



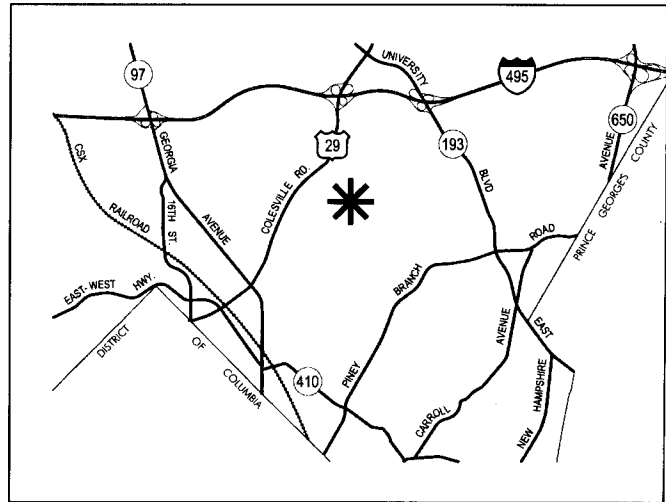
Gough Property, Preliminary Plan, 120140010

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Staff Report Date:10/3/14

Description

- Request to resubdivide Parcel A into two one-family lots
- Applicant: Beverly Gough
- Address: 185 Feet north of the intersection of Three Oaks Drive and Sligo Creek Parkway
- Zone: R-60
- Size: 0.71 ac
- Master Plan: East Silver Spring (2000)
- Submittal Date: August 19, 2013



Summary

Staff recommends **Approval with conditions** of submitted Preliminary Plan of Subdivision, Preliminary Forest Conservation Plan, and approval of a waiver from two (frontage and lot width) of the seven resubdivision criteria contained in Section 50-38 (a) (1) of the Subdivision Regulations.

The Applicant is requesting to subdivide Parcel A into two one-family lots.

Community opposition to this proposal focuses on forest clearing, soil erosion and stormwater run-off, and change in neighborhood character.

RECOMMENDATION: Approval subject to the following conditions:

- 1) This Preliminary Plan is limited to two lots for two one- family dwelling units.
- 2) The certified Preliminary Plan must contain the following note:
“Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
- 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 28, 2014, and hereby incorporates 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 4) Prior to recordation of the plat, the Applicant must satisfy MCDOT requirements to widen the existing four (4) foot wide sidewalk to five (5) feet along the property’s frontage on Three Oaks Drive.
- 5) The Planning Board accepts the recommendations of the MCDPS Water Resources Section in its stormwater management concept letter dated April 4, 2014, and hereby incorporates them as conditions of this approval. 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 this approval.
- 6) The Record Plat and Final Forest Conservation Plan must show the building restriction line on Lot 2 located at least 15 feet from the Category I conservation easement.
- 7) The Applicant must submit and receive Staff approval of a Final Forest Conservation Plan. The Forest Conservation Plan must show:
 - a. Location of supplemental native plantings and details for removal of invasive species within the Category I and Category II easement areas;
 - b. A split rail fence, to be provided and installed by the Applicant, along the Category 1 Conservation Easement and signage along both the Category I and Category II Conservation Easements.
 - c. Revision of the Forest Conservation worksheet to show all of the existing onsite forest as being cleared.
- 8) Prior to clearing or any land-disturbing or demolition activities occurring onsite, the Applicant must either receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.16 acres, or provide a fee-in-lieu payment.
- 9) The Category I and Category II Conservation Easements approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to demolition, clearing, or grading, and the Liber Folio for the easements must be referenced on the record plat.

- 10) The Subject Property is within the Northwood High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary, middle and high school levels at the one-family detached unit rates for any unit for which a residential building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code
- 11) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

SITE DESCRIPTION

The Subject Property, Parcel A, is located on the west side of Three Oaks Drive, approximately 185 feet northwest of its intersection with Sligo Creek Parkway. The property is rectangular in shape, with approximately 247 feet of frontage along Three Oaks Drive and contains 30,754 square feet of R-60 zoned land. It is vacant and almost completely forested, with a groundcover dominated by English Ivy.

The site, which contains erodible soils, is relatively flat along its street frontage then gradually increases in grade to slopes greater than 25% before it decreases to slopes of 15% along the entire length of the rear property line. A utility easement, approximately 25 feet in width, containing sewer, water, and gas lines runs east to west along the northern portion of the site.

There is an existing bus stop in front of site along Three Oaks Drive. The property is within the Sligo Creek watershed. The main stem of the Sligo Creek is located 240 feet south of the site, thus portions of the associated 100-year floodplain are located within the right of way of Three Oaks Drive that fronts the site. There are no wetlands, streams or endangered species on this site.

