unnecessarily burdensome. As stated above, the Property’s tapered, pie shape and +/- 10 ac. of Sensitive Area leave a *de facto* +/- 4 ac. useable area. As per the very terms of the “Special Provision” added to the Zoning Ordinance in 2009, lots of this size would not be subject to the 50’ side yard requirement and would need only to comply with the generally applicable 15’ requirement.

Use of the Property is further restricted by severe topography to the rear of the primary residence and a pre-existing 15’ access lane and easement across the narrow front portion of the Property and make it impractical to situate the proposed accessory building or second dwelling unit in any other way on the Property. As such, a lesser relaxation of the “Special Provision” 50’ side yard setback requirement would not give substantial relief and denying the variance would do substantial injustice to the applicants.

As clearly seen from the aerial photograph of the Property attached as **Exhibit E**, the proposed new location for the accessory, pole barn structure and the proposed location for the requested second dwelling unit, are both (i) a safe distance from Leiters Mill Road consistent with the spacing of the Mill Village homes located to the west and the closest residence on the Chuckla property to the east; and (ii) along the eastern boundary line where there are already a number of existing accessory buildings and structures. As such, granting the requested variances would not violate the spirit of the Zoning Ordinance or jeopardize public safety or welfare. Moreover, both proposed structures will be high quality, attractive additions to the Property.

Special Exception:

In addition to the request for two (2) side yard setback variances, the applicants have also requested a Special Exception to allow the second dwelling unit discussed above.

Specifically, the Property Owners wish to construct a modest size (32' x 35') Second Dwelling Unit for Mrs. Boese's parents. This growing trend of multi-generational homes and living arrangements is certainly something this Board is familiar with and has seen many times. The Second Dwelling Unit will be connected to the same well and septic systems as the primary residence and thus cannot be subdivided to be conveyed as a separate lot of record. Essentially, the two (2) residences on the Property will be tethered together.

As guided by the Zoning Ordinance, application for a Special Exception: "shall not be approved where the Board finds the proposed use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood." Article 25, Sec. 25.6.

Further guidance is provided by the Maryland Court of Appeals in the seminal case of Schultz v. Pritts which states: "The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. 1, 22-23 (1981).

In sum, a use designated by the Zoning Ordinance as being permitted by Special Exception carries with it a presumption of compatibility with the surrounding area absent facts or circumstances demonstrating that the use proposed at the particular location would have adverse effects above and beyond those inherently associated with such use anywhere else within the zone.

In this case, there is nothing unique about this particular location which would make any adverse effects of the proposed second dwelling unit any different than what would inherently be associated with the use anywhere else.

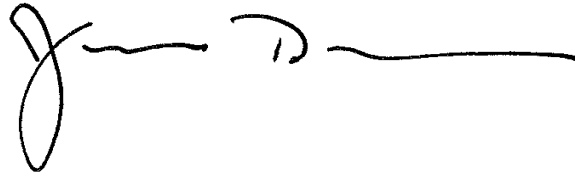
As pointed out above in the discussion of requested variances, the proposed Second Dwelling Unit would be consistent with the density and pattern of development along this stretch of Leiters Mill Road. Specifically, the row of twelve (12) houses immediately to the west which in some instances are less than 50' apart. See the additional BZA Exhibit prepared by Frederick Seibert & Associates, Inc. and attached hereto as **Exhibit F.** In addition, there appear to be multiple dwelling units located on the +/- 5.5 ac. property to the east owned by Mr. and Mrs. Chuckla.

Also as discussed above, the proposed second dwelling unit is proposed to be located a safe distance from Leiters Mill Road along the eastern boundary line of the Property where there are already a number of existing accessory buildings and structures.

Therefore, the proposed second dwelling unit is compatible with the pattern and density in the surrounding neighborhood and there are no uniquely adverse effects evident at this particular location in the Agricultural (A) zone.

I look forward to discussing in greater detail the particular facts and circumstances of the requested variances and Special Exception at the Board's regularly scheduled hearing on December 20, 2023.

Very truly yours,
JD LAW COMPANY, INC.

A handwritten signature in black ink, appearing to read 'J. Divelbiss', with a long horizontal line extending to the right.

Jason M. Divelbiss
Attorney at Law

Email: jdivelbiss@divelbisslaw.com

WASHINGTON COUNTY CIRCUIT COURT (Plats) Plat 8326-8330, MSA_C2167-6196, Date available 2005/06/09, Printed 11/29/2023

DEDICATION FOR INDIVIDUALS

We, Misty Glen Development, LLC, personal representatives, heirs and assigns, do hereby certify and that we are the legal and true owners of the property shown and described on this plat and that we hereby adopt this plan of subdivision shown hereon, hereby establish the minimum building restriction lines shown hereon, hereby dedicate to public use all utility and drainage easement areas and all alley, street, and road rights of way designated on this plat, hereby agree to keep open all spaces and recreation areas shown hereon and hereby agree that said dedication shall not impose any responsibility on the Board of County Commissioners of Washington County regarding the subjects of such dedication until legal acceptance by said board, and we hereby reserve the fee simple title to the land underlying said easements, rights of way, open spaces and recreation areas and with regard to said easements and rights of way, hereby agree to convey the same to said Board for the use of Washington County, without consideration, upon the legal acceptance of said easements and / or rights of way by said Board. This deed and agreement of dedication shall be binding upon our grantees, assigns, successors, heirs, and personal representatives.

There are no suits, actions at Law, leases, liens, mortgages, trusts, easements, or rights of way affecting the property included in this plan of subdivision, except a certain Deed of Trust to Leitersburg Investors Group, LLC, dated August 31, 2004, and recorded among the aforesaid Land Records in Liber 2433, Folio 605, and certain Deeds of Trust to First United Bank & Trust dated August 31, 2004, and recorded among the aforesaid Land Records in Liber 2433, Folio 561 & 546 and all parties having interest therein have hereto affixed their signatures, indicating their assent to this plan of subdivision.

I DO HEREBY ASSENT TO THIS PLAN OF SUBDIVISION:

Witness my hand and seal this _____ day of _____, 2005

5-18-2005 *William J. Brennan, Jr.* for Misty Glen Development, LLC

Date 5/18/05

for Leitersburg Investors Group, LLC

Date 5/19/05

for First United Bank & Trust

Witness: *Lisa M. Lewis*

STORMWATER MANAGEMENT NOTES

1. Stormwater Management is required per the Washington County Stormwater Management Ordinance adopted 7/17/01.
2. The property owner is responsible for all maintenance, repair, and rehabilitation of the stormwater management structure shown hereon in perpetuity.
3. The lots qualify for Stormwater Credits as shown in the table. The following notes relate to the credits listed in the table.
- (5.2) Rooftop Runoff Disconnection Credit requires that the following criteria be met: Roof downspouts shall be directed over a vegetated flow path with an average slope of 5% or less for 75' or more to the property line.
- (5.6) Environmentally Sensitive Design Credit must meet the following criteria: Site impervious cover is less than 15%. The lot size is greater than 2 Ac. and rooftop runoff is disconnected per Section 5.2. Grass channels are used to convey runoff.

LOT	AREA	WQV	REV	CPV	Qp	STRUCTURE
1	5.67	5.2	5.6	<2	<10%	NONE
2	6.48	5.2	5.6	<2	<10%	NONE
3	3.37	5.2	5.6	<2	<10%	NONE
4	4.16	5.2	5.6	<2	<10%	NONE
5	14.15	5.2	5.6	<2	<10%	NONE

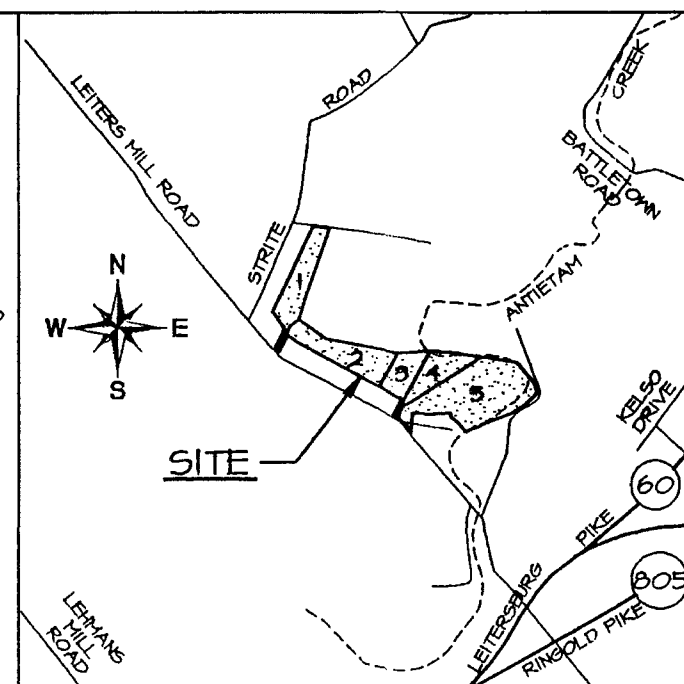
The Stormwater Management plan shown hereon is approved

WASHINGTON COUNTY, DIVISION OF PUBLIC WORKS CHIEF ENGINEER

DATE 6-6-05

The lot owner is solely responsible for all on lot grading to insure that the rooftop and non-rooftop disconnect credits, approved hereon are maintained in perpetuity.

Exhibit A
(Sheets 1-5)



VICINITY MAP
TAX MAP 26, GRID 7, PARCEL 417
SCALE: 1" = 2000'

ADDRESS ASSIGNMENTS
LOT 1 - 21212 LEITERS MILL ROAD
LOT 2 - 21216 LEITERS MILL ROAD
LOT 3 - 14002 MISTY GLEN LANE
LOT 4 - 14006 MISTY GLEN LANE
LOT 5 - 14005 MISTY GLEN LANE
Note: Each address is based on the entrance as shown on this plat. If the driveway is constructed at a different location from that shown hereon, the address listed above may be VOID and the owner / developer of the lot must reapply to the Planning Commission for a new address assignment.

AREA TABLE

LOT 1 AREA	246,964.74 Sq.Ft. OR 5.6695 Ac.
LOT 2 AREA	282,042.56 Sq.Ft. OR 6.4748 Ac.
LOT 3 AREA	146,473.31 Sq.Ft. OR 3.3625 Ac.
LOT 4 AREA	181,053.31 Sq.Ft. OR 4.1516 Ac.
LOT 5 AREA	615,383.28 Sq.Ft. OR 14.1273 Ac.
DEDICATION AREA	1,606.02 Sq.Ft. OR 0.0368 Ac.
TOTAL AREA OF PLAT	1,473,575.23 Sq.Ft. OR 33.8286 Ac.

INTERIM FACILITIES PROVISION CERTIFICATION

In compliance with C.O.M.A.R. 26.03.01.05 B. (1) and (2), the individual water supply and individual sewer systems are hereby permitted on a temporary basis. Future lot owners are advised that the individual systems serving the lots indicated on this plat are of a temporary nature and that connection to a future community system shall be made within one (1) year or less after the system becomes available.

5-18-2005 *William J. Brennan, Jr.* for Misty Glen Development, LLC

CERTIFICATE OF APPROVAL OF INDIVIDUAL WATER SUPPLY AND INDIVIDUAL SEWERAGE SYSTEM

I hereby certify that the minimum ownership area complies with the minimum width and minimum area requirements specified in C.O.M.A.R. 26.04.03.03. Such minimum ownership shall remain equal to the minimum width and minimum area set forth in C.O.M.A.R. 26.04.03.03. A (2) until community sewerage and water have been made available. Not more than one principal building may be erected or constructed on a lot or lots contained in the minimum ownership area established by C.O.M.A.R. 26.04.03.03. A (2) until community sewerage and water have been made available.

DATE: 9 June '05

SURVEYOR'S CERTIFICATE

I hereby certify that to the best of my professional knowledge, information, belief and judgment that this plat is correct, that it is a subdivision of part of the land conveyed by Lawrence E. Johns and Ray M. Johns, Trustees under a declaration of trust, dated July 24, 1971 into Misty Glen Development, LLC, by deed dated August 31, 2004 and recorded among the Land Records of Washington County, Maryland in Liber 2433, Folio 562 on September 9, 2004.

