



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

MCPB
Item #
11/01/07



MEMORANDUM

DATE: October 19, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301-495-4542)
Development Review Division *CC*

REVIEW TYPE: Subdivision Regulations Waiver Request

PROJECT NAME: B.F. Gilbert's Addn. to Takoma Park (Sligo Creek Nursing & Rehabilitation Center)

CASE #: SRW 200801

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: R-60

LOCATION: Located on Carroll Avenue, 340 feet northeast of Lincoln Avenue

MASTER PLAN: Takoma Park

APPLICANT: Adventist HealthCare, Inc.

ATTORNEY: Lerch, Early & Brewer

FILING DATE: August 23, 2007

HEARING DATE: November 1, 2007

STAFF RECOMMENDATION: Grant the waiver request to provide relief from full compliance with Section 50-35A(a)(3) of the Subdivision Regulations that requires parts of lots included in a minor subdivision under that section to have been recorded prior to June 1, 1958.

Background

Sligo Creek Nursing & Rehabilitation Center ("Sligo Creek NRC") is located at 7523 Carroll Avenue in Takoma Park, on a 2.6-acre piece of land in the R-60 zone (Attachment A). The facility has existed in this location since the 1960s and is currently undergoing the necessary approval process for a one-story, 1,080 square foot dining room addition. The property owned by Sligo Creek NRC is comprised of three lots (Lots 8, 42, and 43) and three parts of lots (Parts of Lots 9, 12 and 13) in Block 37 of the B.F. Gilbert's Subdivision. The existing building is currently built over the underlying lot lines, and the proposed addition would also cross an existing lot line (Attachment B). Pursuant to Chapter 50 of the Montgomery County Code (Subdivision Regulations) this prevents a building permit from being issued for the proposed addition. To rectify this situation, the applicant has submitted a record plat under the minor subdivision provisions of Section 50-35A(a)(3) to consolidate the existing lots and parts of lots, and create one lot for which a building permit may be issued. Section 50-35A(a)(3) specifically states:

"Consolidation of Lots and a Part of a Lot.

Consolidation of Two or More Lots or a Part of a lot into One Lot. Consolidating more than one lot into a single lot is permitted under the minor subdivision procedure provided:

- a. Any conditions applicable to the original subdivision remain in full force and effect and the number of trips generated on the new lot do not exceed those permitted for the original lots or as limited by an Adequate Public Facilities agreement.
- b. Any consolidation involving a part of a lot may occur under the minor subdivision process if the part of a lot was created by deed recorded prior to June 1, 1958."

The provision requires that parts of lots which are consolidated through this process be limited to those which were created prior to June 1, 1958. The subject application includes one part of a lot (Part of Lot 13, Block 37) that was created in 1967, not-pre 1958 as required by the Subdivision Regulations (Attachment C). The applicant is requesting a waiver of the Section 50-35A(a)(3) provisions to permit this part of a lot to be consolidated with other existing lots and parts of lots which meet the requirements through the minor subdivision process, without having to submit a preliminary plan of subdivision. The waiver requested by the applicant is covered in Section 50-38(a)(1), which states that:

"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."

Applicant's Position

The applicant's justification for the requested waiver is presented in a letter dated August 15, 2007, from their representative, Mr. Stuart Barr of the law firm of Lerch, Early and Brewer (Attachment D). In this letter, Mr. Barr states that the waiver is necessary because the financing that Sligo Creek NRS has obtained for the project is extremely time sensitive, and could be lost if they have to go through the approval process for a preliminary plan. Specifically, Mr. Barr explains that the Sligo Creek NRS facility and the proposed addition are financed by a U.S. Department of Housing and Urban Development (HUD) insured mortgage, and the HUD loan for the addition is contingent on the project being completed within one year from the closing of the loan (i.e., December 19, 2007). This deadline creates a practical difficulty for the applicant because if these funds are lost, the facility would be placed in an extreme hardship to be able to pay for this much needed upgrade. Although a short extension of the deadline may be possible, it would still not provide enough time to complete a preliminary plan.

In further support of this request, the applicant's representative points out that the requirements of the underlying R-60 zone will not be adversely affected by the proposed addition, and the applicant is not proposing to add any additional residents or employees. He believes that this is the minimum necessary waiver to provide relief since five out of six lots and parts of lots on the property are eligible for consolidation under the minor subdivision procedures. Finally, he explains that this waiver is not inconsistent with the Takoma Park Master Plan or the General Plan, and is not adverse to the public interest. In fact, no opposition to the project was expressed by the surrounding community or City of Takoma Park officials during the outreach conducted by the applicant, and the Board of Appeals has granted a modification to the special exception.