The surrounding properties contain a mixture of residential zones. Directly north of the site, the properties are zoned RT-12.5 and developed with one family attached residential units. Across Three Oaks Drive and east of the site, the property is a vacant, wooded R-60-zoned property owned by M-NCPPC. East of the M-NCPPC site, properties are zoned R-10 (Multi-family high density residential) and developed with a multi-family high rise building. South of the site, the property is zoned R-60 and developed with a one family use. West of and abutting the subject site the properties are zoned R-60 and developed with a one family detached units.

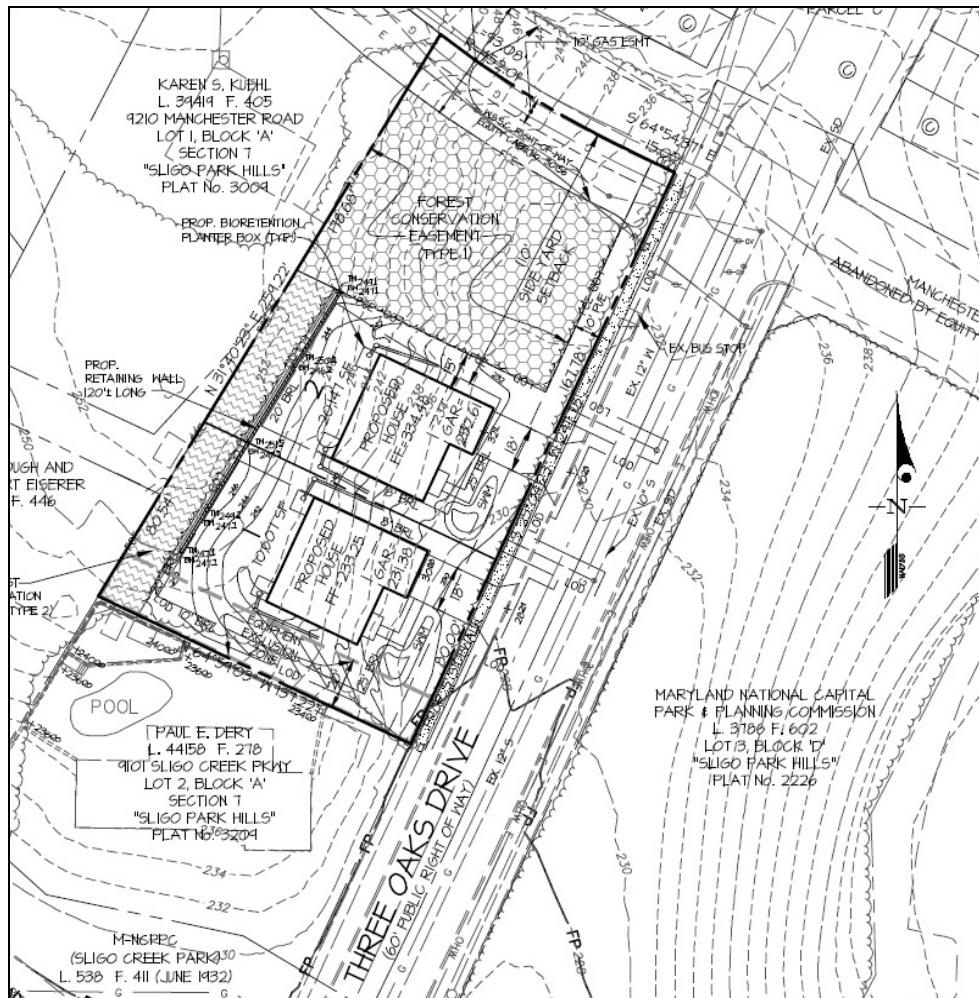


Aerial View (Site outlined in Red)

PROJECT DESCRIPTION

Initially, the Applicant proposed to subdivide the site into three lots for three one-family detached residential dwellings. That submittal would have removed all the existing onsite forest, and caused severe impacts to existing off site trees on adjacent properties. Based on these environmental concerns, Staff would not support the three-lot application.

After discussions with Staff, the application was revised to subdivide the site into two lots for two one-family detached residential dwellings. Proposed Lot 1 will be 10,607 square feet, while proposed Lot 2 will be 20,147 square feet. The Applicant is proposing to leave the northern portion of proposed Lot 2, approximately 8,276 square feet, undeveloped and place this area into a Category I Conservation Easement. This Category I Conservation Easement will be incorporated into the overall square footage of Proposed Lot 2, as it will remain undisturbed. Additionally, at the rear of each proposed lot there will be a 17 foot wide Category II Conservation Easement. The Category II Conservation Easement will help protect the sizeable trees on the adjacent residentially developed property to the west as well as provide a buffer with screening. Access to each lot will be from driveways off of Three Oaks Drive, a publicly maintained 36-foot right-of-way.



