

March 10, 2023

Via email to: Patricia.Wolford@montgomerycountymd.gov
Patricia Wolford, Zoning Section Manager
Department of Permitting Services
2425 Reedie Drive, 7th Floor
Wheaton, Maryland 20902

Re: Application for Non-Conforming Use Certificate and Exemption
Determination for 2230 Spencerville Road, Spencerville, MD 20868

Dear Ms. Wolford:

Our clients José and Nelsy Polanco seek a Non-Conforming Use Certificate to establish that the existing residence on their property at 2230 Spencerville Road, Spencerville, Maryland (the “Property”), together with its driveway, is a legal non-conforming use. They also request a determination that the residence and driveway on the Property are exempt from the 8% imperviousness cap of the Upper Paint Branch Overlay Zone (the “UPB Overlay”) under Code Section 59.4.9.20.B.1.

We have been working with the Polancos on a conditional use application for a landscape contracting use on the Property. As shown on the attached Impervious Study, the front portion of the Property is located within the UPB Overlay, which imposes an 8% cap on imperviousness. See Code Section 59.4.9.20.D. We have met with planning staff on this matter and determined that for staff to support a conditional use application for the Property, the existing house and driveway must be found exempt from the 8% impervious surface cap.

Section 59.4.9.20.B.1 provides for such an exemption, stating that “[a]ny impervious surface lawfully existing allowed by a building permit issued before July 1, 2007 may continue or be reconstructed under the development standards in effect when the building permit was issued.”

The difficulty has been that because the house was built in 1916, we have not been able to locate a record of a building permit for the Property. As an alternative, we believe that a Non-Conforming Use Certificate can serve as a means of validating the existing residential use and its associated impervious surface areas and, under the unique circumstances of this case, can serve to meet the intent of Section 59.4.9.20.B.1.

According to State Department of Taxation records, the existing residence on the Property was constructed in 1916. It therefore predates the Montgomery County Zoning Code. A residential use has been permitted on the Property by right at least since 1954, when the Property was shown in the R-R

(later R-200) zone on the County's zoning map, which permitted single family homes by right. The R-R zone designation continued on the 1958 zoning map and was reconfirmed in 1974 by Sectional Map Amendment F-926. The Property's zoning designation was changed to RE-1 by Sectional Map Amendment G-337 in about 1982, following a recommendation for the RE-1 zone in the 1997 Cloverly Master Plan (see Master Plan p. 35). The RE-1 zone also permits single-family homes by right. The Property remains in the RE-1 zone on the County's current zoning map and on the zoning map in effect on October 29, 2014.

The residence on the Property was the home of Margaret and Franklin Hume from August, 1964, until February, 2021. The Humes sold the Property to the Polancos by deed dated November 19, 2020, pursuant to a contract that permitted the Humes to remain in the home through February, 2021. The Humes moved out of the residence on February 14, 2021. Since that time, it has been the residence of members of the Polanco family. Thus, the residence and its driveway have been in continuous use at least since 1964.

The driveway serving the residence was installed by Franklin Hume as a gravel drive soon after his family moved to the property in 1964. The driveway served as the sole vehicular access point to the Property and residence and, therefore, was a legal, permitted improvement. Mr. Hume maintained and widened the driveway over the years, and ultimately paved the apron with concrete and the remainder with asphalt. This likely took place in 1990, when the Maryland Department of Transportation acquired the property frontage in connection with widening Spencerville Road. Following the road widening, Mr. Hume re-constructed the front portion of his driveway to provide a smoother connection to Spencerville Road. It is likely that he paved the driveway and installed the concrete apron at that time. When the Polancos purchased the Property, the driveway was asphalt and the apron was concrete but in poor condition. The Polancos repaired and resurfaced the driveway apron.

The earliest historical aerial photo we have identified shows that a driveway existed on the Property at the current driveway location in 1988. A 2002 photo shows that the driveway had been widened, as both the driveway and the apron were wider than those on the adjoining property to the east, in contrast with the 1988 aerial. Better clarity on a 2020 aerial photo shows that the driveway apron was paved with concrete at that time.

The following supporting documents are submitted as attachments to this letter:

1. Application for Non-Conforming Use Certificate
2. Impervious Exhibit with location map, site plan to scale, and aerial photographs showing the existing and location of the house and driveway over time.
3. Current photograph of the house and driveway.
4. Affidavit of Terry L. Hume
5. Affidavit of José Polanco
6. County Council adopting the UPB Overlay, July 11, 1995
7. List of adjoining and confronting property owners.
8. Map identifying properties listed as adjoining and confronting.

