

November 29, 2024



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Jon Monger
Director

November 29, 2024

NOTICE OF ADMINISTRATIVE DELEGATION (AD) 2025-1 PUBLIC HEARING

TO: Keith Levchenko, Senior Legislative Analyst
County Council

Patrick Butler, Upper County Planning Team, M-NCPPC
Maryland - National Capital Park and Planning Commission

Ray Chicca, Manager, Development Services Division
Washington Suburban Sanitary Commission

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

Category Change Request Property Owners and Applicants

FROM: Tim Williamson, Planning Specialist III, Water Supply and Wastewater Unit Watershed Restoration
Division, Department of Environmental Protection

SUBJECT: **Administrative Public Hearing AD 2025-1 for Water and Sewer Plan Amendments**

DATE & TIME: **Wednesday, January 8, 2025 at 10:00 a.m.**

LOCATION: **Telephone Conference**
Please contact me at timothy.williamson@montgomerycountymd.gov for instructions on joining the teleconference, or if you wish to submit written testimony.

Please be advised that the Montgomery County Department of Environmental Protection (DEP) will hold an administrative public hearing as specified above on the following requested water/sewer category map amendments (WSCCR) to the County's 2018 Comprehensive Water Supply and Sewerage Systems Plan:

25-GMT-01A...Ali Shahrezaei Mirbagheri
25-PAT-01A....Carl Cimino

To assist with your review of this proposed action, DEP has created and posted a PDF to the "Service Area Category Changes" webpage at www.montgomerycountymd.gov/water/supply/category-changes.html. Select the blue "Application Hearing Schedule" tab to expand the section, then scroll down to the "Current Administrative Review Packet" heading. The hearing notice PDF includes the following information for the proposed amendments:

- Information summaries
- Staff reports and recommendations
- Mapping
- Supporting documents, as appropriate

We ask that Council staff provide the posted materials to the Councilmembers for their review. If Council staff members or their aides would like to meet with DEP regarding the proposed amendments, call me to arrange a date and time to review the cases before the public hearing. We request that the Council staff submit

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Councilmembers' comments to DEP no later than the hearing record closing date (see below). Please note that DEP cannot complete the administrative action without receiving this notice from Council staff.

We understand that the Montgomery County Planning Board will include this administrative packet for consideration on its agenda.

Attendance at DEP's administrative public hearing is optional for agency staff, applicants, and others. These requests will be considered at the time specified on page 1. If you wish to comment on a referenced amendment or on the staff recommendations, you may testify at the public hearing, or you may submit written testimony to:

Jon Monger, Director, DEP; 2425 Reedie Drive, 4th Floor, Wheaton, MD 20902;
or to timothy.williamson@montgomerycountymd.gov.

DEP will close the record on January 15, 2025. Following the closing, DEP staff will prepare Statement of Action and provide it to the DEP director for approval. DEP will then send the action to the Maryland Dept. of the Environment (MDE) for review and concurrence. MDE has 60 days to review and comment on DEP's action. MDE's concurrence with DEP's action is required for approval of these Plan amendments. (MDE may extend its review time up to an additional 90 days.) Applicant's may proceed with development plans and/or service requests with WSSC Water based on DEP's action at their own risk during MDE's review.

Please do not hesitate to contact me at timothy.williamson@montgomerycountymd.gov or at 202-579-3116 if you have any questions concerning these category change requests or on the schedule provided.

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cc: Andrew Friedson, President, Montgomery County Council
Linda Kobylski, Jason Flemming & Megan Wilhelm, DPS
Artie Harris, Chairperson, Montgomery County Planning Board
Donnell Zeigler, and Jamey Pratt, Upper County Planning Team, M-NCPPC
Jason Sartori, Functional Planning and Policy Division, M-NCPPC
Geoffrey Mason, Parks Planning and Stewardship Division, M-NCPPC
Fred Mejias, Development Services Division, WSSC
Luis Tapia, Permit Services Section, WSSC
D. Lee Currey, Director, Water and Science Admin., Maryland Dept. of the Environment
Robin Pellicano, Division Chief, Water and Science Admin., Maryland Dept. of the Environment
Dinorah Dalmasy, Program Manager, Water and Science Admin., Maryland Dept. of the Environment
Rebecca L. Flora, Secretary, Maryland Department of Planning

