



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

**MCPB**  
**Item # 7**  
**9-23-2010**



**MEMORANDUM**

**DATE:** August 30, 2010

**TO:** Montgomery County Planning Board

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

Catherine Conlon, Supervisor *CC*  
Development Review Division

**FROM:** *SS*  
Stephen Smith, Senior Planner (301) 495-4522  
Development Review Division

**REVIEW TYPE:** Subdivision Waiver Request

**APPLYING FOR:** Waiver of the Subdivision Regulations to permit a lot-line adjustment of greater than 5 percent of the combined lot area

**PROJECT NAME:** Kensington Heights

**CASE #:** SRW 201001

**REVIEW BASIS:** Chapter 50, Sec. 50-38(a)(1), Montgomery County Subdivision Regulations

**ZONE:** R-60

**LOCATION:** Located on the south side of University Boulevard West (MD 193), 300 feet west of Hobson Street

**MASTER PLAN:** Kensington/Wheaton

**APPLICANT:** Christopher and Mary Ann Carter

**FILING DATE:** February 12, 2010

**HEARING DATE:** September 23, 2010

## **EXECUTIVE SUMMARY:**

The Subdivision Regulations contain a specific provision, in Section 50-35A, which allows property owners to make small adjustments in the property boundaries between adjoining lots without requiring the submission of a Preliminary Plan. This Minor Subdivision provision, found in 50-35A(a)(1), limits the total area of such an adjustment to no more than 5 percent of the combined area of the subject lots. The subject application proposes an adjustment of the shared rear property line which exceeds the aforesaid 5 percent limit and, therefore, would require the submission of a Preliminary Plan. The applicants are requesting that the Planning Board grant a waiver of the 5 percent limitation requirement and permit them to adjust the rear property line as depicted on the proposed Sketch Plan without the submission of a preliminary plan.

**STAFF RECOMMENDATION:** Approval of a waiver of section 50-35A(a)(1)a. of the Subdivision Regulations pursuant to section 50-38(a)(1) of the Subdivision Regulations in order to permit recordation of a plat through the minor subdivision process for a lot line adjustment that exceeds 5 percent of the combined area of the subject lots, subject to the following conditions:

1. Applicant must submit a Record Plat application within 90 days of the date of mailing of the Board's Resolution for this decision.
2. All necessary easements for ingress/egress and public utilities must be depicted on the plat.

## **SITE AND PROJECT DESCRIPTION**

The subject property consists of two recorded lots, Lot 18 and Lot 19, both of which are owned by the applicants. The lots share a common rear property line and are located on the south side of University Boulevard West (MD 193) and the north side of Decatur Avenue, respectively (Attachment A). Lot 18 contains 8,260 square feet and Lot 19 contains 18,515 square feet for a total of 26,775 square feet, all of which is zoned R-60. Each lot contains a single family dwelling, neither of which is being proposed for removal or modification as part of this application.

The subject waiver request has been submitted by the applicant to obtain permission to adjust the shared rear property line between the two lots through the minor subdivision process. There is an existing single family residence on Lot 19 and a large garage/workshop (approximately 50' x 27') which is situated in the extreme southwest corner of the lot. The applicants currently reside in the dwelling on Lot 18 but use the garage/workshop located on Lot 19. In order to allow for a possible future sale of the residence on Lot 19 while preserving their use of the garage, the applicants desire to legally incorporate the garage and underlying land into Lot 18. The application proposes no other changes to the lot boundaries, no land disturbance, nor any modifications to the structures located thereon.

## BACKGROUND AND EXPLANATION OF WAIVER REQUEST

The applicants are the owners of two record lots in the Kensington Heights subdivision. These were originally platted in 1989, when the then owner received approval from the Board to create two lots, back to back, from his existing through-lot (Attachment B). The current applicants purchased Lot 18, constructed a new home in 1997, and continue to reside there today. In 2000, the applicants also purchased Lot 19, containing the original house and the garage situated behind their residence. As the owner of both lots, the applicants have continually used the garage/workshop as an accessory building to their residence, even though it is not situated within the boundaries of the lot containing their residence. The applicants now wish to legally formalize their right to use this building by incorporating it onto the same lot as their house via a lot line adjustment.

