



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

MCPB No. 18-053  
 Administrative Subdivision No. 620170070  
 8911 and 8915 Burdette Road  
 Date of Hearing: June 28, 2018

JUL 16 2018

**RESOLUTION**

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

WHEREAS, on July 10, 2017, Jan Evans and Steven Heflin (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create three (3) lots on 2.86 acres of land in the R-200 zone, located on Burdette Road, approximately 900 feet south of Bradley Boulevard (“Property” or “Subject Property”), in the Bethesda/Chevy Chase Policy Area and 1990 *Bethesda-Chevy Chase Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620170070, 8911 and 8915 Burdette 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 June 15, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 28, 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. 620170070 to create three (3) 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:

1. This Administrative Subdivision Plan is limited to three lots for one single family detached dwelling unit on each lot.
  2. Prior to any clearing, grading, or demolition necessary to construct the project, the Applicant must obtain Planning Department approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
  3. The Final Forest Conservation Plan must address the following items:
    - a. Signage, and a split-rail fence and/or boundary posts, to delineate easement areas;
    - b. Control of invasive species;
    - c. Cleanup of trash/debris;
    - d. Mitigation tree planting details, and timing for installation;
    - e. Update the FCP sheets to entirely remove the previously proposed overhead electric notes/graphics (within the CRZ of tree 34) and show the proposed utility location similar to the layout on the Certified Administrative Subdivision Plan;
    - f. Detailed tree save plan;
    - g. Removal of hazardous trees/limbs; and
    - h. All tree protection measures shown on the plans must be certified by an International Society of Arboriculture certified arborist who is also a Maryland Licensed Tree Care Expert.
  4. The signage, and a split-rail fence and/or boundary posts, (as determined on the Final Forest Conservation Plan) to delineate easement areas must be installed prior to the release of any building permit for new construction.
  5. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated January 18, 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. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
  6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter dated January 4, 2018, and hereby incorporates them as conditions of
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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.

7. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter(s) dated August 23, 2017, and December 21, 2017, 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.
8. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT in its letter(s) dated August 23, 2017, and December 21, 2017, 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.
9. The record plat must show necessary easements.
10. 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 Planning Board Resolution.
11. The Certified Administrative Subdivision Plan must contain the following note:

*“Unless specifically noted on this plan drawing or in the 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) approval. 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 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 will not be served by wells or septic areas, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

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

The Applicant is providing road dedication in accordance with the Master Plan, which designates Burdette Road as a principal secondary roadway (PS-1) with a 70-foot right-of-way. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat as well as a common ingress/egress easement over the shared driveway.

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

#### Roads and Transportation Facilities

There are adequate public facilities to support and service the Property in accordance with Section 50.4.3.J of the Subdivision Code. The Property is in the Bethesda/Chevy Chase Policy Area, which is categorized as an Orange Policy Area under the 2016 - 2020 Subdivision Staging Policy (the "SSP"). As demonstrated in Lenhart Traffic Consulting's May 8, 2017, Traffic Statement submitted with the Application, the Administrative Subdivision generates fewer than 50 peak-hour person trips and is therefore exempt from Local Area Transportation Review under the SSP. Therefore, roads and transportation facilities are adequate to support the Application.

#### School Adequacy

This Application was reviewed for school adequacy. The Property is served by Burning Tree Elementary School, Thomas W. Pyle Middle School, and Walt Whitman High School.

#### *Student Generation*

To calculate the number of students generated by the development, the number of dwelling units is multiplied by the applicable student generation rate for each school level. The Application proposes three single family detached dwelling units on a property with one existing single family detached unit. With a net of two new single-family homes, the project is estimated to generate 0.41 new elementary 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.

#### *Cluster Adequacy*

To test cluster adequacy, the Planning Board must look at the projected September 2022 enrollment for the Walt Whitman High School Cluster at the elementary, middle and high school levels after considering the student generation of the Preliminary Plan and compare that to the enrollment threshold that would trigger a moratorium on construction, which is 120% the programmed 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 Burning Tree Elementary and Thomas W. Pyle 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 analysis performed, there is adequate cluster and individual school capacity for the amount and type of development proposed by this Application.

