



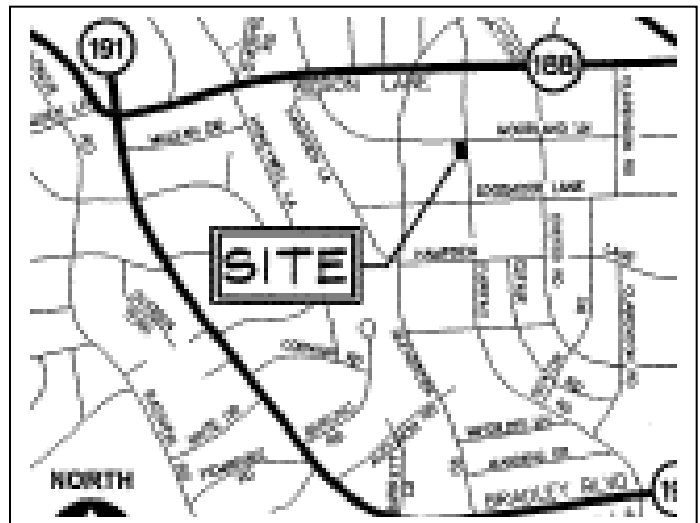
Edgemoor Lot 16, Block 8, Subdivision Record Plat, 220111080

- Cathy Conlon, Supervisor - DARC, catherine.conlon@montgomeryplanning.org, 301-495-4542
- Mark Pfefferle, Acting Chief - DARC, mark.pfefferle@montgomeryplanning.org, 301-495-4730
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Completed: 10/28/11

Description

- Subdivision Plat No. 220111080, Edgemoor
- 5300 Moorland Lane west of Fairfax Road
 - 0.38 acre tract zoned R-90 in the Bethesda Chevy Chase Master Plan
 - Request for a waiver of the Subdivision Regulations pursuant to Section 50-38(a)(1) to permit recordation of two parts of previously platted lots into one lot as a minor subdivision
 - Application submitted 4/11/11



Summary

Staff recommends **denial** of the waiver request.

- One of the subject parts of lots was created after June 1, 1958, and the Subdivision Regulations do not permit post-June 1, 1958 parts of lots to be consolidated by minor subdivision.
- The applicant's request for a Subdivision Regulations waiver to permit the post-June 1, 1958 part of a lot to be platted under minor subdivision does not include sufficient justification for a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirement to submit a preliminary plan for approval prior to the submission of the record plat.

SITE AND PROJECT DESCRIPTION

The subject property consists of two parts of previously platted lots. These parts were created in two steps by deed action after the original record lots were platted. The original lots, lots 4 and 5 in Block 8 of the Edgemoor Subdivision were recorded by plat in 1924 (see Figure A). In 1937, the northern 150' of both lots were conveyed by deed creating parts of the originally platted lots (see Figure B). In 1965, a 10' wide strip of land on the eastern edge of the northern part of lot 4 was conveyed by deed to the owner of the northern part of lot 5, creating a third part of lot 4, and the remaining land was platted (see Figure C). This third part of lot 4 and the northern part of lot 5 are the subject of this application. The current owner would like to combine these two parts of lots and create a new lot by subdivision record plat. The property is 0.38 acres in size and is zoned R-90. The property contains a single family dwelling which currently crosses the existing line between the two parts of lots, and will remain on the new lot.

