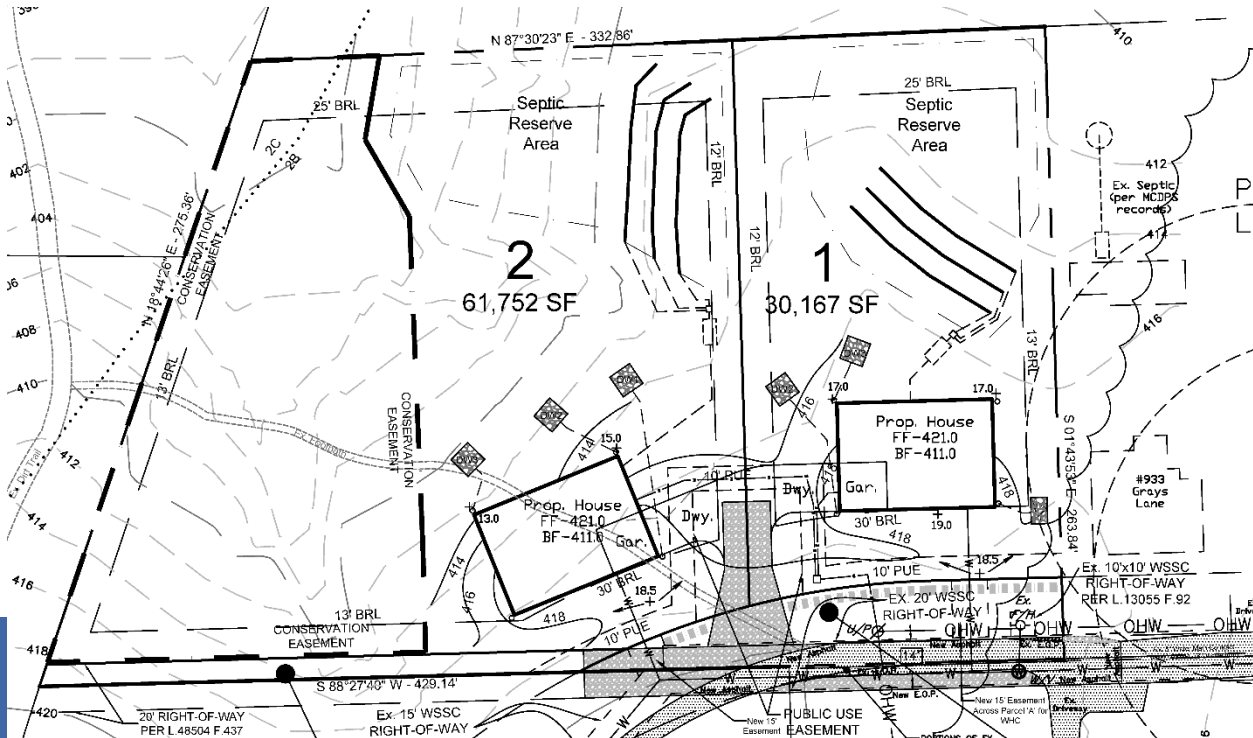


DONNER PROPERTY AT GRAYS LANE

ADMINISTRATIVE SUBDIVISION PLAN NO. 620230010



Request to create two lots for two new single-family detached dwelling units and two parcels with covenants for future dedication.

No. 620230010

Completed: 1-20-2023




MCPB

Item No.

2-2-2023

Montgomery County
Planning Board
2425 Reddie Drive
Floor 14
Wheaton, MD 20902

Planning Staff

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LOCATION/ADDRESS

939 Grays Lane

MASTER PLAN

2001 *Kemp Mill Master Plan*

ZONE

R-90

PROPERTY SIZE

2.28 acres

APPLICANT

Irah H. Donner

ACCEPTANCE DATE

October 19, 2022

REVIEW BASIS

Chapter 22A
Chapter 50



Summary:

- Staff recommends approval of the Administrative Subdivision Plan, with conditions.
- Although this Application is an Administrative Subdivision Plan, typically acted on by the Planning Director, the Application requires a Planning Board public hearing and action because of the correspondence opposing this Application.
- Meets the applicability requirements for an Administrative Subdivision Plan to create two lots for two new single-family detached dwelling units and two parcels with covenants for future dedication.
- The Application includes a Final Forest Conservation Plan that conforms to Chapter 22A.
- Community correspondence and phone calls opposing the Application have been received.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

ADMINISTRATIVE SUBDIVISION PLAN 620230010

Staff recommends approval with conditions of the Administrative Subdivision Plan to create two lots for two new single-family detached dwelling units and two parcels with covenants for future public right-of-way dedication. All site development elements shown on the latest electronic version of the Administrative Subdivision Plan No. 620230010 as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.

GENERAL APPROVAL

1. This Administrative Subdivision Plan is limited to two (2) lots for two (2) dwelling units.

ADEQUATE PUBLIC FACILITIES AND OUTSIDE AGENCIES

2. The Adequate Public Facilities (“APF”) review for the Administrative Subdivision Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

PLAN VALIDITY PERIOD

3. The Administrative Subdivision Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

OUTSIDE AGENCIES

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated January 20, 2023, and 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 if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated December 9, 2022, and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS –

Water Resources Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.

7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Well and Septic Section in its letter dated November 29, 2022, and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
8. 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 December 6, 2022, 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 Administrative Subdivision Plan approval.

OTHER APPROVALS

9. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.

ENVIRONMENT AND NOISE

10. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers not already covered by an existing Category I Conservation Easement, as specified on the approved Preliminary and 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 prior to recordation of the record plat. The Book/Page of the Category I Conservation Easements must be referenced on the record plat.
11. 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.
12. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree protection measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
13. 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.
14. Prior to the start of any demolition, clearing, grading or construction, whichever comes first, for this development Application, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.26 acres of afforestation/reforestation requirement.

15. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, 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 mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
16. Prior to the start of any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easement as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
17. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 22 caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
18. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute 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 variance tree mitigation plantings. The MMA includes invasive species management control measures.
19. Tree ST-5 can only be removed with the permission of the neighboring property owner at 933 Grays Lane.

TRANSPORTATION

20. Prior to record plat, the Applicant must record a covenant in the Land Records of Montgomery County to allow for dedication of Parcel A for public right-of-way for Grays Lane. Dedication will occur when adjacent land is dedicated.
21. Prior to record plat, the Applicant must record a covenant in the Land Records of Montgomery County to allow for dedication of Parcel B for future public pedestrian access to Wheaton Regional Park. Dedication will occur when adjacent land is dedicated for public right-of-way.

SURETY

22. Before issuance of any building permit or sediment control permit, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions:
 - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
 - b) Completion of all improvements covered by the surety will be followed by inspection and potential reduction of the surety.
 - c) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

RECORD PLATS

23. There shall be no clearing or grading of the site prior to recordation of plat(s).

Easements

24. The record plat must show necessary easements.
25. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
26. The record plat must reflect a common use and access covenant for the benefit of the public over all trails, sidewalks and paths not included in a public right-of-way or private street parcel. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel and recorded among the Montgomery County Land Records.

CERTIFIED ADMINISTRATIVE SUBDIVISION PLAN

27. The Applicant must include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).
28. The certified Administrative Subdivision Plan must contain the following notes:
 - a. *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.*
 - b. *The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Administrative Subdivision Plan is required to be on-site at all times.*
29. Prior to submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set.
 - b) Include the approved Fire and Rescue Access plan in the certified set.
 - c) Provide 22 caliper inches of mitigation plantings for the removal of Protected Trees ST-17 and ST-5.
 - d) Provide an invasive management plan for the area of wisteria within the forest not being removed now.

SECTION 2: SITE DESCRIPTION

VICINITY

The Subject Property (outlined in red), Lot 5 and Parcel 257, is located at 939 Grays Lane in the Kemp Mill Master Plan area (Figure 1). The Property abuts Wheaton Regional Park to the north and west. Other confronting and abutting uses are residential. Kemp Mill Synagogue and Wallerstein Mikvah are at the intersection of Grays Lane and Kemp Mill Road. Grays Lane is a public road terminating at the Wallerstein Mikvah and extending to the Property across private properties.



Figure 1 – Vicinity Map

PROPERTY DESCRIPTION

The Subject Property is 2.28 acres of unimproved land adjacent to Wheaton Regional Park (Figure 2). The Property has 2.24 acres of forest on it and the ground slopes from the southeast corner to the northwest corner of the Property. A portion of Grays Lane runs on the southern property line and is improved with a gravel drive.



Figure 2 – Subject Property

This section of Grays Lane is a private road that runs within a 20-foot wide easement that was established by express grant under the Last Will and Testament of William T. Gray (H.G.C. 5 Folio 431) (Attachment A). Properties along Grays Lane have the non-exclusive right of ingress and egress upon the easement and the reasonable use of the easement, including the right to install utilities and to repair, maintain, and improve the easement. This issue was decided in the Circuit Court for Montgomery County, Maryland by Case No. 412883-V (Attachment A) and recorded in the Montgomery County Land Records at Book 48504, page 437 (Figure 3).

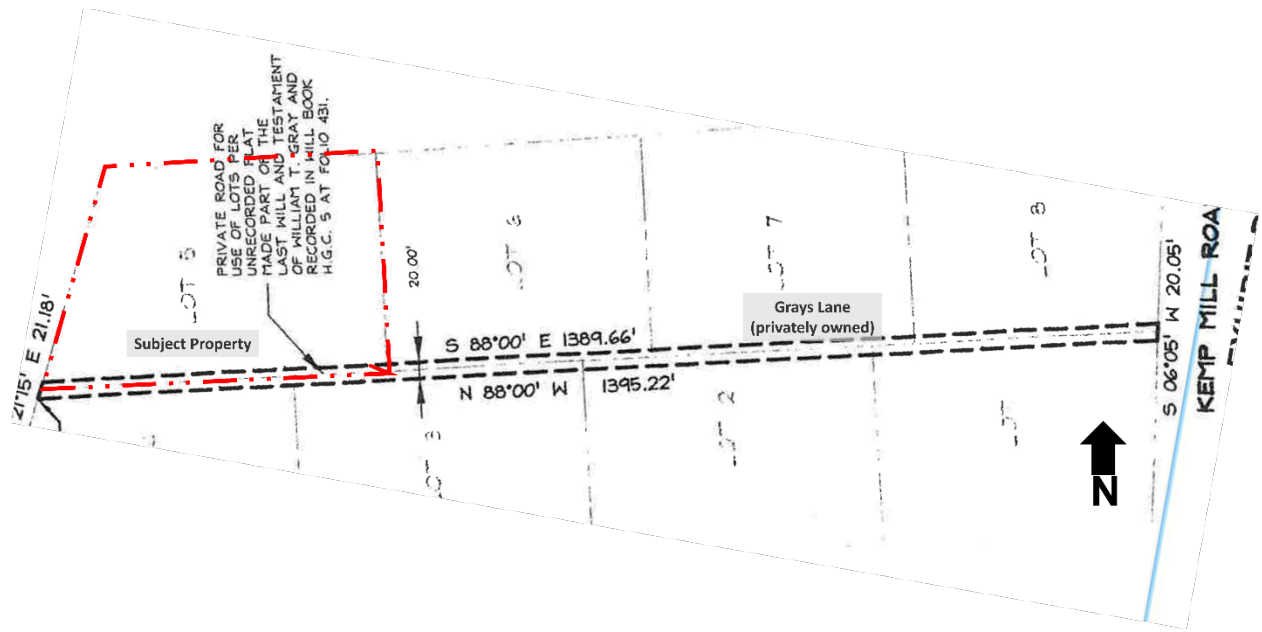


Figure 3 – Grays Lane Description

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The project proposes two single-family detached residential dwelling units on two lots and two parcels encumbered with a covenant for the future dedication of Grays Lane. Lot 1 is approximately 30,167 square feet with a septic field and septic reserve area and meets all zoning requirements. Lot 2 is approximately 61,752 square feet and includes a septic field, septic reserve area, Category I Conservation Easement, and meets all zoning requirements. Parcel A is approximately 5,291 square feet and provides for the future dedication of land for Grays Lane to meet the 70' right-of-way requirement. Parcel B is a 10' wide parcel for future dedication to Montgomery County Parks Department for pedestrian access to Wheaton Regional Park. A turnaround for fire and rescue vehicles incorporates a shared driveway for the new residential units. The proposed development will be served by public water and private septic systems.

