



Gertson Property – Subdivision Regulations Waiver Request: SRW201501

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Completed: 10/2/15

Description

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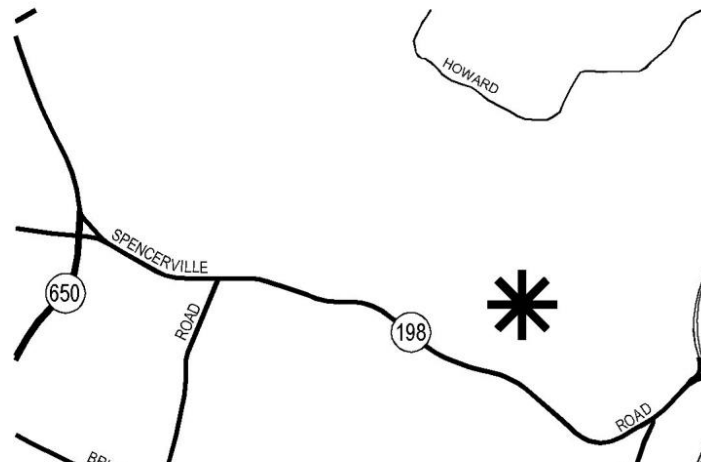
A request for a waiver under Section 50-38 to allow an unplatted parcel created after June 1, 1958 to proceed under the minor subdivision process, located at 15800 Kruhm Road, Burtonsville, 5.86 acres, RC Zone, Fairland Master Plan.

Staff Recommendation: Approval with conditions

Applicant: Jennifer Richberg

Submission Date: May 15, 2015

Review Basis: Chapter 50 (Sec. 50-38(a)(1))



Summary

- No proposed development, platting for estate purposes.
- Requires a Frontage Waiver, parcel is landlocked.
- Adjacent parcel has granted 20 foot ingress/egress, utility, and maintenance easement to Kruhm Road.
- There is no additional public benefit that would be obtained through the submission and review of a Preliminary Plan.
- The request to waive the submission a preliminary plan as required in 50-34(a) is the minimum necessary to provide relief.

- **STAFF RECOMMENDATION**

Approval of a waiver of Section 50-34(a) of the Subdivision Regulations pursuant to Section 50-38(a)(1) of the Subdivision Regulations in order to permit recordation of a plat through the minor subdivision process for a parcel created **after** June 1, 1958, subject to the following conditions:

1. Applicant must submit a complete Record Plat application within 120 days of the date of mailing of the Board’s Resolution for this decision.
2. All necessary easements for ingress/egress and public utilities for the lot without frontage must be shown on the plat.

SITE DESCRIPTION

The 5.86 acre property is an unplatted parcel (P417, Tax Map KS342) located at 15800 Kruhm Road in Burtonsville, MD and zoned RC (“Property” or “Subject Property”). The Property is currently vacant. Surrounding uses within the immediate area along Kruhm Road are mostly residential on large lots and parcels. Agriculture is the predominant use beyond the homes that front on Kruhm Road.

The Property contains some forest and is moderately sloped with its highest elevation located in southwest corner at 480 feet sloping to the north and west to its lowest elevation of 420 feet. The Property is polygonal in shape and has no frontage on Kruhm Road. At the northern end of the parcel is 35 foot wide strip that extends to the west.

PROJECT DESCRIPTION

The Applicant seeks to settle a portion of an estate by creating and platting a recorded lot. A platted lot would grant entitlements to a future purchaser facilitating the sale of the Property. No construction or development is proposed for the Property at this time.

WAIVER REQUIREMENTS

The Planning Board has the authority to grant waivers pursuant to Section 50-38(a)(1) of the Subdivision Regulations provided certain findings can be made. The section states:

“The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.”

