



May 26, 2017

## TECHNICAL STAFF REPORT

*Hearing Examiner hearing of June 5, 2017*

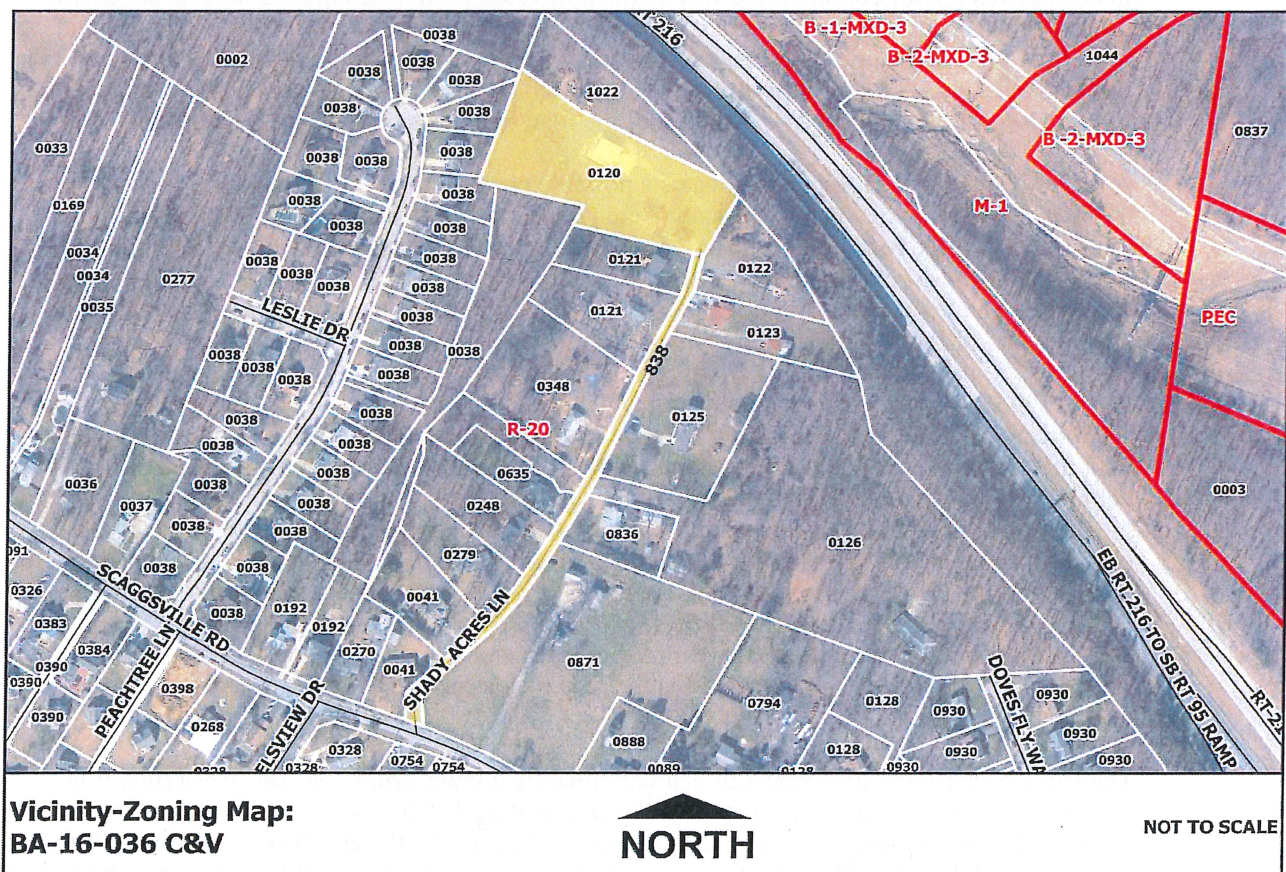
**Case No./Petitioners:** BA-16-036C&V – Miller Family Trust and Shady Acres Lane, LLC

**Request:** Conditional Use for a Home-Based Contractor (Section 131.0.N.28.). Variance to reduce the 20 foot use setback to zero feet for a use-in-common driveway and gravel parking area (Section 108.0D.4.c.(2)).

