



MCPB
Item No. 7
Date: 10.28.2021

2710 Washington Avenue, Administrative Subdivision 620190130

 Marco Fuster, Planner Coordinator, Downcounty Planning, marco.fuster@montgomeryplanning.org, 301.495.4521

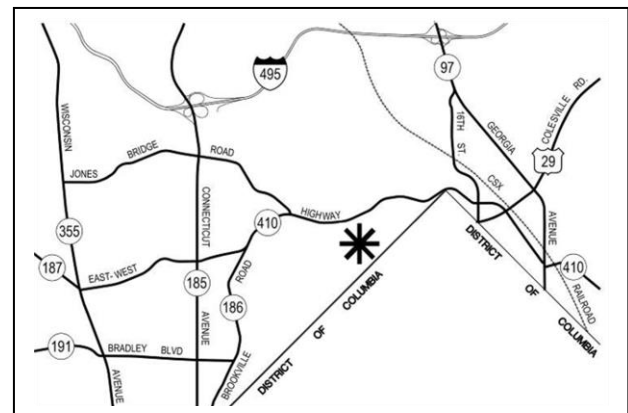
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Description

- Request to create two (2) lots for one (1) single-family detached dwelling unit on each lot, utilizing an existing recorded outlot as access to the new home
- Location: 2710 Washington Avenue
- Zone: R-60
- Master Plan: 2000 North and West Silver Spring
- Property size: 1.07 acres
- Applicant: Larry Eig
- Acceptance Date: January 7, 2020
- Review Basis: Chapter 50, Chapter 22A, Chapter 59

Completed: 10/18/2021



Summary

- Staff recommends **APPROVAL** of the administrative subdivision with conditions.
- The Administrative Subdivision proposes to retain the existing home and subdivide one lot into two, for a single-family dwelling on each lot.
- Subdivisions for the creation of up to 3 lots for residential detached houses are permitted to be reviewed administratively (per Section 50.6.1.C of the Subdivision Ordinance). However, due to the lack of roadway frontage, the Planning Director referred consideration of the application to the Planning Board (per Section 50.6.3.B.1 of the Subdivision Ordinance).
- The lot associated with the new home will not have on street frontage as exempt under 50.4.3.C.1.b.i. & b.ii.
- The Planning Board approved the first request to extend the regulatory review period from April 30, 2020, to November 19, 2020, a second approval to extend the review period from November 19, 2020 to April 29, 2021 and a third extension to shift the hearing date from April 29, 2021 to July 29, 2021. The extension requests were a result of the Applicant needing additional time to address agency comments. On July 29, 2021 the during the scheduled Planning Board hearing, the Applicant requested a 3-month continuance to resolve concerns/opposition that arose from the owner of the outlot which is needed to access the project.
- Staff received correspondence regarding concerns from adjacent residents and property owners.
- The SWM Concept Approval reflecting the current layout and a comprehensive Forest Conservation variance have not been submitted at this time, however per 50.6.1.C.5. the forest conservation, stormwater management, and environmental protection requirements may be satisfied before approval of the plat.

RECOMMENDATION AND CONDITIONS

Administrative Subdivision Plan No. 620190130

Staff recommends approval of Administrative Subdivision Plan No. 620190130, with the following conditions:

1. This Administrative Subdivision is limited to two (2) lots for one (1) single-family dwelling unit on each lot.
2. The Adequate Public Facilities (APF) review for the Administrative Subdivision will remain valid for five (5) years from the date of mailing of the Planning Board resolution.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in their letter dated July 1, 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.
4. Prior to issuance of the first building permit, an amendment to Site Plan 819840640 must be approved to reflect the ultimately proposed features within Outlot A (such as but not limited to the paving and walls) in addition to the necessary 5-foot wide sidewalk extensions for Abilene Drive.
5. The record plat must show necessary easements.
6. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements associated with each plat, as required by MCDOT.
7. The Applicant must dedicate all road rights-of-way to the full width as required by Chapter 49-31 as shown on the Certified Administrative Subdivision Plan, and show on the record plat(s) the following dedications:
 - a. Dedication of right-of-way as necessary to provide 30 feet from the existing right-of-way centerline along the Subject Property frontage on Washington Drive to achieve the minimum total width for a secondary residential roadway.
8. Prior to recordation of the plat the Applicant must satisfy MCDPS requirements to ensure the construction of i) a 5-foot wide sidewalk on the Washington Avenue frontage (south side) with a 6-foot lawn panel; and, ii) a 5-foot wide sidewalk with a 2-foot lawn panel on the Property frontage on the Abilene Drive cul-de-sac (east side), both segments connecting off-site to existing sidewalks. However, the sidewalk modifications associated with Abilene Drive will be further evaluated as part of the pending Site Plan amendment associated with Outlot A.
9. The Applicant must install street trees along the Washington Avenue frontage subject to MCDPS-ROW review and approval. Any street trees proposed for the Abilene Drive will be evaluated as part of the Site Plan amendment for Outlot A. The street tree plantings associated with the frontage of each lot must be installed as seasonally appropriate and prior to the Final Inspection for the new residence.
10. The use of retaining walls for grading purposes must be minimized where possible. Any retaining wall that is proposed, excluding walls built as part of a stormwater management facility, should use a tiered layout to minimize visual impact and enhance stability and must be located and implemented in a manner so that the wall can be constructed, maintained and/or replaced entirely from within the subject Property and/or Outlot A as applicable. Any retaining walls within the Outlot will be evaluated as part of the Site Plan amendment associated with Outlot A.
11. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated July 20, 2021 and 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 amendment does not conflict with other conditions of Preliminary Plan approval.

12. Prior to record plat approval, the Applicant must satisfy the requirements for stormwater management and receive approval from the Department of Permitting Services, Water Resource Section.
13. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:
 - a. A 127-foot minimum side building restriction line (BRL) for the south side of Lot 141 as shown on the Certified Administrative Subdivision Plan.
 - b. 15-foot minimum side BRL for the north side of Lot 141.
14. Prior to Certification of the Administrative Subdivision Plan, the Applicant must submit and receive M-NCPPC Staff approval of a revised Preliminary/Final Forest Conservation Plan (FFCP) and variance request as applicable. The revised FFCP must also address the removal of invasive species and the planting of supplemental native species.
15. Prior to approval of the record plat, the Applicant must record a Category I Conservation Easement as specified on the approved Final Forest Conservation Plan. 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.
16. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage, fencing and posts along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
17. Prior to certification of the Administrative Subdivision Plan, the Applicant must revise plans/notes to include details and specifications for soil restoration in areas of the LOD which are not built (i.e. to remain in a lawn or landscape setting).
18. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plans and/or Final Forest Conservation Plan as applicable. Tree save measures not specified on the Final Forest Conservation Plan and/or the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
19. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the supplemental forest plantings and for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
20. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA is to include invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the wetland and the associated watershed. The use of herbicides should be avoided where possible.
21. 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, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install any variance tree mitigation plantings as shown on the FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches each, with the total caliper inches planted equaling the requirement 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.
22. The Applicant must hire a project arborist to implement the tree save plan who is qualified as an ISA-certified Arborist and also a MD Licensed Tree Care Expert.

23. 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 as applicable.
24. 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.
25. Prior to approval of the Certified Administrative Subdivision Plan, the Applicant must address the following:
 - a. The Applicant must include all applicable agency approval letters and Administrative Subdivision Plan Resolution on the cover sheet(s).
 - b. Include 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.*
 - c. The Applicant must revise the Plans and include corresponding cross-sections of Washington Avenue and Abilene Drive showing the applicable master-planned right-of way width, the sidewalks, lawns panels and proposed street trees along the Property’s frontages including extensions beyond the frontages as needed to connect to the nearby existing sidewalks. However, the sidewalk modifications associated with Abilene Drive will be further evaluated as part of the pending Site Plan amendment associated with Outlot A.
 - a. Pursue refinements of the new access driveway layout through Outlot A and the associated infrastructure, utility connections and any proposed easement locations to be shown on the Certified Administrative Subdivision Plan.
 - b. Provide corrections from the ePlans reviews and conditions of approval on the Certified Administrative Subdivision Plan.

SECTION 1 – SITE DESCRIPTION

Site Location and Vicinity

The Project is located in Silver Spring at 2710 Washington Avenue, approximately 100 feet west of Ellingson Drive. The existing outlet associated with the Project is located on a cul-de-sac at the east end of Abilene Drive. The vicinity is developed with single-family detached dwellings in the R-60 zone and the nearby lot sizes range widely, with the Subject Property being the largest in the vicinity. The Property is also within 2000 *North and West Silver Spring Master Plan*. The Meadowbrook Park and Maintenance Facility are located to the south, Meadowbrook Stables are located towards the west and the mainstem of Lower Rock Creek is located further towards the south.



Figure 1 – Vicinity Map

Subject Property and Analysis

The Subject Property (Site, Property, or Project) is located at 2710 Washington Avenue, zoned R-60 and is within the 2000 *North and West Silver Spring Master Plan*. The Property is known as Lot 46, as recorded in 1889 in Plat Book A, page 45 (MSA plat # c2139-000045 and MNCPPC Plat # B-05). Existing Lot 46 is the last lot under the original plat (remaining in private ownership) which has not been re-subdivided. The two similarly sized lots towards the east (near the DC line) which were created by the same plat had been acquired by Parks in 2012. Per the Department of Assessments and Taxation records, the Property (excluding the outlet) consists of 41,435 square feet (1.07 acres).

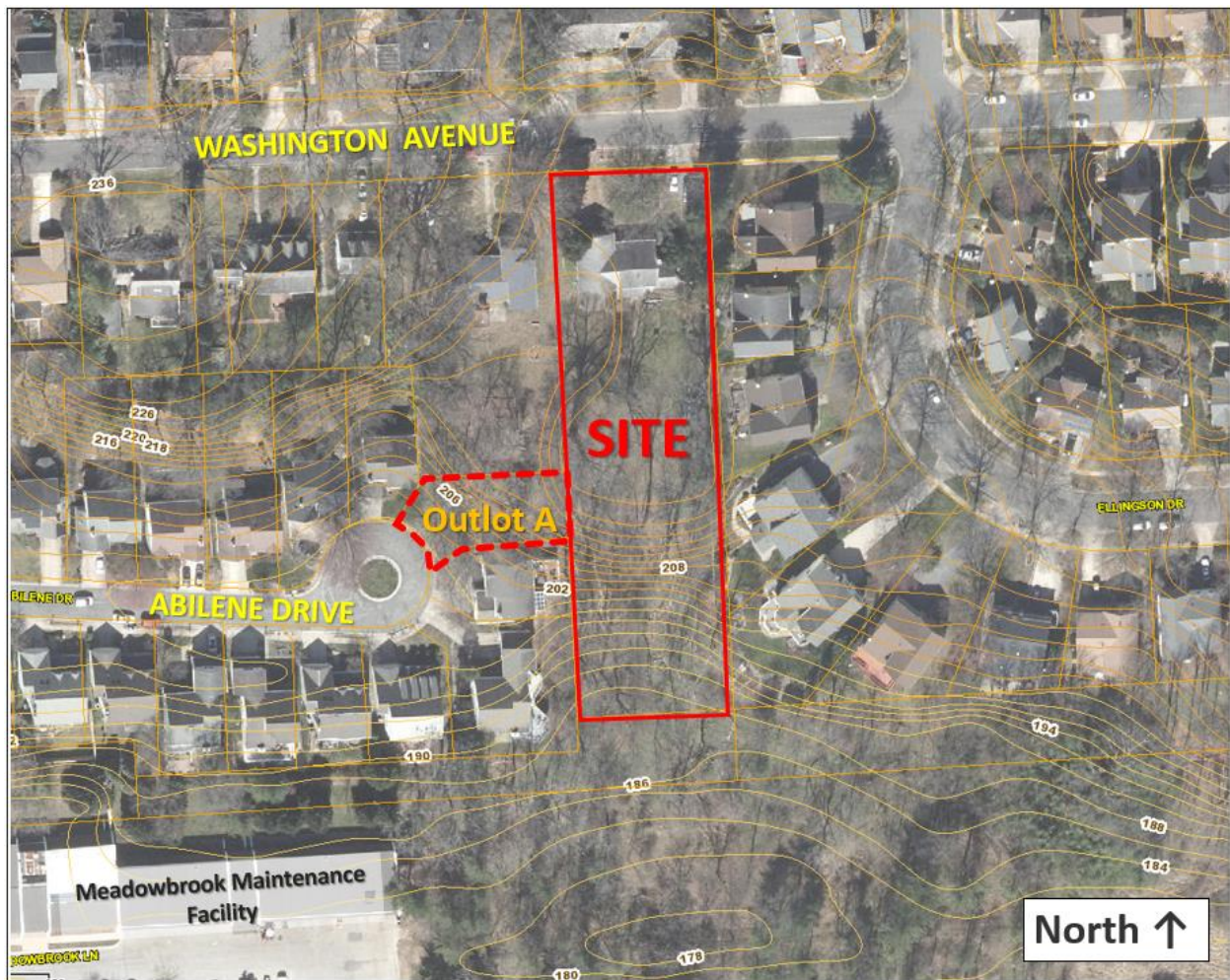


Figure 2 – Aerial Map

The Subject Property is located within the Lower Rock Creek Watershed, a Use I¹ watershed. Most of the northern portion of the Property (towards Washington Avenue) is generally flat and contains the existing house, lawn, and a few trees. However, towards the south, the lawn setting transitions into forest areas associated with steep slopes ($\geq 25\%$) which are visible on Figure 2 above. At the bottom of this sloped area lies a potential wetland with a buffer as identified on the approved NRI/FSD. The onsite forest is dominated by boxelder, poplar, maple and black locust. Ground cover consists of a mix of native and invasive species. Specimen trees sized 30" diameter-at-breast-height (DBH) or greater are present on the site, both within and outside of the forested areas.

