



## Ruck Property, Administrative Subdivision, 620190120



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Completed: 2/26/2021

### Description

Request to subdivide one parcel to create one lot without frontage for a single dwelling unit.

**Location:** Parcel 70 is located on Rocky Road, 2100 feet west of MD 108, SW quadrant of the intersection of Rocky Road and MD 108.

**Master Plan:** 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*

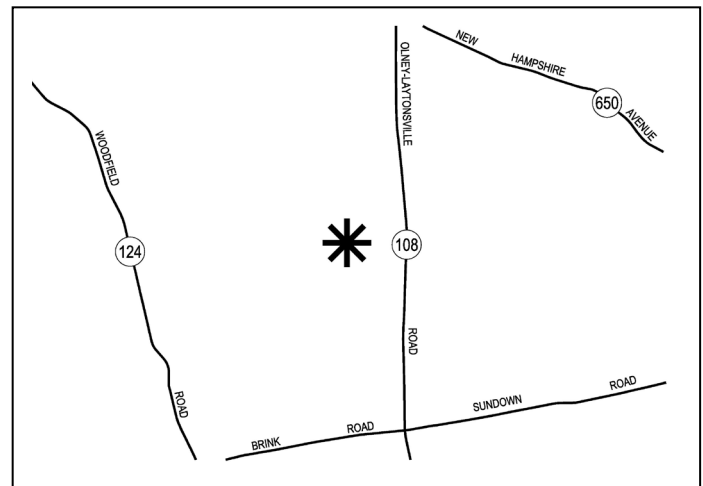
**Zone:** AR

**Property Size:** 3.38 acres

**Applicant:** Matt Ruck

**Acceptance date:** August 25, 2020

**Review Basis:** Chapters 50 and 59



### Summary

- Staff recommends **approval with conditions**
- Although this application is an Administrative Subdivision Plan, typically acted on by the Director, the Application requires Planning Board action because the proposed lot does not have frontage.
- Meets the applicability requirements for an Administrative Subdivision Plan to create a lot for a detached house.
- The Subject Property qualifies for an exemption from the minimum lot area requirements and lot width requirements of the AR zone under Section 59.7.7.1.D.9. of the Zoning Ordinance.
- The Applicant must verify prior to record plat that adequate sight distance can be achieved on Rocky Road, which is a designated Rustic Road.
- Staff supports the Applicant's request for waiver of Section 50.4.3.C.1.b.i, of the Subdivision Regulations, which prohibits a lot without frontage to utilize a private driveway that serves other lots without frontage.
- The Application satisfies the requirements of Chapter 22A, Forest Conservation Law.
- The Application substantially conforms to the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*.
- Staff has not received any citizen correspondence on the Application.

Chapter 50, Section 6.1 of the County Code permits subdivision of land by filing an Administrative Subdivision Plan in limited circumstances. The necessary technical requirements of these applications must be reviewed under Section 50.4.3.

Under Section 50.6.3.B, the Planning Director must act upon the application, in writing, or may require that the application be acted upon by the Planning Board. In this case, the Planning Board must review the Application because of the lack of frontage.

A Pre-submittal Community Meeting with the community/public/parties of record is not required. However, applicants must post signs on the development site and provide public notice that the application has been filed under Section 50.00.01.04 of the Administrative Procedures for Subdivision Plan Review.

A notice of the subject administrative subdivision plan was sent to all required parties by the Applicant on June 16, 2020. The notice gave the interested parties 15 days to review and comment on the contents of the plan. Staff did not receive any correspondence regarding the application.

### **RECOMMENDATION AND CONDITIONS**

Staff recommends approval subject to the following conditions:

- 1) This Administrative Subdivision Plan is limited to one lot for one Single-Unit Living dwelling.
- 2) Include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).

### **Forest Conservation**

- 3) The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan No. 6201901201, approved as part of this Administrative Subdivision Plan, subject to:
  - a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - b) The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan ("FFCP"). Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved FFCP. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
  - d) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the reforestation requirement for a total of 0.08 acres of mitigation

- credit. If there are no credits available for purchase from a forest bank, the Applicant may satisfy the 0.08-acre mitigation requirement via a fee-in-lieu payment to M-NCPPC.
- e) Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - f) The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 10.75 caliper inches as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
  - g) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, the Applicant must install the variance tree mitigation plantings as shown on the FFCP or as directed by the M-NCPPC Forest Conservation Inspection Staff
  - h) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- 4) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 7, 2021, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
  - 5) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
  - 6) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Fire Code Enforcement Section in its correspondence dated December 3, 2019, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Administrative Subdivision Plan approval.
  - 7) The Planning Board has reviewed and accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated September 2, 2020, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
  - 8) The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its correspondence dated December 21, 2020, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
  - 9) The record plat must show necessary easements.

- 10) The record plat must contain the following note:

*Agriculture is the preferred use in the Agricultural Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.*

- 11) The Adequate Public Facility (“APF”) review for the Administrative Subdivision Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

- 12) The certified Administrative Subdivision Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.*

- 13) Prior to submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:

- a) Modify the data table to reflect the setbacks, lot coverage, and building height for the AR zone.