**Location:** Sixth Election District  
Northern terminus of Shady Acres Lane approximately 1,230 feet north of Scaggsville Road; Tax Map 47, Grid 7, Parcels 120 and 838; 10430 Shady Acres Lane (the "Property").

**Area of Property:** 2.99 acres

**Zoning:** R-20 (Residential: Single)



## I. CONDITIONAL USE AND VARIANCE PROPOSALS

The Petitioners request Conditional Use approval of an existing Home-Based Contractor use consisting of an office, storage of equipment and materials within an existing 42.2-foot by 52.2-foot metal-sided garage (“Contractor Garage”) and a 7,797-square foot outdoor gravel-surfaced area, and three commercial vehicles. The use will have five employees and no customers or vendors will visit the Property.

The only proposed changes to the site are the relocation of an existing pipe rack, located west of the garage, to comply with the setback requirements; the construction of a six-foot board-on-board fence on the west side of the parking and storage area; the planting of 15 White Spruce trees along the rear lot line and a portion of the south side lot line; and the planting of four Leyland Cypress in the area to the southeast of the garage.

### Variance

The Petitioners request a variance to reduce the 20-foot use setback to zero feet for the existing driveway and for a portion of a parking area located to the north of the Contractor Garage, labeled as a gravel parking area on the Conditional Use Plan.

## II. BACKGROUND INFORMATION

### A. Site Description

The Property includes two parcels, Parcel 838 and Parcel 120, which total 2.99 acres. Parcel 838 is an approximately 20-foot wide by 730-foot long parcel, which contains the Shady Acres Lane private road. According to the plan, this parcel extends from the southeastern corner of Parcel 120 in a southwesterly direction all the way to the north side lot line of Parcel 248. The pavement width of the private road varies, but it generally ranges between 10 and 11 feet wide. In total, 15 parcels or lots have vehicular access using Shady Acre Lane. From the north side of Parcel 248, the road extends across front portions of Parcel 248, Parcel 279, and Lots 1 and 2 or Parcel 41, within a use-in-common right-of-way, until the road intersects with Scaggsville Road.

A review of aerial photographs indicates a possible error on the Conditional Use plan with respect to the location of a portion of the Shady Acres Lane road pavement. On the plan, before the northern end of the road adjoins with Parcel 120, the road pavement is depicted as extending across the northeast corner of the adjacent Parcel 78. However, the aerial photograph does not show this. The Petitioners should address any potential inaccuracies on the plan related to the northern end of Parcel 838 and Shady Acres Lane.

Parcel 120 is an irregularly-shaped parcel which has both residential improvements and improvements associated with the proposed Conditional Use. At the southeast corner of Parcel 120, the driveway enters the parcel from Shady Acres Lane. To the west of the entrance is a two-vehicle detached garage with a paved parking pad in front. Approximately 33 feet to the west of the detached garage is a one-story, single-family detached dwelling. The driveway drops in elevation and curves to the northwest, beyond these two buildings, and extends to the Contractor Garage and the paved areas around this garage. There are gravel surfaced areas around the Contractor Garage, but the largest of these are to the south and west of this garage. Approximately 65 feet to the southwest of the Contractor Garage is a block shed, and approximately 60 feet to the northwest is the pipe rack structure which is proposed to be relocated.

The front, eastern half of Parcel 120 is predominantly a lawn, while the rear, western half is mostly a gravel covered area, except that the rear of Parcel 120 is wooded. The highest point on Parcel 120 is at the southwestern corner. From this high point, the elevation drops towards the east to a pond that is south of the Contractor Garage area, and towards the northeast to the lowest

point along the portion of the side lot line that is to the north of the house. The total elevation change from the high point to the low point is approximately 38 feet.

