



## Bounding Bend, Preliminary Plan No. 120130030



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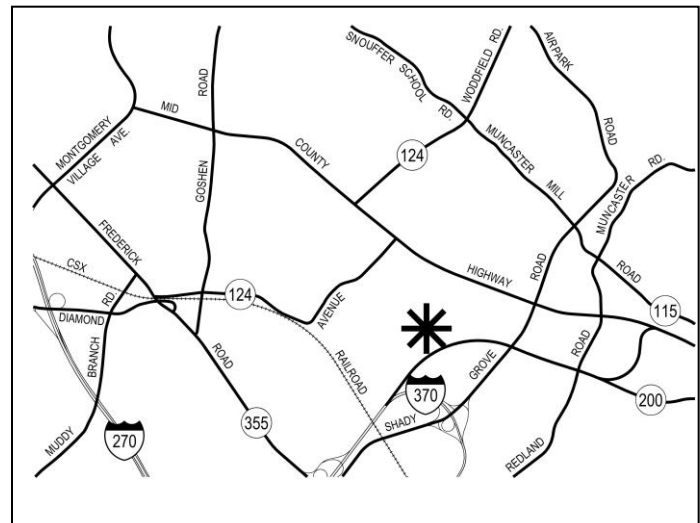


Glenn Kreger, Chief, Area 2 Division, [Glenn.Kreger@montgomeryplanning.org](mailto:Glenn.Kreger@montgomeryplanning.org), 301-495-4653

Completed: 11/1/13

### Description

- Request for resubdivision of one lot (Parcel 331) and Outlot D into two lots. One new single-family detached dwelling is proposed;
- Preliminary Forest Conservation Plan (PFCP) and Tree Variance;
- Location: 7915 Bounding Bend Court on 1.01 acres of land;
- Current Zoning: R-90 in the Shady Grove Sector Plan;
- Applicant: Kathleen Guinane & Robert Cunningham;
- Filing Date: September 27, 2012



### Summary

- Staff recommends approval of Preliminary Plan 120130030 and associated Preliminary Forest Conservation Plan (PFCP) and tree variance with conditions;
- Staff is recommending approval of Proposed Lot 2 without frontage, pursuant to Section 50-29-(a)(2) of the Subdivision Regulations;
- Staff is recommending a waiver of the resubdivision criteria for Proposed Lot 2, pursuant to Section 50-38 of the Subdivision Regulations, to provide relief from one of the seven Resubdivision Criteria (street frontage) found within 50-29(b)(2) of the Subdivision Regulations.

The subject property ("Property") is located at the cul-de-sac terminus of Bounding Bend Court. The Property is described as Parcel 331 and Outlot D, of the Mill Creek South Subdivision. The Property, comprising approximately 44,000 square feet of land, is zoned R-90 and improved with a two-story, farm house built in 1923. The Applicant, who resides at the Property, is proposing a resubdivision of the property into two lots. The existing home will remain and one new home will be built. If approved, the existing house on Parcel 331 (Lot 2 if approved) will have no street frontage and will access the street using the common driveway of the other proposed lot (Lot 1). Currently, Parcel 331 has no frontage and driveway access is provided through Outlot D. The Planning Board can approve up to two lots without frontage on a private driveway or private street per Section 50-29(a)(2).

Since Outlot D is a lot recorded by plat, this application is considered a resubdivision, and a finding that the proposed lots are of the same character as existing lots in the neighborhood is necessary for approval. Staff is recommending a waiver of the resubdivision criteria for proposed Lot 2, pursuant to Section 50-38 of the Subdivision Regulations, to provide relief from one of the seven Resubdivision Criteria (street frontage) found within 50-29(b)(2) of the Subdivision Code.

This application is also subject to the Forest Conservation Law and the submitted PFCP provides the minimum required reforestation and mitigation on- and off-site. Because this project will not require a Site Plan, the Applicant must submit a Final Forest Conservation Plan to be reviewed and approved by Staff prior to the record plat approval.