The environmentally sensitive features onsite consist of forest stands, mature trees, areas of steep slope, and the wetland and associated buffer. Due to the association with environmentally sensitive areas, the forest areas are ranked as high priority for retention. There are no other environmentally sensitive features present such as 100-year floodplain, or stream valley buffers, and the Site is not located within a Special Protection Area. There are no cultural facilities or historic sites located within or adjacent to this site nor any known endangered species or critical habitats.

¹WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports; play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

Property History

As previously mentioned, the Site was recorded in 1889 and has not been re-subdivided since. However, the Property was subject to a previous Application which was not completed. The prior owner of the Property previously sought to re-subdivide the Property into a number of lots under Preliminary Plan No. 119841990 (noted as 1984199). One iteration of the plan included a proposal for four lots, however the proposal was deferred and returned to the Planning Board with a revised proposal for fewer lots which was again deferred. Ultimately the re-subdivision was not pursued and was later withdrawn/closed out due to inactivity.

Existing Outlot A

The community to the west of the Subject Property includes existing Outlot A and was approved as part of a cluster development, under Pre-Preliminary Plan (also termed “Preapplication”) number 783035 or 719830350, Preliminary Plan 119840250 (noted as 184025) and the subsequent Site Plan No. 819840640 (noted as 884064). The development applications created twenty-four (24) new buildable lots, Outlot A, and also two (2) parcels that were dedicated to M-NCPPC.



Figure 3 – Area of the “Pegasus” project developed under Preliminary Plan 119840250 & Site Plan No. 819840640

Twenty-two of these lots and Outlot A front an extension of Abilene Drive, which ends in a cul-de-sac in the vicinity of the Property. Per the Record Plat (MSA Clerk # 15020 and MNCPPC Plat Number: 555-33) recorded on November 8, 1984, Outlot A is specifically intended “to provide ingress/egress to adjacent Property (lot 46)”. The Plat also includes a recorded 10-foot Public Utilities Easement (PUE) within the Outlot, leading from the Abilene Drive cul-de-sac to the Subject Property. The current Applicant is seeking to utilize the *Outlot A* portion of the Site Plan for access to the subject Administrative Subdivision Plan.

The owner of Outlot A is related to the Applicant and has already granted approval to use her Outlot for the intended access from Abilene Drive. This grant of access is an as-yet-undefined twenty-foot ingress/egress easement per deed recorded in Liber 56917 at Folio 563 which also includes provisions for utilities as needed (Attachment B). The owner of Outlot A has provided a letter of authorization (Attachment C) and is also prepared to grant other approvals as required.

SECTION 2 – PROPOSAL

Proposal

The Administrative Subdivision currently seeks to create a total of two lots (proposed Lot 140 and Lot 141) from the existing Lot 46. The existing home is to remain on a new lot of approximately 18,933 square feet, identified as proposed Lot 140 and will continue to front on Washington Avenue. Proposed Lot 141 is approximately 22,443 square feet in size overall and will contain the Category I Easement at the southern portion. Furthermore, Lot 141 will access Abilene Drive through the existing subdivided Outlot A. The lot designs are in a rectangular configuration similar to existing lots in the vicinity. The R-60 zone requires a minimum 8' and 18' combined side setback, and the Application meets or exceeds these requirements. The proposed lots meet the minimum development standards for the R-60 zone in terms of size, street frontage, setbacks, and meet the infill development standards for lot coverage. Notably, the frontage of Lot 141 is exempt under Chapter 50 *Lot design general requirements* per 50.4.3.C.1.b.ii. which provides that 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, and access to the lots with no road frontage must be adequate to serve the lots for emergency vehicles and for the installation of public utilities and other public service. Outlot A was created to provide ingress/egress and utilities to the adjacent Property (lot 46). In Figure 4 above, the proposed lot configuration demonstrates that the proposed lots can accommodate the two single-family detached dwellings in conformance with the development standards for the R-60 zone.



Figure 4: Proposed Lot Configuration
(Green shading represents proposed Category I Conservation Easement)

As conditioned the Applicant will construct 5-foot wide sidewalk connections along and slightly beyond both frontages. The proposal also includes a new onsite Category I Forest Conservation Easement which will meet or exceed the forest conservation worksheet requirements onsite (without the use of offsite banking or the payment of a fee-in lieu). Additionally, a modified BRL is proposed/conditioned to maintain approximately 15' of separation between the BRL for the new home and the conservation easement. The tree save plans will also preserve additional trees outside of the proposed conservation easement setting. As previously mentioned, a 10' PUE leading from the Abilene Drive cul-de-sac to the Subject Property was recorded within the Outlot by record plat. Furthermore, the owner of Outlot A has already granted a deed recorded in Liber 56917 at Folio 563 which includes additional provisions for utilities as needed.

Outlot A was created under approved Preliminary Plan No. 119841990 and platted with a note for it to provide ingress/egress to adjacent property Lot 46. However, the subsequently approved Site Plan (819840640) did not reflect a proposed layout for the access drive and only showed existing trees/canopy within Outlot A. A Site Plan amendment is needed to approve the proposed features within the Outlot (such as the paving and retaining walls) in addition to the necessary 5' wide sidewalk extension along Abilene Drive. A condition of approval is included for an amendment to Site Plan 819840640 to be approved prior to first building permit.

Previous submissions under this Application included a 3-lot proposal and subsequently a layout for a 2-lot scenario which placed the building envelope entirely within the environmentally sensitive areas. The initial proposals were not supported by Staff due to excessive environmental impacts and other concerns. Ultimately, the current layout (Figure 4) shifts the building envelope northwards into the flatter area with minimized impacts to the environmentally sensitive areas. The current layout includes an expanded Category I Forest Conservation Easement footprint which fully meets all the Forest Conservation worksheet requirements onsite through forest retention (with no afforestation/ reforestation or use of offsite bank, or payment of fee-in-lieu). Additionally, the southern side BRL was modified to maintain approximately 15' separation between the BRL for the new home and the ultimate conservation easement footprint.

Environmental Guidelines

As previously mentioned in the project description, the Subject Property is located within the Lower Rock Creek Watershed. The Property contains approximately 0.50-acres of forest which includes a number of mature and specimen trees. The Site also contains mature trees inside and outside of the forest setting and also includes and other environmentally sensitive features such as slopes of 25% or greater (located in the middle/rear of the property), and a minor area of wetland in the southernmost portion of the site; no other environmentally sensitive features are present. Through collaboration with Staff and the Applicant, the building envelope is located in a manner which minimizes encroachment on areas of forested steep slopes and reduces the impact to the critical root zones (CRZ) of trees within the environmentally sensitive areas. With this revised proposal, the areas of forest to remain will be appropriately protected by the approval of a modified building restriction line (BRL) and tree save plan which will set the LOD at a reasonable distance from the retained onsite trees while also providing tree protection/stress reduction measures. Further, outside of the BRL, the Applicant proposes a Category I Conservation Easement to encompass the remaining area of forest to the south, including the wetland buffer area. With these actions proposed, this project will provide adequate protection of the onsite environmentally sensitive areas.

Forest Conservation

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420192070, was approved for the Subject Property on September 5, 2019. The approved NRI/FSD shows approximately 0.50-acres of forest onsite. The latest proposal for this Site, which includes shifted placement of the proposed single-family

home, an expanded BRL, and Category I Conservation Easement, reduces the area of forest cleared from 0.31-acres as originally submitted, to 0.22-acres. This modified proposal also increases the easement area from 0.19-acres to approximately 0.28-acres which fully meets all Forest Conservation requirements onsite, as calculated by the Forest Conservation Worksheet. These efforts to minimize forest impact are in line with both the Master Plan and priorities of the Forest Conservation Law; the Master Plan states that “urban forestry concepts should be applied both inside and outside the parks to improve the quality of the urban ecosystem...to create pockets of native trees and understory vegetation within the urban ring to better support the remaining natural ecosystem.” While the Forest Conservation Regulations identifies the following features as priorities for retention: *Trees and shrubs in sensitive areas (such as steep slopes and near wetland buffers); areas of contiguous forest and forest identified as high priority for retention; individual specimen trees.*

Due to the proposed impacts and removal of several specimen trees associated with this development, this Application is also subject to the Variance Provisions of the Forest Conservation Law. Accordingly, a Variance Request is required. A comprehensive Forest Conservation Plan and associated variance request which address the current layout have not been submitted at this time, however per 50.6.1.C.5. the forest conservation and environmental protection requirements may be satisfied before approval of the plat. As conditioned an updated Forest Conservation Plan and variance request which accounts for the design changes described above must be submitted by the Applicant and reviewed subject to Staff approval prior to approval of the plat. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

Stormwater Management (SWM)

Although the SWM Concept Approval reflecting the proposed layout appearing in Figure 4 has not been submitted, a SWM concept was granted under a previous version of the plans which located the building envelope entirely within the sloping portion of the Site, therefore it is anticipated that a SWM concept approval would also be achievable under the current scenario of shifting the building envelope partially into the flat/up-slope area. Per Section 50.6.1.C.5, the Applicant must obtain Stormwater Management approval from MCDPS prior to Record Plat. As conditioned, the Applicant must satisfy the requirements for stormwater management and receive approval from the Department of Permitting Services, Water Resources Section, thereby meeting the requirements as applicable.

Access and Circulation

Access to the existing home on the remaining lot will continue to be provided by the existing driveway on Washington Avenue. As conditioned, the Applicant will dedicate frontage as needed to achieve 30 feet from the existing centerline and meet the total master-planned width of 60 feet. Additionally, as conditioned, the Project will provide a new 5-foot wide sidewalk with a 6-foot lawn panel with street trees along the Washington Avenue Site frontage and extending eastward off-site to connect to the existing sidewalk. A shared roadway is recommended along Washington Avenue between Ellingson Drive and Meadowbrook Lane per the 2018 *Bicycle Master Plan*. Shared Roadways do not include designated bikeway treatments, and therefore no further dedication or participation is required for compliance with the 2018 *Bicycle Master Plan*.

Access to the new residence will be provided from a new driveway on Abilene Drive. The Applicant will construct a 5-foot sidewalk and a 2-foot lawn panel along the Abilene Drive Site frontage and will extend that new sidewalk segment off-site eastbound around the cul-de-sac bulb to connect to the existing sidewalk. Therefore, as subject to the conditioned frontage improvements, access to the site for vehicles, pedestrians and bicyclists will be adequate. The Project proposes one new single-family dwelling on the new lot, which does slightly increase the overall density within the vicinity of the Site.

SECTION 3 – ANALYSIS AND FINDINGS, CHAPTER 50

Applicability, Section 6.1.C

1. The lots are approved for the standard method of development;

The lots were submitted and are approved for standard method development in the R-60 zone.

2. Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat;

The lot will not be served by a well or septic area, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

3. Any required road dedications and associated public utility easements are shown on the plat and the Applicant provides any required improvements;

Washington Avenue and Abilene Drive function as secondary and tertiary residential roadways, respectively. As conditioned, the Applicant will be required to dedicate or demonstrate that prior dedication has been made such that there is 30-feet of dedicated right-of-way between the roadway centerline and the property line, to achieve the minimum total width of 60-feet for a Secondary Residential Roadway (Section 49-31 of the County Code).

As conditioned, the Applicant will provide a 5-foot sidewalk with a 6-foot tree lawn on the Washington Avenue frontage and a 5-foot sidewalk with a 2-foot lawn panel on its Abilene Drive frontage. Both sidewalks will be extended beyond the Site frontage to connect with existing sidewalks east of the existing lot and south of the Outlot A frontage.

The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

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

School Adequacy

The Property is served by Rock Creek Forest Elementary School, Silver Creek Middle School and Bethesda-Chevy Chase High School. Since the application was accepted prior to January 1, 2021 it falls under the rules of the 2016 Subdivision Staging Policy (SSP). Under the 2016 SSP, testing for estimated impact on school enrollment is not required as there is an increase of only of one new single-family-detached dwelling unit and the application falls within the de minimis (three units or less) exemption.

Transportation Adequacy

As conditioned, transportation access is adequate to serve the proposed development by this Administrative Subdivision.

Section 50-4.3.E.3.b requires administrative subdivision applications containing lots fronting on an existing State, County, or municipally maintained road, provide additional right-of-way dedication and reasonable improvements to the road in front of the subdivision including sidewalks and bicycle facilities required by the Master Plan and the Road Design and Construction

Code. As conditioned, the Applicant will install a 5-foot sidewalk and 6-foot tree lawn across the Washington Avenue frontage and 5-foot sidewalk with 2-foot lawn panels associated with the Abilene Drive frontage, unless waived by the Department of Permitting Services. As conditioned, the sidewalk improvements will be extended off-site to connect to existing sidewalks on the adjacent lots.