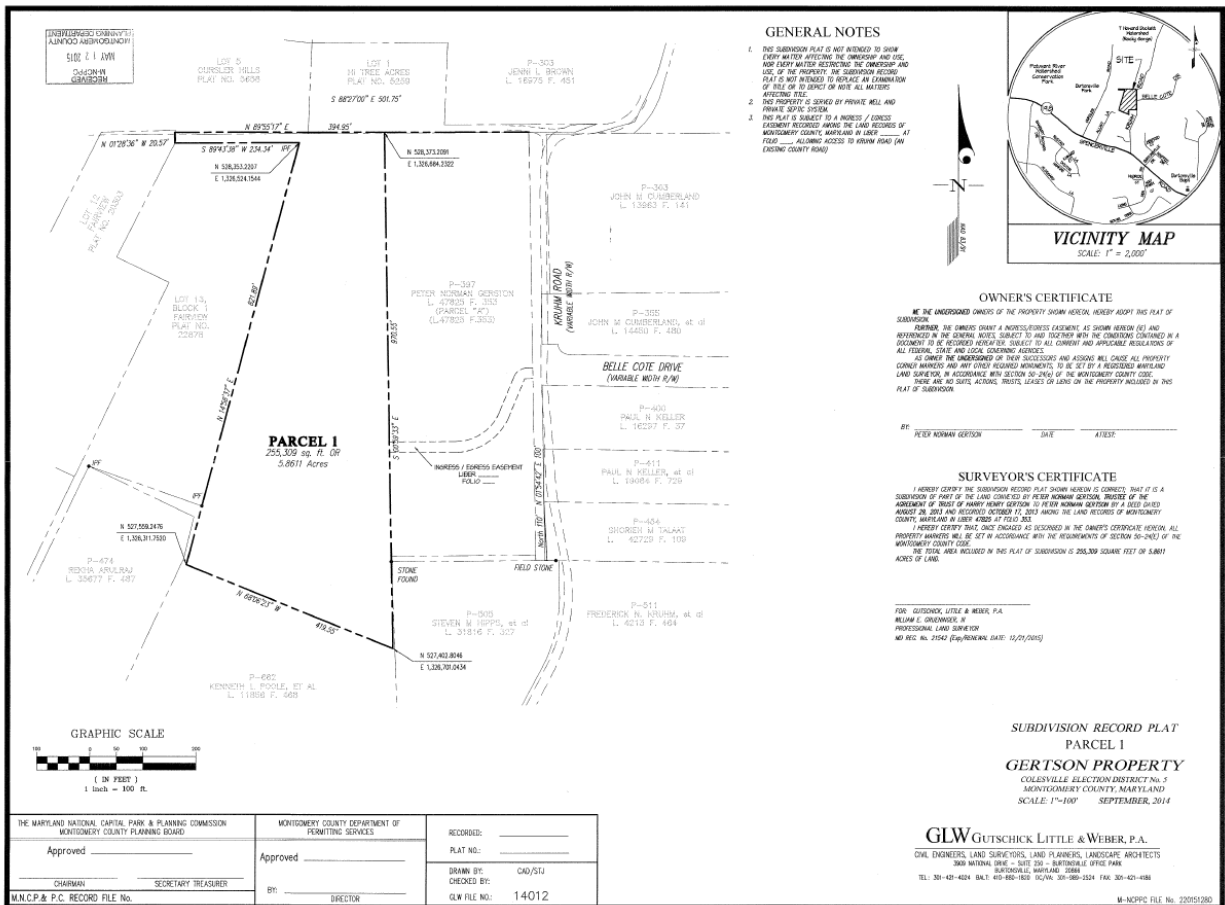
DISCUSSION

The deed history to the Property indicates that in 1963 a 5.77 acre parcel and a 0.09 acre parcel (each of which was recorded by deed prior to June 1, 1958) were consolidated in 1963 to create Parcel 417 a 5.86 acre property and the Subject Property. The consolidation essentially changed the size and shape

of the property after June 1, 1958, therefore, the Property is not an Exempt (Pre-1958) Parcel and the Applicant is not able to get a building permit without first recording a plat. The Applicant has submitted this Subdivision Regulation Waiver requesting that the Planning Board waive the requirement that allows only Pre-1958 parcels (Exempt parcels) to be platted as a Minor Subdivision under the provisions of Section 50-35(a)(6) which states:

“Plats for certain residentially zoned parcels created by deed **before** June 1, 1958. Although a single family residential parcel may qualify for an exception to platting under Section 50-9(f), if the parcel is developable for only one single family detached dwelling unit, then an owner may submit a plat to record such a parcel under the minor subdivision procedures”

If the Planning Board grants a waiver of the date requirement in 50-35(a)(6), the Applicant has agreed to submit a record plat application as quickly as possible. A Draft Subdivision Record Plat is provided below and illustrates what the recorded property would look like.