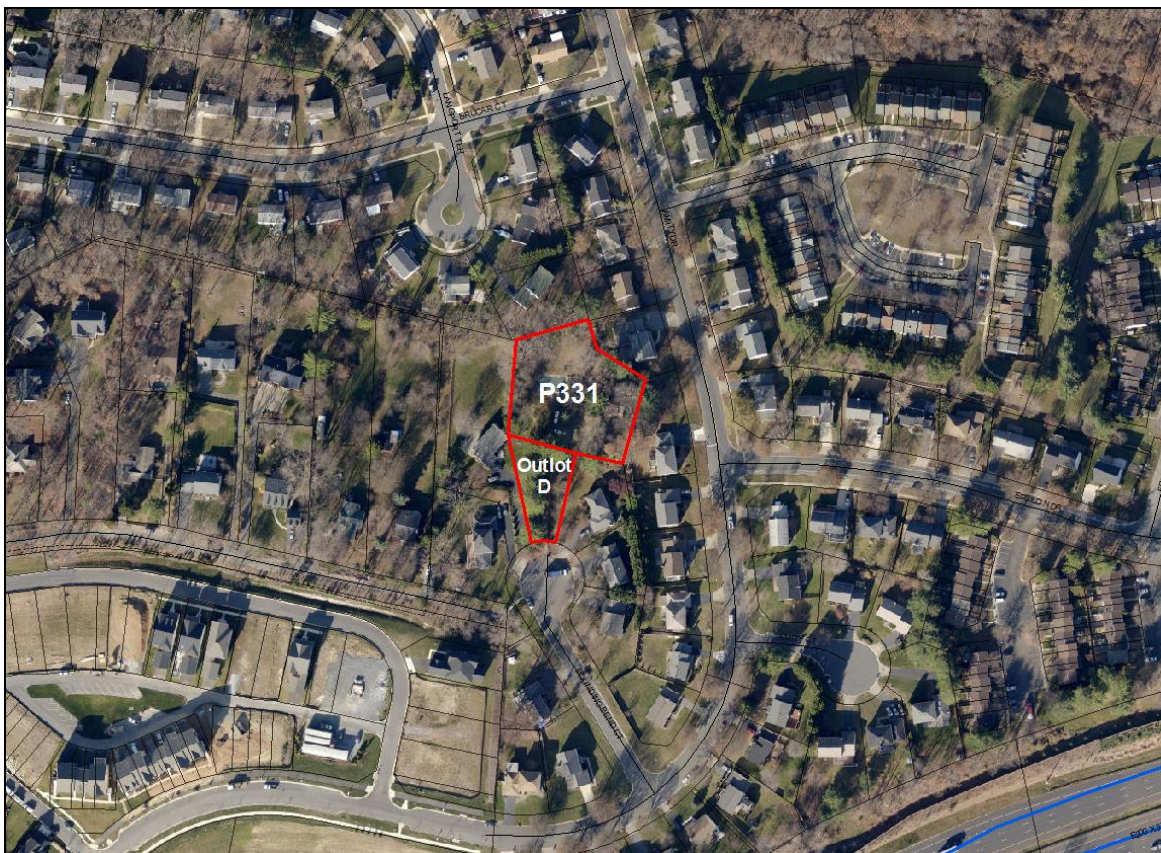
## **RECOMMENDATION**

Staff recommends Approval of Preliminary Plan 120130030, with conditions:

1. This Preliminary Plan is limited to two residential lots.
2. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to recordation of the Plat.
3. The impacts to tree #13 may not exceed 12% of the critical root zone as shown on the Preliminary Forest Conservation Plan. This includes any house location.
4. The impacts to tree #14 may not exceed 14% of the critical root zone as shown on the Preliminary Forest Conservation Plan. This includes any house location.
5. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 12, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the MCDOT letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to recordation of plat, the Applicant must satisfy provisions for access and improvements as required by MCDOT.
7. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter dated June 28, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must construct a five-foot wide sidewalk with a green panel along the Bounding Bend Court frontage, unless construction is waived by the Montgomery County Department of Permitting Services (MCDPS).
9. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
10. The Property is within the Gaithersburg High School Cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary school level at the applicable unit rates for any building permit issued for a new residential unit. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

## SITE DESCRIPTION

The Property is located at 7915 Bounding Bend Court within a cul-de-sac terminus adjacent to the Town of Washington Grove in the Shady Grove Sector Plan area. The Property is approximately 44,000 square feet of land consisting of Parcel 331 (34,000 sq. ft.) and Outlot D (10,000 sq. ft.). The Property is located in the R-90 zone and currently contains one existing single family home, an in-ground swimming pool, and shed. Parcel 331, which contains the existing farm house, currently has no street frontage. Currently, access to the street is via a graveled 10-foot wide driveway through Outlot D, which has approximately 39 feet of frontage on Bounding Bend Court. The surrounding land uses are predominantly residential houses located in the R-90 Zone. The site's topography has an upward slope from the curb of Bounding Bend Court. The site contains no forest, wetlands, streams, floodplains, or stream valley buffers and is not located in a Special Protection Area.



**Figure 1. Vicinity Map**

The Applicant proposes to resubdivide the existing lot (Outlot D) and Parcel 331 into two lots for one new one-family detached dwelling with one existing dwelling to remain. Lot 1 is proposed to be 25,018 square feet, and Lot 2 is proposed to be 19,087 square feet. The existing dwelling will remain on the proposed Lot 2. Vehicular access to the lots will be provided by a shared driveway from Bounding Bend Court. The existing house on the proposed Lot 2 will have no street frontage and will access the street using the driveway of the other proposed lot (Lot 1). An ingress/egress easement will be established on the record plat to guarantee continued access and, if necessary, future connection of utilities for the proposed Lot 2 across proposed Lot 1.





## COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. As of the date of this report, Staff is not aware of any citizen concerns regarding the proposed resubdivision. The Applicant submitted a letter, signed by several neighbors, stating no objection to the proposed Preliminary Plan. (See Attachment 7.)

## ANALYSIS AND FINDINGS

### Master Plan

The Property is located in the Approved and Adopted (2006) *Shady Grove Sector Plan* area. The Sector Plan confirms the existing R-90 Zone for the Property. No specific recommendations are made for the site. The Sector Plan supports protecting residential communities, while providing sidewalks, bike routes, and traffic calming measures in residential neighborhoods (p.21). Amity Drive, which is east of the proposed development, is recommended to connect through the Piedmont Crossing property to the west. Further, Amity Drive (B-12) is identified as a Class III bikeway, which is an unmarked lane. The proposed development will add a new residential dwelling to the area built to the development standards of the zone, which is consistent with the Sector Plan.

### Transportation

The proposal will generate one additional (or two total) peak-hour vehicular trips within both the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the proposed land use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

For the Transportation Policy Area Review (TPAR) test, the proposed land use will generate less than three (3) new weekday peak-hour trips. Therefore, the Applicant is not required to pay the transportation impact tax to satisfy the TPAR test.

#### Sector-Planned Transportation Demand Management

Although the Property is located within the 2006 *Shady Grove Sector Plan* area and the Greater Shady Grove Transportation Management District (TMD), a traffic mitigation agreement is not required to assist the County in achieving and maintaining the Sector Plan's transit ridership goal for this small residential development.