Local Area Transportation Review (LATR)

The Project generates one net new person trip as it proposes retaining an existing home and building another on a new lot. As a result, the Application is not subject to the Local Area Transportation Review (LATR)² and vehicular access to the Site is determined to be adequate. As conditioned, the provision of new sidewalks on both the Washington Avenue and Abilene Drive frontages, will provide adequate access for pedestrians.

Other Public Facilities and Services

The Property is currently served by public water and sewer, classified in the S-1 and W-1 categories, and will be adequate to serve the proposed subdivision. Dry utilities including electricity, gas, and telephone are also available to the Property. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution in effect at the time of the Application acceptance.

5. Forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.

The Administrative Subdivision is subject to Chapter 22A of the County Code. There are 0.50-acres of forest onsite and the Property has approximately 17 significant or specimen sized trees located on site. The Applicant had submitted a Preliminary/Final Forest Conservation Plan based on the outdated layout proposing to place a new single-family home entirely within the sloped and forested area of the site. However, as described above, Staff and the Applicant have coordinated for an updated layout which minimizes impact to the environmentally sensitive features of the site. The current proposal as conditioned, will provide at least 0.28-acres of onsite Category I Conservation Easement which will fully meet all of the Forest Conservation worksheet requirements through forest retention and without the use of offsite banking or the payment of a fee-in lieu.

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. 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 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 ("Protected Trees"). Any impact to a Protected Tree, including removal or disturbance within the Tree's critical root zone ("CRZ") requires a variance. An application 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.

² Page 40 of the LATR states, "Developments that generate less than 5 peak-hour vehicle trips (i.e. subdivisions of four or fewer single-family detached houses) are not generally included" in LATR review.

The Applicant proposes to impact subject trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. However, with the revised design, the impacts proposed to subject trees will change, therefore, an updated Forest Conservation Plan and variance request will be required prior to plat as allowed under section 50.6.1.C.5. of the Subdivision Regulations. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

The Stormwater Management requirements must also be approved prior to the approval of plat, per Chapter 50.6.1.C.5 by MCDPS Stormwater Management Section.

Furthermore, under 50.4.3.K. the Board must restrict the subdivision or development of any land for environmental protection relative to highly erodible soils, steep slopes and the associated objectives of Chapter 22A relating to conservation of trees and forest resources. However, the modified BRL(s) and Category I Conservation Easement (along with other enhancements and special measures which are recommended as conditions of approval) adequately address protection of the environmentally sensitive areas as required under 50.4.3.K. 2.b.ii.

Technical Review, Section 4.3

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*

a. The block design is appropriate for the development or use contemplated

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The proposed subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to create any new residential blocks.

b. The lot design is appropriate for the development or use contemplated

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. The proposed lots are appropriate in size, shape, width, and orientation, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the proposed building type (single-family detached dwelling unit) contemplated for the Property.

As previously mentioned, the frontage is exempt under Chapter 50 *Lot design general requirements* per 50.4.3.C.1.b.ii. which provides that 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, and that the access to the lots with no road frontage must be adequate to serve the lots for emergency vehicles and for the installation of public utilities and other public service. The Outlot A was created to provide ingress/egress to the adjacent Property (lot 46). As previously mentioned, a 10' PUE leading from the Abilene Drive cul-de-sac to the Subject Property was also recorded within the Outlot. Furthermore, the owner of Outlot A has already granted a deed recorded in Liber 56917 at Folio 563 which includes additional provisions for utilities as needed.

The MCDPS Fire Prevention and Code Compliance Division Staff has approved the Fire Access Plan for the current layout on July 20, 2021 (Attachment A).

Other properties in the vicinity within the R-60 zone range from 6,000 square feet in size to 30,638 square feet (the existing Subject Property is the largest in the vicinity at 41,435 sf). The proposed lots meet the minimum development requirements for the R-60 zone in terms of size, street frontage, setbacks, and meet the infill development standards for lot coverage. Therefore, the lot design is appropriate for the development and use contemplated.

c. The Preliminary Plan provides for required public sites and adequate open areas

The Property was reviewed for compliance with Section 50.4.3.D, “Public Sites and Adequate Public Facilities,” of the Subdivision Code. There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

d. The Lot(s) and Use comply with the basic requirements of Chapter 59

The proposed lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and width, and can reasonably achieve proposed setbacks that meet or exceed the requirements of the R-60 zone. A summary of this review is included in Table 1 below.

Table 1 – Development Standards in the R-60 Zone

Standard	Required/ Permitted	Proposed	
		LOT 140	LOT 141
Minimum lot size	6,000 sq ft	18,933 sq feet	22,443 sq feet
Min Lot Width at Front Building Line	60'	106 feet	212 feet
Min Lot Width at Front Lot Line	25 feet	106 feet	N/A ¹
Maximum Density (units/acre)	7.26	1	1
Max Lot Coverage	20% ²	3,786 SF (max)	4,488 SF (max)
Front setback	25 feet (min)	25 feet (min)	25 feet (min)
Side setbacks	8 feet (min)	15 (min)	15 feet (min) ³ north side 128 feet (min) ⁴ south side
Sum of Side setbacks	18 feet (min)	18 feet (min)	143 feet (min) ⁵
Rear setbacks	20 feet (min)	20 feet (min)	20 feet (min)
Max Building Height to highest point on any roof.	35 feet	≤ 35'	≤ 35'

¹25' frontages Per 59.4.4.9.B required except as exempt under chapter 50 Lot Design requirements under 50.4.3.C. 1.b.ii.

²Maximum lot coverage is 20% for lots ≥ 16,000 sf per Residential Infill Compatibility, Section 59.4.4.1.B.

³North side setback for Lot 141 was increased to enhance fire protection buffer.

⁴South side setback for Lot 141 was increased to enhance protection of environmentally sensitive areas.

⁵Sum of the proposed Lot 141 side setbacks.

2. The Administrative Subdivision Plan substantially conforms to the Master Plan or Urban Renewal Plan

The Property is located within 2000 North and West Silver Spring Master Plan. The Master Plan generally reaffirmed the existing zoning throughout the plan area. The Property is more specifically within the West Silver Spring area of the Master Plan where “suburban and urban lifestyles merge.” (see p. 23 of the Master Plan) The Master Plan values the “close-in, older, well-established, and densely developed down-County area characterized by diversity in income, ethnicity, and racial composition.” The character of these neighborhoods should be preserved and enhanced. (Page 16).

The proposed Administrative Subdivision seeks to add an additional single-family lot in a densely-developed neighborhood with lot sizes that range from 6,000 square feet to 30,638 square feet. At 41,436.53 square feet, the Property currently outlies as the largest lot in the neighborhood. The proposed new lots, which are 18,933 square feet and 22,443, are more in character with the other lots in the neighborhood in terms of size, and diversity of housing options.

Furthermore, the Master Plan also recognizes the appeal of the densely developed residential neighborhoods due to their “proximity to natural resources, particularly the nearby stream valley parks, recreation facilities, and the urban forest.” (Master Plan at page 83).

Consistent with Master Plan recommendations, the new lots respect urban forests through the preservation of existing tree stock on the western and southern edges of proposed Lot 141. In these areas, the proposed subdivision minimizes the limits of disturbance to only the extent needed to reasonably accommodate the house, driveway and minimal yard area. Moreover, the proposed plan utilizes urban forestry principles, including the maintenance of existing tree coverage in the proposed forest conservation area and the removal of invasive species, as conditioned.

The sidewalk installation and associated plantings as conditioned are supported by the Master Plan, which states “Enhance the natural environment by creating green spaces and identifying locations for improved street tree plantings” (page 4), “Preserve the residential character. Improve existing streets, sidewalks, gathering spaces, streetscape and landscaping” (page 16), and lastly, maintaining the existing healthy tree stock is important to the character of the community” (page 91).

The modified BRL and Category I Conservation Easement will help protect the steepest part of the slopes and protect most of the forest and environmentally sensitive areas. As conditioned, the Project substantially conforms to the Master Plan.

3. Public Facilities will be adequate to support and service the area of the subdivision

As discussed in findings 6.1.C.4 above, public facilities will be adequate to support and service the area of the subdivision.

The Project generates fewer than three (3) net new peak hour person trips and is considered to have a *de minimis* impact on the transportation network. As a result, the Application is not subject to the Local Area Transportation Review (LATR).

As conditioned, the Applicant is required to provide a 5-foot sidewalk with a 6-foot lawn panel along its Washington Avenue frontage and a 5-foot sidewalk with a 2-foot lawn panel along its Abilene Drive frontage. Therefore, as conditioned, the Project will provide adequate vehicle, bicycle and pedestrian access within the service area of the subdivision.

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

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420192070, was approved for the Subject Property on September 5, 2019. The Subject Property is located within the Lower Rock Creek Watershed, a Use I watershed. The Property contains forest and mature trees subject to the Variance provision of the Forest Conservation Law, including a number of specimen trees which measure 30-inches or greater in diameter-at-breast height (DBH). The mature trees are generally located to the south of the Property, within the forested area, and along the bordering neighboring properties. The

site is mostly flat towards Washington Avenue, but transitions into forest areas associated with steep slopes ($\geq 25\%$) toward the southern portion of the Property. At the bottom of this sloped area lies a potential wetland with a buffer as identified on the approved NRI/FSD.

There are no known rare, threatened, or endangered species on or near the site; there are no 100-year floodplains or associated BRLs, however there are steep slopes and wetland/buffers on site. The environmentally features found onsite also include numerous significant and specimen trees. There are no historic or cultural features on or near the site.

The current proposal for this site includes enhanced placement of the proposed single-family home with a modified BRL and Category I Conservation Easement which reduces the area of forest cleared from 0.31-acres as originally submitted, to 0.22-acres. The improved layout will also include an expanded Conservation Easement area of approximately 0.28-acres which will fully meet all Forest Conservation requirements onsite.

These efforts serve to minimize the impact to the environmentally sensitive features of the Site such as the steep slopes and forest. These plan updates were proposed with respect to both the Master Plan and Forest Conservation Law which provide guidance and priorities for the protection of natural resources. The Forest Conservation Regulations identify trees and shrubs in sensitive areas (such as steep slopes and near wetland buffers), areas of contiguous forest and forest identified as high priority for retention, and individual specimen trees as priorities for retention.

The Master Plan states that “urban forestry concepts should be applied both inside and outside the parks to improve the quality of the urban ecosystem...to create pockets of native trees and understory vegetation within the urban ring to better support the remaining natural ecosystem.”

Due to the proposed impacts and removal of several specimen trees associated with this development, this Application is also subject to the Variance provisions of the Forest Conservation Law. Accordingly, a Variance Request is required. Among other changes, the current layout will result in impacts to two previously unaffected variance trees; however, the subject trees are located along or beyond the property boundaries (where they can be retained) and out of the forest/environmentally sensitive areas. The new impacts would be supported by Staff, as allowing the new impacts would result in reduced impacts to other subject trees located within in the environmentally sensitive areas which have enhanced protection under the revised layout. An updated plan will be submitted at the time of Certification (prior to record plat) that addresses the updated Forest Conservation Plan and variance request which accounts for the design changes described above. The Application must meet the requirements of Chapter 22A of the Montgomery County Code prior to approval of the plat per Section 50.6.1.C.5. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied*

Since the existing single family detached dwelling and the proposed residence are governed by the Administrative Subdivision process, the Stormwater Concept Plan and the associated requirements must be approved by MCDPS Stormwater Management Section prior to the approval of the record plat in accordance with the Subdivision Regulations, Chapter 50.6.1.C.5. As previously mentioned, although the SWM Concept Approval reflecting the current layout has not been submitted, a SWM concept was granted under the version of the plans which located the building envelope entirely within the sloping portion of the site, therefore it is anticipated that a SWM concept approval would

also be achievable under the current scenario of shifting the building envelope partially into the flat/up-slope area. As conditioned the Applicant must satisfy the requirements for stormwater management and receive approval from the Department of Permitting Services, Water Resources Section, thereby meeting the requirements as applicable.