DATE: 5/18/05

Richard E. McNeill, Surveyor #585, For Gary Castle & Associates

5-05-033 SHEET 1 OF 5

COMBINED PRELIMINARY / FINAL PLAT
LOTS 1 - 5

MISTY GLEN

Situate along the north side of
Leiters Mill Road
Election District #9
Washington County, Maryland

SCALE 1"=200' JANUARY 2005

Gary Castle & Associates
Land Surveyors
300 W. Patrick Street Frederick, Maryland 21701
Phone: (301)668-0505 ~ Fax: (301)668-0507

AREA TABLE	
Lot 1 Area	247,117.84 Sq.Ft. or 5.6730 Ac. Gross Area 153.15 Sq.Ft. or 0.0035 Ac. Future Dedication 6,441.77 Sq.Ft. or 0.1474 Ac. Panhandle = 240,522.97 Sq.Ft. or 5.5216 Ac. Net Area
Lot 2 Area	282,192.31 Sq.Ft. or 6.4782 Ac. Gross Area 149.75 Sq.Ft. or 0.0034 Ac. Future Dedication 5,652.83 Sq.Ft. or 0.1298 Ac. Panhandle = 276,389.73 Sq.Ft. or 6.3450 Ac. Net Area
Lot 3 Area	146,548.86 Sq.Ft. or 3.3654 Ac. Gross Area 125.55 Sq.Ft. or 0.0029 Ac. Future Dedication 4,341.97 Sq.Ft. or 0.0998 Ac. Panhandle = 142,125.34 Sq.Ft. or 3.2627 Ac. Net Area
Lot 4 Area	181,231.81 Sq.Ft. or 4.1605 Ac. Gross Area 126.50 Sq.Ft. or 0.0029 Ac. Future Dedication 2,821.76 Sq.Ft. or 0.0648 Ac. Panhandle = 178,283.55 Sq.Ft. or 4.0428 Ac. Net Area
Lot 5 Area	616,434.35 Sq.Ft. or 14.1514 Ac. Gross Area 1,051.07 Sq.Ft. or 0.0241 Ac. Future Dedication = 615,383.28 Sq.Ft. or 14.1273 Ac. Net Area
Total Plat Area	1,473,575.23 Sq.Ft. or 33.8286 Ac. Gross Area

TOTAL NUMBER OF LOTS IN THIS SUBDIVISION = 5

OWNER(S):

Misty Glen Development, LLC
300 West Patrick Street
Frederick, Md. 21701
301-668-0505

CERTIFICATE OF APPROVAL

FINAL APPROVAL GRANTED

BY: *6/8/05*

DATE: *Michael E. Perry*

Washington County Planning Commission

NOTES:

1. A 10,000 square foot or greater area is hereby reserved for sewage disposal. No permanent physical objects are permitted in this area.
2. There is a (10') ten foot wide drainage and utility easement along all front lot lines and an (8') eight foot wide drainage and utility easement along all side and rear lot lines hereby reserved, unless otherwise shown hereon.
3. Horizontal datum is based on an Assumed Datum.
4. Soil types are as shown hereon.
5. Minimum Building Setbacks: front yard-40'; side yard-15'; rear yard-50'. Minimum Building Setback Lines are based on the current Wash. Co. Zoning Ordinance. Accessory Structures may be constructed in accordance with Section 4.10 and Section 235 (b). Accessory structures are not permitted without the placement of the principal permitted structure. Frontage of panhandle lots at owner's option per section 28.7B (a) Zoned A - AGRICULTURAL.
6. Total upstream watershed affecting this subdivision is > 400 acres.
7. There is no habitat of threatened or endangered species identified by the US Fish and Wildlife service per 50 CFR 17 as required to be shown by Sections 306 and 314 of the Washington County Subdivision Ordinance and Section 4.21 (C4D) of the Washington County Zoning Ordinance. This subdivision is not within 1000' of the Appalachian Trail.
8. Topography shown hereon provided by Washington County Aerial Photogrammetry.
9. An additional Right-of-Way (25') twenty five feet in width as measured from the centerline of Leiters Mill Road is hereby dedicated for the purpose of the possible future widening of said road.
10. No other wells or septic lines within 100' of the property lines.
11. Common use access easements are shown hereon for ingress/egress access to benefit the owners of lots 1 and 2 and their heirs and assigns. There is also a common use access easement for lots 3, 4, and 5 and their heirs and assigns.
12. This plat and survey were prepared without the benefit of a title report (none furnished) and therefore may not necessarily indicate all encumbrances on this property.

PLAT NO. 8326

DATE: JUNE 2005

WASHINGTON COUNTY

NOTE:

Monetary contributions specified by article V of the adequate public facilities ordinance are due and payable upon application for building permits for construction of lots 1, 2, 3, 4, and 5 shown and approved on this plat.

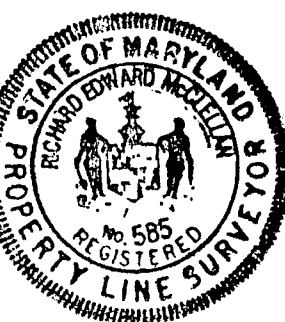
LEGEND:

- EXISTING WELL
- PROPOSED WELL
- EXISTING SEPTIC
- PROPOSED SEPTIC
- PROPOSED HOUSE

MINIMUM BUILDING SETBACK LINE (MBSL)

FRONT: 40'
REAR: 50'
SIDE: 15'
BOTH SIDES: N/A
SEPTIC: 10' SBRL

REVISIONS:



RECORDED: WASHINGTON CO. PLAT NO.: 2076

MSR CSU 2167-6196-1

NOTES:

1. Steep slopes exist on the south side of the stream at lots 3 and 4 and are included in the stream buffer.
2. There are no habitats of threatened or endangered species identified by the U.S. Fish and Wildlife Service per 50 CFR 17, as required to be shown by section 306, 307 and 314 of the Subdivision Ordinance and Section 4.21 of the Zoning Ordinance.
3. There were no wetlands observed on this site outside of the Antietam Creek banks.

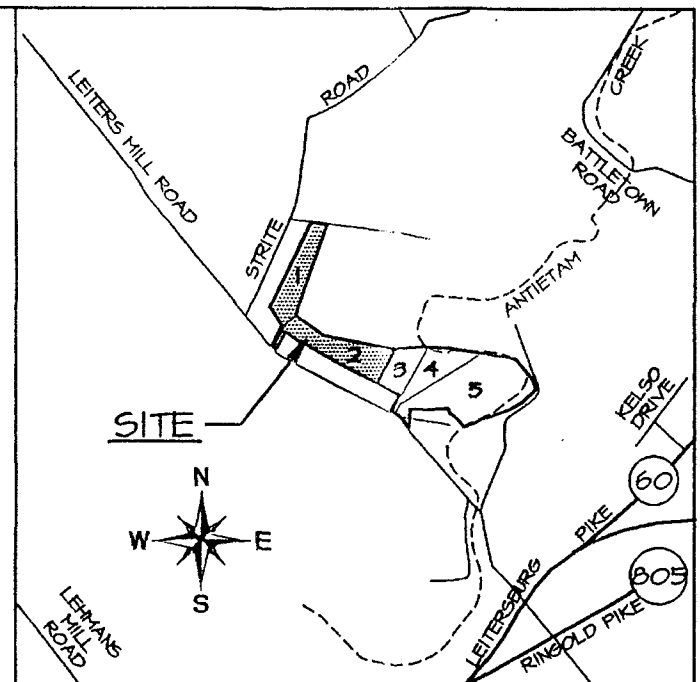
SENSITIVE AREA NOTICE

The stream buffer shown on this plat is established pursuant to the requirements of the Washington County Subdivision Ordinance Article IV, Section 404. In an effort to preserve or improve water quality, the property is required to establish and thereafter maintain in perpetuity vegetative ground cover in accordance with urban best management practices recommended by the Washington County Soil Conservation District. No permanent structures, and no construction are permitted within the stream buffer except those structures existing at the time of approval of this subdivision and which are shown on this plat and to those designed to improve water quality or flow as approved by the Washington County Planning Commission in accordance with all applicable regulations, laws and policies. No septic system shall be constructed within the buffer nor shall any septic reserve area be established within the buffer.

AREA TABLE

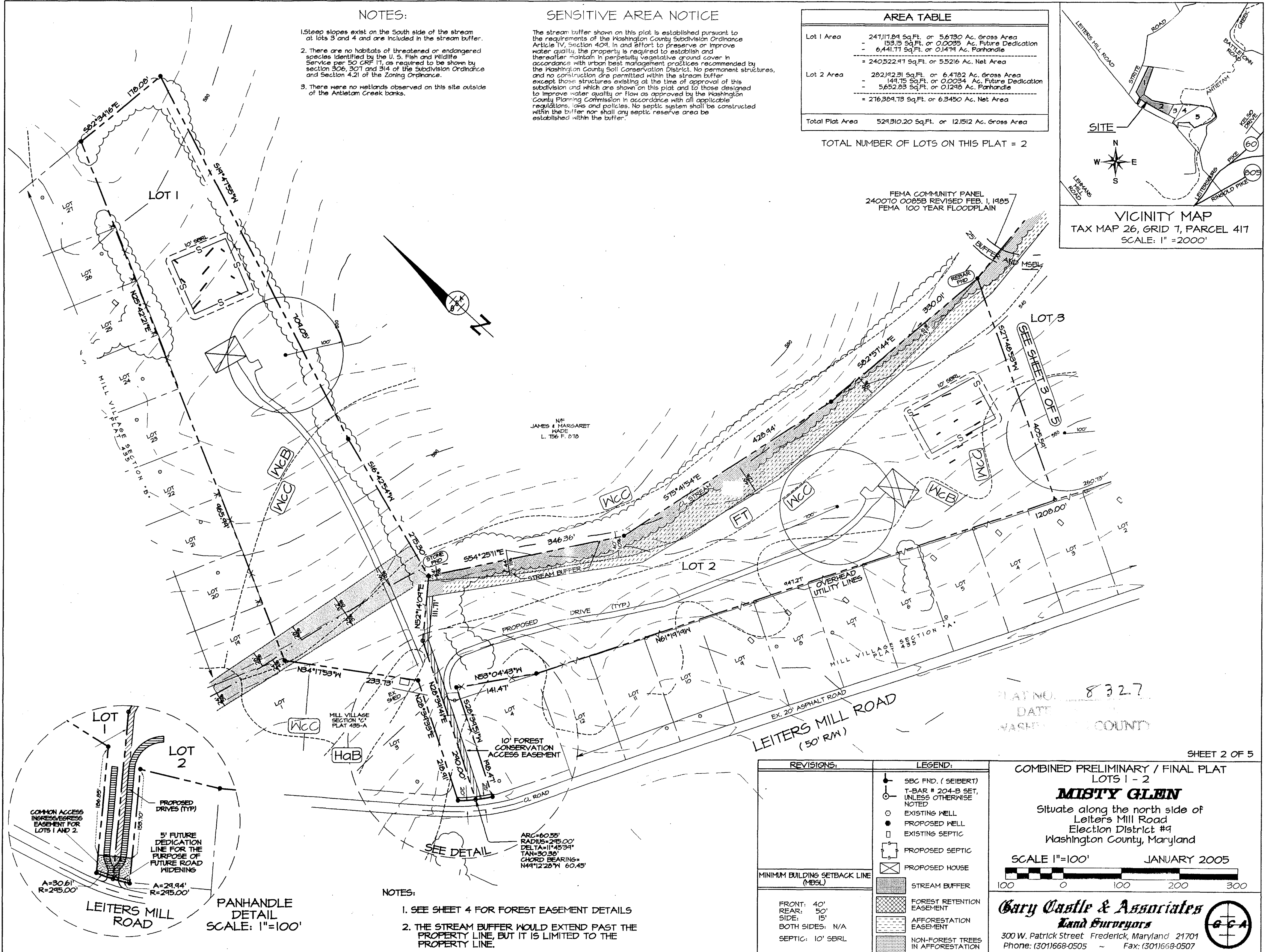
Lot 1 Area	241,117.84 Sq.Ft. or 5.6730 Ac. Gross Area
-	153.15 Sq.Ft. or 0.0035 Ac. Future Dedication
-	6,441.71 Sq.Ft. or 0.1474 Ac. Panhandle
=	240,522.47 Sq.Ft. or 5.5216 Ac. Net Area
Lot 2 Area	282,192.31 Sq.Ft. or 6.4782 Ac. Gross Area
-	149.75 Sq.Ft. or 0.0034 Ac. Future Dedication
-	5,652.83 Sq.Ft. or 0.1298 Ac. Panhandle
=	276,389.73 Sq.Ft. or 6.3450 Ac. Net Area
Total Plat Area	521,910.20 Sq.Ft. or 12.1512 Ac. Gross Area

TOTAL NUMBER OF LOTS ON THIS PLAT = 2



VICINITY MAP
TAX MAP 26, GRID 7, PARCEL 417
SCALE: 1" = 2000'

FEMA COMMUNITY PANEL
240070 0085B REVISED FEB. 1, 1985
FEMA 100 YEAR FLOODPLAIN



PLAT NO. 8327
DATE
WASHINGTON COUNTY

SHEET 2 OF 5

REVISIONS:	LEGEND:
MINIMUM BUILDING SETBACK LINE (MSBL)	SBC FND. (SEIBERT)
FRONT: 40'	T-BAR # 204-B SET, UNLESS OTHERWISE NOTED
REAR: 50'	EXISTING WELL
SIDE: 15'	PROPOSED WELL
BOTH SIDES: N/A	EXISTING SEPTIC
SEPTIC: 10' SBRL	PROPOSED SEPTIC
	PROPOSED HOUSE
	STREAM BUFFER
	FOREST RETENTION EASEMENT
	AFFORESTATION EASEMENT
	NON-FOREST TREES IN AFFORESTATION

COMBINED PRELIMINARY / FINAL PLAT
LOTS 1 - 2

MISTY GLEN

Situate along the north side of
Leaters Mill Road
Election District #9
Washington County, Maryland

SCALE 1"=100' JANUARY 2005
100 0 100 200 300

Gary Castle & Associates
Land Surveyors

300 W. Patrick Street Frederick, Maryland 21701
Phone: (301)668-0505 ~ Fax: (301)668-0507

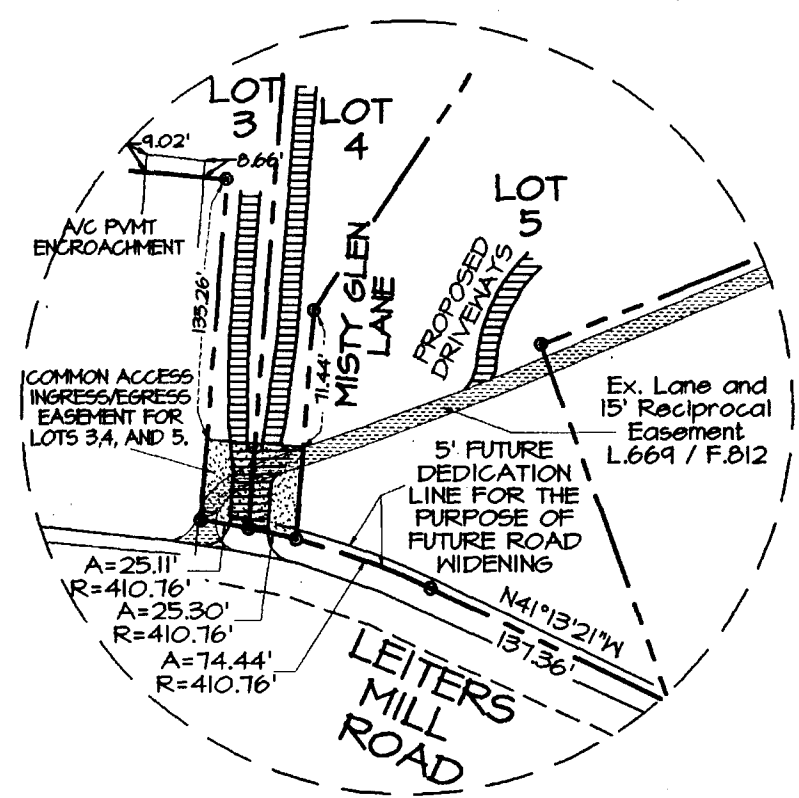
NOTES:

1. SEE SHEET 4 FOR FOREST EASEMENT DETAILS
2. THE STREAM BUFFER WOULD EXTEND PAST THE PROPERTY LINE, BUT IT IS LIMITED TO THE PROPERTY LINE.

