NAYLOR DUPONT
Advisory Neighborhood Commission 7B

District of Columbia Government
3200 S Street, S.E., Washington, DC. 20020
email: *anc7b@pressroom.com*
web: *www.anc7b.org*
phone: (202) 584-3400 fax: (202) 584-3420

March 29, 2004

Jerrily R. Kress, Director
Office of Zoning
Government of the District of Columbia
441 4th Street, NW, Suite 210
Washington, DC 20001

Subject: ANC 7B Opposes BZA Application 17123 for Variance from Lot Area Requirement at 3139 and 3143 Westover Drive, SE

At the Tuesday, March 9, 2004, BZA hearing on subject application, the applicant for the Beech Center, Inc. application, pursuant to 11DCMR 3103.2, for a variance from the lot area requirement under subsection 410.3, was allowed to prepare a response to the proceedings of the hearing and ANC 7B was allowed to file a reply to the applicant's response. ANC 7B received a memorandum from the Law Offices, Stephen N. Gell, A Professional Corporation, Dated March 22, 2004, on March 23, 2004, which provided a copy of the applicant's response. The ANC 7B response to the foregoing memorandum, which contained several attachments, is provided below.

The information received from the applicant in response to the proceedings of the March 9, 2004 BZA hearing were made available to home owners directly impacted by the construction of two new single-family detached dwellings in the R-1-B District at premises 3139 and 3143 Westover Drive, S.E. (Square 5664, Lots 70 and 71). A letter sent to Commissioner Vincent Spaulding, ANC Commissioner for the Single Member District (7B04) where the lot area variance is requested is provided as an attachment for consideration by the BZA Board Members. The letter was prepared by Mr. Garet Bornstein, owner of the property at 3147 Westover Drive, SE, who testified at the March 9, 2004 hearing, and is directly impacted by the lot area variance request. A statement by Mr. Bornstein, on behalf of the Westover Drive, SE, property owners directly impacted by the variance application, and a Soil Evaluation prepared by Piedmont Geotechnical, inc., are also attached for consideration by the BZA Board Members.

The reasons for ANC 7B opposing the application were contained on our February 20, 2004 letter to the BZA. Review of the memorandum, which contained several attachments, supplied by the Applicant's attorney still did not abate the concerns

BZA
Case No. 17123
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 17123
EXHIBIT NO. 35

previously raised by ANC 7B. Lots 70 and 71 of Square 5664 have poor potential for use as building sites because of the slope and poor stability. Cuts or excavations will be difficult to stabilize, and the clay frequently slides, slumps, or flows down the surface of cuts onto roads or other areas below. Because the area for each lot is less than the minimum area required by 15%, the opportunity for the foregoing problems to occur is increased. Major adverse effects that can realistically arise as a result of granting variances for these lots clearly fail the basic test of "is it in the public good". Also, research done by Mr. Bornstein and documented by the attachments to this letter, indicate Beech Center, Inc. is no longer a legal entity and has not been one since March 10, 2003. Consequently, we are concerned about the lack of recourse to recover damages from the applicant if such damages occurs to surrounding properties. Therefore for reasons stated herein, ANC 7B still Opposes BZA Application 17123 for Variance from Lot Area Requirement at 3139 and 3143 Westover Drive, SE. The resolution as previously submitted is:

"Be it resolved that for public safety, and to minimize risk to surrounding properties, ANC 7B opposes the application of Beech Center, Inc., pursuant to 11DCMR 3103.2, for a variance from the lot area requirement under subsection 410.3, to allow the construction of two new single-family detached dwellings in the R-1-B District at premises 3139 and 3143 Westover Drive, S.E. (Square 5664, Lots 70 and 71)."

Sincerely,

Kathy Chamberlain
Chair, ANC 7B

Vincent Spaulding
Commissioner, 7B04

Cc:
ANC 7B commissioners
Beech Center, Inc, Owner

March 27, 2004

Vince Spaulding
3180 Westover Drive, S.E.
Washington DC, 20020

Dear Vince,

I appreciate your including my comments and findings as part of the ANC response.

Reviewing the applications that you sent me on March 11th and hearing the BZA point out that an illegal act occurred back in 1985, has led me to search the credentials of the applicants. I found that both the application for the variance request, and the construction permit were filed by corporations that no longer exist.