## SITE AND VICINITY DESCRIPTION

On August 25, 2020, Matt Ruck ("Applicant") filed an administrative subdivision plan application designated, "Ruck Property," Administrative Subdivision Plan No. 620190120 ("Administrative Plan" or "Application"). Administrative Subdivision No. 620190120 is a request to subdivide a property identified as Parcel 70 (Book 55976 Page 458) on Tax Map GV33; located on Rocky Road, 2100 feet west of MD 108, SW quadrant of the intersection of Rocky Road and MD 108 and consisting of 3.38 acres, zoned AR ("Property" or "Subject Property") into one lot for a single-family detached unit. The Property is within the Rural East Policy Area and 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan* ("Master Plan"). As depicted in the figures below, the Property is surrounded by agricultural land to the south, east and west. Directly to the north, there are four existing houses on unplatted parcels. The Subject Property is within the W-6 and S-6 water and sewer categories, respectively. The Subject Property was developed with an existing house between 1982 and 2017, when it was demolished (Permit # 804226). Approximately 2.51 acres of the Subject Property is forest, however there is a portion of the Property that is relatively flat and unvegetated, where the previous house existed.

The Subject Property is located within the Goshen Branch of the Great Seneca Creek, a Use Class I-P stream and contains 2.51 acres of forest. There are no streams, wetlands, seeps, springs or other environmental features on the Subject Property.