RECORDED: WASHINGTON CO. PLAT NO.: 2076

msn csw 2167-6196-2

WASHINGTON COUNTY CIRCUIT COURT (Plats) Plat 8326-8330, MSA C2167-6196, Date available 2005/06/09, Printed 11/16/05, MSA C2167-6196



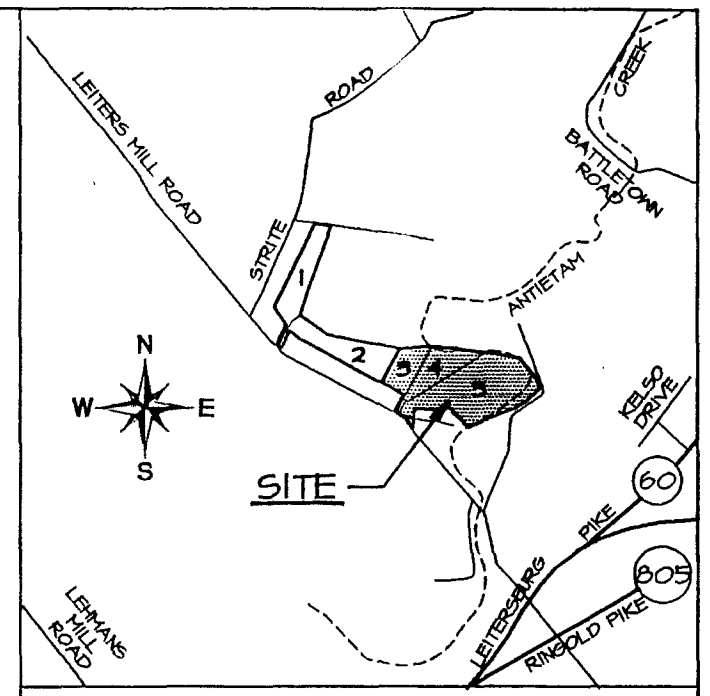
PANHANDLE
DETAIL
SCALE: 1"=100'

AREA TABLE	
Lot 3 Area	146,598.86 Sq.Ft. or 3.3654 Ac. Gross Area - 125.55 Sq.Ft. or 0.0029 Ac. Future Dedication = 43,471.91 Sq.Ft. or 0.9948 Ac. Panhandle = 142,125.34 Sq.Ft. or 3.2621 Ac. Net Area
Lot 4 Area	181,231.81 Sq.Ft. or 4.1605 Ac. Gross Area - 26,550 Sq.Ft. or 0.6029 Ac. Future Dedication = 2,821.76 Sq.Ft. or 0.0648 Ac. Panhandle = 178,283.55 Sq.Ft. or 4.0928 Ac. Net Area
Lot 5 Area	616,434.35 Sq.Ft. or 14.1514 Ac. Gross Area - 1,051.07 Sq.Ft. or 0.0241 Ac. Future Dedication = 615,383.28 Sq.Ft. or 14.1273 Ac. Net Area
Total Plat Area	444,265.02 Sq.Ft. or 21.6773 Ac. Gross Area

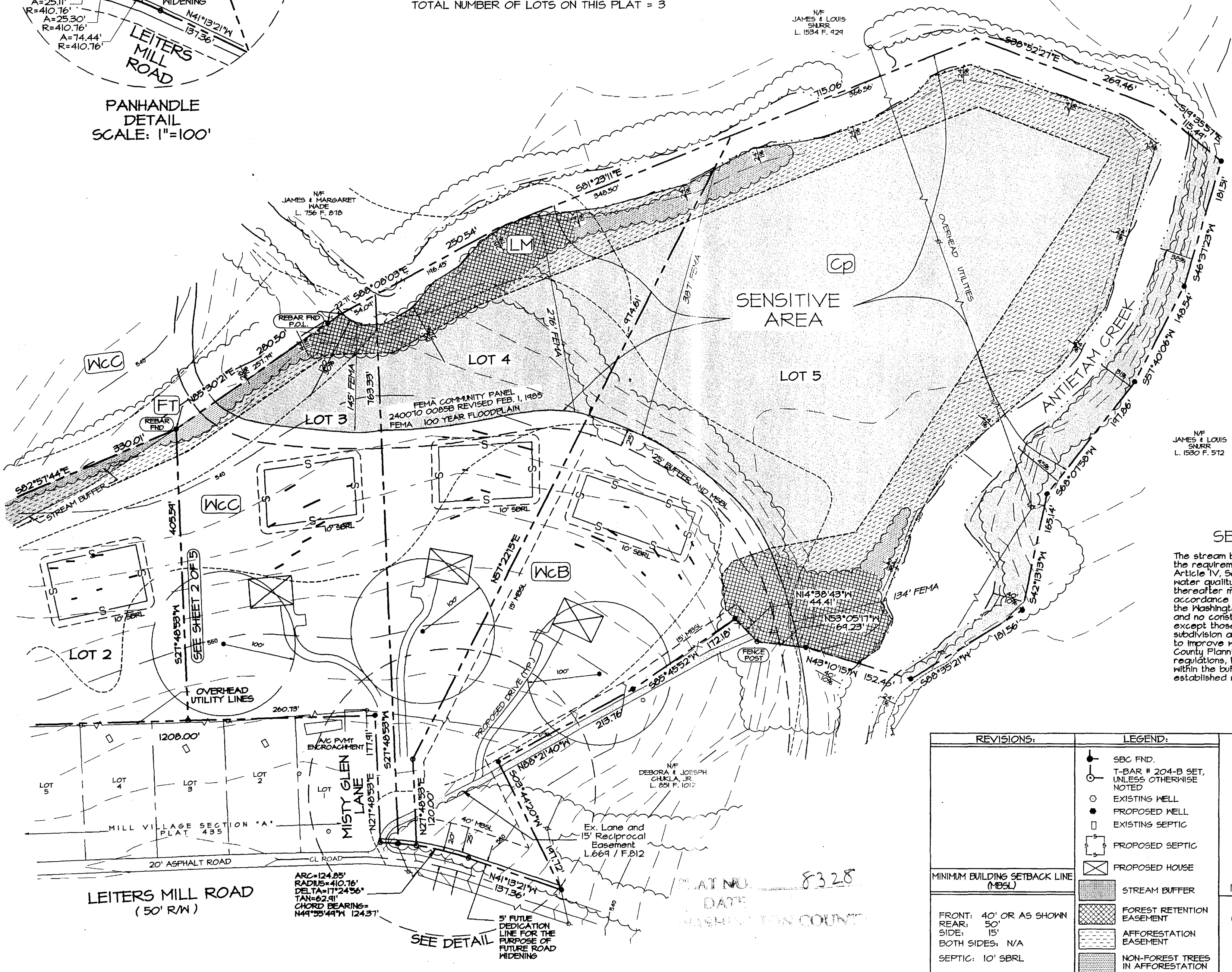
TOTAL NUMBER OF LOTS ON THIS PLAT = 3

NOTES:

1. See sheet 4 for Forest Easement Details.
2. The stream buffer would extend past the property line, but it is limited to this property line.
3. Steep slopes exist on the South side of the stream at lots 3 and 4 and are included in the stream buffer.
4. There are no habitats of threatened or endangered species identified by the U. S. Fish and Wildlife Service per 50 CRF 17, as required to be shown by section 306, 307 and 314 of the Subdivision Ordinance and Section 4.21 of the Zoning Ordinance.
5. There were no wetlands observed on this site outside of the Antietam Creek banks.



VICINITY MAP
TAX MAP 26, GRID 1, PARCEL 417
SCALE: 1" = 2000'



SENSITIVE AREA NOTICE

The stream buffer shown on this plat is established pursuant to the requirements of the Washington County Subdivision Ordinance Article IV, Section 404. In an effort to preserve or improve water quality, the property is required to establish and thereafter maintain in perpetuity vegetative ground cover in accordance with urban best management practices recommended by the Washington County Soil Conservation District. No permanent structures, and no construction are permitted within the stream buffer except those structures existing at the time of approval of this subdivision and which are shown on this plat and to those designed to improve water quality or flow as approved by the Washington County Planning Commission in accordance with all applicable regulations, laws and policies. No septic system shall be constructed within the buffer nor shall any septic reserve area be established within the buffer.

SHEET 3 OF 5

REVISIONS:	LEGEND:
	SBC FND.
	T-BAR # 204-B SET, UNLESS OTHERWISE NOTED
	EXISTING WELL
	PROPOSED WELL
	EXISTING SEPTIC
	PROPOSED SEPTIC
	PROPOSED HOUSE
	STREAM BUFFER
	FOREST RETENTION EASEMENT
	AFFORESTATION EASEMENT
	NON-FOREST TREES IN AFFORESTATION
MINIMUM BUILDING SETBACK LINE (MSBL)	
FRONT: 40' OR AS SHOWN	
REAR: 50'	
SIDE: 15'	
BOTH SIDES: N/A	
SEPTIC: 10' SBRL	

COMBINED PRELIMINARY / FINAL PLAT
LOTS 3 - 5
MISTY GLEN
Situate along the north side of
Leiters Mill Road
Election District #9
Washington County, Maryland
SCALE 1"=100' JANUARY 2005
100 0 100 200 300
Gary Castle & Associates
Land Surveyors
300 W. Patrick Street Frederick, Maryland 21701
Phone: (301)668-0505 ~ Fax: (301)668-0507

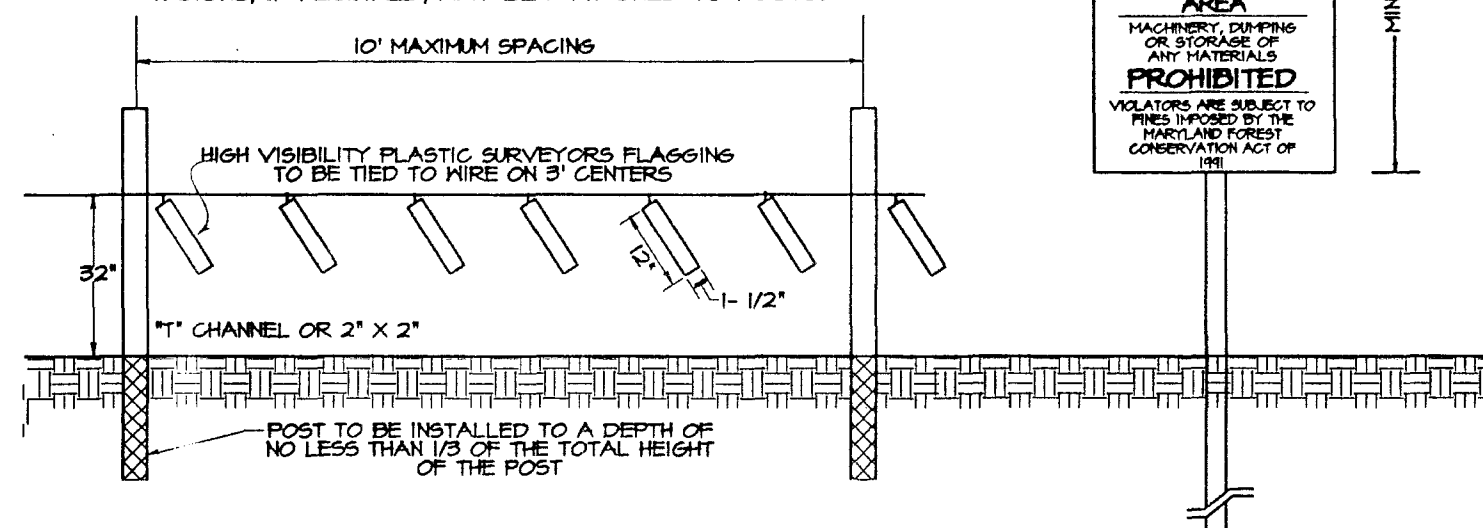
Notes:

1. The retention and afforestation areas shown on this plat are to be retained by the respective property owners in a natural forested condition, pursuant to the Washington County Forest Conservation Ordinance of 1993. Furthermore, the use of the retention area shall be limited to forest conservation practices and recreation activities which are consistent with the preservation of the retention area as natural forest land, as stipulated by the same ordinance.
2. Refer to the approved Preliminary Forest Conservation Plan #FS 05-010 dated 04/15/05 on file at the Washington County Planning Department Office for details regarding sequence of construction, planting specifications, etc.