Section 50-35A(a)(1) of the Subdivision Regulations provides an opportunity for the owners of adjacent lots to make adjustments to their common lot lines without necessitating the submission and approval of a Preliminary Plan. The section states:

*Minor Lot line Adjustment. The sale or exchange of part of a lot between owners of adjacent lots for the purpose of small adjustments in boundaries; provided:*

- a. *The total area of the adjustment does not exceed five percent of the combined area of the lots affected by the adjustment* (emphasis added);
- b. *No additional lots are created;*
- c. *The adjusted lot line is approximately parallel with the original lot line or, if it is proposed to intersect with the original line, it does not significantly change the shape of the lots involved; and,*
- d. *The owner submits a sketch plan for review and approval by the Planning Board staff. The sketch plan may be a copy of the existing record plan and must contain the following information:*
  - i. *proposed lot line adjustment as a dashed line;*
  - ii. *any buildings, driveways, or other physical improvements located within fifteen feet of the proposed adjusted lot line;*
  - iii. *any minimum building setback that would be altered by the minor lot line adjustment; and*
  - iv. *the amount of lot area affected by the minor lot line adjustment.*

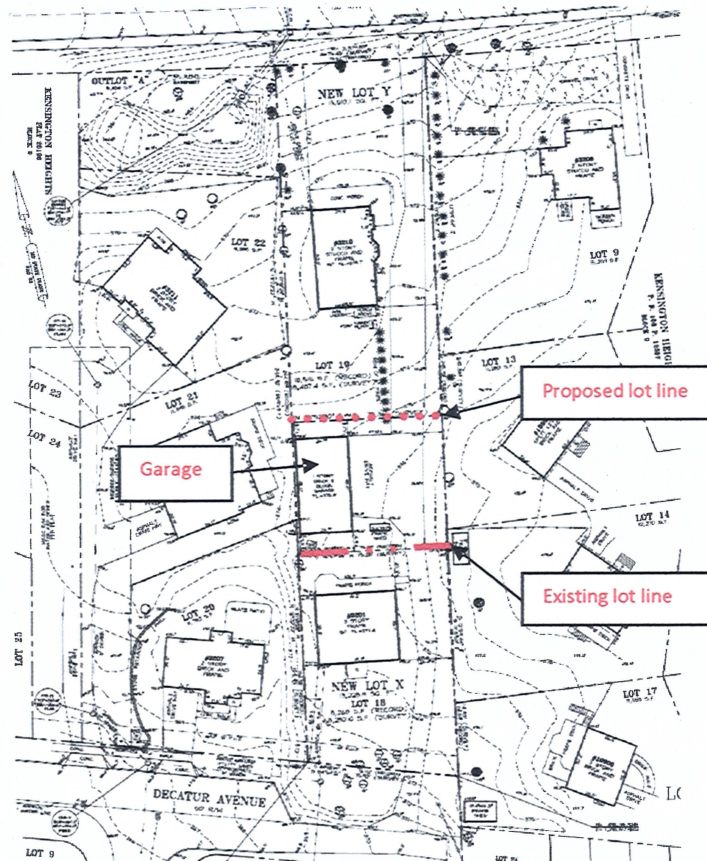
*The sketch plan must be approved, approved with revision or denied, in writing, within ten business days after the plan is submitted or the sketch plan is deemed approved, provided requirements i through iii, above, are met. A final record plat must be submitted to Planning Board staff within ninety days after sketch plan approval or the sketch plan is no longer valid.*



*Any minor lot line adjustment between properties that occurred prior to May 19, 1997, remains an exception to platting as provided in Section 50-9(d).*

The waiver requested by the applicant pertains directly to subsection (a.) highlighted above, i.e. the requirement that a minor lot line adjustment be no greater than 5% of the combined lot area. In this instance, an adjustment up to the permitted maximum of 5% (1339 +/- square feet) would result in a new lot line that would bisect the garage, necessitating its removal, and thereby not accomplishing the desired objective of the applicants.

The proposed Sketch Plan (below and in Attachment C) depicts a new rear lot line, parallel to and approximately 65' north of the existing lot line, which fully incorporates the garage into Lot 18 (shown as new Lot X) and meets the requirements of the Zoning Ordinance. While it accomplishes the intentions of the applicants, this proposal amounts to a lot line adjustment of approximately 4,875 square feet, or 18% of the combined area of the lots, far in excess of the maximum allowed as stated in the Subdivision Regulations, and noted above. Since the proposal does not meet the criteria to be platted through the minor subdivision process, the submittal of a Preliminary Plan would typically be required.



## ANALYSIS OF THE WAIVER REQUEST

The Planning Board has the authority to grant waivers pursuant to Section 50-38(a)(1) of the Subdivision Regulations provided certain findings can be made. The section states:

*“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

In a letter to the Planning Board dated February 1, 2010 (Attachment D), the property owners request that the Planning Board waive the requirements of Section 50-35A(a)(1)a., and permit them to make a lot line adjustment of more than 5 percent of the combined lot area. They base their request on unusual circumstances regarding the subdivision history in conjunction with the existing site conditions of the properties involved. They further believe that there are practical difficulties which prevent full compliance with the subdivision provisions and that mandating a full preliminary plan to accomplish their objective is unwarranted in this case.