B. Vicinal Properties

The vicinal properties descriptions are based on the properties surrounding the Parcel 120 portion of the Property. All adjacent properties are zoned R-20. To the north of the Property is Parcel 1022, which is owned by BGE and is unused. To the north of Parcel 1022 is MD 216. The properties to the south are Parcel 78, which is improved with a single-family detached dwelling fronting on Shady Acres Lane, and Open Space Lot 36 of the Rosemont subdivision. To the west of the Property are Open Space Lot 37, and the single-family residential lots in the Rosemont subdivision that front on Rosemont Drive. The residential lots to the southwest of the Property are at a significantly higher elevation than the areas surrounding the Contractor Garage on the Property. The areas around this garage are approximately 340 to 342 feet in elevation, while the residential lots to the southwest range from 370 to 390 feet in elevation.

C. Roads

Scaggsville Road has two travel lanes and approximately 25 feet of paving within a variable width right-of-way. The posted speed limit is 30 miles per hour.

The estimated sight distance from the Shady Acres Lane private road is approximately 420 feet to the southeast and 400 feet to the northwest. However, precise sight distance measurements can only be determined through a detailed sight distance analysis.

There is no current traffic volume data for this portion of Scaggsville Road.

D. Water and Sewer Service

The Property is in the Metropolitan District and within the Existing Service Area, according to the Howard County Geographic Information System maps.

The site will be served by public water and sewer facilities.

E. General Plan

The Property is designated Established Communities on the Designated Place Types Map of the PlanHoward 2030 General Plan, and Low Density Residential on the Land Use Map.

This portion of Scaggsville Road is depicted as a Local Road on the Transportation Map of the PlanHoward 2030 General Plan.

F. Agency Comments

The Department of Recreation & Parks, the Department of Fire and Rescue Services, and the Department of Inspections, Licenses and Permits all reported that they have no comments on the petition.

III. EVALUATION AND CONCLUSIONS

A. Evaluation of petition according to Section 130.0.B.2.a. of the Zoning Regulations (general criteria for evaluating variances):

1. *That there are unique physical conditions, including irregularity, narrowness or*

*shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.*

Parcel 838 is a 20 foot wide pipe stem lot that serves as a use in common driveway for 15 lots, including the petitioners. The use of this driveway for the Home-Based Contractor Conditional Use activates the 20 foot use setback, as it traverses the lot and hugs the property line in multiple locations. The narrowness of the lot results in a practical difficulty for an existing 10 to 11 foot wide driveway to comply with the 20 foot use setback.

The existing gravel parking area may have existed prior to the creation of Parcel 1022, however, there are no unique physical conditions that warrant a variance to maintain this use area. There is approximately 14 feet between the Contractor Garage and the use setback line, which is wider than the driveway and there is ample space to the south of the Contractor Garage for vehicle circulation.

Because there is no finding of unique physical conditions for the gravel parking area variance, the subsequent evaluations are only for the variance related to the existing driveway.

2. *That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.*

The Parcel 838 driveway has existed for many years and it provides vehicular access to 14 other properties. Allowing the driveway to be used by the proposed Conditional Use would maintain the character of the neighborhood.

3. *That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.*

Parcel 838 was purchased by the Petitioner Shady Acres Lane, LLC in 2016 and the driveway existed at that time. Therefore, the practical difficulties were not created by the Petitioner.

4. *That within the intent and purpose of these regulations, the variance, if granted, is the minimum variance necessary to afford relief.*

Variance Request 1, to maintain the use of the existing driveway within Parcel 838, is the minimum necessary for relief.

B. Evaluation of petition according to Section 131.0.B. of the Zoning Regulations (general criteria for Conditional Uses):

1. *The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.*



There are no General Plan policies which are specifically related to the Home-based Contractor Conditional Use category. Home-base Contractors are generally considered compatible with residential areas, since they are accessory to residential uses and require that the operator occupy the dwelling. The proposal complies with the Specific Conditional Use criteria related to employees, storage, and commercial vehicles, other operational characteristics.