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The evidence summarized in this letter and shown in more detail through the submitted supporting documentation demonstrates that the residence and driveway on the Property were legal, permitted uses when created and became legal nonconforming uses when the UPB Overlay was adopted in 1995. The applicant requests issuance of a Non-Conforming Use Certificate to this effect as well as a finding that the Property is exempt from the 8% imperviousness cap, as it relates to the home and driveway, under Section 59.4.9.20.B.1.

Should any additional information be needed, please feel free to contact the undersigned directly, at 240-428-4671 or fcARRIER@bregmanlaw.com.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: 
Françoise M. Carrier



DPS

**Montgomery County
Department of Permitting Services**

Phone: 311 in Montgomery County or (240) 777-031
www.montgomerycountymd.gov/dps



Application for Non-Conforming Use

A. Location of Non-Conforming Use:

Street Number: 2230 Street Name: Spencerville Road
Town/City: Spencerville Zip Code: 20868
Nearest Cross Street: Batson Road Lot: _____ Block: _____
Parcel: P319 Election District: District 5
Maryland Real Property Tax Account Number: 05-00263833

B. Owner/Tenant Information:

Name of Property Owner/
Contract Purchaser/Tenant: José and Nelsy Polanco
Address: 2230 Spencerville Road
Town/City: Spencerville, Maryland Zip Code: 20868
Phone #: _____ Please contact attorney, Françoise Carrier, 240-428-4671 Email: Please contact attorney, Françoise Carrier, fcarrier@bregmanlaw.com

USE INFORMATION:

Type of Use (be specific): Residential house with driveway
Previous Use (if applicable): Not applicable.
Date Use Began: House built 1916. Driveway built approx. 1962
Date(s) of Construction: House 1916, driveway 1962
Property Description: Lot Size: 2.15 ac Dimensions: unknown
Improvements (Describe All): Single-family house and driveway. Rear paved area is not part of this application, but will be the subject of a future landscaping contractor Conditional Use application.
Present/Former Trade Names of Commercial Use: _____ Proposed trade name: Treeman, Inc.

C. The following information must be submitted at the time of application:

1. Name and Addresses of adjoining and confronting property owners; (identify location of each property owner on the location map.
2. Location map with site identified.
3. Site plan to scale showing the location of all structures and parking
4. Current Photographs of the property including all structures.
5. Evidence sufficient to establish that the use was lawful when established and continues to be lawful, even though it no longer conforms to the requirements of the zone in which it is located because of zoning ordinance or zoning map changes.
6. Evidence sufficient to show continuous use since initial establishment of the lawful use.

D. Affidavit for Non-Conforming Use:

I hereby declare and affirm, under the penalty of perjury, that:

1. I have read and understand Chapter 59, of the Montgomery County Code concerning non-conforming uses and related policies.
2. I understand the conditions and requirements applicable to non-conforming uses.
3. I agree to abide by all the rules and procedures set forth in these documents.

Jose M Polanco

03-09-2023

José (Manny) Polanco

Applicant's Signature

Date

Print Name

FOR OFFICE USE ONLY DO NOT WRITE BELOW THIS LINE

Application Reviewed for Completeness by: _____ Date: _____

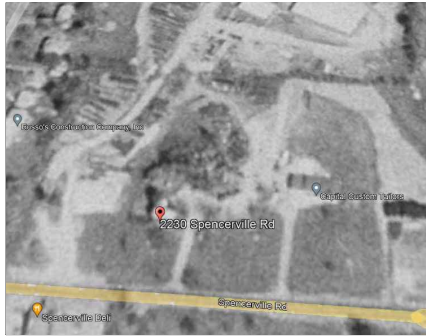
Present Zoning Classification _____

Non-Conforming Use: Approved Disapproved

Reason for Disapproval:

Reviewing Investigator: _____ Date: _____

Zoning Supervisor: _____ Date: _____



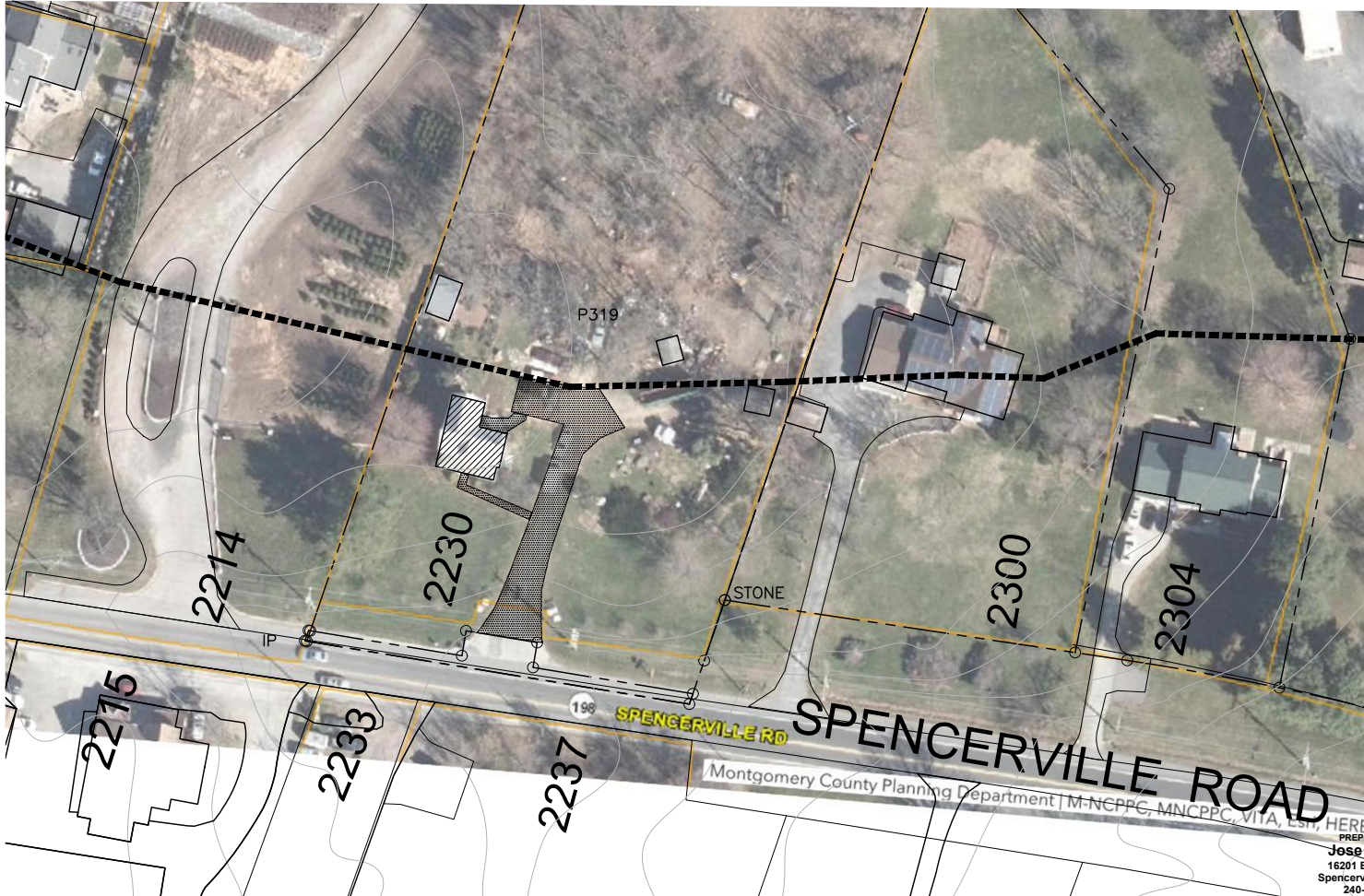
GOOGLE EARTH 1988



GOOGLE EARTH 2002



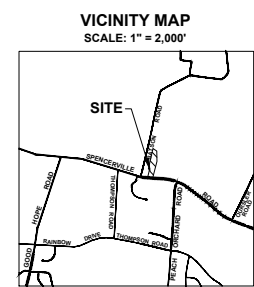
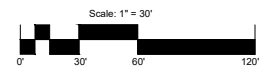
GOOGLE EARTH 2020