In the **Application For Variance**, which is of most interest to the BZA, the applicant was named as "Beech Center Inc." at 223 Clearbrook Court, Shaumburg, IL 20193. I called the state of Illinois and found Beech Center Inc. was not a corporation in the state of Illinois (1). I then checked with the DC government. Their records show that Beech Center Inc. is no longer in good standing (instrument # 711065?). They had been listed as a Maryland Corporation, with Metropolitan Agents listed as their agent. This led me to the Maryland Corporation Commission, where I found out that Beech Center Inc. was dissolved on 3/10/03, well before the application was submitted.

I have included a copy of the certification showing that Beech Center Inc., a Maryland Corporation, is not in good standing (2).

The applicant in the **Application For Construction Permits On Private Property** was listed as: Suraj Corporation, 7714 Maltese Lane, Falls Church, VA 22043. The DC registered agent information desk found no corporation or agent by this name in DC. A search of the Virginia State Corporation Commission showed that a company by that name existed at one time, but was purged from the records on 12/31/1990 (3). A certified copy has been requested and will be forwarded to the BZA as soon as it arrives.

It defies logic that the BZA could issue a zoning variance to a defunct entity and they should terminate the process.

The same holds for the **Application For Construction Permits On Private Property** made to DC's Department of Consumer and Regulatory Affairs.

I must admit my suspicions heightened with these findings. We should get a lawyer, especially since the applicant has retained one who can hit us with a lot of legalese that we are not experienced in handling.

Finally, I would like to make the BZA aware of my overall concerns. I am not anti-development but I think this project fails the basic test of "is it in the public good."

- I am concerned that the character of the neighborhood would be changed by the addition of two modular homes on undersized lots. The neighborhood is filled with lovely custom-built homes. Most of these houses are on oversized lots. Within a few hundred feet is the house of a former capitol planning commission architect (he would role over in his grave.)

- I am concerned that damage will occur to my home from soil movement and I will have little or no recourse to make me whole.

- I am concerned that even if I did have recourse it would be a huge hassle to be constantly vigilant that my foundation is not crumbling away.

- I am concerned that the value of my home would be substantially impacted in a negative way.

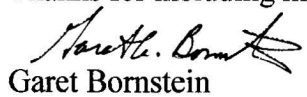
- I am concerned with the credentials of the development team; i.e., defunct corporations, no clear lines of who is what (the misinformation in the applications,

the applicants' financial capacity and willingness to make me whole if damaged by his actions, their technical capacity to build under such challenging conditions, and their interest in the well being of the neighborhood.)

In conclusion I feel my fellow owners share my concerns. That is why we had such an overwhelming vote of support among the citizens at the ANC meetings and among those who signed the petitions.

It appears that the only one likely to benefit from these transactions is the owner, whoever he is; the rest of us will be left holding the bag, including the eventual purchasers of the two houses.

Thanks for including me in the loop.



Garet Bornstein

Status of Applications

We ask the BZA to throw out the application of Beech Center, Inc. They are not a legal entity and have not been one since March 10, 2003. Evidence of this fact is shown in the State of Maryland Certification attached to this response.

Response to the Applicants Comments

- **Facts Present a Condition that is unique and Extraordinary**
- **The Applicants are faced with a Practical Difficulty**
- **There are No Adverse Effects (harm to the public interest)**

DC Code 6-641.07 Note 10 states that an area variance is only appropriate where these three conditions exist. We argue most vigorously that the third condition is not met. There are major adverse effects that can realistically arise as a result of granting variances for these two lots. Clearly, this application fails the basic test of "is it in the public good." And, this is by far the most important condition.

We agree that neighbors will probably not be losing light or air but there is a realistic potential that they could lose their basements, foundations, and walls. We have evidence from an expert that this is so (Piedmont Engineering Report which has already been given to the BZA but attached here to emphasize our case). The BZA is not being asked to delve into the engineering and physics of the situation. It has an experts opinion in hand and been shown evidence of actual cases within a short distance of this site. The applicant has shown no information to dispel our concerns. They have developed no mitigation plan and have done no more than a cursory literature check on the soils. Their failure to grasp the significance of the issue is worrisome.

We are concerned with the financial impact that results from such damage, and the aggravation of monitoring for and performing these repairs.

We are concerned that the value of our houses will suffer.

We are concerned that the character of the neighborhood would be changed by the addition of modular homes on undersized lots.

We are concerned about our lack of recourse to recover damages from the applicant if such damage occurs. The credentials of the development team, as revealed, are very sketchy. The applicants are defunct corporations; their technical capacity to build under such challenging conditions is questionable, and they have demonstrated little interest in the well being of the neighborhood.

