



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

MCPB No. 18-043  
Administrative Subdivision No. 620180030  
10202 Falls Road  
Date of Hearing: May 17, 2018

MAY 22 2018

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review administrative subdivision applications; and

WHEREAS, on December 7, 2017, Terrier Falls LLC (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create two (2) lots on 1.14 acres of land in the R-200 zone, located at 10202 Falls Road (“Subject Property”), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620180030, 10202 Falls Road (“Administrative Subdivision Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated May 4, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 17, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620180030 to create two (2) lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<sup>1</sup> For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

---

Approved as to  
Legal Sufficiency:   
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

1. This Administrative Subdivision Plan is limited to two (2) lots for two (2) one-family detached dwelling units.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan (PFCP) No. 620180030, approved as part of this Administrative Subdivision Plan, including:
  - a. Prior to record plat approval, the Final Forest Conservation Plan (FFCP) must be reviewed and approved by the Planning Board or Planning Director as specified in Section 22A-11(g) of the Forest Conservation Law.
  - b. The FFCP must be consistent with the approved PFCP.
  - c. The Limits of Disturbance (LOD) shown on the Final Erosion and Sediment Control Plan must be consistent with the LOD shown on the approved FFCP.
  - d. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmentally sensitive areas as shown on the approved FFCP. The Category I Conservation Easements approved by the M-NCPPC Office of General Council must be recorded in the Montgomery County Office of Land Records by deed and the Liber/Folio of the Category I Conservation Easement must be referenced on the record plat.
  - e. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record an M-NCPPC- approved Certificate of Compliance in an M-NCPPC-approved off-site forest bank to satisfy the 0.69-acre forest conservation requirement.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 1, 2018, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. 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 Administrative Subdivision Plan approval.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated February 15, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Administrative Subdivision Plan approval.

5. The Planning Board accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated April 10, 2018, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
6. The record plat must show necessary easements.
7. The Applicant must construct a minimum 5-foot wide bikeable shoulder on Falls Road along the frontage of the Subject Property subject to permitting by the Maryland State Highway Administration.
8. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
9. The Adequate Public Facility (“APF”) review for the Administrative Subdivision Plan will remain valid for sixty-one (61) months from the date of mailing of this Memorandum.
10. The Certified Administrative Subdivision 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 Administrative Subdivision 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.”*

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for up to 3 lots for detached houses permitted in any residential zone.*

*A. The lots are approved for standard method development.*

The lots were submitted and are approved for standard method development in the R-200 zone.

*B. Written approval for any proposed well and septic area is received from the MCDPS, Well and Septic Section before approval of the plat.*

The lots are classified S-1 for the use of public sewer. Therefore, this finding does not apply.

*C. Any required road dedications and associated public utility easements are shown on the plat and the applicant provides any required improvements.*

The Application requires no additional right-of-way dedication because previously recorded Plat No. 1866 and Plat No. 16604 (adjacent plat on the opposite side of Falls Road) combined to grant a total of 125 feet which exceeds the Master Plan recommendation by five feet. The Application shows all necessary public utility easements.

*D. The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat.*

As conditioned and discussed below, the requirements for adequate public facilities have been met.

*E. Forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.*

a. As conditioned and discussed below, the Forest Conservation requirements of Chapter 22A have been met.

b. As conditioned above and discussed in the findings below, the Application has received approval from MCDPS for a stormwater concept.

c. There are no additional environmental protection requirements to be met.

*2. The Administrative Subdivision Plan meets the technical review requirements of Chapter 50, Section 4.3.*

*A. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision, environmental constraints, the funnel shaped lot created by the Ronald Drive

right-of-way (paper street), and the building type (single family homes) contemplated for the Subject Property.

The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

*B. The Administrative Subdivision Plan substantially conforms to the Master Plan.*

The Planning Board finds that the Application substantially complies with the 2002 Potomac Subregion Master Plan. The Master Plan recognizes the largely developed nature of this area and recommends “infill development of the remaining vacant properties with residential development essentially similar to what is now there...” (p 41). The land use recommendations for this part of the plan focus on properties that were undeveloped at the time the plan was prepared and on the Planning Area’s commercial centers. While there is no specific recommendation for this recorded lot in the Master Plan, this subdivision is consistent with the Plan’s recommendation for infill development in the Potomac Planning Area.

*C. Public facilities will be adequate to support and service the area of the subdivision.*

Roads and Transportation Facilities

The transportation Adequate Public Facilities test is satisfied under the current 2016-2020 Subdivision Staging Policy. The Property is located in the Potomac Policy Area.

A traffic study is not required to satisfy the APF’s Local Area Transportation Review (LATR) test because the two new single-family detached units do not generate 50 or more person trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Falls Road is classified as a Major Highway under the management of the Maryland State Highway Administration with 120 feet of right-of-way. The existing right-of-way width on Falls Road is 125 feet, which is slightly more than the Master Plan requirement. Therefore, no additional right-of-way dedication is necessary as part of this Application.

Ronald Drive is an undeveloped right-of-way commonly known as a “paper” street, which lies within an existing stream and stream buffer. Due to these

environmental constraints, no additional right-of-way or frontage improvements are required.

The 2005 Countywide Bikeways Functional Master Plan designates Falls Road in front of the subject property as a Dual Bikeway (DB-2) with a shared use path on the east side of the street and bike lanes. The forthcoming Bicycle Master Plan Update also designates this section of Falls Road for a shared use path on the east side and bikeable shoulders. M-NCPPC now considers facilities formerly described as bike lanes to be a similar bicycle facility as bikeable shoulders. As conditioned, this Application should construct a minimum 5' wide bikeable shoulder along the frontage of the Subject Property to be consistent with both the Master Plan and Bicycle Master Plan.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. The Subject Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. A Fire Access Plan was approved on February 15, 2018. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

#### School Adequacy

The Application was reviewed for school adequacy. The Property associated with this application is located within the Winston Churchill High School cluster and is within the attendance area for Potomac Elementary and Hoover Middle Schools.