2. *The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.*

The petitioner proposes five employees, two of whom live on the property, three commercial vehicles, and 10,000 square feet of indoor/outdoor storage on a 2.5 acre property. The proposed use complies with the lot size, employee, and storage conditional use criteria. Except for the minor variances, the proposed use complies with all structure and use setback requirements.

3. *The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.*

As described in the Petition, the use is not likely to generate a significant fumes or odors, will not have intense lighting, and will not cause vibrations or hazards. However, it is anticipated that the proposed use may generate some noise and potentially some dust. The noise would most likely be related to loading and unloading materials and equipment, back-up warning sounds from vehicles, the movement of vehicles on the gravel-surfaced areas, and the voices of employees. Any noise generated by the use is likely discernable from the Rosemont community to the west because it is at a much higher elevation than the areas surrounding the Contractor Garage; where most of the on-site activities would take place.

The movement of vehicles and equipment on the gravel-surfaced areas may generate dust. If a Site Development Plan is required for the use, all vehicle circulation areas and parking and storage areas will require paving, which would eliminate the potential for dust. Therefore, DPZ recommends that a Site Development Plan be required as a condition of approval. A Site Development Plan would also need to address any stormwater management issues.

The impact of the aforementioned effects will not be greater at the Property than it would generally be elsewhere for a Home Based Contractor in the R-20 zoning district.

4. *The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.*

The Petitioners propose two methods to screen and buffer the use from the Rosemont community - planting 15 White Spruce trees along the rear lot line and a portion of the

south side lot line and installing a six-foot board-on-board fence, which would run in a Z-shape through the open area to the west of the Contractor Garage. Due to the higher elevation of the Rosemont community, in comparison the areas surrounding the Contractor Garage, locating the fence farther up the slope is recommended to better mitigate noise.

The Petitioners also propose planting four Leyland Cypresses in the area to the southeast of the Contractor Garage to screen and buffer the Contractor Garage from the neighboring properties to the southeast.

5. *The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.*

The Home-based Contractor land use requires 1.0 space per nonresident employee working on the premises at peak use, plus 1.0 space for each visitor potentially present at peak use. The Petitioners proposes 5 employees, two of whom live on the property, and three commercial vehicles. No vendors or customers visit the Property. The Conditional Use Plan indicates 10,000 square feet for parking and storage, which is more than adequate to accommodate up to 3 parking spaces.

Since the loading areas are not specified, there is no way to evaluate if they are appropriately located and buffered. Should loading takes place in front of the Contractor Garage, that area would be screened by the proposed Leyland Cypress buffer. However, loading could also occur within the open parking and storage area to the southwest and west of the Contractor Garage. DPZ recommends the Petitioners provide more details to the Hearing Authority on these activities.

6. *The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.*

Based on existing conditions, the Shady Acres Lane access point on Scaggsville Road is approximately 420 feet from a bend in the road located to the southeast, and approximately 400 feet to the northwest. According to the American Association of State Highway and Transportation Official guidelines, based on an estimated stopping sight distance of 200 feet for a car going 30 miles per hour, the existing access point on Scaggsville Road appears to provide safe access, with adequate stopping sight distance.

However, a professional sight distance analysis would need to be conducted to conclusively evaluate sight distance at the proposed location. A professional sight distance analysis is typically conducted when the Site Development Plan is submitted. Approval of the Site Development Plan would be contingent upon complying with all Howard County design criteria, including sight distance.

Shady Acres Lane is shared with a number of other residential properties. Given the existing nature of the driveway, DPZ has not identified any adverse impacts to the convenience or safety of the shared use.

7. *The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.*

There is a pond located on and adjacent to the south side of the Property; however, it is unlikely that the proposed use will have any adverse impact on that area.