Category Change Applicants & Interested Parties

25-GMT-01A...Shahrezaei Mirbagheri
25-PAT-01A....Carl Cimino

Civic Organizations and Other Public Interest Groups

Sandy Spring Ashton Rural Preservation
Sandy Spring Civic Association
Ashton Alliance
Patuxent Watershed Protective Association
East County Citizens Advisory Board
Greater Olney Civic Association
Southeast Rural Olney Civic Association

Northern Montgomery County Alliance
Montgomery County Civic Federation
Montgomery's Coalition to Stop Sewer Sprawl
West Montgomery Citizens Association
Nature Forward
Kingsview Village HOA Inc

Adjacent and Confronting Property Owners

DEP will send a hearing notice to each owner of properties adjacent to and confronting these category change request sites.

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WSSCR 25-PAT-01A: Carl Cimino

DEP Staff Recommendation: Approve W-1. Administrative policy V.D.2.a: Consistent with Existing Plans.

<p>Property Information and Location Property Development</p> <ul style="list-style-type: none"> • 211 Olney Sandy Spring Rd, Ashton • Parcel N331, Furrs Sub (acct. no. 00707255) • Map tile: WSSC – 224NW01; MD – JT42 • Northside of Olney Sandy Spring Rd, 500 feet west of Hidden Garden Lane. • RC Zone; 3.1 acres • Patuxent Watershed Conservation Planning Area • Ashton Village Center Sector Plan (2021) • Hawlings River Watershed • (MDE Use IV/IV-P) • Existing use: Single-Family Home • Proposed use: No change; provide public water service to the existing house. 	<p>Applicant’s Request: Service Area Categories & Justification</p> <hr/> <p><u>Existing – Requested – Service Area Categories</u></p> <p>W-6 W-1 S-6 No change</p> <p>Within planned public water and sewer service envelope.</p> <hr/> <p><u>Applicant’s Explanation</u></p> <p><i>“Well failure and abandonment.”</i></p> <p><i>On September 12, 2024, DEP requested that WSSC Water expedite the provision of public water service to this property. DEP directed WSSC Water to proceed with public service despite the existing W-6 water category. The DPS Well and Septic Section had notified DEP about a failed well at this location. (See the following pages.)</i></p>
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DEP Staff Report:

The applicant requests a category change from W-6 (private well) to W-1 (community water service) for their single-family home after a well-failure on their property. The property is in the RC zone within the planned water service envelope and is therefore eligible for public water service. Given the zoning and parcel size (3.1 acres), this property is not eligible for subdivision into more than one building lot. The property abuts an active water main so that the connect can be made without any extensions. Planning staff confirmed that public service is consistent with existing plans. WSSC reviewed the request and confirmed that there is capacity in the mains to serve this property. DEP staff recommend approval of the category change of W-6 to W-1.

Agency Review Comments

DPS: Confirmed failure of existing well, no records of well available.

M-NCPPC – Planning Dept.:

The applicant requests a change from W-6 to W-1 to allow public water service for an existing single-family detached house at 211 Olney-Sandy Spring Road in Ashton due to a well failure. The 3.1-acre property is within the 2021 Ashton Village Center Sector Plan area and is in the RC zone. The master plan recommends public water to all properties within the plan area. The property qualifies for public water service. On September 12, 2024, DEP requested the expedited provision of public water service to the property.

M-NCPPC – Parks Planning: No park impacts.

WSSC - Water:

1. Water pressure zone: 660A
2. A 12” Water Main. Contract no. 1960-4655 within Olney Sandy Spring Rd. abuts the property.
3. Local service is adequate.
4. Program-sized water main extensions (16 inches in diameter or greater) are **not** required to serve the property.

MDE’s Water Resources Planning Division Comments:

No comments.

