



Neve Property –Subdivision Regulation Waiver Request: SRW201502

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Completed: 1/8/16

Description

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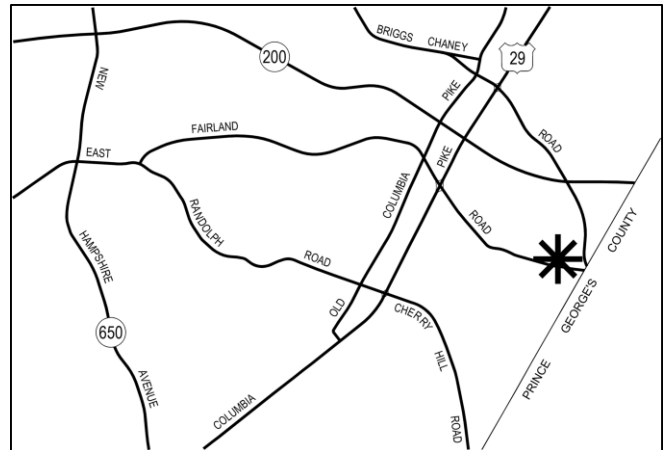
A request for a waiver under Section 50-38 to be relieved of the requirement to obtain Planning Board approval for a preliminary plan of subdivision under Section 50-34(a) of the Subdivision Regulations, located at 3138 Fairland Road, Silver Spring, 0.47 acres, R-90 Zone, Fairland Master Plan.

Staff Recommendation: Approval, with conditions

Applicant: Jody Kline

Submission Date: October 12, 2015

Review Basis: Chapter 50 (Sec. 50-38(a)(1))



Summary

- The request to waive the submission a preliminary plan as required in 50-34(a) is the minimum necessary to provide relief.
- The Applicant proposes to submit a record plat to construct one house.
- The Board of Appeals granted a 21.5 foot variance from the required minimum lot width at the building line under Section 59-4.4.8.B.1.
- There is no additional public benefit that would be obtained through the submission and review of a Preliminary Plan.
- Applicant to dedicate on the record plat 40 feet of right-of-way from the centerline of Fairland Road to meet Master Plan requirement.

STAFF RECOMMENDATION

Approval of a waiver of Section 50-34(a) of the Subdivision Regulations pursuant to Section 50-38(a)(1) of the Subdivision Regulations in order to permit recordation of a plat without submitting a preliminary plan of subdivision, subject to the following conditions:

1. Applicant must submit a complete Record Plat application within 120 days of the date of mailing of the Board's Resolution for this decision.
2. The record plat must show a dedication of 40 feet of right-of-way from the centerline of Fairland Road.
3. At the time of building permit, the Applicant shall pay a school facilities payment at the high school level for being located in the Paint Branch High School cluster which is inadequate in terms of capacity.

SITE DESCRIPTION

The 0.47-acre property is an unplatted parcel (P931, Tax Map KR561) located at 3138 Fairland Road in Silver Spring, MD and zoned R-90 ("Property" or "Subject Property"). The Property is currently vacant. Surrounding uses within the immediate area along Fairland Road are predominantly detached residential homes on recorded lots and parcels.

The Property contains no forest and is moderately sloped with its highest elevation located along the Fairland Road frontage on the south side of the Property at 312 feet sloping to the north to its lowest elevation of 290 feet. The Property is rectangular in shape and has frontage on Fairland Road.

On February 25, 2015, the Montgomery County Board of Appeals granted a variance of 21.5 feet to the required 75-foot minimum width at the building line as required under the zoning ordinance. Without this variance, the Property could not be platted as all lots must meet the minimum dimensional standards for their respective zone. The resulting lot will have a width of 53.5 feet at the building line.

PROJECT DESCRIPTION

The Applicant seeks to ultimately file a record plat for the Subject Property. A platted lot would grant entitlements to the Applicant and allow the County to issue a building permit to construct a detached single family residence.