The applicant contends that the common lot line separating the subject properties that was created by the preliminary plan done by the previous owner (Preliminary Plan # 1-89013) has, in some part, contributed to the current dilemma. At that time, the owner’s request to retain the existing garage on the same lot as the primary structure, which is now Lot 19, was accommodated. As opposed to creating similarly shaped and sized lots, the arrangement resulted in a significant discrepancy in area between the two subject lots, which the current applicant is trying to overcome.

Another issue raised by the applicant in their waiver request pertains to the practical difficulties that would arise from having to remove and reconstruct the garage, or move the garage within the boundaries of a lot that could be created by adjusting the property line to the maximum 5% limit. Both of the above options, in addition to causing a disruptive demolition and construction project, present situations that are impractical from a cost-benefit standpoint, and would not accomplish the objective of the applicants.

The applicant also notes that the proposed lot line adjustment is, in all respects, minor in nature as there will be no visible impact at all since the existing structures will all remain in their current location. Therefore, they contend that imposing the costs and time associated with processing a Preliminary Plan are unwarranted. In lieu of a preliminary plan, the applicant has submitted a sketch plan of the proposed lot line adjustment with the request that the Board waive the requirements of 50-35A(a)(1)a. and allow the applicant to proceed with a new record plat.

## Staff Position

Staff believes that the applicant's justification for the requested waiver is supportable. The lots approved in 1989 appear to have been created disproportionately with respect to size solely for the purpose of retaining the garage/workshop. Now that the lots are commonly owned and the structure is used solely by the residents of the new dwelling, there is merit to creating proportionally sized lots (13,640 and 13,135 square feet, respectively) while preserving the garage/workshop. The proposal will not change any of the existing site conditions or have a perceptible impact on any of the adjoining properties. As such, the more complex and time-consuming preliminary plan review would not be an efficient use of staff or applicant resources, and would not change the end results. Therefore, staff believes that there are justifiable grounds to approve a waiver of the subdivision regulations based upon the practical difficulty involved with the submission of preliminary plan of subdivision solely to accommodate the proposed lot line adjustment.

In staff's opinion, nothing would be gained by requiring review of a preliminary plan because the lots are already developed with two one-family residences, neither of which is to be modified. There will be no adequate public facilities implications with respect to traffic, schools, fire and rescue services access, road dedication or forest conservation. As such, there appears to be no public benefit to, or need for, the increased level of review that would be afforded by approval of a preliminary plan.

The applicant is requesting a waiver of Section 50-35A(a)(1)a. to permit a lot line adjustment that will involve 18% of the combined area of the lots involved. Staff believes that this constitutes the minimum necessary to provide relief from the requirements because it is the minimum necessary to achieve the necessary rear yard setback for the garage/workshop that is being retained. The resulting lots will meet the applicable requirements of the Subdivision Regulations, Zoning Ordinance and Kensington/Wheaton Master Plan, and as such, the waiver is not inconsistent with the purposes and objectives of the General Plan. Further, the waiver is not adverse to the public interest as there is no additional public benefit that would be obtained through the submission and review of a Preliminary Plan. For these reasons, staff recommends approval of the requested waiver.

## **CITIZEN NOTIFICATION**

Staff has notified adjacent and confronting property owners as well as community groups and civic associations of this public hearing, as required. To date, no comments have been received.

Attachment A - Location Map

Attachment B - Approved Preliminary Plan from 1989

Attachment C - Sketch Plan proposing lot line adjustment

Attachment D - Waiver Request Letter



# SRW 201001 KENSINGTON HEIGHTS

Attachment A



Map compiled on September 10, 2010 at 9:38 AM | Site located on base sheet no - 214NW03

## 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

Key Map



N



Research & Technology Center



1 inch = 100 feet  
1 : 1200



VICINITY MAP  
SCALE: 1" = 2000'

NOTES:

- LOTS - 2
- AREA - 29461 sq
- SEWER SERVICE - PUBLIC
- WATER SERVICE - PUBLIC
- TOPOGRAPHY SHOWN IS AN ENLARGEMENT OF MNC-P-8, 200 SCALE, 5' CONTOUR INTERVAL
- ZONING - R-60