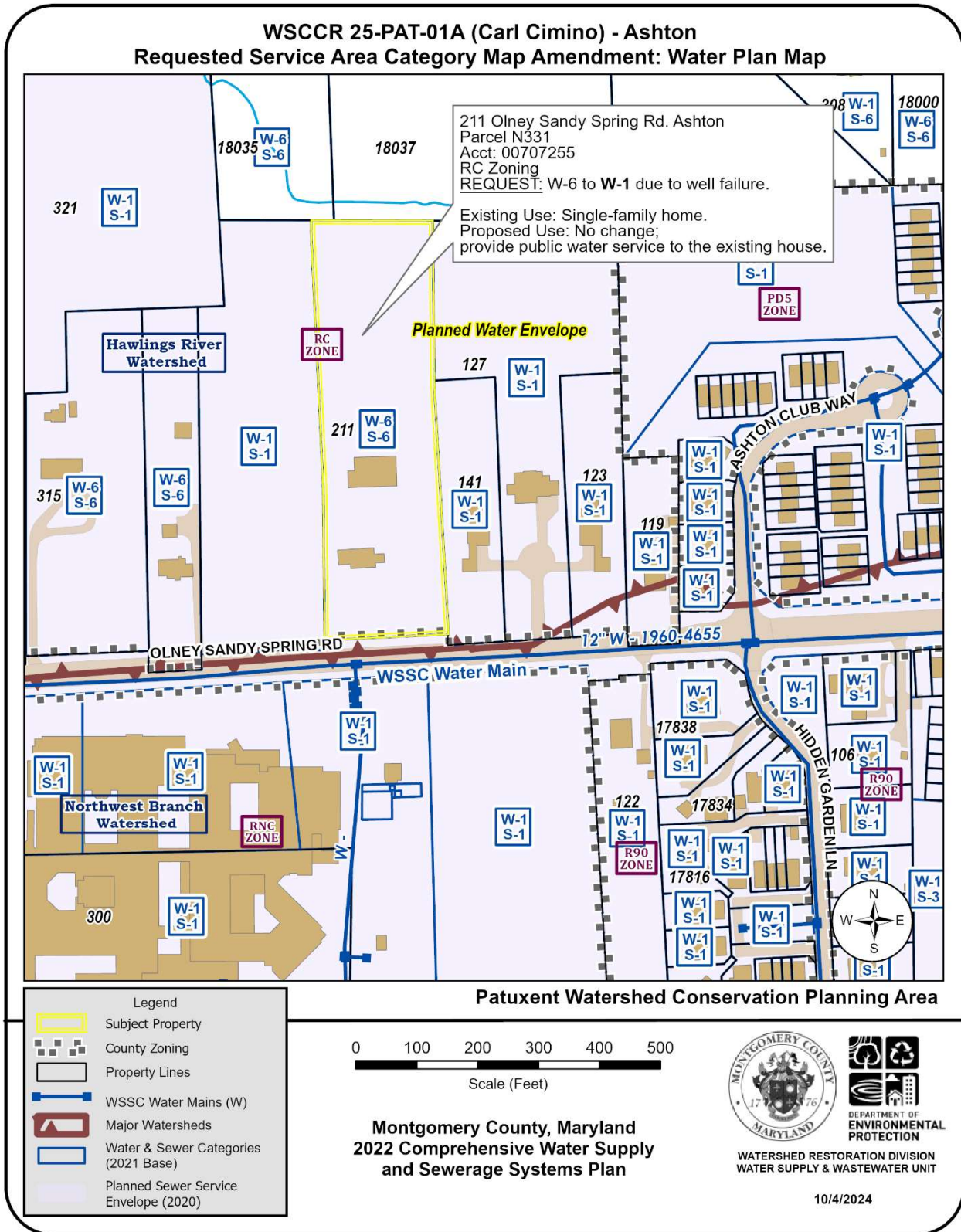


Figure 1: Water Plan Map for 25-PAT-01A including closest WSSC water mains.

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WSSCR: 25-GMT-01A: Ali Shahrezaei Mirbagheri

DEP Staff Recommendation: Approve W-3 and S-3. Administrative policy V.D.2.a: Consistent with Existing Plans.