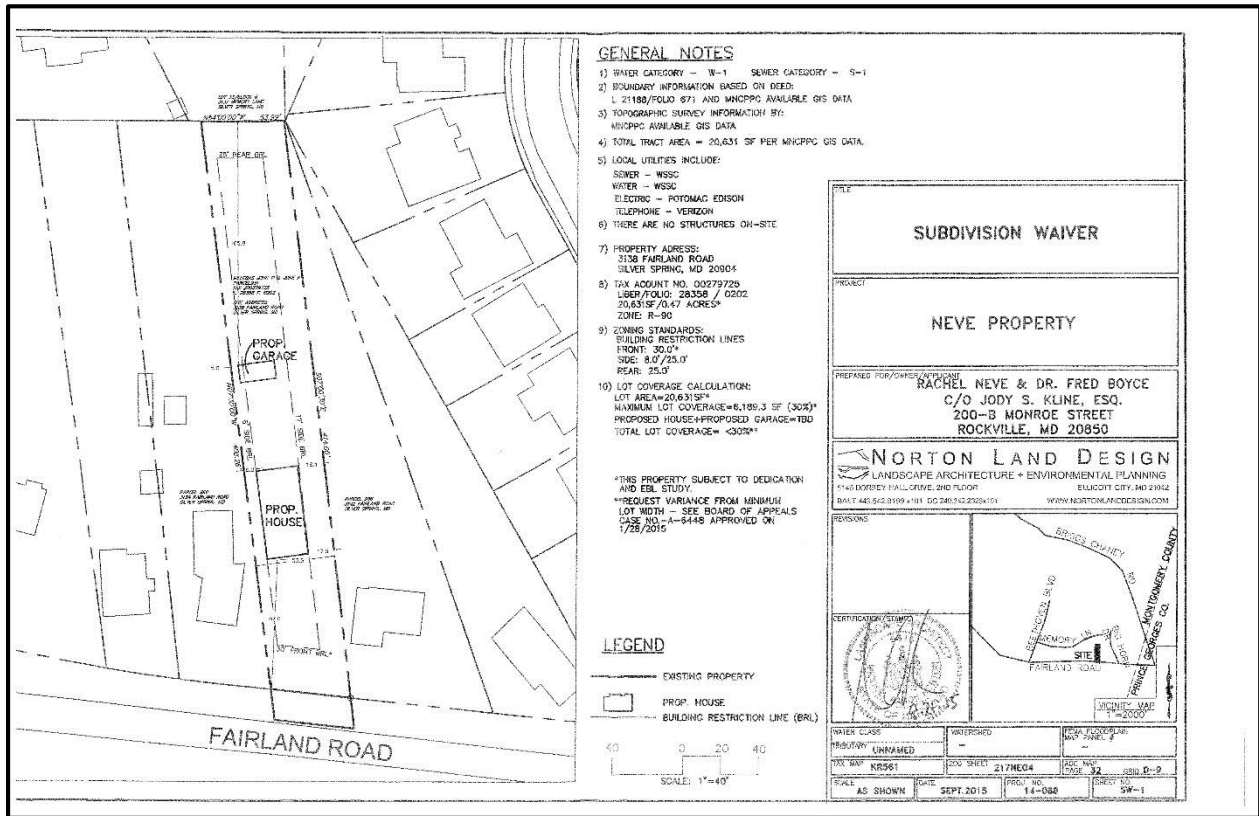
The Applicant has submitted this Subdivision Regulation Waiver requesting that the Planning Board waive the requirement for the submission of a preliminary plan of subdivision under the provisions of Section 50-34(a) which states:

"General. Every proposed subdivision or resubdivision shall be submitted to the board for tentative or conditional approval in the form of a preliminary plan prior to the submission of a subdivision record plat. The plan shall show graphically all facts needed to enable the board and other public agencies to determine whether the proposed

layout of the land in question is satisfactory from the standpoint of the public health, safety and welfare and the regulations, ordinance and laws applicable.”

If the Planning Board grants a waiver to the requirements in 50-34(a), the Applicant has agreed to submit a record plat application as quickly as possible. A Draft Subdivision Record Plat is provided below and illustrates what the recorded property would look like.