#### Sector-Planned Roadway and Bikeways

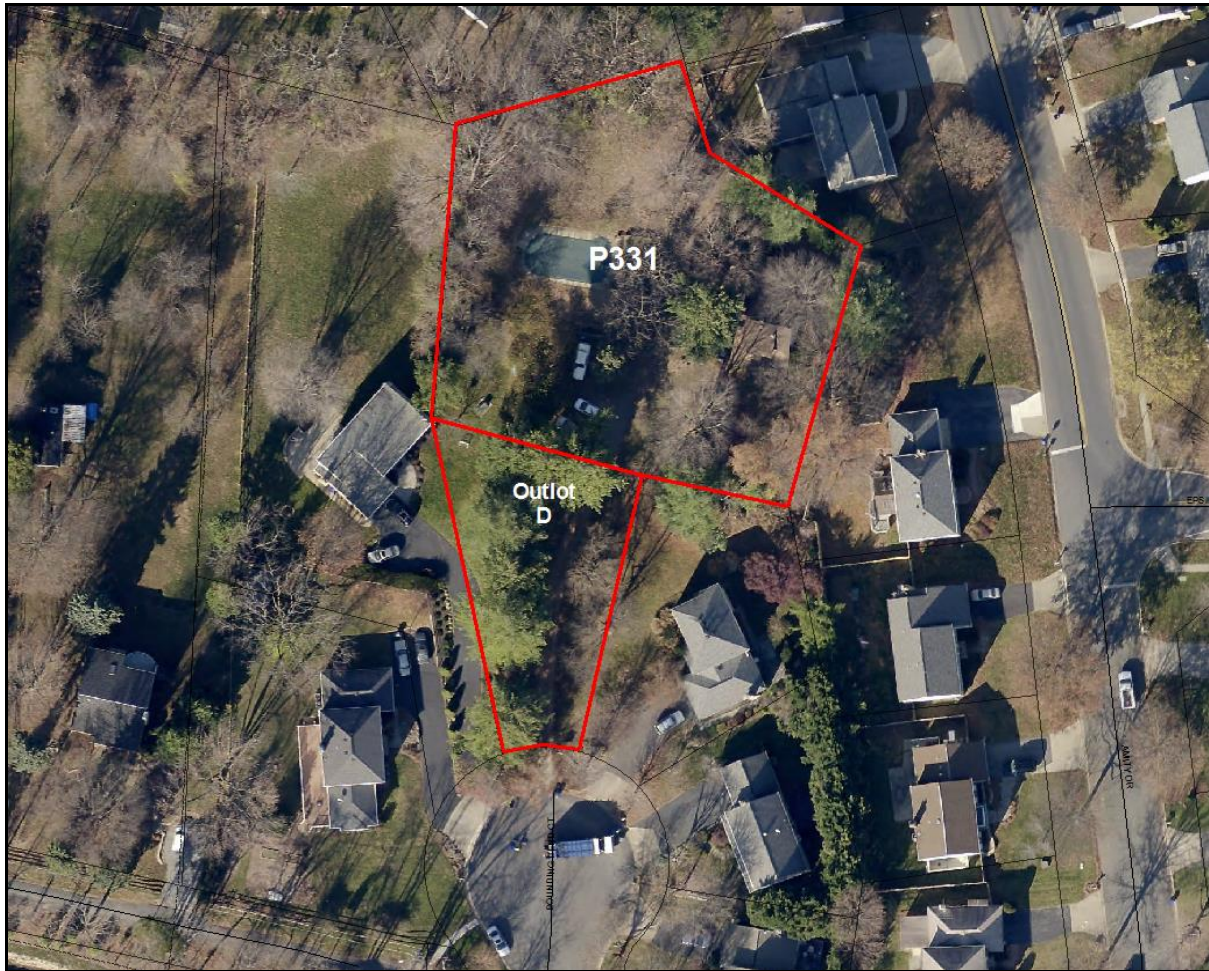
Bounding Bend is a secondary residential street with a 60-foot wide right-of-way that is not listed in the *Shady Grove Sector Plan*. The *Sector Plan* and the 2005 *Countywide Bikeways Functional Master Plan* do not designate bikeway along Bounding Bend Court.

#### Available Transit Service

Transit service is not available along Bounding Bend Court. The nearest transit service (5 total Ride On routes) is available along Shady Grove Road, Midcounty Highway, and Washington Grove Lane.

### Pedestrian Facilities

Bounding Bend Court does not have sidewalks currently. However, under the Road Code's Standard 200.01, a 5-foot-wide sidewalk with a 10-foot wide green panel along this secondary residential street that crosses the driveway at-grade is required. The Montgomery County Department of Permitting Services (DPS) may waive this requirement if the Applicant pays DPS a fee in lieu of constructing the sidewalk.



**Figure 3. Aerial Map**

### Other Public Facilities and Services

This area is served by existing public facilities, including roads, water, sewer, utilities, and emergency services. Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The application meets the Montgomery County Fire and Rescue Service requirements for access, and police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. The Property is located in the Gaithersburg High School Cluster. Under the FY2013 Annual School Test, residential development in this cluster is required to make a School Facility Payment at the elementary school level.

## **Environment**

### Environmental Guidelines

As depicted on the approved Natural Resource Inventory/Forest Stand Delineation (#420112100) approved on July 22, 2011, the site contains no forest, wetlands, streams, floodplains, or stream valley buffers and is not located in a Special Protection Area. The proposed project is in compliance with M-NCPPC's *Environmental Guidelines*.

### Preliminary Forest Conservation Plan

This Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code), and a Preliminary Forest Conservation Plan (PFCP) has been submitted for Planning Board approval (Attachment 4). The PFCP proposes no forest clearing on-site; therefore, a planting requirement of 0.15 acres for this project. The Applicant proposes to meet the 0.15-acre planting requirement by purchasing credits in an approved off-site forest bank.

### Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. These include trees that measure 30 inches or greater DBH; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to these trees, including disturbance within the critical root zone (CRZ) of a subject tree, requires a variance. An application for a variance must provide written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request on November 5, 2012, for the impacts to specimen trees as depicted in Figure 4 and on the attached PFCP (Attachment 4). The Applicant is requesting a variance to impact the critical root zones (CRZ) of two specimen trees greater than 30" diameter at breast height (DBH) that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law. These two trees include a 48" DBH red maple (tree #13) and a 32" DBH silver maple (tree #14).

### **Unwarranted Hardship Basis**

As per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. In this case, the unwarranted hardship is caused by Applicant's desire to subdivide the existing parcel into two buildable lots. Due to the configuration of the Property and given that there is an existing house (to be preserved) on Parcel 331, there is only one suitable design configuration to divide the property into two lots. In order to provide a "hammerhead" turnaround at the end of the single driveway as required by Montgomery County Fire & Rescue Service and construct a new house on Lot 1, an existing in-ground swimming pool will be removed. Thirteen percent of the CRZ of tree #13 will be impacted by the installation of the proposed house and 26% of the CRZ of tree #14 will be impacted by extension of the gravel driveway and removal of the existing frame deck on-site. In order to reduce the CRZ impact to tree #14, the parking area is proposed to be a gravel surface laid on existing grade. Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to consider a variance request.



**Figure 4. Specimen trees with critical root zones circled in blue that are located within the northern portion of the subject site.**

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board, in order for a variance to be granted.

**Variance Findings** - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *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 removal of the swimming pool, framed deck, and location of the proposed house would cause impacts to the CRZ trees #13 and #14 in order to subdivide the existing parcel into two buildable lots. Demolishing the swimming pool and frame deck as well as providing an adequate gravel parking area for the existing house will impact the specimen trees (#13 and #14). Due to the constraints of the property, in staff's opinion, granting the variance will not confer a special privilege on the Applicant.