<p>Property Information and Location Property Development</p> <ul style="list-style-type: none"> • 17639 Charity Lane, Germantown • Block A, Lot P1. Cedar Creek Estates (acct. no. 02326087) • Map tile: WSSC – 224NW14; MD – ET22 • East side of Charity Lane, 170 feet north of Charity Ct. • R-200 Zone; 4.45 acres • Germantown Planning Area Germantown Master Plan (1989) • Lower Great Seneca Creek Watershed (MDE Use I/I-P) • <u>Existing use</u>: Single-Family Home (built 1985) • <u>Proposed use</u>: Proposed residential subdivision 	<p>Applicant’s Request: Service Area Categories & Justification</p> <p><u>Existing – Requested – Service Area Categories</u></p> <p>W-6 W-3 S-6 S-3</p> <p>Outside planned public water and sewer service envelope.</p> <p><u>Applicant’s Explanation</u></p> <p><i>None listed on category change request. In discussions with DEP, applicant intends to re-subdivide the property into 3 lots using public water and sewer service: one 1.5-acre lot with an existing house and two additional lots with proposed single-family houses.</i></p>
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DEP Staff Report:

The applicant has requested approval of water and sewer categories W-3 and S-3 to allow for public water and sewer service to the property, which the applicant has indicated that they intend to subdivide into three new lots for 2 additional dwelling units. One of these lots will retain the existing home with 2 new lots created for single family homes. The property size is ample at approximately 4.4 acres in the R-200 zone.

The land was developed in the Cedar Creek Estates subdivision in 1985. A stream tributary of Great Seneca Creek runs along the northern portion of the property. The stream runs into 2 Forest Conservation Easements (cat. 1; tax account: 03122535 & 03124501) which abut the property along its eastern edge. The stream requires a 100-ft buffer zone along its length (see Planning Staff comments below), which constrains how the new lots can be developed.

Planning staff concluded that providing the requested water and sewer category changes is consistent with the 1989 Germantown Master Plan. Furthermore, R-200 zoning supports the provision of public water and sewer service. Therefore, even though the property is outside the currently delineated, planned water and sewer service envelopes, the zoning and the Master Plan support the category change to W-3 and S-3 (community service), regardless of whether the subdivision and subsequent development occur. In other words, if the new lots are not developed due to stream buffer and/or other setbacks, the existing property would still be eligible for public water and sewer service.

WSSC Water reviewed the request from a standpoint of serving the existing house. Their review states that a 640-foot-long non-CIP-sized water main extension would be needed to serve the property from the active 8” main on the west side of Germantown Rd (contract no. 1995-1241B). Construction of this main could require easements as the main extension would cross an intervening HOA property (Kingsview Village; west of Germantown Rd.) and the removal of mature trees.

Sewer service would require a 500-foot-long non-CIP-sized sewer extension running along Charity Lane. This extension would connect to an existing 8-inch sewer along Germantown Road (contract no. 1995-1241C) and does not require the removal of trees.

The questions raised by MDE in the following section are typically addressed as part of the County’s development review process.

DEP staff recommends the approval of W-3 and S-3 because the request is consistent

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with existing plans. It is important to note that the feasibility of accessing the mains to provide service is costly for the property owner.

Agency Review Comments

DPS: There is no existing soils testing data for this property other than for the existing house which was conducted prior to 2/1/1979 and is no longer considered valid. The existing house has a well and septic system installed in 1985.

M-NCPPC – Planning Dept.: The applicant requests changes from W-6 and S-6 to W-3 and S-3 to allow public water and sewer service for a property currently improved with a single-family detached house. The address is 17639 Charity Lane in Germantown's Ceder Creek Estates subdivision. The property is within the 1989 Germantown Master Plan area and falls within the Clopper Village neighborhood in the master plan. The 4.45-acre property is in the R-200 zone. According to conversations with DEP, the applicant intends to subdivide the property into three lots, with the existing house to remain on one of the lots.

The primary question here is whether the request is consistent with the master plan, but the master plan is unclear. Under the initial "Plan Highlights" chapter, the plan "recommends the expansion of the sewage systems into all areas of Germantown" (1989 plan, p. 4). But the more detailed "Water Supply and Sewerage Policies" section states that "[i]n order to increase the number of single family detached residential units, this Plan recommends the expansion of community water service to all areas recommended for development in Germantown" (1989 plan p. 93, emphasis added). Because Ceder Creek Estates had been developed in the early- to mid-1980s on private well and septic systems, the subdivision was not included as an "area recommended for development" in the plan. The master plan does not contain a recommendation for areas not recommended for development, such as previously developed properties. The later "Water Supply and Sewerage System Plan" section of the master plan unhelpfully reports that "[m]ost of Germantown is either currently being served or scheduled to be served in the near future" (1989 plan, p. 154).