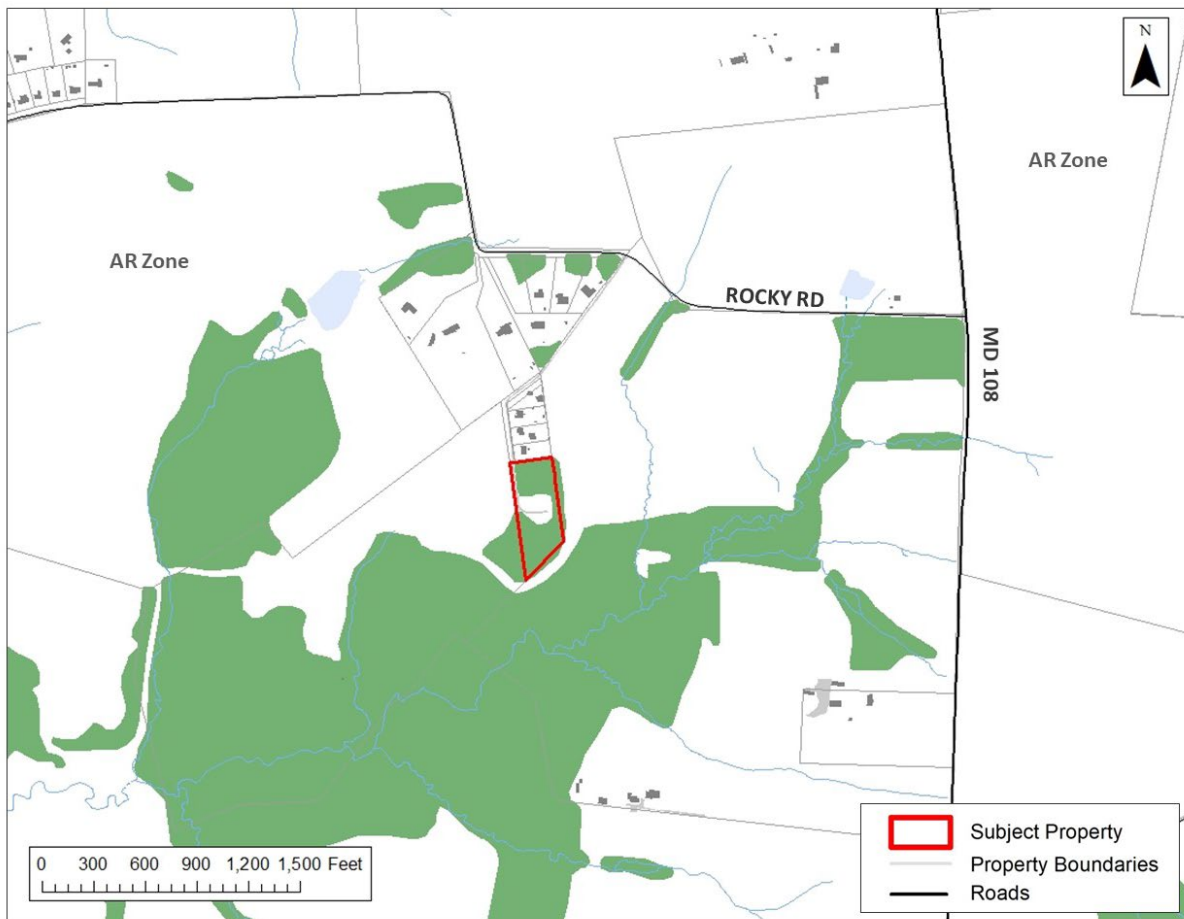


Figure 1 – Vicinity Map

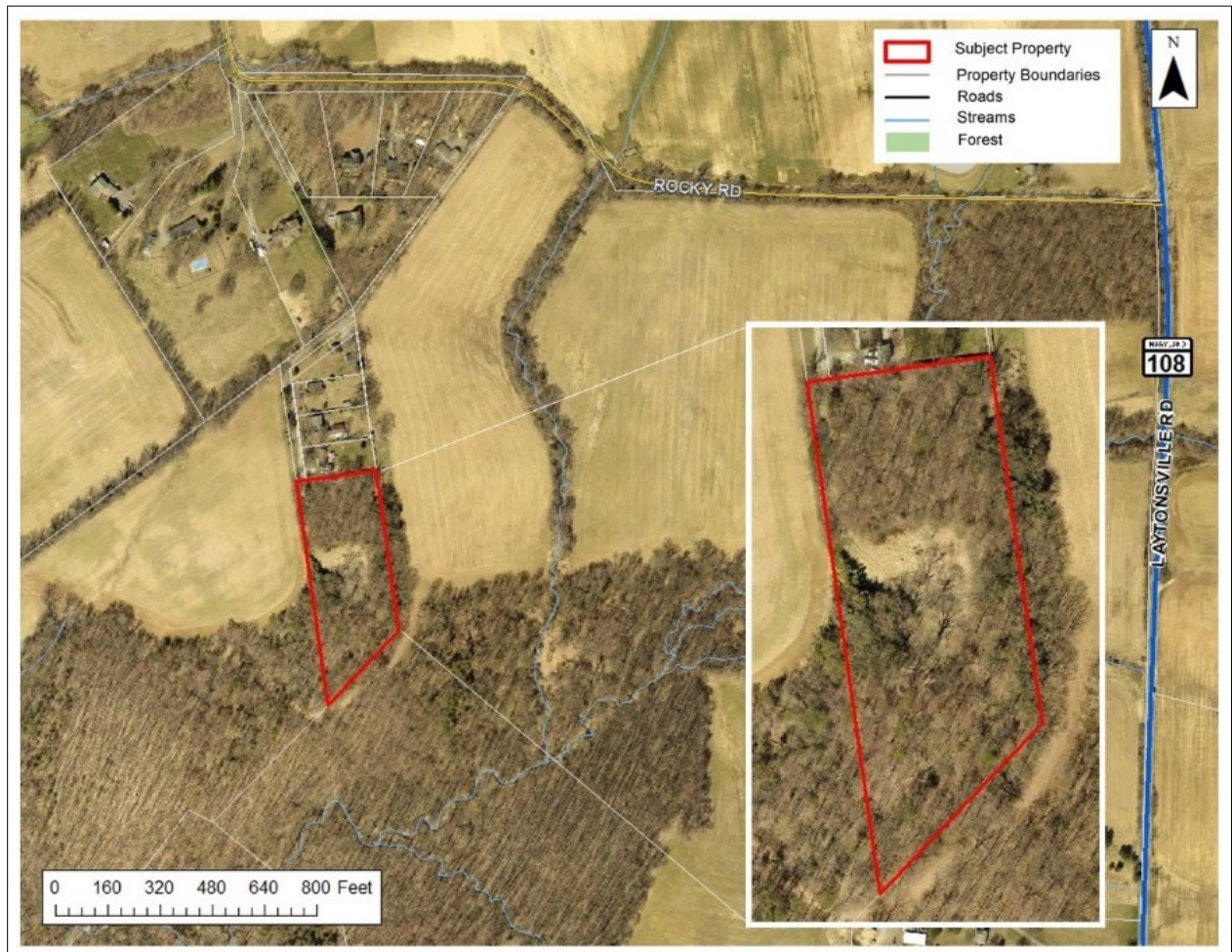


Figure 2 – Aerial



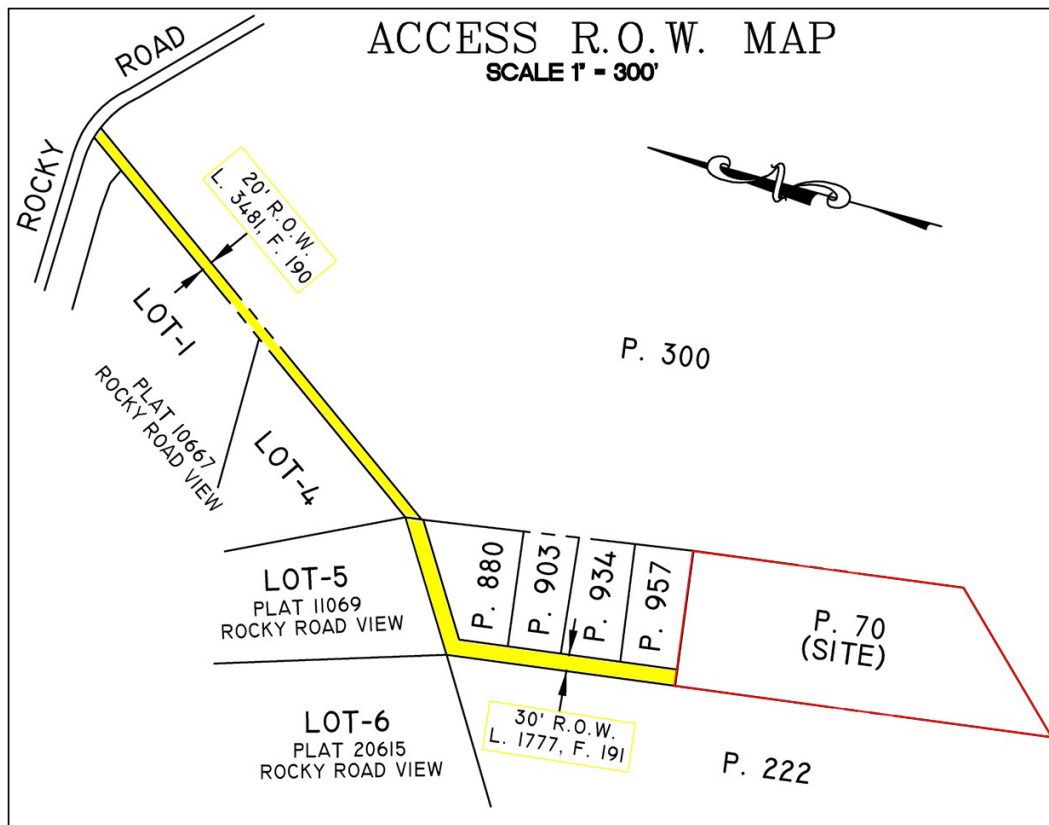


Figure 3 – Proposed Lot and Access Easements

## PROJECT DESCRIPTION

The Application proposes one lot, approximately 3.38 acres in size, to accommodate one new detached dwelling unit. The Property has access to Rocky Road, via a private driveway which is also utilized by the four other single-family houses situated on unplatted parcels directly north of the Property<sup>1</sup>. The driveway is in a private right-of-way created by deed (Book 3481 Page 190 – Attachment A) and Parcel P905 (Book 1777 Page 191 – Attachment B). The driveway is constructed of asphalt and gravel. Because the Property lacks frontage on a public road and proposes access onto a shared driveway utilized by four other detached dwelling units, the Applicant is seeking a waiver from Section 50.4.3.C.1.b.i of the Subdivision Regulations.