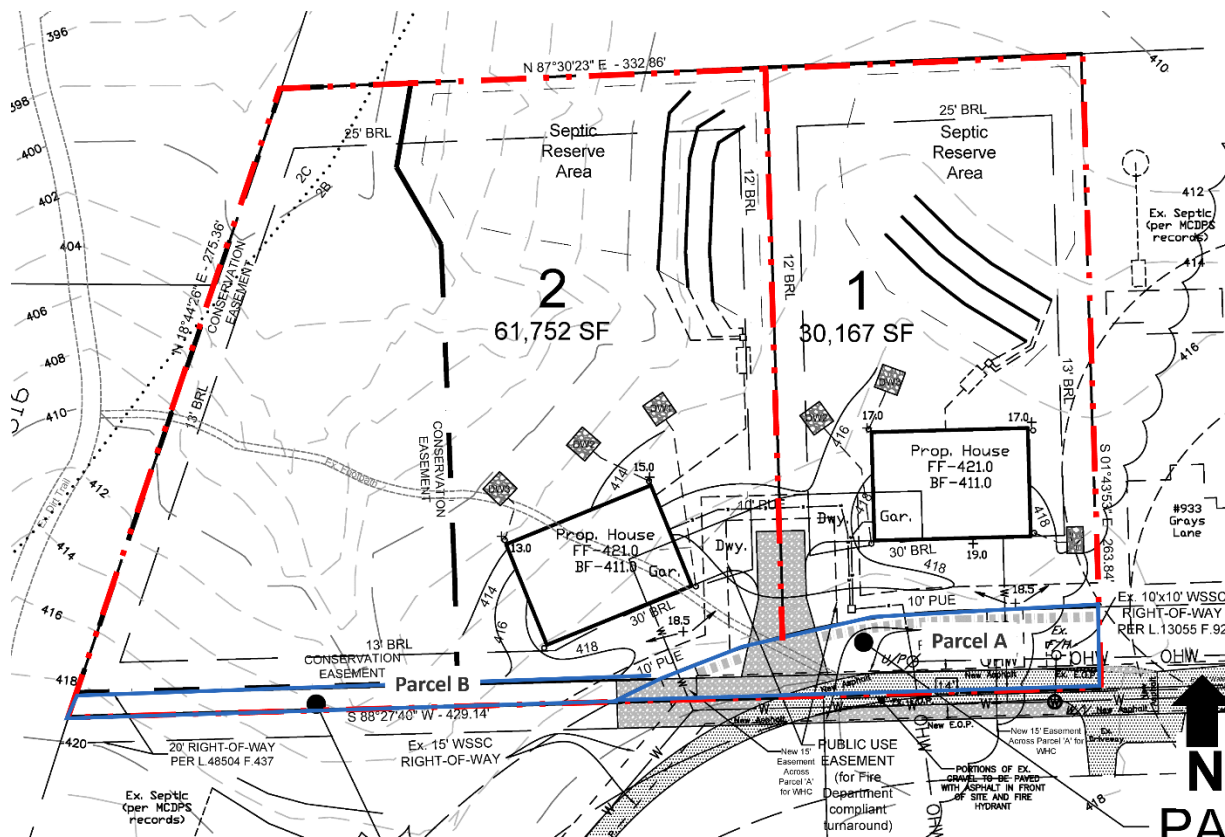


Figure 4 - Proposed Development

TRANSPORTATION

The Subject Property is accessed by Grays Lane, a private road within a 20-foot wide private right-of-way. This section of Grays Lane extends east for about 150 feet as a gravel roadway, at which point the road transitions to a 15-foot-wide paved asphalt road. The asphalt road continues east for 450 feet, at which point the private road transitions to a public road, with curb and gutter, a 70-foot right-of-way and a pavement width of 36 feet. The Applicant proposes to improve the Grays Lane 20-foot right-of-way by paving the gravel segment of roadway along the Subject Property's frontage as well as a portion of the road that extends east of the Subject Property for approximately 40 feet. The new street condition will be a 20-foot-wide asphalt roadway, built to the Secondary Road standard. The Applicant is recording a covenant over Parcel A, so that it can be dedicated for public right-of-way. While this Application cannot address the entire ownership of Grays Lane, as the other property owners are not included in this Application, this approach will allow for the future dedication of right-of-way without requiring a new record plat. Please see the Analysis in Section 5 for an expanded explanation of the access issues.

ENVIRONMENT

As required by the Forest Conservation Law, the Application includes a Preliminary/Final Forest Conservation Plan ("FCP"). Included with the FCP is a request for a tree variance for impacts to subject trees. The FCP proposes to clear 1.63 acres, retain 0.61 acres of forest, and meet the remaining 0.26 acres of reforestation offsite to satisfy the requirements of the Forest Conservation Law. All retained forest will be protected with Category I Conservation Easements. Please see the Analysis in Section 5 for an expanded explanation of the FCP.

SECTION 4: ADMINISTRATIVE SUBDIVISION PLAN NO. 620230010 FINDINGS AND ANALYSIS

APPLICABILITY, SECTION 50.6.1.C OF THE SUBDIVISION ORDINANCE

The Application meets the criteria for the Administrative Subdivision process per Section 50.6.1.C as demonstrated below:

C) Subdivision for creation of certain residential lots. Up to 3 lots for detached houses may be created in any residential or rural residential zone under these procedures if:

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-90 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 Subject Property is designated in the W-1 and S-3 categories but will be served by public water and private septic systems. Public sewer cannot be extended to the site at this time because the Property is located along a private lane and is accessed by way of an easement. The Department of Environmental Protection (MCDEP) has reviewed and the Department of Permitting Services (MCDPS), Well and Septic Section has approved the request to allow the use of private, onsite sanitary systems. The provision of public sewer service would require an extension of approximately 700 feet from the nearest, accessible sewer main. In addition, the Property is accessible via a private road easement. The existing 20' wide WSSC public water easement in Grays Lane is insufficient to accommodate the installation of a sewer main. Additional easement width is required to extend public sewer to the Property. The Applicant was unable to obtain permission for additional easement from the neighboring properties. The cost and/or timing of extending public service favor the interim use of an on-site system. WSSC reviewed and denied a proposed extension of the sewer main within the private easement.

Proposed subdivisions under the R-90 Zone are generally ineligible for onsite systems exceptions. However, in this case the proposed building lots are substantially larger than the minimum zoning standard of 9,000 sq. ft. The proposed lot sizes (61,572 square foot and 30,167 square foot) in this case are more consistent with the RE-1 Zone. On November 29, MCDPS, Well and Septic approved the onsite private septic system for the Property.

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

As described in Finding 3 A) i. below, all road dedications and associated public utility easements are being provided and will be shown on the plat.

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

As described in Finding 3 below, the requirements for adequate public facilities are being satisfied.

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

As described in Finding 4 below, all forest conservation, stormwater management, and environmental protection requirements are being satisfied.

FINDINGS REQUIRED BY SECTION 50.6.1, INCLUDING TECHNICAL REVIEW CRITERIA OF SECTION 50.4.3 OF THE SUBDIVISION ORDINANCE

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

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape, and orientation is appropriate for the location of the subdivision, considering the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the building type (Single-Unit Living) contemplated for the Property.

Single-Unit Living, as defined by Section 59.3.3.1.B of the Zoning Ordinance, is a permitted use in the R-90 zone according to the Use Table in Section 59.3.1.6. The lot will meet all the dimensional requirements for area, frontage and width and can accommodate a building which can reasonably meet the setback requirements in the R-90 zone. A summary of this review is included in Table 1.

Table 1 – Development Standards

R-90 Zone	Required by the Zone	Proposed for Lot 1	Proposed for Lot 2
Minimum Lot Area	9,000 square feet	30,167 square feet	61,752 square feet
Minimum Lot Width at Property Line	25 feet	130 feet	54 feet
Minimum Lot Width at B.R.L.	75 feet	131 feet	126 feet
Maximum Lot Coverage	30%	30% or less	30% or less
Minimum Setbacks (for principal structures)			
Front	30 feet	30 feet or greater	30 feet or greater
Side	8 feet	12 feet or greater	12 feet or greater
Rear	25 feet	25 feet or greater	25 feet or greater
Maximum Building Height	35 feet	35 feet or less	35 feet or less

2. *The Administrative Subdivision Plan substantially conforms to the Master Plan.*

The Property is within the boundary of the 2001 *Kemp Mill Master Plan*. The Plan does not specifically address the Property, but includes a recommendation related to connectivity which are relevant to this Application. The 2001 *Kemp Mill Master Plan* states that “Monticello Avenue-Grays Lane (P-1) is a primary residential street extending north from Kemp Mill Road. This road is recommended to connect with Grays Lane to form a loop road connecting with Kemp Mill Road in two locations. It is the primary access to E. Brooke Lee Middle School. There are sidewalks on both sides of the existing portion of the street.” (Page 33). E. Brooke Lee Middle School was renamed Odessa Shannon Middle School. Overall, the application is in conformance with the 2001 *Kemp Mill Master Plan*.

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

a) *Roads and other Transportation Facilities*

i. *Existing Facilities*

The Subject Property is located within the limits of the 2001 *Kemp Mill Master Plan*. The Master Plan designates Monticello Avenue-Grays Lane as Primary Residential Street ‘P-1’ with a minimum right-of-way width of 70 feet for two lanes, as shown on page 31. Portions of Monticello Avenue to the south of the Subject Property and Grays Lane to the east of the Subject Property have been dedicated and built as public roadways. The Subject Application conforms to the Master Plan by providing for the future extension of P-1 as a loop road as anticipated in the Master Plan. Page 33 of the 2001 *Kemp Mill Master Plan* as approved and adopted states “Monticello Avenue-Grays Lane (P-1) is a primary residential street extending north from Kemp Mill Road. This road is recommended to connect with Grays Lane to form a loop road connecting with Kemp Mill Road in two locations.” Parcel A proposed by the Subject Application provides a portion of this loop connection anticipated by the Master Plan. Due to the number of private properties beyond the limits of the Subject Property that would need to dedicate in order to realize the completion of this right-of-way, the Applicant is unable to complete the envisioned loop road at this time. Therefore, the Subject Application identifies existing dedicated areas and future dedicated areas with a right-of-way width of 70 feet and identifies Parcel A of the Subject Property for future dedication to complete the loop. Parcel A, a 5,291-square-foot parcel, will be recorded with an easement for future dedication to a public street.

The plan provides frontage for both lots along Parcel A. The Zoning Ordinance defines “frontage” as “a property line shared with an existing or master-planned public or private road, street, highway, or alley right-of-way, open space, or easement boundary.” A waiver is not required from the frontage requirement for both lots due to the property’s frontage along master-planned public street P-1.

Access to the proposed lots, until such time as the loop road connection referenced above is fully dedicated and built, is to be by way of an existing easement (recorded at Book 48504 Page 437) which extends east from the Subject Property to the end of the public portion of Grays Lane about 400 feet west of Kemp Mill Road. An existing private road within the easement area provides access to several existing properties, including the Subject Property, which are located along the north and south sides of the easement and roadway.

This easement was legally established by the court case of *Irah Donner, Plaintiff, versus Mark A. Friedman*, Case No. 412883-V, that went before the Circuit Court for Montgomery County Maryland. The case declared that “an easement exists by express grant under the Last Will and Testament of William T. Gray along a private road commonly known as “Grays Lane”. The case also declared “that the plaintiff, Irah Donner, as the current owner of the Donner Property, and his successors in interest to the Donner Property, has a non-exclusive right of ingress and egress upon the easement and reasonable use of the easement, including the right to install utilities to and from the Donner Property and to repair, maintain, and improve the easement.” This declaration from the Montgomery County Circuit Court thus allows the Applicant to make improvements to the Grays Lane right-of-way along the Subject Property.

