



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 12
9/16/10



MEMORANDUM

DATE: September 3, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301-495-4544) *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Two (2) lots for two (2) one family detached residential dwelling units and two outlots.

PROJECT NAME: 939 Grays Lane
CASE #: 120070070
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: R-90
LOCATION: On the northern side of Grays Lane, approximately 1000 feet west of Kemp Mill Road
MASTER PLAN: Kemp Mill Master Plan

APPLICANT: Irah Donner
ENGINEER: CAS Engineering
ATTORNEY: Lerch, Early and Brewer

FILING DATE: August 10, 2006

RECOMMENDATION: Denial

EXECUTIVE SUMMARY

The subject application proposes to create two lots and two outlots from an unrecorded parcel that does not currently have frontage on a public road. Although staff believes there is a basis on which road frontage for the lots may be waived, we do not currently support this application because the Applicant has not satisfactorily demonstrated that the proposed subdivision will have legal access via a private driveway to a public street. The Applicant is requesting that the Planning Board make a finding that legal access is available to the property, however, staff does not believe that the determination in this case is a matter that the Board should decide. As a result, staff is recommending denial of this application.

SITE DESCRIPTION (See Figure 1 - Vicinity Map)

The property (“Subject Property” or “Property”) is identified as an unplatted parcel, P267 on tax map sheet JQ32. It is 2.28 acres in size and zoned R-90. It is located on the north side of Grays Lane, approximately 1000 feet west of Kemp Mill Road. Grays Lane is partially dedicated and constructed but for most of its length, it is not dedicated and exists as a partially paved driveway over private properties. The Kemp Mill Master Plan identifies Grays Lane as a 70-foot-wide, primary residential street that would connect Kemp Mill Road and Monticello Avenue. (see Figure 2) The Property is unimproved and is surrounded to the south and east by R-90 zoned property and to the north and west by properties in the Wheaton Regional Park (MNCPPC).

Seven other homes with addresses to Grays Lane currently use the undedicated section of the road that staff describes as a shared, private driveway. None of the homes are built on recorded lots but were constructed on unplatted parcels. The Property is entirely forested, with numerous large and/or specimen trees. The site drains to the Northwest Branch, a Use IV/IV-P watershed, however; there are no streams or stream buffers on the site.