Per Section 7.7.1.D.9. of the Zoning Ordinance, the application is exempt from minimum lot area and lot width requirements of the AR zone, but the minimum requirements for the RE-2 zone apply. The proposed subdivision meets these requirements, and conceptually shows how the lot can accommodate a future detached dwelling.

A new well and septic system will be installed to serve the lot and the existing well and septic systems will be abandoned. Stormwater management will be met on-site using drywells. The Application includes a

<sup>1</sup> As a result of the subject application, the private driveway would serve a total of 5 single unit detached dwellings.

tree variance to remove one tree and impact six trees, which is necessary to facilitate construction of the new detached dwelling unit and associated improvements. Of the 2.51 acres of forest on-site, 0.72 acres forest will be cleared, and 1.79 acres will be retained in Category I Conservation Easements.

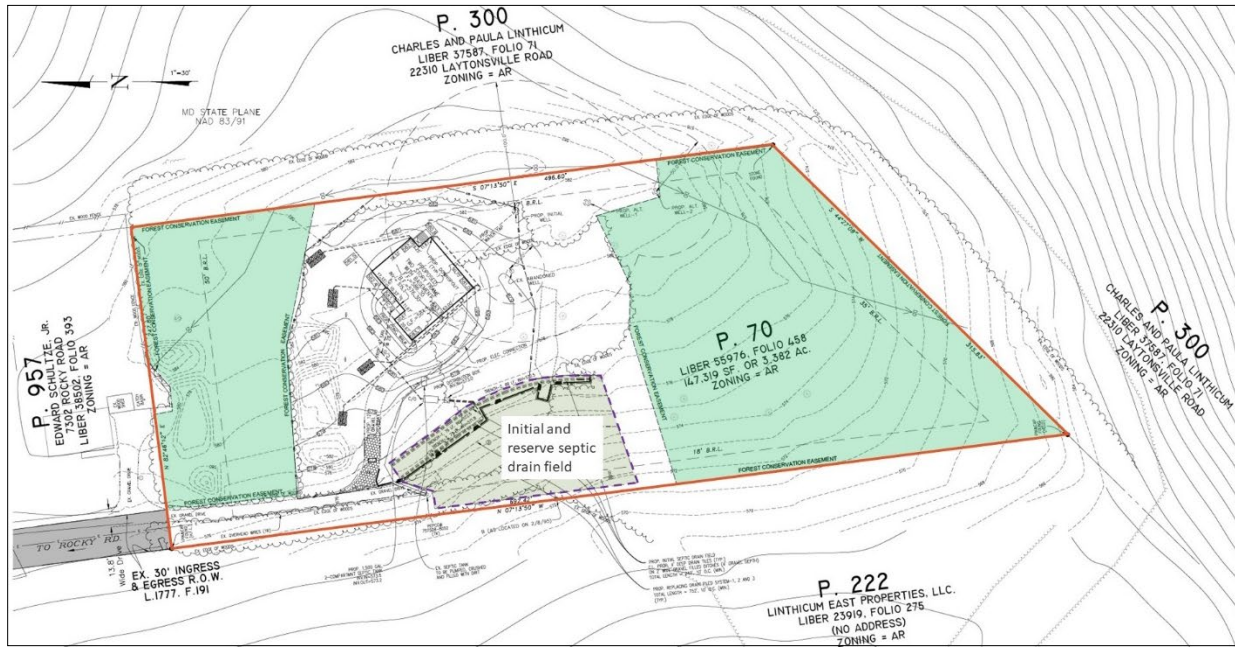


Figure 4 – Close up of Subject Property



## ANALYSIS AND FINDINGS – Chapter 50

### Section 6.1.B - Applicability

Section 6.1.B of the Subdivision Regulation permit the subdivision of land through the administrative subdivision process:

*Subdivision for creation of certain residential lots located in the Agricultural Reserve zone. Up to 5 lots for detached houses are permitted under these procedures in the AR zone if:*

1. *Written approval for a proposed well and septic area is received from the Department of Permitting Services before approval of the plat;*

The Application has been reviewed by MCDPS – Well and Septic Section who determined that the proposed well and septic location is acceptable in its approval letter dated December 21, 2020 (Attachment C).

2. *Any required road dedications and public utility easements along the frontage of the proposed lots are shown on the record plat, and the applicant provides any required improvements;*

As described below, the proposed lot does not have frontage on a public road and instead, will access Rocky Road via two ingress/egress and utility easements. No public improvements are required at this time because Rocky Road is designated as a Rustic Road.

3. *The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat;*

As discussed below, public facilities are adequate to serve the proposed lot.

4. *A covenant is recorded for the unplatted balance of the tract noting that density and development rights have been used for the new lots and noted on the record plat for the lots;*

These criteria is not applicable because the entire tract of land subject to the Application is being recorded as a buildable lot and recorded on a record plat. A Transferable Development Right (TDR) is not required to record the Subject Property, because as a property with less than 5 acres of land, it was not assigned a TDR when the Property was rezoned from RE-2 to AR (formerly RDT) in 1980.