Figure 1: Draft Subdivision Record Plat



WAIVER REQUIREMENTS

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

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

DISCUSSION

The Subject Property was part of a six-acre tract of land known as "Sopers Fancy." According to current deeds for the Property, the six-acre tract was divided into nine parcels based on an unrecorded survey referenced in the deed that was prepared in November 1949. Staff and the Applicant have been unable to locate the survey to substantiate that it actually exists. The deed history further indicates that on August 5, 1960, a 0.47-acre parcel was described by a metes and bounds survey in a recorded deed, thereby establishing the date that the Subject Property was created. The size and shape of the Subject Property has been consistent since its creation in 1960. However, because the Property was created after June 1, 1958, it is not a parcel "exempt" from platting and must be recorded by plat before a building permit can be issued. This parcel does not meet the minimum width at the building line requirements (75 ft.) for the R-90 zone and it could not be platted in any regard without a variance from the Board of Appeals. The Board of Appeals recently granted such a variance.

The Applicant also pursued other options to secure building permits on this unplatted parcel including an attempt to prove that there had at one time been a house on the Property that burned down due to natural causes, and that a replacement house could be permitted. No documentation has surfaced that proves the Subject Property contained a residence at any time in its history.

SUBDIVISION REGULATION WAIVER DISCUSSION

Applicant's Position

The Applicant believes the waiver is the minimum necessary to provide relief from the requirement to submit a preliminary plan of subdivision and that the use of the R-90 zoned Subject Property for one house is consistent with the General Plan. The Applicant suggests that the eventual recordation of a plat sufficiently provides for the public interest and that the plat will ensure the building permit will be issued for a structure that meets all requirements of the County Code. A final comment is made regarding the hardship that has been placed on the Applicant and how that hardship would be extended both financially and time-wise if the waiver were not granted.

Staff Position

The unusual circumstance that justifies the requested waiver is that bringing this particular Property through a full preliminary plan review provides no actual public benefit and the Applicant has already spent a considerable amount of time attempting to get the Property platted, including a variance approval from the Board of Appeals. Also contributing to the unusual nature of the circumstances of this Application is that for some time after the Subject Property was created in 1960, the Property was exempt from platting and was able to get a building permit without the platting requirement. That allowance was changed by action of the County Council in the mid-1980's. Requesting this waiver has become the most efficient means of getting a record plat and a building permit.

Dedication will be provided at the time a record plat is recorded. Stormwater management and sediment control will be addressed at the time of building permit. Because of the size of the Subject Property, it is exempt from the requirements of Forest Conservation Law. After dedication, the Property will continue to meet the minimum size requirements of the R-90 zone and will meet all other zoning

standards as shown in the table below, except width at the front building restriction line which has been addressed via a variance granted by the Board of Appeals:

R-90 Requirements	Proposed
Minimum Size (9,000 sq. ft. min.)	20,361 sq. ft. or 0.47 acres
Frontage on street (25 ft. min)	54 ft.
Width at front b.r.l. (75 ft. min)	53.5 ft. (Variance granted by Board of Appeals)
Setbacks: <ul style="list-style-type: none"> ▪ Front (30 ft. min) ▪ Rear 25 ft. min) ▪ Side (12 ft. min/25 ft. total) 	Exact setbacks to be determined at time of building permit
Max. lots permitted under zone (1)	1

Unusual Circumstances - *Staff finds* that the unusual circumstance of this Application that the County Council eliminated the provision that would have allowed a building permit to be issued on the parcel in 1985. There is no additional public benefit that could be derived by taking this Property through a complete preliminary plan review.

Minimum Necessary - *Staff finds* that for this Property, the request to waive the submission a preliminary plan as required in 50-34(a) is the minimum necessary to provide relief from this requirement.

Consistent with the General Plan - The waiver will allow this Property to be platted as a recorded lot. This community of homes along Fairland Road is a suburban community. The Fairland Master Plan does not specifically mention this Property but does recommend the area retain the R-90 zoning. The Property, if platted, would retain the R-90 zone and meet the size and dimensional requirements (with the granted variance) of the zone. Therefore, *Staff finds* that the waiver is consistent with the General Plan as amended by the Fairland Master Plan.

Public Interest - Further, *Staff finds* that the waiver is not adverse to the public interest as there is no additional public benefit that would be obtained through the submission and review of a Preliminary Plan. The eventual platting of the Property is in the public interest to assure conformity with the subdivision regulations.

FINDINGS AND CONCLUSION

Staff agrees that the submission of a preliminary plan in this instance will serve no purpose in the public interest. All of the public benefits derived from the typical preliminary plan can be addressed at the record plat and building permit process. Therefore, there is no additional public benefit available by subjecting the Applicant to a preliminary plan review.