Proposed Preliminary Plan

ANALYSIS AND FINDINGS

Master Plan

The site is covered by the 2000 *East Silver Spring Master Plan*. One of the four main themes of that Master Plan encourages neighborhood reinvestment along with the preservation of existing residential character (p.21). The Master Plan does not directly address this property, however it reconfirms the R-60 zone in predominantly residential areas. It also states an intention to sustain a livable community while also guiding change, directly addressing new development, infill development, redevelopment and special exceptions.

The Preliminary Plan application is an example of the infill/ redevelopment that the Master Plan anticipated. The Master Plan notes that:

There are limited sites with development/redevelopment potential in Silver Spring and the infill that may occur will cause little additional adverse environmental impacts. Indeed, as redevelopment does occur enhanced landscaping and green spaces, larger green areas around new residential development, and managed stormwater runoff to neighborhood stream will create positive environmental aesthetic and even economic benefits over time.

The Master Plan also states that:

The narrow-rights-way utility easements and dense development pattern in East Silver Spring often makes it difficult to find space for new or replacement trees. The conservation and replanting of trees is also accomplished through the application of the County Forest Conservation Law that is designed to protect existing forest and requires the planting of new forest and trees when protection thresholds are not met. (p.53)

Finally, another recommendation from the Master Plan states:

Encourage the application of urban forestry principles to landscaping projects to improve the diversity, health and aesthetics of the urban ecosystem and better support the remaining natural ecosystem of stream valley parks Key principles include:

- Using native plant species for landscape projects
- Planting a mixture of overstory trees and understory trees and shrubs
- Controlling existing alien invasive species and reduce further use. (p.55)

As noted above, the revised Preliminary Plan application reduced the number of proposed lots from three to two. This reduction of one lot and the creation of conservation easements (both Category I and II) on the property addressed the environmental impacts raised by Staff regarding the loss of tree canopy and the protection of steep slopes. Moreover, the conservation easements, further the Master Plan's goals of meeting the forest conservation law requirements while protecting portions of the existing onsite forest setting. Additionally, the Applicant will be controlling and removing invasive species on-site. This effort will implement one of the key principles of urban forestry principles recommended by the Master Plan.

The application complies with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation. The proposed residential lots will be similar to surrounding lots with respect to dimensions and orientation. The application will not alter the existing pattern of development or land use and is in substantial conformance with the Master Plan recommendation to maintain the existing land use.

Parks

The Parks Department staff has reviewed this application and offered the following comments:

1. Parks has no need for additional land along Sligo Creek Stream Valley Park at this location. Therefore no portion of the land in this subdivision will be requested as parkland.
2. This proposed subdivision should accommodate a driveway access to Three Oaks Drive for the adjacent property, owned by Beverly Gough and Elaine Robert Eiserer, referred to as Proposed Lot 3, Block A, Sligo Hills Park on this Preliminary Plan. Department of Parks staff has made it clear that direct access to Sligo Creek Parkway would not be appropriate or allowed for the Gough/Eiserer property. The properties only potential access to Sligo Creek Parkway would therefore be by way of Three Oaks Drive.

The subject application seeks to resubdivide Parcel A on Three Oaks Drive into two one-family lots. Staff notes the common ownership of the property on Three Oaks Drive and the property located on Sligo Creek Parkway. However, the property located on Sligo Creek Parkway (the Gough/Eiserer property) is not part of the submitted Preliminary Plan application.

With respect to the property on Sligo Creek Parkway, it was recorded by deed prior to 1958 and is part of a platted block. As such, it is eligible to be resubdivided under the provisions of a minor subdivision application. The applicant has filed a minor subdivision plat (220121150) for this property. The status of this application is pending.

The Planning Staff continues to support the proposed access on Three Oaks Drive for the proposed two lot subdivision. Moreover, the subject site contains environmental features, such as forested land, steep slopes, and erodible soils. The Applicant submitted a Preliminary Plan that proposed two, not three, lots and minimized impacts to these features by retaining the onsite forest setting and protecting it by incorporating Category I and Category forest conservation easements into the proposed lots. To require the Applicant to provide access for the parcel on Sligo Creek Parkway from the subject site would impact these environmental features. In approving the subject Preliminary Plan, the Planning Board will limit site access for the parcel on Sligo Creek Parkway to only that roadway.