5. *Lots created in the AR zone through this procedure are 5 acres or less, unless approved by the Board; and*

The proposed 3.38-acre lot is below the maximum 5-acre size limit.

6. *Forest conservation and environmental protection requirements are satisfied before approval of the plat.*

The Application is subject to the requirements of Chapter 22A. As conditioned and discussed below in the Technical Review for Forest Conservation section, the Application satisfies the forest conservation requirements.

#### **Section 4.2.D – Technical Review**

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;*

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations except with regard to frontage, for which the Applicant has requested a waiver. The proposed lot size, width, shape and orientation is appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type contemplated for the Property.

#### **Exemption**

The 3.38 parcel does not meet the minimum lot size requirements for the AR zone, which is 25 acres. However, the Subject Property qualifies for an exemption under Section 7.7.1.D.9. of the Zoning Ordinance, *Exempted Lots and Parcels in the Agricultural Zone*, which states that a parcel in the Agricultural Reserve, created before January 6, 1981, is exempt from the minimum lot area requirements and lot width requirements of the AR zone, but must satisfy the requirements of the applicable zone before it's classification into the AR zone.

According to the deed history submitted by the Applicant (Attachment D), and verified by Staff, the Subject Property was created by deed (Book 4306 Page 681) on November 17<sup>th</sup>, 1972, when the Property was zoned Rural-Residential (R-R). Subsequently, in 1973, Section Map Amendment F-925 rezoned the Property from R-R (renamed R-200) to RE-2. In 1980, Section Map Amendment G-266 rezoned the Property from RE-2 to AR (formerly RDT). As reflected in Table 1, the Subject Property conforms to the dimensional standards of the AR zone, except for lot area and lot width which conform to the standards of the former RE-2 zone.

A summary of this review is included below in the Administrative Subdivision Plan Data Table.

**Table 1 – Development Standards Table**

AR Zone	Required by the Zone	Proposed for Approval
Minimum Lot Area <sup>1</sup>	2 acres	3.38 acres
Minimum Lot Frontage	25 feet	See waiver
Minimum Lot Width at B.R.L. <sup>1</sup>	150 feet	247.80 ft.
Maximum Lot Coverage	10%	Approximately 2.5%
Minimum Setbacks <sup>2</sup>		
Front	50 feet	50 ft.
Side	20 feet	20 feet or greater
Rear	35 feet	35 feet or greater
Building Height <sup>2</sup>	50 feet max.	50 feet max.
Site Plan Required	No	No

<sup>1</sup> Per Section 7.7.1.D.9. of the Zoning Ordinance, the Subject Property is subject to the minimum lot area and width requirements of the RE-2 zone

<sup>2</sup>As determined by MCDPS

#### Waiver

In a letter dated February 1, 2021 (Attachment E), the Applicant requested that the Planning Board waive Section 4.3.C.1.b.i of the Subdivision Regulations, which states:

*Except as specified below, every lot must abut on a public or private road. A public road must be dedicated or donated to public use or have acquired the status of a public road under Chapter 49. A private road must be shown on a record plat.*

- i. The Board may approve a maximum of 2 lots that do not abut a public or private road if the lots will be served by a private driveway that serves no other lots without frontage.*

Due to the unusual circumstances of the Subject Property that preclude the Applicant from meeting the frontage requirements or use of a shared driveway that serves no other lots without frontage, the Applicant requests that the Planning Board grant a waiver from a requirement of this Chapter after making the required findings.

#### **Section 9.3. Findings**

*A. To grant a waiver, the Board must find that:*

- 1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

The Application is unique in that the Subject Property is not only eligible to be grandfathered to the development standards of the prior zone, but that the Property was previously developed with a house. When the Property was originally created, legal access

was granted to the Subject Property and the houses to its north. Acquiring additional land from an adjoining Property owner to create a pipe stem to attain frontage on Rocky Road would result in a change in the size and shape of the Property from when it was originally created, which would jeopardize the ability to be exempt for the minimum lot area. Therefore, there is no feasible or legal alternative to attain frontage on a public road. Maintaining the existing access to the Property does not jeopardize public health, safety or general welfare.

2. the intent of the requirement is still met; and

The intent of the requirement to have road frontage is to ensure perpetual access and utility service to a proposed lot. In this case, the intent is still being met since the Applicant has deeded rights to ingress, egress and utility service via easement.

3. the waiver is:

- a. the minimum necessary to provide relief from the requirements; and

The waiver is the minimum necessary to provide relief from the requirements of Chapter 50 to allow this lot to be platted according to the grandfathering provisions. No other waivers have been submitted with this Application.

- b. consistent with the purposes and objectives of the General Plan.

The Applicant has made a reasonable case that practical difficulties exist that prevent full compliance with the Subdivision Regulations. The waiver is not inconsistent with the objectives of the General Plan, nor will it have a detrimental effect on the Master Plan vision to preserve agricultural land in the Agricultural Reserve. The waiver is not adverse to the public interest because the existing common access has historically been in place serving the existing dwellings.