8. *The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.*

There are no nearby historic sites on the Property or in the vicinity.

C. Evaluation of petition according to Section 131.0.N.28 (Specific Criteria for Home-based Contractors):

1. *The minimum lot size is three acres in the RC and RR Districts. The minimum lot size is 2.5 acres in the R-20 district and the lot shall abut an intermediate arterial highway, as designated in the General Plan.*

The Property is zoned R-20 and is 2.99 acres. According to the plan, 10.67 feet of the north side lot line adjoins MD 216, an Intermediate Arterial highway. Although the Howard County Zoning Regulations do not define the term 'abut', the term 'adjoin' is defined as - "land which is touching or would be touching in the absence of an intervening utility or read right-of-way, other than a principle arterial highway." Other than the directly adjoining 10.67 feet, the remainder of the north property line is separated from MD 216 by a BG&E easement, and, therefore, meets this criterion.

2. *The number of commercial vehicles parked on the site shall be limited to three commercial vehicles for lots up to six acres, and five commercial vehicles for lots larger than six acres and not more than 20 acres. On lots larger than 20 acres, the Hearing Authority may approve additional commercial vehicles, as is determined to be appropriate based upon the character of the property and its relation to the surrounding area.*

The Petitioners states that there will be three commercial vehicles on the Property.

3. *On lots six acres or fewer, the area used for parking and storage of commercial vehicles, equipment and supplies, whether exterior or interior, shall be limited to no more than 50% of the area of the lot or 10,000 square feet, whichever is less. On lots larger than six acres, the area used for these purposes shall be limited to no more than 5% of the lot or one acre, whichever is less.*

The Petitioner proposes 10,000 square feet of indoor and outdoor storage. On the Conditional Use Plan, this area is defined as 2,203 square feet inside the Contractor Garage and 7,797 square feet in the open areas to the south and west of the Contractor Garage.

4. *In the RR and RC Districts, structures used for the Conditional Use shall be at least 50 feet from lot lines and all outdoor parking or storage areas shall be at least 100 feet from lot lines. In the R-20 district, structures for and uses of the home-based contractor conditional use shall be restricted as follows:*

- (1) *The use shall not alter the residential appearance of the neighborhood.*
- (2) *The structures used for the Conditional Use shall be at least 100 feet from the nearest residential lot lines.*
- (3) *Outdoor parking or storage areas shall be at least 75 feet from residential lot lines and screened from public streets and residential lots by solid walls, fences, or a tree buffer at least 25 feet wide.*

The petition notes that the proposed fence would not alter the residential appearance, but it does not address the appearance of the proposed Contractor Garage or pipe rack areas. DPZ recommends that additional information regarding the design of this building and pipe rack be submitted for evaluation.

The proposed outdoor parking and storage area is located at least 90 feet from lots or parcels improved with a single-family residence. The Contractor Garage and the pipe rack are located at least 100 feet from lots or parcels improved with a single-family residence.

5. *The location and design of the operation shall be such that the use will not be a nuisance to residents of neighboring properties due to noise, dust or fumes. Particular consideration shall be given to the location of loading areas, parking and circulation areas, and driveways in relation to neighboring properties.*

The proposed parking and storage areas are located approximately 100 feet and the proposed indoor parking/storage building is over 150 feet from the adjoining residentially developed properties. A significant vegetation screen is proposed to mitigate potential impacts. The driveway is in an area that has the least impact on adjacent residentially developed properties.

6. *If the driveway providing access to the proposed site is shared with other properties, the petitioner shall demonstrate that the use will not result in damage to or deterioration of the shared driveway or in increased hazards to other users of the driveway.*

The Petitioners state that the use "...has operated on a shared use-in-common private road without adverse effects, it has not caused damage to, deterioration of or increased hazard to other users of the shared private roadway..."