Transportation

Adequate Public Facilities Review (APF)

Originally, the Applicant submitted a transportation statement that summarized the estimated traffic impact for three proposed one-family dwelling units. After the Application was revised to drop one lot, the statement was adjusted to reflect this reduction to two one-family dwelling units, which will generate two (2) AM peak-hour and two (2) PM peak-hour vehicular trips. As a result of this *de minimis*

impact, this project is exempt from the Local Area Transportation Policy Review (LATR) and Transportation Policy Area Review (TPAR). The proposed development satisfies APF requirements and does not necessitate further traffic analysis. The proposed development satisfies the *LATR and TPAR requirements* of the APF review and will provide safe, adequate, and efficient site access.

Roadways and Bikeways

Neither the *2000 East Silver Spring Master Plan* nor the *2005 Countywide Bikeways Functional Master Plan* has specific recommendations for Three Oaks Drive. This street is a county-maintained 36-foot wide primary residential road (60-foot public right-of-way) with sidewalks along both sides. Roadway improvements associated with the subject development include widening the existing four-foot wide sidewalk along the site's frontage to five feet. Attachment A contains a memo from Montgomery County Department of Transportation.

Transit

Transit service on the following routes is available via a bus stop along the site's frontage:

1. Ride On 12 (Silver Spring to Takoma Park);
2. Ride On 13 (Silver Spring to Takoma Park); and
3. Ride On 19 (Silver Spring to Northwood).

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the subject property has appropriate access for fire and rescue vehicles. The property is located in the Northwood cluster, which is operating over its program capacity at the elementary, middle, and high school levels and a school facility payment is required at each of these levels. Other public facilities and services, such as police stations, firehouses, and health services are available to serve the existing dwelling units. Electrical, gas, and telecommunications services are also available to serve the property.