The master plan did not explicitly exclude any properties from public sewer service, and recommended sewer service for all properties recommended for development. Absent a specific plan recommendation not to provide public water and sewer service, the master plan recommends public water and service in conformance with the county's Ten-Year Comprehensive Water and Sewer Plan ("CWSP"). Under the service policies in the CWSP, the county would typically provide public service for a property in the R-200 zone unless recommended against in a master plan: The decision to provide community water and sewer systems service, or to use individual, on-site systems, for residential development most often relies on development densities recommended by local area master plans and established by the County's Zoning Code. (CWSP, Section II.F.2.: Service Policies for Residential Development, p. 1-27).

Areas zoned for moderate to high-density residential development (zoned R-60, R-200, TMD, etc.) will generally be served by community water and sewer systems. Moderate to high-density residential development (1 dwelling unit per one-half-acre or greater densities), with smaller-sized lots, cannot provide the area required for onsite wells and septic systems; they are more efficiently served by community water and sewerage systems. (CWSP, Section II.F.2.a.: Moderate- to High-Density Residential Development, p. 1-27)

In addition, the Water and Sewer Plan "strongly discourages the provision of community water service without community sewer service to areas zoned for moderate-density residential development, such as for the R-200 Zone" (II.F.2.a.: Moderate- to High-Density Residential Development). Furthermore, the Water and Sewer Plan "intends that community water service will be provided wherever community sewerage service is provided" (CWSP, Section II.F.9.a.: Providing Community Water and Sewer Service in Concert, p. 1-32).

There does not appear to be a compelling reason to deny public water and sewer service to the property. The master plan supports public water and sewer for all areas surrounding Ceder Creek Estates to increase the number of single-family homes and did not explicitly exclude any properties from the public services envelope. As previously mentioned, the Plan Highlights chapter states that the master plan "recommends the expansion of the sewage systems into all areas of Germantown" (1989 plan, p. 4). The Water and Sewer Plan generally supports public services for R-200 properties. It is extremely unlikely that providing public services to all R-200-zoned properties in the Germantown area would result in a large number of new houses. It is reasonable to conclude that the entire 1989 Germantown Master Plan area is within the public water and sewer envelopes.

Returning to the specific proposal contemplated here, the 48 properties in Cedar Creek Estates range from 0.67 acres (29,092 square feet) to 6.55 acres. The average property is 1.41 acres, and the median is 1.08 acres. The subject property, at 4.5 acres, is the second largest (see Figure 1). All the lots exceeding two acres—including the subject property—have significant environmental constraints due to stream buffers on the property.

MONTGOMERY COUNTY CIRCUIT COURT (Subdivision Plats, MO) Plat 14380, MSA s1249 020586. Date available 1983/08/02. Printed 10/17/2024.