SECTION 4 – COMMUNITY OUTREACH

A pre-submittal community meeting is not required for an Administrative Subdivision Plan; however, Applicants must post signs on the development site and provide written public notice. A notice of the Application was sent to all required parties by the Applicant on January 10, 2020. The notice gave the interested parties 15 days to review and comment on the contents of the Application and the Request for Waiver. In addition to mailing a written notice, a sign was posted in compliance with the Zoning Code. As of the posting this report Staff has received a letter of opposition (Attachment D) on the Project which is based on the initial submission of a 3-lot proposal and expresses concerns from adjacent residents and property owners relative to unusual access requiring a Planning Board hearing (rather than Administrative approval), significant retaining walls proposed along the property boundaries, stormwater/flooding concerns, and ongoing concerns related to previous applications. A follow-up letter was sent to the Planning Board Chair on July 27, 2021 shortly before the previously scheduled hearing for this project. The supplemental letter reiterated some of the previous concerns and expressed additional concerns/requests. The Staff responses to the letters are outlined below:

- Atypical access/Planning Board review
The Planning Director referred consideration of the application to the Planning Board (per Section 50.6.3.B.1 of the Subdivision Ordinance) largely based on the lack of roadway frontage and the associated non-traditional access. Although the Application has been referred to the Planning Board in keeping with the concern expressed in the letter, the access through Outlot A (which was created to provide access and utilities to the Property) is suitable, and the frontage is exempt per 50.4.3.C.1.b.ii.
- Retaining Walls
The initial application for this Administrative Subdivision included very large retaining walls (up to 18-feet in height) which had been proposed along significant portions of the property lines and very close to multiple neighboring properties. The concerns regarding the extensive walls were based on the original layout for the three-lot proposal. However, the most recent layout (Figure 4) has significantly reduced the walls in both length and height (≤ 4 -feet). Under the revised layout the walls are generally located near the proposed home rather than near the neighboring property lines. Furthermore, Staff has included a condition of approval, Condition 10, that addresses the use and implementation of retaining walls.
- SWM/Flooding
Some of the surrounding neighbors have noted general stormwater/flooding concerns. As an Administrative Subdivision Plan, the Application is required to satisfy stormwater management requirements prior to record plat. The Application received a Stormwater Management Concept Plan approval for an earlier iteration of the lot design, which was located entirely within the steeply sloping area. Since approval of that Stormwater Management Concept Plan, Planning Staff worked with the Applicant to further improve the design by shifting the building envelope towards the flatter upslope area. The Application has been conditioned to receive a Stormwater Management Concept Plan for the improved lot design prior to approval of the record plat.

- Previous Applications

The letter states that the Property has been the subject of at least two prior subdivision applications which were both denied, and the current application does not alleviate previous concerns. As described in the *Project History* section of the report, the previous application (119841990) was *deferred* multiple times (rather than denied) and ultimately withdrawn/closed out due to inactivity. More importantly, the initial 3-lot submission for the Administrative Subdivision was not supported by Staff and the Project has since been significantly redesigned to a 2-lot layout which has minimized the overall impacts and meets or exceeds the regulatory requirements.

- Defective Access Easement

The July 27, 2021 letter states that the ingress/egress easement provided across Outlot A is defective as the easement references, but does not include, "Exhibit A" which is used in part to identify the property subject to the Easement. Furthermore, the Grantor affirmatively warrants that she will not interfere with construction of the driveway within the Easement, she does not offer the same assurance to a future owner with respect to future use or maintenance of the Easement. In response to the concern regarding the adequacy of the easement, a review by Legal Staff confirmed that the recorded document does adequately describe the easement location (even without the attachment) and is therefore valid. The assurance of access that is referenced in the Letter of Authorization (Attachment C) is related to the development application itself and is not intended to pertain to future owners or maintenance. The letter of authorization generally allows permission for plan submissions and property access for surveyors, engineers, review staff etc. to perform site visits as part of the plan review process.

- Revised Conditions of Approval

The July 27, 2021 letter requests that if the Board decides to approve the subdivision, particular conditions of approval should be modified to address the following:

1. Outlot A and Lot 141 both must be subject to site plan review;
2. A Forest Conservation variance has not yet been filed and must return for Planning Board approval;
3. Side yard building setback limits should be included, consistent with the plans filed with the Fire Marshal; and
4. Operational limits regarding noise should be added.

The Staff responses to the concerns are as follows:

1. The Staff-recommended conditions of approval require a Site Plan Amendment for the work on Outlot A (which is already part of an overarching Site Plan). The main reasoning provided in the letter of opposition requesting the Site Plans review for Lot 46 are related to concerns over the atypical access, retaining wall design and the potential for the preliminary plan review to be prejudicial to a subsequent site plan review. However, as described previously in the Staff Report, the access through Outlot A (which was created to provide access and utilities to the Property) is suitable, and the frontage is exempt per 50.4.3.C.1.b.ii. Furthermore, the retaining wall concerns are addressed in the second bullet point above. Lastly, the Preliminary Plan review of the Subject Property would not be prejudicial to the Site Plan for the outlot, as the original Site Plan and recorded plat have already established Outlot A as ingress/egress to adjacent property Lot 46. As conditioned, a Site Plan amendment for the Outlot A will specifically address proposed features within Outlot A such as the paving and retaining walls, prior to building permit release which will ensure that the design elements required by the Site Plan will be

meshed with the final layout of the new residence. Therefore, Staff does not recommend that Lot 141 be subject to Site Plan review.

2. The Applicant submitted a variance request with the subject Application. Since the initial submission, Staff and the Applicant have derived at an updated (current) layout. Although the Forest Conservation variance for the current layout has not yet been filed, the current layout results in less impacts to the environmentally sensitive areas and would be supportable. The subject trees that would receive new impacts under the current layout are located along or beyond the property lines where there would be adequate space for their protection. Furthermore, since the project is governed by the Administrative Subdivision process, the Variance request must be approved prior to the approval of the record plat in accordance with the Subdivision Regulations, Chapter 50.6.1.C.5. The review would be anticipated to be performed at a Director's level review, however if preferred by the Planning Board, the Forest Conservation Variance could be brought to the Board.
3. The side yards setbacks appearing the plans filed with Fire Department Access and Water Supply Section are reflected in the development table and recommended as a condition of approval (condition 13.) which address the related concerns in the letter.
4. Though it is inevitable that any redevelopment of the Property will have temporary construction impacts (such as delivery of materials, noise etc.); the construction must be in compliance with all County requirements, including work hours, as directed by the County Department of Permitting Services and Department of Environmental Protection who have purview over such issues.

SECTION 5 – CONCLUSION

The Administrative Subdivision Plan No. 620190130 meets the technical requirements of Section 50.4.3 of the Subdivision Code, and the applicable requirements of Section 50.6.1.C, as conditioned. The proposed lots meet all requirements established in the Subdivision Code and the Zoning Ordinance and substantially conform to the recommendations of the 2000 *North and West Silver Spring Master Plan*, as conditioned. Therefore, Staff recommends approval of this Administrative Subdivision Plan with conditions enumerated at the beginning of this report.

Attachments

- Attachment A – Agency Letters
- Attachment B – Access Easement
- Attachment C – Letter of Authorization
- Attachment D – Community Correspondence



DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher Conklin
Director

July 1, 2021

Mr. Marco Fuster, Planner Coordinator
DownCounty Division
The Maryland-National Capital
Park & Planning Commission
2425 Reedie Drive
Wheaton, Maryland 20902

RE: Administrative Plan No. 620190130
2710 Washington Avenue

Dear Mr. Fuster:

We have completed our review of the administrative plan uploaded to Eplans on May 11, 2021. A previous version of this plan was reviewed by the Development Review Committee (DRC) at its meeting on February 4, 2020. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Montgomery County Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. This letter and all other correspondence from this department should be included in the package.

Significant Plan Review Comments

1. The applicant is required to construct a five (5) foot wide, continuous clear path (no grates) concrete sidewalk along the 2710 Washington Avenue frontage. On the Certified Administrative Subdivision Plan, show the sidewalk located two (2) feet inside the right-of-way line.
2. The applicant is required to construct a five (5) foot wide, continuous clear path (no grates) concrete sidewalk along the Outlot A, Abilene Drive frontage. The sidewalk shall be located within the existing ten (10) foot wide, overlapping Public Improvement Easement (PIE) and Public Utilities Easement (PUE) along the existing Abilene Drive frontage. On the Certified Administrative Subdivision Plan, show the sidewalk located within the combined PIE/PUE, two (2) feet from the outside edge of the combined PIE/PUE.
3. Design all access points and alleys to be at-grade with the sidewalk, dropping down to street level between the sidewalk and roadway.

Office of the Director

101 Monroe Street 10th Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX
www.montgomerycountymd.gov

Located one block west of the Rockville Metro Station

4. The two (2) existing, privately-owned light posts along the 2710 Washington Avenue frontage are not allowed in the public right-of-way and must be removed or relocated outside the right-of-way prior to the record plat.

Standard Plan Review Comments

5. The storm drain study was reviewed and is acceptable to MCDOT. No improvements are needed to the downstream public storm drain system for this plan.
6. The sight distance study has been accepted. A copy of the accepted Sight Distance Evaluation certification form is enclosed for your information and reference.
7. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
8. The spacing and species of trees in the County rights-of-way are to be in accordance with the applicable MCDOT standards. Tree planning within the public right of way must be coordinated with DPS Right-of-Way Plan Review Section.
9. Posting of a right-of-way permit bond is a prerequisite to DPS approval of the record plat. The right-of-way permit will include, but not necessarily be limited to, the following improvements:
 - A. Sidewalks and street trees along Washington Avenue and Abilene Drive.
 - B. Permanent monuments and property line markers, as required by Section 50-4.3(G) of the Subdivision Regulations.
 - C. Erosion and sediment control measures as required by Montgomery County Code 19-10(02) and on-site stormwater management, where applicable, shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
 - D. The developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

Mr. Marco Fuster
Administrative Plan No. 620190130
July 1, 2021
Page 3

Thank you for the opportunity to review this administrative plan. If you have any questions or comments regarding this letter, please contact me at william.whelan@montgomerycountymd.gov or (240) 777-2173.

Sincerely,

William Whelan

William Whelan
Development Review Team
Office of Transportation Policy

Enclosures (1)

Sight Distances

Sharepoint/transportation/director's office/development review/WhelanW/620190130 2710 Washington Ave – MCDOT
Review Letter 070121.docx

cc: Plan letters notebook

cc-e: Doug Tilley O'Connell and Lawrence, Inc.
Sam Farhadi MCDPS RWPR
Marie LaBaw MCFRS



**Department of Permitting Services
Fire Department Access and Water Supply Comments**

DATE: 20-Jul-21
TO: Douglas Tilley - tilld@ocline.com
O'Connell & Lawrence
FROM: Marie LaBaw
RE: 2710 Washington Avenue - Hickey and Offutt's Subdivision
620190130

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **14-Jul-21** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

***** Developing one lot in existing subdivision with existing method of access already in place per original community planning *****



17904 GEORGIA AVENUE, SUITE 302
OLNEY, MARYLAND, 20832

TEL: 301-924-4570

FAX: 301-924-5872

November 25, 2020

Last Revised: July 14, 2021

Montgomery County Department of Permitting Services/Fire and Rescue Services
Fire Prevention and Code Compliance Section

Attn: Dr. Marie LaBaw

2425 Reddie Drive, 7th Floor

Wheaton, MD 20902

Sent via electronic mail only.

Re: Statement of Performance Based Design
Development Application #620190130
2710 Washington Avenue and Abilene Drive – Chevy Chase, MD 20815
Hickey and Offutt's Subdivision
O'C&L Job #018-006

Dear Dr. LaBaw:

The purpose of this letter is to establish a Statement of Performance Based Design for the proposed development application. This letter is derived from the substance of discussion from a telephone conversation we had on October 27, 2020 regarding this development.

O'C&L represents the Applicant for the subject development application and is the engineer of record for the proposed development. The initial filing for the proposed development application was accepted by the Maryland-National Capital Park and Planning Commission ("M-NCPPC") in January 2020; a total of three (3) review cycles and comment issuance cycles have been completed as of the date of this letter.

As part of the original series of issued comments, Montgomery County Fire and Rescue staff issued the following comments (among others):

1. Fire Department vehicular access dead ends shall be no more than 150 feet long before providing a compliant turnaround. Abilene Drive cul-de-sac must be at least 90ft to qualify.
5. Show that [*sic*] Abilene Drive is a compliant fire department vehicular access path.

O'C&L understands these comments were largely issued due to the overall diameter of Abilene Drive and the overall setback of the proposed houses from the Abilene Drive cul-de-sac.

As part of the second series of submission documents, O'C&L, with approval from the Applicant, reduced the number of new proposed record lots with access from Abilene Drive from two (2) to one (1). However, the comments as received from Fire and Rescue did not change as part of the second submission. These comments generated the need for the telephone conversation that occurred on October 27, 2020.

A Fire Department Access plan has been prepared for the proposed development and is attached to this letter as **Exhibit A**. As designed, existing Lot 46 shall be divided into two (2) separate lots. The first proposed record lot has frontage on Washington Avenue and is developed with an existing house; this house is proposed to remain. The second proposed lot is primarily in question and is proposed to be accessed from Abilene Drive through existing Outlot A, as shown on Exhibit A. Note that the overall layout of the proposed subdivision has been revised from the version of this Statement of Performance Based Design as previously submitted to you in November, 25, 2020 and as a result of design correspondence with M-NCPPC Staff. It is O’C&L’s understanding that the layout as found on this Fire Access plan mirrors M-NCPPC Staff’s preferred layout for the subdivision, and is in substantial conformance with the layout that will be recommended by Staff to the Planning Board at the scheduled hearing to be held on July 29, 2021, although certain exact parameters, such as the exact amount of Forest Conservation Area proposed on Lot 141, shall be addressed by M-NCPPC Staff with conditions of approval on the document to be brought before the Planning Board.

