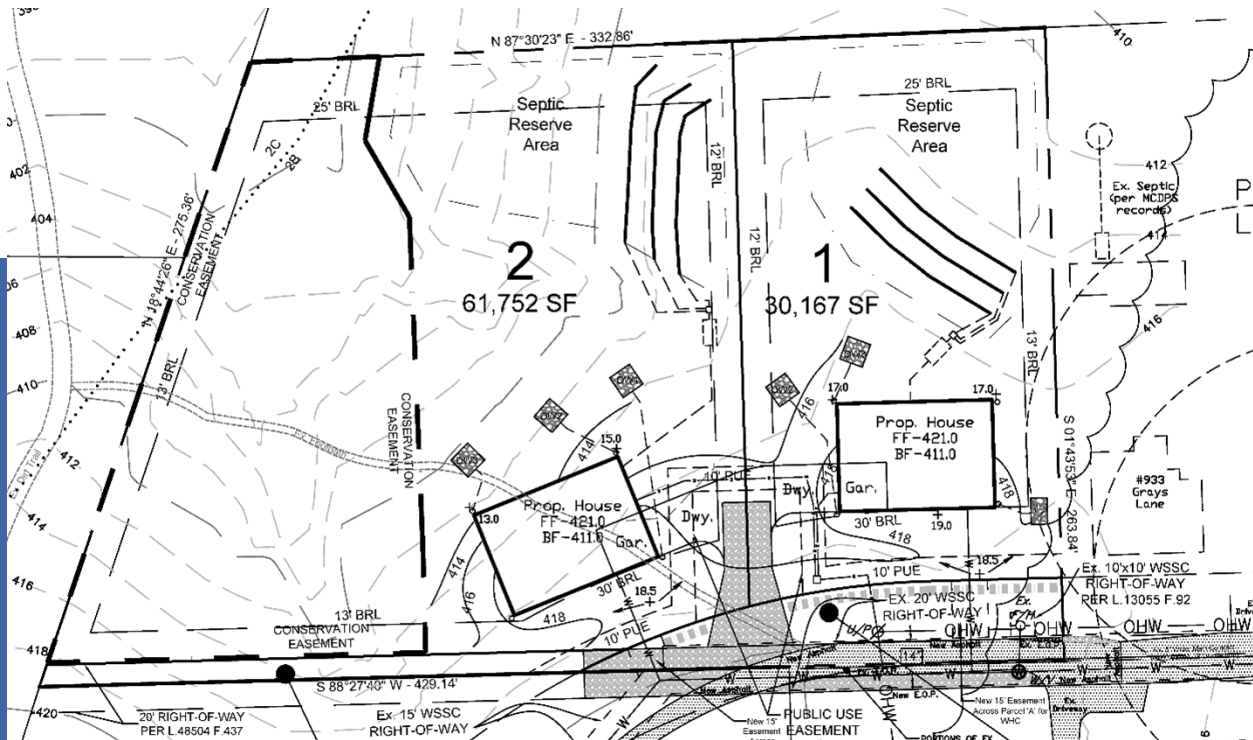


## DONNER PROPERTY AT GRAYS LANE

### ADMINISTRATIVE SUBDIVISION PLAN NO. 62023001A



Request to remove Condition No. 26, requiring the recordation of a common use and access covenant over all trails, sidewalks, and paths not included in a public right-of-way or private street parcel.

COMPLETED: 4/21/2025

PLANNING BOARD HEARING DATE: 5/1/2025

MCPB ITEM NO. 6

## Planning Staff



Amy Lindsey, Planner III, Midcounty Planning, [Amy.Lindsey@montgomeryplanning.org](mailto:Amy.Lindsey@montgomeryplanning.org), 301-495-2189



Matthew Folden, Supervisor, Midcounty Planning, [Matthew.Folden@montgomeryplanning.org](mailto:Matthew.Folden@montgomeryplanning.org), 301-495-4539



Carrie Sanders, Chief, Midcounty Planning, [Carrie.Sanders@montgomeryplanning.org](mailto:Carrie.Sanders@montgomeryplanning.org), 301-495-4653

### 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

June 3, 2024

### REVIEW BASIS

Chapter 50



### Summary:

- On February 2, 2023, the Planning Board approved Administrative Subdivision Plan No. 620230010 creating two lots for two new single-family homes and two parcels for future dedication.
- Administrative Subdivision Plan No. 62023001A removes Condition No. 26, requiring 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.
- Parcel B will be dedicated to Montgomery County Parks Department for a future connection to Wheaton Regional Park but is currently unimproved. Condition No. 26 created an indemnification requirement over Parcel B, which was an unforeseen consequence.
- No other changes to the Administrative Subdivision are proposed with this amendment.
- All other conditions of approval are valid in full force and effect.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### ADMINISTRATIVE SUBDIVISION PLAN NO. 62023001A