EXISTING IMPERVIOUS TABULATION WITHIN SPA

| | |
|---------------------|------------------|
| EXISTING SPA | 34,717 SQUARE FT |
| EXISTING BUILDING | 1,178 SQUARE FT |
| EXISTING DRIVEWAY | 3,605 SQUARE FT |
| EXISTING FRONT WALK | 186 SQUARE FT |
| EXISTING REAR PATIO | 172 SQUARE FT |
| TOTAL | 5,141 SQUARE FT |

- LEGEND:**
- PROPERTY LINE
 - SPA DIVIDE
 - EXISTING RESIDENCE
 - EXISTING RESIDENTIAL DRIVEWAY/ WALK/PATIO



PREPARED FOR:
Jose Polanco
16201 Batson Road
Spencerville, MD 20868
240-353-0444

Sheet 1 of 1

Revisions

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date: 9/16/2021
1" = 30'
scale:

nld
NORTON LAND DESIGN
5146 CORSEY HALL DRIVE
ELLCOTT CITY, MD 21042
0443.8424.00
NORTHWOODS.COM
LANDSCAPE ARCHITECTURE & ENVIRONMENTAL PLANNING

IMPERVIOUS STUDY
2230 SPENCERVILLE ROAD
(Parcel 319, Tax Map KS342)
Montgomery County, Maryland

Recent Photograph of 2230 Spencerville Road from Spencerville Road

Photo Taken November 2022



**APPLICATION TO THE MONTGOMERY COUNTY DEPARTMENT OF
PERMITTING SERVICES
for
CERTIFICATE OF NONCONFORMING USE**

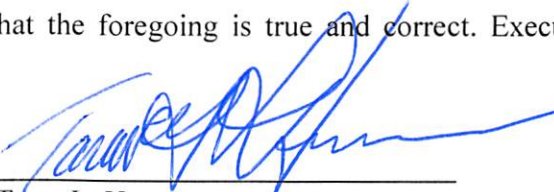
**Applicants: José and Nelsy Polanco
Subject Property: 2230 Spencerville Road, Spencerville, Md. 20868**

AFFIDAVIT OF TERRY L. HUME

I, Terry L. Hume, upon personal knowledge hereby submit this affidavit pursuant to 28 U.S.C. § 1746, and declare as follows:

1. I am a citizen of the United States and a resident of the District of Columbia.
2. My mother, Margaret Hume and my late father, Franklin Hume, moved our family to 2230 Spencerville Road, Spencerville, Maryland (the "Property"), in August 1962. We lived in the existing home on the Property, which was served by a gravel driveway that my father installed soon after moving onto the Property.
3. The gravel driveway, which my father maintained and widened over the years, was necessary to facilitate vehicular access to the house, serving as the only means of ingress/egress for the Property along Spencerville Road.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on March 9, 2023.



Terry L. Hume

Resolution No.: 13-215
Introduced: May 16, 1995
Adopted: July 11, 1995

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Upper Paint Branch Watershed Special Protection Area

Background

1. The Paint Branch is a moderately sized tributary stream to the Anacostia River's Northeast Branch. The Paint Branch stream is located in portions of the Cloverly and Fairland/White Oak Planning Areas of Eastern Montgomery County. The headwaters of the Paint Branch originate near Spencerville, Maryland and follow a southeasterly course for a distance of 17 miles through Montgomery County into Prince George's County.
2. Maryland Water Resources Administration, having observed that portions of the Paint Branch stream sustains a naturally reproducing brown trout population since 1973, designated the entire area of Paint Branch above the Capital Beltway as "Use III Waters" under Maryland's adopted watershed classification system. The presence of naturally reproducing trout species in Maryland waters is indicative of the highest measure of water quality, and, consequently, is afforded the highest order of resource protection under State and County laws and policies.
3. The County Council from time to time receives and evaluates information concerning watershed resource management, prepared by qualified representatives of various public agencies from Montgomery County, the State of Maryland, and from other affected Maryland Counties.
4. The Council has been advised by the Park and Planning Commission that certain portions of the Paint Branch watershed are experiencing considerable stress as a result of development pressure which may lead to degradation of these resources. In particular, the resources consist of the headwater tributary areas and portions of the main stem of the Paint Branch north of Fairland Road, located in Montgomery County, namely the Good Hope, the Gum Springs, the Right Fork and Left Fork.
5. The Park and Planning Commission's conclusions are contained in a technical report on the designation of the Upper Paint Branch Watershed as a Special Protection Area and are supported by preliminary findings of the Maryland Department of Natural Resources (MdDNR) and the Maryland Department of the Environment (MDE). Analysis of changes to in-stream cross-section and in-stream habitat conducted by MdDNR, the Planning Department and Department of Parks, and staff of the Washington Council of Governments confirms that

these resources while still healthy are facing serious levels of stress. The Staff Draft Limited Amendment to the Eastern Montgomery County Master Plan, Expanded Park Acquisition/Resource Management Plan, dated May 1995 provides further supporting information relevant to findings, conclusions, and recommendations regarding the status of the Upper Paint Branch Watershed.