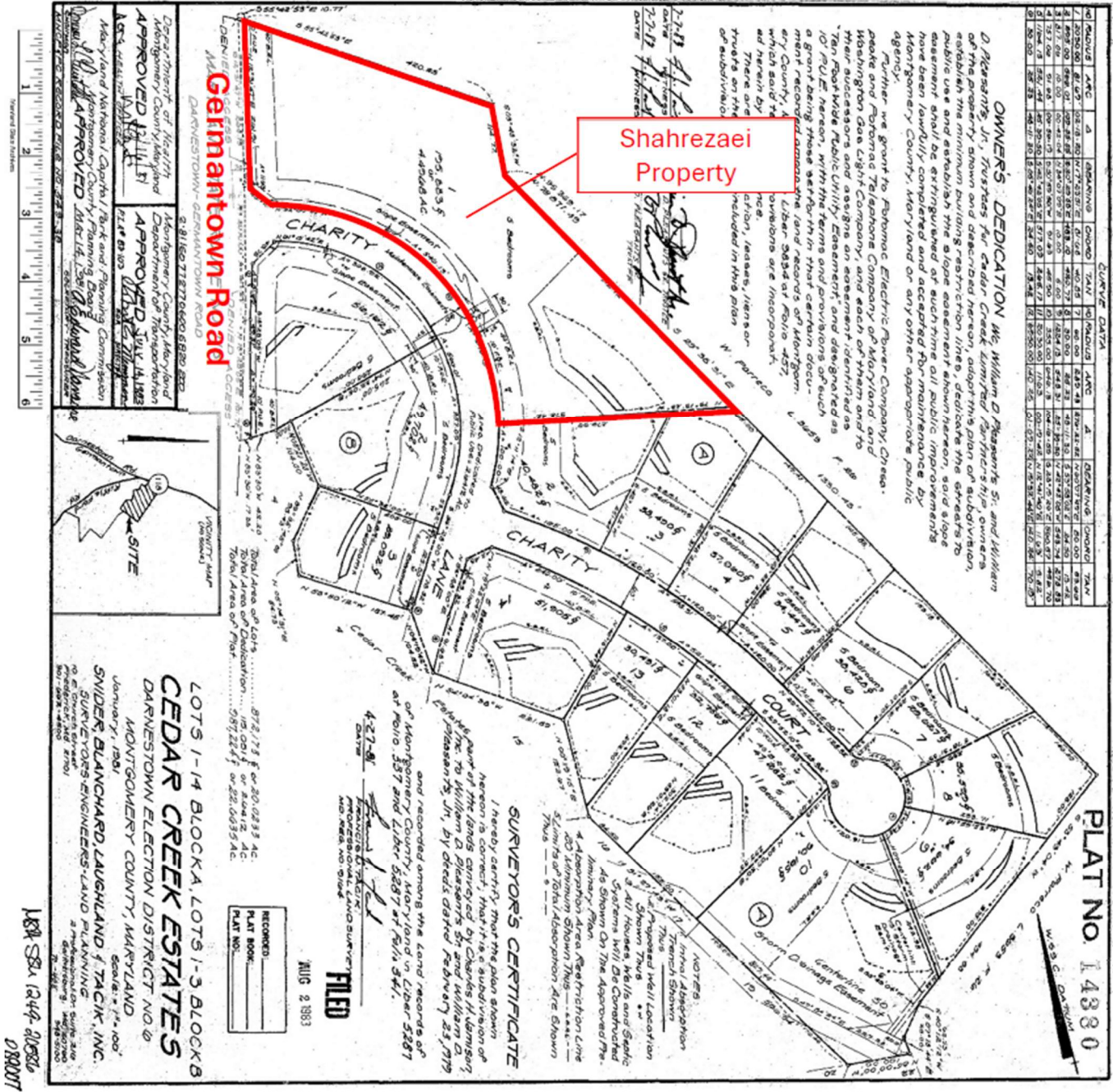


Figure 2: Plat 14380 showing size of property compared to some of the others in the neighborhood.

The only additional sewer recommendation in the master plan relevant to this discussion is that “[t]he provision of sewer facilities should be consistent with policies to protect the physical attributes of the watershed, sensitive headwater areas, and the character of the proposed low density residential areas” (1989 plan p. 95). The property owner desires to subdivide the property into three lots, so each would average 1.5 acres. Lots of this size would not be out of character in the neighborhood, although it is not clear if the stream buffer on the property would allow two additional lots, or even one (see Figure 2).



Figure 3: 2023 aerial image of subject property showing approximate extent of a 100-foot stream buffer.

The property qualifies for public water and sewer connections conditioned on protecting the stream buffer and maintaining the character of the neighborhood. Further subdivision planning efforts by the property owner may show that no additional lots are possible on the property, but the owner would still be able to connect the existing house to public services if desired.

M-NCPPC – Parks Planning: No parks impacts.

WSSC - Water:

1. Water pressure zone: 660A Montgomery High Zone.
2. A 640-foot-long non-CIP-sized water main extension is required to this property. This extension would connect to an existing 8-inch water west of Germantown Road (contract no. 1995-1241B) and would abut 2 other properties currently in Category W-6 in addition to the applicants. Easements may be required. Construction of this extension would involve the removal of mature trees.
3. Local service is adequate.

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4. Program-sized water main extensions (16 inches in diameter or greater) are not required to serve the property.

WSSC - Sewer:

1. Basin: Seneca Creek

2. A 500-foot-long non-CIP-sized sewer extension is required to serve the property. This alignment runs along Charity Lane. This extension would connect to an existing 8-inch sewer along Germantown Road (contract no. 1995-1241C) and would abut 2 other properties currently in Category S-6 in addition to the applicants. Easements would not be required.