Staff recommends approval of Administrative Subdivision Plan Amendment No. 62023001A to remove Condition No. 26, regarding the recordation of a covenant. All site development elements shown on the latest electronic version of the Donner Property, Administrative Subdivision No. 62023001A as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. The following Condition No. 26 is removed and all other conditions remain in full force and effect:

#### **Deleted Condition**

- ~~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.~~

## 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

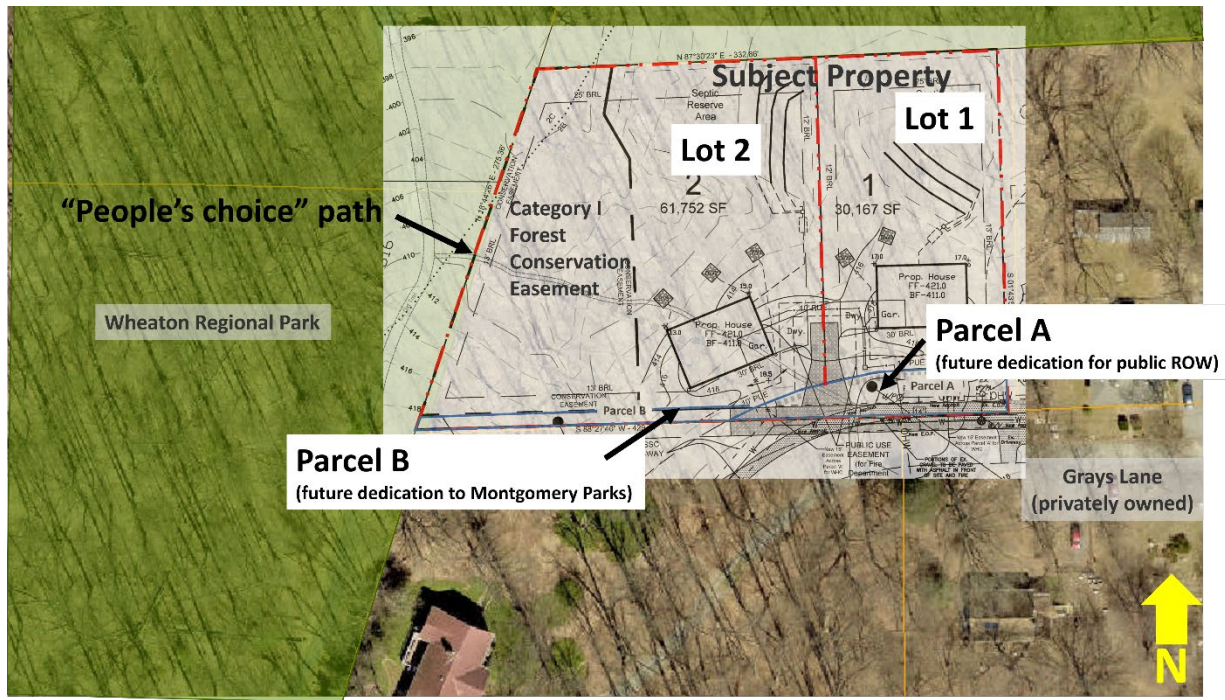
The Subject Property is 2.28 acres of unimproved land adjacent to Wheaton Regional Park (Figure 2). The Property has 2.24 acres of forest on it and the ground slopes from the southeast corner to the northwest corner of the Property. A portion of Grays Lane runs on the southern property line and is improved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

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).



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 and recorded in the Montgomery County Land Records at Book 48504, page 437.

The Property is approved as two (2) lots and two (2) parcels, as created by Administrative Subdivision Plan No. 620230010, to allow for the development of two (2) single-family homes. The Property has not been platted in the approved configuration and is presently described in the land records as Lot 5 and Parcel 257.