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

The requested variance is based on the layout of the existing buildings on-site, the driveway configuration to meet the Montgomery County Fire and Rescue Service requirements, and placement of stormwater management facilities as required by Montgomery County Department of Permitting Services, rather than on conditions or circumstances which are the result of actions by the Applicant.

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

Staff concurs that the requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

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

Because the specimen trees are not proposed for removal and that the specimen trees are not located within an environmental buffer or within a Special Protection Area, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

**Mitigation for Trees Subject to the Variance Provisions** – Because the Applicant proposes to disturb less than 30% of the CRZs of each of the two specimen trees and to provide tree protection measures, Staff is recommending no additional mitigation for this variance request.

**County Arborist's Recommendation on the Variance** - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on November 9, 2012. On November 28, 2012, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation.

#### **Variance Recommendation**

Staff recommends that the variance be granted.

#### **Stormwater Management**

DPS issued a letter accepting the Stormwater Management Concept for the Bounding Bend site on June 28, 2013 (Attachment 2). The stormwater management concept proposes to meet required stormwater management goals via two landscape infiltration practices, a bioswale and a drywell.

Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report. The Variance approval is assumed in the Planning Board's approval of the Preliminary Forest Conservation Plan.

### **Compliance with the Subdivision Regulations and Zoning Ordinance**

The application has been reviewed for compliance with Chapter 50 of the Montgomery County Code, the Subdivision Regulations. The application meets all applicable sections, including the requirements for resubdivision, as discussed below. The lots meet all the dimensional requirements for width, and setbacks in the R-90 zone as specified in the Zoning Ordinance. One of the lots will meet the frontage requirements of the zone, and for the second lot, staff is recommending approval of a lot without frontage pursuant to Section 50-29(a)(2) and a 50-38 waiver of the frontage criteria of Section 50-29(b)(2). A summary of this review is included in the table below.

*Zoning Table for the R-90 Zone*

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposed for Approval by the Preliminary Plan</b>
Minimum Lot Area	9,000 sq. ft.	25,018 sq. ft. (Lot 1) 19,087 sq. ft. (Lot 2)
Minimum Lot Width	75 ft.	75 ft. minimum
Minimum Lot Frontage	25 ft.	39 ft. (Lot 1) 0 ft. (Lot 2) <sup>1</sup>
Minimum Setbacks:		
Front	30 ft.	Must meet minimum <sup>2</sup>
Side	8 ft. / 25 ft. total	Must meet minimum <sup>2</sup>
Rear	25 ft.	Must meet minimum <sup>2</sup>
Maximum Height	2.5 stories or 35 ft. to roof peak or 30 ft. to mean height	May not exceed maximum <sup>2</sup>

<sup>1</sup> Per Section 50-29(a)(2)

<sup>2</sup> As determined by MCDPS at the time of building permit.

Per Section 50-29(a)(2), in exceptional circumstances, the Board may approve not more than two lots on a private driveway, provided that such access is adequate to serve the lots by emergency vehicles, for installation of public utilities, and is accessible for other public services, and is not detrimental to the future subdivision of adjacent lands. As proposed, Lot 2 does not have direct frontage on a public street, but is proposed to use the current driveway as a shared access point with proposed Lot 1.

Parcel 331 is the last remaining unplatted parcel in the immediate vicinity. It is surrounded entirely by lots recorded by plats, and access is limited to Outlot D. Even if the Applicant were to apply to record Parcel 331, the Planning Board would be approving a lot without frontage, and would have to make a similar finding. In the case of this subdivision, staff believes the proposed 20-foot driveway with a hammerhead turnaround area for emergency vehicles and a 10-foot wide public utility easement will be adequate to serve the lots by emergency vehicles, installation of public utilities and other public services, and is not detrimental to the future subdivision of adjacent lands.

## **Conformance with Section 50-29(b)(2)**

### **A. Statutory Review Criteria**

In order to approve an application for resubdivision, the Planning Board must find that the proposed lot(s) comply with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

**Resubdivision.** Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall 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 or subdivision.

### **B. Neighborhood Delineation**

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "Neighborhood" for evaluating the application. In this instance, the Neighborhood selected by the applicant, and agreed to by Staff, consists of twenty-nine lots. The Neighborhood includes platted lots in the R-90 Zone in the vicinity of the Property. The surrounding lots were developed under the R-90 Density Control method, which allows for smaller than the otherwise minimum 9,000-square foot lot size typically required in the R-90 Zone, provided the overall density of development within a subdivision remains unchanged, and any resubdivision must not result in a reduction of the average lot size of the subdivision. In this case, approximately nine lots are slightly smaller than 9,000 square feet. The remaining lots are of typical size found in the R-90 standard method zone. (See Attachment 8, Data Table.) Staff would typically exclude lots from a neighborhood when they were developed under different zoning or method of development. In this case, since the majority of the lots are of typical size found in the R-90 Zone, Staff finds the lots within the defined Neighborhood are acceptable, and the Planning Board can approve the resubdivision because it does not reduce the average lot size per Section 59-C-1.429 of the Zoning Ordinance. The Neighborhood does not contain any commercial uses and all residential lots share similar configurations, shape, and size and provide an adequate sample of the lot and development pattern of the area is below:



*Defined Neighborhood Map*

### **C. Analysis**

#### Comparison of the Character of Proposed Lots to Existing

In performing the analysis, the above-noted resubdivision criteria were applied to the Neighborhood. The proposed lots are of the same character with respect to the resubdivision criteria as other lots within the Neighborhood. Therefore, the proposed resubdivision complies with the criteria of Section 50-2(b)(2). As set forth below, the attached summary and graphical documentation support this conclusion:

**Frontage:** In the Neighborhood of 29 existing lots, lot frontages range from 26 feet to 153 feet. Eighteen of the lots have frontages of 75 feet or less. Eleven lots have frontages of 77 feet or greater. Sufficient frontage of 50 feet is necessary for the creation of two lots. Proposed Lot 2 will have zero feet of frontage and will access the street using the common driveway of proposed Lot 1 which will have a street frontage of 39 feet.



As discussed below, staff believes that unusual circumstances exist that prevent full compliance with the requirements of the Subdivision Code, therefore, staff recommends a waiver under 50-38(a)(1) of the Subdivision Regulations for proposed Lot 2.