OWNER:  
RICHARD F. WOODBURN  
11712 KAREN DRIVE  
POTOMAC, MD 20854  
299-5845

1-89013

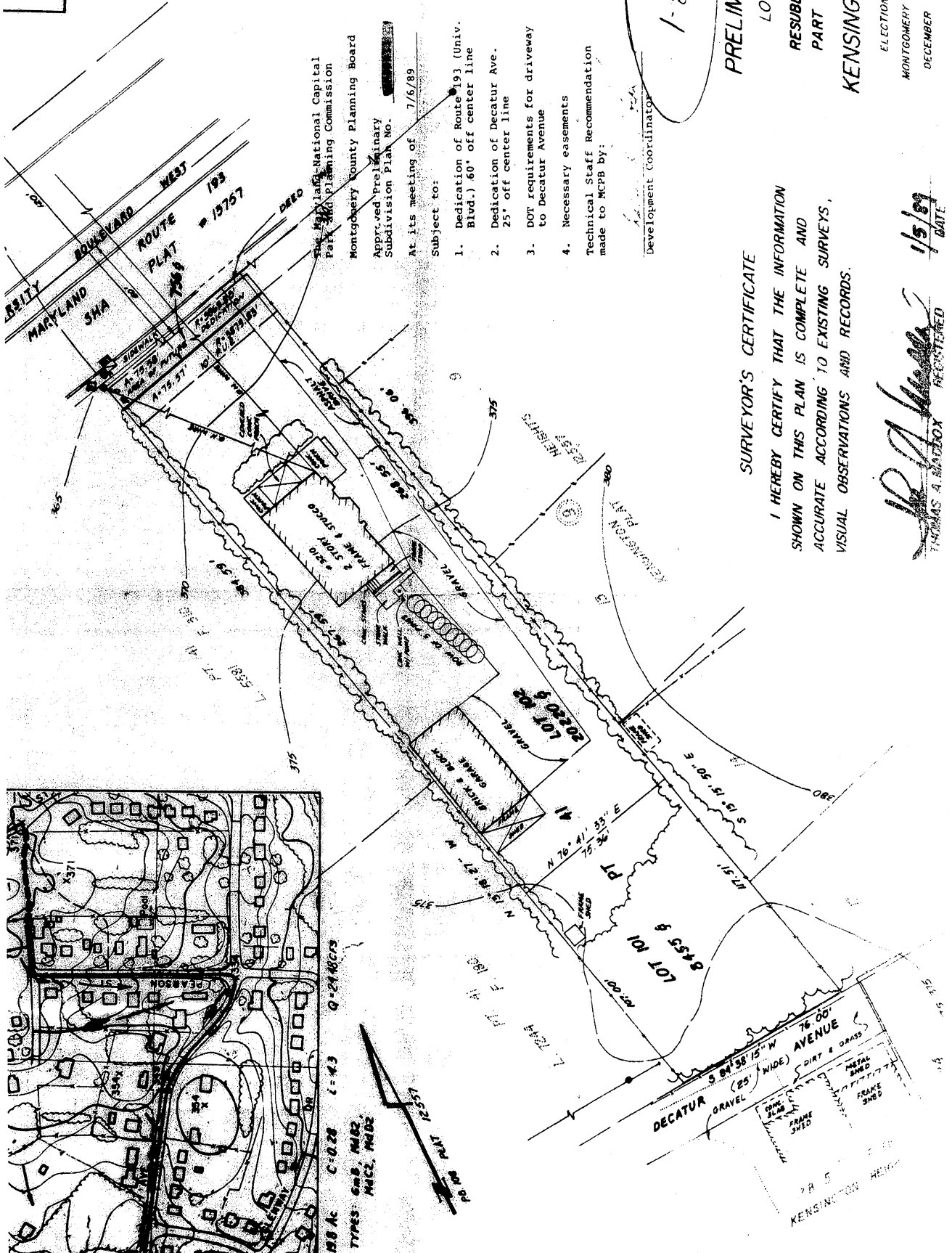
PRELIMINARY PLAN

LOTS 101 & 102

RESUBDIVISION OF  
PART OF LOT 41

KENSINGTON HEIGHTS

ELECTION DISTRICT No. 13  
MONTGOMERY COUNTY, MARYLAND  
DECEMBER 1989 SCALE 1" = 30'



At its meeting of 7/6/89  
Subject to:  
1. Dedication of Route 193 (Univ. Blvd.) 60' off center line  
2. Dedication of Decatur Ave. 25' off center line  
3. DOT requirements for driveway to Decatur Avenue  
4. Necessary easements  
Technical Staff Recommendation made to MCPB by:  
Development Coordinator

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE INFORMATION SHOWN ON THIS PLAN IS COMPLETE AND ACCURATE ACCORDING TO EXISTING SURVEYS, VISUAL OBSERVATIONS AND RECORDS.