ONE STRAND SMOOTH WIRE PROTECTION DEVICE

NOTES:

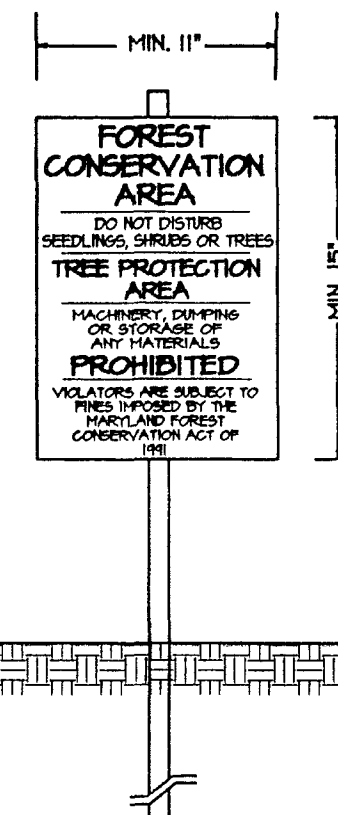
1. FOREST PROTECTION DEVICE ONLY.
2. RETENTION AREAS ARE TO STAKED AND FLAGGED PRIOR TO INSTALLATION OF FENCE.
3. AVOID ROOT DAMAGE WHEN PLACING ANCHORS POSTS.
4. SMOOTH WIRE STRAND TO BE ATTACHED SECURELY TO POSTS.
5. DEVICE SHOULD BE PROPERLY MAINTAINED DURING CONSTRUCTION.
6. THIS TEMPORARY FENCE MAY BE TAKEN DOWN AFTER ALL HOUSE AND DRIVE CONSTRUCTION IS COMPLETE OR AFTER TWO YEAR MAINTENANCE AGREEMENT.
7. SIGNS, IF REQUIRED, MAY BE ATTACHED TO POSTS.



FOREST CONSERVATION ORDINANCE SIGNAGE NOTES

1. FENCING AND SIGNAGE ARE TO BE PLACED ALONG ALL THE FOREST RETENTION LINES WHERE CONSTRUCTION WOULD BE WITHIN 100' OF THE EASEMENT. SIGNS TO BE PLACED AT 100' INTERVALS ON THE FENCING AND AT ANGLE BREAKS.
2. UPON COMPLETION OF FINAL GRADING AND FOREST PLANTINGS THE FOREST RETENTION FENCING AND SIGNS ARE TO BE REMOVED. THE SIGNS SHALL BE PLACED AT 50' INTERVALS AROUND THE ENTIRE FOREST CONSERVATION EASEMENT.

PERMANENT SIGNAGE



AREA TABLE

SHEET 4	NON-FOREST IN AFFORESTATION AREA 0.41 AC.
+ AFFORESTATION AREA	0.13 AC.
TOTAL FRO AREA SHEET 4	1.20 AC.
SHEET 5	NON-FOREST IN AFFORESTATION AREA 0.38 AC.
+ AFFORESTATION AREA	2.24 AC.
+ FOREST RETENTION AREA	1.07 AC.
TOTAL FRO AREA SHEET 5	3.69 AC.
TOTAL FOREST CONSERVATION EASEMENT	4.89 AC.

FOREST CONSERVATION EASEMENT AREA SUMMARY

NET TRACT AREA.....	1473575 SQ. FT. or 33.83 AC.
REQUIRED CONSERVATION.....	175982 SQ. FT. or 4.04 AC.
PROVIDED CONSERVATION	
ON-SITE (TREE SAVE).....	31026 SQ. FT. or 0.85 AC.
ON-SITE (FOREST RETENTION).....	46631 SQ. FT. or 1.07 AC.
ON-SITE (AFFORESTATION).....	129352 SQ. FT. or 2.97 AC.
TOTAL FOREST EASEMENT.....	213009 SQ. FT. or 4.89 AC.

SEQUENCE OF FOREST PROTECTION

1. ALL TEMPORARY PROTECTION DEVICES (WIRE TREE PROTECTION FENCE) AND PERMANENT DEVICES (SIGNAGE) TO BE PUT IN PLACE.
2. A PRE-CONSTRUCTION MEETING WILL BE REQUIRED AFTER BOUNDARIES OF THE LIMITS OF DISTURBANCE HAVE BEEN STAKED AND FLAGGED AND THE FOREST PROTECTION DEVICES HAVE BEEN INSTALLED AND BEFORE ANY DISTURBANCE HAS TAKEN PLACE ON SITE. IT IS THE OWNER AND/OR DEVELOPER'S RESPONSIBILITY TO ARRANGE FOR THE WASHINGTON COUNTY PLANNING DEPARTMENT (240-313-2430) INSPECTION OF THESE DEVICES PRIOR TO THE START OF THE CONSTRUCTION WITH AT LEAST FIVE (5) DAYS NOTICE.
3. CLEARING AND/OR GRADING OF SITE FOR CONSTRUCTION OF STREET AND UTILITY AND BUILDING AREAS.
4. PROTECTION DEVICES SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
5. ALL PROTECTION DEVICES SHALL REMAIN IN PLACE UNTIL ALL CONSTRUCTION HAS CEASED IN THE IMMEDIATE VICINITY.
6. TEMPORARY PROTECTION DEVICES TO BE REMOVED AFTER CONSTRUCTION HAS TAKEN PLACE.
7. ALL PERMANENT DEVICES TO BE PUT IN PLACE (FINAL SIGNAGE).

EXHIBIT G - Worksheet Version 2.1

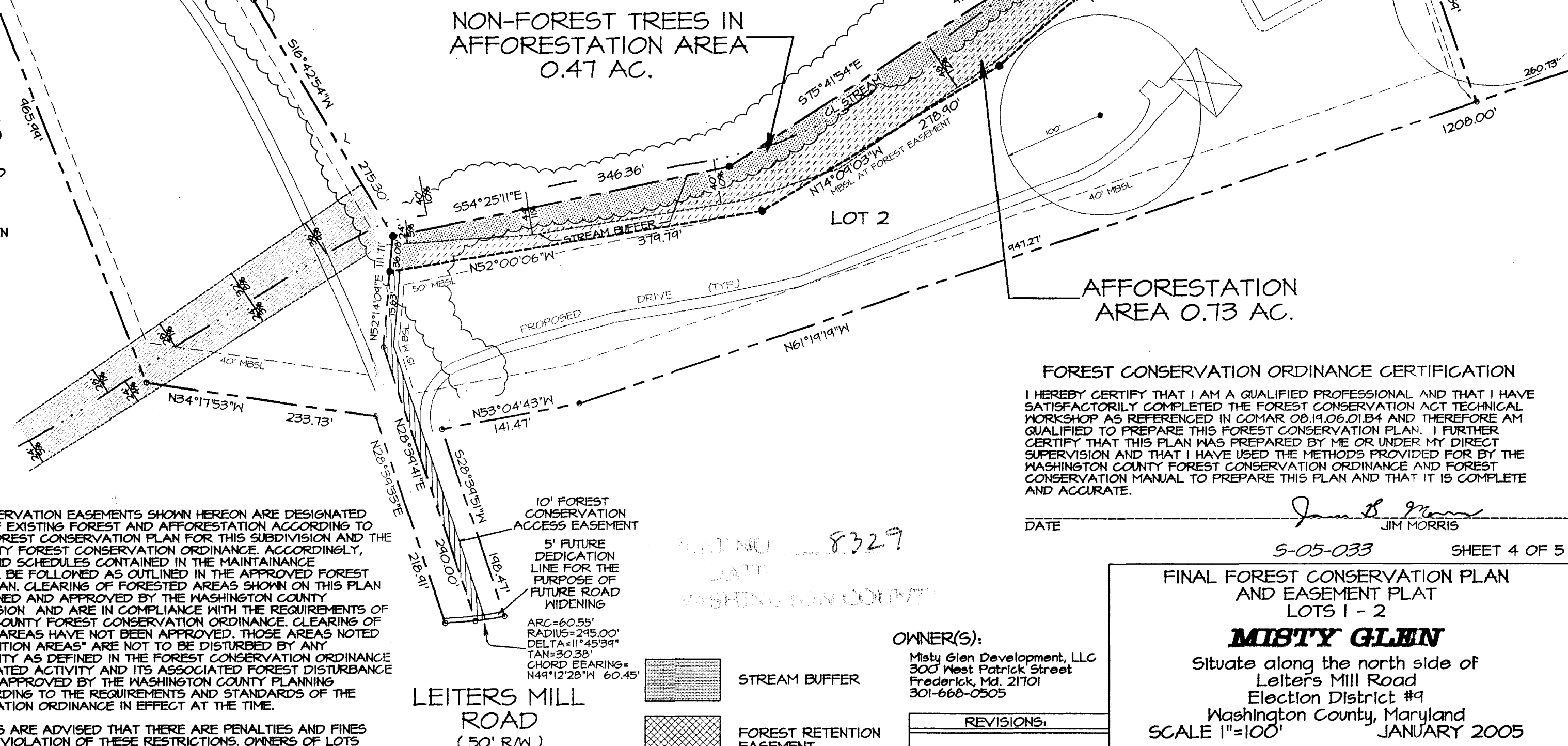
Forest Conservation Worksheet 2.1	
Note: Use 0 for all negative numbers that result from the calculations.	
A. Net Tract Area	A= 33.83
B. Deductions (Critical Area, area restricted by local ordinance or program)	B= 13.64
C. Net Tract Area = Total Tract (A) - Deductions (B)	C= 20.19
D. Land Use Category - Medium Density Residential	D= 4.04
E. Afforestation Threshold (Net Tract Area (C) x 22%)	E= 5.05
F. Existing Forest Cover	F= 0.22
G. Area of Forest Above Conservation Threshold	G= 0.00
H. Break-even Point (Amount of forest that must be retained so that no mitigation is required)	H= 0.22
I. Forest Clearing Permitted Without Mitigation	I= 0.00
J. Total Area of Forest to be Cleared	J= 0.00
K. Total Area of Forest to be Retained	K= 0.22
L. Total Area of Forest to be Retained	L= 0.00
M. Total Area of Forest to be Retained	M= 0.00
N. Credit for Retention Above the Conservation Threshold	N= 0.00
O. Total Afforestation Required	O= 0.00
P. Total Afforestation Required	P= 0.00
Q. Total Afforestation Required	Q= 3.82
R. Total Afforestation Required	R= 3.82
Forest Conservation Worksheet	C:5

THE FOREST CONSERVATION EASEMENTS SHOWN HEREON ARE DESIGNATED FOR RETENTION OF EXISTING FOREST AND AFFORESTATION ACCORDING TO THE APPROVED FOREST CONSERVATION PLAN FOR THIS SUBDIVISION AND THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE. ACCORDINGLY, THE PRACTICES AND SCHEDULES CONTAINED IN THE MAINTENANCE AGREEMENT SHALL BE FOLLOWED AS OUTLINED IN THE APPROVED FOREST CONSERVATION PLAN. CLEARING OF FORESTED AREAS SHOWN ON THIS PLAN HAVE BEEN REVIEWED AND APPROVED BY THE WASHINGTON COUNTY PLANNING COMMISSION AND ARE IN COMPLIANCE WITH THE REQUIREMENTS OF THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE. CLEARING OF OTHER FORESTED AREAS HAVE NOT BEEN APPROVED. THOSE AREAS NOTED AS "FOREST RETENTION AREAS" ARE NOT TO BE DISTURBED BY ANY REGULATED ACTIVITY AS DEFINED IN THE FOREST CONSERVATION ORDINANCE UNTIL THAT REGULATED ACTIVITY AND ITS ASSOCIATED FOREST DISTURBANCE IS REVIEWED AND APPROVED BY THE WASHINGTON COUNTY PLANNING COMMISSION ACCORDING TO THE REQUIREMENTS AND STANDARDS OF THE FOREST CONSERVATION ORDINANCE IN EFFECT AT THE TIME.

PROPERTY OWNERS ARE ADVISED THAT THERE ARE PENALTIES AND FINES ASSOCIATED WITH VIOLATION OF THESE RESTRICTIONS. OWNERS OF LOTS AFFECTED BY THE FOREST CONSERVATION EASEMENTS SHALL TAKE PRECAUTIONS TO PROTECT FOREST IN EASEMENT AREAS FROM UNAUTHORIZED DISTURBANCE PURSUANT TO THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE. ACTIVITIES OF A RECREATIONAL OR PASSIVE NATURE, AS LONG AS THERE IS NO FOREST DISTURBANCE, REMOVAL OF EXISTING FOREST, OR INHIBITION OF ITS NATURAL GROWTH PROCESSES ARE PERMITTED IN THE FOREST RETENTION AREAS. ACCESS TO EASEMENT AREAS AND OVER ACCESS RIGHTS OF WAY SHOWN ON THIS PLAN ARE NECESSARY AND PERMITTED TO WASHINGTON COUNTY AT REASONABLE TIMES FOR PERIODIC INSPECTION OF EASEMENT AREAS.