*Figure 2 – Subject Property, as approved through Administrative Subdivision No. 620230010*

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVAL

On February 2, 2023, the Planning Board approved Administrative Subdivision No. 620230010 by Resolution MCPB No. 23-010. (Attachment B) The Administrative Subdivision created two (2) lots and two (2) parcels to allow the development of two (2) single-family detached residential dwelling units. Lot 1 is approximately 30,167 square feet in size with a septic field and septic reserve area. Lot 2 is approximately 61,752 square feet in size and includes a septic field, septic reserve area, and a Category I Conservation Easement. Parcel A is approximately 5,291 square feet in size and provides for the future dedication of land for Grays Lane to meet the 70-foot right-of-way requirement. Parcel B is a 10-foot wide parcel for future dedication to the Montgomery County Parks Department for pedestrian access to Wheaton Regional Park. A common use and access covenant was required to be recorded over Parcel B, to provide public access to Wheaton Regional Park until dedication occurs. Dedication will occur when adjacent land is dedicated as public right-of-way for Grays Lane, converting the private road to a public road.

### PROPOSAL

Administrative Subdivision Plan No. 62023001A proposes no changes to the plans approved under Administrative Subdivision Plan No. 620230010 except for the removal of Condition No. 26, which requires the recordation of a common use and access covenant over all trails, sidewalks, and paths not included in a public right-of-way or private street parcel.

Condition No. 26 requires the Applicant to create a covenant to allow public access across Parcel B of the Subject Property prior to dedication. Parcel B was created to allow for public access to Wheaton Regional Park and will be dedicated to the Montgomery County Parks Department. When Grays Lane becomes a public road and Parcel A is dedicated for right-of-way, Parcel B will then be dedicated to provide public access to Wheaton Regional Park, which will be reflected on the record plat.

The original intent of Condition No. 26 was to maintain access to Wheaton Regional Park prior to dedication. However, the requirement to place a covenant on Parcel B has created an indemnification requirement for the Applicant to maintain, regardless of the actual existence of a formal path. The indemnification requirement was an unforeseen consequence that negatively impacts the Applicant, while not providing concrete benefits to the surrounding community.

Planning Staff supports the Applicant's request to remove Condition No. 26 because Grays Lane is currently a private road, without public access, limiting the public's ability to use Parcel B to access Wheaton Regional Park. Additionally, there is currently no formal, improved pedestrian path on Parcel B. Indemnification would burden the Applicant with the legal responsibility of pedestrian safety, which was not the intent of the Condition No. 26.

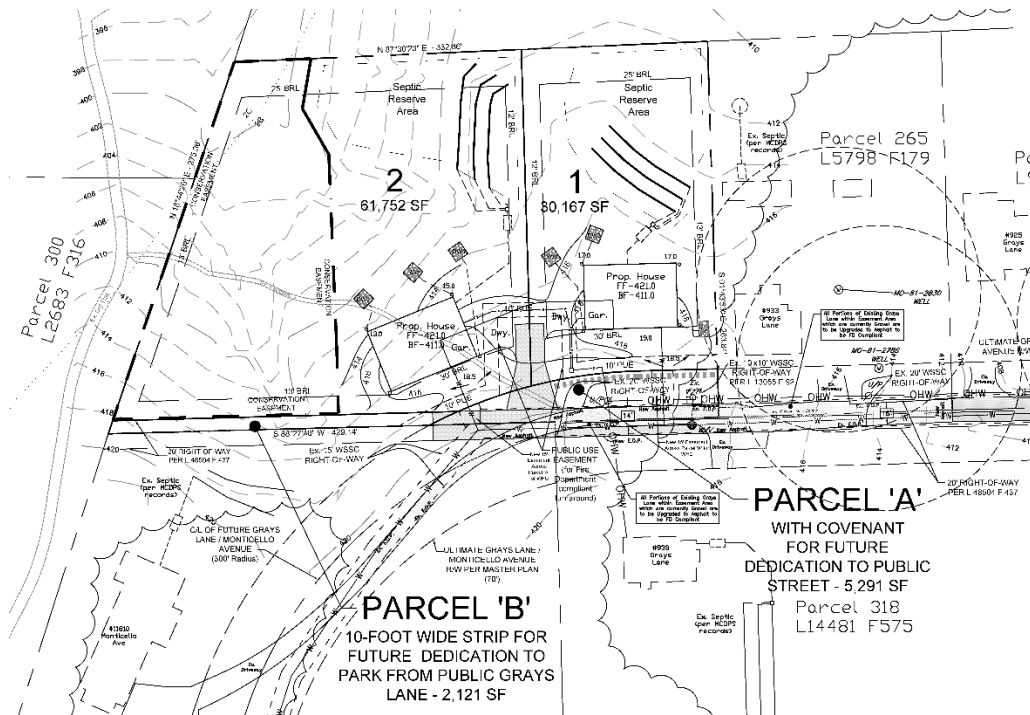


Figure 3 – Administrative Subdivision Plan

## SECTION 4: COMMUNITY OUTREACH

A pre-submittal community meeting is not required for an Administrative Subdivision Plan. However, applicants must post signs on the development site and provide written public notice. The Applicant has met the posting and noticing requirements for this Application. As of date of this Staff Report, no correspondence has been received.