*Thomas A. Madrox*  
THOMAS A. MADROX REGISTERED  
1/5/89 DATE

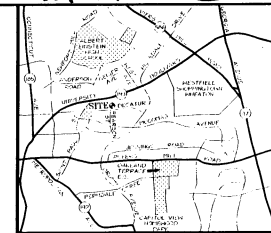


**TOPOGRAPHIC INFORMATION NOTES:**

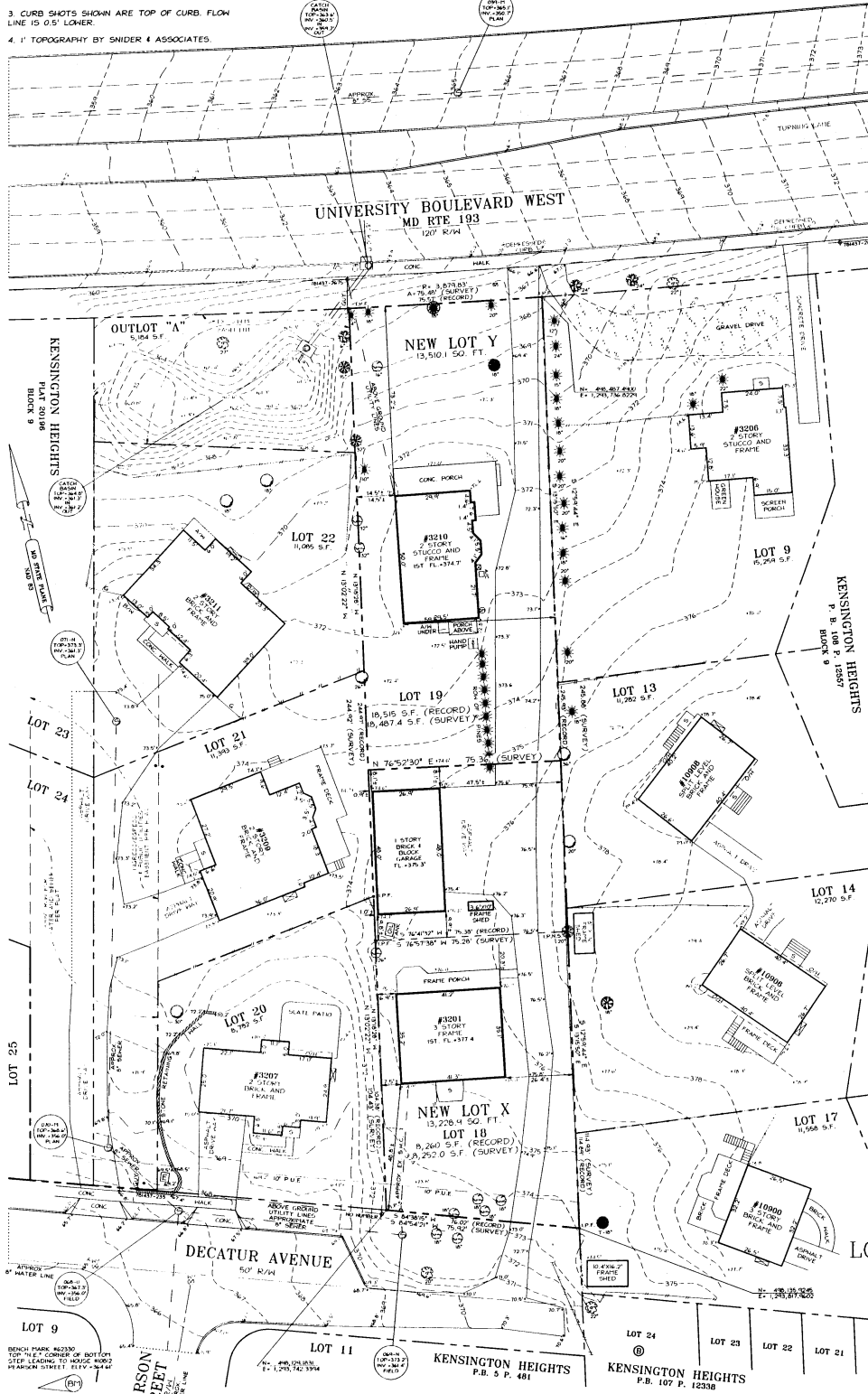
1. THE ELEVATIONS SHOWN HEREON HAVE BEEN ESTABLISHED BASED UPON HSSC VERTICAL DATUM OBTAINED FROM THE HSSC INTERNET GIS FOR CONTRACT NUMBER AS SHOWN ON HSSC 2007 SHEET 214N003. THE BENCH MARK SHOWN FOR THIS DATUM HAS BEEN ASSIGNED THE FOLLOWING ELEVATION: B.M. #2330 TOP "N.E." CORNER OF BOTTOM STEP LEADING TO HOUSE #1012 PEARSON STREET ELEVATION 364.61'.
2. THE TYPE AND NATURE OF ALL UTILITIES SHOWN HEREON HAVE BEEN ESTABLISHED BY ON-SITE OBSERVATION AND FIELD LOCATION. ANY UTILITIES SHOWN SHOULD BE CONSIDERED INCOMPLETE AND HAVE NOT BEEN REFERENCED OR VERIFIED WITH ANY UTILITY COMPANY AS-BUILT PLANS OR RECORDS EXCEPT AS INDICATED HEREON.
3. CURB SHOTS SHOWN ARE TOP OF CURB. FLOW LINE IS 0.5' LOWER.
4. TOPOGRAPHY BY SNIDER & ASSOCIATES.