As discussed with you on October 27, 2020, access to the rear of existing Lot 46 by way of Outlot A was contemplated as far back as September 1984. Outlot A was created as part of Plat of Subdivision #15020, as recorded in the Land Records of Montgomery County, Maryland, which generally established Lots 83 – 106, Outlot A, and Parcels B and C of Hickey & Offutt’s Subdivision, including Abilene Drive. This plat is attached to this document as **Exhibit B**. A note on the plat reads as follows:

Outlot “A” to provide ingress/egress to adjacent property (lot 46).

This note has been boxed by O’C&L on **Exhibit B**. Further, this plat also shows the actual radius of Abilene Drive at 41.67’, which is not in accordance with current Fire Access turnaround standards. The radius callout for Abilene Drive is also boxed on **Exhibit B**.

Pursuant to our discussion, it is our understanding that, based on this information and the note re-printed above, Abilene Drive was always contemplated to provide access to the number of homes which are proposed as part of the on-going Development Application process. Therefore, pursuant to our discussion, Abilene Drive may be considered a suitable turnaround under Fire and Rescue standards for the new record lot proposed to be accessed via Abilene Drive and Outlot A, thus nullifying Comments 1 and 5 as re-printed above, and permitting approval of this proposed development subject to final plan review by Fire and Rescue staff of final submitted documentation. Thus, this particular development may be reviewed and approved based on this Performance Based Design, as the contemplation of access to this new lot was established prior to 2010. Further, the design proposes certain dedication to MCDOT as part of this development that shall establish a 50’ radius at Abilene in the vicinity of Outlot A.

The proposed new single family dwelling on Lot 141 shall not be an exposure hazard to any existing structures. It shall be set a minimum of 30’ from any adjacent single family dwelling. The relevant building restriction lines for the proposed development are shown on Exhibit A; however, to ensure that a 30’ distance between single family units is met, the northernmost setback for Proposed Lot 141 shall be increased from a 9’ to 15’. The southernmost setback is extensive, as the area of proposed forest conservation precludes development directly to the south of the new proposed dwelling unit. The existing houses to the east and west of the proposed structure are significantly more than 30’ from the location of the proposed setbacks. There are no anticipated hazards anticipated with this development.

Further, O’C&L offers the following additional consideration associated with this Statement of Performance-Based Standards

Abilene Drive: Abilene Drive is a dedicated public road that is consistent with a neighborhood street; although it is not signed for a speed limit, it is O’C&L’s belief that this road is consistent with a street having a 25 MPH speed limit. A fire apparatus can park on the side of the road in the event of an emergency at the site. The anticipated parking location of the emergency vehicle location is shown on the accompanying drawing.

Distance from Emergency Vehicle to Main Side-Hinge Door: The main side hinge door designated as the front entrance is more than 50’ from the edge of Abilene Drive. One common performance based standard applicable to this potential condition is whether emergency services personnel can walk from the vehicle to the main side hinge door from an operational bay within 150’. If this condition is able to be met, a performance based standard can be considered.

To evaluate this standard, O’C&L completed the following tasks:

1. Showed an approximate location of the Operational Bay on the Fire Access Plan.
2. Determined the overall length of walking path to reach the main side-hinge door. Note that O’C&L has shown these locations for both houses.

The maximum walking path from the Abilene Drive Operational Bay to the proposed main side hinge door is 143.8’ which meets the 150’ requirement as specified above. The driveway is set a maximum of a 12% slope, which is traversable for able-bodied rescue personnel. There are no proposed locked gates or fences along the walking path; the main door to the facility and certain internal doors are located in the path.

O’C&L also notes that the main side hinge door for the house on Lot 140 is 89.1’ from the Operational Bay on Washington Avenue.

Both access paths may be seen on the Fire Access Plan included with this submission.

Hydrant Location: O’C&L has noted the location of the existing fire hydrants nearest to the existing building on Proposed Lot 140 and proposed building on proposed Lot 141. Each hydrant is within 250’ of the structures and is much closer to the Operational Bay.

Sprinklers and Building Height: O’C&L has noted the following conditions on the Fire Access Plan for the proposed dwelling unit on Lot 141

- The proposed dwelling unit shall be equipped with an automatic sprinkler system compliant with NFPA 13D.
- The height of the proposed dwelling unit shall be such that the maximum elevation of the highest window sill shall be no more than 27 feet in height from grade.

The existing building on Lot 140 is not expected to be modified.

Based on these conditions and the explanation as found herein, it is the belief of O’C&L that suitable emergency services access is provided, and, on behalf of the Applicant, we formally request this statement of performance based design justification be accepted and approved by the Montgomery County Department of Permitting Services/Fire and Rescue Services - Fire Prevention and Code Compliance Section in conjunction with the listed Administrative Subdivision application.

We appreciate the opportunity to provide this Statement of Performance Based Design to you, and we look forward to eventual approval of the proposed development. Please feel free to contact me with questions or concerns related to the information as found herein. I can be reached at (301) 924-4570 or at doug@oclinc.com. Thank you very much.

Very Truly Yours,
O'Connell & Lawrence, Inc.

DocuSigned by:
Douglas G. Tilley
C7B5FAF84E754E2...

Douglas G. Tilley, P.E.
Vice President of Engineering & Surveying

Douglas G. Tilley
Registered Professional Engineer
Maryland No. 42417

DocuSigned by:
Douglas G. Tilley
C7B5FAF84E754E2...

STATE OF MARYLAND
REGISTERED PROFESSIONAL ENGINEER

Sealed Date: 7/14/2021

Professional Certification: I hereby certify that these documents were prepared or approved by me and that I am a duly licensed Professional Engineer under the laws of the State of Maryland, License #42417, Expiration Date June 6, 2022.

Exhibit A: *Fire Access Plan, prepared by O'C&L, dated July 13, 2021*
Exhibit B: *Plat of Subdivision #15020, as recorded in the Land Records of Montgomery County, MD (Mark-ups by O'C&L)*

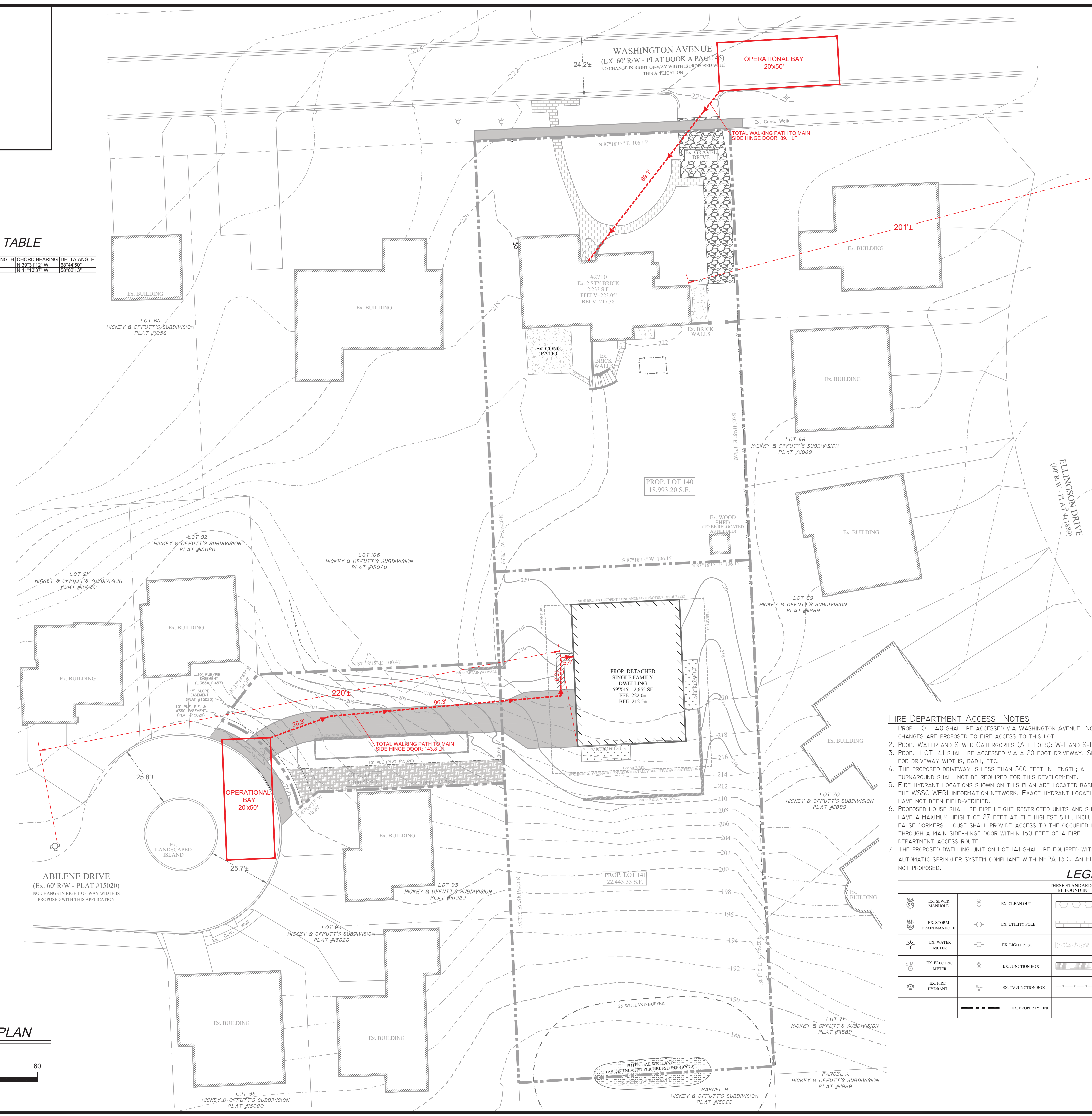
FIRE CODE ENFORCEMENT

Fire Department Access Review

Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from omissions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation

BY: SAC FM: 43 DATE: 7/20/2021

*** Developing one lot in existing subdivision with existing method of access already in place per original community planning ***



CURVE TABLE

Table with 5 columns: CURVE, RADIUS, ARC LENGTH, CHORD LENGTH, CHORD BEARING, DELTA ANGLE. Contains data for curves C1 and C2.

GENERAL NOTES

- 1. EX. PROPERTY DATA
LEGAL REFERENCE: LOT 46, HICKEY & OFFUTT'S SUBDIVISION, PLAT BOOK A, PAGE 45
AND OUTLOT "A", HICKEY & OFFUTT'S SUBDIVISION, PLAT #15020
LOT AREA: LOT 46 = 41,436.53 SQ. FT. OR 0.9513 ACRES
AND OUTLOT "A" = 5,519.40 SQ. FT. OR 0.1267 ACRES
TAX MAP GRID HN 63 - TAX ACCT: LOT 46 13-00959356; OUTLOT "A" 13-02446562
ZONING: R-60
WATERSHED: ROCK CREEK, USE CLASS I
WSSC 200 SHEET: 210NW03
ADC MAP PAGE 73 GRID F1 (2012 EDITION)
EX. WATER AND SEWER CATEGORIES: PUBLIC WATER & SEWER (W-1 & S-1)
2. EX. SITE DATA
PROPERTY LINES SHOWN HEREON WERE TAKEN FROM FIELD OBSERVATIONS AND AVAILABLE RECORDS.
THIS PLAN HAS BEEN PREPARED WITH THE BENEFIT OF A TITLE EXAMINATION FOR LOT 46, BUT WITHOUT A TITLE EXAMINATION FOR OUTLOT "A".
TOPOGRAPHY AND EXISTING FEATURES SHOWN ON THE SUBJECT PROPERTIES PER FIELD SURVEY CONDUCTED BY O'CONNELL & LAWRENCE IN APRIL 2018. BUILDINGS, SITE FEATURES, AND TOPOGRAPHY ON ADJACENT PROPERTIES SHOWN PER PUBLICLY-AVAILABLE AERIAL IMAGERY AND/OR GIS DATA ACCESSED FROM PUBLIC SOURCES. THE LIMITS OF FIELD-RUN AND GIS-BASED TOPOGRAPHY ARE DELINEATED ON THE PLAN.
HORIZONTAL DATUM SHOWN HEREON IS PLAT #15020.
VERTICAL DATUM SHOWN HEREON IS NAVD 88.
THERE ARE NO STREAMS WITHIN 200' OF THE PROPERTY.
THE SITE IS LOCATED IN A FLOOD ZONE X (AREA OF MINIMAL FLOOD HAZARD) OF THE NATIONAL FLOOD INSURANCE PROGRAM, PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP #2003010400D WITH EFFECTIVE DATE 9-29-2006. THERE ARE NO FLOODPLAINS, TIDAL WETLANDS, OR NON-TIDAL WETLANDS ON THE SUBJECT PROPERTY.
THIS SITE DOES NOT CONTAIN ANY EXISTING FOREST CONSERVATION EASEMENTS PER MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION'S "PROTECTING FORESTS ONLINE EASEMENT LOCATOR AND MAPPING TOOL".
EXISTING SITE USE: DETACHED SINGLE FAMILY RESIDENCE
EXISTING SITE COVERAGE: RESIDENTIAL HOME, WALKS & DRIVE, METAL AND WOOD FENCES, & PLANTINGS
3. UTILITIES DATA
UTILITIES LOCATIONS SHOWN HEREON ARE AVAILABLE PLANS AND FIELD OBSERVATIONS. WHERE SURFACE INDICATIONS EXIST, DIGGING OF TEST PITS AT ALL FUTURE UTILITY CROSSINGS IS RECOMMENDED. CONTACT "MISS UTILITY" AT 1-800-257-7777, 48 HOURS PRIOR TO ANY EXCAVATION OR CONSTRUCTION
4. THIS FIRE ACCESS EXHIBIT IS PREPARED IN CONJUNCTION WITH ADMINISTRATIVE SUBDIVISION PLAN WITH FILE NO. 620190130. THE STATEMENT OF PERFORMANCE BASED DESIGN IS AN INTEGRAL PART OF THIS ACCESS PLAN.
5. THERE WERE NO APPARENT EXISTING SPEED LIMIT SIGNS ON ABILENE DRIVE. THERE IS NO MODIFICATION TO THE SPEED LIMIT ANTICIPATED AS PART OF THIS APPLICATION.
6. THE MAXIMUM WALKING DISTANCE FROM THE EMERGENCY OPERATIONAL BAY TO THE MAIN SIDE HINGE DOOR OF THE BUILDINGS ARE 89.1 LF FOR LOT 140 AND 143.8 LF FOR LOT 141. SEE THE PERFORMANCE-BASED STANDARD JUSTIFICATION LETTER FOR FURTHER DISCUSSION. EMERGENCY SERVICES PERSONNEL PATHS ARE AS SHOWN ON THE SUBJECT DRAWING THUSLY:
7. THE BUILDING IS EXPECTED TO HAVE TO BE SPRINKLED AS PART OF THIS PROJECT.