## SECTION 5: ADMINISTRATIVE SUBDIVISION PLAN 62023001A FINDINGS AND ANALYSIS

The Planning Board approved Administrative Subdivision Plan No. 620230010, Resolution MCPB No. 23-010, to create two (2) lots and two (2) parcels on the Subject Property with conditions.

Administrative Subdivision Plan Amendment 62023001A requests to remove Condition No. 26. The proposed Administrative Subdivision Plan Amendment does not alter the intent of the previous findings, which remain applicable.



## 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. and substantially conforms to the recommendations of the 2001 *Kemp Mill Master Plan*. Therefore, Staff recommends approval of Administrative Subdivision No. 62023001A, with the removal of Condition No. 26, as specified at the beginning of this report.

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### ATTACHMENTS

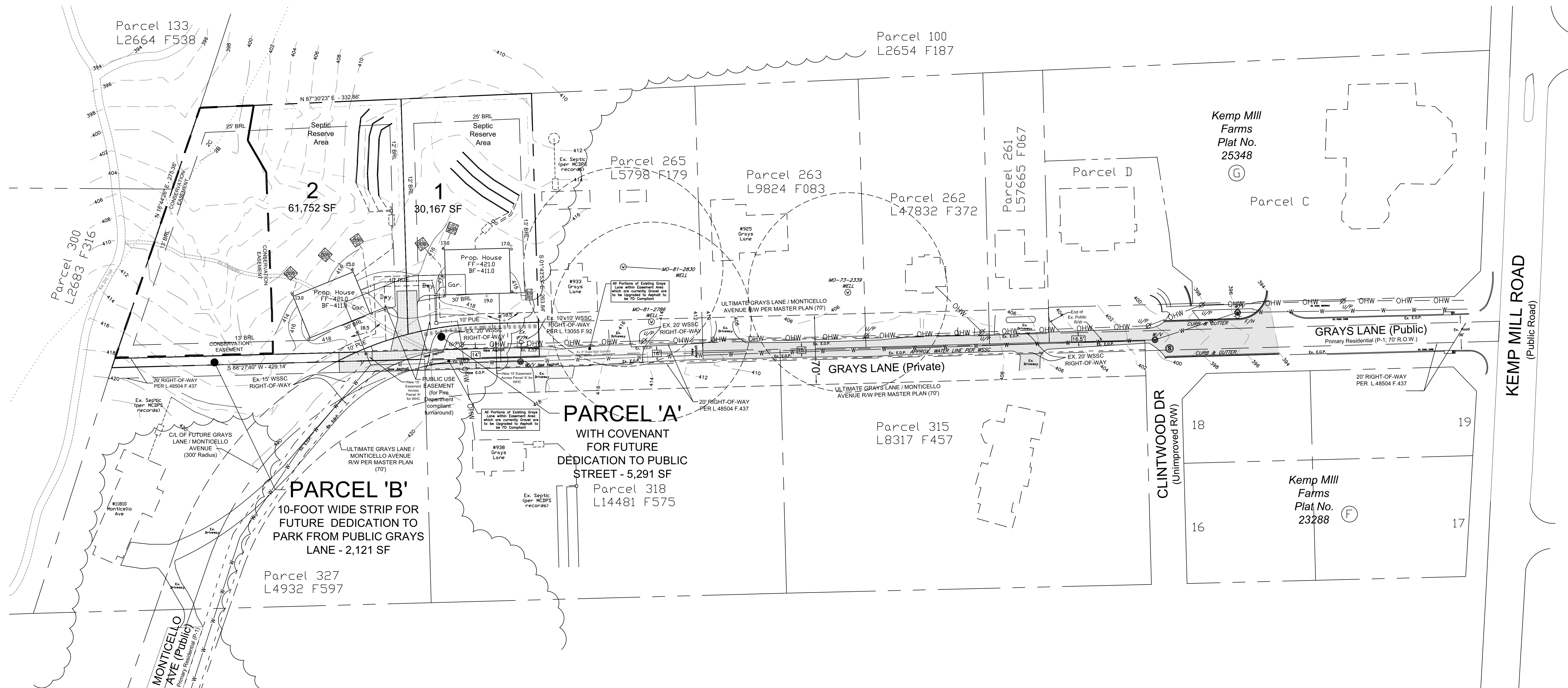
*Attachment A: Administrative Subdivision Plan*