**SEWER NOTES:**

1. THE LOCATION AND ELEVATION OF ANY SEWER OR WATER HOUSE CONNECTION SHOWN HEREON IS APPROXIMATE. CONTRACTOR SHOULD VERIFY LOCATION AND ELEVATION OF EXISTING OR PROPOSED S.H.C. PRIOR TO CONSTRUCTION TO VERIFY THAT A MINIMUM SLOPE OF 2% IS OBTAINED FROM HOUSE TO EXISTING SEWER.
2. THE LOCATIONS AND TOP ELEVATIONS SHOWN FOR SEWER MANHOLES HEREON HAVE BEEN ESTABLISHED BY THIS SURVEY. MANHOLE INVERTS SHOWN ARE PLAN OR FIELD AS INDICATED.



**VICINITY MAP**  
ADC MAP 37TH EDITION  
ADC MAP PAGE 36, GRID 2-E  
SCALE: 1" = 200'



**NEW LOT NOTES:**

- LOT X**
1. PROPOSED LOT AREA 13,228.4 SQ. FT. OR 0.3037 AC.
  2. EXISTING LOT AREA 8,250.50 SQ. FT. OR 0.1844 AC.
  3. PROPOSED LOT INCREASE 4,978.9 SQ. FT. OR 0.1143 AC.
- LOT Y**
1. PROPOSED LOT AREA 13,510.1 SQ. FT. OR 0.3101 AC.
  2. EXISTING LOT AREA 18,515.50 SQ. FT. OR 0.4250 AC.
  3. PROPOSED LOT DECREASE 5,004.9 SQ. FT. OR 0.1149 AC.

**ZONING INFORMATION NOTES:**

THE PROPERTY SHOWN HEREON IS ZONED R-60 (RESIDENTIAL). BUILDING RESTRICTION LINES HAVE BEEN TAKEN FROM TYPICAL R-60 ZONING CHARTS AND ARE SUBJECT TO VERIFICATION BY MONTGOMERY COUNTY ZONING AUTHORITIES.

**BUILDING RESTRICTION LINES:**

- FRONT B.R.L. 25'
- REAR B.R.L. 20'
- SIDE B.R.L. 8' ONE SIDES
- 18' TOTAL

PLAT RECORDED IN 1990

**TOPOGRAPHIC SYMBOLS:**

- AIR CONDITIONER
- CABLE TV JUNCTION BOX
- ELECTRIC TRANSFORMER
- FIRE HYDRANT
- GAS METER
- MAIL BOX
- POWDER POLE
- SANITARY SEWER MANHOLE
- STORM DRAIN MANHOLE
- WATER METER
- WATER VALVE

**TREE SYMBOLS:**

- APPLE TREE
- ASH TREE
- CEDAR TREE
- CHERRY TREE
- HOLLY TREE
- MAPLE TREE
- PINE TREE
- POPLAR TREE
- WALNUT TREE

**DATUM NOTE:**

THE INFORMATION SHOWN HEREON IS IN THE MARYLAND STATE PLANE NAD 83 DATUM BASED UPON HSSC TRAVERSE STATIONS 20225 AND 20210. RECORD INFORMATION WAS TAKEN FROM P.B. 157 PLAT 17789.

**SKETCH PLAN TO REVISE LOT LINE BETWEEN LOTS 18 & 19 BLOCK 9 KENSINGTON HEIGHTS**

#3201 DECATUR & #3210 UNIVERSITY BOULEVARD WHEATON (13th) ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND

**GENERAL NOTES:**

1. FLOOD ZONE "X" PER H.U.D. FLOOD INSURANCE RATE MAPS COMMUNITY PANEL NUMBER 240044-03700. FLOOD ZONE INFORMATION HAS BEEN TAKEN FROM AVAILABLE RECORDS AND IS SUBJECT TO THE INTERPRETATION OF THE ORIGINATOR.
2. PROPERTY IS SHOWN IN MONTGOMERY COUNTY TAX ASSESSMENT BOOK, MAP PAGE 462-51.
3. PROPERTIES ARE RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MD. LOT 18 IN LIBER 15264 AS FOLIO 304 LOT 13 IN LIBER 18356 AS FOLIO 531 AND ARE SHOWN IN PLAT BOOK 157 AT PLAT 17789.
4. CURRENT OWNER OF RECORD: CHRISTOPHER AND MARY CARTER 3210 UNIVERSITY BLVD, WEST KENSINGTON MD. 20895-1849
5. PREMISE ADDRESS: LOT 18 3210 DECATUR AVENUE KENSINGTON MD. 20895 LOT 19 3210 UNIVERSITY BLVD, WEST KENSINGTON MD. 20895-1849
6. I.P.F. INDICATES IRON PIPE FOUND. I.P.S. INDICATES IRON PIPE SET. I.P.N.S. INDICATES IRON PIPE NOT SET. IT FALLS IN TREE.

**SURVEYOR'S CERTIFICATE:**

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON HAS BEEN BASED UPON AN ACTUAL FIELD SURVEY, PERFORMED BY ACCEPTED METHODS, PURSUANT TO THE PLAT OF RECORD. PROPERTY CORNER MARKERS HAVE BEEN RECOVERED OR PLACED AS INDICATED AND VERIFIED TO BE IN RELATIVE AGREEMENT WITH THE RECORD INFORMATION AS SHOWN. THE INFORMATION SHOWN HAS BEEN DERIVED WITHOUT THE BENEFIT OF A TITLE REPORT, AND MAY NOT REFLECT ALL EASEMENTS OR ENCUMBRANCES AFFECTING THE SUBJECT PROPERTY.

DATE: \_\_\_\_\_  
JOSEPH E. SNIDER  
PROFESSIONAL LAND SURVEYOR  
MD. REG. #21224

**SNIDER & ASSOCIATES SURVEYORS**

20270 GOLDENROD LANE, SUITE 110  
GERMANTOWN, MARYLAND 20876  
301/948-5100 • Fax 301/948-1286

DRAFTING C.N.T.	COMPUTATIONS C.N.T.
PROJECT 09-25055	APPROVAL J.E.S.

CALL "MISS UTILITY" AT 1-800-257-7777  
FOR UTILITY LOCATION AT LEAST 48  
HOURS PRIOR TO BEGINNING CONSTRUCTION.

DATE	REVISIONS
4/17/2009	ADDED ADDITIONAL TREES PER CLIENTS REQUEST

Date: February 1, 2010

From: Christopher J and Mary Ann Carter (property owners)  
3201 Decatur Avenue, Kensington, MD 20895 (301) 933-4186

To: The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission

Re: Waiver request for Minor Subdivision in Kensington, Md. involving Lots 18 & 19 Block 9 in Kensington Heights

Honorable Planning Board members,

As long-time Montgomery County residents and owners of both residential properties involved in this petition, we request a resolution by the Planning Board approving a waiver from a single provision of section 50-35A governing minor subdivisions in the County, considering this request as a minor subdivision and allowing plat recordation to proceed. The singular provision at issue places a condition that "The total area of the adjustment does not exceed five percent of the combined area of the lots affected by the adjustment." We seek a simple lot line adjustment between our two properties representing a larger percentage than 5% of our combined land area, but request that it be considered a minor subdivision due to practical difficulties and unusual circumstances regarding the position and orientation of an existing outbuilding, as indicated in the attached sketch plan. We submit that this waiver is the minimum necessary to provide relief from the requirements, is not inconsistent with the purposes and objectives of the General Plan, and will not be in any way adverse to the public interest. This request is not based upon or likely to be used to establish a precedent for a resubdivision that may be filed for other properties located in the same block, subdivision, or neighborhood, and is consistent with all applicable zoning requirements.

On April 29, 1997 the Montgomery County Council approved legislation to enact a minor subdivision process to help streamline the development process for certain properties in situations where the full process is not needed. This request is consistent with that intent. In contrast with an opinion expressed by an M-NCPPC staff member in discussions, we submit that passing the 1997 legislation made the minor subdivision process a regular provision of the rules, and thus subject to the waiver provisions.

Through this request, no additional development will be enabled or is being requested. As a minor subdivision, no additional lots will be created and the proposed adjusted lot line is parallel with the original lot line and does not significantly change the shape or character of the lots involved. As evidenced by the recent survey and included sketch plan by Snider Associates, no existing easements will be affected, and no additional public improvements would likely be required by any reviewing agencies beyond those required for the original subdivision of Lot 19. The Planning Board can be confident that a resolution approving this waiver could not be construed to vary or modify the provisions of Chapter 59 of this Code, the road construction code, the building code, health laws or other ordinances or regulations of the County in letter or in spirit.