6. The Anacostia Watershed Restoration Committee's Upper Paint Branch Work Group, chaired by the Montgomery County Department of Environmental Protection, has similarly studied the Upper Paint Branch Watershed. The Work Group reached similar conclusions concerning stress being experienced by the stream and its tributaries and the need to carefully protect this resource.

7. Protecting the water quality and quantity of the Upper Paint Branch Watershed and its tributaries, as well as the varied biodiversity situate in these resources, has been assigned a high degree of importance by State and County policies. A robust Paint Branch stream system, especially its headwaters, aside from its aesthetically pleasing appeal, contributes to the health of the entire watershed.

8. The 1981 Master Plan for Eastern Montgomery County recognized the importance of the Upper Paint Branch Watershed as a critical resource for the County. Numerous factors contribute to make the Upper Paint Branch Watershed resource an important asset for Montgomery County and the State, including the very high water quality of the stream, its unique habitat conditions, the particular presence and status of several environmental features in the watershed, and its capacity for supporting self-reproducing populations of aquatic species. Since the adoption of the Master Plan, the County has endeavored to implement the watershed protection goals and objectives through a variety of strategies that which include downzoning, park acquisition, and the development and use of stormwater management performance criteria.

9. The County has committed almost \$3 million in performing stormwater management retrofits and stream restoration projects in the Anacostia Watershed since 1993. In addition, the County has acquired sizeable parcels of property in the watershed. The thrust of these efforts is to improve local stream water quality and protect waterway conditions, enhance aquatic habitats, and create wetlands.

10. State and Federal watershed/water quality anti-degradation policy requires that existing water quality be maintained. The policy precludes governmental conduct consciously allowing or facilitating the degradation of a watershed, unless MDE determines that a change to a lower quality designation is justifiable as a result of necessary economic or social development. Thus far no information has been articulated in support of a finding that some degradation of the Paint Branch Watershed is necessary in light of economic or social circumstances.

11. The Economic Growth, Resource Protection, and Planning Act of 1992 requires Montgomery County to protect sensitive areas (defined to include streams and buffers) through its exercise of the planning, zoning, and subdivision powers.

12. Since the adoption of the Master Plan, the Park and Planning Commission, DEP, MdDNR, MDE, and the Upper Paint Branch Work Group and other State and County agencies have examined the nature, intensity, type, and location of development that has occurred, based upon approvals both before and after the Master Plan was adopted in 1981. These examinations indicated declining water quality and aquatic habitat conditions in tributaries of the Upper Paint Branch and were attributed to the effect from increased levels of imperviousness in sensitive areas of the watersheds and other developmental impacts.

13. As part of its work in preparation of both the May, 1995, limited-purpose plan amendment and the comprehensive amendment to the 1981 Eastern Montgomery County Master Plan, the Park and Planning Commission analyzed data that has been collected relating to the vitality of the Upper Paint Branch Watershed. Principal considerations to be balanced include appropriate land uses associated with development activity and compliance with the established Performance Criteria.

14. The amount and location of such factors as impervious areas are key benchmarks in determining the long term vitality of the health and quality of a given stream. Rain water can penetrate pervious areas, thus maintaining levels of groundwater, controlling erosion, and allowing the ground to naturally filter water and control temperature. Current levels of impervious surface and the resulting effect on the Use III designation of the Upper Paint Branch Watershed are approaching critical levels according to estimates made by the Park and Planning Commission and MdDNR Staff.

15. Preliminary findings by the Park and Planning Commission indicate that in order to maintain the viability of this very high quality, cold water Use III stream system resource, impervious levels and other parameters need to be kept in check. Information available to the Commission indicates that engineering solutions do not appear to suitably offset development impacts and protect the cold water resource. Deterioration of water quality and habitat, in part taking the form of increased sedimentation and erosion, have been observed in these watersheds.