*Attachment B: Prior Approvals*



## LEGEND:

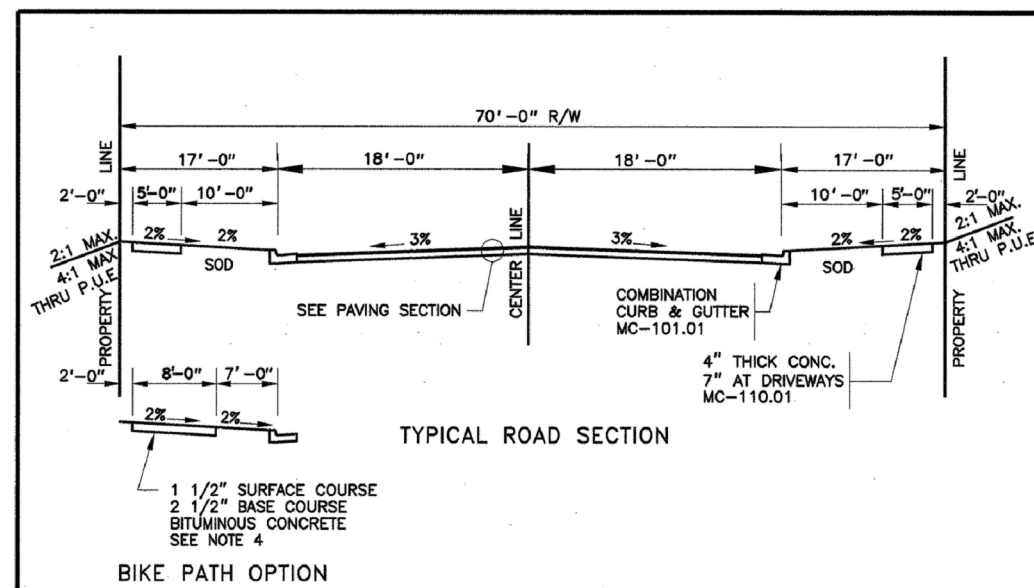
BUILDING RESTRICTION LINE	25' BRL
CANOPY COVERAGE	
CENTERLINE	
EXISTING BUILDING	
EXISTING PAVEMENT (GRAVEL)	
EXISTING PAVEMENT (ASPHALT)	
INDEX CONTOUR (2' INTERVAL)	410
INTERMEDIATE CONTOUR	414
LIMIT OF DISTURBANCE	
PROPOSED LOT LINE	
BOUNDARY LINE (SUBJECT)	N 32°04'20" W
PROPERTY LINE (ADJACENT)	
PROPOSED CATEGORY I CONSERVATION EASEMENT	
OVERHEAD POWER LINE	OHW
PROPOSED HOUSE	
PROPOSED ASPHALT PAVEMENT	
SEPTIC OUTLINE	
SEPTIC TANK	
SEPTIC SYSTEM (INITIAL)	
STORMWATER MANAGEMENT BIOSWALE	
STORMWATER MANAGEMENT DRYWELL	
UTILITY POLE (EX.)	Ex. UP
UTILITY CONNECTION (NEW)	E
WATER LINE (EX.)	W
WATER LINE (NEW)	W