**Alignment:** Twelve of the 29 existing lots in the Neighborhood are perpendicular in alignment, 12 are radial and the remaining 5 are corner lots. The proposed lots include a radial alignment for Lot 1 and Lot 2 and both are similar in character as existing lots with respect to the alignment criterion.

**Size:** The size of the lots in the Neighborhood range from 8,063 square feet to 28,540 square feet. Nine of the existing lots are 9,630 square feet or smaller. Fourteen of the lots are 9,713 square feet to 12,402 square feet and 6 lots are 12,473 square feet to 28,540 square feet. The largest lot at 28,540 square feet (Lot 98) is adjacent to proposed Lot 1. At 25,018 and 19,087 square feet, the proposed lots will fall within the range of the existing lots in the delineated neighborhood. Therefore, the proposed size of Lots 1 and 2 are similar in character with the existing lots in the Neighborhood.

**Shape:** Fourteen existing lots in the Neighborhood are rectangular, and fifteen are irregular. The irregular shape of the proposed lots will be in character with shapes of the existing lots in the Neighborhood.

**Width:** Lot widths in the Neighborhood range from 75 feet to 165 feet. The lot widths for the most part are evenly dispersed within the range. Sixteen lots are 75 feet to 85 feet in width and 13 lots are greater than 85 feet wide. Therefore, the proposed lots, at 75 and 85 feet wide, will be in character with existing lots in the Neighborhood with respect to width.

**Area:** The buildable area of lots in the Neighborhood ranges from 2,339 square feet to 16,211 square feet. Proposed Lot 1 will have a buildable area of 10,212 square feet. Proposed Lot 2 will have a buildable area of 14,056 square feet. The proposed lots falls within the range and will be of the same character with existing lots in the Neighborhood.

**Suitability for Residential Use:** The existing and the proposed lots are zoned residential and the land is developed with residential use. The lots are, therefore, in character with the rest of the Neighborhood.

#### **D. Subdivision Regulations Waiver 50-38(a)(1)**

As noted above, proposed Lot 2 will not meet the dimensional characteristics with respect to street frontage for all lots within the Neighborhood. Staff recommends a Subdivision Regulation Waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations to provide relief from one of the seven Resubdivision Criteria (street frontage) found within 50-29(b)(2) of the Subdivision Regulations. The Planning Board has the authority to grant such 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 interests.”

In this application, the waiver request only pertains to Lot 2 (existing dwelling). Staff believes that there are unusual circumstances that warrant the approval of Lot 2 without street frontage. Originally, Parcel 331 and its existing farm house had street access solely by Ridge Road. Subsequently, the approval of the Mill Creek South Subdivision resulted in the elimination of access from Ridge Road to the existing farm house dwelling built in 1928. As a result, access to Parcel 331 was provided via Outlot D which had 39 feet of frontage on the new subdivision street of Bounding Bend Court. Parcel 331 and the existing home already have no frontage. The only reason this is a resubdivision is because Outlot D was recorded by plat and is included in the proposed Preliminary Plan. If Outlot D had not been included in the adjacent subdivision, the Planning Board would only be considering approving a lot without frontage and the resubdivision criteria would not apply.

Therefore, in order to subdivide Parcel 331 in a manner that can meet the resubdivision criteria with respect to frontage, Staff finds that an unusual circumstance exists. Staff believes that the elimination of access to Ridge Road by Parcel 331 and its lot size of approximately 44,000 square feet surrounded by smaller lots constitute unusual circumstances that justify waiver approval. Staff finds that the requested waiver of frontage criteria of the resubdivision analysis for proposed Lot 2 is the minimum necessary to provide relief from this requirement, and is not adverse to the objectives of the General Plan. The waiver is not adverse to the public interest as access to both lots by emergency vehicles and other public services meet the requirements of the Montgomery County Fire and Rescue Service. Furthermore, there is no detriment to future subdivision of adjacent lands as the surrounding land is subdivided to its maximum potential. Therefore, Staff finds that all required findings have been made pursuant to Section 50-38(a)(1) and recommends approval of the waiver of Section 50-29(b)(2) for frontage of proposed Lot 2.

## **CONCLUSION**

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which re-subdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood, or subdivision. As set forth above, the proposed lots are of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria, and therefore, comply with Section 50-29(b)(2) of the Subdivision Regulations. The proposed lots also meet all other requirements established in the Subdivision Regulations and the Zoning Ordinance, and substantially comply with the recommendations of the Shady Grove Sector Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable County agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

## **ATTACHMENTS**

Attachment 1 – MCDOT Approval Letter  
Attachment 2 – Stormwater Concept Approval Letter  
Attachment 3 – Fire and Rescue Approval Letter and Emergency Access Plan  
Attachment 4 – PFCP Plan  
Attachment 5 – Tree Variance Request  
Attachment 6 – Letter from the County Arborist  
Attachment 7 – Letters in support of the Preliminary Plan  
Attachment 8 – Resubdivision Criteria Data Table



## DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

July 12, 2013

Arthur Holmes, Jr.  
Director

Mr. Carlton Gilbert, Planner/Coordinator  
Area 2 Planning Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #120130030  
Bounding Bend Residual

Dear *Carlton* Mr. Gilbert:

We have completed our review of the revised preliminary plan dated September 14, 2012. This plan was reviewed by the Development Review Committee at its meeting on November 5, 2012. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. An amended storm drain capacity and study, with computations, was submitted to our office on April 12, 2013 (with additional information provided on July 11, 2013). We accept the conclusions of that study; no improvements to the downstream public storm drain system are needed for this preliminary plan.
2. The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. David Adams, our Development Review Area Engineer for this part of the County, at [david.adams@montgomerycountymd.gov](mailto:david.adams@montgomerycountymd.gov) or (240) 777-2197.