The improvements proposed along the Subject Property’s frontage includes a paved fire access turnaround, including a driveway that is situated along the property line that divides proposed Lots 1 and 2. Grays Lane as existing is a gravel drive that extends east of the Subject Property for about 150 feet, at which point the road transitions to a 15-foot-wide paved asphalt road. The asphalt road continues east for 450 feet, at which point the private road transitions to a public road, with curb and gutter, a 70-foot right-of-way and a pavement width of 36 feet. The Applicant proposes to improve the Grays Lane 20-foot right-of-way by paving the gravel segment of roadway along the Subject Property’s frontage as well as a portion of the road that extends east of the Subject Property for approximately 40 feet. The new street condition will be a 20-foot-wide asphalt roadway, built to the Secondary Road standard.

Currently, Grays Lane is only improved with a sidewalk along the public portion of the street, about 750 feet east of the Subject Property. Due to the limited and private right-of-way by which the Subject Property is accessed, no pedestrian improvements are proposed along Grays Lane as part of the Subject Application. Neither the 2001 *Kemp Mill Master Plan*, nor 2018 *Bicycle Master Plan* call for any bikeways along the Master Plan designated P-1, Grays Lane, and therefore no bikeways are proposed as part of this subdivision.

ii. Public Transit Service

Ride On Route 31 operates along Kemp Mill Road, with a bus stop about 1,100 feet east of the Subject Property at the intersection of Grays Lane with Kemp Mill Road. Route 31 operates service between the Glenmont Metro Station and the Wheaton Metro Station every 30 minutes on weekdays, during the morning and evening peak periods.

b) Local Area Transportation Review (LATR)

As demonstrated in the Applicant's traffic statement, dated August 5, 2022, the proposed Administrative Subdivision generates fewer than 50 peak-hour person trips and is therefore exempt from Local Area Transportation Review under the Growth and Infrastructure Policy without further review.

c) Other Public Facilities and Services

Adequate public school facilities exist to support the Subject Application. The Property is served by Kemp Mill Elementary School, Odessa Shannon Middle School, and Northwood High School. With a net of 2 new single-family detached dwelling units, Administrative Subdivision No. 620230010 falls within the de minimis (three units or less) exemption. Therefore, it is unnecessary to test the project's estimated impact on school enrollment.

The Property is served by public water and is classified in the W-1 and S-3 categories. As noted above, MCDPS, Well and Septic approved the onsite private septic system for the Property. 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 currently in effect.

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees. The Administrative Subdivision Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

a) Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420212490 for this Property was approved on November 18, 2022. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The NRI/FSD identifies the 2.28-acre Subject Property located within the Northwest Branch Watershed, which is classified as Use Class IV by the State of Maryland. The Subject Property contains approximately 2.24 acres of forest which is contained in one forest stand that is contiguous with a much larger off-site forest stand on Wheaton Regional Park. There are 49 trees with a diameter at breast height ("DBH") of 24 inches or greater; 27 of which have a DBH of 30 inches or more. There are no streams, wetlands, or environmental buffers on-site and the Property does not contain any known rare, threatened or endangered species, and no historic resources or cemeteries.

b) Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan (“FCP”) with the current development application (Attachment D). The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned R-90 and is assigned a Land Use Category of High Density Residential (“HDR”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the net tract area. The net tract area of 2.31 acres is based on the 2.28-acre Property plus 0.03 acres of off-site disturbance. There is a total of 2.24 acres of existing forest on the Subject Property. The Application proposes to clear 1.63 acres and retain 0.61 acres of forest. (Figure 5) There is an 0.26-acre reforestation requirement, that will be met off-site, in a forest bank. If no forest banks are available, a fee-in-lieu payment will be made. Not all forest counted as cleared for worksheet purposes will be cleared at this time. All retained forest will be protected in a Category I Conservation Easement, located on Lot 2. Forest located over the septic reserve areas will not be cleared now but cannot be protected in a Category I Conservation Easement because the property owners need the ability to remove the forest in order to use the septic reserve areas.

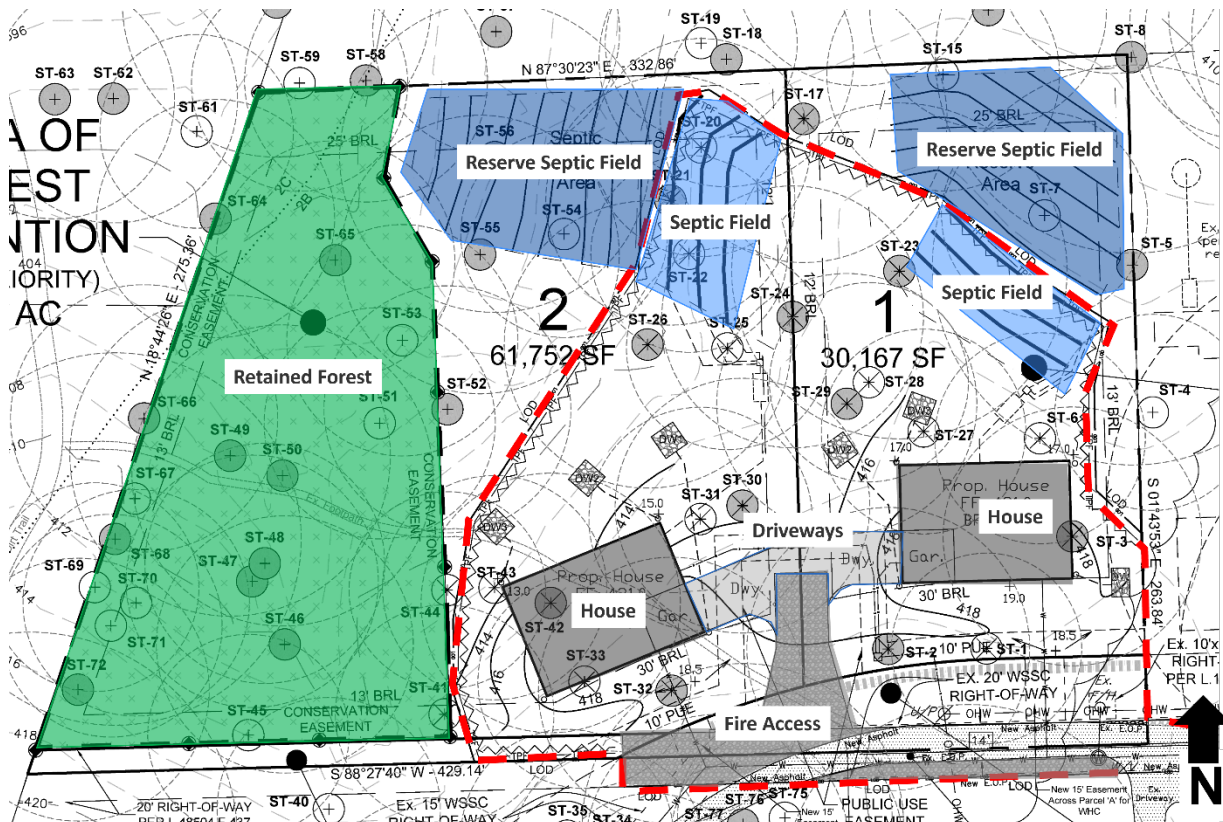


Figure 5 - Forest Conservation Plan

a) Variance Findings

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

The Applicant submitted a variance request in a letter dated December 2, 2022 (Attachment E). The Applicant proposes to remove twelve (12) trees (Table 2) and impact, but not remove five (5) trees (Table 3) that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Figure 6). All Protected Trees on the Property are within forest.

Tree Number	Species	DBH Inches	Notes
ST-29	Tulip Poplar (<u>Liriodendron tulipifera</u>)	33.2"	Impacted by grading, house footprint, and drywells.
ST-30	White Oak (<u>Quercus alba</u>)	32.5"	Impacted by house footprint, shared driveway, and drywells.
ST-32	White Oak (<u>Quercus alba</u>)	34.0"	Within a house footprint.
ST-42	Scarlet Oak (<u>Quercus coccinea</u>)	33.1"	Impacted by house footprint, shared driveway, and road improvements.

Table 3 – Protected Trees to be Impacted

Tree Number	Species	DBH Inches	% CRZ Impacts	Notes
ST-18	Tulip Poplar (<u>Liriodendron tulipifera</u>)	32.5"	18%	Offsite, impacted by septic field.
ST-52	Tulip Poplar (<u>Liriodendron tulipifera</u>)	31.5"	12%	Impacted by drywells.
ST-74	Willow Oak (<u>Quercus phellos</u>)	47.7"	14%	Offsite, impacted by road improvements.
ST-76	Tulip Poplar (<u>Liriodendron tulipifera</u>)	41.0"	27%	Offsite, impacted by road improvements.
ST-77	Tulip Poplar (<u>Liriodendron tulipifera</u>)	33.6"	17%	Offsite, impacted by road improvements.

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the Applicant would not be able to develop the Property at any level without disturbing Protected Trees. Regardless of the number of units being proposed, the Applicant would be required to provide upgrades to Grays Lane, including a turnaround for fire and rescue services.

Additionally, the Applicant is also constrained by the lack of access to public sewer service. This causes a hardship by requiring the use of septic fields with septic reserve areas, which can only be located where the soils and slopes are appropriate for this use. If the Applicant was required to leave the requested trees in an undisturbed state, the Applicant would be denied reasonable and significant use of the Property.

The following determinations are based on the required findings for granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the specified trees is due to the development of the Property, location of the trees, and necessary site design requirements. The Property contains numerous large trees located within the developable area of the site. The need to provide access improvements, fire and rescue turnaround, and septic fields for any development creates site constraints that are not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The Applicant has minimized impacts to Protected Trees by limiting the areas disturbed. For example, the Applicant has incorporated part of the fire and rescue turnaround with a shared driveway that serves both lots.

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

The requested variance is a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The trees requested for impacts or removal are not located within an environmental buffer and the Property is not located within a Special Protection Area. Stormwater management is being provided for the Application and mitigation plantings must be provided for trees outside of forest shown as being removed, as described below. These mitigation plantings will provide sufficient tree canopy in a few years to replace the lost water quality benefits of the variance tree being removed.

Mitigation for Trees Subject to the Variance Provisions

Ten (10) of the Protected Trees proposed for removal are located within forest that is shown as removed and mitigated for through the Forest Conservation worksheet. Tree ST-5 and ST-17 are proposed for removal and are located within forest, but the forest itself is not shown as being removed. This can happen when the impacts to the CRZ of a large tree will be significantly impacted and cannot be safely maintained, such as with ST-17, yet smaller trees within the forest are not impacted as severely. In the case of tree ST-5, the tree is not in good condition and the species of the tree, Liriodendron tulipifera, does not tolerate construction impacts well. However, this tree is on the

property line and therefore a shared tree, with removal with permission of the owner of 933 Grays Lane. Due to the location, condition, and species of the tree, removal of the tree is warranted, with owner's permission, but mitigation is required. Mitigation for trees ST-5 and ST-17 must follow the Planning Department policy that requires replacement of variance trees at a rate of 1" replaced for every 4" removed, using replacement trees of no less than 3" caliper, to replace lost environmental functions performed by the trees removed. Twenty-two (22) caliper inches of mitigation trees must be shown on the Certified Final Forest Conservation Plan.

Recommendation on the Variance

The variance request to impact Protected Trees as illustrated on the FCP and mitigated for as conditioned, should be granted.

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

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on December 9, 2022, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed through drywells on both residential lots and a bioswale for paving within Parcel A.

6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-.M.

Not applicable to this Property.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

No other provisions apply to the Subdivision.

SECTION 5: 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 October 21, 2022. The notice gave the interested parties 15 days to review and comment on the contents of the Application.

Staff received one letter and two phone calls from members of the community throughout the review of the Project. Community issues are summarized below.

- Impacts on neighbor trees.

Staff response: The Limits of Disturbance have been moved to reduce impacts on the trees on adjacent properties.

- The placement of the septic tanks will make maintenance and pumping of the tanks impossible.