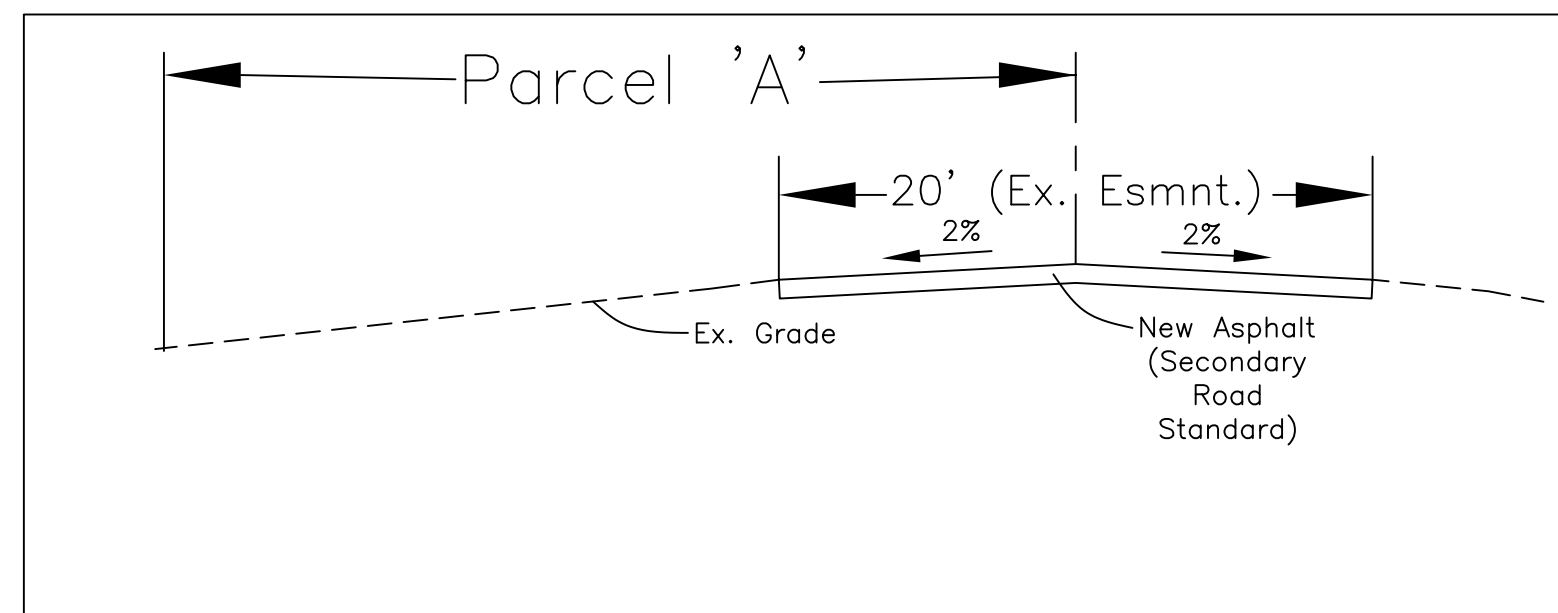
## LIST OF AMENDMENT ITEMS:

- 1 Condition number 26 of the original Planning Board Resolution is removed.

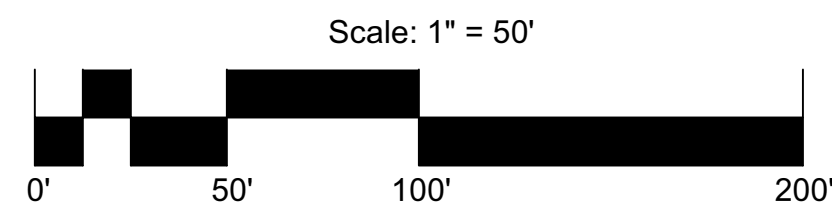
## STANDARD SECTION FOR GRAYS LANE / MONTICELLO AVENUE (P-1)



## INTERIM SECTION FOR GRAYS IN FRONT OF SUBJECT SITE



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  
301-349-5080



**Professional Certification:**  
I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed landscape architect registered to practice in the State of Maryland.

David W. McKee  
Maryland Reg. Landscape Architect #2001  
Renews / Expires 10-21-2024



## Certified Plan Notes:

1. The Applicant must schedule an on-site pre-construction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. This Applicant, along with their representative, 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.
2. Unless specifically noted on this plan drawing or in the 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 location of buildings, structures and hardscape will be determined at the time of issuance of building permit(s) approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of approval.
3. The Applicant must repair any damage to Grays Lane, caused by construction activity for the Subject Property, upon completion of construction for the proposed development.

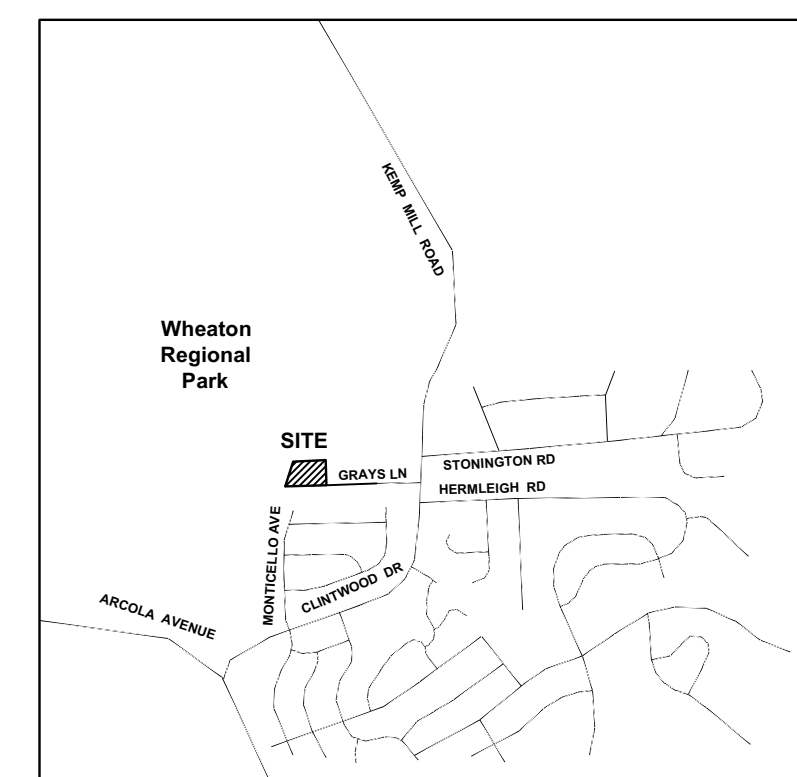
## NOTES:

1. AREA OF PROPERTY - 99,331 SF (2.28033 AC)
2. EXISTING ZONING - R-90
3. NUMBER OF LOTS - 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

## ZONING DATA TABLE

ZONE: R-90	Req.	Lot 1	Lot 2
Lot Area (Sq.Ft.)	9,000	30,167*	61,752*
Front Setback	30 Ft	30 Ft	30 Ft
Side Setback	8 Ft	12 Ft	12 Ft
Sum of Side Setbacks	25 Ft	25 Ft	25 Ft
Rear Setback	25 Ft	25 Ft	25 Ft
Building Height	35 Ft Max.	Will not Exceed Maximum	Will not Exceed Maximum
Lot Coverage	30%	30% (9,320 Sq. Ft.)	30% (18,525 Sq. Ft.)
Lot Width at Building Line	75 Ft	131 Ft	126 Ft
Lot Width at Front Property Line	25 Ft	130 Ft	54 FT
Frontage on Street or Open Space	Required	130 Ft*	54 FT*

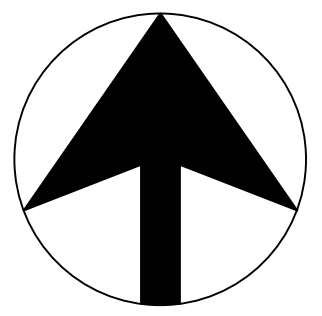
\* along the area designated as "Parcel A" which is set aside for future dedication; a waiver of the frontage requirement is requested for both lots

VICINITY MAP  
SCALE: 1" = 2,000'

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

## Revisions

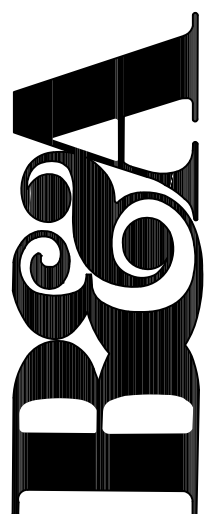
Approval 07-20-23



date: 09/20/2022

scale: 1" = 50'

Bennett & 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. 62023001A

SHEET 7 OF 7



# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-010  
Administrative Subdivision No. 620230010  
**Donner Property at Grays Lane**  
Date of Hearing: February 2, 2023

MAR 03 2023

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review administrative subdivision applications; and

WHEREAS, on October 19, 2022, **Irah H. Donner** ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create **two (2) lots and two (2) parcels** on 2.28 acres of land in the R-90 zone, located at **939 Grays Lane** ("Subject Property"), in the Kemp Mill Master Plan ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620230010 **Donner Property at Grays Lane** ("Administrative Subdivision Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 20, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on **February 2, 2023**, the Planning Board held a public hearing on the Application and voted to approve the Application, subject to certain conditions, on the motion of Commissioner Piñero, seconded by Vice Chair Presley, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill and Piñero voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620230010 to create two (2) lots and two (2) parcels on the Subject Property, subject to the following conditions:<sup>1</sup>

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

---

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320  
[www.montgomeryplanningboard.org](http://www.montgomeryplanningboard.org) | [mcp-chair@mncppc.org](mailto:mcp-chair@mncppc.org)

Approved as to

Legal Sufficiency: /s/ Emily Vaias  
M-NCPPC Legal Department

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Administrative Subdivision Plan No. 620230010  
Donner Property at Grays Lane  
Page 2

### **General Approval**

1. This Administrative Subdivision Plan is limited to two (2) lots for two (2) dwelling units and two (2) parcels with covenants for future dedication.