Staff's Position

Staff recommends approval of the waiver request. Staff agrees that the time limits placed on the financing for this project could not be met if the applicant has to go through the full preliminary plan process. The time limits associated with the type of loan received by the applicant do constitute a justifiable practical difficulty. The waiver is the minimum necessary and is not inconsistent with the purposes and objectives of the General Plan. The waiver is not adverse to the public interest because the property will be platted. The application is exempt from adequate public facilities review, forest conservation requirements, and stormwater management requirements because of the minor nature of the planned development, so this exemption will not result in loss of any review that would typically be done as part of a preliminary plan. For these reasons, staff supports the request to permit Part of Lot 13, Block 37 to be platted under the minor subdivision process for lot consolidation even though it was not created by deed prior to June 1, 1958.

Attachments

Attachment A – Vicinity Map

Attachment B – Existing and Proposed Development Plan

Attachment C – Existing post-1958 Part of Lot
Attachment D – Applicant's 8/15/07 Justification Letter

B.F. GILBERTS ADDITION TO TAKOMA PARK (SRW200801)



Map compiled on September 13, 2007 at 10:51 AM | Site located on base sheet no - 209NE01

NOTICE

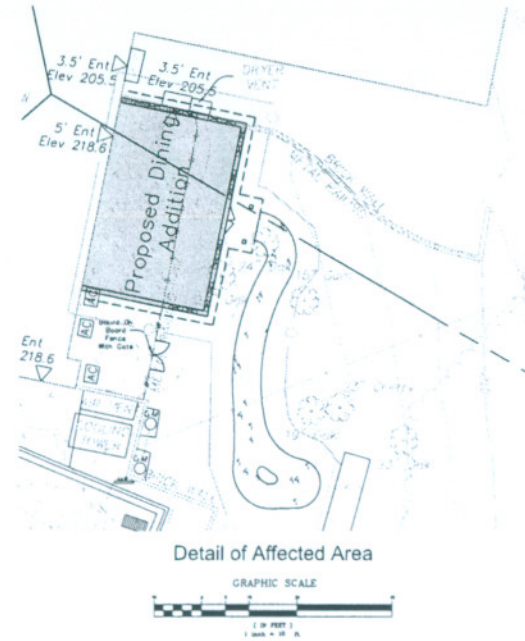
The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



Attachment B



TAX MAP J0502

Site Plan
Sligo Creek Nursing and Rehabilitation Center
Liber 9973 - Folio 251
13TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

| | | | |
|--|---|-----------------------------------|-----------------------------------|
| | MHG MASTERS, HANCOCK & GLASCOCK, P.A. Engineers • Planners Landscape Architects • Surveyors | Proj. Mgr. | Design |
| | | Exp. | Draw |
| 8220 Highway Route, Suite 100 Montgomery, MD 20854 Phone: 410-271-0840 Fax: 410-271-0841 www.mhgpa.com | | 5-31-07 1"=50' 2007.14.01.1 | 5-31-07 1"=50' 2007.14.01.1 |

Attachment C

OWNER'S CERTIFICATE

Washington Adventist Nursing & Rehabilitation Center, Inc., a Maryland corporation, owner of the property shown hereon, hereby adopt this plat of subdivision, dedicate the streets as shown hereon to public use, establish and grant to Montgomery County, Maryland or other appropriate agency, temporary slope easements twenty-five (25) feet wide over the lot or parcel shown hereon, adjacent, contiguous, and parallel to the street lines, the slope easements shall be extinguished after all required public improvements in adjacent roadways have been accepted for maintenance by Montgomery County, Maryland or other appropriate agency; hereby grant a Public Utilities Easement (P.U.E.) as shown hereon to the parties named in a document entitled "Terms and Provisions of Public Utility Easements" as recorded in Liber 3834 at Folio 457 among the Land Records of Montgomery County, Maryland, subject to all current and applicable regulations of all federal, state, and local governing agencies; As owners of this subdivision, we, our successors and assigns, will cause all property corner markers and any other required monumentation, to be set by a registered Maryland Land Surveyor, in accordance with Section 50-24(a)(2) of the Montgomery County Code.