7. *Parking and storage areas shall be restricted as follows:*
  - (1) *Supplies shall be stored within a building, except that mulch, compost, soil, sand, stone and other natural materials may be stored outdoors. Supplies stored outdoors must be fully screened from surrounding properties and roads by vegetation, fencing or other appropriate means in accordance with the County Landscape Manual.*
  - (2) *Equipment shall be either stored within a building or screened from surrounding properties and roads by vegetation, fencing or other appropriate means in accordance with the Howard County Landscape Manual.*

The Petitioners propose a six-foot opaque fence and vegetative screen between the outdoor storage area and the adjacent residentially developed property. The type of material that will be stored on the property is not identified. DPZ recommends that the



Petitioners describe the type of materials that will be stored outside on the Conditional Use Plan.

8. *The Hearing Authority shall establish the maximum number of employees permitted on the lot and the maximum allowable number of employee trips per day.*

The Petitioners propose 5 employees, four of whom are family members.

9. *The Hearing Authority shall establish the days and hours of operation.*

Due to the proximity of the neighboring residential uses, DPZ requests that the Hearing Authority establish hours of operation and consider limiting the hours of operation in the evenings and on weekends.

10. *New structures or additions to existing structures shall be designed to be compatible in appearance and scale with other residential or agricultural structures in the vicinity, as demonstrated by architectural elevations or renderings that shall be submitted with the petition.*

No additions to existing structures are proposed. The only new structure is a six-foot board-on-board fence, which is compatible in appearance and scale with residential areas.

11. *Minor repairs to vehicles or equipment shall be permitted, provided such activities take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities shall not be permitted.*

The Petitioner states that minor repairs will be conducted within the Contractor Garage.

12. *Where two or more adjacent lots are under common ownership and used as a single homesite, home-based contracting uses may be located on a different lot than the principal dwelling, if the Hearing Authority determines that this will provide a more compatible location in relation to vicinal properties that effective screening will be provided by using existing site features, or that it will result in decreased impacts on neighboring lots.*

This criterion is not applicable, since the Home-based Contractor use will be located on the same parcel as the principal dwelling.

13. *On an ALPP purchased or dedicated easement property, the following additional criteria are required:*

- (1) *The use shall not interfere with the farming operations or limit future farming production.*
- (2) *Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.*

This criterion is not applicable, since the property is not an ALPP purchased property or subject to a dedicated easement.

#### IV. RECOMMENDATION

For the reasons stated above, DPZ recommends that the request for a Conditional Use for a Home-Based Contractor and variance to reduce the 20-foot use setback to zero feet for an existing use-in-common driveway be **APPROVED**, with the following conditions:

1. The Petitioners shall demonstrate that use does not alter the residential appearance of the neighborhood for all associated structures.
2. The Petitioners shall specify the types of supplies will be stored outdoors; the locations for the supplies storage; and shall specify the types of equipment and the equipment storage locations.

Approved by:

 5-26-17  
Valdis Lazdins, Director Date

**NOTE: The file on this case is available for review at the Public Service Counter by appointment in the Department of Planning and Zoning.**

Department of Planning and Zoning  
Howard County, Maryland  
Recommendations/Comments

Date: December 15, 2016

Hearing Examiner 02/06/17

Planning Board \_\_\_\_\_ Board of Appeals \_\_\_\_\_ Zoning Board \_\_\_\_\_

Petition No. BA-16-036 C&V Map No. \_\_\_\_\_ Block \_\_\_\_\_ Parcel \_\_\_\_\_ Lot \_\_\_\_\_