### **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 before 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
-

MCPB No. 23-010  
Administrative Subdivision Plan No. 620230010  
Donner Property at Grays Lane  
Page 3

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**

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 before 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.



MCPB No. 23-010  
Administrative Subdivision Plan No. 620230010  
Donner Property at Grays Lane  
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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. Before 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. Before 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. Before 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 are permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
18. Before 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 and shall include 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.

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Administrative Subdivision Plan No. 620230010  
Donner Property at Grays Lane  
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### **Transportation**

20. Before 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 to public use as right-of-way.
21. Before 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 land adjacent to the Subject Property 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 before 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.

MCPB No. 23-010  
 Administrative Subdivision Plan No. 620230010  
 Donner Property at Grays Lane  
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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.
- c) The Applicant must repair any damage to Grays Lane, caused by construction activity for the Subject Property, upon completion of construction for the proposed development.

29. Before submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:

- 1. Show resolutions and approval letters on the certified set.
- 2. Include the approved Fire and Rescue Access plan in the certified set.
- 3. Provide 22 caliper inches of mitigation plantings for the removal of Protected Trees ST-17 and ST-5.
- 4. Provide an invasive management plan for the area of wisteria within the forest not being removed.

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Administrative Subdivision Plan No. 620230010  
Donner Property at Grays Lane  
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BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for up to 3 lots for detached houses permitted in any residential zone.*

*A. 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.

*B. 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, and, 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.

Subdivisions under the R-90 Zone are generally ineligible for onsite systems exceptions. However, in this case the lots are substantially larger than the minimum zoning standard of 9,000 sq. ft. The 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, 2022 MCDPS, Well and Septic approved the onsite private septic system for the Property.

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- C. *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 2.C below, all road dedications and associated public utility easements are being provided and will be shown on the plat.

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

As described in Finding 2.C below, the requirements for adequate public facilities are being satisfied.

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

As described in Finding 2.D below, all forest conservation, stormwater management, and environmental protection requirements are being satisfied.

2. *The Administrative Subdivision Plan meets the technical review requirements of Chapter 50, Section 4.3.*

- A. *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 approved 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 lots meet all the dimensional requirements for area, frontage and width and 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.



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**Table 1 – Development Standards**

<b>R-90 Zone</b>	<b>Required by the Zone</b>	<b>Approved for Lot 1</b>	<b>Approved for Lot 2</b>
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

**B. 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.

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

**1) Roads and other Transportation Facilities**

**a) 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

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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 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 approved 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 v. 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

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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 along the Subject Property's frontage include a paved fire access turnaround, including a driveway that is situated along the property line that divides 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 included 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 included as part of this subdivision.

b) *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.

2) *Local Area Transportation Review (LATR)*

As demonstrated in the Applicant's traffic statement, dated August 5, 2022, the 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.

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*3) 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. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	Utilization %	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Kemp Mill ES	448	416	92.9%	+32	No UPP	117	134	189
Odessa Shannon MS	881	739	83.9%	+142	No UPP	268	319	451
Northwood HS <sup>2</sup>	2,498	2,282	91.4%	+216	No UPP	396	716	1,091

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY23 Annual School Test, development projects approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in the table above.

Based on the school capacity analysis performed, using the FY2023 Annual School Test, this application is not subject to a Utilization Premium Payment..

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.

D. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

<sup>2</sup> Projected enrollment reflects the estimated impact of CIP P651908, which will reassign students between the Downcounty Consortium, Walter Johnson HS and Woodward HS in 2026.

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***Technical Review 50.4.3.K***

**1. Forest Conservation**

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Applicant has submitted a Final Forest Conservation Plan ("FCP") with the current development application. 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. 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.

**2. Forest Conservation Variance**

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 17 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the



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Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

- a. *Granting the Variance 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.

- b. *The need for the Variance 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.

- c. *The need for the Variance is not based on a condition related 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 site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

- d. *Granting the Variance 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

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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 the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately 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. No mitigation is required for Protected Trees impacted but retained.

- E. 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.

- F. 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 4.3.M*

Not applicable to this Property.

- G. Any other applicable provision specific to the property and necessary for approval of the Administrative Subdivision is satisfied.*

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 03 2023 (which is the date that this Resolution is mailed to all parties of record); and

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BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Piñero, seconded by Commissioner Branson, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, March 2, 2023, in Wheaton, Maryland and via video conference.

  
\_\_\_\_\_  
Jeffrey Zyontz, Chair  
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