3. Average wastewater flow from the proposed development: 840 GPD

4. Program-sized sewer main extensions (15 inches in diameter or greater) are not required to serve the property.

5. Interceptor capacity is adequate.

MDE's Water Resources Planning Division Wetlands and Waterways Comments:

For case 25-GMT-01A, an evaluation through the WRR does not show the presence of regulated resources, however, the submittal provided does show a stream. If a stream, floodplain, and any associated wetlands are present, how will the County and applicant avoid or minimize impacts to these resources from new proposed subdivided lots and construction of additional residences?

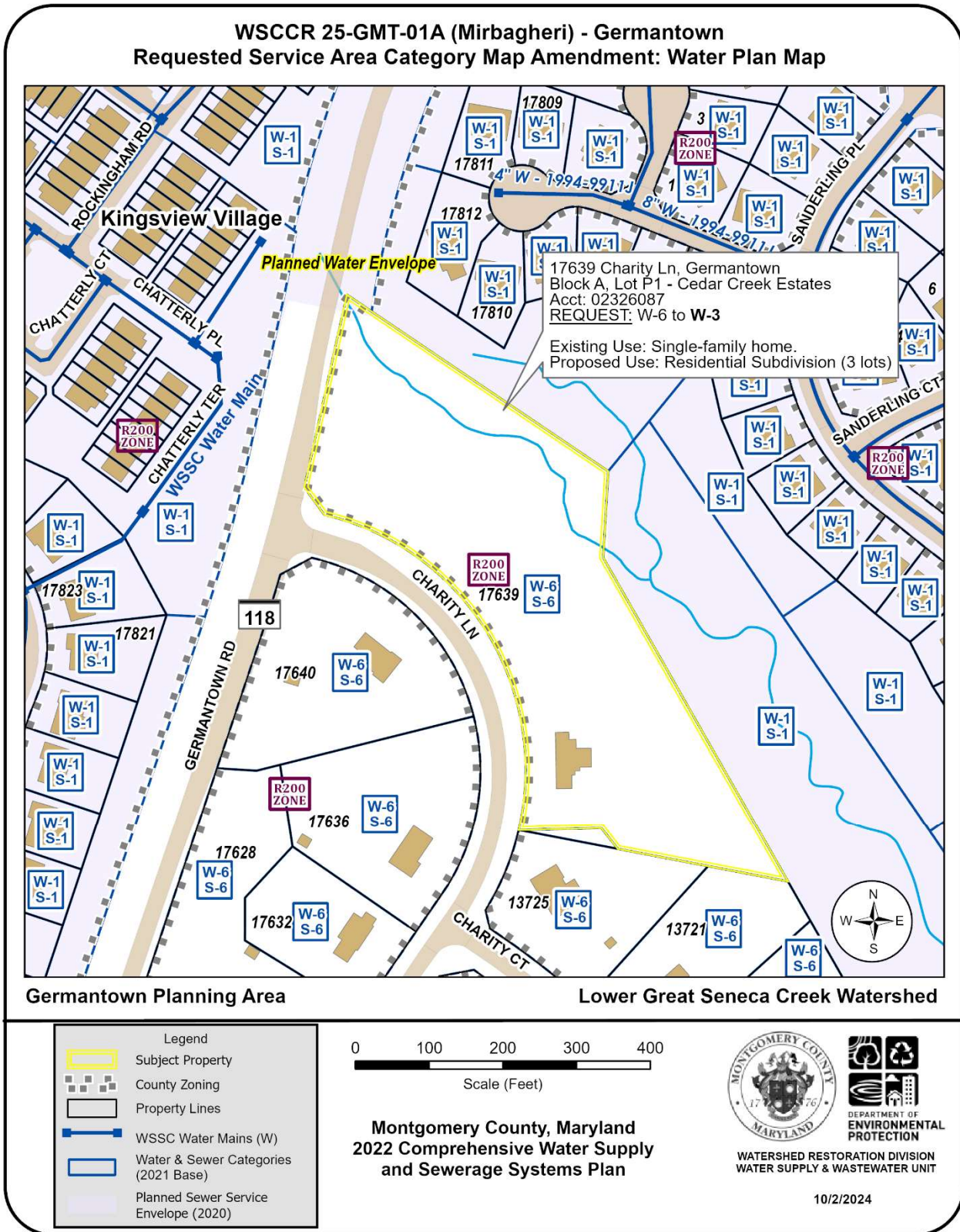


Figure 4: Water Plan Map for 25-GMT-01A including closest mains and surrounding water categories.