16. It is the position of the Council that the Upper Paint Branch Watershed will best be protected through the combined application of the Special Protection Area law and performance criteria as established in the 1981 Eastern Montgomery County Master Plans. The Council supports the establishment of relevant and appropriate performance criteria under Planning Board guidelines and Executive Regulation and rigorous application of the performance criteria in the review of water quality plans.

17. Because of the sensitivity and current condition of the Upper Paint Branch Watershed, it is the position of the Council that each applicant proposing any land disturbance activity in the watershed must submit water quality plans and undergo water quality reviews as provided in the Special Protection Area legislation.

18. The County Council, based upon available evidence, finds that: 1) the Upper Paint Branch Watershed together with its associated supporting plant and animal species, have been previously designated and continue to be watershed resources of critical importance to the needs and interests of Montgomery County residents; 2) protection of the Upper Paint Branch Watershed is essential to the promotion of the public health, safety and welfare; and 3) the Upper Paint Branch Watershed is of particular importance because it, among other things:

- o supplies the imperiled Anacostia River system with the highest quality of naturally occurring water which is of critical importance to inter-jurisdictional efforts to restore the watershed and prevent its further degradation within the region and in Montgomery County;
- o currently complies with Federal and State clean water standards governing the control of point and non-point pollution levels;
- o maintains quality groundwater sufficient for potable utilization through existing private wells and reserves for potential use as a source of public drinking water;
- o provides efficient management of stormwater runoff without flooding, stream channel erosion, pollution, siltation, and sedimentation, and, consequently, without adverse impacts to water and land resources within Montgomery County and the State;
- o provides suitable habitat and conditions that sustain a high degree of naturally occurring biodiversity of plant and animal species, including a naturally reproducing brown trout population;
- o provides numerous scenic and recreational opportunities; and
- o features a diverse landscape supporting a broad diversity of wildlife habitats.

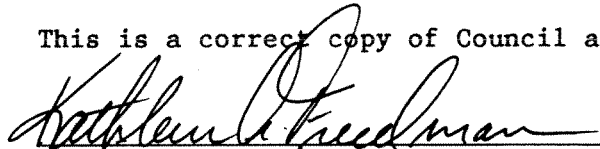
19. The Council, in acknowledging the critical need to protect the Upper Paint Branch Watershed, reaffirms that the design and construction of all public projects in the watershed, including roads, buildings, structures, and other facilities, must conform to the water quality plan submission and review requirements established in the Special Protection Area legislation. The Council notes that the application of the Special Protection Area law does not preclude the construction of any public project, including those delineated in the Eastern Montgomery County Master Plan, such as the widening of Briggs Chaney Road, the Intercounty Connector, or the expansion of the Spencerville Post Office.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

In order to protect and manage the Upper Paint Branch Watershed as a very high quality, cold water Use III stream system resource, the County Council: 1) designates the Upper Paint Branch Watershed, as shown on the attached map, a Special Protection area under Section 19-62(a)(4), Montgomery County Code; and 2) as authorized under Sec. 19-63(b), requires each applicant proposing any land disturbance activity within the Upper Paint Branch Special Protection Area to submit a water quality plan for review in accordance with the Special Protection Area legislation.