Figure A. Record Plat for Lots 4 and 5, Block 8, Edgemoor

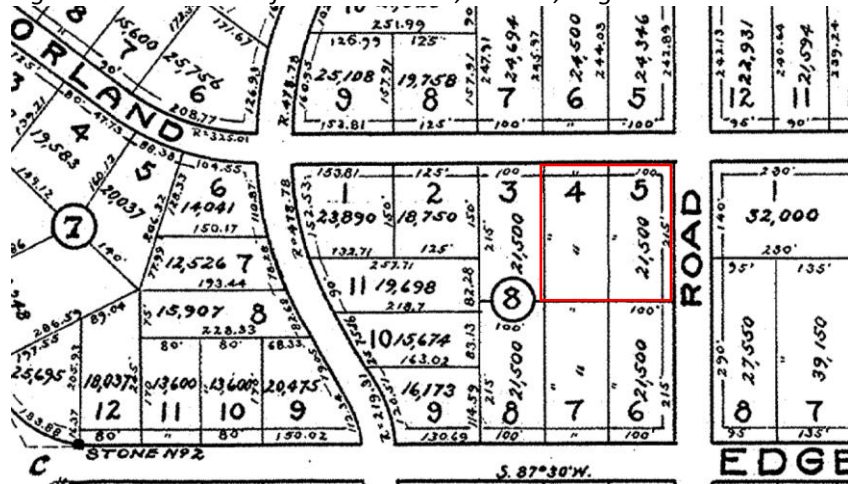
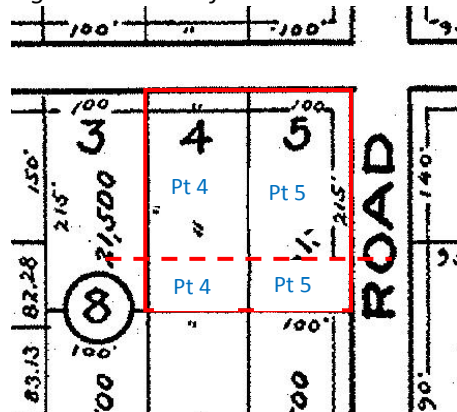
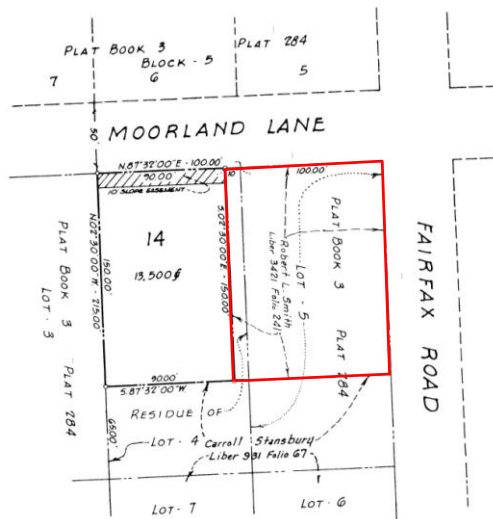


Figure B. Parts of Lots Created in 1934



Not to scale.

Figure C. Part of Lot 4 Created in 1965



CITIZEN NOTIFICATION

Staff has notified adjacent and confronting property owners as well as community groups and civic associations of this public hearing, as required.

BACKGROUND AND EXPLANATION OF WAIVER REQUEST

The Subdivision Regulations generally specify that whenever land in the county is subdivided for any purpose, a plat of such subdivision must be recorded in the land records of the county. They further specify that, with certain exceptions, the Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, unless the dwelling or structure would be located on a lot or parcel of land which is shown on a recorded plat. They also prohibit, with certain exceptions, the issuance of a building permit for construction of a dwelling or other structure which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot. As a result of these requirements, a building permit could not currently be issued for new construction (major renovation or replacement of the existing dwelling) on this property. For this reason, the applicant wishes to combine the parts of lots and create a new platted lot.

The Subdivision Regulations specify a process for creating new lots that includes approval of a preliminary plan followed by approval of a record plat. In certain minor subdivision instances, the preliminary plan step may be skipped and only a record plat needs to be approved. One of the minor subdivisions that qualify for platting without a preliminary plan is the creation of a lot from a part of lot that was created prior to June 1, 1958. The part of lot 5 that is included in the current application could be platted under this provision. Unfortunately, the part of lot 4 included in this application was created in 1965 and it does not qualify. Thus, a preliminary plan is required prior to platting, but the applicant is requesting that the Board waive the requirement that the part of lot be pre-June 1, 1958, and permit both pieces of land to be platted under minor subdivision.

ANALYSIS OF THE WAIVER REQUEST

The Planning Board has the authority to grant a waiver 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, dated July 6, 2011 (Attachment A), the property owners’ representative requests that the Planning Board waive the requirement that the property proceed through the preliminary plan process because they believe this situation meets the purpose and intent of the minor subdivision provisions. This conclusion is based on the fact that the existing dwelling lawfully exists on the two parts of lots today, and it is not being changed as part of this application. As such, the applicant believes the lengthy and costly preliminary plan approval process is not justified for this application. The applicant believes that going through minor subdivision is the most efficient process for all parties concerned, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest.

Staff Position

The applicant’s request is based on the justification that the time and expense involved in preliminary plan review for this case would constitute a practical difficulty that prevents achieving full compliance with the requirement. This justification is not sufficient. Although time and expense are associated with the review of a preliminary plan, these factors alone do not prevent one from being submitted. Instead, granting a waiver should be based on a finding that having to commit either time or money would create a hardship that is unique to this case. The applicant has provided no evidence to support that finding, and therefore, a waiver in this case is not justified.