Staff response: The tanks have been moved and will be accessed from the shared driveway.

- Expansion of private road to provide parking for guests.

Staff response: The paving shown on the plans is the minimum amount necessary to provide fire and rescue access and turnaround. No on-street parking is proposed. The frontage for Lots 1 and 2 will be upgraded to asphalt, as required.

- Grading for Lots 1 and 2 as well as the road improvements will change the drainage pattern and disrupt access to other lots.

Staff response: The proposed development does not include significant grading. The elevation of the road will be maintained, and the overall drainage pattern will be maintained, while allowing for the movement of water around the proposed houses.

- Access issues with Grays Lane.

Staff response: This issue was settled with the court case of Irah Donner, Plaintiff, versus Mark A. Friedman, Case No. 412883-V, that went before the Circuit Court for Montgomery County Maryland. The case declared that “an easement exists by express grant under the Last Will and Testament of William T. Gray along a private road commonly known as “Grays Lane”. The case also declared “that the plaintiff, Irah Donner, as the current owner of the Donner Property, and his successors in interest to the Donner Property, has a non-exclusive right of ingress and egress upon the easement and reasonable use of the easement, including the right to install utilities to and from the Donner Property and to repair, maintain, and improve the easement.” This declaration from the

Montgomery County Circuit Court thus allows the Applicant to make improvements to the Grays Lane right-of-way along the Subject Property.

- Maintenance and repair of Grays Lane due to construction vehicle damage.

Staff response: Maintenance and repair of private roads is governed by an agreement between property owners. This is a private matter between property owners that should be negotiated. There is only one access point for Grays Lane so the Applicant does not have any other options for construction access.

SECTION 6: CONCLUSION

The Administrative Subdivision meets the requirements of Section 50.6.3.C and the technical requirements of Section 50.4.3 of the Subdivision Regulations, and the applicable requirements of Section 50.6.1.C. The lot(s) meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the 2001 *Kemp Mill Master Plan*. Access and public facilities will be adequate to serve the proposed lot(s), and the Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

ATTACHMENTS

Attachment A: Legal Documents

Attachment B: Administrative Subdivision Plan

Attachment C: Agency Letters

Attachment D: Forest Conservation Plan

Attachment E: Forest Conservation Variance

Attachment F: Community Correspondence

48974

Attachment A

M. T. GRAY'S SUBDIVISION
OF PART OF A TRACT OF LAND

BEING 1.56 ACRES

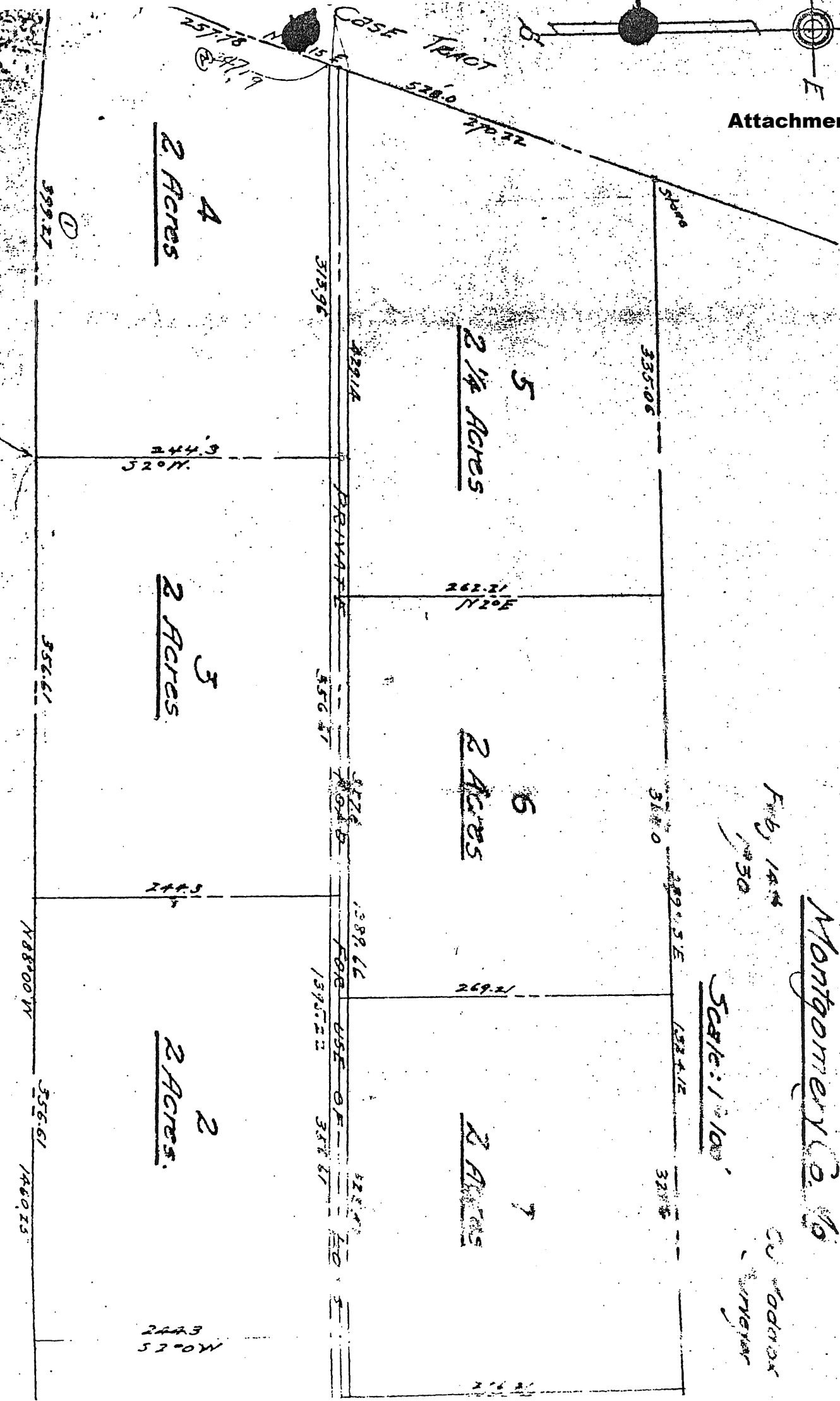
BEING EDMONSTON'S SURVEY

Montgomery Co. Mo

Feb 14th 1850

Co. 100000

Scale: 1" = 100'



FILED
APR 18 1974

Micro-Filmed

EXHIBIT A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

IRAH DONNER

:

Plaintiff,

:

v.

:

Case No. 412883-V

MARK A. FRIEDMAN, *et al.*

:

Defendants.

:

DECLARATORY JUDGMENT

This matter came before the Court on the plaintiff's Complaint for Declaratory Judgement, and the Court finding that, pursuant to Sections 3-401 *et seq.* of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland, there exists an actual controversy of a justiciable issue between the plaintiff and defendants involving their rights and liabilities, that antagonistic claims are present between the parties, and that a declaratory judgment by this Court will terminate this controversy, it is this 23rd day of June, 2016, hereby

DECLARED, that the plaintiff, Irah Donner, is the present owner of real property located at 939 Grays Lane, Silver Spring, Maryland; further identified as Lot 5 and Parcel P267 under Acct. No. 13-00962183 (the "Donner Property"); and it is further

DECLARED, that the defendants, Mark A. Friedman, Emily A. Friedman, John H. O'Donnell, Pesach Mehlman, Nancy S. Mehlman, Richard Weinstein, Hanna Weinstein, Thomas J. Becker, Allene C. Becker, Don E. Schwartz, Marilyn J. Schwartz, James M. Barnes and Chiu-
~~Er Barnes~~, are all owners of real property located adjacent to or near the Donner Property in Silver Spring, Maryland; and it is further

ENTERED

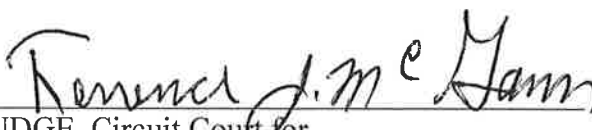
JUN 24 2016

a
Clerk of the Circuit Court
Montgomery County, Md.

DECLARED and ORDERED, that an easement exists by express grant under the Last Will and Testament of William T. Gray along a private road commonly known as "Grays Lane" in Silver Spring, Montgomery County, Maryland, which burdens the properties of the plaintiff and defendants; and it is further

DECLARED and ORDERED, that the dimensions of the easement are described in a metes and bounds description and survey drawing of David J. Ritchie, Professional Land Surveyor, copies of which are attached hereto and incorporated herein; and it is further

DECLARED and ORDERED, that the plaintiff, Irah Donner, as the current owner of the Donner Property, and his successors in interest to the Donner Property, has a non-exclusive right of ingress and egress upon the easement and reasonable use of the easement, including the right to install utilities to and from the Donner Property and to repair, maintain and improve the easement.


JUDGE, Circuit Court for
Montgomery County, Maryland

Terrence J. McGann
Judge

ENTERED

JUN 24 2016
Clerk of the Circuit Court
Montgomery County, Md.

EXHIBIT A

Metes and Bounds Description

Right-of-way area as shown
in last will and testament (H.G.C. 5, Folio 431) of
William T. Gray
Silver Spring,
Montgomery County, Maryland

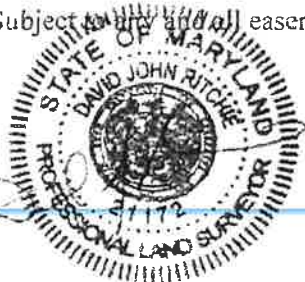
BEING a right-of-way, 20 feet wide, lying and being on the west side of Kemp Mill Road in Silver Spring, Maryland, said right-of-way being shown on an unrecorded plat made part of the last Will and Testament of William T. Gray recorded in Will Book 5 at Folio 431, and corresponding to the plat attached to the Equity Action No. 48974-E by the Circuit Court for Montgomery County, State of Maryland and being more particularly described as follows:

BEGINNING for the same at end of 247.19 Feet on the second line of a conveyance made the 24th day of December, in the year 1875 by Reuben Middleton to Stephen A. Bailey for 16 ¼ acres of land recorded in Liber E.B.P. 14, Folio 356, among the Land Records of Montgomery County, Maryland and running with said line

1. **North 21°15' East, 21.18 Feet**, to a point on the second line, thence leaving said line to cross and include a portion of said conveyance
2. **South 88° East, 1389.66 Feet**, to intersect the 4th line of said conveyance at the end of 273.61 feet thereon, said line also being the westerly line of Kemp Mil Road, thence with said 4th line
3. **South 06°05' West, 20.05 Feet**, to a point on the said 4th line, thence leaving said line to cross and include a portion of said conveyance
4. **North 88° West, 1395.22 Feet**, to the point of beginning.

Said right-of-way is encompassed in part by a right-of-way dedicated to public use by Subdivision Plats 11741 and 20443

Subject to any and all easements, rights-of-way and encumbrances of record.



David John Ritchie
Professional Land Surveyor
MD Reg. No 21172, Exp. 06/26/2015

3-26-14

David John Ritchie has sworn to and
subscribed before me the 26th day of March,
2014.



Signature: *Curt A. Schreffler*
Printed Name: Curt A. Schreffler
Notary Public

commission expires 12-04-14

EXHIBIT B

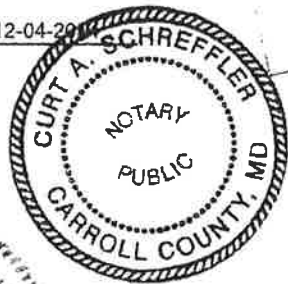
David John Ritchie has sworn to and subscribed before me the 26th day of March, 2014

Signature:

Curt A. Schreffler
NOTARY PUBLIC

Printed Name: Curt A. Schreffler

My Commission Expires: 12-04-2017



SURVEYOR'S CERTIFICATE

I hereby certify to the best of my knowledge and belief, that this plat or drawing is a true and accurate depiction of the private road right-of-way illustrated on an unrecorded plat included in the last will and testament of William T. Gray recorded in Will Book HGC 5 at Folio 431, and corresponding to the plat attached to the Equity Action No. 48974-E by the Circuit Court for Montgomery County, State of Maryland.