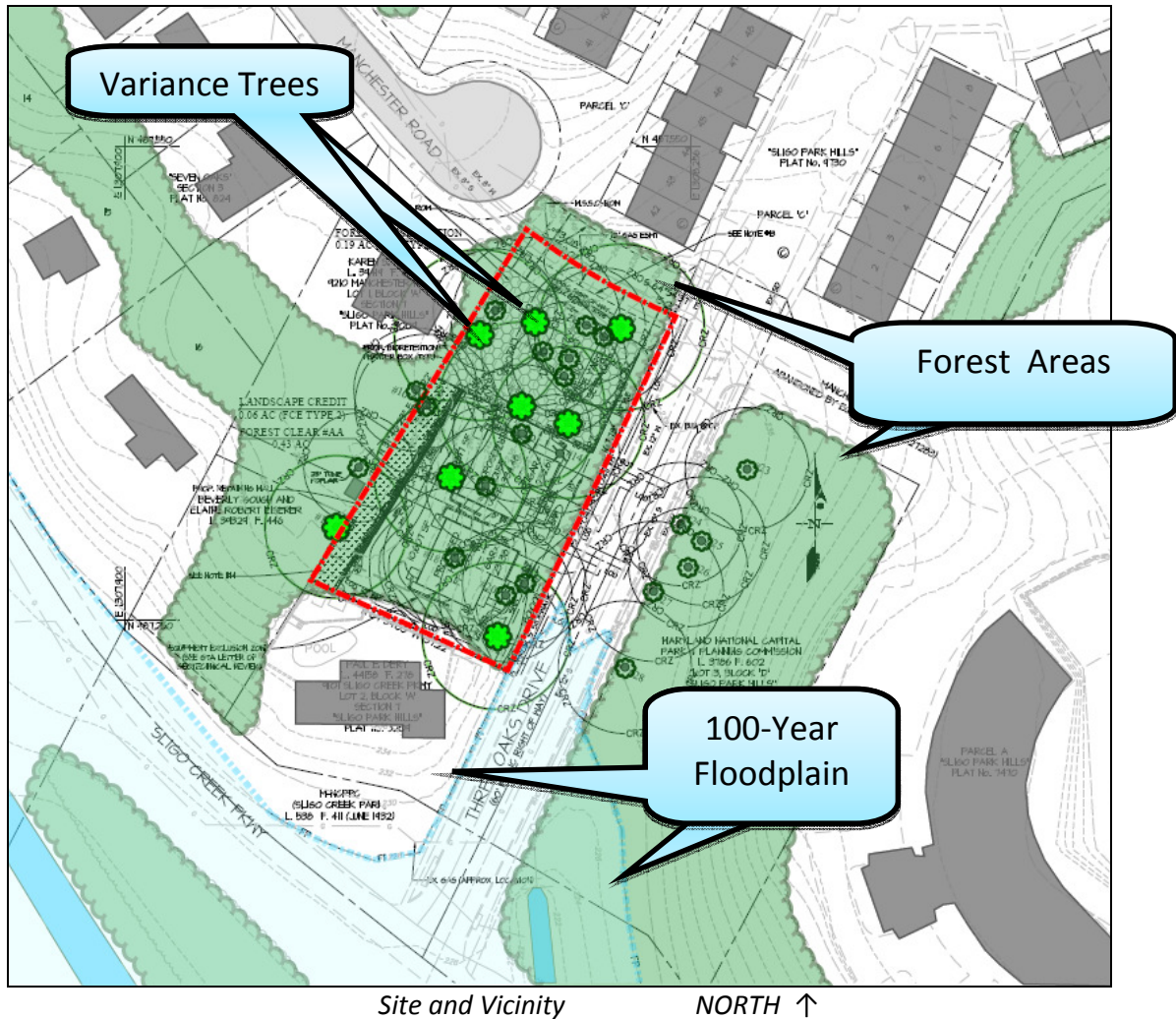
Environment

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420131710 for the site was approved on May 13, 2013. The property is 0.71 acres in size and is almost entirely forested (0.03 acres of the site does not meet forest definition due to previous maintenance and clearing along the southern property line. The site contains numerous native trees, many of which are significant or specimen in size. The forest groundcover is dominated by English ivy which is an invasive species. The forest stand is rated as high priority for retention due to presence of the large trees, steep slopes, and highly erodible soils. The site is located within the Sligo Creek watershed, a Use I watershed¹. The main stem of Sligo Creek is located approximately 240 feet southwest of the site. Portions of the associated 100-year

¹ Use I:

WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports; play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

floodplain are located within the Three Oaks Drive roadway fronting the site. Additionally a tributary to Sligo Creek is located across Three Oaks Drive and east of the subject property.



Forest Conservation and Tree Save

The project is subject to forest conservation law under Section 22A-4(a) which states : “a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, preliminary plan of subdivision, or site plan.” The project does not qualify for a forest conservation exemption due the amount of forest clearing proposed and the clearing within a priority forest area. Therefore, the project is subject to a Forest Conservation Plan (FCP).

The initially submitted FCP for this project showed the entire property as being cleared for a three-lot subdivision. That proposal would have removed all of the existing forest and also caused severe impacts to existing offsite trees located on adjacent property. The complete removal of the high-

priority forest and associated variance trees along with the excessive impacts to other offsite trees was not supported by Staff.

The proposed two-lot subdivision limits the disturbance activity to less than 40% of the site area and now includes protective Category I & Category II conservation easements. Forest clearing of 0.43 acres is proposed within the Limits of Disturbance (LOD). However, since for forest conservation accounting purposes the areas protected by the proposed Conservation Easements do not meet the definition of forest, the entire property technically is considered to be cleared.

The Preliminary Plan proposes an onsite 0.19 acre Category I Conservation Easement at the northern end of the site. This Category I Conservation Easement does not extend into the existing utility easement along the property northern lot line. The onsite utility easement is forested and will not be affected by the proposed development. The Category I Conservation Easement area is less than 10,000 square-foot minimum area threshold for the definition of forest, although it is worthy of protection, as discussed below. Furthermore, since the Category I Easement area is technically cleared, as a condition of approval staff recommends that the forest conservation worksheet be revised to show the entire site as being cleared. This revised worksheet triggers an additional forest conservation requirement of 0.16 acres that will be satisfied offsite by either a fee-in-lieu payment or through the use of an offsite forest mitigation bank.

Section 50-32 (c) of the Subdivision Regulations provides special controls for trees, forests, and environmentally sensitive areas:

The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.

This property is completely covered with highly erodible soils and contains significant specimen trees and steep slopes of 15 % and 25%. The existing onsite forest is rated as high priority for retention because it is associated with these environmentally sensitive conditions. The northern portion of the site is the preferred location for protection through the Category I Conservation Easement, as it contains the highest concentration of significant and specimen trees, while the southern portion of the site contains a lower concentration of specimen trees due to maintenance performed by previous owner. Although the proposed Category I Conservation Easement does not meet the minimum threshold for a forest, preserving this forest setting meets the intent of the Master Plan recommendations regarding green space, native plantings, and removal of invasive species.

The Preliminary Plan also proposes a 17-foot-wide, 0.06 acre Category II Conservation Easement along the site's western property line.² The Category II easement area will provide a number of benefits, including the protection of existing onsite understory trees, removal of invasive species as noted on the

² The Category II conservation easement on the property does not meet the definition of forest as defined in Chapter 22A-3 of the Forest Conservation Law. Understory trees are a required component of any forest as defined. However, understory trees are not protected and if cleared would not meet the forest definition.

FCP, and planting of supplemental native species. Additionally, this Category II conservation easement will also protect adjacent off-site large trees from activity that would otherwise occur on the subject property. The retained and planted vegetation within the Category II area will connect to the proposed Category I Easement along the northern portion of the site. Both easements will also provide a buffer between the site and abutting residential property along the western lot line.