GRAYS LANE 120070070

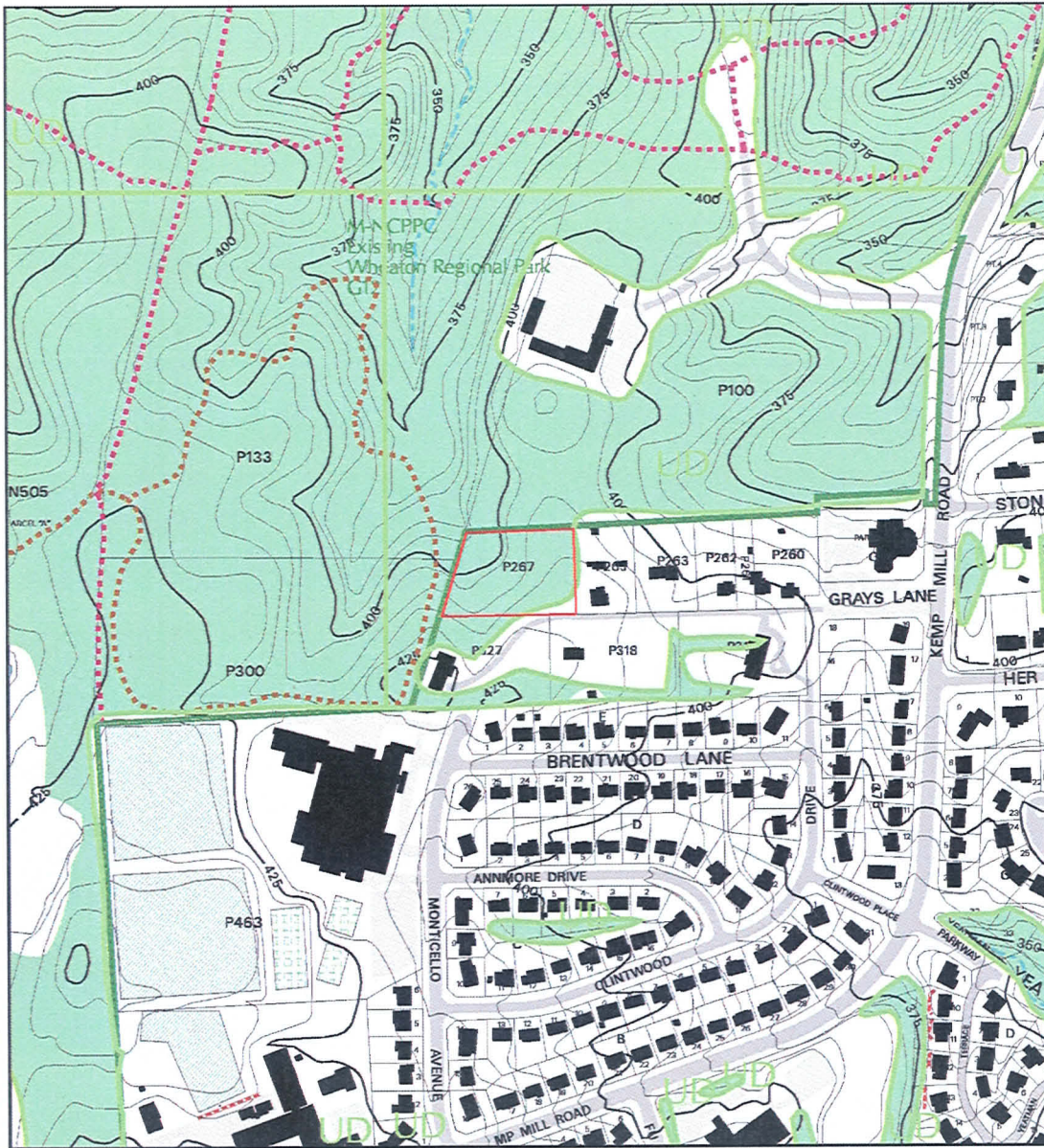


Figure 1. Vicinity Map

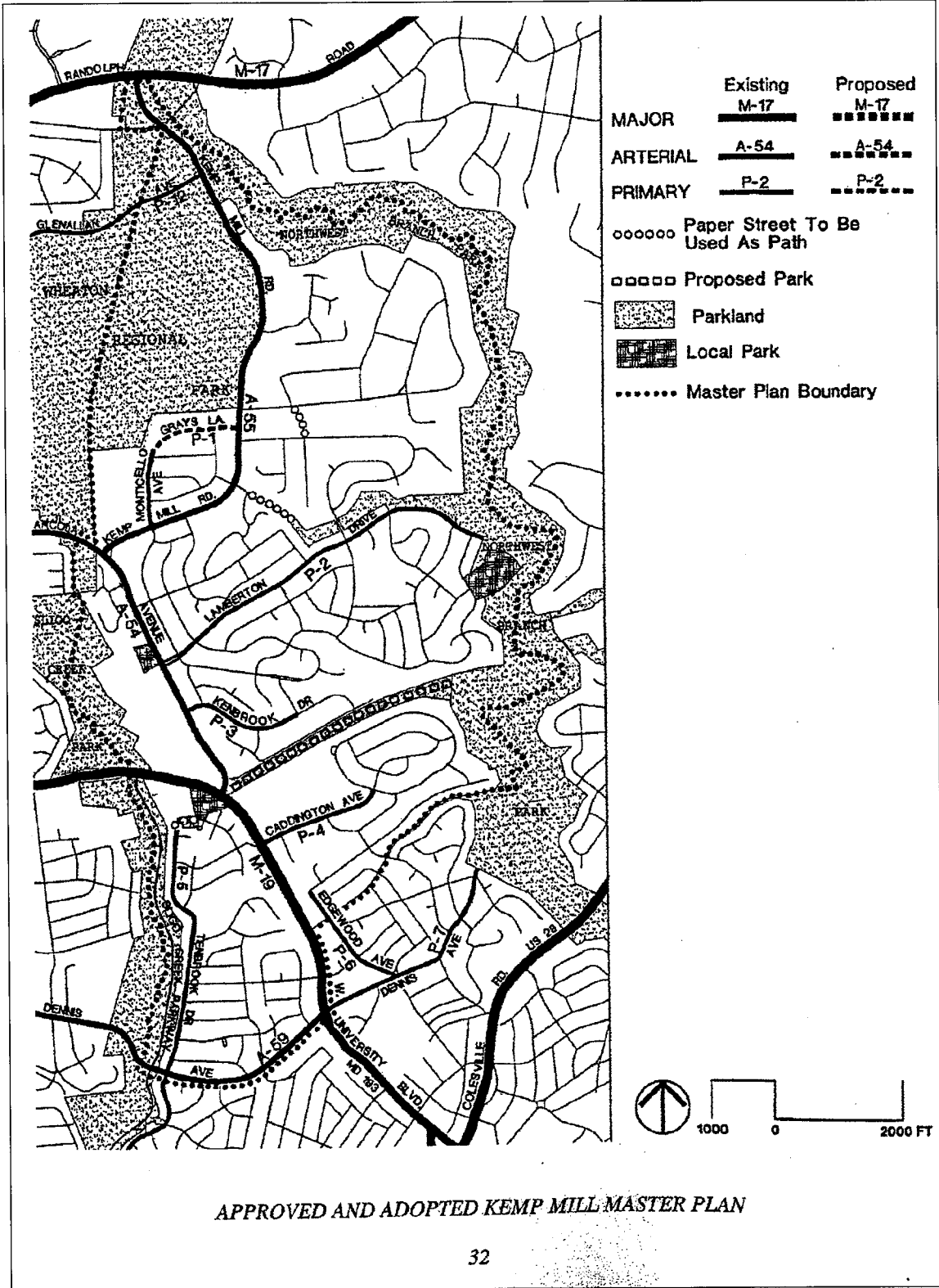


Figure 2

PROJECT DESCRIPTION (See Figure 3 - Preliminary Plan)

The proposal is to subdivide the parcel into two lots for building purposes and two outlots. The two buildable lots and the two outlots will front on Grays Lane which serves as the only means of vehicular access to the Subject Property. The only public utilities established in this neighborhood along the unplatted portion of Grays Lane are phone, electric and public water. No sewer service exists nor have any easements for sewer extension been granted.

Because of the lack of public sewer easements or public right-of-way and the evident inability to gain access for sewer utilities across adjoining private properties, the Applicant must use septic systems to accommodate sanitary service. While the Property is in the correct sewer service category (S-1), sewer cannot be provided until adjacent property owners agree to the extension(s) of service through their properties to connect this neighborhood to the WSSC system. As such, the septic limitations of the Property limit the site to two lots for building purposes. The outlots will be used to accommodate the septic fields for the buildable lots. The two building lots are 16,975 square feet (Lot 1) and 16,733 square feet (Lot 2) in size. Outlots A and B are 17,102 square feet and 38,355 square feet, respectively. Under current regulatory restrictions, the outlots cannot be made buildable until, at a minimum, the issue of sewer service is resolved.

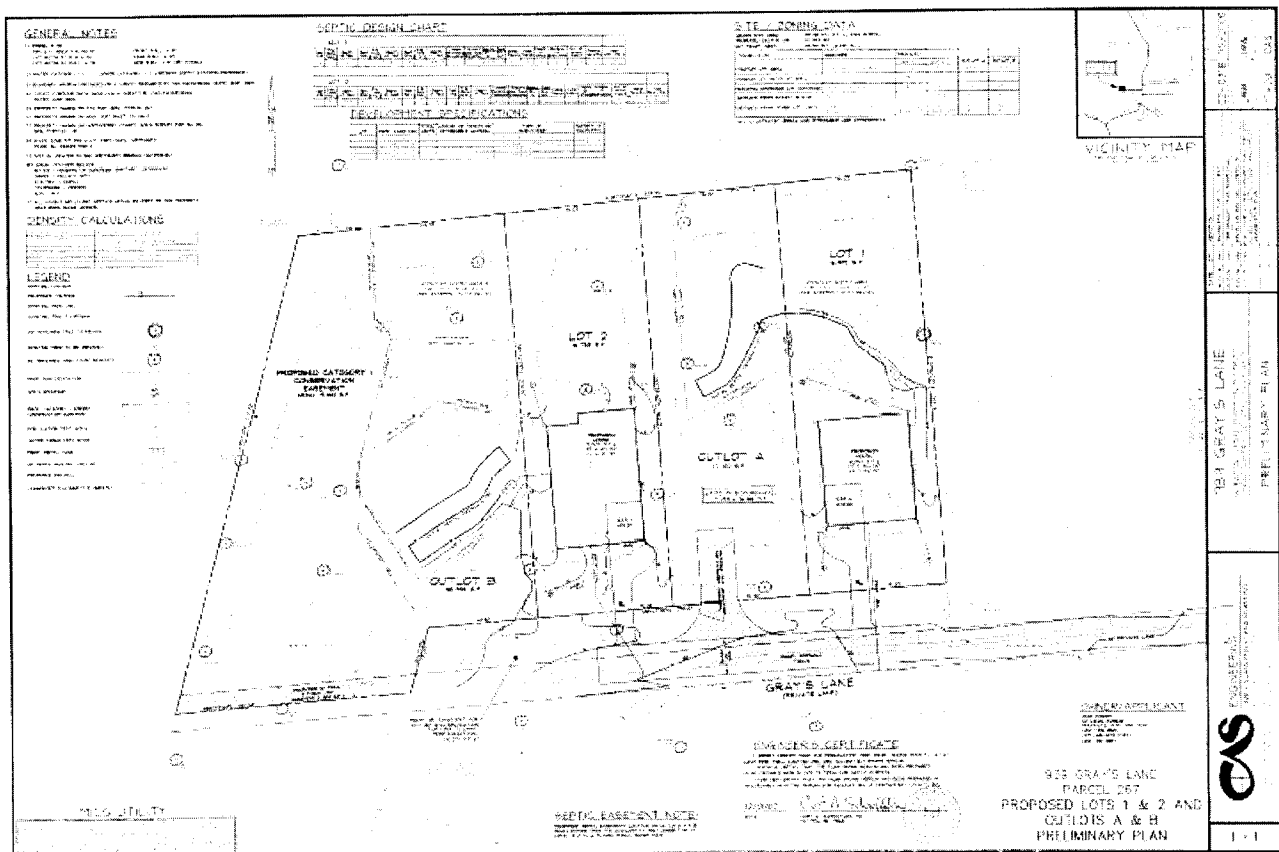


Figure 3. Preliminary Plan

DISCUSSION OF ISSUES

Two significant issues must be addressed by the Board prior to its action upon the proposed subdivision: access to the proposed lots; and lot frontage. Staff cannot make the finding that the lots have adequate access and, for that reason, the application should be denied. However, even if the Board finds that access is available, the issue of lot frontage on a public street must also be addressed. This report, therefore, focuses on these issues.