The Applicant will obtain the necessary access permit from Montgomery County Department of Transportation to ensure a safe driveway location onto Fairland Road. There will be no public facilities implications with respect to traffic, schools, or fire and rescue access. The Subject Property is in the Paint Branch High School cluster which does requires a school facilities payment at the high school level. Aside from the dedication of right-of-way, no road frontage improvements are necessary or required.

Staff recommends approval of the requested waiver with the conditions cited above.

Attachments:

Attachment 1: Board of Appeals Opinion, Case No. A-6448

Attachment 2: Applicants' Statement of Justification

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. A-6448

PETITION OF JOHN AND JUNE HILLEGAS AND RACHEL NEVE

OPINION OF THE BOARD

(Opinion Adopted January 28, 2015)
(Effective Date of Opinion: February 25, 2015)

Case No. A-6448 is an application for a 21.5-foot variance from the required minimum lot width at the building line of 75 feet, under Section 59-4.4.8.B.1. The Petitioners propose to construct a new single family dwelling on a lot whose width at the front building line is 53.5 feet.

The Board of Appeals held a hearing on the application on January 28, 2015. Jody Kline, Esquire, appeared on behalf of the Petitioners. He called John Hillegas as a witness. Solomon Yohannes, the abutting neighbor to the west of the subject property, also testified.

EVIDENCE PRESENTED

1. The subject property is Parcel P931, Colesville Subdivision located at 3138 Fairland Road, Silver Spring, Maryland, 20904, in the R-90 Zone.
2. To obtain a building permit to construct the proposed house, Petitioners must have a plat of subdivision recorded. [Chapter 50-8 Montgomery County Subdivision Regulations]. The Maryland National Park and Planning Commission (MNCPPC) advises the Petitioners that it cannot accept or allow recordation of a plat for this property because it does not comply with the requirement of Section 4.4.8.B.1 of the Zoning Ordinance, specifically the property's width at the front building line.
2. The subject property was part of a six-acre tract of land originally known as "Sopers Fancy." That parcel was divided into nine parcels in accordance with an unrecorded plat of survey prepared by Joseph N. Starkey in November, 1949. The subject property was shown as Parcel A on that plat. [See Exhibits, 3, 4(a), 12].

3 The subject property was designated as a separate parcel of land, Parcel 931, at 3138 Fairland Road, in a conveyance by deed dated May 1, 1960, recorded in the Land Records of Montgomery County in Liber 2764 at Folio 311, from George Jackson and Emory Lee, joint tenants, to Herbert Henry Jackson and Grace Margaret Jackson as tenants by entirety. [Exhibit No. 6(a)].

4. Abutting Parcel 960, to the west of the subject property, with roughly the same shape and dimensions, was created simultaneously by recordation of a deed to the same grantees, recorded in Liber 2764 at Folio 313. [Exhibit No. 6(b)]. The address of that property is 3134 Fairland Road.

5. Anecdotal evidence suggests that there was a residence for Mrs. Grace Jackson on Parcel 931, although there are no records of permits for its construction. Incomplete records from the Department of Housing and Community Affairs indicate that this house came to be considered unsanitary and/or unsafe and that the County intervened and constructed a residence for Ms. Jackson on abutting Parcel 960, to which she relocated, leaving the structure on the subject property vacant. Subsequently, again according to anecdotal evidence, and without official records, the vacant structure was destroyed in a fire, leaving no markings or features that can be identified today.¹ [See, Exhibit No. 3, pp. 3-4, Transcript, January 28, 2015, p. 20-21].

8. Mr. Kline stated that the proposed construction substantially conforms with the established historic or traditional development pattern of the street or neighborhood since there is a development pattern of houses constructed on narrow lots on the block. [Transcript, January 28, 2015, p. 14].

9. Mr. Hillegas purchased the subject property and began paying taxes on it in 2001. He testified that he began the process to obtain a building permit shortly before the downturn in the housing market, so he abandoned that process. He had a copy of a September 14, 1995 memorandum from MNCPPC Subdivision Office, Development Review Division to the Montgomery County Health Department which states, in part, "Since this request is an exception to the subdivision regulations, no preliminary subdivision plan will be required for the release of a building permit by this office." [Exhibit No. 13].