- **There was no Credible Evidence that Counters the Applicants Case**

This was addressed in the answer to the previous point. Clearly, there is long list of credible evidence that this variance is not in the public interest.

- **Grant of Variances is Consistent with the Purpose and Intent of the Zone Plan**

Evidently the Office of Planning had objections that the granting of these variances would be at odds with the area zoning plan. We are unfamiliar with the issue and have no comment. However, the applicant does state an interesting issue. " Moreover, in focusing on the Commission's (and we assume the Zoning Commission) desire to combine lots that were in single ownership...." This seems to say that the applicants attempt to create contiguous undersized building lots is contrary to the Zoning Commission's desires.

- **The District is Estopped From Denying Applicants to Build on a Non-Conforming Lot**

In 1985, lots 45,46,47 of square 5664 were combined into lots 70 and 71.
The applicant quotes 20DCMR 2701.2 as *"Where a lot of record is subdivided for the purpose of creating another lot of record, it shall be effected in a manner as to not violate the provisions of this chapter or any other District of Columbia regulations."*
"When the three lots were subdivided into two lots, the Zoning Administrator and [Office of] Surveyor made the decision that the lots were buildable under the regulations." Based on the DC action, the applicant claims the District is estopped from enforcing a strict interpretation of the area requirements because they were led to believe that there were two buildable lots.

The definition of subdivide is to divide further...to divide (land) into smaller parcels....
In this case, the lots were not subdivided but were combined. There were fewer parts after the act than before the act. Thus, this regulation does not apply and there was no reason to believe the lots had been made buildable and circumvented the zoning restriction placed on irregular shaped lots. They remained unbuildable lots. They were unbuildable lots before the act and unbuildable lots after the act. Thus, it appears the District is not estopped from enforcing minimum area requirements against the applicant.

The 1985 decision by the Zoning Commissioner and the Surveyors office was called an "illegal act" by the BZA. It was done without public notice, which, whether this was part of the illegal act or not, is not a good idea. The public should always be noticed.

The applicant purports to have spent $45,000 to prepare the development plans to bring the project to the current state. This is hard to believe, unless they were careless with their money. The drawings come from Nationwide Homes, who sells them for about $40 without architectural modifications.

- **The Evidence of Prejudice to the Applicant is a Sound Basis for Laches**

No comment.

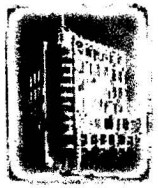
- **Government Delay May Justify Grant of Variance**

No comment.

Conclusion

Based on these arguments, we ask the BZA to deny the variance request.

Commonwealth of Virginia



State Corporation Commission

5

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TCP00009 CISM9022 NAME SEARCH 11:03:53
PAGE: 1

SEARCH NAME: [redacted]
GO TO PAGE:

DIRECTION: F

	CORP-ID	CORPORATION NAME	STATUS/DATE
1:	0251892-6	SURAJ CORPORATION	PURGED 12/31/90
2:	0549328-3	SURAJ ENTERPRISES, INC.	ACTIVE 11/20/00
3:	0372559-5	SURAT TRADING COMPANY	PURGED 09/30/99
4:	0322417-7	SURBER AND SON, INC.	ACTIVE 03/31/97
5:	0393634-1	SURBER MASONRY, INC.	PURGED 09/30/99
6:	0183607-1	SURBER & SONS, INC., D. B.	PURGED 12/31/96
7:	0147532-6	SURBURBAN COLLECTION AGENCY, INC.	PURGED 12/31/85

COMMAND:

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NOTE: Function Key usage varies depending on the Application Screen.
For specifics, refer to Function Key Documentation.