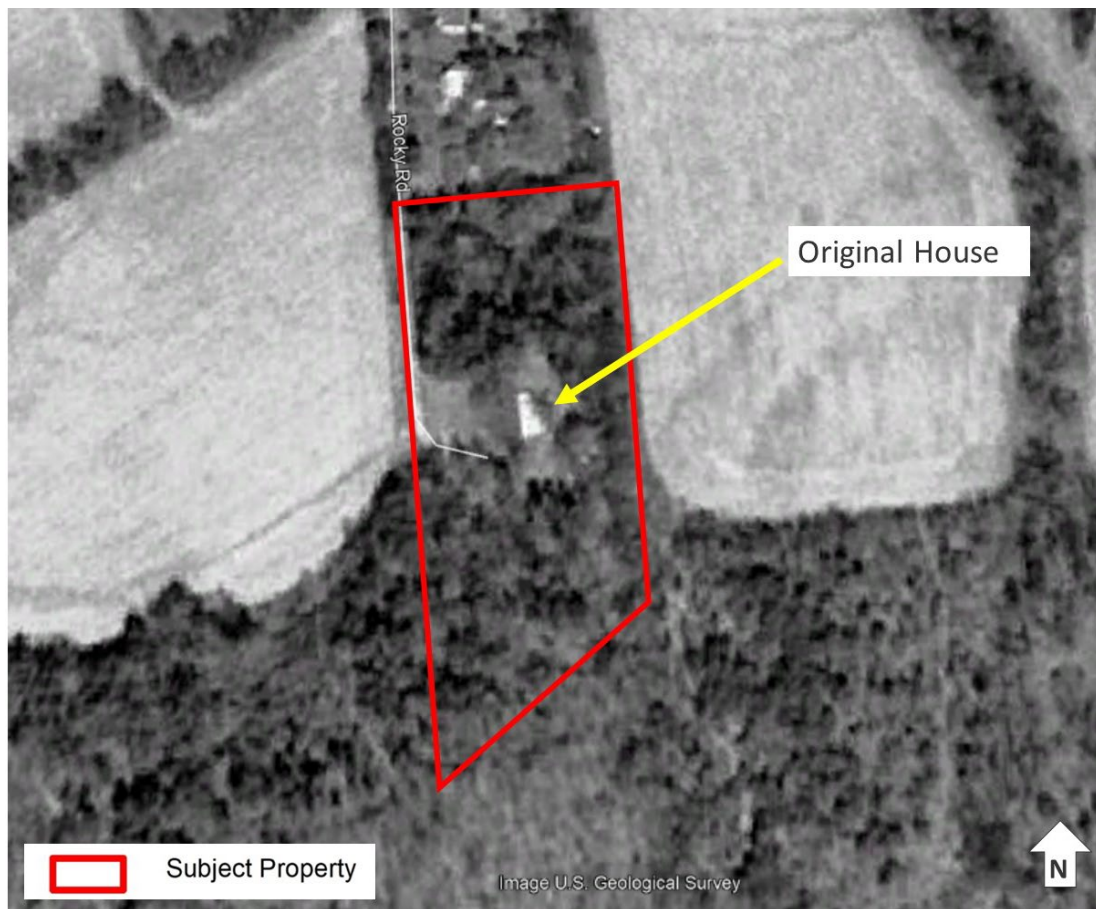
2. The administrative subdivision plan substantially conforms to the master plan;

1980 Preservation of Agriculture and Rural Open Space Functional Master Plan

The Subject Property is located within P.A. 14, the Goshen Woodfield, Cedar Grove and Vicinity Area of the *1980 Agricultural and Rural Open Place Master Plan*. The Master Plan does not make any site-specific recommendations for the Subject Property. This Application does not adversely affect the historic agricultural character of the area and is in substantial conformance with the goals of the Master Plan.

1996 Rustic Roads Functional Master Plan

The proposed lot will access Rocky Road which is identified as a Rustic Road in the 1996 Rustic Roads Functional Master Plan and has an ultimate right-of-way width of 70 feet. As discussed in the proposal section of this Staff Report, the lot is being accessed via an existing driveway that historically served the original house on the Property.



*Figure 5 – Historical Image Circa 1993 showing the house driveway*

The Rustic Roads Advisory Committee (“RRAC”) reviewed the Application to determine if it has any effect on the rustic characteristics of Rocky Road. In a letter dated September 20, 2019, (Attachment F) the RRAC confirmed their general support of the proposal. As discussed in their letter, adequate site distance on Rocky Road to the right of the existing driveway hasn’t yet been verified. Currently, sight distance is limited to 115 feet where 150 feet is needed. As cited in the RRAC letter, site distance is being blocked by existing vegetation (including vines and a tree). The horizontal and vertical alignment of the road also be a factor but that can’t be verified until the vegetation is removed, and sight distance is reevaluated. Part of the vegetation is a hedgerow, which is identified as a Significant Feature of the rustic road, which should ideally be preserved. As a way to minimize impacts to the rustic character of Rocky Road, the RRAC prescribed a two-step approach: first to remove the vines along the fence and hedgerow. If sight distance is still inadequate, the second step is to selectively remove portions of the hedgerow. The Applicant consultant states that adequate sight distance should be attainable with the aforementioned steps and modifying the alignment of the road is highly unlikely; therefore, the Application has been conditioned to verify site distance prior to recordation of plat.



*Figure 6 – Existing Hedgerow at the intersection of the shared driveway and Rocky Road looking east*

The Application has also been reviewed by the MCDOT, who determined in its letter dated January 7, 2021, that the proposed lot can utilize the existing driveway since there was a house on the Property previously. However, prior to approval of record plat, the Applicant must verify that adequate sight distance at the entrance to the shared driveway can be achieved. Furthermore, MCDOT's standard policy typically only allows four lots to share a driveway. This Application creates a lot for a fifth house, which MCDOT approved in their letter since there was a previous house on the Property (Attachment G).

No dedication is required as part of this Application because the lot does not front on a right-of-way. Because of its Rustic Road designation, there are no existing or recommended sidewalks or bikeways.