THIS NOTE OR REFERENCE TO ITS EXISTENCE ON THIS PLAT SHALL BE INCLUDED IN EACH AND EVERY DEED OF CONVEYANCE FOR ANY LOT SHOWN ON THIS PLAT.

NON-FOREST TREES IN AFFORESTATION AREA 0.41 AC.



AFFORESTATION AREA 0.73 AC.

FOREST CONSERVATION ORDINANCE CERTIFICATION

I HEREBY CERTIFY THAT I AM A QUALIFIED PROFESSIONAL AND THAT I HAVE SATISFACTORILY COMPLETED THE FOREST CONSERVATION ACT TECHNICAL WORKSHOP AS REFERENCED IN COMAR 08.14.06.01.B4 AND THEREFORE AM QUALIFIED TO PREPARE THIS FOREST CONSERVATION PLAN. I FURTHER CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I HAVE USED THE METHODS PROVIDED FOR BY THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE AND FOREST CONSERVATION MANUAL TO PREPARE THIS PLAN AND THAT IT IS COMPLETE AND ACCURATE.

DATE

5-05-033

SHEET 4 OF 5

FINAL FOREST CONSERVATION PLAN AND EASEMENT PLAT LOTS 1 - 2

MISTY GLEN

Situate along the north side of
Leiters Mill Road
Election District #9
Washington County, Maryland
SCALE 1"=100' JANUARY 2005

Gary Castle & Associates
Land Surveyors

300 W. Patrick Street Frederick, Maryland 21701
Phone: (301)668-0505 ~ Fax: (301)668-0507

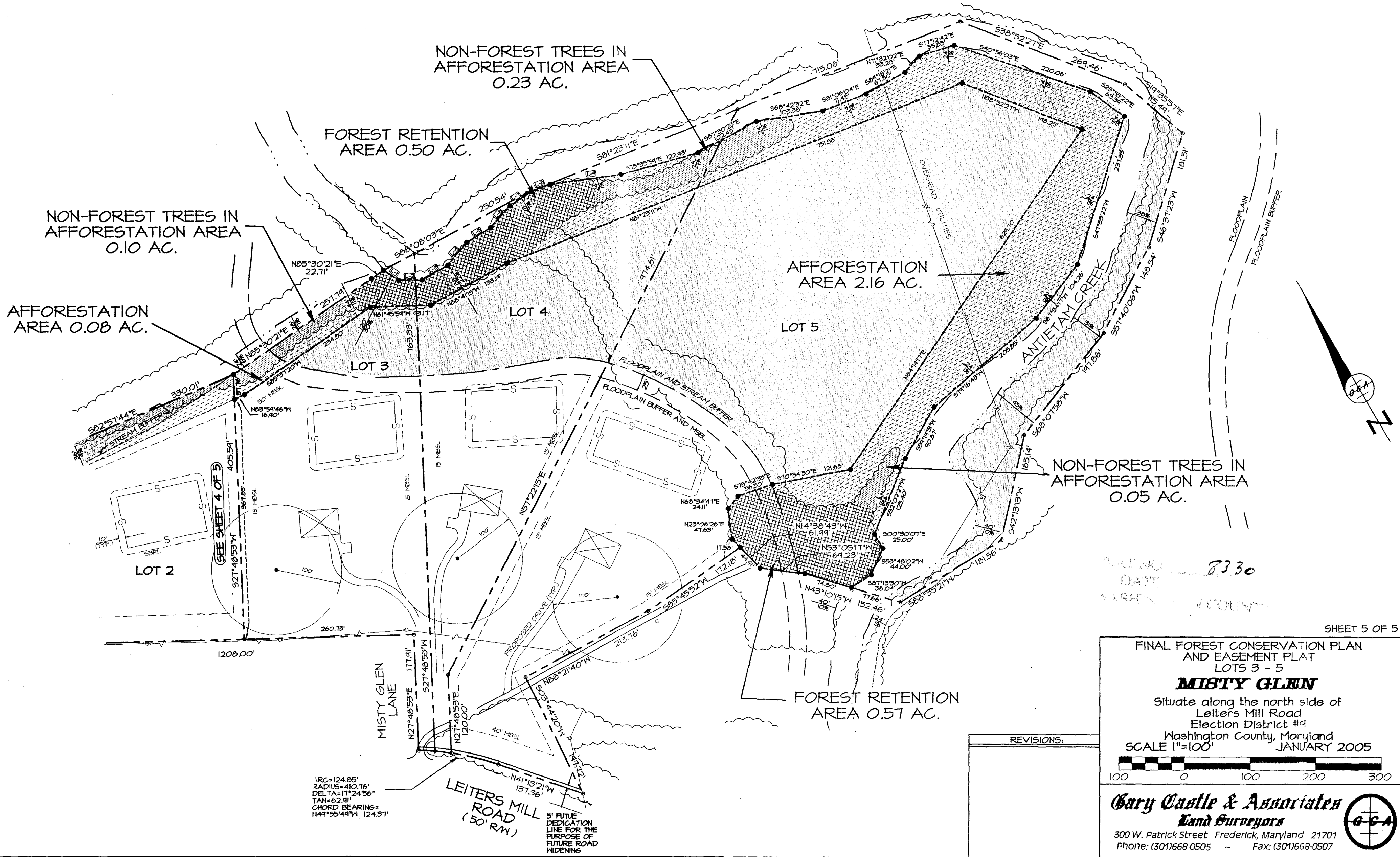


WASHINGTON COUNTY CIRCUIT COURT (Plats) Plat 8326-8330, MSA_C2167-6196. Date available 2005/06/09, Printed 11/29/2023.

LINE TABLE		
LINE	BEARING	DISTANCE
L-1	S25°54'04"E	27.61'
L-2	S60°40'44"E	36.29'
L-3	S84°13'51"E	45.27'
L-4	N64°36'57"E	45.74'
L-5	N88°43'11"E	43.18'
L-6	N72°11'41"E	44.81'
L-7	N86°07'11"E	39.77'
L-8	S80°39'26"E	30.61'
L-4	S67°24'01"E	109.75'

- STREAM BUFFER
- FOREST RETENTION EASEMENT
- AFFORESTATION EASEMENT
- NON-FOREST TREES IN AFFORESTATION

AREA TABLE	
SHEET 5 NON-FOREST IN AFFORESTATION AREA	0.10 AC.
+	0.23 AC.
+	0.05 AC.
TOTAL AREA NON-FOREST THIS SHEET 0.38 AC.	
SHEET 5 AFFORESTATION AREA	0.08 AC.
+	2.16 AC.
TOTAL AREA AFFORESTATION THIS SHEET 2.24 AC.	
SHEET 5 FOREST RETENTION AREA	0.50 AC.
+	0.51 AC.
TOTAL AREA RETENTION THIS SHEET 1.07 AC.	
TOTAL FOREST CONSERVATION EASEMENT SHEET 5 3.69 AC.	



Washington County Zoning Review Map



11/21/2023, 11:07:00 AM

Streets



County Road



Private Road

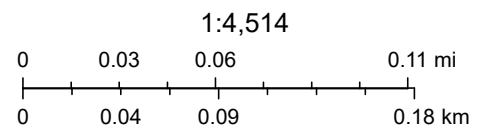
Floodplain



A



Parcels



MD iMAP, DoIT

Exhibit B



Proposed 2nd Dwelling Unit Location (Approx.)

New Pole Barn Location (Approx.)

Attorney Assistance



BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

This is to certify that ED SCHREIBER
is authorized to file an appeal with the Washington County Board of Appeals for
SPECIAL EXCEPTION FOR 2nd Dwelling & SIDE YARD VARIANCE on property
located 14005 MISTY GLEN LN, HAGERSTOWN MD 21742
The said work is authorized by NICOLE BOESE
the property owner in fee.

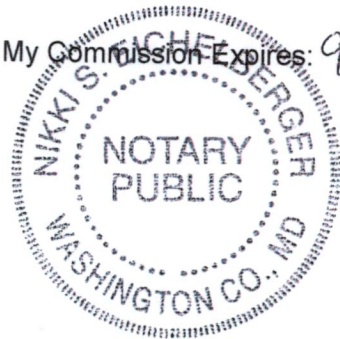
PROPERTY OWNER

Nicole M. Boese
Name
816 Dewey Ave
Address
Hagerstown MD 21742
City, State, Zip Code
N. Boese
Owner's Signature

Sworn and subscribed before me this 28 day of September, 2023.

Nikki S. Echelberger
Notary Public

My Commission Expires: 9/15/2024



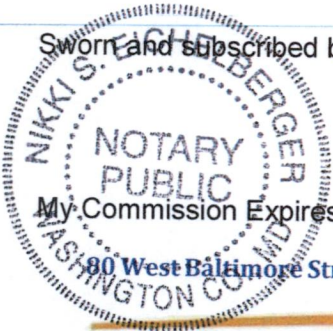
AUTHORIZED REPRESENTATIVE

ED SCHREIBER c/o FSA
Name
128 S. POTOMAC ST
Address
HAGERSTOWN, MD 21740
City, State, Zip Code
[Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 28 day of September, 2023.

Nikki S. Echelberger
Notary Public

My Commission Expires: 9/15/2024



80 West Baltimore Street | Hagerstown, MD 21740 | P: 240.313.2460 | F: 240.313.2461 | Hearing Impaired: 7-1-1

Project Name: Martin & Nicole Boese Special Exception/Side Yard Variance

Owner/Applicant: Martin & Nicole Boese

Project Address: 14005 Misty Glen Lane

Tax Map 26 **Grid** 7 **Parcel** 417

Account # 09017712

Zoning: A(R) Agricultural Rural

Reason for filing:

This is a request for a Special Exception from section 4.5 of the Washington County Zoning Ordinance. Among other regulations this section states that "All lots, parcels or tracts either created prior to or after the adoption of this ordinance which are located in the A(R), EC, P, RV, RB, RT, RS, or RU districts shall be limited to one principal permitted residential use on a lot, parcel or tract".

The applicants desire to construct an 1,100 SF house on their 14 acre property which is currently improved with the applicants personal home. Aging in-laws would like to downsize from their current 3,000 SF residence, the 2nd dwelling is intended to allow the in-laws to live in said home and be close to the immediate family. Reciprocal healthcare/child care is also a driving factor that is further explained in a memo prepared by the applicant and enclosed with this application.

The variance request is for a right-side yard setback variance to 15' from the required 50' setback as specified in Section 5A.7(4) under special provisions. This is a little known provision that was written into the ordinance during the 2005 comprehensive map amendment. This states that side yard setbacks for residential use lots shall be a minimum of 50' for lots 5 acres in size or greater. I can understand this requirement for lots created after the 2005 comprehensive rezoning, such lots can be designed to accommodate the greater setback and the greater setback can be shown on the plan. To retrofit 50' building restriction lines on large lots does not always work. This lot is a perfect instance, the 14.15 acre lot is comprised of 10.07 acres of floodplain meaning the house well and septic have to be pushed up towards the front of the pie shaped lot. Once you remove 10.07 acres of floodplain you are left with 4.08 acres, under the threshold that requires the 50' setback. The subdivision plat that created this lot, plat 8328, shows 15' setbacks and no mention of 50' setbacks if over 5 acres in size.

The variance hardship is the irregular shape of the existing lot which portrays the appearance of the area for the 2nd house to be built as already existing as a separate lot. No different then the dozen lots immediately to the west on Leiters Mill Road, all which have 15' side yard setbacks. The existing house is over 400' off of Leiters Mill Road and about 12' lower than the proposed 2nd dwelling which will front directly on Leiters Mill Road and use an existing access. The Health Department has been contacted and will allow the 2nd dwelling to be hooked up to the existing system with minor modifications and use of the existing well is permitted. The applicants have met with all of the adjacent property owners to explain what their intentions are.

October 13, 2023

Dear Members of the Zoning Board of Appeals,

We are requesting a special exception to permit an accessory dwelling unit (ADU) on our property located at 14005 Misty Glen Lane, Hagerstown MD 21742.

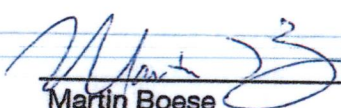
Nicole's parents, Steven and Jill Silas, are in their late 70's. While both Steven and Jill are in relatively good health, Steven is a cancer survivor and Jill has a family history of strokes and heart disease. As they age, it would be beneficial for our family if they lived nearby, but still maintained their own space and dignity. Our property is shaped with an approximate 1/4-1/3 acre exclave on the opposite side of our main lot, separated by a common driveway, that would easily fit a small retirement cottage. This area would be ideal for Nicole's parents to live out their golden years.

Meanwhile, our eldest daughter is autistic and suffers from treatment resistant depression. She has bouts of severe depression requiring electric convulsive therapy and sometimes psychiatric hospitalization. We have high hopes that she can lead a functional life - she is highly intelligent - but she may be unable to live without continued support. In the distant future, having a separate-yet-attached ADU on our property may be essential.

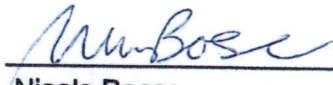
Thank you for your consideration.