Status of Grays Lane as Legal Access to the Proposed Subdivision

One of the key requirements for subdivision approval is adequate access. Section 50-29(a)(2) of the Subdivision Regulations requires lots to “abut on a street or road which has been dedicated to public use or which has acquired the status of a public road.” In exceptional circumstances where a property has no frontage on such a road, the Subdivision Regulations states:

“...the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such *access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.*” (*emphasis added*)

Where, as in this case, an applicant proposes that lots be served by a shared private driveway, staff generally relies on very clear evidence demonstrating rights of access. It is generally staff’s practice to require that the right to such shared driveway access be memorialized and included within a recorded ingress/egress and utility easement that clearly assures a certain level of continued right to access one’s property through, or over, adjoining private properties. When such lots are approved, that easement is recorded in the land record of Montgomery County and the easement’s liber and folio is included, with graphic depiction, on the subdivision record plat for the lot(s).

This application is somewhat unique in that there are numerous intervening private property owners between the Subject Property and the closest public street, (dedicated Grays Lane). For this application, the applicant has not presented such an easement agreement from the other private property owners who own the land over which the shared private driveway runs. Alternatively, intervening property owners could, but have not, dedicated their portion of the future Grays Lane, which would allow the applicant to build a complete public road from existing Grays Lane to the Subject Property.

The applicant has presented documentation that he claims shows that the Property has legal access. This documentation consists largely of a Will that includes a surveyor’s “plat” drawing; however, it is not clear if the documents presented establish the necessary access, in part, because staff has no evidence that they have been recorded in the land records of Montgomery County against this the applicant’s property. Staff understands the applicant’s position to be as follows: Grays Lane was envisioned as a private drive of some type, described in an exhibit included in the 1934 Last Will and Testament of a Mr. William Gray (“Will”).

With this exhibit, the Will indicated that the original 16.25 acre Gray property would be divided into eight "lots" with a "Private Road For Use Of Lots." The Subject Property is one of the eight properties that were described in the 1934 Will and remains in the same configuration as it was shown in the drawing from the 1934 Will. Seven other residences have been built on parcels that access the private driveway and all have but one has an address on Grays Lane.

The documentation presented by the applicant has been summarized in a letter from the applicant's representative dated, September 2, 2010. (See Attachment A). According to this letter:

- The William T. Gray Will, circa 1934, divided the 16.25 acre Gray Tract into eight parcels of land which were depicted on a surveyor's plat included in the Will. (Attached) The plat drawing included a 20 foot wide "Private Road For Use of Lots" which runs down the center of the Tract, essentially dividing the northern four parcels from the southern four parcels. The Applicant argues that there is an express easement created by the original conveyance and recognized by the Circuit Court of Montgomery County.
- The Applicant contends that all seven of the other parcels have been improved with either residential or non-residential uses with County issued building permits.
- The Grays Lane driveway is currently accessed by U.S. Mail postal carriers, Department of Public Works trucks, UPS, Fedex and other delivery service trucks, WSSC for a water line thus demonstrating it functions as a public road.
- The private driveway has long been used by the properties that abut it.

Although there are no physical barriers to vehicular traffic, the driveway is identified by a sign as a "Private Drive," "No Access to Park". The County does not maintain the driveway and, while it is presumably used solely by the individual property owners, the applicant indicates that their invitees, delivery trucks, mail delivery and emergency responders can also use the driveway to access the residences. While this may be so, the applicant has been unable to provide any documentation that makes clear to staff how this use of the driveway is legally granted, and how or who maintains the driveway. (See figure 3-6)

Figures 3-6. Photos of existing Grays Lane



Figure 3

View from the dedicated portion of Grays Lane looking west towards the private driveway. Asphalt appears to have been placed recently to a width of 15-16 feet.



Figure 4

For half of its length, the driveway is a gravel concrete mix that extends back to the Subject Property.



Figure 5
Looking back towards Kemp Mill Road from the Subject Property. Temporary WSSC water lines cross the driveway.



Figure 6
View of the Subject Property

From the documentation provided, staff is unable to conclude that the lots will have adequate access to a public street. The private driveway has numerous unresolved issues which make this application unsupportable. Most significant is the lack of a demonstrated

ingress/egress and utility easement agreement amongst the private property owners which brings into question the ability to install basic utilities and allow others to access the site. Stemming from this is the issue of emergency apparatus access. Typically the Montgomery County Fire and Rescue Services (MCFRS) requires shared private driveways to be 20 feet wide. The applicant has received an approved "Fire Access Plan" from the MCFRS which was based upon a waiver request by the applicant to reduce the standard 20 foot wide pavement width and to allow a narrower pavement width of 15-18 feet. However, the approved "Fire Access Plan" shows that the driveway was, or will be, located in a "20' wide easement". Staff is not aware of the existence of any easement, much less one that permits the applicant to meet the requirements of the approved "Fire Access Plan." Staff does not believe that the Applicant has shown that they have the necessary access to (1) ensure that the existing paved portions of Grays Lane will remain paved, or (2) install new paving on the intervening property owners' land. Again, lacking a dedicated and built public street, or a recorded easement agreement between the users of this driveway, staff is not able to make the necessary findings for adequate access to the proposed subdivision and recommends that the application be denied.

Lot Frontage - Subdivision Waiver 50-38(a)(1)

As noted above, Section 50-29(a)(2) of the Montgomery County Subdivision Regulations requires that all lots abut a street or road which has been dedicated to public use or which has attained the status of a public road. This Section of the Subdivision Regulations allows the Board to approve (without waiver) no more than two lots without public road frontage, provided they are, on a private driveway. In other cases that have been approved using this provision, it has been interpreted to mean that the two lots must be the only ones sharing the private driveway. Consistent with the Board rulings in those cases, the proposed lots do not qualify for a finding for lots without frontage. Instead, staff believes that a waiver of frontage is required.

The Applicant has requested a waiver of the requirement that the proposed lots abut a street or road that has been dedicated to public use or which has acquired the status of a public road pursuant to Section 50-38(a)(1) of the Subdivision Regulations. This section authorizes the Planning Board to grant a waiver from the requirements of Chapter 50 based upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements and that the waiver is:

- 1) the minimum necessary to provide relief from the requirements;
- 2) not inconsistent with the purposed and objectives of the General Plan; and
- 3) not adverse to the public interest.