He testified that eventually he decided to sell the property and that after four or five years, received a contract from Rachel Neve. Ms. Neve was told by the Maryland National Capital Park and Planning Commission that the lot is unbuildable because of its substandard narrowness at the building line. He noted that the lot contains 20,000 square feet, well above the minimum lot size for the zone.

¹ Under Subdivision Regulations Section 50-9-(f)(2), Montgomery County would allow replacement of a structure on an un-platted lot created after 1958 if the Petitioners could produce evidence that a house once existed on the Subject Property. But because there are no such County records, and no physical evidence of the prior house's existence, this avenue is not available to the Petitioners.

Mr. Hillegas stated that he discussed with MNCPPC staff the September 14, 1995 memorandum and the fact that other parcels, created out of 'Sopers Fancy' in 1960 like his, have houses on them, but was told that because his lot was created after June 1, 1958, it does not qualify for the exemption in the subdivision regulations that would make it buildable.²

Mr. Hillegas stated that without a variance, allowing a house to be built on it, the lot would have no reasonable use. He testified that during the time the subject property was for sale, he received no inquiries about using the property for something other than a single-family house. [Transcript, p. 23]. In response to a Board question, Mr. Hillegas confirmed that the contract to sell the subject property is contingent on receiving the variance.

10. Soloman Yohannes, the abutting neighbor to the west at 3134 Fairland Road, testified that the front door to his home faces the shared side lot line between his property and the subject property. He stated that he does not oppose a house being built on the subject property but that he prefers that it not be located in front of his front door. He also requested that a fence be installed.

Mr. Kline stated that he has talked to Mr. Yohannes about siting the proposed house to the rear of Mr. Yohannes's front door, and that they had also discussed use of a driveway area on Parcel 931, as well as installation of a fence.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7-3.2.E.1. denying the variance would result in no reasonable use of the property*

The Board finds that no house can be built on the subject property without the requested variance. The Board finds that 'reasonable use' as contemplated in this section of the variance standard means use for any reasonable purpose that is consistent with the surrounding properties, the neighborhood and the zone. This is clearly a residential neighborhood and the best use for this lot is to put a residence on it. Based on the foregoing and on Mr. Hillegas's binding testimony, that he attempted to sell the property for more than four years and received no offers to use the property for anything other than a residence, the Board finds that the variance can be granted on this basis.

² Under Subdivision Regulations Section 50-9-(f)(1), a lot created by deed prior to June 1, 1958 may be built upon even if the lot is not platted. This exemption appears to have applied to several of the lots created out of 'Sopers Fancy'.

Section 59-7-3.2.E.1.a - one or more of the following unusual or extraordinary situations or conditions exist:

2. *Section 59-7.3.3.E.1.a.v - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood*

The evidence of record indicates that the historical pattern of development along the block includes several houses on narrow lots. The Board finds that granting the variance for the subject property would continue this pattern of development, which can be the basis for the variance.

3. *Section 59-7.3.2.E.1.b - the special circumstances or conditions are not the result of actions by the applicant*

Mr. Hillegas purchased the subject property thinking it was a buildable lot. He took no action that created the circumstances that constrain building on it.

4. *Section 59-7.3.2.E.1.c - the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property*

The Board finds that a variance to allow construction of a house on the lot is the minimum necessary to afford Mr. Hillegas reasonable use of his property. The proposed construction will conform with applicable development standards in all other respects. While narrow at the front building line, the property contains 20,000 square feet affording the ability to site the house away from neighboring homes.

5. *Section 59-7.3.2.E.1.d. - the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan*

The purposed of the variance is to allow construction of a single family home in a single family neighborhood, which is entirely consistent with the master plan.

6. *Section 59-7.3.2.E.1.e. - granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties*

The Board finds that the proposed construction continues the traditional development pattern on the block and as such, will not be adverse to the use and enjoyment of abutting or confronting properties. Exhibit No. 4(b) shows the proposed house to the rear of Mr. Yohannes's house and Mr. Kline stated that the Petitioners have agreed to accommodate Mr. Yohannes's concern that a new house not be placed directly in front of his front door. The property's large size allows flexibility to site the house to avoid such an impact.