David John Ritchie 3-30-14

DAVID JOHN RITCHIE

Professional Land Surveyor, Maryland Reg. No. 21172, Exp. 06/26/2015



108 West Ridgeville Blvd., Suite 101
Mount Airy, Maryland 21771
301-607-8031 office
301-607-8045 fax
www.casengineering.com
info@casengineering.com

DATE	REFERENCES	SCALE: N.T.S.
10/30/13 (Revised)	WILL BOOK: H.G.C. 5	DRAWN BY: JDR
03/26/14 (Revised)	FOLIO: 431	JOB #: 02-031

N 21°15' E 247.19'
P.O.B.

NORTH



PRIVATE ROAD FOR USE OF LOTS PER UNRECORDED PLAT MADE PART OF THE LAST WILL AND TESTAMENT OF WILLIAM T. GRAY AND RECORDED IN WILL BOOK H.G.C. 5 AT FOLIO 431.

20.00'

S 88°00' E 1389.66'
N 88°00' W 1395.22'

S 06°05' W 20.05'

KEMP MILL ROAD

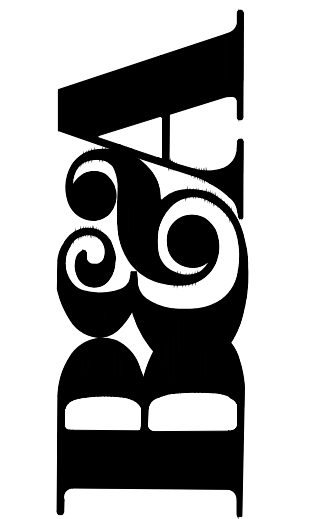
EXHIBIT B
RIGHT-OF-WAY
PER UNRECORDED PLAT INCLUDED IN THE LAST WILL AND TESTAMENT OF WILLIAM T. GRAY (H.G.C. 5, F. 431)

[illegible]

date: 09/20/2022

scale: 1" = 50'

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240



ADMINISTRATIVE SUBDIVISION PLAN
Donner Property at Grays Lane
Parcel 'P267'; Tax Map 'JQ342'
Montgomery County, Maryland

WSSC GRID 215NW01
TAX MAP JQ342
M-NCPPC FILE NO. 620230010
SHEET 1 OF 3





DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher Conklin
Director

January 20, 2023

Ms. Amy Lindsey, Planner Coordinator
Mid-County Division
The Maryland-National Capital
Park & Planning Commission
2425 Reedie Drive, 13th floor
Wheaton, MD 20902

RE: Administrative Plan No. 620230010
Donner Property at Grays Lane

Dear Ms. Lindsey:

We have completed our review of the administrative plan uploaded to eplans on December 5, 2022. A previous version of this plan was reviewed by the Development Review Committee (DRC) at its meeting on November 8, 2022. We recommend approval of the plan subject to the following comments:

Significant Plan Review Comments

1. Prior to record plat, the Applicant must record a covenant in the Land Records of Montgomery County to allow for dedication of Parcel A for public right-of-way for Grays Lane. Dedication may occur once improvements are complete and adjacent land is dedicated.

Standard Plan Review Comments

2. 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.
3. The storm drain analysis was reviewed and is acceptable to MCDOT. No improvements are needed to any downstream, County-maintained storm drain system for this plan.

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

Ms. Amy Lindsey
Administrative Plan No. 620230010
January 20, 2023
Page 2

Thank you for the opportunity to review this preliminary 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

SharePoint/transportation/directors office/development review/WhelanW/620230010 Donner Property at Grays Lane - MCDOT Letter 011923.docx

cc: SharePoint Correspondence Folder FY-2023

cc-e:	David McKee	Benning & Associates
	Sam Farhadi	MCDPS ROW
	Marie LaBaw	MCDPS FRS



Department of Permitting Services
Fire Department Access and Water Supply Comments

DATE: 06-Dec-22
TO: David McKee
Benning and Associates
FROM: Marie LaBaw
RE: Donner Property at Grays Lane
620230010

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **05-Dec-22**. 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.

***** See statement of performance based design regarding reduced pavement width *****

Benning & Associates, Inc.

8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
dmckee@benninglandplan.com

To: S. Marie LaBaw, PhD PE - MCDPS / Fire Code Enforcement Office

Date: December 3, 2022

Re: Donner Property at Grays Lane - MNCPPC #620230010

Dear Ms. LaBaw:

Attached herewith is an updated Fire Department Apparatus Access & Water Supply Plan for the subject property for your review. Two new single-family dwellings are proposed to be constructed with access from a private lane (Grays Lane).

Regarding your comments provided to us at the DRC meeting on 11/8:

1) Clarify pavement surface to be asphalt or concrete and at least 20 feet wide.

- The plan has been updated to show the pavement as asphalt with a width of 20 feet.

2) Hydrant shall be located no more than 400 feet from end of turnaround measured as the truck travels.

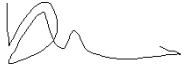
- An existing hydrant is located at the front right corner of the site. The pavement is shown to to be improved in the area of the hydrant to provide an operational area of 20 feet wide x 60 feet in length.

3) If any length of access pavement is less than 20 feet wide, but no less than 12 feet wide, applicant may submit for a performance based option where hydrant is located at the turnaround provided the turnaround is compliant for FD access undercurrent code.

- The entire length of Grays Lane has been surveyed. Dimensions have been added to the plan for the "off-site" portion of Grays Lane to show that the surveyed width is greater than 12 feet in all areas. The portion of Grays Lane in front of the site is to be widened to 20 feet as shown.

Please let me know if any additional information is needed for approval of this plan.

Sincerely,



David W. McKee

LEGEND:

BUILDING RESTRICTION LINE 25' BRL

CANOPY COVERAGE

CENTERLINE

EXISTING BUILDING

EXISTING PAVEMENT (GRAVEL)

EXISTING PAVEMENT (ASPHALT)

INDEX CONTOUR (2' INTERVAL) 410

INTERMEDIATE CONTOUR 414

LIMIT OF DISTURBANCE

PROPOSED LOT LINE

BOUNDARY LINE (SUBJECT) N 32°04'20" W

PROPERTY LINE (ADJACENT)

PROPOSED CATEGORY I CONSERVATION EASEMENT

OVERHEAD POWER LINE OHW

PROPOSED HOUSE

PROPOSED PAVEMENT (Asphalt)

SEPTIC OUTLINE

SEPTIC TANK

SEPTIC SYSTEM (INITIAL)

STORMWATER MANAGEMENT BIOSWALE

STORMWATER MANAGEMENT DRYWELL

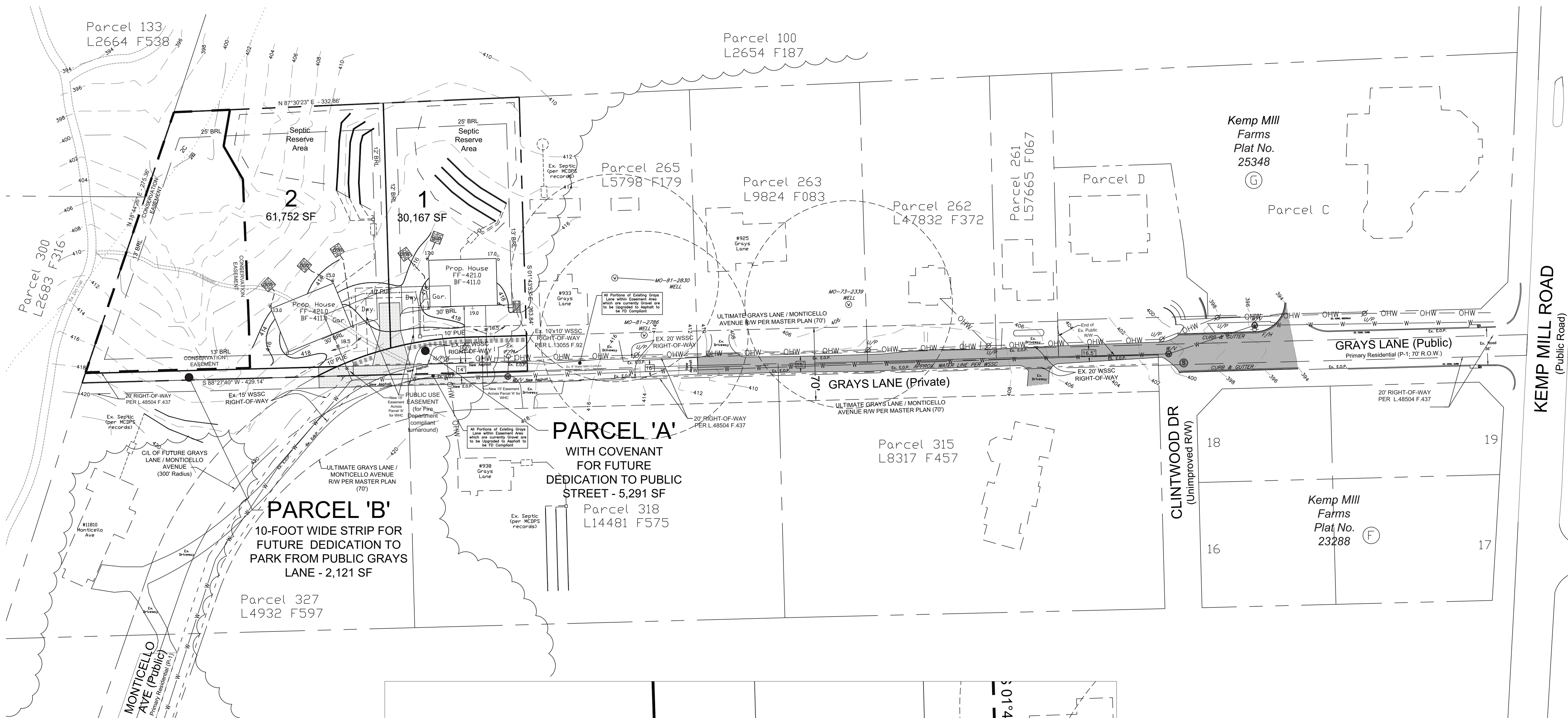
UTILITY POLE (EX.)

UTILITY CONNECTION (NEW) E

WATER LINE (EX.) W

WATER LINE (NEW) W

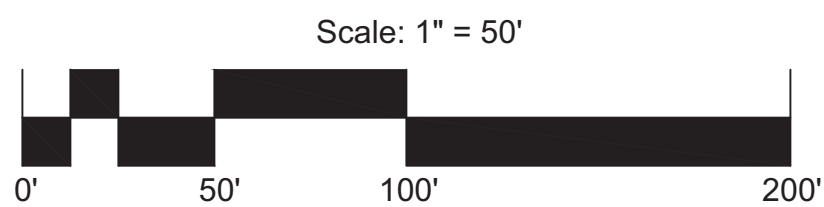
DIMENSION FROM MAIN SIDE HINGE DOOR TO FIRE DEPARTMENT COMPLIANT ACCESS 31'



FIRE DEPARTMENT APPARATUS ACCESS & WATER SUPPLY NOTES:

1. The purpose of this plan is to address requirements of Executive Regulation 8-16 (Fire Department Apparatus Access and Water Supply) as appropriate for the proposed subdivision.
2. Grays Lane which provides access to the proposed lots is currently a privately maintained roadway.
3. Grays Lane is to be improved in front of the property for a minimum of 20 feet of pavement width
4. The off-site portion of Grays Lane up to the public road is to have a minimum paved width of 12 feet. Based upon survey of the access, the current pavement width is 15' or greater.
5. For water supply, an existing WSSC public water supply fire hydrants is located in front of the site along Grays Lane.
6. The height restriction (see detail this plan) applies to the existing and proposed houses on each lot based upon the building restriction lines shown on this plan (less than 15 feet). If 15 feet from all property lines is provided, the height restriction is not applicable.