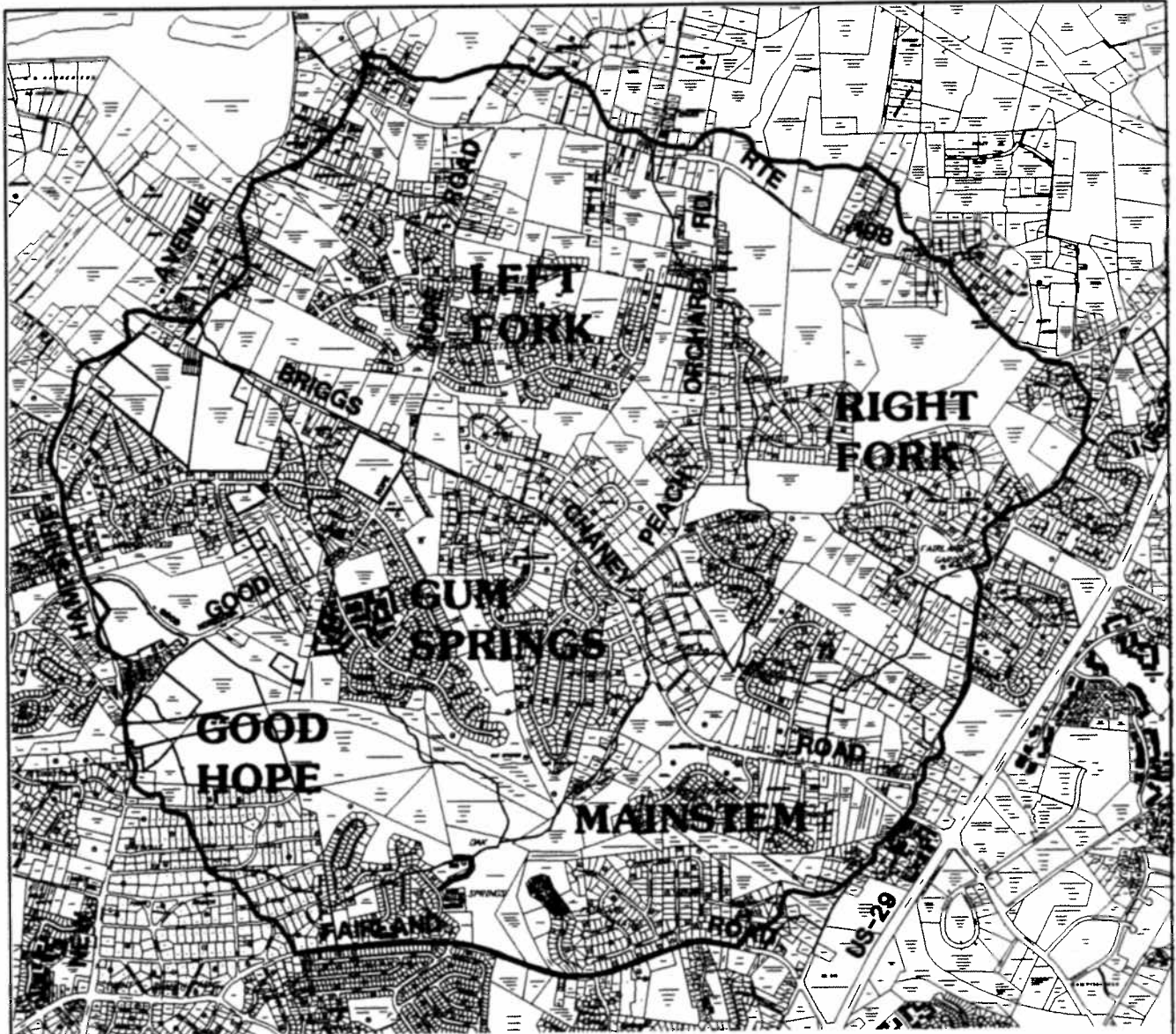
This is a correct copy of Council action.



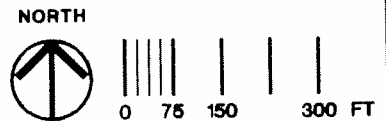
Kathleen A. Freedman, CMC
Secretary of the Council