There are no suits, liens, leases, mortgages, or trusts, affecting the property included in this plat of subdivision, except a certain deed of trust and the parties in interest thereto have affixed their signatures hereon indicating their assent to this plat of subdivision.

Washington Adventist Nursing & Rehabilitation Center, Inc.

Date _____

We hereby assent to this plat of subdivision.

Date _____ Trustee _____ Trustee _____

Notes:

1. This property is zoned R-60.
2. The approval of this plat is predicated on the availability of public water and sewer prior to the construction of buildings.
3. The property shown hereon is exempt from the requirements of Chapter 22A of the Montgomery County Forest Conservation Law by Exemption Letter for 10/17/00 #4200732RE, dated June 17, 2007.
4. Unless expressly contemplated by the plan as approved, all terms, conditions, agreements, limitations, and requirements associated with any preliminary plan, site plan, project plan, or other plan, allowing development of this property, approved by the Montgomery County Planning Board are intended to survive and not be extinguished by the recordation of this plat. The official public files for any such plan are maintained by the Planning Board and available for public review during normal business hours.
5. This plat conforms with the requirements of Section 50-35A of the Montgomery County Subdivision Regulations, being Chapter 50 of the County Code. This plat involves a consolidation of two or more lots as provided for in Section 50-35A (c)(3).
6. This Plat is not intended to show every matter affecting or restricting the ownership and use of the property. This Plat is not intended to replace an examination of title or to depict or note of matters affecting title.
7. Coordinates shown hereon are based on the Maryland State NAD 83/91 Datum as projected by NGS and are Geographical Information Services (GIS) only. Stations used are GAT1 with grid coordinates of North 534457.880 feet and East 1240651.227 feet and G00E with coordinates of North 493540.729 feet and East 1361523.038 feet. The combined scale factor for this site is 0.9999462.

To convert the grid coordinates to ground/surface coordinates, divide the grid coordinates by the combined scale factor.

The distances shown on this plat are as measured on the ground/surface. To convert the ground/surface distances to grid distances, multiply the ground/surface distances by the combined scale factor.

LEGEND:

OPF = Open Pipe Found
PPF = Fenced Pipe Found

FOR PUBLIC WATER AND SEWER ONLY

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING BOARD

APPROVED: _____

CHAIRMAN

SECRETARY-TREASURER

M.N.C.P. & P.C. RECORD FILE No. _____

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF PERMITTING SERVICES

APPROVED: _____

DIRECTOR

DATE: _____

Plot No.: _____

PLAT No.

CARROLL AVENUE
VARIABLE R/W
P.No. 50 & SHA R/W P.No. CVT

N 76°37'16" E 260.06'

LOT 8

PARCEL 2
L9973 E.251

(37)

B.F. GILBERT'S ADDITION
TO TAKOMA PARK
P.No. 50

LOT 56
115,767 sq. ft.
2.65785 Acres

LOT 43

B.F. GILBERT'S ADDITION
TO TAKOMA PARK
P.No. 275

PARCEL 3
L9973 E.251

LOT 42

LOT 51

LOT 25

LOT 24

LOT 18

LOT 17

LOT 16

LOT 15

LOT 14

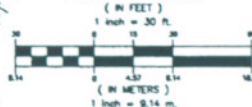
PT LOT 9

PT LOT 12

LOT 53

B.F. GILBERT'S ADDITION
TO TAKOMA PARK
PLAT 3273

GRAPHIC SCALE

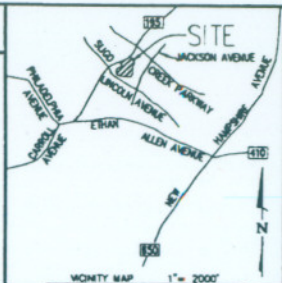


Macris, Hendricks & Glascock, P.A.
Engineers & Planners
Landscape Architects & Surveyors

8220 Wymann Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.870.0840
Fax 301.842.0803
www.mhga.com

07.140.11



TAX MAP No. JN562

PLAT TABULATION

| | |
|---------------------------|------------------------------------|
| Number of Parcels | = 1 |
| Area of Parcels | = 115,767 sq. ft. |
| Area of Street Dedication | = 0 sq. ft. |
| Total Area | = 115,767 sq. ft. or 2.65785 acres |