Accordingly, the requested variance of from the required is granted subject to the following condition:

1. The petitioners shall be bound by the testimony presented and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

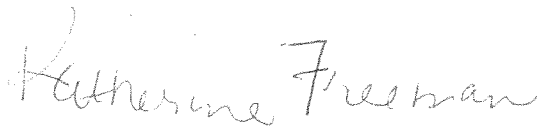
Therefore, based upon the foregoing on a motion by David K. Perdue, Chairman, seconded by Stanley B. Boyd, with Carolyn J. Shawaker, Vice-Chair, John H. Pentecost and Edwin S. Rosado in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of February, 2015.



Katherine Freeman
Executive Director

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section

59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

APPLICANTS' AMENDED STATEMENT OF JUSTIFICATIONWAIVER REQUESTINTRODUCTION

Applicants, Dr. Rachel Neve and Dr. Frederick Boyce, recent purchasers (March 3, 2015 deed recordation date) of the real property located at 3138 Fairland Road, Silver Spring, seek a waiver of the strict application of Chapter 50 ("Subdivision Regulations") of the Montgomery County Code.

In particular, the Applicants request that they be relieved of the requirement to obtain Planning Board approval of a preliminary plan of subdivision (Sections 50-34 (a) of the Subdivision Regulations) prior to preparation, review and recordation of a plat of subdivision. Upon grant of the requested waiver, Applicants will promptly proceed to submit and have recorded among the Land Records of Montgomery County a plat of subdivision for the subject property as part of which they will dedicate any land area shown to be necessary for the widening of Fairland Road and will comply with any other requirements relating to platting of the subject property.

JUSTIFICATION FOR WAIVER OF REQUIREMENTSTO OBTAIN PRELIMINARY PLAN OF SUBDIVISIONAPPROVAL PRIOR TO PLATTINGA. Background History

The fact that the Applicants have to go through any of the procedures of Chapter 50 at all is surprising.

The Subject Property was created by a deed recorded on August 5, 1960 in Liber 276 at Folio 311. The deed transferred title to the property from George Jackson and Emory Lee to Herbert Henry Jackson and Grace Margaret Jackson as tenants by the entirety. The property conveyed was known as "Parcel A" on a drawing entitled "Outline of Original 6 Ac. Tract, L1158 F53 Dated May, 1948" (attached, marked "Exhibit 5A")

Subsequent to acquiring title to the Subject Property, at an unknown date in time, Ms. Jackson built a residence on the lot at 3138 Fairland Road but probably without a building permit (no records at the Montgomery County Department of Permitting Services) and probably without a septic system, or at least without a publicly approved septic system (no records of any sanitary system at the Well and Septic Division of MCDPS).

By 1980, according to the remaining (but limited) records of the Montgomery County Department of Housing and Community Affairs, and the recollections of DHCA personnel involved with Grace Jackson, Mrs. Jackson's residence on the Subject Property was considered unsanitary and uninhabitable. Accordingly, Montgomery County intervened and, through one of its housing programs, constructed a residence for Mrs. Jackson on a second adjacent lot that she

owned at 3134 Fairland Road, to which Mrs. Jackson relocated leaving the structure on the Subject Property vacant.

Subsequently, according to neighbors, on or around 1985, a fire destroyed the remains of Mrs. Jackson's house at 3138 Fairland Road leaving no markings or features that can be identified on the site today.

Under Section 50-9(f)(1) of the Subdivision Regulations a house may be constructed on a parcel of land not previously recorded if the lot has not changed in shape or size since June 1, 1958. Of course, as pointed out above in the beginning of this Statement, Mrs. Jackson's parcel of land was not created by deed until August 5, 1960. Therefore, this parcel of land is not considered "buildable" under this commonly used provision of the Subdivision Regulations.

Separately, Subsection 50-9(f)(2) provides an exception to the rule about "buildability" for construction of a new residence on an unplatted lot when the building permit is to replace a dwelling "...involuntarily demolished by fire...or other force of nature." For the past several years, the Applicants' predecessor in title unsuccessfully tried to convince County regulators of his ability to replace the former dwelling unit on the Subject Property but was unable to do so because there was no tangible evidence, either among the records of the County, or physical features that could be identified in the field, to confirm the anecdotal evidence that a house had once existed on the property.