Sincerely,

Gregory M. Leck, Manager  
Development Review Team

M:/correspondence/FY13/Traffic/Active/120130030, Bounding Bend Residual, MCDOT plan review ltr.doc  
Enclosures (2)

cc: Kathleen Guinane & Robert Cunningham  
Jeffrey Lewis; Site Solutions, Inc.  
Norman Knopf; Knopf & Brown  
Preliminary Plan notebook  
Preliminary Plan folder

cc-e: Sam Farhadi; MCDPS RWPR  
David Adams; MCDOT DTEO

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Division of Traffic Engineering and Operations

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Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080  
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**MONTGOMERY COUNTY, MARYLAND**  
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
DEPARTMENT OF PERMITTING SERVICES

**SIGHT DISTANCE EVALUATION**

Facility/Subdivision Name: BOUNDING BEND RESIDUAL Preliminary Plan Number: 1-20130030

Street Name: BOUNDING BEND COURT Master Plan Road Classification: SECONDARY

Posted Speed Limit: 30 mph

Street/Driveway #1 (BOUNDING BEND COURT)

Street/Driveway #2 ( \_\_\_\_\_ )

Sight Distance (feet) OK?

Right 5' TO ADJACENT DRIVEWAY

Left ADJACENT DRIVEWAY

Sight Distance (feet) OK?

Right \_\_\_\_\_

Left \_\_\_\_\_

Comments: DRIVEWAY IS EXISTING & STRAIGHT OUT AT HEAD OF CUL-DE-SAC; SIGHT DISTANCE LINE IS STRAIGHT DOWN BOUNDING BEND COURT ALL THE WAY TO ADJUTY DR.

Comments: \_\_\_\_\_

**GUIDELINES**

Classification or Posted Speed  
(use higher value)

Tertiary - 25 mph

Secondary - 30

Business - 30

Primary - 35

Arterial - 40

(45)

Major - 50

(55)

Required  
Sight Distance  
in Each Direction\*

150'

200'

200'

250'

325'

400'

475'

550'

\*Source: AASHTO

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 6' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

**ENGINEER/ SURVEYOR CERTIFICATE**

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

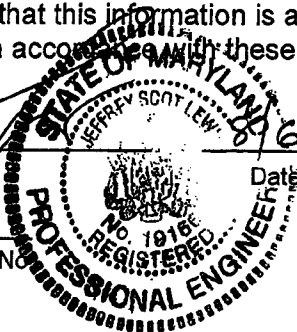
Signature

MD 19156

PLS/P.E. MD Reg. No.

Date

6/6/12



**Montgomery County Review:**

☒ Approved

☐ Disapproved:

By: \_\_\_\_\_

Date: 7/12/12





## DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R. Schwartz Jones  
Director

June 28, 2013

Jeffrey Lewis  
Site Solutions, Inc.  
20410 Observation Dr., Suite 205  
Germantown, Maryland 20876

Re: Stormwater Management **CONCEPT** Request  
for 7915 & 7917 Bounding Bend Court  
Preliminary Plan #: 120130030  
SM File #: 245050  
Tract Size/Zone: 1 Ac. / R-90  
Total Concept Area: 1 Ac.  
Lots/Block: 2 lots proposed  
Parcel: P331  
Watershed: Upper Rock Creek

Dear Mr. Lewis:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via 2 landscape infiltration practices, a bio-swale and a drywell.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.

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

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is **not required**.

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
www.montgomerycountymd.gov

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

If you have any questions regarding these actions, please feel free to contact Mike Geier at 240-777-6342.

Sincerely,



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

MCE: jb CN245050 Bounding Bend.mjg.doc

cc: C. Conlon  
SM File # 245050

ESD Acres:	1
STRUCTURAL Acres:	0
WAIVED Acres:	0



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**FIRE MARSHAL COMMENTS**

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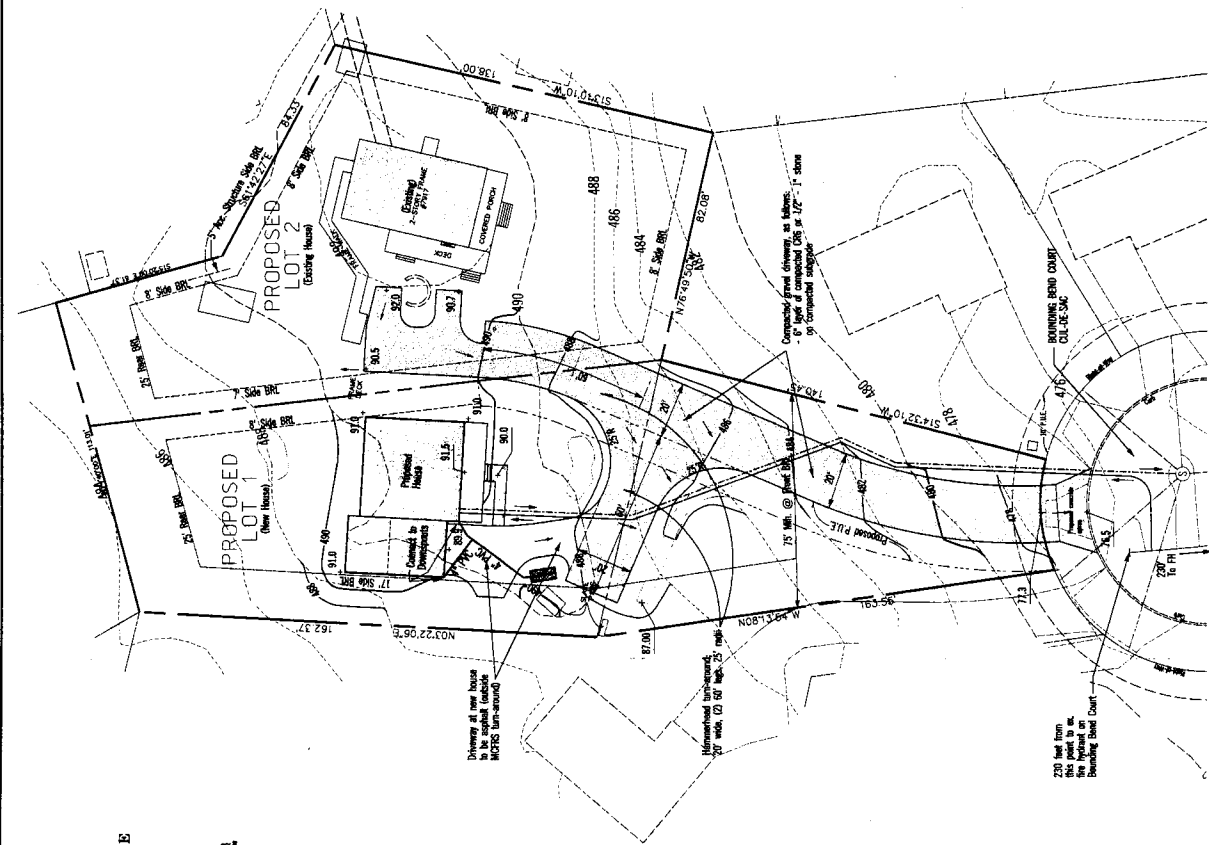
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**DATE:** 21-May-13  
**TO:** Jeffrey Lewis - jsl@ssimd.net  
Site Solutions, Inc.  
**FROM:** Marie LaBaw  
**RE:** Bounding Bend Residual  
720080010 120130030

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**PLAN APPROVED**

1. Review based only upon information contained on the plan submitted 21-May-13. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.