SURVEYOR'S CERTIFICATE

We hereby certify that the plat shown hereon is correct; that it is a subdivision of all of the land conveyed by Silge Colonial L.P. to Washington Adventist Nursing & Rehabilitation Center, Inc. by deed dated October 10, 1991, and recorded among the Land Records of Montgomery County, Maryland, in Liber 9973 at Folio 251; and also being a subdivision of all of Lots 42 and 43, Block 37, as delineated on a plat of subdivision entitled "B.F. Gilbert's Subdivision of part of Takoma Park" as recorded among the said Land Records as Plat No. 275; and also being a subdivision of all of Lot 8, Block 37, and part of Lots 9, 12 and 13, Block 37, as delineated on a plat of subdivision entitled "Part of Takoma Park" as recorded among the said Land Records as Plat No. 50. We hereby certify that, once engaged as described in the owner's certification hereon, all monuments and all property markers and other boundary markers will be set in accordance with the provisions of Section 50-24(a) of the Montgomery County Code. (There is no street dedication by this plat.) The total area included on this plat is 115,767 square feet or 2.65785 acres.

Date _____
By _____
Professional Land Surveyor
Md. Reg. No. 10712

SUBDIVISION RECORD PLAT
LOT 56, BLOCK 37
B.F. GILBERT'S ADDITION
TO TAKOMA PARK
ELECTION DISTRICT No. 13
MONTGOMERY COUNTY, MARYLAND
SCALE: 1" = 30' AUGUST, 2007



ATTORNEYS

STUART R. BARR
DIRECT 301.961.6095
SRBARR@LERCHEARLY.COM

August 15, 2007

BY HAND DELIVERY

Ms. Cathy Conlon
Subdivision Review, Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Ave.
Silver Spring, MD 20910-3760

Re: *Sligo Creek Nursing & Rehabilitation Center
Subdivision Regulation Waiver Request Application and Justification Statement
In Connection with Record Plat Application Number 2-08025*

Dear Ms. Conlon:

Our firm represents the Sligo Creek Nursing & Rehabilitation Center ("Sligo Creek"), a nursing home located at 7523 Carroll Avenue, Takoma Park, in the R-60 zone. Sligo Creek is part of Adventist Senior Living Services, Inc. (ASLS), which owns and operates a total of five Maryland based nursing and rehabilitation centers. ASLS is owned by Adventist HealthCare, a non-profit family of health care providers serving the Mid-Atlantic region and one of the largest employers in the State of Maryland. The Sligo Creek nursing home has existed since the 1960s and is undergoing the necessary approval process for a modest addition to the existing building.

The Sligo Creek Property is approximately 2.6 acres and is currently comprised of a combination of three lots and three parts of lots. Sligo Creek has submitted a record plat application to consolidate these lots and parts of lots into one lot (Lot 56) under the minor subdivision procedures contained in Section 50-35A(a)(3) of the Subdivision Ordinance. The Record Plat Application was filed by Macris, Hendricks and Glascock on August 1, 2007 and has been assigned File Number 2-08025.

The purpose of this letter and the attached application is to request a waiver of subdivision regulation pursuant to Section 50-38(a)(1) in connection with the Record Plat application. This waiver request concerns Section 50-35A(a)(3)(b), which requires that for consolidation of parts of a lot under the minor subdivision process, the parts of a lot must have been created before June 1, 1958. Two out of the three parts of lots in question were created prior to 1958. The other part of lot was created in 1967.

Background and Project Description

The Record Plat and Subdivision Waiver applications are a result of Sligo Creek's proposal to add a modest one-story addition to the existing nursing home building for a new dining room. The proposed dining room addition is approximately 1080 square feet in size and will be located in the rear of the building. Sligo Creek has conducted outreach with the surrounding community and City of Takoma Park officials concerning the project and will be requesting a modification to its special exception approval from the Montgomery County Board of Appeals. Sligo Creek is not aware of any opposition to the project.

The Record Plat and Subdivision Waiver applications to consolidate the lots and parts of lots on the Property are necessary because the location of the proposed addition would cross one of the existing internal lot lines. Section 50-20(b) of the Subdivision Ordinance does not permit the issuance of a building permit for a dwelling or structure which crosses a lot line, unless one of the enumerated exceptions from Section 50-20(b) applies. It does not appear that any of those exceptions would apply in this instance.

History of Lots and Subdivision Status

The Sligo Creek Property is comprised of three lots -- Lots 8, 42, 43 -- and three parts of lots -- Parts of Lots 9, 12, and 13 -- in Block 37 of the B.F. Gilbert's Subdivision. The proposed dining room addition would cross the internal lot line separating Part of Lot 12 and Part of Lot 13, as shown on the attached site plan.