BOUNDARY & TOPOGRAPHIC DATA FOR THE PROPERTY AND GRAYS LANE FROM A FIELD SURVEY CONDUCTED IN JANUARY 2021 BY:
POTOMAC VALLEY SURVEYS, LLC
20010 FISHER AVENUE SUITE F
POOLESVILLE, MD 20837
301-349-5090



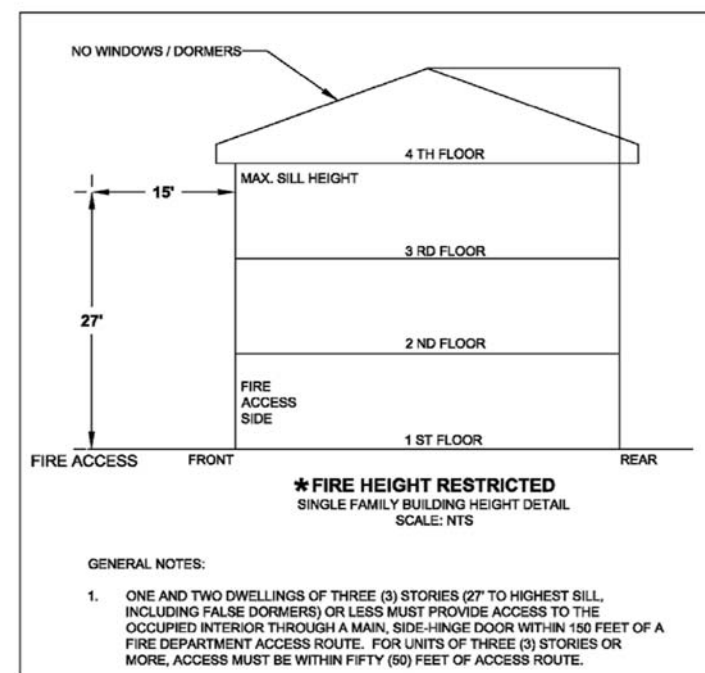
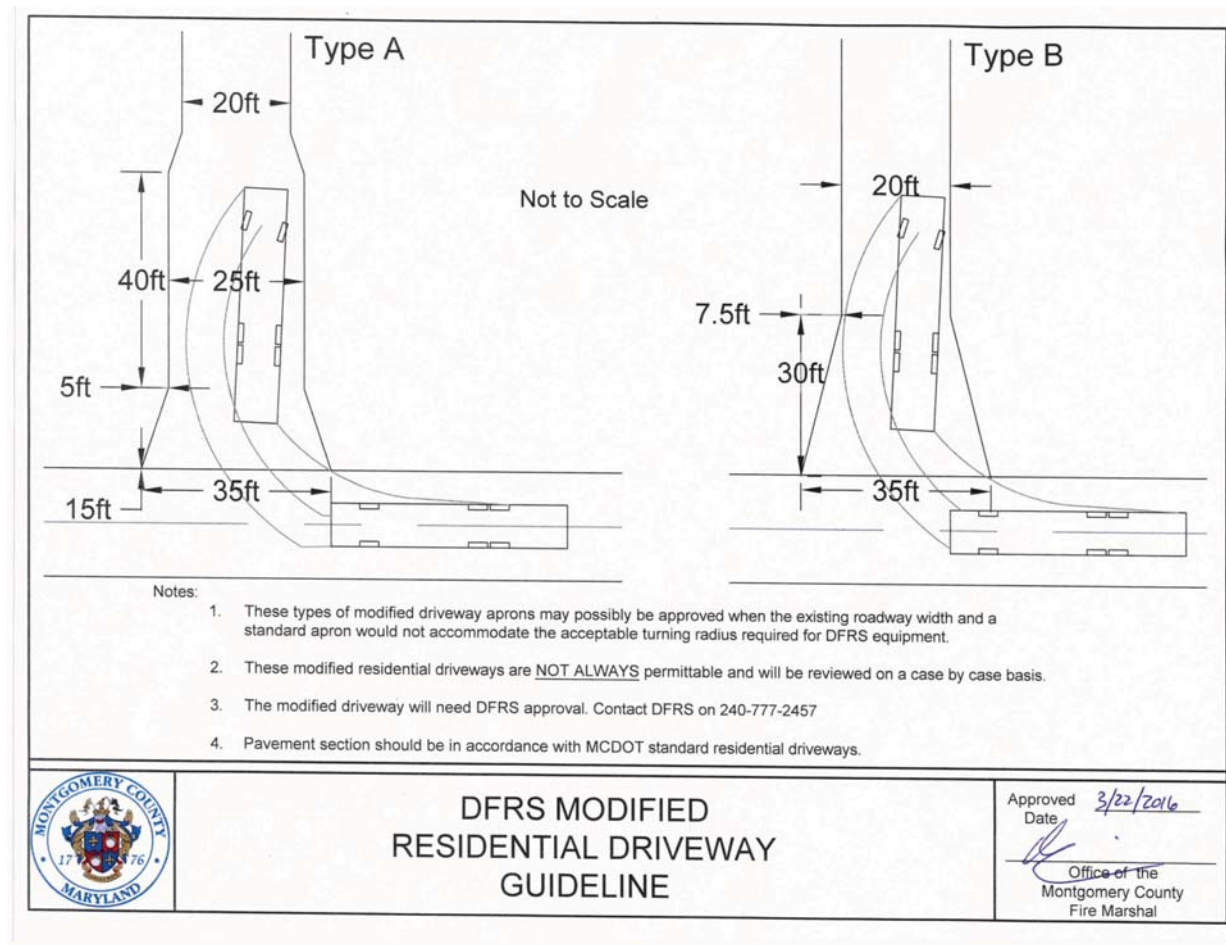
Professional Certification:
I hereby certify that this Fire Department Apparatus Access Plan has been prepared in accordance with the requirements of Executive Regulation 8-16 (Fire Department Apparatus Access and Water Supply) to the best of my knowledge and belief.

Signature: *[Signature]* Date: 12-05-2022

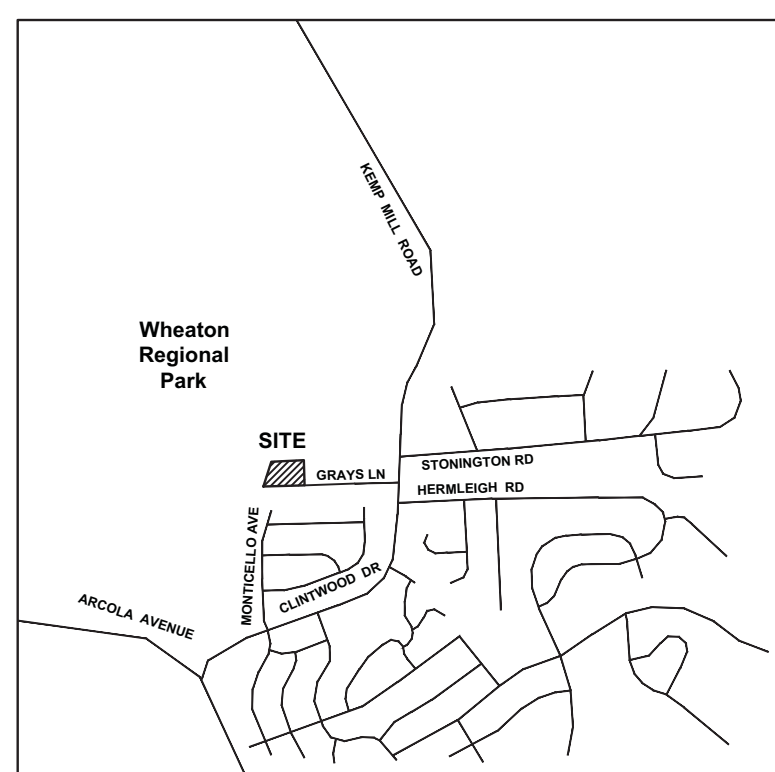


NOTES:

1. AREA OF PROPERTY - 99,331 SF (2.28033 AC)
2. EXISTING ZONING - R-90
3. NUMBER OF LOTS PROPOSED - 2
4. PARCEL 'A' FOR FUTURE DEDICATION TO PUBLIC STREET - 5,291 SF
5. SITE TO BE SERVED BY PUBLIC WATER AND PRIVATE SEPTIC SYSTEMS. SEPTIC AREAS ARE PROPOSED AS 'INTERIM' UNTIL SUCH TIME AS PUBLIC SEWER IS AVAILABLE.
6. AN EXISTING WATER MAIN IS CURRENTLY PRESENT IN GRAYS LANE INCLUDING THE PORTION WHICH IS PRIVATE.
7. EXISTING SEWER & WATER SERVICE CATEGORIES: W-1, S-3
8. GRAYS LANE & MONTICELLO AVENUE ARE IDENTIFIED AS PRIMARY RESIDENTIAL STREET "P-1" IN THE APPROVED AND ADOPTED **KEMP MILL MASTER PLAN** (JUNE 2001).
9. THE MASTER PLAN ULTIMATE RIGHT-OF-WAY AREA FOR GRAYS LANE / MONTICELLO AVENUE IS SHOWN ON THE PLAN. FUTURE DEDICATION FOR A PORTION OF THE ULTIMATE RIGHT-OF-WAY IN FRONT OF THE SUBJECT SITE IS PROVIDED BY THIS PLAN.
10. LOCATED IN NORTHWEST BRANCH WATERSHED, USE CLASS IV.
11. UTILITIES AS AVAILABLE PROVIDED BY: Washington Gas, Verizon, PEPCO



VICINITY MAP SCALE: 1" = 2,000'

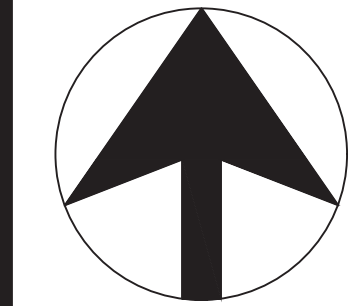


Prepared for:
Irah H. Donner
310 Lewis Avenue
Woodmere, NY 11598
(212)790-4650

FIRE DEPARTMENT APPARATUS ACCESS & WATER SUPPLY PLAN Donner Property at Grays Lane Parcel 'P267'; Tax Map JQ342 Montgomery County, Maryland

WSSC GRID 215NW01
TAX MAP JQ342
MANPCPC FILE NO. 620230010
SHEET 1 OF 1

Revisions
Rev. 12-05-22



date: 09/20/2022
scale: 1" = 50'

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240





DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Mitra Pedoeem
Director

M E M O R A N D U M

November 29th, 2022

TO: Amy Lindsey, Lead Reviewer
Development Review
Maryland National Capital Park and Planning Commission

FROM: Heidi Benham, Manager
Well and Septic Section
Department of Permitting Services

SUBJECT: Administrative Subdivision : Donner Property at Grays Lane
620230010

This is to notify you that the Well & Septic Section of MCDPS approved the administrative subdivision plan received in this office on November 9th, 2022. Approved with the following reservations:

- The record plat must show the septic reserve areas as they are shown on this plan.
- Forest conservation easements established subsequent to this approval must meet all minimum well and septic setback requirements:
 - 5 feet from the septic area

If you have any questions, please contact Heidi Benham at (240) 777-6318.

Cc: Dave McKee, Benning & Assoc



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Adriana Hochberg
Acting Director

MEMORANDUM

November 4, 2022

TO: Heidi Benham, Manager, Well and Septic Section
Department of Permitting Services

FROM: George Dizelos, Planning Specialist III, Water Supply and Wastewater Unit
Intergovernmental Affairs Division, Department of Environmental Protection

SUBJECT: On-Site Systems for Properties Designated as Service Area Categories 1 or 3

Our office has received a request to allow the use of two private, onsite sanitary systems for the following property designated as service area category 1 or 3 in the County's Water and Sewer Plan:

Address: 939 Grays Lane, Silver Spring

Property I.D.: Parcel P267, Lot 5, PT Culvers Chance; acct. no. 00962183 (SDAT: JQ32; WSSC: 215NW01)
Owner: Irah Donner Service Areas: **W-1 and S-3**
Zoning: R-90 Property Size: 2.29 ac.
Planning Area: Kemp Mill/Four Corners Watershed: Northwest Branch

APPLICANT'S REQUEST

Request for: ☐ Existing Well ☐ Existing Septic System
☐ New or Repair/Replacement Well ☒ New or Repair/Replacement Septic Systems
☐ Non-Potable Well (Including Irrigation Wells)

Applicant's Explanation: "This undeveloped property is located in the R-90 zone and is proposed to be subdivided into 2 building lots (Administrative Subdivision Plan 620230010). Although the property is located within the sewer service category S-3, public sewer is not able to be extended to the site at this time. The property is located along a private lane and is accessed by way of an easement. WSSC reviewed and denied a proposed extension of the sewer main within the private easement."