Sincerely,

Martin & Nicole Boese



Martin Boese



Nicole Boese

Real Property Data Search ()
Search Result for WASHINGTON COUNTY

SITE

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 09 Account Number - 017712

Owner Information

Owner Name: BOESE MARTIN LEWIS Use: RESIDENTIAL
BOESE NICOLE M Principal Residence: NO
Mailing Address: 816 DEWEY AVENUE Deed Reference: /07211/ 00329
HAGERSTOWN MD 21742-

Location & Structure Information

Premises Address: 14005 MISTY GLEN LN Legal Description: LOT 5 14.12 ACRES
HAGERSTOWN 21742-0000 14005 MISTY GLEN LANE
MISTY GLEN

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 8326
0026 0007 0417 9010142.22 0000 5 2022 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
14.1200 AC 000000

Stories Basement Type Exterior Quality Full/Half Bath Garage Last Notice of Major Improvements

Value Information

	Base Value	Value	Phase-in Assessments	
		As of	As of	As of
		01/01/2022	07/01/2023	07/01/2024
Land:	112,800	112,800		
Improvements	0	0		
Total:	112,800	112,800	112,800	112,800
Preferential Land:	0	0		

Transfer Information

Seller: MISTY KNOLLS LLC	Date: 03/16/2023	Price: \$217,500
Type: ARMS LENGTH VACANT	Deed1: /07211/ 00329	Deed2:
Seller: TOUSA HOMES INC	Date: 01/16/2007	Price: \$1,000,000
Type: NON-ARMS LENGTH OTHER	Deed1: /03203/ 00666	Deed2:
Seller: MISTY GLEN DEVELOPMENT LLC	Date: 08/01/2005	Price: \$1,125,000
Type: ARMS LENGTH MULTIPLE	Deed1: /03203/ 00659	Deed2:

Exemption Information

Partial Exempt Assessments: Class	07/01/2023	07/01/2024
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00 0.00 0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

1082

Salisbury, McLister & Foley, LLP
File No. 23-34051ACW
Tax ID # 09-017712
Property Address - 14005 Misty Glen Lane, Hagerstown, MD 21742

This Deed, made this 8th day of March, 2023, by and between **Misty Knolls, LLC**, GRANTOR, and **Martin Lewis Boese and Nicole M. Boese**, GRANTEES.

Witnesseth –

That in consideration of the sum of Two Hundred Seventeen Thousand Five Hundred and 00/100 Dollars (\$217,500.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt of which is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

All that lot or parcel of land situate, lying and being in Washington County, Maryland and being more particularly described as follows:

Being known and designated as Lot 5, as shown on the plat entitled "Combined Preliminary/Final Plat, Lots 1-5, Misty Glen, situate along the north side of Leiter's Mill Road, Election District 9", and recorded among the Plat Records of Washington County, Maryland in Plat Number 8326.

BEING part of the fee simple property which, by Deed dated December 22, 2006, and recorded in the Land Records of the County of Washington, Maryland, in Liber 3203, Folio 666, was granted and conveyed by Touse Homes, Inc. unto Misty Knolls, LLC.

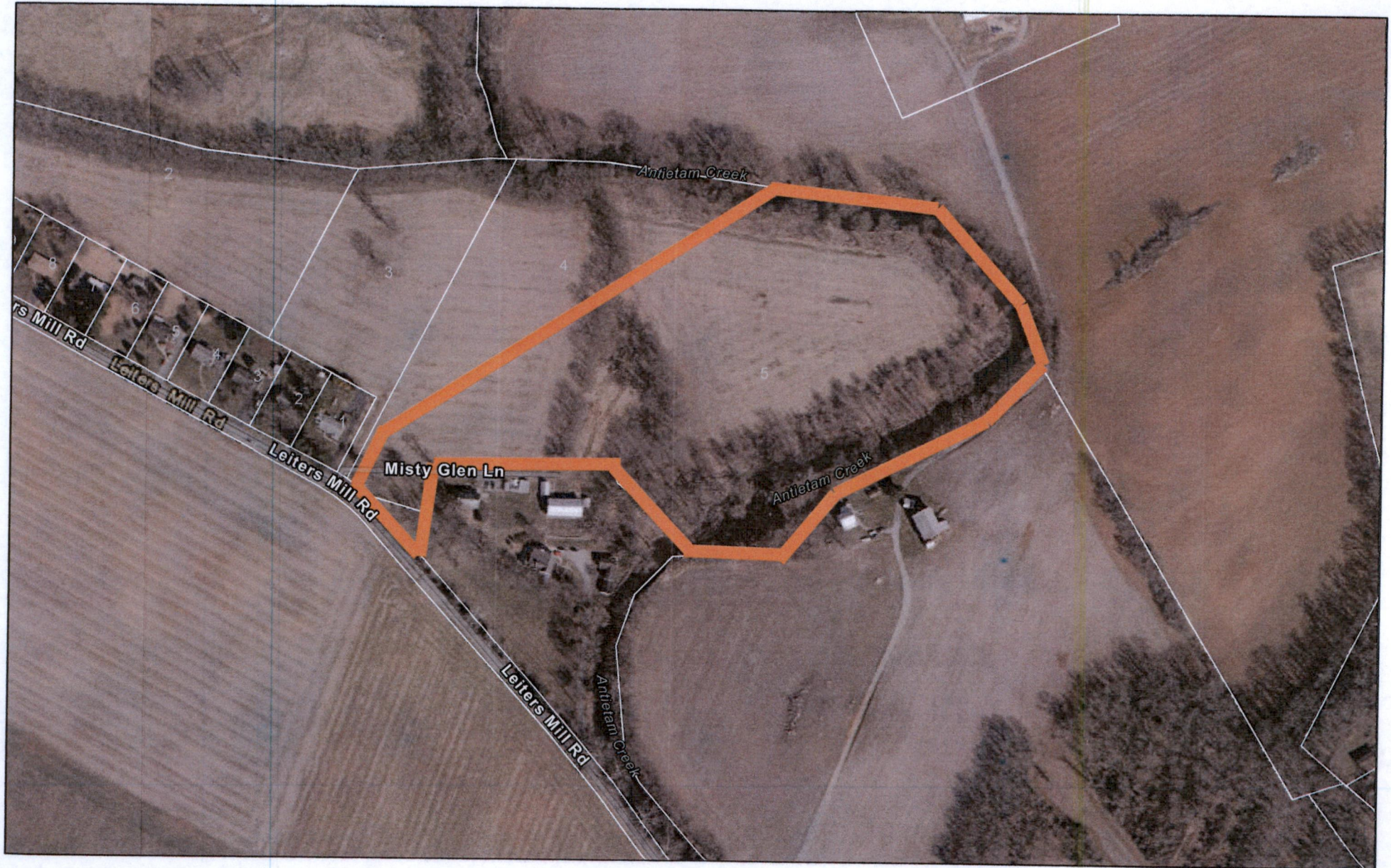
Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Martin Lewis Boese and Nicole M. Boese, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple.

And the Grantor hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant Specially the property hereby granted; and that it will execute such further assurances of the same as may be requisite.

000324

Frederick Seibert & Associates, Inc.

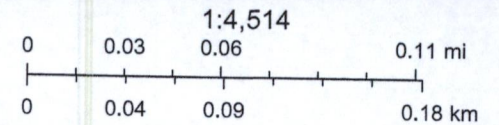


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World Transportation

Parcels

MD_SixInchImagery

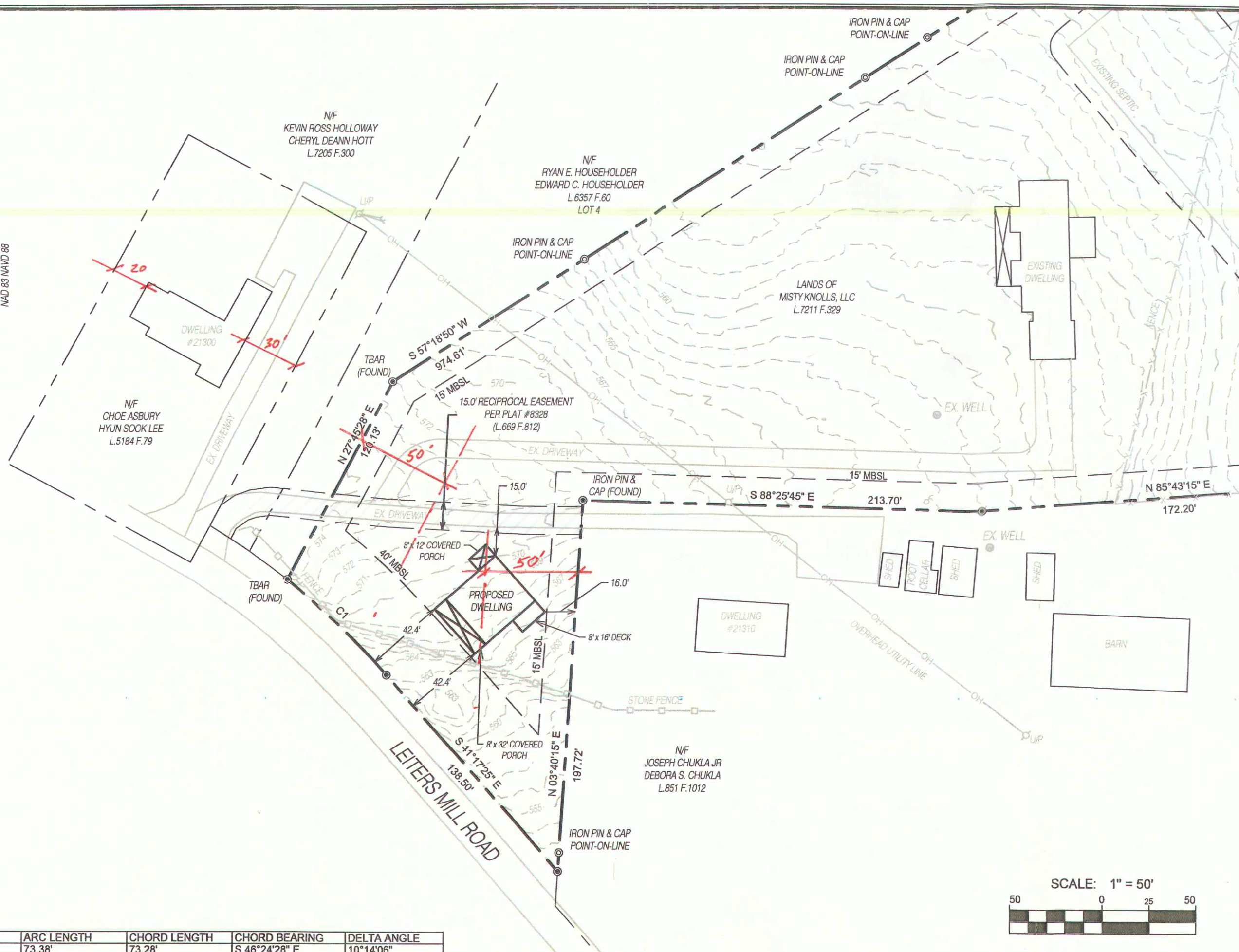


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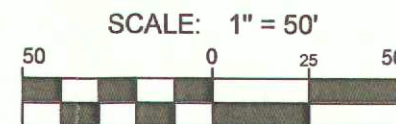
Maxar | MD iMAP, DoIT | Hagerstown MD | Washington County Planning Department | Source: USDA NRCS, Esri | MD iMAP, USDA | Esri, HERE, IPC | Esri Community Maps Contributors, Frederick County, WashCo MD, © OpenStreetMap, Microsoft, Esri, HERE, Web AppBuilder for ArcGIS

Adjacent Owners List, Boese Special Exception

[illegible]



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	410.76'	73.38'	73.28'	S 46°24'28" E	10°14'06"



**FREDERICK
SEIBERT &
ASSOCIATES, INC.**

2023

CIVIL ENGINEERS SURVEYORS LANDSCAPE ARCHITECTS LAND PLANNERS
128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
20 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
505 SOUTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013
220201 SPRING ROAD, SUITE 3, SHERMANSDALE, PENNSYLVANIA 17090
(301) 791-3850

FAX (301) 739-4956

717) 597-1007

(301) 416-7478

WASHINGTON COUNTY, MARYLAND

Preliminary / Final Plat
PLOT PLAN

FOR
MARTIN LEWIS BOESE
& NICOLE M. BOESE

14005 MISTY GLEN LANE
HAGERTSOWN MD 21742

JOB NUMBER:
202

2023-0028.2

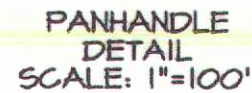
TAX MAP 26-7-417 DISTRICT 09

DRAWING NUMBER 1 OF 1

DRAWN BY: MTJ	DATE: 10-04-2023
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CHECKED BY: EJS	DATE: 10-04-2023
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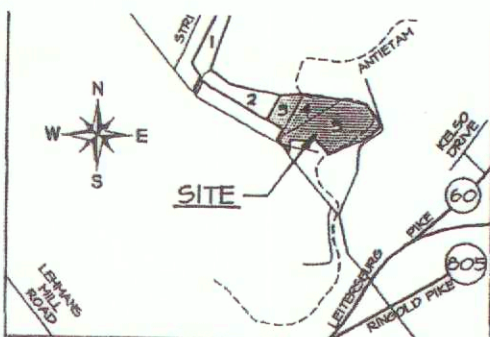
SCALE: $1'' = 50'$