Bounding Bend Court (cul de sac)	86 ft. diameter
Bounding Bend Court (travelway)	26 feet wide
Amity Drive (travelway)	36 feet wide

230 feet from  
this point to ex.  
fire hydrant on  
Bouncing Bend  
Court



**158 SITE SOLUTIONS, INC.**  
20410 Observation Drive Suite 202  
Germantown, Maryland 20878-4000  
(301) 840-7890 Fax (301) 840-7991  
Planning Landscape Architecture  
Engineering Surveying

**EMERGENCY SERVICES ACCESS PLAN**  
**BOUNDING BEND RESIDUAL**  
(P331 & Outlot 'D', Block E, Hill Creek South)  
GANTHERSBURG ELECTION DISTRICT #9  
MONTGOMERY COUNTY, MARYLAND

DATE	5/13/2013	SHEET	1 OF 1	SCALE	1" = 20'
DRAWN BY	ENGINEER				





**STATEMENT OF KATHLEEN M. GUINANE & ROBERT CUNNINGHAM**

**FOR A VARIANCE IN ACCORDANCE WITH SECTION 22A-21**

**OF THE MONTGOMERY COUNTY CODE**

**BOUNDING BEND RESIDUAL**

**August, 2011 (Revised Nov. 5, 2012)**

**I. BACKGROUND INFORMATION.**

The Applicants for a variance pursuant to the provisions of Section 22A-21 of the Montgomery County Code are Kathleen M. Guinane and Robert Cunningham, the owners of the property. The owners propose to subdivide an existing parcel (P331) and subdivided outlot (Outlot "D") in the R-90 zone into two buildable lots. The property consists of 1.01 acres. The site is located at the cul de sac terminus of Bounding Bend Court adjacent to Washington Grove. There is no forest cover on or adjacent to the subject property. There are no priority environmental features on or adjacent to the subject property.

**II. APPLICANT'S PROPOSAL.**

Attached is a copy of the proposed Preliminary Plan of Subdivision for the two proposed residential lots. Proposed Lot 1 will contain a new home while proposed Lot 2 will contain an existing home. A common driveway will serve both homes.

**III. EXPLANATION FOR NEED TO IMPACT TWO TREES THAT ARE IDENTIFIED IN STATE LAW FOR PROTECTION (NO TREES TO BE REMOVED).**

Attached to this variance application is a copy of the Preliminary Forest Conservation Plan (PFCP), on which the two protected specimen trees proposed to be impacted have been identified.

There are five existing specimen trees of 30" DBH or larger noted on the PFCP. Three of these trees will not be impacted, while two will be marginally impacted by the proposed development. Tree #13, a 48" Red Maple, lies immediately abutting the west property line of the subject tract. This tree is within 40 feet of the future house on Lot 1 and very close to an existing in-ground swimming pool that must be removed to make room for the future house. A small amount of critical root zone (CRZ) must be disturbed to accommodate the proposed construction activity. However, 88% of the CRZ area will be preserved, resulting in minor impact to this tree. The second impacted tree, tree #14, a

32" Silver Maple, lies about 20 feet from the northwest corner of the existing house on Lot 2. Although about 26% of the CRZ of this tree will be disturbed, the disturbance will be superficial. About half of the disturbance will be for the placement of a gravel surface to provide a parking area for the existing house and the other half of the disturbance will be for the removal of an above-ground wood deck located adjacent to the existing swimming pool. Little or no grading will occur within the CRZ of tree #14, thus the disturbance to this tree will be of very low impact to tree #14's root structure.

**IV. SATISFACTION OF THE CRITERIA LISTED IN SECTION 22A-21(b) OF THE MONTGOMERY COUNTY CODE.**

Section 22A-21(b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

*“(1) describe the special conditions peculiar to the property which caused the unwarranted hardship.”*

- A. Due to the configuration of the subject property and given that there is an existing house (to be preserved) on P331, there is only one suitable design configuration to divide the property into two lots.
- B. Outlot “D” provides driveway access to the two proposed lots.
- C. A “hammerhead” turnaround must be provided within the two proposed lots as required by Montgomery County Fire & Rescue Services. The hammerhead must be designed to meet MCFRS minimum geometric specifications.
- D. As a result of A, B & C, above, the building envelope for a house on Lot 1 lies as shown on the proposed Preliminary Plan. The future house on Lot 1 will necessitate the removal of the existing swimming pool and will resulting a minor amount of grading within the CRZ of tree #13.
- E. A parking area must be provided for the existing house on Lot 2. The parking area is proposed to be an extension of the MCFRS hammerhead driveway to conveniently serve the existing house. To reduce CRZ impact, the parking area is proposed to be a gravel surface laid on existing grade. No grading disturbance of the CRZ for tree # 14 is proposed.
- F. An existing raised wood deck adjacent to the swimming pool lies partly within the CRZ of tree #14 and must be removed. Being a raised deck, no grade disturbance is proposed.

*“(2) Describe how enforcement of these rules will deprive the owner of rights commonly enjoyed by others in similar areas.”*

There is no reasonable alternative site design that would not impact the two trees affected by this development proposal. Because of zoning and other regulatory restrictions (MCFRS), the limited impact on the two trees is unavoidable.

Essentially, the proposed subdivision of these two lots could not take place without the limited impact proposed on trees #13 and #14.

- “(3) *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance.*”

There are currently no stormwater quantity or quality provisions on the property. In conjunction with its proposed development of the subject property, the Applicant has prepared a stormwater management concept plan which will improve water quality measures on the subject property and in the surrounding area.

The Applicant confirms that the impact on the two affected trees will cause no degradation in water quality associated with the proposed two-lot subdivision as a result of the granting of the requested variance.