DEP FINDINGS

Properties designated as categories 1 or 3 are generally expected to use public (community) water and sewerage systems. This office has reviewed the preceding request and has made the following finding(s):

- ☐ DPS can pursue the use of an **interim permit well** for the subject property
- ☒ DPS can pursue the use of an **interim permit septic system** for the subject property
- ☒ This property does not have access to public sewer service is at this time. The provision of public service would require an extension of approximately 700 feet from the nearest, accessible sewer main. In

addition, the property is accessible via a private road easement. The existing WSSC public water easement accessible to this property is insufficient to accommodate the installation of a sewer main, being 20' in width. WSSC would require an additional easement to allow for the extension of sewer to this property, to which the applicant was unable to obtain from the neighboring properties. The cost and/or timing of extending public service favor the interim use of an on-site system.

Proposed subdivisions under the R-90 Zone are generally ineligible for onsite systems exceptions. However, in this case the proposed building lots are substantially larger than the minimum zoning standard of 9,000 sq. ft. The proposed lot sizes (63,873 sq.ft. and 30,167 sq.ft.) in this case are more consistent with the RE-1 Zone. DEP has granted onsite systems exceptions for proposed, larger lot subdivisions such as those in the RE-1 and RE-2 Zones.

☐ Although public service is available to this site, the cost of providing service is restrictive at this time.

☒ The Water and Sewer Plan currently designates the property as category S-3, under which, its service policies do allow for the use of interim on-site systems.

☐ DPS can pursue the use of a **well permit for non-potable uses only** for the subject property.

☐ DPS **cannot** pursue the use of an interim permit well for the subject property; public water service is available.

☐ DPS **cannot** pursue the use of a non-potable well for the subject property; public water service is available.

☐ DPS **cannot** pursue the use of an interim permit septic system for the subject property; public sewer service is available.

☒ Other findings:

Onsite systems permit approvals: DEP advises the property owner that concurrence with this request to pursue the use of the onsite system proposed does not constitute the County's approval of that system. That responsibility resides with the Department of Permitting Services.

Interim Onsite Permits and future public service connection: Note that interim, onsite system permits require the property owners to connect to public sanitary systems within one year of the time that the public service becomes available, as specified in the County's Water and Sewer Plan.

Proposed Subdivision: This exception shall apply to the proposed two lot subdivision. **An exception for any resubdivision of this site into more than two lots will require reconsideration by DEP.**

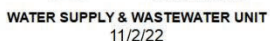
DEP requests that the DPS Well and Septic Section provide a copy of the approved, interim onsite system permit for this project for tracking purposes as part of the Water and Sewer Plan. If you have any questions concerning this case, please contact me at george.dizelos@montgomerycountymd.gov or 240-777-7755.

☒ Attachment(s)

GJD:gjd/

R:\Programs\Water_and_Sewer\well-septic\exceptions\alpha-street\G\grays-ln-939--septic\grays-ln-939-excptn-S3.docx

cc: Steve Shofar, Manager, Intergovernmental Affairs Division, DEP
Linda Kobylski, Chief, Division of Land Development, DPS
Kim Beall, Jason Flemming, and Megan Wilhelm Well and Septic Section, DPS
Luis Tapia, Unit Coordinator, Permit Services Unit, WSSC
Ray Chicca, Development Services Division, WSSC
Patrick Butler, Donnell Zeigler and Katherine Nelson, Upcounty Planning Division, M-NCPPC
Dave McKee, Benning and Associates
Irah Donner





DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Mitra Pedoeem
Director

December 9, 2022

Mr. David McKee
Benning & Associates, Inc.
8933 Shady Grove Court
Gaithersburg, MD 20877

Re: **COMBINED STORMWATER MANAGEMENT
CONCEPT/SITE DEVELOPMENT
STORMWATER MANAGEMENT PLAN** for
Donner Property at Grays Lane
Address: 939 Grays Lane
Administrative Subdivision: #620230010
SM File #: 288451
Tract Size/Zone: 2.33 ac/ R-90
Total Concept Area: 2.33 ac
Legal Description: P267 to be subdivided into 2
lots and two parcels
Watershed: Northwest Branch/ IV
Type of Development: New Development

Dear Mr. McKee:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals for each new lot via ESD practices (drywells), a bioswale for improvements (paving) in Parcel A and a waiver of on-site SWM for paving being required by the Fire Marshal on adjacent Parcel B. The administrative subdivision approval requires the paving of existing gravel on adjacent Parcels 265, 267 and 318 which are not owned by the applicant.

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development. All filtration media for manufactured best management practices, must consist of DPS approved material.
3. The detailed plan must utilize the latest DPS guidance.
4. At time of final engineering the applicant must demonstrate permissions for any off-site work within the LOD.



2425 Reddie Drive, 7th Floor, Wheaton, Maryland 20902 | 240-777-0311
www.montgomerycountymd.gov/permittingervices

Mr. McKee
December 9, 2022
Page 2 of 2

5. Paving over existing gravel to provide emergency vehicle access as required by the Fire Marshal, on Parcels 265, 267 and 318 may be subject to the payment of a waiver fee. That will be determined at the time of application

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mary Fertig at mary.fertig@montgomerycountymd.gov or at 240-777-6202.

Sincerely,

Mark Etheridge

Mark Etheridge, Manager
Water Resources Section
Division of Land Development Services

cc: Neil Braunstein
SM File # 288451

Lots 1 and 2
ESD: Required/Provided: 385 cf /450 cf - 403cf /450 cf
PE: Target/Achieved: 1.0/1.0
STRUCTURAL: n/a
WAIVED: n/a

Parcel A ESD: Required/Provided varies cf / varies cf
PE: Target/Achieved: 1.0"/1.0"
STRUCTURAL: n/a
WAIVED: n/a

Parcel B
ESD: Required/Provided: 6 cf/0 cf
PE: Target/Achieved: 1.0"/0/0"
STRUCTURAL: n/a
WAIVED: full QN and QL waiver, if applicable

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
E-mail: dmckee@benninglandplan.com

To: Ms. Carrie Sanders, Chief – M-NCPPC Mid-County Planning Area
From: David W. McKee
Date: 09-19-2022 (Revised 12-02-22)
Re: Donner Property at Grays Lane – MNCPPC File #620230010

Dear Ms. Sanders,

In accordance with the requirements of Section 22A-21 of the County Code and on behalf of the applicant for this project, I am writing to request a variance from provisions of Chapter 22 as it applies to this project. Specifically, a variance is required to impact or remove several specimen trees.

The trees proposed to be removed are shown on the pending Preliminary / Final Forest Conservation Plan (FCP) for the subject project. A total of 16 trees which are of specimen-size for their species are proposed to be impacted or removed. The trees requiring a variance are as follows:

SPECIMEN TREE CHART						
TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	%CRZ IMPACTED	Status
ST-2	Quercus coccinea	Scarlet Oak	36.1"	Moderate	100%	Remove
ST-3	Liriodendron tulipifera	Tulip Poplar	33.0"	Moderate-Poor	100%	Remove
ST-5	Liriodendron tulipifera	Tulip Poplar	51.0"	Moderate-Poor	20%	Remove
ST-17	Quercus coccinea	Scarlet Oak	36.6"	Poor	40%	Remove
ST-18	Liriodendron tulipifera	Tulip Poplar	32.5"	Moderate	18%	Retain
ST-21	Quercus rubra	N. Red Oak	31.8"	Poor-Dead	100%	Remove

ST-23	Liriodendron tulipifera	Tulip Poplar	42.8"	Moderate-Poor	100%	Remove
ST-24	Liriodendron tulipifera	Tulip Poplar	33.4"	Moderate	100%	Remove
ST-26	Liriodendron tulipifera	Tulip Poplar	36.6"	Moderate	100%	Remove
ST-29	Liriodendron tulipifera	Tulip Poplar	33.2"	Moderate	100%	Remove
ST-30	Quercus alba	White Oak	32.5"	Moderate	100%	Remove
ST-32	Quercus alba	White Oak	34.0"	Moderate-Poor	100%	Remove
ST-42	Quercus coccinea	Scarlet Oak	33.1"	Moderate-Poor	100%	Remove
ST-52	Liriodendron tulipifera	Tulip Poplar	31.5"	Moderate	12%	Retain
ST-74	Quercus phellos	Willow Oak	47.7"	Moderate	14%	Retain
ST-76	Liriodendron tulipifera	Tulip Poplar	41.0"	Moderate-Poor	27%	Retain
ST-77	Liriodendron tulipifera	Tulip Poplar	33.6"	Moderate	17%	Retain

The subject application proposes to create 2 new building lots for the construction of 2 new single-family homes. Construction of the homes will include improvements to a private road for access, new driveways for access to each lot, new on-site septic systems, utility connections including a connection to the WSSC water system, and on-site stormwater management facilities. As the site is currently completely forested with many large trees throughout the site and adjacent to the property, some tree impacts are unavoidable if any development is to occur. Of the 79 trees identified on the approved NRI/FSD and Forest Conservation Plan, 41 of those trees are of specimen size (30" diameter-at-breast-height or larger).

Specific impacts to each of the 16 trees included in this variance request are as follows:

ST-2, a 36.1" Scarlet Oak, is located at the front of the site and near an existing paved access lane (private road). The site is adjacent to the area identified as 'Parcel A' on plans which is an area to be reserved for future dedication and roadway construction. The tree lies within

the proposed public-utility easement (PUE). The tree will be severely impacted by grading and construction of a new fire department turnaround, utility installations, and construction of the home on proposed Lot 1. The tree is planned to be removed due to the severity of impacts.

ST-3, a 33" Tulip Poplar, is located at the front right corner of the property where the home on Lot 1 is planned. The tree is within the planned footprint of the new home and is proposed to be removed for this reason.

ST-5, a 51" Tulip Poplar, is located along the eastern boundary of the site and close to the proposed septic field on Lot 1. The tree will be impacted by the installation of the septic system within the critical-root-zone (CRZ) of the tree. Because of the impacts to the tree, the poor condition of the tree and its location near structures on an adjacent property, and the lack of tolerance of Tulip Poplar to root zone impacts, the tree is proposed to be removed to avoid a hazardous condition.

ST-17, a 36.6" Scarlet Oak, is located near the northern boundary of the site in close to the plan septic field for Lot 2. Due to the poor condition of the tree and the impacts from installation of the new septic system on Lot 2, the tree is proposed to be removed.

ST-18, a 32.5" Tulip Poplar, is located off-site to the north of the property and close to the planned septic field for Lot 2. The tree will be impacted by the installation of the new septic field on Lot 2. Because the tree is off-site and is in moderate condition, the tree is proposed to be retained with tree protection measures which include root pruning.

ST-21, a 31.8" Northern Red Oak, is located near the northern boundary of the site and within the planned septic field for Lot 2. The tree will be severely impacted by the installation of the new septic system on Lot 2. The tree is proposed to be removed.

ST-23, a 42.8" Tulip Poplar, is located within the limits of proposed Lot 1 and close to the planned septic field on Lot 1. The tree will be impacted by the installation of the septic system on Lot 1 and the installation of a stormwater management drywell on Lot 1. Due to the severity of impacts within the CRZ, the tree is proposed to be removed.

ST-24, a 33.4" Tulip Poplar, is located on the proposed lot line between lots 1 and 2. The tree will be impacted by the installation of the septic drainfield and septic tank for Lot 2. The tree is proposed to be removed due to the severity of these impacts.