FIRE DEPARTMENT ACCESS NOTES

- 1. PROP. LOT 140 SHALL BE ACCESSED VIA WASHINGTON AVENUE. NO CHANGES ARE PROPOSED TO FIRE ACCESS TO THIS LOT.
2. PROP. WATER AND SEWER CATEGORIES (ALL LOTS): W-1 AND S-1
3. PROP. LOT 141 SHALL BE ACCESSED VIA A 20 FOOT DRIVEWAY. SEE PLAN FOR DRIVEWAY WIDTHS, RADII, ETC.
4. THE PROPOSED DRIVEWAY IS LESS THAN 300 FEET IN LENGTH; A TURNAROUND SHALL NOT BE REQUIRED FOR THIS DEVELOPMENT.
5. FIRE HYDRANT LOCATIONS SHOWN ON THIS PLAN ARE LOCATED BASED ON THE WSSC WERI INFORMATION NETWORK. EXACT HYDRANT LOCATIONS HAVE NOT BEEN FIELD-VERIFIED.
6. PROPOSED HOUSE SHALL BE FIRE HEIGHT RESTRICTED UNITS AND SHALL HAVE A MAXIMUM HEIGHT OF 27 FEET AT THE HIGHEST SILL, INCLUDING FALSE DORMERS. HOUSE SHALL PROVIDE ACCESS TO THE OCCUPIED INTERIOR THROUGH A MAIN SIDE-HINGE DOOR WITHIN 150 FEET OF A FIRE DEPARTMENT ACCESS ROUTE.
7. THE PROPOSED DWELLING UNIT ON LOT 141 SHALL BE EQUIPPED WITH AN AUTOMATIC SPRINKLER SYSTEM COMPLIANT WITH NFPA 13D. AN FDC IS NOT PROPOSED.

FIRE CODE ENFORCEMENT

Fire Department Access Review
Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from omissions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation.
BY: SAC FM: 43 DATE: 7/20/2021

*** Developing one lot in existing subdivision with existing method of access already in place per original community planning ***

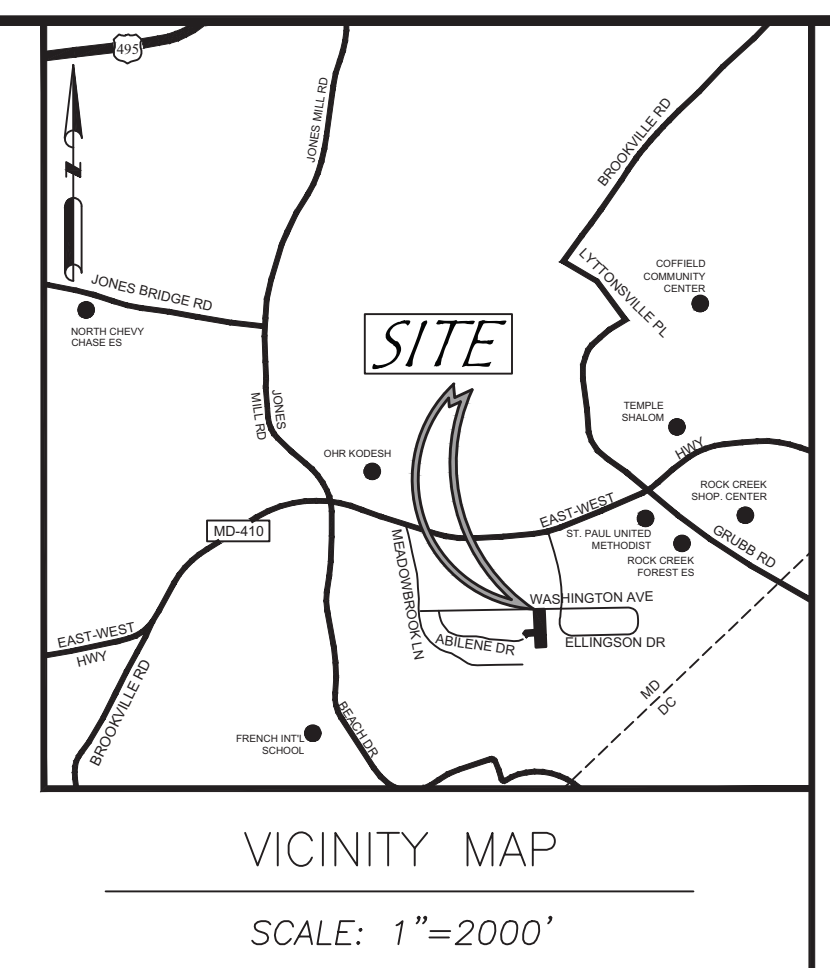
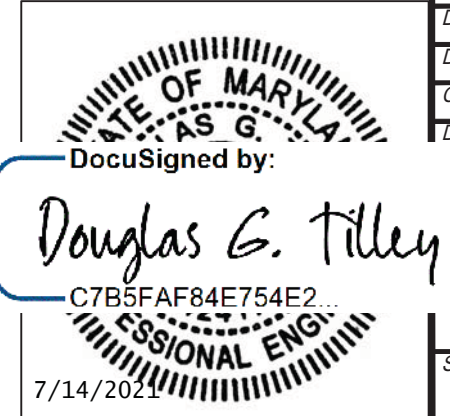
LEGEND

Table with 4 columns: Symbol, Description, Symbol, Description. Lists various symbols for sewer, storm, water, electric, fire, and property lines.

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 42417, EXPIRATION DATE: JUNE 6, 2022.

DocuSigned by: Douglas G. Tilley 7/14/2021
DOUGLAS G. TILLEY 42417
PRINTED NAME REGISTRATION NUMBER



Construction Consultants, Engineers, Surveyors
17904 Georgia Avenue, Suite 302
Olin, Maryland 20832
Tel: (301) 924-4570
Fax: (301) 924-5872

O'C&L
HICKEY & OFFUTT'S SUBDIVISION
2710 WASHINGTON AVENUE
Plat Book A, Page 45 - PLAT #15020
13TH FLOOR, WASHINGTON DISTRICT
MONTGOMERY COUNTY, MARYLAND

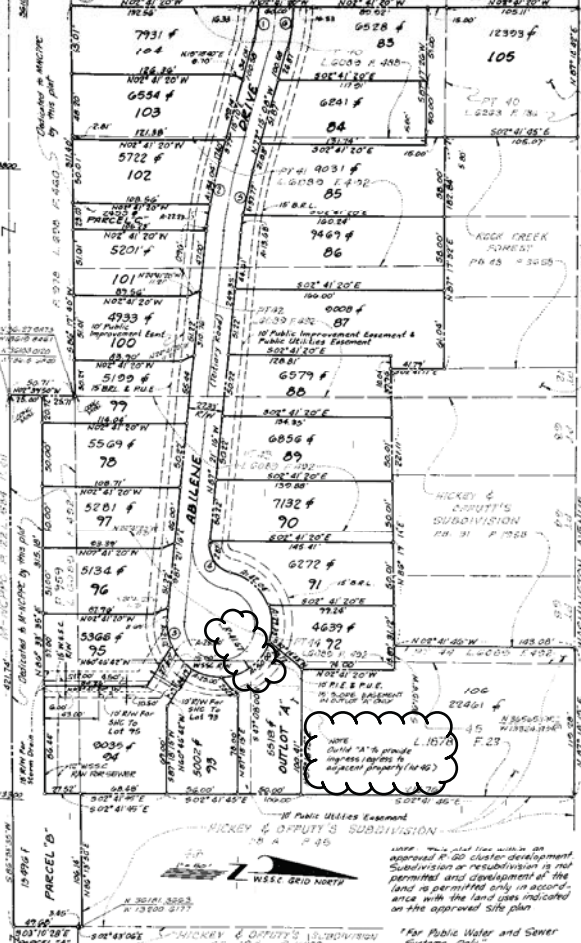
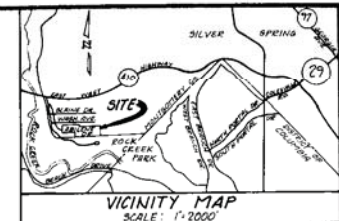
2710 WASHINGTON AVENUE
FIRE ACCESS PLAN
ADMINISTRATIVE SUBDIVISION
FILE NO: 620190130

Table with 3 columns: DESIGN BY, DRAWN BY, CHECKED BY, DATE, etc. Lists project team members and dates.

FIRE ACCESS PLAN

SCALE 1"=20'





CURVE DATA

No.	Radius	Ch	arc	1/4	Tangent	Chord	Stationing
1	470.0'	15°00'00"	66.0'	13.0'	20.00'	3.82-16.17'	
2	319.15'	10°00'00"	56.87'	10.0'	15.00'	3.82-16.17'	
3	350.00'	10°00'00"	62.83'	12.0'	18.00'	3.82-16.17'	
4	250.00'	20°00'00"	40.00'	8.00'	12.00'	3.82-16.17'	
5	200.00'	30°00'00"	30.00'	6.00'	9.00'	3.82-16.17'	
6	200.00'	10°00'00"	35.00'	7.00'	10.00'	3.82-16.17'	
7	125.00'	18°00'00"	22.00'	4.50'	6.00'	3.82-16.17'	
8	150.00'	15°00'00"	27.00'	5.50'	7.50'	3.82-16.17'	

CONVEYANCE CERTIFICATION

I hereby certify that the plan shown herein is correct. This is a subdivision of the land required by the Planning Commission and all recorded against the Land Records of Montgomery County, Maryland.

Trustee/Signer	Witness	Date	Block	Volume	Page	All
Thomas Herring	William J. Hubbard and Robert J. Lynch, Jr. (Montgomery County) Agents of the estate of Howard A. and Virginia G. Corney	Dec 14, 1984	00003	100	10	All
Thomas & Marie J. Corney	William J. Hubbard and Robert J. Lynch, Jr. (Montgomery County) Agents of the estate of Howard A. and Virginia G. Corney	May 28, 1983	00000	488	All	All
Robert L. Herring	Helen Patricia Kunkin	May 27, 1983	00000	492	All	All
Harry Frank and Anne Elizabeth Smith	Sam Gray and Esther G. H. Gray	Dec 20, 1982	1819	13	All	All

NOTARY PUBLIC
 J. J. H. R. S. (Signature)
 Notary Public, State of Maryland
 My Comm. Expires 10/12/84

OWNER'S DECLARATION

We, the undersigned, having received notice on or about March 31, 1984 from the Planning Commission and the Montgomery County Department of Transportation, regarding the subdivision of the land shown on this plat, do hereby declare that we own the entire interest in the land shown on this plat, and that we are the persons who are authorized to execute this declaration. We declare that we own the entire interest in the land shown on this plat, and that we are the persons who are authorized to execute this declaration. We declare that we own the entire interest in the land shown on this plat, and that we are the persons who are authorized to execute this declaration.

DATE: 10/12/84
 (Signature)
 (Signature)

PLANNING COMMISSION'S DECLARATION

The Planning Commission on or about March 31, 1984, reviewed the subdivision plan and the Declaration of the land shown on this plat. The Commission found that the subdivision is in accordance with the Montgomery County Zoning Ordinance, and that the proposed subdivision is in the public interest. The Commission approved the subdivision and the Declaration of the land shown on this plat. The Commission approved the subdivision and the Declaration of the land shown on this plat.