Staff does not believe that Grays Lane, in its current state, has attained the status of a public road because it is not within a dedicated right-of-way that would permit the general public to use it and because it is generally in substandard condition. For any road to be classified as dedicated to public use it must be dedicated by plat for use as a public street. The Kemp Mill Master Plan recommends that Grays Lane be extended as a loop road to Monticello Avenue as a primary residential street having a 70 foot right-of-way and, while the Applicant is willing to dedicate their half of the right-of-way (35 feet assuming that Grays Lane will eventually align in

the current location), to provide necessary lot frontage, the Montgomery County Department of Transportation (DOT) is not willing to accept the dedication at this time. Their rationale is that the dedicated area would be an isolated fragment; not physically connected to another section of existing dedicated road or prescriptive right-of-way. DOT is not willing to accept the maintenance and liability of dedicated lands where the ability to access it is questionable. Because DOT refuses to accept dedication, the applicant argues that there are practical difficulties and unusual circumstances that prevent full compliance with the Regulations. The Applicant has, therefore, asked the Board to waive this requirement and allow the lots to front on an "easement for future dedication" of Grays Lane. The dedication would occur if, or when, the County ever needed it to allow for the completion of this Master Plan road.

Staff believes that this is an unusual circumstance whereby the Property has its sole access on a private driveway that cannot attain the status of a public street and, while technically able to convey dedicated land for purposes of public street construction, the applicant is not able to do so due to public policy. Further, the road in question is a master planned road which makes it even more unusual that it cannot be used for frontage. In fact, given the intent of the Master Plan to make this connection, and the fact that seven existing residences already utilize the existing driveway in the designated location of the road, Staff pursued the possibility of condemnation for the construction of the entire roadway with the Montgomery County Department of Transportation. That has, however, been met with resistance from DOT due to their finding that there is a lack of demonstrated need. In staff's opinion, these unusual circumstances support the grant of a waiver in this instance.

Staff believes that the waiver is the minimum necessary to provide relief from the requirements of the Subdivision Regulations; the waiver requests no additional relief from other sections of the Regulations. The request is not inconsistent with the purposes and objectives of the General Plan; the driveway is, in fact, a future master plan primary residential street and approval of the waiver in no way conflicts with the eventual construction of that road. It is also staff's determination that the waiver is not adverse to the public interest.

Therefore, Staff finds there to be sufficient justification based on unusual circumstances for the Planning Board to support the waiver pursuant 50-38(a)(1) and to allow the lots to abut an easement for future dedication.

Citizen Correspondence and Issues

This plan submittal pre-dated any requirements for a pre-submission meeting with neighboring residents; however, written notice was given by the applicant and staff of the plan submittal and the public hearing date. During the course of the review, the plan had been mailed back out to the residents because of the significant time it has been under review, and to assure that all residents were aware that the plan had been revised from four lots to two lots and two outlots without using public sewerage systems. As of the date of this report, there are two letters that have been received from local residents. From the date of the letters and the discussion of issues it is evident that they were in response to the original four lot proposal with intent to extend public sewers.

A summary of the concerns raised in the two letters are as follows:

- The four lot proposal appears to be a cluster with smaller than existing lots, out of character or changes the character
- Future homeowners may be surprised by the lack of amenities that can be provided on Grays Lane such as trash and mail delivery
- Sewer main construction will be disruptive to Grays Lane, including grading and front foot benefit fees
- Tree clearing will be excessive for four homes
- Fear that the developer will be disappointed with home sales on Grays Lane
- All residents on Grays Lane should be noticed
- Parking overflow for the four new homes on Grays Lane
- Four homes would provide too much traffic
- Property values would drop because of four homes with small side yard setbacks and limited public amenities such as public street maintenance, gas, etc.
- Overcrowding at schools

As mentioned above, the two letters that are in the file addressed the four lot plan. Most of the concerns, in staff's estimation, are addressed by a reduction in buildable lots to two. No sewer will be extended with the current proposal, tree loss will be reduced, lot sizes, while in the half acre size range, will appear to be expansive because of the undeveloped outlots that will remain undeveloped until significant changes to this neighborhood occur. The amount of traffic and impacts to Grays Lane are reduced by half, and any overflow parking on Grays Lane would be sporadic. The Northwood High School cluster is currently operating within acceptable levels according to the latest test. Citizen concerns have been adequately addressed by the proposed plan, or with the recommended changes.

CONCLUSION

Staff concludes that an adequate finding for access cannot be made for this Application and that without a recorded ingress/egress and utility easement agreement amongst all users of the driveway, the determination cannot be made by Staff or the Planning Board. This staff report has been written as a recommendation to deny, therefore, most of the findings for Adequate Public Facilities, conformance to the Subdivision Regulations and the Zoning Ordinance have not been addressed in this report.

Should the Planning Board disagree with our findings on the issues of access and agree with staff's determination that there is sufficient justification to waive the requirements for frontage on a public street; the plan should be deferred and brought back with a revised staff evaluation.

Attachments

Attachment A – Lerch, Early and Brewer letter



ATTORNEYS

STUART R. BARR
DIRECT 301.961.6095
SRBARR@LERCHEARLY.COM

September 2, 2010

BY E-MAIL AND HAND DELIVERY

Montgomery County Planning Board
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 939 Grays Lane, Silver Spring, Maryland (the "Property")
Preliminary Plan No. 1-20070070
Legal Access to the Property

Dear Members of the Board:

We hope you enjoyed the summer recess. On September 16, 2010, at your first set of hearings after the break, you will consider a very small subdivision application involving a property in Wheaton next to the Wheaton Regional Park. The Property is currently unimproved and is zoned R-90. The applicant, Mr. Irah Donner, has applied to subdivide his Property into 2 buildable lots and 2 outlots. The Property is approximately 2.3 acres in size and adequately meets all of the development standards of the R-90 zone.

All matters have been resolved with the planning staff with the exception of one issue: does the Property have legal access? Despite extensive research and documentation and our best efforts, we have apparently been unable to convince staff that the Property does in fact have legal access. Staff would prefer that Mr. Donner obtain a Court declaration confirming that the Property has legal access. We respectfully maintain that such an effort is unnecessary and unduly burdensome, and we turn to you for consideration of our position.

Initially it is worth noting that Park and Planning has already determined that Mr. Donner is entitled under Subdivision Regulation §50-9(f) to construct one dwelling unit on the Property without recordation of a subdivision plat (*see Attachment A*). It is also noteworthy that Grays Lane is master planned as a public roadway connecting Monticello Avenue with Kemp Mill Road.¹

¹ The 2001 Approved and Adopted Kemp Mill Master Plan (the "Master Plan") generally recommends improving mobility in the planning area by encouraging a safe and efficient transportation system with a range of alternatives (p. 1). The Master Plan specifically identifies Monticello Avenue/Grays Lane as a 2-lane primary residential street (70' ROW) creating a loop road that connects to Kemp Mill Road in two locations (pp. 31-33).

As to the issue of legal access, we can confirm, based on our many hours of research and the dozens of documents we have reviewed and provided to staff, that Lot 5 (i.e., the subject Property) shown on the February 1930 plat attached as Attachment B in fact has legal access across Grays Lane because the February 1930 plat is clear and states "Private Road for Use of Lots," and case law and Maryland Annotated Code, Real Property Article, §2-114 support a right of access to and from the Property. These reasons, and additional supporting legal arguments, are described in detail below.

In addition, Grays Lane, the private road that provides physical access to the Property, has existed for over 80 years. During this 80 year history, all of the current and prior property owners on Grays Lane have used it freely for access to Kemp Mill Road, the nearest public road. To our knowledge, no one, whether a property owner on Grays Lane or otherwise, has ever questioned the right of access to the subject Property, 939 Grays Lane, or to any other property on Grays Lane. There has been no suggestion or argument in the 80 year history of Grays Lane that Mr. Donner's Property or any of the other properties on Grays Lane do not have legal access.