When the Applicants became interested in the Subject Property, they elected to "go with the flow", that is, have the property platted so that a building permit could be issued for new construction. However, that decision had its own problems.

When the parcel at 3138 Fairland Road was created by deed in 1960, it had a maximum width at the building line of only 53.99 feet. Minimum lot width at the building line in the R-90 zone is 75 feet. (Section 59-4.4.8.B.1). Accordingly, staff of Maryland-National Capital Park and Planning Commission advised the Applicants that it could not accept a preliminary plan of subdivision for processing because it could not allow the creation of a lot the dimensions of which were in conformance with the requirements of the Zoning Ordinance. The owners have addressed and solved the lot size nonconformity problem. On February 25, 2015, the County Board of Appeals granted a variance from the strict requirement of the Zoning Ordinance that the Subject Property must have 75 of width at the building line in order to be eligible for construction of a new residence. (See Board of Appeals decision in Case No. A-6448, attached). The variance of 21 feet granted by the Board of Appeals in Case No. A-6448 allows the Applicants to pursue their goal of constructing a new house on the subject property which they intend to make into a platted lot.

B. Applicant's Request for Waiver

This application is a request for a waiver under Section 50-38 of the Subdivision Regulations to allow an unplatted parcel of land created after June 1, 1958 (August 5, 1960 to be exact) to proceed directly to the record plat phase of the subdivision process without the

necessity of obtaining preliminary plan of subdivision approval as required under Section 50-34(a). But for a quirk in the record keeping related to a previous residence located on the site, this property would have been eligible for issuance of a building permit for a new residence. But because the owner cannot provide any governmental record confirming that a house once stood on the property, platting of the property is required in order to be able to obtain a permit for a replacement residence.

C. Rationale for Relief from the Requirement to obtain preliminary plan of subdivision approval prior to platting.

As the facts above describe, the Applicants, and their predecessor in title have had to go through extraordinary steps to reach a point when they can pursue platting of their property. The preceding owners, Mr. and Mrs. Jack Hillegas worked on solving the “buildability” problem from the date of their acquisition of the land in 2004 until the Applicants took on the challenge in July, 2013, prior to actually settling on the property. Under slightly difference circumstances (creation of the parcel of ground twenty-two months earlier; tangible evidence that a residence once stood on the property), no requirement for a preliminary plan or record plat would have been applicable.

Under Section 50-38(a)(1) of the Subdivision Regulations, the Planning Board may grant a waiver of any provision of the Regulations upon a showing by the applicant of practical difficulties or unusual circumstances that warrant relief from the strict requirements of the Subdivision Ordinance. There is some precedential history under which the Planning Board extended the exemption for requiring platting for lots that were not created until after June 1, 1958. By analogy, Applicant seek relief from the strict application of Section 50-34(a) of the Subdivision Regulations. Although the subject property is not an Exempt (pre-1958) Parcel it should be eligible for construction of a replacement residence for the pre-existing residence under Section 50-9(f)(2).

D. Conformance with Public Interest

The master plan for the Fairland area has been reviewed and the only provision that would apply to the proposed construction (see attached " Site Plan for Variance") would be dedication in accordance with the Master Plan's recommendations, a requirement that the Applicants are pleased to satisfy through the record plat process.

The issues typically addressed in a preliminary plan application (e.g., Stormwater management, forest conversation, adequacy of public facilities, service by public utilities) are simply not an issue or subject of concern for a parcel of land surrounded by existing residences fronting on an improved public street with good lines of sight in both directions to safe and efficient access to the property. The administrative processes to which the property will be subject will involve an adequate review of issues of importance to the County and to the community. Therefore, having the property go through the preliminary plan review process would serve no public interest.

E. Conclusion

The practical difficulties and unusual circumstances suffered by the Applicants and their predecessors in title would be extended by a requirement that they complete the entire subdivision review process. But requiring them to go through the preliminary plan review process accentuates the hardship that the Applicants will suffer due to a time consuming and expensive process which provides no public benefits.

Granting of this waiver request to avoid the preliminary plan of subdivision review process imposed by Sections 50-34(a) of the Subdivision Regulations will be the minimum action necessary to provide relief from the strict requirements of the Subdivision Regulations. Such waiver will not be inconsistent with the purposes and objectives of the General Plan. And such relief will not be adverse to the public interest.