SUBDIVISION REGULATION WAIVER DISCUSSION

Applicant's Position

The Applicant believes the waiver is the minimum necessary to provide relief from the requirement to submit a full subdivision and that the continued use of the RC zoned Subject Property for one house is consistent with the General Plan. The Applicant suggests that the eventual recordation of a plat sufficiently provides for the public interest and that the plat will ensure the building permit will be issued for a structure that meets all requirements of the County Code. A final comment is made regarding the hardship that has been placed on the Applicant and how that hardship would be extended both financially and time-wise if the waiver were not granted.

Staff Position

The unusual circumstance that justifies the requested waiver is the consolidation of two pre-1958 parcels in 1963. At that time, a property owner would not have been aware that the consolidation of the parcels would jeopardize the ability to build on the property at some time in the future. And, for some time after the consolidation was done in 1963, the Property was likely able to get a building permit without the platting requirement. That allowance was changed by action of the County Council in the 1980's.

While the consolidation did change the size and shape of the parcel, it did not materially alter the parcel's ability to accommodate a house nor did it create any issue for zoning conformance. No other buildable parcels were created by this consolidation; no additional lots are requested, and the Property remains in excess of the minimum size requirements of the RC zone and meets all other zoning standards as shown in the table below, except frontage:

RC Requirements	Proposed
Minimum Size (5 Ac. min)	5.8611 Ac.
Frontage on street (300 ft. min)	0 ft.
Width at front b.r.l. (300 ft. min)	950 ft.
Setbacks: <ul style="list-style-type: none">▪ Front (40 ft. min)▪ Rear (30 ft. min)▪ Side (12 ft. min/25 ft. total)	No Proposed Development
Max. lots permitted under zone (1)	1

Unusual Circumstances - *Staff finds* that the unusual circumstance is that of this property is the change in size and shape does not change the development potential of the property. In other words, the original 5.77 ac. parcel would have been developable on its own. The consolidation to combine two pre-

1958 parcels effectively eliminating the exempt status the parcel once had. The Property is no longer exempt from platting and must be recorded by plat before a building permit can be issued. The submission and review of a preliminary plan further delays the Applicant and provides no useful purpose that benefits the public interest.

Minimum Necessary - *Staff finds* that for this Property, the request to waive the submission a preliminary plan as required in 50.34(a) is the minimum necessary to provide relief from this requirement.

Consistent with the General Plan - The waiver will allow this Property to be platted as a recorded lot. This community of homes along Kruhm Road is a rural community. The Master plan does not specifically mention this Property but does recommend the area retain the RC zoning. The Property, if platted, would retain the RC zone and meet the size and dimensional requirements of the zone. Therefore, *Staff finds* that the waiver is consistent with the General Plan as amended by the Fairland Master Plan.

Public Interest - Further, *Staff finds* that the waiver is not adverse to the public interest as there is no additional public benefit that would be obtained through the submission and review of a Preliminary Plan. The eventual platting of the Property is in the public interest to assure conformity with zoning.

LOT WITHOUT FRONTAGE DISCUSSION

P417 is currently landlocked and does not have frontage on a public road. The parcel to the east (P397) is under common ownership and has an ingress/egress, utility, and maintenance easement from P417 to Kruhm Road.

Per Section 50-29(a)(2) of the Subdivision Regulations, the Planning Board may approve up to two lots without frontage on a public road provided the proposed private driveway is adequate to serve the lots for emergency vehicles and installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands. Staff believes access via the private driveway in a twenty foot ingress-egress easement meets these requirements. As such, Staff recommends the Planning Board find that the proposed lot without frontage is acceptable.

FINDINGS AND CONCLUSION

Staff generally agrees that the submission of a preliminary plan in this instance will serve no purpose in the public interest. The Applicant will establish the necessary ingress/egress easements for a driveway that traverses P397 to the the Subject Property and serves no adjacent properties. There will be no adequate public facilities implications with respect to traffic, schools, or fire and rescue access. Additionally, since parcel P417 has no frontage no frontage improvements or right-of-way dedications will be necessary.

Staff recommends approval of the requested waiver with the conditions cited above.