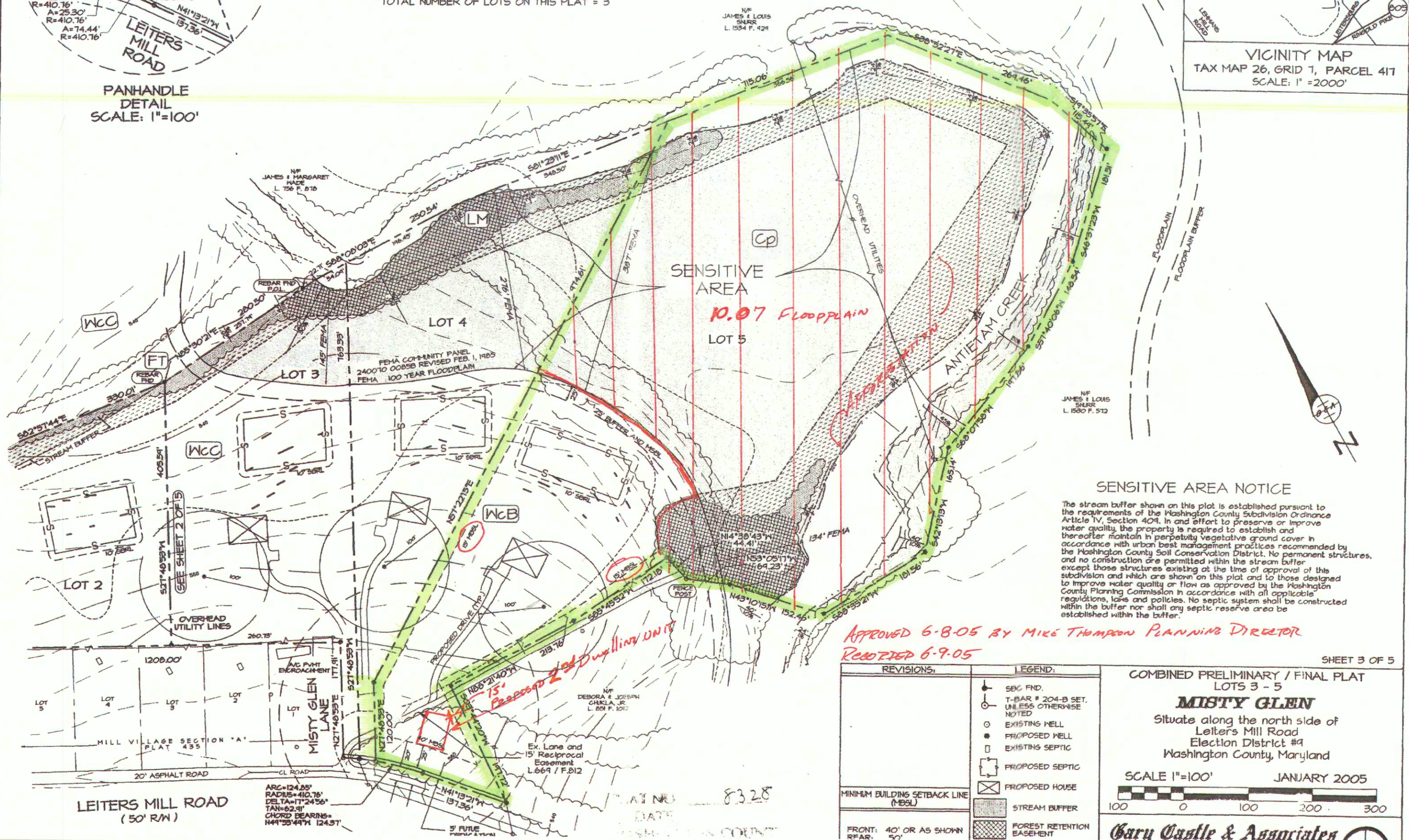
Lot 4 Area	181,231.01 Sq.Ft. or 4.1605 Ac. Gross Area - 126.50 Sq.Ft. or 0.0029 Ac. Future Dedication - 2,821.76 Sq.Ft. or 0.0646 Ac. Parhandle ----- = 178,282.55 Sq.Ft. or 4.0929 Ac. Net Area
Lot 5 Area	616,434.33 Sq.Ft. or 14.1514 Ac. Gross Area - 1251.07 Sq.Ft. or 0.0281 Ac. Future Dedication ----- = 615,303.26 Sq.Ft. or 14.1273 Ac. Net Area
Total Plat Area	944,265.02 Sq.Ft. or 21.6773 Ac. Gross Area

TOTAL NUMBER OF LOTS ON THIS PLAT = 3

4. There are no habitats of threatened or endangered species identified by the U. S. Fish and Wildlife Service per 50 CRF 17, as required to be shown by section 306, 307 and 314 of the Subdivision Ordinance and Section 4.21 of the Zoning Ordinance.
5. There were no wetlands observed on this site outside of the Antietam Creek banks.



VICINITY MAP
TAX MAP 26, GRID 7, PARCEL 417
SCALE: 1" = 2000'





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Martin & Nicole Boese
816 Dewey Avenue
Hagerstown MD 21742

Appellant: Martin & Nicole Boese
816 Dewey Avenue
Hagerstown MD 21742

Property Location: 14005 Misty Glen Lane
Hagerstown, MD 21742

Description Of Appeal: Special exception to establish a second single-family dwelling on a parcel improved with a dwelling.

Docket No: AP2023-047

Tax ID No: 09017712

Zoning: A(R)

RB Overlay: No

Zoning Overlay:

Filed Date: 10/17/2023

Hearing Date: 11/08/2023

Appellant's Legal Interest In Above Property: **Owner:** Yes

Lessee: No

Other:

Contract to Rent/Lease: No

Contract to Purchase: No

Previous Petition/Appeal Docket No(s):

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 4.5

Reason For Hardship:

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling

Proposed Use: Second Single Family Dwelling

Previous Use Ceased For At Least 6 Months:

Date Ceased:

Area Devoted To Non-Conforming Use -

Existing:

Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 23 day of October, 2023.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY

My Commission Expires **NOVEMBER 07, 2025**

Notary Public



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2023-047

State of Maryland Washington County, To Wit:

On 10/17/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick, Seibert & Associates Inc and made oath in due form of law as follows:

Frederick, Seibert & Associates Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 11/08/2023, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 10/24/2023 and will remain until after the above hearing date.

Frederick, Seibert & Associates Inc

Sworn and subscribed before me the day and year first above written.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Notary Public

Seal

My Commission Expires

Project Name: Martin & Nicole Boese Special Exception

Owner/Applicant: Martin & Nicole Boese

Project Address: 14005 Misty Glen Lane

Tax Map 26 **Grid** 7 **Parcel** 417

Account # 09017712

Zoning: A(R) Agricultural Rural

Reason for filing:

This is a request for a Special Exception from section 4.5 of the Washington County Zoning Ordinance. Among other regulations this section states that "All lots, parcels or tracts either created prior to or after the adoption of this ordinance which are located in the A(R), EC, P, RV, RB, RT, RS, or RU districts shall be limited to one principal permitted residential use on a lot, parcel or tract".

The applicants desire to construct an 1,100 SF house on their 14 acre property which is currently improved with the applicants personal home. Aging in-laws would like to downsize from their current 3,000 SF residence, the 2nd dwelling is intended to allow the in-laws to live in said home and be close to the immediate family. Reciprocal healthcare/child care is also a driving factor that is further explained in a memo prepared by the applicant and enclosed with this application.

The shape of the existing lot portrays the appearance of the area for the 2nd house to be built as already existing as a separate lot. The existing house is over 400' off of Leiters Mill Road and about 12' lower than the proposed 2nd dwelling which will front directly on Leiters Mill Road and use an existing access. The Health Department has been contacted and will allow the 2nd dwelling to be hooked up to the existing system with minor modifications and use of the existing well is permitted. The applicants have met with all of the adjacent property owners to explain what their intentions are.

October 13, 2023

Dear Members of the Zoning Board of Appeals,

We are requesting a special exception to permit an accessory dwelling unit (ADU) on our property located at 14005 Misty Glen Lane, Hagerstown MD 21742.

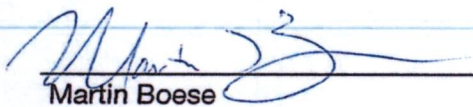
Nicole's parents, Steven and Jill Silas, are in their late 70's. While both Steven and Jill are in relatively good health, Steven is a cancer survivor and Jill has a family history of strokes and heart disease. As they age, it would be beneficial for our family if they lived nearby, but still maintained their own space and dignity. Our property is shaped with an approximate 1/4-1/3 acre exclave on the opposite side of our main lot, separated by a common driveway, that would easily fit a small retirement cottage. This area would be ideal for Nicole's parents to live out their golden years.

Meanwhile, our eldest daughter is autistic and suffers from treatment resistant depression. She has bouts of severe depression requiring electric convulsive therapy and sometimes psychiatric hospitalization. We have high hopes that she can lead a functional life - she is highly intelligent - but she may be unable to live without continued support. In the distant future, having a separate-yet-attached ADU on our property may be essential.

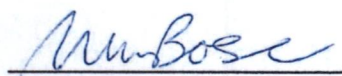
Thank you for your consideration.

Sincerely,

Martin & Nicole Boese



Martin Boese



Nicole Boese



Washington County MARYLAND

BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

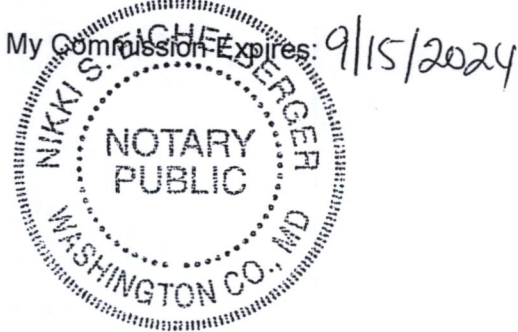
This is to certify that ED SCHREIBER
is authorized to file an appeal with the Washington County Board of Appeals for
SPECIAL EXCEPTION FOR 2nd DWELLING on property
located 14005 MISTY GLEN LN, HAGERSTOWN MD 21742
The said work is authorized by NICOLE BOESE
the property owner in fee.

PROPERTY OWNER

Nicole M. Boese
Name
816 Dewey Ave
Address
Hagerstown MD 21742
City, State, Zip Code
Nicole Boese
Owner's Signature

Sworn and subscribed before me this 28 day of September, 2023.

Nikki S. Echelberger
Notary Public

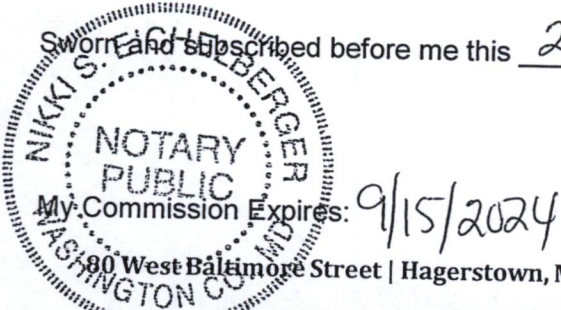


AUTHORIZED REPRESENTATIVE

ED SCHREIBER c/o FSA
Name
128 S. POTOMAC ST
Address
HAGERSTOWN, MD 21740
City, State, Zip Code
[Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 28 day of September, 2023.

Nikki S. Echelberger
Notary Public



80 West Baltimore Street | Hagerstown, MD 21740 | P: 240.313.2460 | F: 240.313.2461 | Hearing Impaired: 7-1-1

Real Property Data Search ()
Search Result for WASHINGTON COUNTY

SITE

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 09 Account Number - 017712

Owner Information

Owner Name: BOESE MARTIN LEWIS Use: RESIDENTIAL
BOESE NICOLE M Principal Residence: NO
Mailing Address: 816 DEWEY AVENUE Deed Reference: /07211/ 00329
HAGERSTOWN MD 21742-

Location & Structure Information

Premises Address: 14005 MISTY GLEN LN Legal Description: LOT 5 14.12 ACRES
HAGERSTOWN 21742-0000 14005 MISTY GLEN LANE
MISTY GLEN

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 8326
0026 0007 0417 9010142.22 0000 5 2022 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
14.1200 AC 000000

Stories Basement Type Exterior Quality Full/Half Bath Garage Last Notice of Major Improvements
/

Value Information

	Base Value	Value	Phase-in Assessments	
		As of	As of	As of
		01/01/2022	07/01/2023	07/01/2024
Land:	112,800	112,800		
Improvements	0	0		
Total:	112,800	112,800	112,800	112,800
Preferential Land:	0	0		

Transfer Information

Seller: MISTY KNOLLS LLC	Date: 03/16/2023	Price: \$217,500
Type: ARMS LENGTH VACANT	Deed1: /07211/ 00329	Deed2:
Seller: TOUSA HOMES INC	Date: 01/16/2007	Price: \$1,000,000
Type: NON-ARMS LENGTH OTHER	Deed1: /03203/ 00666	Deed2:
Seller: MISTY GLEN DEVELOPMENT LLC	Date: 08/01/2005	Price: \$1,125,000
Type: ARMS LENGTH MULTIPLE	Deed1: /03203/ 00659	Deed2:

Exemption Information

Partial Exempt Assessments: Class	07/01/2023	07/01/2024
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

1082

Salisbury, McLister & Foley, LLP
 File No. 23-34051ACW
 Tax ID # 09-017712
 Property Address - 14005 Misty Glen Lane, Hagerstown, MD 21742

This Deed, made this 8th day of March, 2023, by and between Misty Knolls, LLC, GRANTOR, and Martin Lewis Boese and Nicole M. Boese, GRANTEES.