Forest Conservation Plan NORTH ↑

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. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ), requires a variance under Section 22A-21 of the Law. An Applicant for a variance must show that enforcement would result in unwarranted hardship, and provide certain written information in support of the

required findings. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The proposed project includes disturbance within the CRZ of trees measuring the 30 inches DBH or greater, which are subject to a variance. The Applicant submitted a variance request to remove five specimen trees and to impact, but retain, two specimen trees. A copy of the Applicant’s variance request is included as Attachment B.

TABLE 1: SUBJECT TREES TO BE REMOVED

| Tree No. | Tree Type | DBH | Condition/Status |
|----------|------------|-----|------------------|
| 9 | Red Oak | 36" | Poor/ Remove |
| 11 | Tulip Tree | 35" | Good/ Remove |
| 13 | Tulip Tree | 32" | Good/ Remove |
| 16 | Red Oak | 32" | Good-Fair/Remove |
| 21 | Tulip Tree | 31" | Good/Remove |

TABLE 2: SUBJECT TREES TO BE IMPACTED BUT RETAINED

| Tree No. | Tree Type | DBH | Percent of CRZ impacted by LOD | Condition/Status |
|----------|-----------|-----|--------------------------------|------------------|
| 1 | Sycamore | 35" | 14% | Good/Save |
| 17 | Red Oak | 30" | 21% | Good/Save |

Staff has determined that the Applicant has shown that enforcement of the Law for the designated trees would result in an unwarranted hardship:

- One of the five trees proposed for removal under the variance (tree 9) is in poor condition, and retention of the tree would create a significant maintenance burden and potential liability;
- Not granting the variance would severely limit the site’s buildable area, approximately 0.07 acres on the entire property.

Variance Findings

Based on the review of the variance request, and proposed Preliminary Forest Conservation Plan, Staff makes the following findings:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Since the property is almost entirely forested and the buildable area is largely interspersed with subject trees and their associated critical root zones, any development of the property would require impacts and removals. The tree impacts and removals associated with the site are within the buildable area established by the site's constraints of the building restriction lines, and proposed conservation easements. . Therefore, the variance request would be granted to any applicant in a similar situation.

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

The requested variance is based on proposed development allowed under the existing zoning and the need to achieve adequate stormwater management. Staff finds the variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance/removals, and mitigation is provided through the forest conservation requirements that include onsite easements and associated control of invasive species and supplemental native plantings.

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

The requested variance is a result of the proposed site design and layout of the Subject Property and the impacts are 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.*

The Montgomery County Department of Permitting Services (MCDPS) staff approved the stormwater management (SWM) concept for the project on April 4, 2014. The SWM concept proposes to meet required stormwater management goals via Environmental Site Design (ESD) with the use of micro-bioretenion planter boxes and landscape infiltration. MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. Furthermore, the proposed Category I and Category II easements, along with supplemental plantings, will help provide shading, and water retention and uptake. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendations

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 Applicants' request was forwarded to the County Arborist on August 22, 2014. The County Arborist issued a response to the variance request on September 4, 2014, and recommended the variance be approved with the condition that mitigation is provided. The County Arborist's general recommendations on tree protection methods and calculating mitigation requirements are contained in Attachment C.

Mitigation for Trees Subject to the Variance Provisions

All of the specimen trees removed under the FCP are contained within the forest boundary. Since the forest clearing which includes the subject trees is to be mitigated by the reforestation requirements, no additional mitigation for these trees is requested. No mitigation is recommended for trees impacted but retained. As a result of the above findings, staff recommends the Board approve the Applicant’s request for a variance from the Forest Conservation Law to remove five variance trees and to impact, but retain, two variance trees on the subject site. The variance approval is incorporated into the Planning Board’s approval of the Forest Conservation Plan. Staff is also recommending approval of the Preliminary Forest Conservation Plan with conditions listed at the front of this staff report.

Stormwater Management Concept

The MCDPS Stormwater Management Section reviewed a stormwater management concept plan for the subject site (#255154) and approved it on April 4, 2014. The stormwater management concept plan will use micro-bio-retention planter boxes and landscape infiltration to achieve the goals of ESD on site. (Attachment D)

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The proposal meets all applicable sections, including the requirements for resubdivision as discussed in the subsequent sections. The proposed lot size, width, shape, alignment, area, and orientation are appropriate for the location of the subdivision given the environmentally sensitive site conditions, the master plan recommendations for retention of the R-60 zoning, and development consistent with the one-family residential development patterns.