Further, though minor subdivision approvals are not specifically subject to the resubdivision criteria of Section 50-29(b)(2) of the Code, we have reviewed them and affirm that this request is not at variance with any of the Section 50-29 criteria. As evident in the attached drawings, the modified lots will be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood and subdivision. Indeed, currently lot 19 is the largest, and lot 18 is the smallest of the lots on the sketch plan. The modified lots will both be closer in size to adjacent lots, with the adjusted lot 19 no longer the largest, and lot 18 within 10% of the *average* of the resulting lots in the sketch plan area. In addition, the survey of the proposed adjustment area reveals the subject area has previously been fully developed by the outbuilding and pavement as indicated on the sketch plan and no additional development will be enabled or envisioned. In fact, the intent is to *avoid* the disruption of demolition and rebuilding of a re-oriented outbuilding. The survey also reveals no trees of conservation interest exist on the adjustment area. The Planning Board can be confident that with approval, there is no contraindication regarding forest and tree conservation, preservation of exceptional natural topography or environmentally sensitive areas, or a need for provisions for the prevention of soil erosion.

These adjacent properties, subject of a subdivision of lot 19 through an application approved by the Planning Board on December 14, 1989 (record file # 579-30), were subject to full compliance review by the Department of Transportation, Environmental Protection, and this Commission and Planning Board at that time. The original Lot 19 parcel contained a single family residence on University Boulevard West, and a separate outbuilding in the center of the large lot. Placement of that original subdivision line by the previous owner (and subdivision petitioner at the time) was established in such a way as to ensure that the newly created lot did not have a lone outbuilding, though that clearly would have resulted in a more even distribution of land between the resulting lots. The resulting Lot 19 is thus the largest lot in the sketch plan area, and Lot 18 is the smallest. Pursuant to that approved subdivision, the Carters purchased both properties and constructed a primary residence on the resulting new lot 18 which was completed in 1997, whereupon we occupied the home and occupy it today. The Carter family has lived in Kensington since 1984, and intends to continue to reside in the home on lot 18 for the foreseeable future. While we also own and have maintained the older original residence on lot 19 as a single family rental, we have continually used the outbuilding as if part of lot 18.

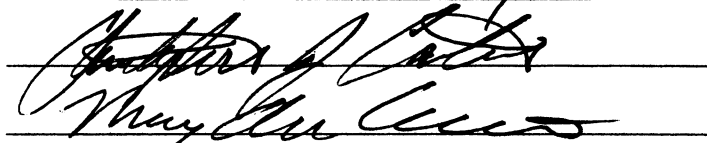
As depicted in the sketch plan, the two parcels are fully developed each with existing single family residences and the existing freestanding masonry garage and workshop outbuilding, as well as such pavement as necessary to provide suitable access from the respective road frontages. At issue is our family desire to remain residents in the house on lot 18, and to simply adjust the line between the two properties to more evenly apportion the land area of the two and to preserve our use of the outbuilding. The unusual circumstance is that the outbuilding constructed some long time past, presumably in the 1970s, sits

approximately at the border between the two properties, is oriented along the long axis of the parcels, and is a valuable and desirable feature of the property. Moving the property line to the 5 percent limit would bisect the outbuilding and present practical difficulties, resulting in disruptive demolition and loss of the desirable structure and creating an unnecessary erosion control project and more disruptive future construction of a replacement structure. Being a substantial masonry structure of brick, block and steel, moving and/or reorientation of the current building would not be cost effective or practical.

A favorable disposition by the Planning Board resulting in a suitable waiver resolution enables prompt and cost effective movement by the property owners to recordation as envisioned by the 1997 minor subdivision legislation, without compromising any public interest, statutes or codes, or in contradiction of any other's rights or interests. While we understand and endorse the setting of guideline constraint benchmarks such as say, a 5% limit, we believe the facts of this request including: the compliance with all other provisions within and beyond Section 50-35A; the unusual circumstances; the practical difficulty described; the fully developed condition of the properties; owner-occupied interests; and the declared vegetation stand status, are best served by waiving this single provision. We believe this is a minor subdivision in all other respects, and that simply moving this lot line does not warrant the resulting encumbrances, costs, and complexity on the requester, on the Commission staff, and on the Planning Board through the extensive process intended for protecting public interests impacted by major subdivisions involving substantial development and construction by commercial interests.

We propose that this aligns well with the minor subdivision intent, and the public interest will not be compromised by approving this request, and would not be better served by requiring the full subdivision process. We respectfully submit to the jurisdiction and prudence of the Planning Board to make that judgment.

Dated this: 4<sup>th</sup> day of February, 2010



Christopher J and Mary Ann Carter (property owners)  
3201 Decatur Avenue, Kensington, MD 20895  
(301) 933-4186

Attached: Sketch Plan and Area Map