Petitioner: \_\_\_\_\_ Jonathan & Sonya Miller

Petitioner's Address: \_\_\_\_\_

Address of Property: \_\_\_\_\_

Return Comments by January 16, 2017 to Public Service and Zoning Administration

Owner: (if other than applicant) \_\_\_\_\_

Owner's Address: \_\_\_\_\_

Petition: SEE APPLICATION

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To: \_\_\_\_\_ MD Department of Education – Office of Child Care  
3300 N. Ridge Road, Ste. 190, EC, MD 21043 (Louis Valenti)  
\_\_\_\_\_ ☒ Bureau of Environmental Health  
\_\_\_\_\_ ☒ Development Engineering Division  
\_\_\_\_\_ ☒ Department of Inspections, Licenses and Permits  
\_\_\_\_\_ ☒ Department of Recreation and Parks  
\_\_\_\_\_ ☒ Department of Fire and Rescue Services  
\_\_\_\_\_ State Highway Administration  
\_\_\_\_\_ Sgt. Karen Shinham, Howard County Police Dept.  
\_\_\_\_\_ James Irvin, Department of Public Works  
\_\_\_\_\_ Office on Aging, Terri Hansen (senior assisted living)  
\_\_\_\_\_ Police Dept., Animal Control, Deborah Baracco, (kennels)  
\_\_\_\_\_ Susan Fitzpatrick, Health Dept. (Nursing & Res. Care)  
\_\_\_\_\_ Land Development - (Religious Facility & Age-Restricted  
Adult Housing)  
\_\_\_\_\_ Housing and Community Development  
\_\_\_\_\_ Resource Conservation Division – Beth Burgess  
\_\_\_\_\_ Route 1 Cases – DCCP – Kristen O'Connor  
\_\_\_\_\_ Telecommunication Towers – (Comm. Dept.)  
\_\_\_\_\_ Division of Transportation – Dave Cookson

COMMENTS:

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7-11-1914

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JRL

Department of Planning and Zoning  
Howard County, Maryland  
Recommendations/Comments

Date: December 15, 2016

Hearing Examiner 02/06/17

Planning Board \_\_\_\_\_ Board of Appeals \_\_\_\_\_ Zoning Board \_\_\_\_\_

Petition No. BA-16-036 C&V Map No. \_\_\_\_\_ Block \_\_\_\_\_ Parcel \_\_\_\_\_ Lot \_\_\_\_\_

Petitioner: \_\_\_\_\_ Jonathan & Sonya Miller

Petitioner's Address: \_\_\_\_\_

Address of Property: \_\_\_\_\_

Return Comments by January 16, 2017 to Public Service and Zoning Administration

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Owner's Address: \_\_\_\_\_

Petition: SEE APPLICATION

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\_\_\_\_\_ Telecommunication Towers – (Comm. Dept.)  
\_\_\_\_\_ Division of Transportation – Dave Cookson



COMMENTS:

No Comment

G. Nelson 1-17-17  
SIGNATURE

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# Howard County

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*Department of Planning and Zoning*

**Board of Appeals Case No:** BA-16-036 C&V

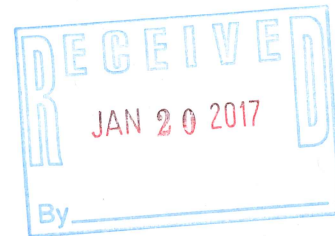
**Applicant:** Miller Family Trust and Shady Acres Lane, LLC

**Petition:** Conditional Use to bring into compliance a family masonry business.

**DATE:** January 17, 2017

**TO:** Division of Public Service and Zoning Administration  
Department of Planning and Zoning

**FROM:** Development Engineering Division  
Department of Planning and Zoning




The Development Engineering Division has reviewed the above referenced petition and has no objection.

Based on an examination of the petition, we offer the following comments:

1. The request appears to have no adverse engineering impact on the adjacent properties.
2. All improvements must comply with current Howard County design criteria including APFO requirements and stormwater management.
3. Please be advised that if the area of disturbance north of the property line located approximately 100 feet east of the northwest corner of the property is being used by the Miller Property it should be removed and stabilized.

If you have any questions concerning this matter please contact me at extension 2406.

  
Chad Edmondson  
Chief

cc: Valdis Lazdins, Director, Department of Planning and Zoning  
James M. Irvin, Director, Department of Public Works  
Reading File