PLANNING COMMISSION CHAIRMAN
 (Signature)
PLANNING COMMISSION SECRETARY
 (Signature)

MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

DECLARATION OF THE LANDSHOWN ON THIS PLAT

We, the undersigned, hereby declare that we own the entire interest in the land shown on this plat, and that we are the persons who are authorized to execute this declaration. We declare that we own the entire interest in the land shown on this plat, and that we are the persons who are authorized to execute this declaration.

DATE: 10/1/84
 Adeline R. Kunkin
 Adeline R. Kunkin
 Adeline R. Kunkin

PLANNING COMMISSION SECRETARY
 (Signature)
 (Signature)

PLANNING COMMISSION CHAIRMAN
 (Signature)
 (Signature)

Montgomery-National Capital Park & Planning Commission
 Montgomery County Planning Board

Approved **OCTOBER 11, 1984**
 (Signature)
 Chairman
 (Signature)
 Secretary-Treasurer
 M-NCP&PG Record File No. 555-33

Montgomery County, Maryland
 Department of Transportation

Approved **November 1, 1985**
 (Signature)
 For Director
 P.I. No. **04-155**

HICKEY & OFFUTT'S SUBDIVISION
 LOTS 23 THRU 79, OUTLOT 'A', AND A PORTION OF LOT 22
 SILVER SPRING ELECTION DISTRICT NO. 13
 MONTGOMERY COUNTY, MARYLAND

Recorded
 Plot Book
 Plot No.

SCALE: 1" = 50'
 NOV 9 1984
 SEPTEMBER 1984

kamber engineering, inc.
 101 COMMERCE CENTER BLVD., SUITE 201
 GAITHERSBURG, MARYLAND 20878

284463/16025
 284463/270246040

EASEMENT OR RIGHT-OF-WAY FOR ACCESS TO PROPERTY

FOR AN IN CONSIDERATION of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **JUDITH M. KOENICK** ("Grantor") hereby grants and conveys to **THE SHIRLEY P. EIG REVOCABLE TRUST**, ("Grantee"), its successors and assigns, a perpetual, non-exclusive right of way and easement ("Easement") in, under, upon, about, over and through the property described on the attached Exhibit "A", hereto and incorporated herein by reference ("Property").

1. Grant. The Grantor grants unto the Grantee, its successors and assigns the right to lay, construct and maintain utilities and a permanent street or road of at least 20 feet in width in, under, upon, about, over and through Outlot A, as shown on the Plat entitled "Hickey & Offutt's Subdivision, Lots 83 thru 106, Outlot 'A' and Parcels 'B' and 'C'", which Plat is recorded among the Land Records of Montgomery County, MD, as Plat No. 15020 easement for the purpose of ingress, egress and utilities to Abilene Drive, from Lot 46, Hickey and Offutt's Subdivision (Plat Book A, Page 45) and any re-subdivision(s) thereof.
2. This Easement shall run with the land.
3. No Interference. Grantor shall not interfere with the Grantee's construction of such permanent street or road within the Easement.
4. Amendment. This Easement shall be amended only by a written and recorded instrument signed by the parties or the then current owner of the Property and the Easement.
5. This Easement shall be binding upon and inure to the benefit of the parties successors and assigns, heirs, beneficiaries and personal representatives.
6. Governing. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

SIGNED on this the 18th day of October, 20 18.

Judith M. Koenick

Judith M. Koenick

MONTGOMERY COUNTY, MD

APPROVED BY ADJ

NOV 27 2018

\$ 0 RECORDATION TAX PAID
\$ N/A TRANSFER TAX PAID

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56917, p. 0063, MSA_CE63_56874. Date available 11/30/2018. Printed 05/21/2019.

20
40
CDB

STATE OF Maryland
COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Judith M. Koenick, Grantor, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

NOTARY PUBLIC

My Commission Expires: _____



STATE OF Maryland
COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Shirley P. Eig, Trustee of the Shirley P. Eig Revocable Trust, Grantee, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

NOTARY PUBLIC

My Commission Expires: _____

Prepared by: Jill Pogach Michaels, Esq.



State of Maryland Land Instrument Intake Sheet

Baltimore City County:

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only. (Type or Print in Black Ink Only—All Copies Must Be Legible)

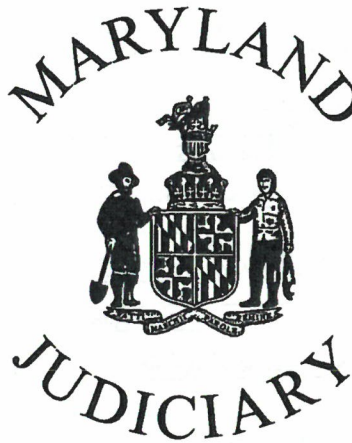
Space Reserved for Circuit Court Clerk Recording Validation

Main form body with sections 1-11: Type(s) of Instruments, Conveyance Type Check Box, Tax Exemptions, Consideration and Tax Calculations, Fees, Description of Property, Transferred From, Transferred To, Other Names to Be Indexed, Contact/Mail Information, and Assessment Information.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56917, p. 0065, MSA_CE63_56874, Date available 11/30/2018, Printed 05/21/2019.

Space Reserved for County Validation

LR - Easement
 (No-Taxes) Recording
 Fee 20.00
 Name: KDENICK
 Ref:
 LR - Easement
 (No-Taxes) Surcharge 40.00
 =====
 SubTotal: 60.00
 =====
 Total: 60.00
 11/28/2018 10:43
 CC15-06
 #11325508 CC0002 -
 Montgomery
 County/CC06.02.06 -
 Register 06



**DOCUMENT VALIDATION PAGE
 FOR CLERK'S USE ONLY
 (EXCLUDED FROM PAGE COUNT FOR CERTIFIED COPY)**

BARBARA H. MEIKLEJOHN
 Clerk of the Circuit Court for Montgomery County
 50 Maryland Avenue
 Rockville, Maryland 20850
 Recording and Licensing
 (240) 777-9470

Judith Koenick
2714 Washington Avenue
Chevy Chase, MD 20815
February 5, 2019

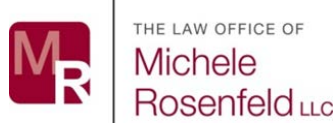
Larry Eig, Trustee
Shirley P. Eig Irrevocable Trust
2710 Washington Avenue
Chevy Chase, MD 20815

Dear Larry:

I authorize the Shirley P. Eig Irrevocable Trust; Larry Eig, Trustee; or their designees to submit development documents relative to the subdivision of Lot 46 of Hickey and Offutt' Subdivision that address Outlot A as part of the development project. These documents may include Stormwater Management Concept Plans, NRI/FSDs, Forest Conservation Plans, and the like. I also want to make clear that I authorize access over Outlot A to Lot 46 for utility, inspection, emergency, and other vehicles as required during development of Lot 46.

Sincerely,


Judith Koenick



January 14, 2019

Marco Fuster, Lead Reviewer
Planning Department
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20910

RE: Administrative Subdivision No. 620190130
Lot 46 and Outlot A, Hickey & Offutt's Subdivision
2710 Washington Avenue

Dear Mr. Fuster:

I am writing on behalf of my clients, listed at the end of this letter, in connection with the above-referenced Administrative Subdivision. Please also add each of my clients, representing six adjoining and nearby property owners, as a party of record in this matter.

We oppose consideration of this application as an administrative subdivision, and instead request that it be considered by the Planning Board as a standard subdivision application. There are a number of substantive grounds for this request, including:

1. The proposed subdivision layout has several extraordinary features that merit Planning Board review, including:
 - (a) The two proposed new lots have access through an easement within a dedicated outlot owned by a third party, a very unusual means of securing access to public road frontage.
 - (b) Nearly the entire periphery of the outlot and the two new lots themselves are bordered with significant retaining walls that far exceed the length and height of retaining walls typically found in a residential subdivision.

The proposed retaining walls raise a number of issues, including the retaining walls' impact on stormwater runoff, their compatibility with the surrounding community, and potential adverse impacts to the foundations/basements of adjoining properties resulting from extensive grading.

2. The subject property, and the surrounding properties, suffer from significant stormwater runoff and associated flooding and erosion. My clients are concerned that this proposal will exacerbate those problems.
3. This property has been the subject of at least two prior subdivision applications, both denied. There is nothing in this application that serves to alleviate the

concerns that the neighbors raised in connection with the prior applications, and much that heightens their concerns.

These are significant, substantive issues relating to this application, which further serve as grounds for my clients' opposition to the merits of the application. Additionally, we are aware of other nearby property owners that also have concerns about this application, and they should be accorded an opportunity to raise those concerns to the Board.

Accordingly, we respectfully request that this application be reviewed consistent with the full subdivision review process, and that the application be the subject of a Planning Board hearing.

I will follow up with you in the next few days to set up a meeting to discuss this application.

Sincerely,



Michele Rosenfeld

CC:

Mr. Robert and Ms. Valerie Slater
8036 Ellingson Drive
Chevy Chase MD 20815

Mr. Gerald and Ms. Jan Feldman
8038 Ellingson Drive
Chevy Chase MD 20815

Mr. Elliot Mincberg and Ms. Carol Rest-Mincberg
8040 Ellingson Drive
Chevy Chase MD 20815

Ms. Sharon Terry
2700 Abilene Drive
Chevy Chase MD 20815

Mr. Edwin and Ms. Gloria Hege
2702 Abilene Drive
Chevy Chase MD 20815

Mr. Albert and Ms. Donna Tanenbaum
2707 Abilene Drive
Chevy Chase MD 20815



July 27, 2021

Casey Anderson, Chairman
Montgomery County Planning Board
2420 Reddie Drive
Wheaton MD 20902

RE: 2710 Washington Avenue, Administrative Subdivision 620190130
July 29, 2021 MCPB Agenda Item No. 6

Dear Chairman Anderson and Commissioners:

On behalf of my clients Avi and Karen Alpert, 2700 Abilene Drive; Jan and Gerald Feldman, 8038 Ellingson Drive; Gloria and Edwin Hege, 2702 Abilene Drive; Elliot Minberg and Carol Rest-Minberg, 8040 Ellingson Drive; Joshua Singer and Jenilee Keefe Singer, 8036 Ellingson Drive; and Al and Donna Tanenbaum, 2707 Abilene Drive,¹ please accept this letter into the record and consider the following testimony in connection with the above-referenced subdivision.

Summary

We ask that the Board deny the application because the ingress/egress easement provided across Outlot A is defective. The proposed new Lot 141 does not have frontage on a public street, but rather relies on an access easement across Outlot A – which will be owned by a third party and not the future owner of proposed Lot 141. The Outlot A Easement fails to provide legally sufficient access for the following reasons:

1. The Easement references, but does not include, “Exhibit A” which is used in part to identify the property subject to the Easement. See Attachment 2.
2. While the Grantor affirmatively warrants that she will not interfere with construction of the driveway within the Easement, she does not offer the same assurance to a future owner with respect to future use or maintenance of the Easement. Attachment 2, para. 3. This raises a meaningful question as to whether proposed Lot 141 in fact “will be served by a private driveway” as required by the Subdivision Code § 50.4.3.C.1.b.i.

For these reasons the Outlot A Easement fails to provide the evidence necessary to establish that proposed Lot 141 will be served by a driveway as required by the Subdivision Code and we ask that the Board deny the subdivision accordingly.

If the Board decides to approve the subdivision, we request that it amend staff’s proposed conditions in the following manner (specific proposed text to follow):

1. Outlot A and Lot 141 both must be subject to site plan review;
2. A Forest Conservation variance has not yet been filed and must return for Planning Board approval;
3. Side yard building setback limits should be included, consistent with the plans filed with the Fire Marshal; and
4. Operational limits regarding noise should be added.

In support of these changes, please be advised that all of my clients about the Site and have significant concerns about the proposed subdivision. In particular, the last formal submission by the Applicant

¹ Their respective property locations are shown on Attachment One.

included retaining walls approximately 18' tall along the northern and eastern boundaries, requiring extensive excavation. The current plan, which is intended to reduce the size of the retaining walls, is essentially a sketch that does not provide the detail necessary to confirm the height, length or final location of the remaining retaining walls needed to create the desired building pad. Nor does the pending plan address the significant planned tree removal - as there is not yet an approved preliminary forest conservation plan and no variance has yet been filed – and the plan materially changes the layout that was approved in connection with the stormwater management plan previously reviewed and approved by DPS.² As a result the application before the Board lacks sufficient detail for approval based solely on conditions to be satisfied in future submissions.

The specific requested amendments and the supporting grounds are detailed as follows:

1. Site Plan Review The staff is recommending that Outlot A be subject to site plan review as a condition of preliminary plan approval. Site plan review for Lot 141 also is called for at the same time. While ordinarily Lot 141 would not be subject to site plan review, as a result of the staff-recommended change to the proposed subdivision the final location, length and height of the retaining walls necessary to achieve a buildable lot are not shown on the current plan. While the new layout is an improvement over the last one, we are very concerned about the lack of detail in the current plan and site plan review is called for under these circumstances because:

1. This lot can only be developed with highly unusual ingress/egress through an Outlot A, owned by a third party and not by the owner of Lot 141;
2. Both Outlot A and Lot 141 require retaining walls in order to achieve a useable building pad; and
3. Staff is recommending that Outlot A undergo site plan review, consequently concurrent site plan review of Lot 141 will not be prejudicial to the Applicant.