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The proposed use is permitted and the lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is shown on Table 3. The proposal has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

TABLE 3: PRELIMINARY PLAN DATA TABLE FOR THE R-60 ZONE

| Development Standard | Zoning Ordinance Development Standard | Proposed for Approval by the Preliminary Plan |
|----------------------|---------------------------------------|-----------------------------------------------|
| Lot Area, min. | 6,000sq. ft. | 10,607 sq. ft. |
| Lot Width, min. | 60 ft. | 80 ft. |
| Lot Frontage, min. | 25 ft. | 25 ft. |
| Setbacks, min. | | |
| Front | 25 ft. | |
| Side | 8ft. min./18 ft. total | |
| Rear | 20 ft. | |
| Lot Coverage, max. | 35% | 35% |

Resubdivision: Conformance with Section 50-29(b)(2)

Statutory Review Criteria

The Preliminary Plan involves resubdividing part of a previously platted lot into two new lots. In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

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.

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 24 platted lots in the R-60 Zone in the vicinity of Three Oaks Drive, Sligo Creek Parkway, Manchester Road, Worth Street and Hamilton Avenue. The lots share several access points on Three Oaks Drive and Sligo Creek Parkway. The designated neighborhood provides an adequate sample of lots and development patterns in the area. A tabular summary of the area based on the resubdivision criteria and a neighborhood map is included in Attachment E.

Comparison of the Character of Proposed Lots to Existing Lots

In performing the resubdivision analysis, the above-noted criteria were applied to the delineated neighborhood. As described below, the proposed lots are generally of the same character with respect to the applicable resubdivision criteria as other lots within the defined neighborhood. Staff finds a waiver of two of the seven criteria (i.e., frontage and lot width) is warranted given the practical difficulty of developing this site. With this waiver, the application complies with the criteria of Section 50-29(b)(2).

Frontage: Within the delineated neighborhood lot frontages range from 40 feet to 158 feet:

- four lots range from 40 feet to 60 feet;
- eleven lots range from 60 feet and 80 feet;
- three lots range from 80 feet and 100 feet;
- three lots range from 100 feet and 120 feet; and
- three lots have frontage in excess of 120 feet.

Proposed Lot 1 will have frontage of 80 feet, within the range of over half the lots in the delineated neighborhood. Proposed Lot 2 will have a frontage of 167 feet, the largest frontage in the defined neighborhood. This larger frontage dimension is the result of incorporating the existing onsite forest stand into Lot 2. **Proposed Lot 1 meets this criterion and Staff recommends a waiver under Sec 50-38(a) (1) for proposed Lot 2.**

Alignment: Of the 24 lots in the neighborhood, 17 are perpendicular to the street, five are angled, and two are corner lots. Proposed Lots 1 and 2 will be perpendicular, of the same character as the majority of the existing lots in the delineated neighborhood. **The Proposed Lots meet this criterion.**

Size: Lot sizes in the neighborhood range from 7,000 square feet to 25,817 square feet:

- eight lots range from 7,000 square feet to 10,000 square feet;
- nine lots range from 10,000 square feet to 13,000 square feet;
- three lots range from 13,000 square feet to 16,000 square feet;
- three lots range from 16,000 square feet to 20,000 square feet; and
- one lot is in excess of 25,000 square feet.

Proposed Lot 1 will 10,607 square feet and Proposed Lot 2 will be 20,147 square feet. **The proposed lot sizes will be in character with the size of existing lots in the neighborhood.**

Shape: The lots in the neighborhood consist of the following shapes:

- twelve are rectangular;
- eight are trapezoidal; and
- four are irregular in shape.

Proposed Lots 1 and 2 will be rectangular in shape. **The shape of the proposed lots will be in character with shapes of the existing lots.**

Width: Lots in the neighborhood range from approximately 50 feet to 147 feet in width:

- thirteen lots range from 50 feet to 75 feet;
- five lots range from 75 feet to 100 feet;
- five lots range from 100 feet to 125 feet; and
- one lot is in excess of 125 feet in width.

Proposed Lot 1 will be 71 feet in width and Proposed Lot 2 will be 148 feet in width. The larger lot width for proposed Lot 2 is the result of subdividing the property into two lots instead of three lots as originally proposed by the Applicant. The Applicant's commitment to protect the numerous onsite environmental features necessitated the larger lot width at the building line for proposed Lot 2. **Proposed Lot 1 meets this criterion and Staff recommends a waiver under section 50-38 (a) (1) for proposed Lot 2.**

Area: The buildable areas for lots in the delineated neighborhood range from 2,000 square feet to 19,500 square feet:

- eleven lots range from 2,000 square feet and 5,500 square feet;
- eight lots range from 5,500 and 9,000 square feet;
- three lots range from 9,000 square feet to 12,000 square feet;
- one lot ranges from 12,500 square feet and 16,000 square feet; and
- the remaining lot has a buildable area in excess of 19,000 square feet.