Based on our research, Lots 9 and 12, Block 37 were originally created by Plat 50 in 1889. In 1952, portions of Lots 9 and 12 were conveyed by Deed at Liber 1706 Folio 313, without a resubdivision, leaving two Parts of Lot 9 and two Parts of Lot 12. The Parts of Lots 9 and 12 that are not part of the Property were subsequently resubdivided into new lots by Plat 3273. The Parts of Lots 9 and 12 that are part of the Sligo Creek Property remain parts of lots. Parts of Lots 9 and 12 are eligible for consolidation under Minor Subdivision Section 50-35A(a)(3)(b) since they were created prior to June 1, 1958.

Lot 13, Block 37 also was originally created by Plat 50. In 1967, a portion of Lot 13 was conveyed by Deed at Liber 3643 Folio 117, without a resubdivision, leaving two Parts of Lot 13. The Part of Lot 13 that is part of the Sligo Creek Property remains part of a lot. This Part of Lot 13 is not eligible for consolidation under Minor Subdivision Section 50-35A(a)(3)(b), without this subdivision regulation waiver, since it was created after June 1, 1958.

Justification for the Subdivision Regulation Waiver Request

Section 50-38(a)(1) states that:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

Sligo Creek seeks a waiver from Section 50-35A(a)(3)(b) simply to permit the consolidation of lots and parts of lots that have existed for at least the past 40 years on the Property. The consolidation will allow a modest addition to the facility to provide a much needed dining hall improvement. The nursing home has existed since the 1960s and has not received significant upgrades to its physical plant since its original construction.

This subdivision regulation waiver request is the minimum necessary to provide relief from the requirements of Section 50-35A(a)(3)(b). Five out of the six lots and parts of lots on the Property are eligible for consolidation under the minor subdivision procedures. This request addresses the one remaining part of lot.

The Property is located in the R-60 zone. The requirements of this zone will not be adversely affected by the proposed addition. No additional residents or employees at the nursing home are proposed. This request also is not inconsistent with the Takoma Park Master Plan or the General Plan and is not adverse to the public interest.

The Sligo Creek facility, and the proposed addition, are financed by a U.S. Department of Housing and Urban Development (HUD) insured mortgage. The HUD loan for the addition is contingent on the project being completed within one year from the closing of the loan (i.e., by December 19, 2007). While a request for a modest extension is possible, such a request would entail extensive administrative work without any guarantee of an approved extension. Ultimately, there is risk that the funds available for the project would be required to be used to repay existing principal, resulting in the need to secure financing for the improvements again and exposing the facility to credit risk, interest rate risk and construction cost inflation risk. If the additional funds were no longer available to pay for the project, the facility would be placed in an extreme hardship to be able to pay for the project.

Simply stated, the project is extremely time sensitive, and Sligo Creek respectfully requests a waiver in order to avoid the time, expense and unnecessary effort associated with a

ATTORNEYS

Ms. Cathy Conlon
August 15, 2007
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potential resubdivision. No public purpose is served by subjecting the Sligo Creek Property to the resubdivision process, and a resubdivision is unnecessary and undesirable in this instance given the practical difficulties and unusual circumstances that exist. For all of these reasons, Sligo Creek respectfully requests a waiver of subdivision regulation 50-35A(a)(3)(b).

In support of our request, we are enclosing the filing fee in the amount of \$1,390.00 along with the following attachments:

1. Complete application form and fee schedule worksheet (25 copies)
2. A list of adjoining and confronting property owners and civic associations (1 copy with 2 sets of mailing labels)
3. Copy of notice of application (1 copy)
4. Plats 50 and 275 (1 copy)
5. Deeds at Liber 1706 Folio 313 and at Liber 3643 Folio 117 (1 copy)
6. Site Plan for proposed dining room addition (25 copies, reduced size)
7. Proposed Record Plat filed in Case Number 2-08025 (25 copies)

Please contact us if you need any additional information, and thank you very much for your consideration.

Respectfully yours,



Stuart Barr

Enclosures, as described

Cc (w/ all enclosures): Ilona Blanchard, City of Takoma Park
Brenda Rice

Cc (w/o Plats 50 and 275): George Child
Silvana Dill
Jim Litsinger
Michael Rand
Paul Newman
Mark North