Z/860/1-5

UPPER PAINT BRANCH - SPECIAL PROTECTION AREA



- SPECIAL PROTECTION AREA BOUNDARY
- SUB-WATERSHED BOUNDARIES

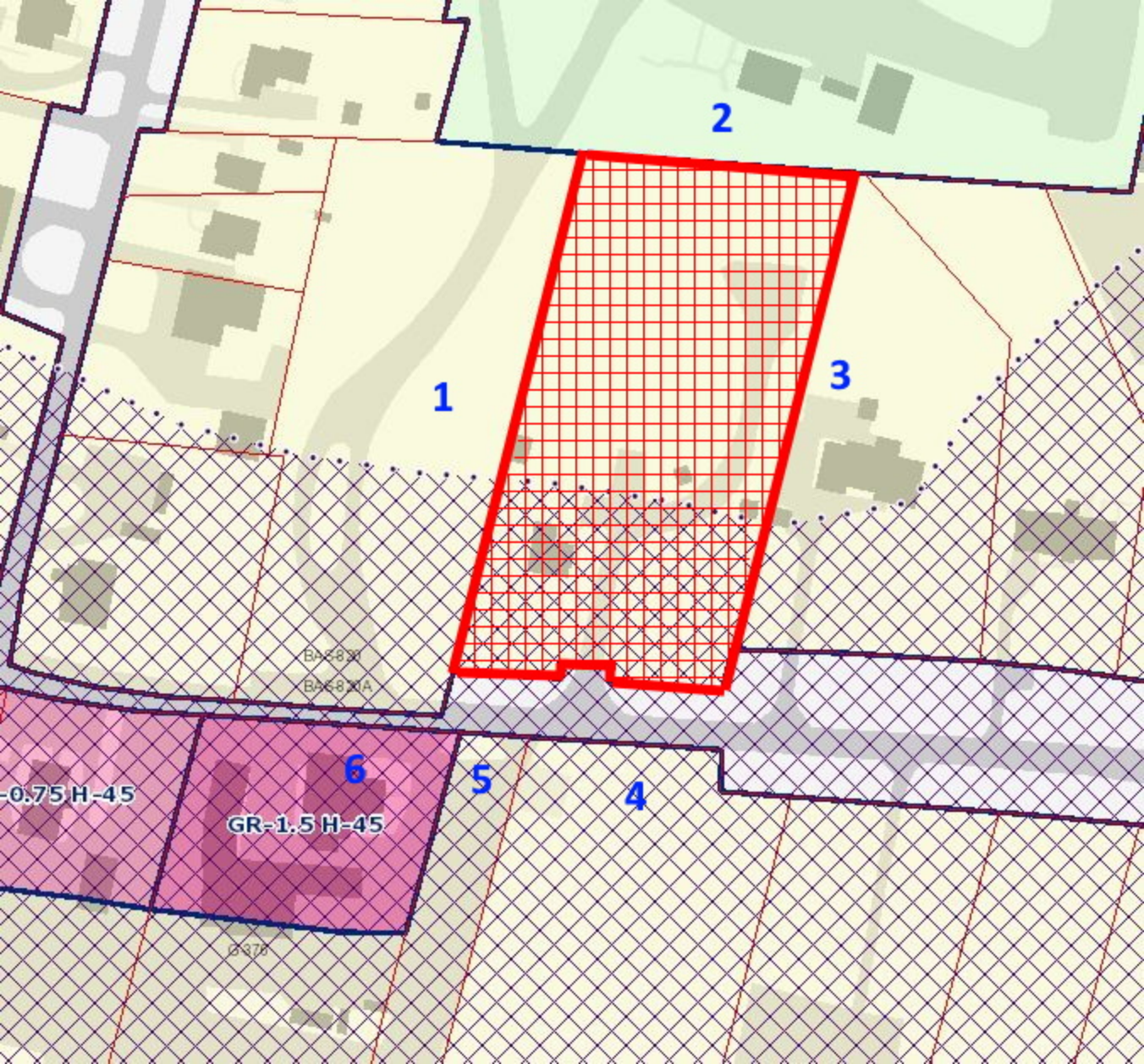


2230 Spencerville Road - Adjoining and Confronting Properties

Adjoining and Confronting Property Owners

| Owner Name (First) | Owner Name (Second) | Street Address | Mailing Address |
|---|---------------------|----------------------|------------------------------|
| Charles S Stephens Jr | | 2214 Spencerville RD | 2214 Spencerville RD |
| Charles S Stephens Jr | | 2214 Spencerville RD | 2214 Spencerville RD |
| Jong S Park | Soon K Park | 2300 Spencerville RD | 2300 Spencerville RD |
| Full Gospel Washington Church-Assembly Of God | | 2235 Spencerville RD | 12115 Heritage Park Cir |
| 2141-2229 Spencerville Road LLC | | 2229 Spencerville RD | 4641 Montgomery Ave. Ste 200 |
| 2141-2229 Spencerville Road LLC | | 2215 Spencerville RD | 4641 Montgomery Ave. Ste 200 |

| City | State | Zip | Property |
|---------------|-------|-------|----------|
| Spencerville | MD | 20868 | 1 |
| Spencerville | MD | 20868 | 2 |
| Spencerville | MD | 20868 | 3 |
| Silver Spring | MD | 20906 | 4 |
| Bethesda | MD | 20814 | 5 |
| Bethesda | MD | 20814 | 6 |



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BA-8.2
BA-8.2(A)

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GR-1.5 H-45

0.75 H-45

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