ST-26, a 36.6" Tulip Poplar, is in the middle of the site near the planned septic field for Lot 2. The tree will be impacted by installation of the septic drainfield and septic tank on Lot 2, and the installation of stormwater management drywells on Lot 2. Due to the severity of impacts and the intolerance of the Tulip Poplar species to construction activities, the tree is proposed to be removed.

ST-29, a 33.2" Tulip Poplar, is in the middle of the site in the area to be developed. The tree will be severely impacted by the installation of drywells on lot 1 for stormwater management. There are no alternatives for drywell placement which would impact the tree less due to setbacks required from the house and septic. Due to the severity of impacts and the

intolerance of the Tulip Poplar species to construction activities, the tree is proposed to be removed.

ST-30, a 41" Tulip Poplar, is in the middle of the site and in the center of the area to be developed. The tree will be severely impacted by installation of a new turnaround for fire department ingress and egress, installation of underground utilities, installation of the new home on Lot 2, and installation of stormwater management drywells for both new homes. The tree is proposed to be removed due to the severity of these impacts.

ST-32, a 34" White Oak, is located at the front of the site in the immediate area of the planned homesite for Lot 2. The tree will be severely impacted by construction of the home on Lot 2 and is proposed to be removed for this reason.

ST-42, a 33.1" Scarlet Oak, is located within the planned footprint for the new home on Lot 2. The tree is in moderate-poor condition and is proposed to be removed due to the severity of the impacts.

ST-52, a 31.5" Tulip Poplar, is located within an area to be placed with a category one conservation easement as retained forest. The tree will receive only minor impacts from clearing and installation of a stormwater management drywell for Lot 2. The tree clearing in the area of the CRZ is needed to make a usable yard area behind the home on Lot 2. Because the impacts are minor in nature, the tree is proposed to be retained.

ST-74, a 47.7" Willow Oak, is located off-site to the south of the property. Work within the CRZ of the tree will include utility connections and improvements to the existing private road. These impacts are minor in nature and the tree is proposed to be retained.

ST-76, a 31.5" Tulip Poplar, is located off-site to the south of the property and adjacent to the existing paved access lane. The tree will be impacted by improvements planned for the access lane including a fire department compliant turnaround. The tree is proposed to be retained with appropriate tree protection measures to be taken to minimize the impacts.

ST-77, a 33.6" Tulip Poplar, is located off-site to the south of the property and adjacent to the existing paved access lane. The tree will be impacted by improvements planned for the access lane including a fire department compliant turnaround. The tree is proposed to be retained with appropriate tree protection measures to be taken to minimize the impacts.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states the applicant must:

1. Describe the special conditions peculiar to the property which would cause unwarranted hardship;
2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
3. Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of granting of the variance; and
4. Provide any other information appropriate to support the request.

There are special conditions peculiar to the property which would cause unwarranted hardships should the variance not be approved. The property is densely forested and contains many large trees. The approved Natural Resources Inventory / Forest Stand Delineation Plan for the site identifies 79 trees on or near the property of which 41 are of specimen size. On this property, which is currently entirely forested with large trees, any proposed activity will result in clearing of forest and impact to specimen trees. However, the planned development of the site has been kept to the eastern portion of the property to minimize forest removal and tree impacts. Only 16 of the 41 specimen trees identified are impacted. In addition, because public sewer is not available to the property, specimen trees will be impacted by the installation of septic systems in addition to impacts from development of the 2 new homesites. The septic systems impact a significant number of the specimen trees as outlined in the summary of specific impacts for each tree. Impacts to certain specimen trees are unavoidable due to these unique characteristics of the site.

Should this variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. The proposed new lot has been carefully planned to meet the requirements of the R-90 zone and the requirements for on-site sewage disposal, and the Kemp Mill Master Plan. Other property owners with land in the R-90 zone have been allowed to develop their properties in accordance with the standards applicable to properties in these areas.

The granting of a variance to remove specimen trees will not result in a violation of State water quality standards or any measurable degradation in water quality. The project has been planned to comply with the latest State and County stormwater management requirements and will provide environmental site design (ESD) practices to address these requirements. Furthermore, a significant portion of the site including an area which contains a natural drainageway will be preserved in a category one conservation easement.

In addition to the above, Section 22A-21(d) indicates that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

This request for a variance will not confer a special privilege that would be denied to other applicants. Approval of the requested variance will allow the property owner to develop the property in a manner appropriate for the R-90 zone given the circumstances of the site.

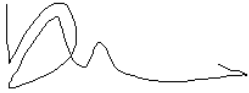
This variance request is not based on conditions and circumstances which are the result of actions by the applicant. The applicant has not taken any actions other than to propose subdivision in accordance with Master Plan and Zoning Ordinance requirements.

The request for a variance does not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

Granting this variance request will not violate State water quality standards or cause measureable degradation in water quality. As stated earlier, the project has been planned to comply with the latest State and County stormwater management requirements and will provide environmental site design (ESD) practices to address these requirements. Furthermore, a significant portion of the site including an area which contains a natural drainageway will be preserved in a category one conservation easement.

For the above reasons, we respectfully request approval of this request for a variance from provisions of Section 22A-21 of the Montgomery County Code. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'David W. McKee', with a stylized, flowing script.

David W. McKee

From: [O'Donnell, John H CIV USN NRL \(6304\) Washington DC \(USA\)](#)
To: [Lindsey, Amy](#)
Subject: Re: Plan for Donner Property at Grays Lane MMCPPC File #620230010 comments
Date: Friday, October 28, 2022 2:03:57 PM

The Maryland-National Capital Park & Planning Commission
 2425 Reedie Drive Wheaton, Maryland 20902
 Attn: Amy Lindsey Amy.Lindsey@montgomeryplanning.org (301)495-2189

Re: Plan for Donner Property at Grays Lane MMCPPC File #620230010

Ms. Lindsey

I saw the sign posted on Grays Lane went on line and reviewed the plans . Here are my comments and those of some of the neighbors to the documents submitted.

1.Tree plan . Looking at the tree plan and the area there are great many large trees not identified . I am assuming that it is a case of these trees being borderline to what the definition of a significant tree is . When I stand at the border of my property at Grays lane at the Fire Hydrant I see more than two large trees I count 7 . I assume that the plan has been verified by someone.

That said the only concern I have is the misidentified tree on my property ST4 which is a black Walnut not a locust, big difference . The issue is the drawing proposes to run the septic line and tank outside the BRL area and places the tank right at the tree location on the donner side of the property . Digging for a tank at the fence line will cut all the roots on the west side of the tree ultimately killing it and sticking me with the bill for its removal.

Likewise, the placement of the tank with no access for a pump truck will make it unlikely the new owner will ever pump it . I realize the goal of the developer is to ultimately force the Grays lane owners to pay for a sewer line to the property and will use the failed systems as grounds to mandate the adjacent property owners to pay for the Donner lot's sewer inline. They will then petition the Planning Board to place 4 additional houses on the lots and per their original plan. The neighbors are support the current plan of 2 houses with septic .

Additionally, a comment the proposal to remove a major tree ST-24 which co located on both properties . No heavy equipment will be allowed on myside of the area as this this the location of my septic tank and field which I do not want my system damaged.

2. Site plan

In reviewing the site plan two issues come up . The owners of parcel 318 and 327 do not agree to ceding their portion of their section right way for parking pads to for the two new houses; the purpose of the right away is access for vehicles and utilities; not converting other people's yards into parking lots for overflow cars and truck for the new houses. Each owner on Grays lane have made additional space on their lots for their own necessary parking not their neighbors.

We do have problems with people from the temple coming up and parking on our grass when there are special events, installing paved parking pads on the right of way is not acceptable. Additional excess parking should be addressed on the their 1 plus acre lots not in common right of way . Adding gravel along the existing right away for passage is acceptable.

The plans do not appear to suggest redirecting the right of way on to the property of 327 and 318 to create new right away for 20 feet to the south of the proposed parking pads for fire and traffic access and using the current section as part of the Donner Parcels private driveway . Thus taking a 30 foot wide section of the other owners property What the thinking is on the proposed paved parking structures on non Donner property is not clear so there is concern that this is the real intent . If this is indeed the case for the record the owners of said properties strongly oppose such taking of their property and construction on their land without their agreement and appropriate compensation. As whole current owners on Grays Lane are opposed to any re interruption of the current right of way .

The second concern is the issue of elevations . The current Grays lane is between one and 2 feet

higher than the proposed lots . The Barnes (327) Driveway branches off from the current right away . It is not clear from the plans how the developer intends to address the elevation difference. Is the fire department turn around slopping down?

Ideally the entire property should maintain the gentle grade towards tree ST50 as it currently has which is in the dry stream bed of the lot that feeds Northwest branch . With removal of all the trees the flow will be increased. As there is less opportunity for absorption.

NOTE: I am not civil engineer so it is difficult to understand the contours among the other items on the drawings.(Combination Concept /site development Stormwater Management Plan) It appears there are conflicts with legend but I am not sure . As I stated in my comments to the storm water plan the existing contours do not look correct and paving legend looks wrong . I leave it to MC Planning to verify

I see two possible Construction Options:

1. Grade the road down to match the lot elevation if so how will the elevation of lot 318 and 327 be addressed ? Will that insure enough coverage over the utilities and protect the roots systems ? The prior water line had to be replaced because it kept breaking damaging the gravel road and flooding the basement of lot 265 because it was not deep enough.

How will the connection to the driveway to 327 be addressed? since it is at the higher elevation? Lot 327 owner intends to keep their access and driveway to Kemp Mill Road.

2. The second approach would be soil will be trucked in to revise the elevation of the lots to match the road. Hopefully there will be a better erosion plan than that of the new JR High whose silt has now washed through the park across several trails and into the Northwest Branch feeders . It would be beneficial for the plans to reflect how much elevation change would be proposed over what part of the lot. The current drawing only shows a 418-contour line around some sides of the house if a low section is not maintained along the property line @ lot 265 there will be an issue in that all water flowing down Grays lane would be redirected against the foundation of the house since the elevation of the front yard of 265 is 416.

It would be nice to have this clarified for the owners and the concerns addressed .

Thank for hearing our concerns If you have questions or need to discuss this please call my cellphone . You might have to leave a message as I work in a secure facility so there are no phones allowed but I check voicemail periodically throughout the day.

John O'Donnell

933 Grays Lane SS Md. 20902

Phone: ((301) 908-1194 C

E-mail: John.ODonnell@nrl.navy.mil

john.odonnell@nrl.navy.smil.mil

odonnej@nmic.ic.gov

Application #: 620230010

Application Type: Administrative Subdivision

Application Name: DONNER PROPERTY AT GRAYS LANE.

Site Location: On 939 Grays Lane, 975 feet West of Kemp Mill Road.

Size: 2.28 ACRE

Master Plan: Kemp Mill Master Plan

Watershed: Northwest Branch

Application Accepted Date: 10/27/2022

Owner Irah Donner 310 Lewis Avenue Woodmere, New York 11598

Day Phone: (646)660-4433

Contact Person David McKee 8933 Shady Grove Ct. Gaithersburg, MD 20877

Day Phone: (301)948-0240

Engineer David McKee Benning & Associates, Inc. 8933 Shady Grove Ct Gaithersburg, MD 20877

Day Phone: (301)948-0240

Attorney Soo Lee Soo Lee-Cho BREGMAN, BERBERT, SCHWARTZ & 7315 Wisconsin Avenue
Suite 800 West Bethesda, MD 20814 Day Phone: (301)656-2707

M-NCPPC Lead Reviewer Amy Lindsey Amy.Lindsey@montgomeryplanning.org
(301)495-2189

John O'Donnell

Sr. Engineer Code 6304

Materials Science and Technology Division

Naval Research Laboratory

4555 Overlook Ave SW Bldg. 28 /270

Washington, DC 20375

Phone: ((301) 908-1194 C (primary during covid-19 emergency) Office Phone
202 767 0040

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john.odonnell@nrl.navy.smil.mil

odonnej@nmic.ic.gov