The origin of Grays Lane is unique, but not ambiguous. While the issue of legal access has been exhaustively researched and dozens of documents have been provided to staff, there are only a few critical facts and documents that the Board needs for its consideration of this issue:

- In the 1930s, William T. Gray, owned the larger 16 ¼ acre property from which Grays Lane, the subject Property, and the other properties on Grays Lane were created.
- In February 1930, the County surveyor at the time prepared a "plat" (i.e., a survey document), which was later attached to Mr. Gray's Will, that divided the 16 ¼ acre property into 8 lots, roughly 2 acres each, numbered 1 through 8 on the plat (Lot 5 is the subject Property) (*see Attachment B*). The February 1930 plat also shows a 20 foot wide "Private Road for Use of Lots" (what is now Grays Lane) connecting all 8 lots with the nearest public road (what is now Kemp Mill Road). At the time when the plat was first prepared, in February 1930, none of the lots had been formally conveyed.
- In June 1930, Mr. Gray conveyed one of the 8 lots shown on the plat -- Lot 4 -- by deed (L. 512 F. 336, recorded November 1930) to one of his sons along with access across a "private road" described by metes and bounds in the deed which matches the "Private Road for Use of Lots" shown on the February 1930 plat. This June 1930 deed, recorded in Land Records, formally created what is now Grays Lane (*see Attachment C*).

- In 1933, Mr. Gray executed his Will and attached the February 1930 plat to his Will (*see Attachment D*). The Will describes the recipients of the remaining 7 lots and expressly references the attached February 1930 plat. The Will was admitted to probate and bequeathed the remaining 7 lots, including the subject Property (Lot 5), to Mr. Gray's descendents when he died in 1934.

As indicated above, the only question now for the Board's consideration, raised by staff, is whether Lot 5 shown on the February 1930 plat (i.e., the subject Property) in fact has legal access across Grays Lane (a/k/a the "Private Road for Use of Lots" shown on the February 1930 plat). We submit that legal access is – unquestionably – established by the following:

1. The February 1930 plat attached to Mr. Gray's 1933 Will is clear and states "Private Road for Use of Lots" ("lots" plural). There can be no other reasonable conclusion other than the private road was intended to provide legal access to multiple lots, not just one lot. There is simply no indication that Mr. Gray intended to landlock any of the lots or provide access to some of the lots, but not others. Plats can create either implied or express easements depending on the language on the plat. Mr. Gray's intent was clear, and no particular words of art are needed to create an express easement. Moreover, a reference in a deed or will to a plat which shows a street or other common area at the very least creates an implied easement in the grantee in the area. "Maryland has long followed the majority rule that where a street or other way is called for as a boundary and the grantor owns the fee in the street, the grantee gets a right of way by implication to the nearest public road." *Layman v. Gnegy*, 26 Md. App. 114, 117, 337 A.2d 126 (1975), cert denied 275 Md. 752. Additionally, intent to create an easement can be found later where the grantees have used the easement area for a long period after the conveyance. Such is the case here where Grays Lane has been used by all of the property owners on Grays Lane, including Mr. Donner and prior owners of 939 Grays Lane, for 80 years.
2. Maryland Annotated Code, Real Property Article, §2-114 supports a right of access to and from the Property by providing:

Title to street or highway where land binding on it is granted. (a) In general. – Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the deviser, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

This Section dates back to 1892 and is applicable to property binding on a private street as well as to property binding on a public one. *State Rds. Comm'n v. Teets*, 210 Md. 213, 123 A.2d 309 (1956).

3. In 1976 the Property was the subject of a partition action by Mr. Gray's descendents (Montgomery County Circuit Court Equity Case Number 48974). The Court Order approved the sale of the Property and never questioned the Property's legal access.
4. The deed conveying the Property to Mr. Donner in 2002 conveyed the land "with all rights, ways, easements, and improvements thereunto belonging or appurtenant thereto" (L. 22134 F. 519), and Mr. Donner's title insurance policy states that the Property has legal access and insures access. Moreover, Mr. Donner's title insurance company is so certain on this matter that it issued a recent letter further confirming legal access (*see Attachment E*).
5. The County has issued building permits for all of the other lots on Grays Lane, which derive access from the same documents as Mr. Donner's Property. Today, all of the other eight lots other than Mr. Donner's are improved with homes and the synagogue at the corner of Grays Lane and Kemp Mill Road. Park and Planning has approved subdivisions for the properties on the corner of Grays Lane and Kemp Mill Road, and some of the lots have been subdivided by deed. The County has issued building permits for all of these lots, and all of the properties on Grays Lane use Grays Lane for vehicular access. In approving permits for all of these homes, determination has been made of legal access. During the 80 year history of Grays Lane all of the lots on Grays Lane, including Mr. Donner's lot, have – without challenge – used it for access.

In our discussions, staff has referenced the *Awkard et al. v. MNCPPC et al.* case that was filed in 2008 because that case involves some question of access for other properties. The case was referred to mediation over a year ago and it appears to be on hold indefinitely. Simply stated, the pending *Awkard* litigation or its ultimate resolution is inapplicable to this case and should not delay or otherwise impact this pending subdivision application.

Thank you very much for considering our position on this one remaining issue. We look forward to presenting our subdivision application on September 16th.

Very Truly Yours,



Stuart R. Barr

Attachments:

- A. March 4, 2002 Letter from Development Review confirming exception to subdivision regulations under Section 50-9(f)
- B. February 1930 plat
- C. June 1930 Deed (L. 512 F. 336, recorded November 1930)
- D. March 1933 Will of William T. Gray
- E. July 13, 2010 Letter from American Home Title

cc: David Lieb, Esq.
Rose Krasnow
Cathy Conlon
Richard Weaver
Irah Donner
Joe Davis, Community Planning Solutions, Inc.
Curt Schreffler, CAS Engineering



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 04, 2002

Rachel Waterstradt
Linowes and Blocher
1010 Wayne Avenue
Silver Spring, MD 20910

Re: Parcel 267; Tax Map JQ342

Dear Ms. Waterstradt,

The Development Review staff has reviewed the information supplied by you with regards to the above referenced property. It is our findings that Parcel 267 does qualify for an exception to the subdivision regulations under section 50-9(f). The deed history provided indicates that this parcel existed in its present size and shape prior to June 1, 1958. This property is eligible for construction of one (1) single-family residential dwelling as provided for under Section 59 - B-5.1 of the Montgomery County Zoning Ordinance.