- “(4) *Provide any other information appropriate to support the request.*”

The information set forth above, the Applicant believes, is adequate to justify the requested variance to *impact* the two protected trees on the subject property.

Furthermore, the Applicant’s request for a variance complies with the “minimum criteria” of Section 22A-21(d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The configuration of the subject property, regulatory requirements, and the location of the protected trees are not the result of actions by the Applicant, since any two-lot subdivision of the subject property would encounter the same constraints.
3. The requested variance is not related in any way to a condition on an adjacent, neighboring property, and
4. *Impact* on the CRZ’s of the two requested trees will not violate State water quality standards or cause measurable degradation in water quality (which is being improved by the Applicant’s overall proposal).



## DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

November 28, 2012

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Bounding Bend, DAIC 120130030, NRI/FSD application accepted on 6/8/2011

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

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

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, is not interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.



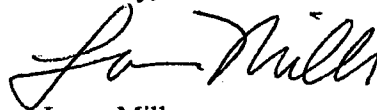
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that revisions to the LOD are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Chief

July 2012

Maryland-National Capital Park and Planning Commission  
Montgomery County Planning Board  
8383 Georgia Ave.  
Silver Spring, MD 20910

Dear Sir or Madam,

I am writing regarding the Proposed Preliminary Plan of Subdivision, Bounding Bend Residual, filed by Robert Cunningham and Kathleen Guinane, 7915 Bounding Bend Ct. in Derwood. The plan would divide the current large lot in two, to create another buildable lot. A single family home will be added.

I have reviewed the proposed plan and have no objection to approval by the Planning Board.

Yours truly,

Name *Nancy Tarkenton*  
Address *7912 Bounding Bend Ct Rockville MD 20855*  
Adjoining Owner? *No*

Name *Jen and Todd Gibson*  
Address *7909 Bounding Bend Ct. Derwood, MD 20855*  
Adjoining Owner? *No*

Name *David & Sally Hunt* *for CMA Sally Hunt*  
Address *7904 Bounding Bend Ct Derwood, MD 20855*  
Adjoining Owner? *NO*

Name *Cory & Robert Stallings* *CRA*  
Address *17206 Amity Dr. Derwood, MD 20855*  
Adjoining Owner? *NO*

Name *Eric & Martha Garcia* *Martha M. Garcia Eric Garcia*  
Address *17210 Amity Dr, Derwood, MD 20855*  
Adjoining Owner? *no*

Name *Rick Hurd*  
Address *8100 Langport Ter Gaithersburg*  
Adjoining Owner? *Yes* *Jill Hurd*

Name *DAVID HARRY + BARBARA HARRY*  
Address *7916 Bounding Bend Ct. DERWOOD MD 20855*  
Adjoining Owner? *YES*

p. 2

July 2012

Maryland-National Capital Park and Planning Commission  
Montgomery County Planning Board  
8383 Georgia Ave.  
Silver Spring, MD 20910

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I have reviewed the proposed plan and have no objection to approval by the Planning Board.

Yours truly,

Name Edward Roberts  
Address 7905 Bounding Bend Ct. Derwood 20855  
Adjoining Owner? No

Name  
Address  
Adjoining Owner?

Name  
Address  
Adjoining Owner?

Name  
Address  
Adjoining Owner?

Name  
Address  
Adjoining Owner?

Name  
Address  
Adjoining Owner?

Name  
Address  
Adjoining Owner?

Maryland-National Capital Park and Planning Commission  
Montgomery County Planning Board  
8383 Georgia Ave  
Silver Spring, MD 20910

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I have reviewed the proposed plan and have no objection to approval by the Planning Board.

Yours truly,

  
Huey Chang  
Adjoining Property Owner

Resubdivision Criteria: Bounding Bend Residual Parcel (P331) of Block E						
Lot #	Frontage	Alignment	Size (ac)	Shape	Width	Suitability
<b>Proposed</b>						
1	39.00'	Radial	25,018sf	Irregular	75'	R-90
2	0'	Perpendicular	19,087 sf	Irregular	85'	R-90
Block E						
98	73.00'	Radial	18,319 sf	Irregular	165"	R-90
97	29.00'	Pipe	28,540 sf	Irregular	105'	R-90
96	41.00'	Radial	12,473 sf	Irregular	75'	R-90
95	48.00'	Radial	8,164 sf	Irregular	80'	R-90
94	70.00'	Radial	11,245 sf	Irregular	90'	R-90
93	98.00'	Corner	10,754 sf	Irregular	110'	R-90
92	90.00'	Radial	8,264 sf	Regular	80'	R-90
91	89.00'	Radial	8,718 sf	Regular	82'	R-90
90	81.00'	Perpendicular	8,184 sf	Regular	81'	R-90
89	81.00"	Perpendicular	8,184 sf	Regular	81'	R-90
88	153.00'	Perpendicular	12,351 sf	Irregular	153'	R-90
87	107.00"	Perpendicular	9,713 sf	Irregular	107'	R-90
86	75.00'	Perpendicular	8,063 sf	Regular	75'	R-90
85	75.00'	Perpendicular	8,063 sf	Regular	75'	R-90
84	75.00'	Perpendicular	8,063 sf	Regular	75'	R-90
83	75.00'	Corner	10,437 sf	Regular	100'	R-90
82	75.00'	Corner	10,437 sf	Regular	100'	R-90
81	53.00'	Perpendicular	11,886 sf	Irregular	100'	R-90
80	26.00'	Pipe	15,519 sf	Irregular	130'	R-90
79	55.00'	Radial	12,402 sf	Irregular	80'	R-90
78	55.00'	Radial	10,663 sf	Irregular	80'	R-90
77	102.00'	Corner	11,604 sf	Irregular	100'	R-90
76	73.00'	Radial	15,752 sf	Regular	80'	R-90
75	73.00'	Radial	12,647 sf	Regular	80'	R-90
74	75.00'	Perpendicular	10,122 sf	Regular	75'	R-90
73	75.00'	Perpendicular	9,630 sf	Regular	75'	R-90
Block F						
1	130.00'	Perpendicular	11,343 sf	Irregular	130'	R-90
2	89.00'	Corner	11,883 sf	Irregular	100'	R-90
3	90.00'	Perpendicular	10,087 sf	Regular	80'	R-90