Corporation Search Results - Illinois

Entity Type	File Number	Corporation Name
CORP MST	58716898	B & C ELECTRIC OF BEECHER, INC.
CORP MST	57492783	BEECH AIR F90, INC.
CORP MST	55065071	BEECH FLYERS, INC.
CORP MST	57749903	BEECH MILITARY REGIONAL OFFICES, INC.
CORP MST	54074239	BEECH STREET CORPORATION
CORP MST	62388943	BEECHAM COMMUNICATIONS CORPORATION
CORP MST	57646926	BEECHAM MOTORSPORTS, INC.
CORP MST	49234708	BEECHEN & DILL BUILDERS, INC.
CORP MST	61318445	BEECHER CAR WASH, INC.
CORP MST	61420495	BEECHER CITY FOODLINER, INC.
CORP MST	63229121	BEECHER CITY JUNIOR BASKETBALL ASSOC.
CORP MST	56708642	BEECHER CITY MERCHANTS ASSOCIATION
CORP MST	55161518	BEECHER CITY UNIT 20 BOOSTER CLUB
CORP MST	61088407	BEECHER COMMUNITY EVANGELICAL FREE CHURCH BUILDING FOUNDATIO
CORP MST	55669783	BEECHER COMMUNITY EVANGELICAL FREE CHURCH, INC.
CORP MST	54015208	BEECHER COMMUNITY HISTORICAL SOCIETY
CORP MST	59053892	BEECHER COMMUNITY LIBRARY FOUNDATION
CORP MST	57493585	BEECHER COMMUNITY PART-TIME PLAYERS
CORP MST	62830425	BEECHER CONSULTING, INC.
CORP MST	53259103	BEECHER FELLOWSHIP BAPTIST CHURCH
CORP MST	63124206	BEECHER LADY STINGERS CLUB - NFP.

CORP MST	53424945	BEECHER LIONS CLUB
CORP MST	60236224	BEECHER MAUSELEUM GUARDIAN ANGEL ASSOCIATION
CORP MST	53525849	BEECHER PRE-SCHOOL COOPERATIVE, INC.
CORP MST	58882496	BEECHER PTA
CORP MST	54800657	BEECHER RESEARCH COMPANY, INC.
CORP MST	58073156	BEECHER SCHOOL DISTRICT 200-U EDUCATION FOUNDATION, INC.
CORP MST	41547871	BEECHER SPORTSMEN'S CLUB
CORP MST	31359236	BEECHER VETERANS' ASSOCIATION
CORP MST	58815322	BEECHER VETERINARY CLINIC, P.C.
CORP MST	52892759	BEECHER WHOLESALE GREENHOUSE, INC.
CORP MST	63085952	BEECHLER REAL ESTATE SERVICE, P.C.
CORP MST	46167937	BEECHNER HEAT TREATING CO. INC.
CORP MST	60075646	BEECHTREE, INC.
CORP MST	62721146	BEECHWOOD ADVISORY GROUP, INC.
CORP MST	63099864	BEECHWOOD DEVELOPMENT GROUP, INC.
CORP MST	60616469	BEECHWOOD HEALTHBOOKS, INC.
CORP MST	53270816	BETHEL BAPTIST CHURCH OF BEECHER CITY
CORP MST	61517162	BILL BEECHY, INC.
CORP MST	52987849	CRETE-BEECHER ANTIQUE DEALERS ASSOCIATION, LTD.
CORP MST	51215567	DALLAS BEECHER CONSTRUCTION CO., INC.
CORP MST	50637328	EXECUTIVE BEECHCRAFT, INC.
CORP MST	13266981	FARMERS GRAIN COMPANY OF BEECHER, ILLINOIS
CORP MST	59877801	HOEHN ACE OF BEECHER, INC.
CORP MST	52826055	KRIVAJA BEECHBROOK CORPORATION
CORP MST	54290578	L.P.M. BEECHCRAFT SALVAGE, INC.

CORP MST	61770011	LINDEN PLACE AND BEECHWOOD COMMONS HOMEOWNERS ASSOCIATION
CORP MST	56899278	LONG BEECH IN, INC.
CORP MST	62766204	QUALITY FENCE OF BEECHER, INC.
CORP MST	10318131	SMITHKLINE BEECHAM CORPORATION
CORP MST	57448253	SOUTHFIELD KNOLL OF BEECHER TOWNHOME OWNERS ASSOCIATION, INC
CORP MST	44490854	THE BEECHER VOLUNTEER FIRE DEPARTMENT
CORP MST	55943915	TONY'S PIZZA OF BEECHER, INC.
CORP MST	55153418	WAYDE BEECHY, INC.
CORP MST	53425151	WOMEN'S CLUB OF BEECHER

STATE OF MARYLAND

Department of Assessments and Taxation

I, PAUL ANDERSON OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE DEPARTMENT, BY LAWS OF THE STATE, IS THE CUSTODIAN OF THE RECORDS OF THIS STATE RELATING TO THE FORFEITURE OR SUSPENSION OF CORPORATIONS OR THE RIGHTS OF CORPORATIONS TO TRANSACT BUSINESS IN THIS STATE, AND THAT I AM THE PROPER OFFICER TO EXECUTE THIS CERTIFICATE.