This exception does not waive any other legal requirements imposed by any governmental review authority. You may wish to contact the Department of Permitting services to clearly understand any limitation associated with building permit reviews for this property. If you have any questions regarding this transmittal, please contact us at 301/435-4595

Sincerely,

Taslima Alam

Cc: W. Cornelius, DRD

Attachment B

OF PART OF A TRACT OF LAND

CALLED

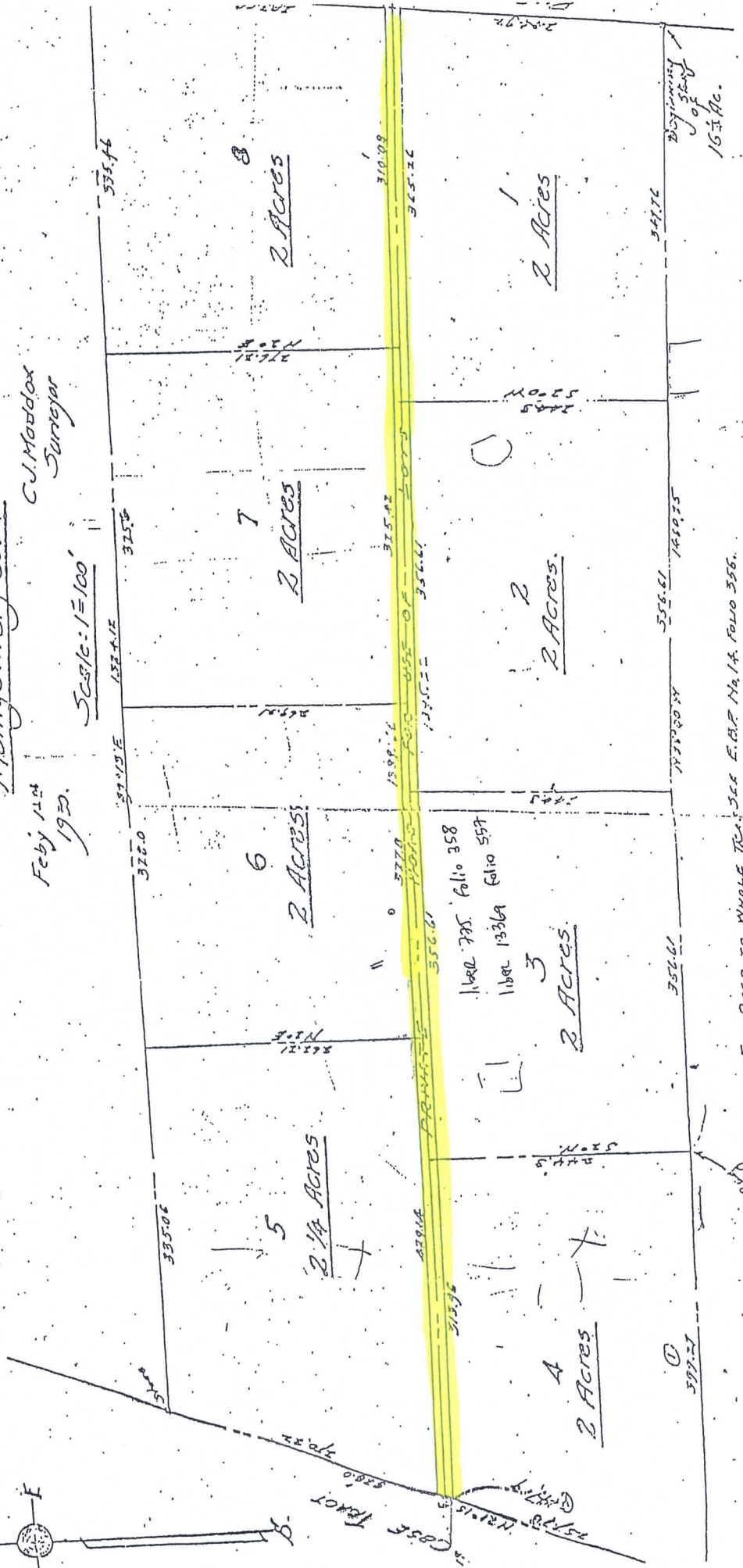
"BEALBY EDMONSTONS DISCOVERY"

Montgomery Co. Md.

C. J. Moddox
Junior

Feb'y 11th
1950.

SCALE: 1" = 100'



FOR DEED TO WHOLE TRACT SEE E.G.P. No. 14, FOLIO 355.

Attachment C

M35180c

remainder of the land thereby conveyed and not hereby released.

Witnesseth, that for and in consideration of the sum of \$1000 dollars and divers other good and valuable considerations us thereto, moving us to this deed, William T. Gray and Rosa Gray, his wife, and Savings Institution of Sandy Springs, Georgia, grant and convey unto Andrew J. Gray all that lot, piece or parcel of land, situate, lying and being in Montgomery County, in the State of Maryland, being Lot numbered Four in the division of part of a tract of land called "Beall and Edmonston's Discovery", containing five and one fourth acres of land, more or less, conveyed by Reuben Middleton to Stephen A. Bailey and wife, the twenty fourth day of December, in the year eighteen hundred and seventy five and recorded in Liber E.B.P. No. 14, folio No. 356, one of the Land Records of Montgomery County, Maryland, and described by metes and bounds, courses and distances following:

Beginning for the same at the end of ten hundred and sixty and ninety one hundredths feet on the first line of the foresaid conveyance and running thence with said first line North eighty eight degrees West, three hundred and ninety nine and two seven one hundredths feet to the end thereof; thence with part of the second line of said conveyance North twenty one degrees, fifteen minutes East two hundred and fifty seven and seventy eight one hundredths feet to the center line of a private road on right of way twenty feet wide laid out for the use of said lot and thence bounding in the center line of said private road or right of way South eighty eight degrees East three hundred and thirteen and ninety six one hundredths feet; thence leaving said road and at right angles thereto south two degrees West, two hundred and forty four and three tenths feet to the place of beginning, containing Two acres of land, more or less, according to survey made by C. J. Maddox, February 1930,

Also all that right of way described as follows:

Beginning for the same at the end of Two hundred and forty seven and nineteen hundredths feet on the second line of a conveyance made the twenty fourth day of December, in the year eighteen hundred and seventy five by Reuben Middleton to Stephen A. Bailey for sixteen and one fourth acres of land, recorded in Liber E.B.P. No. 14, folio No. 356, one of the Land Records of Montgomery County, Maryland, and running thence with said line North twenty one degrees, fifteen minutes East, twenty one and eighteen one hundredths feet thence across said conveyance South eighty eight degrees East, thirteen hundred and eighty nine and sixty six one hundredths feet to intersect the fourth line of said conveyance at the end of two hundred and seventy three and six one hundredths feet thereon and then with said line South six degrees, five minutes West, twenty and five one hundredths feet; thence leaving said line and parallel and twenty feet South of the above described second line of said description North eighty eight degrees West, thirteen hundred and ninety five and twenty two hundredths feet to the place of beginning.

The hereinbefore described land and right of way being part of the same which was conveyed to the said William T. Gray by deed from Andrew J. Gray and Lillian Gray, his wife, bearing date the twenty ninth day of June, in the year nineteen hundred and twenty nine and which is duly recorded among the Land Records of Montgomery County, in the State of Maryland, in Liber No. 484, folio No. 377, to which deed and the deeds therein referred to reference is hereby made for more full and particular description of the land and right of way hereby conveyed.

###

... To have and to hold unto the said William T. Gray and Rosa Gray, his wife, all and singular the tenements and lands together with all the rights, roads, ways, waters, easements, and appurtenances thereto in anywise thereto appertaining.

And the said William T. Gray and Rosa Gray, his wife, covenant to warrant specially the lands and premises hereby conveyed, and to execute any and all such further and other assurances as may be requisite or necessary the better to convey the same as aforesaid.

Witness the hands and seals of William T. Gray and Rosa Gray, his wife, and the signature of the Savings Institution of Sandy Spring, Maryland, by its President, its Corporate seal hereto attached and the same attested by its Secretary.