3. *public facilities will be adequate to support and service the area of the subdivision;*

#### Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the Application's Adequate Public Facilities LATR test because one new single-family detached unit generates fewer than 50 person trips in the peak hour, which occurs within the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

#### Schools Adequacy Test

The Property is served by Laytonsville Elementary School, Gaithersburg Middle School and Gaithersburg High School. Under the rules of the 2016 Subdivision Staging Policy, which apply to this Application, and with a net increase of only one new single-family detached dwelling unit, there is sufficient capacity at each of these schools to accommodate this Administrative Subdivision.



#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize a new on-site private well and septic system, consistent with the current service categories.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. The Application has received an approved Fire Access Plan based in the letter dated April 20, 2020 (Attachment H).

Electrical service is available on the Subject Property from an existing PEPCO pole that serviced the former residence. Other utilities, public facilities and services, such as telecommunications, police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 Growth and Infrastructure Policy.

The Application can be adequately served by all other public facilities and services.

#### 4. *All Forest Conservation Law, Chapter 22A requirements are satisfied;*

##### A. Natural Resource Inventory/Forest Stand Delineation

A Natural Resource Inventory/Forest Stand Delineation Plan ("NRI/FSD") identifies the environmental constraints and forest resources on the Subject Property. An NRI/FSD, Plan No. 420200610, which covers the Subject Property was approved on October 29, 2019. The Subject Property is located within the Goshen Branch of the Great Seneca Creek, a Use Class I-P stream and contains 2.51 acres of forest. There are no streams, wetlands, seeps, springs or other environmental features on the Subject Property.

##### B. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law ("FCL"). As required by Chapter 22A, a combined Preliminary/Final Forest Conservation Plan ("FFCP") (Attachment I) was submitted with the Application. The total net tract area for forest conservation purposes is 3.38 acres. The Subject Property is zoned AR and is classified as Agricultural and Resource Area as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Subject Property contains 2.51 acres of forest. The Applicant proposes to remove 0.72 acres of forest and retain 1.79 acres of forest. This results in a total reforestation requirement of 0.08 acres as calculated in the Forest Conservation Worksheet. According to the Forest Conservation Worksheet, the forest removal break-even point for this Application is 0.66 acres. Under Section 22A-12(b)(1), all applicants are tasked with striving to meet the break-even point, retaining existing forest on their property and avoid reforestation in accordance with the FCL. In this case, 0.72 acres of forest is being cleared for the proposed house, a modest rear and side yards, gravel driveway, SWM drywells, septic field, primary well and 2 backup wells for the Property. Given the location of the septic field and the wells, clearing of forest beyond the 0.66-acre break-even point is unavoidable. However, the Applicant has worked to

keep forest removal to a minimum. The Applicant proposes to meet the reforestation requirement by taking the 0.08 acres to an M-NCPPC approved off-site forest bank or if no forest bank is available, then making a fee-in-lieu payment to M-NCPPC.