I FURTHER CERTIFY THAT BEECH CENTER, INC. , A MARYLAND CORPORATION, IS NOT IN GOOD STANDING WITH THIS DEPARTMENT FOR THE FOLLOWING REASONS:

THE CORPORATION HAS FILED ARTICLES OF DISSOLUTION ON MARCH 10, 2003.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY SIGNATURE AND AFFIXED THE SEAL OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND AT BALTIMORE ON THIS MARCH 25, 2004.

Paul B. Anderson
Charter Division

301 West Preston Street, Baltimore, Maryland 21201
Telephone Balto. Metro (410) 767-1340 / Outside Balto. Metro (888) 246-5941
MRS (Maryland Relay Service) (800) 735-2258 TT/Voice
Fax (410) 333-7097

R2783931

Piedmont Geotechnical, Inc.
14735 Wrights Lane • Waterford, Virginia 20197-1601
Metro (703) 589-1002 • FAX 1-540-882-3629

February 27, 2004

Mr. Garet Bornstein
1 Winterberry Court
Bethesda, Maryland 20817

Re: Soil Mapping Services
3147 Westover Drive, SE
Washington, DC
PGI No. 0740DC

Dear Mr. Bornstein:

Piedmont Geotechnical, Inc., has completed the authorized soil mapping at the referenced property. Our report is enclosed with this letter.

Given the extreme slopes and likelihood that "marine clay" soils will be encountered, the property should not be developed unless a thorough subsurface exploration and engineering evaluation confirm that construction is feasible. The questionable soils are identified in Fairfax County, Virginia, as "Gravelly and Loamy Sediments", and they are considered a problem soil due to instability. Further information on the recommended guidelines to deal with the problems that can be encountered in "marine clay" soils is available on the Fairfax County web site: http://www.co.fairfax.va.us/dpwes/publications/pfm/4.htm.

We trust that the enclosed report is satisfactory. Please call if you have any questions, or if we may be of further service.

Sincerely,

Piedmont Geotechnical, Inc.

Daniel S. Rom, P.E.
President

DSR/jbp

Piedmont Geotechnical, Inc.
14735 Wrights Lane • Waterford, Virginia 20197-1601
Metro (703) 589-1002 • FAX 1-540-882-3629

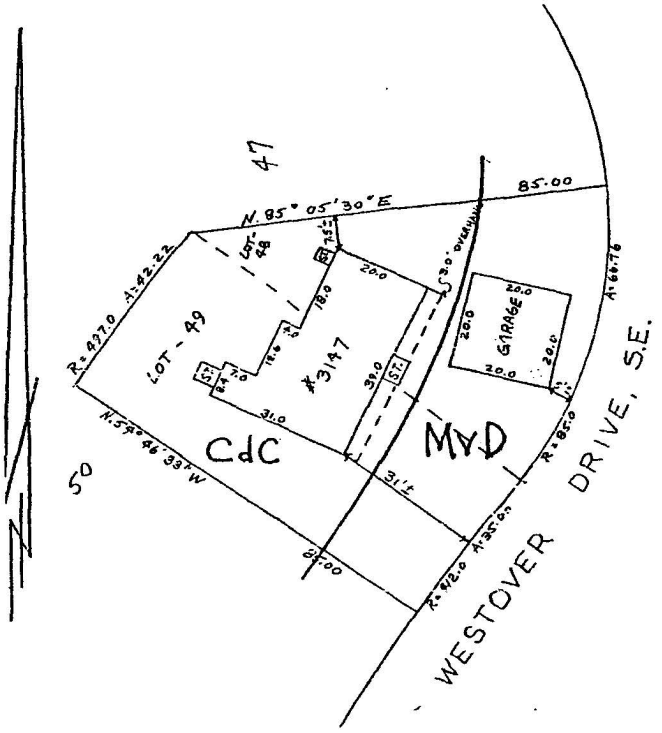
Soil Evaluation

Requested By:	Garet Bornstein
Current Use:	Single-Family Residence
Location:	3147 Westover Drive, SE Washington, DC
Evaluation By:	Daniel S. Rom, P.E.
Lot and Square:	Lots 48 and 49, Square 5664
Date:	February 24, 2004

Daniel S. Rom
2-27-04

SOIL MAP

Soils on Coastal Plain Sediments
Physiographic Province



SCALE: 1" = 40'