Witnesseth –

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All that lot or parcel of land situate, lying and being in Washington County, Maryland and being more particularly described as follows:

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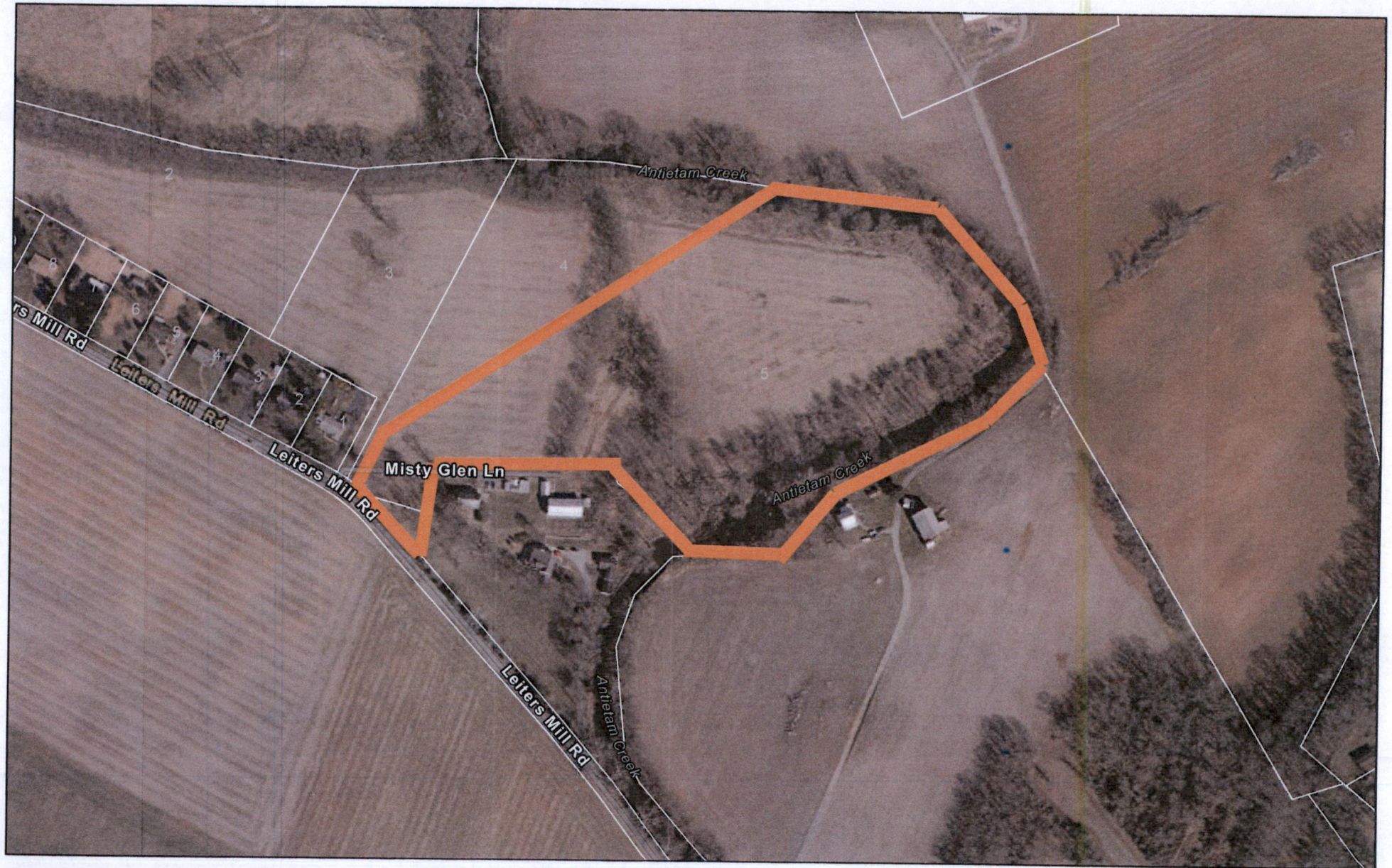
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Frederick Seibert & Associates, Inc.

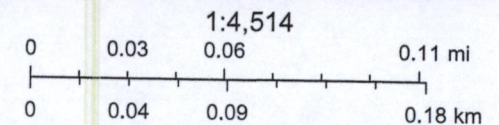


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World Transportation

Parcels

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Web AppBuilder for ArcGIS

Adjacent Owners List, Boese Special Exception

[illegible]



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	410.76'	73.38'	73.28'	S 46°24'28" E	10°14'06"



TAX MAP 26-7-417 DISTRICT 09

DRAWING NUMBER 1 OF 1

DRAWN BY:	DATE:
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CHECKED BY:	DATE:
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SCALE:	100
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**FREDERICK
SEIBERT &
ASSOCIATES, INC.**

©2023

CIVIL ENGINEERS SURVEYORS LANDSCAPE ARCHITECTS LAND PLANNERS
128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
200 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
6065 SOUTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013
SUITE 3, SHERMANSDALE, PENNSYLVANIA 17090

FAX (301) 739-4856

(717) 597-1007

301) 416-7478

Preliminary / Final Plat
PLOT PLAN

FOR

MARTIN LEWIS BOESE

& NICOLE M. BOESE

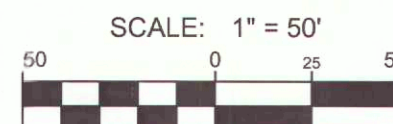
4005 MISTY GLEN LANE

HAGERTSOWN MD 21742

WASHINGTON COUNTY, MARYLAND



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	410.76'	73.38'	73.28'	S 46°24'28" E	10°14'06"



**FREDERICK
SEIBERT &
ASSOCIATES, INC.**

JOB NUMBER:
2023-0028.2

**FREDERICK
SEIBERT &
ASSOCIATES, INC.**

CIVIL ENGINEERS SURVEYORS LANDSCAPE ARCHITECTS LAND PLANNERS
28 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
00 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
05 SOUTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013
2201 SPRING ROAD, SUITE 3, SHERMANSDALE, PENNSYLVANIA 17090

06011 YIN
TAY (201) 720-1058

(717) 597-1007

(301) 416-7478

201 01 N
301) 791-3650

BZA
EXHIBIT
FOR
*MARTIN LEWIS BOESE
& NICOLE M. BOESE*
14005 MISTY GLEN LANE
HAGERTSOWN MD 21742
WASHINGTON COUNTY, MARYLAND

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

MARTIN & NICOLE BOESE
Appellants

Appeal No.: AP2023-047

*

*

*

*

* * * * *

OPINION

Martin and Nicole Boese (hereinafter “Appellants”) request a special exception to establish a second single-family dwelling on a parcel improved with a dwelling and a variance to reduce the side yard setback from 50 feet to 15 feet at the subject property. Appellant also requests a variance to reduce the side yard setback from 50 feet to 16.7 feet for a constructed accessory structure at the subject property. The subject property is located at 14005 Misty Glen Lane, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing on the matter on December 20, 2023.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants are the owners of the subject property located at 14005 Misty Glen Lane, Hagerstown, Maryland. The property is zoned Agricultural, Rural.
2. The subject property is located on the north side of Leiters Mill Road, just to the west of Leitersburg and directly adjacent to the homes that comprise Section A of the Mill Village subdivision. The subject property is bounded to the west by property owned by Joseph and Debbie Chukla and to the east by property owned by Ryan Householder. The subject property consists of approximately 14 acres with a single-family dwelling and a newly constructed pole barn structure.

3. The subject property was created in 2005 as part of the five (5) lot subdivision known as Misty Glen. At the time of creation, the applicable side yard setbacks were 15 feet.

4. In 2009, the Zoning Ordinance was amended to include special provisions for properties in the Agricultural zoning district. Specifically, properties of five (5) acres or more were required to have side yard setbacks of 50 feet.

5. Appellants originally planned to construct the pole barn behind the existing residence, but they discovered that the topography was too steep for building. The site was also very close to the floodplain area near the Antietam Creek and the septic reserve area. They settled on the existing location to right side of the home when viewed from Leiters Mill Road.

6. The pole barn site was relocated, and construction commenced, although the permit was not modified to reflect the change. During an inspection, the relocation issue was discovered, and the process was halted due to the setback issues.

7. The adjacent Householder property also has a barn/shed structure which is approximately 16 feet from the property line.

8. Appellants have also proposed to construct a second dwelling, approximately 32 feet by 35 feet, to be located toward the front of the property, close to Leiters Mill Road. The second dwelling would be connected to the same well and septic systems as the existing residence.

9. The second dwelling would utilize the same ingress and egress for the property which is shared with the primary residence and adjacent property owners. The current driveway serves five (5) separate homes.

10. Appellants have proposed the second dwelling for aging parents to relocate on the subject property as their needs for care and assistance will increase. Appellants also have an adult daughter who is high functioning but on the Autism Spectrum. There is the possibility that she could also utilize the second dwelling in the future as an

independent, but safe and close place to live as an adult.

11. Appellants have no intention to use the second dwelling as a rental and understand that the subject property could not be subdivided.

Rationale

Variance Related to Accessory Structure

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).)

In the instant case, the subject property is located in the Agricultural, Rural zoning district. Historically and still generally, the side yard setback requirement has been 15 feet for single family dwelling units. In 2009, Special Provisions were adopted and incorporated into the Ordinance under Section 5A.7. Specifically, special provision #4

¹ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

states, “[s]ide yard setbacks for residential uses lots shall be a minimum of 50 ft. for lots five (5) acres or greater in size.” As the subject property consists of approximately 14 acres, regardless of the actual developable area, special provision #4 applies in this case.

The Board heard testimony from Appellants that their original location behind the residence was eliminated due to the steep topography. It would have required serious excavation and fill costs to produce a level site for the pole barn structure. The decision was made to relocate the pole barn to the right side of the home close to the property line. Unfortunately, this was done without modifying the permit and construction was mostly completed before any issue was raised. As a result, the pole barn structure was located using the normal setback distance of 15 feet instead of the required 50 feet. Appellants testified that this was an honest mistake and that having to tear down the pole barn and move it would be very expensive. Appellants also pointed out that the adjacent properties both have structures closer than 50 feet to the property line and there are no issues. Appellants also testified that the 50-foot side yard setbacks severely limit and eliminate buildable area on the property. Under the circumstances, strict compliance would render conformance unnecessarily burdensome. The variance relief is necessary to relieve said burden, but still observes the spirit of the Ordinance and promotes the County’s investment in agricultural preservation.

Special Exception Request

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Article 28A. In addition, Section 25.6 sets forth the limitations, guides, and standards in exercise of the board’s duties and provides:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of the land and structure.
- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

The Board finds no cause for concern with respect to the number of people residing or working in the area, general traffic conditions, or nearby public gatherings. While there were concerns raised about the use of the shared drive, a second dwelling would not materially increase or exacerbate traffic conditions. Likewise, there was no evidence to suggest that the proposed use would create odors, dust, gas, smoke, fumes, vibrations, glare or noise that would affect the surrounding properties.

The Board heard testimony from Ryan Householder that he would be able to see the back of the second dwelling from his living room. Mr. Householder testified that when he moved in, the expectation was that each lot would only have one (1) home and that from the location of his home, he would not have to look at the back of another. He further stated that he had to sign covenants restricting construction to a single dwelling. Mr. Householder was very concerned about the peaceful enjoyment of his property and

the overall effect on his property value with the second dwelling located within the forward view of his home.

In order to construct the second dwelling, Appellants require a variance to locate the structure inside a small, triangular building area bordered by the western boundary, Leiters Mill Road and the driveway access and right-of-way. Given the need to reduce the setback by two-thirds and the small buildable area, there are questions about the appropriateness of the proposed use for the subject property. Moreover, it raises questions about whether the proposed use is consistent with the orderly growth of the community. Appellants assert that the second dwelling will be situated in line with the existing homes in the Mill Village and subdivision and as such, is both practically and aesthetically consistent with the neighborhood. However, the subject property would be the only property in that line of homes to have a second dwelling.

Mr. and Mrs. Chukla testified that although they were originally in support of the plan, they have changed their minds. They raised concerns for traffic and the overuse of the shared driveway. Mr. Chukla testified that he was concerned about what might happen once the Appellants no longer lived at the property, but the two dwellings remained. He was concerned about future attempts to rent or otherwise profit from the second dwelling. Mr. Chukla also pointed out that many of the surrounding residents had signed a letter opposing the proposed use.

Although Appellants correctly assert that there is a presumption of appropriateness given to special exception requests, the Board is nevertheless required to consider all of the factors and determine whether that presumption has been rebutted. The uniqueness of the shape and layout of the subject property, and the effect of the setback requirements render the request for a second dwelling problematic. The Board also has concerns about the proposed use being inconsistent with the current character of the neighborhood and impacting the peaceful enjoyment of the immediate neighbors. In light of these concerns, the Board finds that the proposed use is not appropriate for the

subject property, particularly in the location proposed. The Board is unable to find that the proposed use at the subject property will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, we conclude that this appeal does not meet the criteria for a special exception and therefore should be denied.

Variance Related to Second Single-Family Dwelling

In light of the Board’s decision to deny the special exception request for a second single-family dwelling, the Board finds that it is unnecessary to address the variance requests related to said use.

Accordingly, the request for a variance to reduce the side yard setback from 50 feet to 16.7 feet for a constructed accessory structure at the subject property is GRANTED, by a vote 5 to 0. The variance is granted upon the general condition that the use is consistent with the testimony and evidence presented. Appellant’s request for a special exception to establish a second single-family dwelling on a parcel improved with a dwelling at the subject property is DENIED, by a vote of 5 to 0. The accompanying request for variance relief related to the second dwelling is therefore moot.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: January 19, 2024

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.