Accordingly, we ask that Condition No. 4, Condition No. 10 and Condition No. 25.b be revised as follows:³

Condition No. 4. Prior to issuance of the first building permit, the Applicant must obtain site plan approval for Lot 141 concurrently with an amendment to Site Plan 819840640 ~~must be approved~~ to reflect the ultimately proposed features within Lot 141 and Outlot A (such as but not limited to the paving and walls) in addition to the necessary 5-foot wide sidewalk extensions for Abilene Drive.

Condition No. 10. The use of retaining walls for grading purposes must be minimized where possible. Any retaining wall that is proposed should use a tiered layout to minimize visual impact and enhance stability and must be located and implemented in a manner so that the wall can be constructed, maintained and/or replaced entirely from within the subject property ("Site") and/or Outlot A as applicable. Any retaining walls within the Outlot and Lot 141 will be evaluated as part of the site plan for Lot 141 and the Site Plan amendment associated with Outlot A.

Condition No. 25.b. Include the following note: *Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-*

² "The SWM Concept Approval reflecting the current layout and a comprehensive Forest Conservation variance have not been submitted at this time . . ." Staff Report p. 1 last bullet.

³ Proposed new text is identified by red underlined text; proposed deleted text is identified by red strikeout text.

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 site plan review for Lot 141 and Outlot A 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.

2. Planning Board Review of Forest Conservation Plan A forest conservation variance is required because of the proposed impacts to, and removal of, specimen trees. The variance request has not yet been filed.⁴ While the staff report correctly notes that the variance must be approved before record plat, according to the Forest Conservation Law a variance must be approved by the Board and not by staff. Section § 22A-21(2) of the Forest Conservation Law says that “The Planning Board must find that the applicant has met all requirements of this [variance] Section before granting a variance.” As a variance application can be considered concurrently with the site plan, Board review will ensure compliance with the law and not create any hardship for the applicant.

Condition No. 14. ~~Prior to Certification of the Administrative Subdivision Plan, the Applicant must submit and receive M-NCPPC Staff Prior to building permit on Outlot A and Lot 141, the applicant must obtain Planning Board~~ approval of a revised Preliminary/Final Forest conservation plan and variance request as applicable. The revised FCP must also address the removal of invasive species and the planting of supplemental native species.

3. Building restriction lines We ask that Condition No. 13 be amended to reflect the 30’ setback from adjacent single-family dwellings relied upon to justify Fire/Rescue approval:⁵

Condition No. 13. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:

- a. A 127’ minimum side building restriction line (BRL) for the south side of Lot 141 as shown on the Certified Administrative Subdivision Plan.
- b. 15-foot minimum side BRL for the north side of Lot 141.
- c. Any residential structure on Lot 141 shall be set a minimum of 30’ from any adjacent single family dwelling.

4. Construction Noise Given the proximity of the new construction to the surrounding existing single-family homes, we request that the Board adopt the following condition:

New Proposed Condition: Construction Noise generated as part of the work authorized under the County Issued permits shall have a maximum sound level of 90dBA as measured at the property line between the hours of 7 am and 5 pm. At all other times including weekends and Federal Holidays, the site noise generated must comply with County Noise Ordinance limits. Use of chain saws, jackhammers, vibrator rollers and similar repetitive sound and vibration generating equipment shall be limited to between the hours of 9 am and 3 pm. Dump Trucks shall not slam tailgates when off-loading material.

⁴ “A comprehensive Forest Conservation Plan and associated variance request which address the current layout have not been submitted at this time . . .” Staff Report p. 10.

⁵ See Staff Report Attachment A (Agency Letters): July 14, 2021 Revised letter to Fire Marshall from O’CL, p. 2, last paragraph.

Conclusion

We request that the Board deny the application for lack of adequate access, or alternatively to adopt the requested amendments to the staff's recommended conditions of approval to ensure that the subdivision satisfies the standards of the zoning, subdivision and forest conservation laws. These comments do not waive my clients' ability to raise issues in subsequent proceedings that may be of concern.

Sincerely,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld

Attachments

Tanenbaum: 2707 Abilene

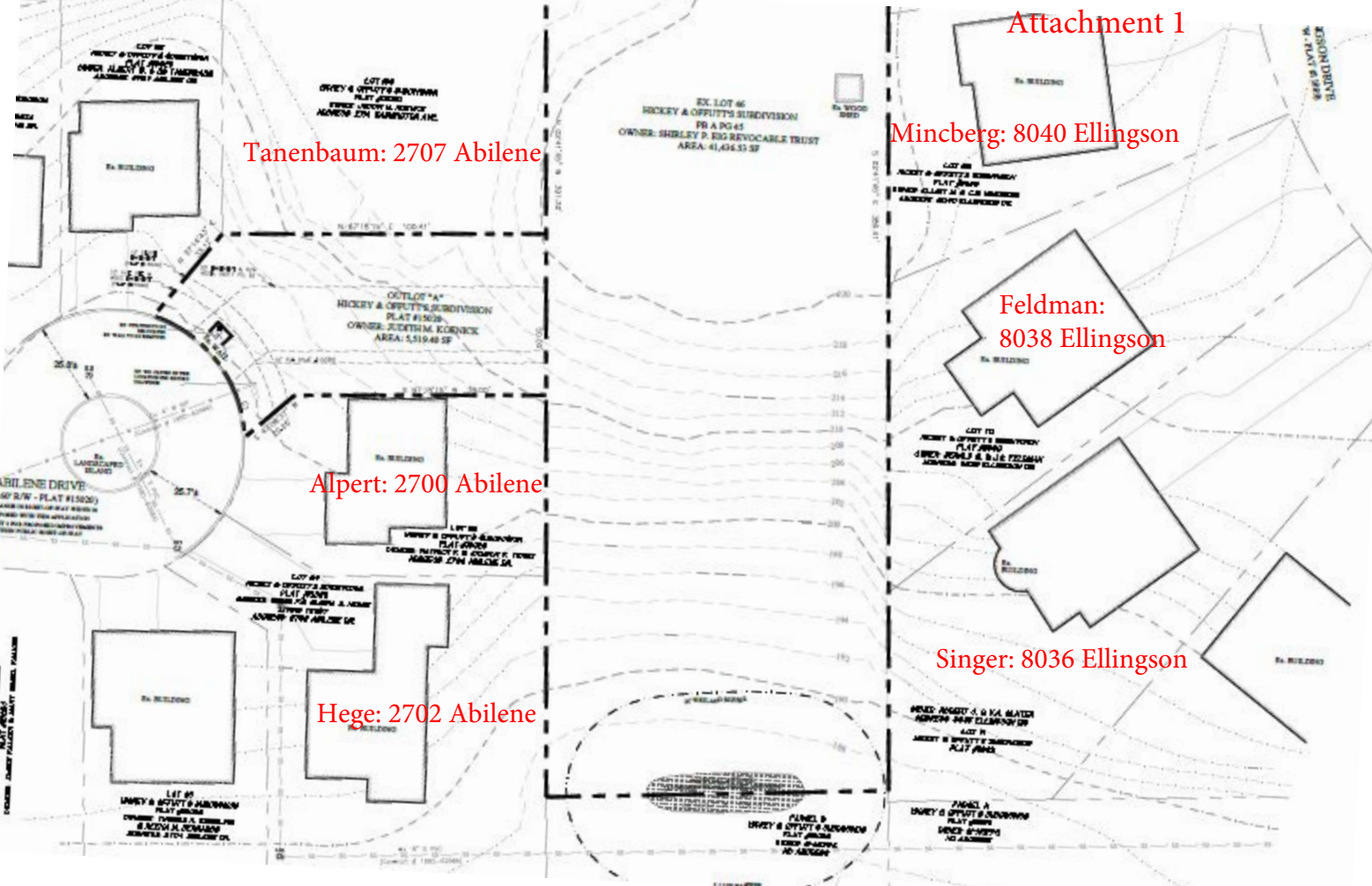
Mincberg: 8040 Ellingson

Feldman: 8038 Ellingson

Alpert: 2700 Abilene

Singer: 8036 Ellingson

Hege: 2702 Abilene



EASEMENT OR RIGHT-OF-WAY FOR ACCESS TO PROPERTY

FOR AN IN CONSIDERATION of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **JUDITH M. KOENICK** ("Grantor") hereby grants and conveys to **THE SHIRLEY P. EIG REVOCABLE TRUST**, ("Grantee"), its successors and assigns, a perpetual, non-exclusive right of way and easement ("Easement") in, under, upon, about, over and through the property described on the attached Exhibit "A", hereto and incorporated herein by reference ("Property").

1. Grant. The Grantor grants unto the Grantee, its successors and assigns the right to lay, construct and maintain utilities and a permanent street or road of at least 20 feet in width in, under, upon, about, over and through Outlot A, as shown on the Plat entitled "Hickey & Offutt's Subdivision, Lots 83 thru 106, Outlot 'A' and Parcels 'B' and 'C'", which Plat is recorded among the Land Records of Montgomery County, MD, as Plat No. 15020 easement for the purpose of ingress, egress and utilities to Abilene Drive, from Lot 46, Hickey and Offutt's Subdivision (Plat Book A, Page 45) and any re-subdivision(s) thereof.

2. This Easement shall run with the land.

3. No Interference. Grantor shall not interfere with the Grantee's construction of such permanent street or road within the Easement.

4. Amendment. This Easement shall be amended only by a written and recorded instrument signed by the parties or the then current owner of the Property and the Easement.

5. This Easement shall be binding upon and inure to the benefit of the parties successors and assigns, heirs, beneficiaries and personal representatives.

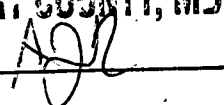
6. Governing. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

SIGNED on this the 18th day of October, 2018.



Judith M. Koenick

MONTGOMERY COUNTY, MD

APPROVED BY 

NOV 27 2018

\$  RECORDATION TAX PAID
\$ NTA TRANSFER TAX PAID

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56917, p. 0063, MSA_CE63_56874. Date available 11/30/2018. Printed 07/26/2021.

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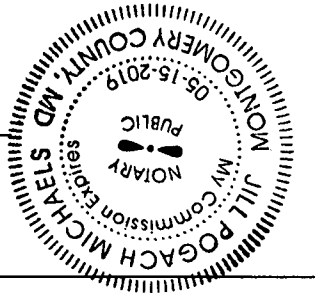
STATE OF Maryland

COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Judith M. Koenick, Grantor, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

NOTARY PUBLIC

My Commission Expires: _____



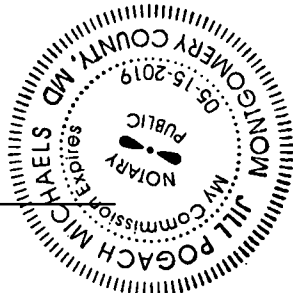
STATE OF Maryland

COUNTY OF Montgomery

Personally appeared before me, the undersigned authority in and for the said County and State, on this 18 day of October, 2018, within my jurisdiction, the within named Shirley P. Eig, Trustee of the Shirley P. Eig Revocable Trust, Grantee, who acknowledged that he executed, signed and delivered the above and foregoing instrument on the date there provided.

NOTARY PUBLIC

My Commission Expires: _____



Prepared by: Jill Pogach Michaels, Esq.

State of Maryland Land Instrument Intake Sheet

Baltimore City County:

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only. (Type or Print in Black Ink Only--All Copies Must Be Legible)

Space Reserved for Circuit Court Recording Validation

1 Type(s) of Instruments () Check Box if addendum Intake Form is Attached. Deed of Trust Mortgage Lease Other Easement Other

2 Conveyance Type Check Box Improved Sale Arms-Length [1] Unimproved Sale Arms-Length [2] Multiple Accounts Arms-Length [3] Not an Arms-Length Sale [9]

3 Tax Exemptions (if applicable) Cite or Explain Authority Recordation State Transfer County Transfer

4 Consideration and Tax Calculations Consideration Amount Finance Office Use Only Transfer and Recordation Tax Consideration

5 Fees Amount of Fees Doc. 1 Doc. 2 Agent: Tax Bill: C.B. Credit: Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i). District Property Tax ID No. (1) Grantor Liber/Folio Map Parcel No. Var. LOG

7 Transferred From Doc. 1 - Grantor(s) Name(s) Doc. 2 - Grantor(s) Name(s)

8 Transferred To Doc. 1 - Grantee(s) Name(s) Doc. 2 - Grantee(s) Name(s) New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed Doc. 1 - Additional Names to be Indexed (Optional) Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information Instrument Submitted By or Contact Person Name: Larry M. Eig Firm Address: 17605 Sir Galahad Way, Ashton MD 20861 Phone: (301) 570-9285

11 Assessment Information IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER Will the property being conveyed be the grantee's principal residence? Does transfer include personal property? If yes, identify: Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line Terminal Verification Agricultural Verification Whole Part Tran. Process Verification Transfer Number Date Received: Deed Reference: Assigned Property No. Year 20 20 Geo. Map Sub Block Land Zoning Grid Plat Lot Buildings Use Parcel Section Occ. Cd. Total Town Cd. Ex. St. Ex. Cd.

REMARKS:

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