Map Legend
Soil Map Symbol Mv
Soil Name Muirkirk
Slope: D
Erosion: 3

Slope Symbols
A: 0-2% Slope
B: 0-8%
C: 8-15%
D: 15-40%
E: 40% and Greater

Erosion Symbols
\+ Soil Accumulation
0. No Erosion
1. Slight Erosion
2. Moderate Erosion
3. Severe Erosion

SOIL MAP SYMBOL	SOIL SERIES NAME	SLOPE RANGE %	ESTIMATED % OF SITE
Soil Map Number	Soil Series Name	Slope Range in Percent	Estimated % Each Soil Type
CdC	**Chillum-Urban Land Complex**	**8-15**	**60**
MvD	**Muirkirk Variant Complex**	**15-40**	**40**
			TOTAL: 100%

POTENTIAL SOIL PROBLEMS	YES/NO	SOIL NO.
Subsurface Drainage	NO	-
Foundation Support	YES	CdC, MvD
Slope Stability	YES	CdC, MvD
Erosion Potential	YES	CdC, MvD
High Seasonal Water Table	NO	-
High Shrink-Swell Clays	YES	MvD
Poor Surface Drainage	NO	-
Shallow Depth to Bedrock	NO	-
Flood Plain (Alluvial)	NO	-
Poor Septic Field Potential	YES	CdC, MvD
Hydric Soils Potential Wetlands	NO	-

GEOTECHNICAL REQUIREMENTS

Since the **Muirkirk Variant Complex** soils are recognized "Problem Soils", they should not be disturbed unless a thorough geotechnical engineering report has been prepared by a registered professional engineer. Construction must address foundation support, slope stability, erosion potential, and high shrink-swell clays.

DESCRIPTION OF SOIL CHARACTERISTICS

(MvD) Muirkirk Variant Complex, 15 to 40 percent slopes

This complex consists of strongly sloping to steep soils on the higher elevations of the coastal plain. The slopes are dominantly convex. Muirkirk soils are highly variable and occur together in an intricate pattern.

A representative profile has a surface layer of dark yellowish brown loamy sand about 5 inches thick and a subsurface layer of yellowish brown loamy sand about 6 inches thick. The subsoil, between depths of 11 and 60 inches, is strong brown sandy loam in the upper part and red clay in the lower part.

This complex has poor potential for use as building sites because of slope and poor stability. Cuts or excavations are difficult to stabilize, and the clay frequently slides, slumps, or flows down the surface of cuts onto roads or other areas below. This complex, especially where it has been disturbed or graded, is severely limited or even sometimes dangerous for most building purposes. Because of instability, the clay, particularly where it is under pressure or load, can squeeze out from under foundations, allowing footings or basements to crack and settle. In extreme cases, buildings have been severely damaged. Banks and fills constructed from the clayey material have been known to collapse, causing severe damage to property. Disturbed areas are highly erodible, and this presents a pollution hazard to nearby streams if adequate sediment control devices are not installed. Because of slope and low available water capacity, this complex has poor potential for landscaping, lawns, and vegetable gardens. It has poor potential for most recreational uses because of slopes and sandiness.

(CdC) Chillum-Urban Land Complex, 8 to 15 percent slopes

This soil unit consists of moderately sloping, well-drained soils of the Chillum series, most areas of which have been altered by grading for housing developments, shopping centers, industrial areas, and similar uses. This unit is at high elevations of urbanized areas of the coastal plain. A representative soil profile has a surface layer of very dark gray silt loam about 2 inches thick and a subsurface layer of pale brown silt loam about 10 inches thick. The subsoil, about 16 inches thick, is brown heavy silt loam in the upper part and yellowish red silty clay loam in the lower part. The substratum, between depths of 28 and 60 inches, is strong brown very gravelly sandy loam.

This complex has only fair potential for most building purposes because of slope. Soil material and fill material of this complex have only fair potential for lawn grasses, shade trees, ornamental trees, shrubs, vines, and vegetable gardens because of slope. Areas that are very deeply cut or excavated are generally very gravelly and droughty and, therefore, have poor potential for vegetation. Most areas of this complex have only fair to poor potential for most recreational uses because of slope and limited open space.

NOTE:

This report and the accompanying soil map are based on a limited site investigation of the property. Soil characteristics, descriptions, and potential problems are based on the site conditions at the time of the investigation. Any disturbance that drastically alters the original site conditions may affect the interpretations of this report.