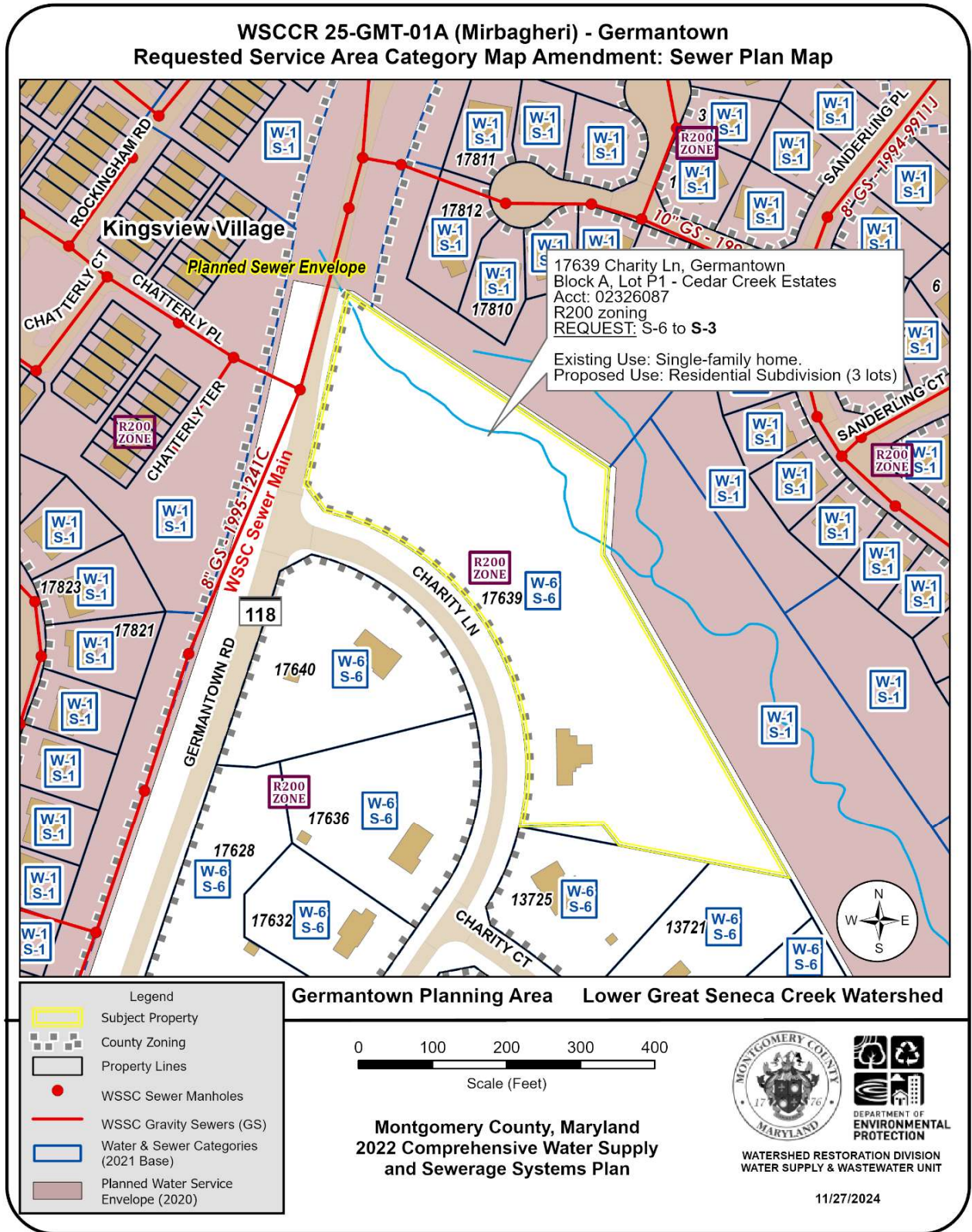


Figure 5: Sewer Plan Map for 25-GMT-01A including closest mains and surrounding sewer categories.