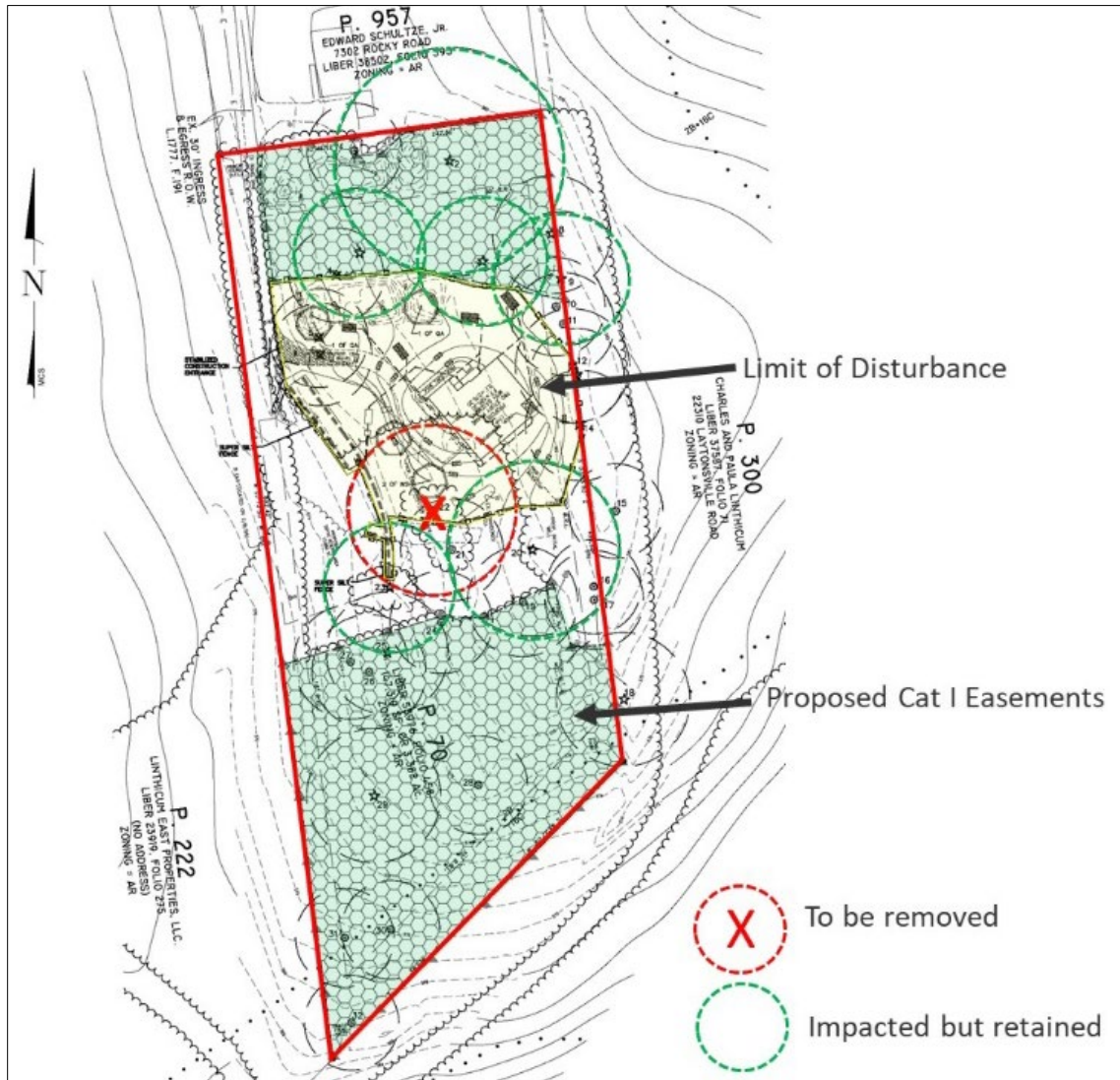


Figure 7 – Forest Conservation Plan and Tree Variance (critical root zones)

### C. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter

of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a Variance request in a letter dated November 27, 2019 and revised on December 9, 2020 (Attachment J). The Applicant proposes to remove one tree and impact six trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 2).

Tree Number	Species	DBH Inches	% CRZ Impacts	Status
2	Red Maple ( <i>Acer rubrum</i> )	58"	0.04%	Impacts only
3	Tulip Poplar ( <i>Liriodendron tulipifera</i> )	33"	28%	Impacts only
7	Tulip Poplar ( <i>Liriodendron tulipifera</i> )	33"	26%	Impacts only
9	Red Oak ( <i>Quercus rubra</i> )	34"	10%	Impacts only
20	Tulip Poplar ( <i>Liriodendron tulipifera</i> )	44"	17.5%	Impacts only
22	Silver Maple ( <i>Acer saccharinum</i> )	43"	45%	Remove
23	Red Maple ( <i>Acer rubrum</i> )	33"	5%	Impacts only

**Table 2: Specimen Trees Impacted or Removed**

Unwarranted Hardship Basis

Per Section 22A-21, a Variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of their property. In this case, the unwarranted hardship is caused by the necessary layout of the proposed development on the Property and the locations of the trees requiring a Variance request. The Property contains eleven specimen trees spread throughout the Property.

Due to the location of the specimen trees, it would be unfeasible to develop the Subject Property and not impact any Protected Trees. The Applicant has strived to reduce the number of Protected Trees impacted by locating the residential structure, driveway, wells and septic field in such a way as to avoid as many Protected Trees as possible. In spite of this, the Applicant will need to remove one specimen tree, Tree 22, and impact the CRZ of six additional specimen trees. Tree 22 is a Silver Maple, which has a shallow root system. The tree is located outside of the existing forest, within the active construction zone of the propose house, approximately 30-feet from the proposed house. Tree 22 is highly impacted by grading and the location of the main septic field which is necessary to serve the house. The tree's condition is listed as "fair" with visible rot, a large cavity in the main truck, vines and epicormic growth indicating the tree currently. It's highly likely that Tree 22 will become a hazard tree in the future following construction impacts and it's removal is recommended. Given the widespread location of the Protected Trees and the necessary building requirements for this residential structure Staff concurs that the Applicant has a sufficient unwarranted hardship to justify a Variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Staff has made the following determinations in the review of the variance request and the proposed Forest Conservation Plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal of the 1 tree and impacts to the 6 trees is due to the location of the trees and necessary site design requirements outlined above. The Applicant proposes removal of the 1 tree with mitigation. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree being removed is not located within a stream buffer, wetland or special protection area. The Application proposes mitigation for the removal of the one tree being removed by planting larger caliper trees on-site. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There is one tree proposed for removal in this variance request resulting in a total of 43 inches of DBH being removed. This tree being removed is not located within an existing forest stand on the Subject Property. As such, removal of this tree will require mitigation. It has been M-NCPPC policy not to require mitigation for specimen trees removed within forest stands since the removal of the forest stand is compensated for through the Forest Conservation Worksheet. In this case, the Applicant has proposed to provide mitigation for the specimen tree loss by replacing the total number of DBH removed with one quarter of the amount of inches replanted. This results in a total mitigation of 10.75 inches of replanted trees. The Applicant proposes to plant four 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property

outside of any rights-of-way and outside of any utility easements. Additionally, no mitigation is required for trees that are impacted, but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist as part of the eplans review process on December 9, 2020. The County Arborist has not responded by the date of this letter.

Stormwater management requirements are met as provided in Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Section on September 2, 2020. The Application will meet stormwater management goals via drywells (Attachment K).

## **CONCLUSION**

The Administrative Subdivision meets the technical requirements of Section 50.4.3 of the Subdivision Regulations, and the applicable requirements of Section 50.6.1.B. With the waiver of Section 50.4.3.C.1.b.i, the lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*. Access and public facilities will be adequate to serve the proposed lots, and the Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application.

## **ATTACHMENTS**

Attachment A – Deed (Book 3481 Page 190)  
Attachment B – Deed for Parcel P905 (Book 1777 Page 191)  
Attachment C – MCDPS, Well and Septic Section letter  
Attachment D – Deed history  
Attachment E – Applicant's waiver request letter  
Attachment F – The Rustic Roads Advisory Committee letter  
Attachment G – MCDOT letter  
Attachment H – MCDPS, Fire Department Access and Water Supply letter  
Attachment I – Preliminary/Final Forest Conservation Plan  
Attachment J – Variance request in a letter (revised)  
Attachment K – MCDPS, Stormwater management concept letter