J. Jeaney Shoemaker	William T. Gray	(Seal)
Witness:	Rosa Gray	(Seal)
Attest:	Savings Institution of Sandy Spring,	
Francis A. Thomas	Maryland,	
Secretary	By Frederic L. Thomas	
	President	

Savings Institution of
Sandy Spring, Md.
Chartered 1868

State of Maryland,
Montgomery County, to wit:-

I hereby certify that on this 30th day of June, in the year nineteen hundred and thirty, before me, the subscriber, a Notary Public of the State of Maryland, in and for Montgomery County, personally appeared William T. Gray and Rosa Gray, and did acknowledge the foregoing and annexed deed to be their act and deed.

Given under my hand and Notarial Seal this 30 day of June, A.D. 1930.

J. J. Shoemaker
Notary Public

J. J. Shoemaker
Notary Public
Sandy Spring,
Md.

State of Maryland,
Montgomery County, to wit:-

I hereby certify that on this 30th day of June, in year nineteen hundred and thirty, before me, the subscriber, a Notary Public of the State of Maryland, in and for Montgomery County, personally appeared Frederick L. Thomas, President of Savings Institution of Sandy Spring, Maryland, and did acknowledge the aforesaid and annexed deed to be the act and deed of said Savings Institution of Sandy Spring, Maryland.

H35180C

Notary Public

J. J. Shoemaker
Notary Public
Sandy Spring
Md.

MAILED
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Mailed to At the request of Walter L. Funderburk the following Deed was recorded
North Wash. Realty Co. November 15th, A.D. 1920, at 8:33 o'clock A.M. to wit:-
Silver Spring, Md. This Deed Made this 24th day of October, in the year nineteen hundred and
thirty, by Alfred Cheetham and Q. Tomlin Cheetham, his wife, of Montgomery County, in the
State of Maryland;

Witnesseth, that for and in consideration of the sum of Ten (\$10.00) dol-
lars and the assumption of and promise to pay by the grantees hereinafter named an encum-
brance given by the said North Washington Realty Company, Incorporated, to secure Weaver Bros
Inc., Clarence Dodge and Martin H. West, Trustees, in the sum of Seven Thousand Five hundred
and 00/100 dollars, with interest from date at the rate of six per centum per annum, dated
April 15th, 1920, and duly recorded among the Land Records of Montgomery County in Liber No.
at folio.... prior hereto and divers other good and valuable considerations then thereunto
moving, we the said Alfred Cheetham and A. Tomlin Cheetham, his wife do grant and convey
unto Walter L. Funderburk, unmarried, all that lot, piece or parcel of land, situate, lying
and being in Montgomery County, in the State of Maryland, which is known as and being Lot
numbered Two (2), in Block lettered "H", in a subdivision of land in said County known as and
called "Sligo Park Hills", Section One", as laid down and described upon a Plat of said Subdi-
vision which is duly recorded among the Land Records of said County in Plat Book No. 4, Plat
Book No. 377, to which Plat reference is hereby made for more full and particular descrip-
tion of the land and premises hereby conveyed.

In consideration of the execution of this deed, the grantee for himself,
his heirs or assigns, covenant and agree (such covenant and agree (such covenant and condition
to run with the land).

1. The building lines of this subdivision as shown on the plat recorded in
the Land Records of Montgomery County are binding upon the lot herein conveyed.
2. For purposes of sanitation and health, this property cannot be sold,
transferred, nor rented, to a member of a race whose death rate is greater than that of the
white race, or to a member of the Negro Race.
3. That neither the grantee nor his heirs or assigns shall or will erect
or permit to be erected more than one single family dwelling and the necessary garage therefor
on any lot in said subdivision.
4. The North Washington Realty Company specifically reserves the right to
approve or disapprove the exterior design of the dwelling and garage as well as the locations
therefor to be built on any lot in this subdivision and the grantee and/or their heirs or
assigns, specifically agree that they will not start construction or the foundation of a dwel-
ling or garage on the lots conveyed herein without the written approval of the North Wash-

LAST WILL AND TESTAMENT.

of

WILLIAM T. GRANT.

IN THE NAME OF GOD, AMEN,

I, William T. Gray of Montgomery County, Maryland being of sound and disposing mind, memory and understanding, and capable of executing a valid deed or contract, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs, and thereby be the better prepared to leave this world when it shall please the Almighty to call me hence, do hereby make, publish and declare this my last Will and Testament, hereby revoking and annulling all wills and testamentary dispositions heretofore made by me, in manner and form following, that is to say:

FIRST, and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my executrix hereinafter named; and my will is, that all my just debts and funeral expenses shall be paid by my executrix hereinafter named as soon after my decease as shall be convenient:

SECOND, I give, devise and bequeath to my wife Rosa Bowman Gray all of lot 1; to my daughter Rosa V. Gray all of lot 2; to my daughter Verna Gray Wessells all of lot 3; to my son Andrew J. Gray all of lot 4 (has been deeded him); to my son Clarence S. Gray all of lot 5, life estate, if he remarries it goes to his children, if not, at his death to be equally divided among his brother John A. Gray, his brother Andrew J. Gray, his sister Velma Gray Bean, his sister Guelda Riggs, his sister Merle Gray Hurdle, his sister Verna Gray Wessells, his sister Rosa V. Gray and his brother Wm. T. Gray, Jr.; to my daughter Guelda Gray Riggs all of lot 6, life estate, at her death to go to her children; to my daughter Velma Gray Bean all of lot 7, life estate, at her death to go to her children; to my son William T. Gray Jr., all of lot 8, life estate, at his death to go to his lawfully wedded wife's children; to my daughter Merle Gray Hurdle two lots in Kensington Maryland, life estate, at her

death to her children (she has privilege of selling one lot); to my son John A.Gray, land that has been deeded him. To my wife Rosa Bowman Gray the privilege to sell all the property on the East side of Road when she sees fit. (Plat attached showing full description and location of lots mentioned. After settling all my debts, my wife Rosa Bowman Gray to have one third of the money, balance to be equally divided among the nine children, my son John A.Gray, my son Andrew J. Gray, my daughter Velma Gray Bean, my son Clarence S.Gray, my daughter Guelda Riggs Gray, my daughter Merle Gray Hurdle, my daughter Verna Gray Wessells, my daughter Rosa V.Gray, and my son William T.Gray Jr. Whatever money in the bank belongs to my wife, Rosa Bowman Gray. This property can not be sold to colored people.

All the rest and residue of my estate, both real, personal and mixed, I give, devise, and bequeath to my wife Rosa Bowman Gray .

And Lastly, I do hereby nominate, constitute and appoint my wife, Rosa Bowman Gray executrix of this, my last Will and Testament, and I desire that my executrix hereinbefore named shall not be required to give bond for the faithful performance of the duties of that office.

IN TESTIMONY WHEREOF, I have set my hand and seal to this, my last Will and Testament, at Silver Spring Maryland, this 24th day of March in the year of our Lord one thousand nine hundred and thirty-three.

William T.Gray (Seal)

Signed, Sealed, Published and Declared, by William T.Gray the above named testator, as and for his last Will and Testament, in our presence, and at his request, and in his presence, and in the presence of each other, we have hereunto subscribed our names as attesting witnesses.

Residence Garland W.Wolfe
917 Bonifant St Silver Spring Md.