#### Other Public Facilities and Services

The Property is served by public water and sewer and is classified in the W-1 and S-1 categories. Public water and sewer mains currently serve the Property, which will be adequate to serve the subdivision. Dry utilities including electricity, gas, and telephone are also available to the Property. 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.

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

The Subject Property is subject to Chapter 22A of the County Code. The Planning Board finds that, as conditioned, the Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

#### 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 Applicant submitted a variance request to remove nine specimen trees and to impact, but retain, eight specimen trees. The Applicant has shown that enforcement of the Law for the designated trees would result in an unwarranted hardship for the following reasons:

- a. One of the trees proposed for removal under the variance (tree 60) is in severely declining health, and retention of the tree would create a significant maintenance burden and potential liability; and
- b. Not granting the variance would severely limit the site's buildable area, due to the extensive cover of the critical root zones of subject trees throughout the property.

The Board makes the following findings necessary to grant the Variance:

- a. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Since the Property is considerably constrained by forest to be protected, and the remaining 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 building restriction lines, and proposed conservation easements. Therefore, the variance request would be granted to any applicant in a similar situation.

- 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 based on development allowed under the existing zoning and the need to achieve adequate stormwater management and fire/rescue service access. 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 onsite mitigation plantings of native canopy trees are provided.

- 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 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.

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

The Montgomery County Department of Permitting Services (MCDPS) approved the stormwater management (SWM) concept for the project on January 18, 2018. The SWM concept proposes to meet required stormwater management goals with eight drywells and one bioswale. MCDPS review and ultimate approval of the sediment and erosion control and stormwater management plans will ensure that appropriate standards are met. Furthermore, the proposed Category I Easement, along with the supplemental mitigation plantings, will help provide water quality enhancements associated with protection of the steep slopes, shading, and water retention/uptake. Therefore, the

project will not violate State water quality standards or cause measurable degradation in water quality.

Planting mitigation for the removals should be at a rate that approximates the form and function of the trees removed, at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. This means that for the 338 diameter inches of tree to be removed, the Applicant must provide mitigation of at least 84.5 inches of caliper replacements. Therefore, the mitigation requirements are addressed by the planting of 29 (quantity) 3" caliper trees for a total of 87 caliper inches of onsite mitigation trees.

No mitigation is recommended for trees impacted but retained. As a result of the above findings, the Planning Board approves the Applicant's request for a variance from the Forest Conservation Law to remove nine variance trees and to impact, but retain, eight variance trees on the Property. The variance approval is incorporated into the Planning Board's approval of the Forest Conservation Plan.

#### Stormwater Management

The Montgomery County Department of Permitting Services approved a stormwater management concept plan on January 18, 2018. The Administrative Subdivision Plan will meet stormwater management goals with eight drywells and one bioswale.

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 Code. The lot sizes, widths, shapes, and orientations are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type (single-family homes) contemplated for the Property.

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



accommodate a building which can reasonably meet the setbacks requirements in that zone.

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

The Administrative Subdivision Plan substantially conforms to the 1990 *Bethesda-Chevy Chase Master Plan*. This property is in the “Mid-Bethesda – Northern B-CC” area of the Master Plan.

While the Master Plan does not specifically identify the Subject Property, this development is proposing single-family houses which align with the established character of high-quality residential neighborhoods this area. This Application reserves a large portion of the Property in a Category 1 forest conservation easement.

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

As discussed in findings 6.1.c.4 above, public facilities will be adequate to support and service the area of the subdivision.

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

As discussed above, the Application satisfies the requirements of the Forest Conservation Law.

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 July 16 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 (Rule 7-203, Maryland Rules).

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**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 Vice Chair Dreyfuss, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, June 28, 2018, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board