Although this case involves a situation that may be appropriate for inclusion as a minor subdivision in the regulations, it is currently not included. Instead of granting a waiver that is not justified, the minor subdivision provisions should be expanded to include it. Such a provision has been drafted and is anticipated to be introduced at the county council in the near future. The subject plat application should remain on hold until either a preliminary plan is approved, or the subdivision regulations are amended to permit it to be reviewed as a minor subdivision.

In conclusion, staff recommends denial of the requested subdivision waiver based on the fact that the applicant has not provided evidence that practical difficulties or unusual circumstances exist that prevent the submittal of a preliminary plan.

ATTACHMENTS

Attachment A – Applicant’s July 6, 2011 Waiver Request



ENGINEERING

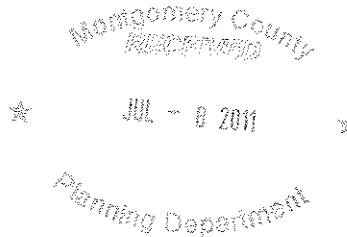
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July 6, 2011

Maryland - National Capital
Park and Planning Commission
Development Review Division
8787 Georgia Avenue
Silver Spring, Maryland 20910



Attn: Stephen Smith

Re: **CAS Job No. 11-095**
Part of Lot 5 & Part of Lot 4, Block 8, Edgemoor
5300 Moorland Lane
Subdivision Waiver Request
MNCPPC File No 220111080.

Dear Mr. Smith,

Pursuant to our conversations recently with you and Cathy Conlon, this letter is to serve as the Subdivision Waiver Request for part of the above referenced property. As you know the subject property consists of two parcels, one identified as Part of Lot 5 and the other as Part of Lot 4. The owner has submitted a minor subdivision request in order to re-plat the property so that it will conform fully with Montgomery County's Subdivision Regulations. We understand you have agreed to plat the Part of Lot 5 as a minor subdivision, under the pre-1958 lot provision of Section 50-35A(a)(3), but have concerns about the Part of Lot 4 meeting the precise provisions of that section. To the extent the part of Lot 4 does not conform with the precise provisions of Section 50-35(A)(a)(3), we believe it can and should be approved as part of the minor subdivision process under the provisions of Section 50-38 that allow for a waiver of the Subdivision Regulations.

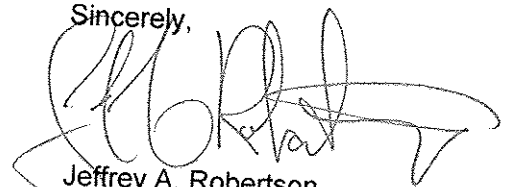
In accordance with Section 50-38 of the Subdivision Regulations, the board may grant a waiver for the requirements of the this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent compliance with the requirements from being achieved and that the waiver 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.

More specifically, we believe the platting of this entire property meets the purpose and intent of the minor subdivision regulation provisions. Although we have not been able to produce evidence that the Part of Lot 4 was the result of a pre-1958 deed, there is ample evidence that the combination of Part of Lot 5 and Part of Lot 4 has existed for decades in its present configuration. At some time many years ago, like many other properties in the Edgemoor subdivision, the property owners created building lots that sometimes included parts of an adjoining record lot. The subject property totals 16,500 square feet in area (the combination of Part of Lot 5 and Part of Lot 4) and substantially exceeds the minimum lot size requirements in the zone. More importantly, not only has the property existed in this configuration for many years, so too has the existing house (constructed in 1918) which itself crosses the prior lot line

between Part of Lot 5 and Part of Lot 4. The owner desires to record this property as a single lot in order to ensure that the property is financeable and saleable. This also meets the desires of the Park and Planning Commission to have record lots reflect actual ownership and development conditions. Finally, there is no benefit to proceeding through the lengthy and costly Preliminary Plan of Subdivision process. That process looks at issues in terms of the new development of a property. In this case, however, the property currently is developed and will remain in the same configuration as it has for many years. A waiver to allow the Part of Lot 4 to be included in the minor subdivision approval for Part of Lot 5 is not inconsistent with the purposes and objectives of the General Plan and allowing the applicant to use the minor subdivision process for both Part of Lot 5 and Part of Lot 4 is the most efficient process for all parties concerned. There also will be no adverse impact on the public interest.

We hereby request your preparation of a staff report and scheduling of a Planning Board Hearing as soon as possible. Should you have any questions, or require any additional information, please do not hesitate to contact me directly.

Sincerely,



Jeffrey A. Robertson
Senior Project Manager

cc: L. Mann
R. Harris