#### *Student Generation*

To calculate the number of students generated by the Application, the number of dwelling units of each dwelling unit type is multiplied by the applicable student generation rate for that dwelling type, at each school level. The Application proposes to build two new one-family detached houses. Based on the trip generation rates approved by the Subdivision Staging Policy and the proposed development type, the Preliminary Plan will generate 0.41 new elementary school students, 0.22 new middle school students and 0.30 new high school students.

This Application is expected to generate, on average, less than one student at each school level. Because of the negligible impact of this Application, there is

adequate cluster and individual school capacity for the amount and type of development proposed.

*Cluster Adequacy*

To test cluster adequacy, the Planning Board must look at the projected August 2022 enrollment for the Churchill Cluster at the elementary, middle and high school levels after considering the student generation of the Preliminary Plan, and compare that to the enrolment threshold that would trigger a moratorium on construction, which is 120% of the programed cluster capacity. The projected enrollment in August 2022 will be below the moratorium threshold at all three school levels, therefore the Preliminary Plan passes the cluster adequacy test.

*Individual School Adequacy*

The Planning Board analyzed the capacity at the individual school level for Potomac Elementary and Hoover Middle Schools. The test looks at the projected 2022 enrollments at both schools and compares it to the moratorium enrollment thresholds of 120% program capacity utilization and seat deficit levels. The projected enrollment including this Application is below the 120% utilization rate and below the seat deficit for both schools, therefore there is adequate capacity for students for this Application.

Based on the school- cluster and individual- school capacity analyses performed, there is adequate cluster and individual school capacity for the amount and type of development proposed by this Application.

- D. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420180620 for the Property was approved on October 24, 2017. The NRI/FSD identifies the environmental features and forest resources on the Property. The Subject Property is 1.14-acres located within the Rock Run watershed, a Use I-P stream. The entire site gently slopes and drains to the south to an unnamed perennial stream located approximately 70-feet off the southern property line running parallel to the property line. A site visit by Staff on October 23, 2017 revealed no evidence of on-site streams. The Property includes a stream buffer extending from the off-site stream. A wetland area of approximately 2,100 square feet is located abutting the Property against the southeast corner of the site. Both the stream and wetland area are located within the existing right-of-way for Ronald Drive. The 100-foot stream buffer (SB) for the off-site stream extends approximately 30-feet onto the Subject Property resulting in an

environmental buffer of approximately 0.19 acres which also encompasses the 100-year floodplain and wetland area.

The Property contains 1.14 acres of forest which has a Retention Priority of 1 (High) due to the forest quality and the location of a stream and wetland. The forest stand is dominated by Tulip Poplar (*Liriodendron tulipifera*) and Red Maple (*Acer rubrum*) with an average canopy closure of 60%. There are twenty-six (26) trees equal to or greater than 24" DBH that were identified on or within 100-feet of the property lines. Of those 26 trees, nine (9) trees are 30" diameter breast height (DBH) or greater (specimen). The Property contains no steep slopes or highly erodible soils.

#### 1. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law, Chapter 22A of the County Code, a Preliminary Forest Conservation Plan (PFCP) for the project was submitted with the Administrative Subdivision Plan application. The total net tract area for forest conservation purposes is 1.17 acres, which includes 0.03 acres of off-site work for the water-line connection to the existing 16" water line in Falls Road and the sewer-line connection at the southwest corner of the site. The Property is zoned R-200 and is considered High Density Residential (HDR) under the Trees Technical Manual. The PFCP worksheet shows the removal of 1.14 acres of forest, the retention of 0.00 acres of forest resulting in a total reforestation/afforestation requirement of 0.69 acres. The Applicant has proposed to meet the reforestation/afforestation requirement by taking the total 0.69 acres to an off-site forest bank. A total of 0.22 acres of on-site forest is proposed to be placed into a Category I Conservation Easement. 0.19 acres of this total lies within the stream buffer, which must be placed into a conservation easement and 0.03 acres are adjacent to the stream buffer along the eastern property line. However, since the physical dimensions and square footage of this 0.22-acre area do not meet the definition of forest, it cannot be used to off-set the reforestation/afforestation requirement even though it is to be protected by a conservation easement.

#### 2. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected

Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to six Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance, as enumerated below:

- a. *Granting the Variance 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 4 trees and impacts to 2 others is due to the location of the trees, necessary site design requirements and environmental constraints on the Property. The Applicant proposes removal of the 4 trees with mitigation. Therefore, The Planning Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

- b. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this preliminary plan application. The Subject Property is a very constrained by environmentally-sensitive features, combined with utility requirements and government regulations which limit options to relocate the proposed residential structures in order to eliminate the need to remove or impact variance trees.

- c. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

- d. Granting the Variance will not violate State water-quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer. The Application proposes mitigation for the removal of these four trees by planting twelve (12) larger caliper trees on-site. The 12 mitigation trees will eventually provide more shade and more groundwater uptake than the four existing trees currently provide. Therefore, the Planning Board finds that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately  $\frac{1}{4}$  of the diameter breast height removed resulting in a total mitigation of 35.75 inches of replanted trees. No mitigation is required for Protected Trees impacted but retained.

- E. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Administrative Subdivision Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on April 10, 2018. The Application will meet stormwater management goals through the use of drywells, rooftop disconnection, landscape infiltration, and micro-infiltration.

BE IT FURTHER RESOLVED that this Administrative Subdivision Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 22 2018 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Maryland Rule 7-203).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Patterson, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss and absent at its regular meeting held on Thursday, May 17, 2018, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board