The buildable area for proposed Lot 1 will be 5,415 square feet, while the buildable area for Lot 2 will be 4,614 square feet as limited by the conservation easement area. **The proposed lots will be in character with the existing lots in the neighborhood with respect to this criterion.**

Suitability for Residential Use: The existing lots and the proposed lots are zoned residential. Currently, the subject site is vacant and the land is suitable for residential use. **The proposed lots will be in character with the existing lots in the neighborhood with respect to suitability for residential uses.**

Subdivision Regulations Waiver 50-38(a)(1)

As noted above, proposed Lot 2 will have the largest lot width and 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 these two Resubdivision Criteria (i.e., frontage and lot width) 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 interest.”

The waiver request for proposed Lot 2 is justified by a practical difficulty that exists due to the property’s onsite environmental features of forested land, erodible soils and the need to reduce impacts to offsite trees. Originally submitted for three lots, the proposal offered minimal protection to the onsite environmental features. It would have graded the entire site, removed existing forest, and severely impacted offsite trees. The revised application for two lots will protect these features, but prevents full compliance with the resubdivision criteria because Lot 2 will have a larger lot frontage and building lot width than found within the defined neighborhood, due to incorporating the Category I Conservation Easement into the overall square footage of the lot. However, Lot 2 will still meet the character of the defined neighborhood overall.

The requested waiver is not inconsistent with the purposes and objectives of the General Plan. The Preliminary Plan substantially conforms to the East Silver Spring Master Plan, which notes that potential development can occur with little adverse environmental impact by adherence to the Forest Conservation Law thresholds, planting native species, planting a mix of over-story and understory trees and shrubs, and controlling and reducing existing invasive species. The Application meets the thresholds of the Forest Conservation Law, while retaining onsite forest, proposes planting native shrubs with a mix of over-story and understory trees, and controlling the existing invasive species (English Ivy). The larger lot size for proposed Lot 2 with its larger lot width and frontage is consistent with the Master Plan recommendations for new development that recognizes minimal adverse environmental impacts if environmental features such as onsite forest are protected.

The waiver is not adverse to the public interest because the development of proposed Lot 2 produces a larger lot that protects environmentally sensitive areas. By protecting these sensitive areas,

the Applicant creates a buildable area where a house can be located that is similar in size to the other existing structures in the neighborhood.

Therefore, all required findings can be made pursuant to Section 50-38 (a) (1) and staff recommends approval of the waiver request from Section 50 29 (b0 (2) of the Subdivision Regulations for frontage and width for proposed Lot 2. The waiver is the minimum needed to adequately protect the sensitive natural resources on the site.

Community Correspondence

The applicant conducted a pre-submission community meeting, as required, on June 3, 2013. Subsequent to the filing of this application, the community submitted numerous letters and a petition in opposition to the originally proposed three-lot subdivision.

The community also engaged the help of former Councilmember Valerie Ervin to include this property into the Parks Department's Legacy Open Space Program. On October 10, 2013, Councilmember Ervin wrote a letter to then Planning Board Chair Francoise Carrier, requesting that the subject site known as the Gough Property be purchased using the Legacy Open Space funds or through a partnership with another entity. In a letter on October 31, 2014, Chair Carrier responded that after review by the Parks Department, staff was not "interested in acquiring the property and did not meet the criteria for Legacy Open Space designation. The property was found to have minimal potential park stewardship or recreational merit." Copies of all letters are included in Attachment F.

The focus of community opposition to the three-lot subdivision application was the resubdivision of the site into three one-family lots and the environmental impacts associated with forest clearing, erosion, storm water runoff, and immediate affects to neighboring properties, such as tree impacts and the potential destabilization of the large off-site existing brick retaining wall along the southern property line.

The current application for two lots reduces the amount of clearing shown on the previous submission. The proposed two lot subdivision protects onsite and offsite resources, includes the removal of invasive species and the planting of supplemental native species within retained areas.. As submitted the Preliminary Plan addresses concerns raised in the community letters.

CONCLUSION

With the waiver of the two resubdivision criteria recommended above, the proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the *East Silver Spring Master Plan*. Access and public facilities will be adequate to serve the proposed lot, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, staff recommends approval of the application, the Preliminary Forest Conservation Plan and the requested waiver with the conditions specified at the beginning of this staff report.

Attachments

Attachment A - MCDOT memo

Attachment B - Applicant's Variance Request

Attachment C Montgomery County Arborist Approval Letter

Attachment D - MCDPS Stormwater Management Concept Approval Letter

Attachment E- Neighborhood Map and Resubdivision Criteria Table

Attachment F - Community Letters