Residence Frank L.Hewitt
Silver Spring Md.

OF PART OF A TRACT OF LAND

CALLED

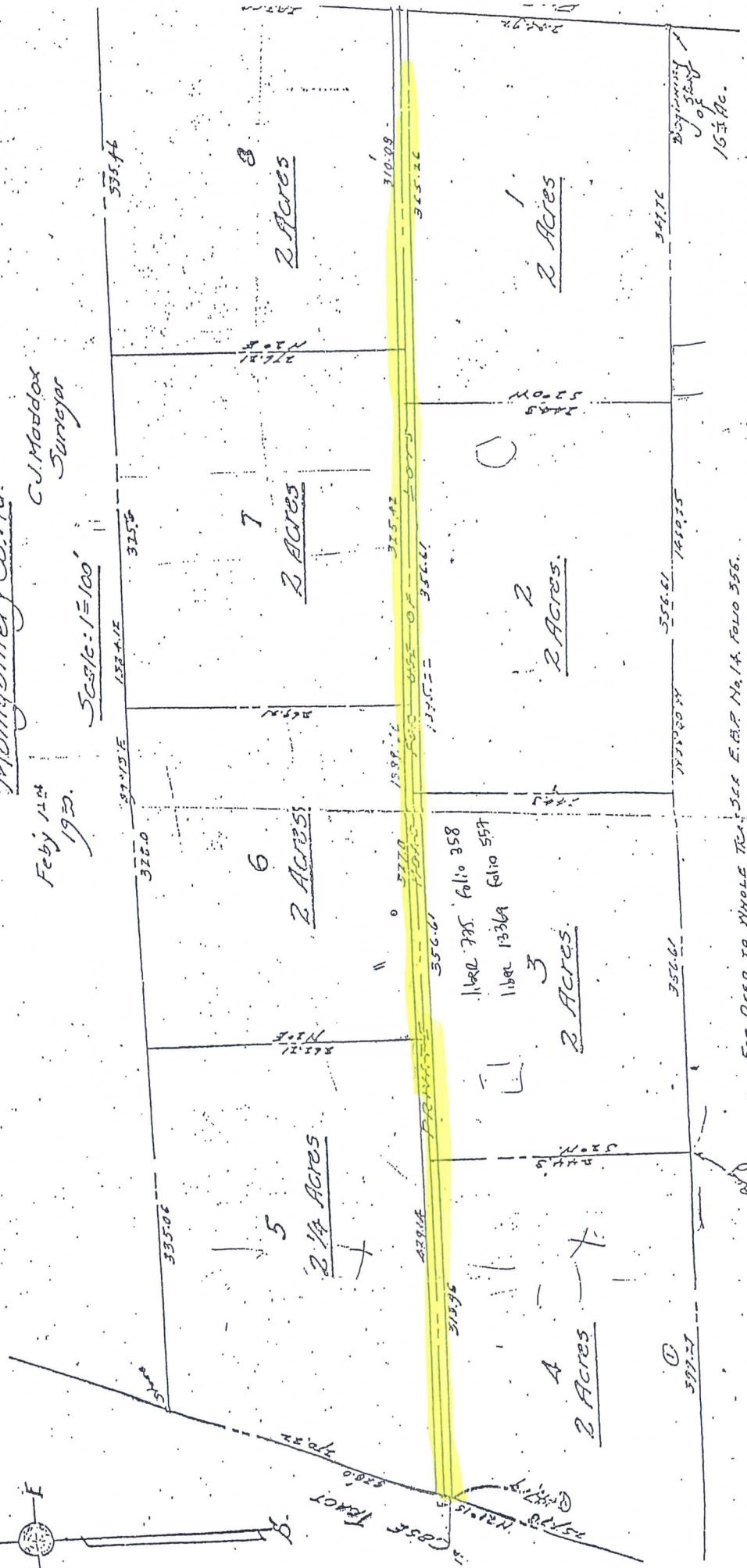
"BEALL'S EDMONSTONS DISCOVERY"

Montgomery Co. Md.

C. J. Moxdax
Surveyor

Feb'y 11th
1930.

Scale: 1" = 100'



AMERICAN HOME TITLE

ONE METRO SQUARE
51 MONROE STREET, SUITE 205
ROCKVILLE, MARYLAND 20850
PHONE (301) 217-9988
FAX (301) 217-9911

July 13, 2010

David Lieb, Esquire
Associate General Counsel
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Property of Irah Donner, Grays Lane, Silver Spring, Maryland
Described in Deed recorded in the Land Records of Montgomery County at
Liber 22134, folio 519
Parcel P267, Tax Map JQ342

Dear Mr. Lieb:

I am an attorney with American Home Title, Inc., which is an authorized agent of Stewart Title Guaranty Company. I understand that you have raised a question as to whether the above referenced property has a right of access to and from the land. At the time of Mr. Donner's purchase of the property, American Home Title, Inc. issued Stewart Title Guaranty Company title insurance policy O-9993-2858218, which affirmatively insures against "any loss or damages . . . sustained by the insured by reason of . . . Lack of a right of access to and from the land."

Mr. Donner's parcel, like the several other parcels which abut Grays Lane, has legal access by way of Grays Lane, which was created by William T. Gray by his will in 1933. Prior to his death, Mr. Gray conveyed one parcel to his son Andrew (Liber 512, folio 336) on June 30, 1930, which included a right-of-way that described the present Grays Lane by metes and bounds. The mortgage holder joined in the deed to release the parcel and right-of-way.

Mr. Gray attached a plat to his will, which shows eight parcels that each front on Grays Lane. In his will, Mr. Gray conveyed each of the parcels to a different devisee. The will was duly admitted to probate on November 27, 1934 in Register of Wills case 2313, and since that date, the owners of the various parcels and their successors have had access to and from their parcels by way of Grays Lane. Homes have been built on most of the parcels. The fact that the Grays Lane subdivision was not recorded in the land records of Montgomery County should not be of concern since Section 50-9 of the Montgomery County Code ("Subdivision Regulations") sets forth "Exceptions to platting requirements", and states that "Recording of a subdivision plat under this Chapter is not required for: . . .(b) . . .Partition of lands by will . . ."

July 13, 2010
David Lieb, Esquire
Associate General Counsel
Page 2

The only question that we are addressing in this letter is whether Mr. Gray, by laying out the eight parcels, abutting on Grays Lane, and conveying (by devise) said parcels to eight separate owners, created a right of access in such owners and their successors. In *Hawley v Baltimore*, 33 Md. 270 (1870), the Maryland Court of Appeals held that “The true doctrine is, as we understand it, that the purchaser of a lot calling to bind on a street not yet opened by public authorities, is entitled to a right of way over it, if it is of the lands of his vendor, to its full extent and dimensions only until it reaches some other street or public way.” Such is the case here. The conveyance to Mr. Donner (Liber 22134, folio 519) conveys the parcel “with all rights, ways, easements and improvements thereunto belonging or appurtenant thereto . . .”.

Mr. Donner’s parcel clearly has a right-of-way over Grays Lane to its full extent and dimensions until it reaches some other street or public way. Therefore, it has access. I trust that this will satisfactorily address any concern you may have.

Sincerely,



S.C. Brian Kim
Attorney

Cc: Harry W. Lerch, Esq.
Stuart Barr, Esq.