



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

MCPB No. 17-084

Administrative Subdivision No. 620170030

Beallmount Grove, Parcel 3

Date of Hearing: September 28, 2017

OCT 06 2017

RESOLUTION

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

WHEREAS, on March 30, 2017, Barry T. Covington (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create three lots on 9.866 acres of land in the RE-2 zone, located 12951 Three Sisters 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. 620170030, Beallmount Grove, Parcel 3 (“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 September 15, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 28, 2017, 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. 620170030 to create three lots on the Subject Property, subject to the following conditions:¹

¹ 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 three one-family detached dwelling units.
 2. The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan No. 620170030, approved as part of this Administrative Subdivision Plan, with the following conditions:
 - a. 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 the 2.80 acres as specified on the approved Preliminary/Final Forest Conservation Plan (FFCP). The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Liber Folio for the easement must be referenced on the record plat.
 - b. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the FFCP, including the reforestation/afforestation of environmental buffers.
 - c. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 2.80 acres of new afforestation/reforestation planting.
 - d. The Applicant must install the 2.80 acres of afforestation/reforestation plantings specified on the FFCP within the Category I Conservation Easement during the first planting season following the issuance of the first sediment and erosion control permit for this project unless otherwise modified by the M-NCPPC Forest Conservation Inspector.
 - e. Prior to Certified FFCP, the FFCP must show the installation of Tree Protection Fencing (TPF) along the LOD adjacent to and within the Critical Root Zone (CRZ) of Tree #8.
 - f. Prior to Certified FFCP, a note must be added to the FFCP stating that the removal of the equestrian facilities is to be accomplished by hand only with no construction equipment allowed in this portion of the LOD.
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- g. Prior to the release of the first building permit, the Applicant must remove the existing equestrian facilities within the environmental buffer by hand, implemented under the M-NCPPC Forest Conservation Inspector's approval and guidance.
 - h. Following the removal of the equestrian facilities and prior to the installation of the required afforestation/reforestation, the Applicant must remediate this disturbed area by tilling and composting the soil to a minimum depth of 6" with the oversight of the M-NCPPC Forest Conservation Inspector.
 - i. The Applicant must install permanent forest conservation easement signage along the perimeter of the conservation easements in all areas, as determined by the FFCP and the M-NCPPC Forest Conservation Inspector.
 - j. Mitigation for the removal of six variance trees must be provided in the form of planting eighteen (18) native canopy trees with a minimum planting stock size of three caliper inches. The trees must be planted outside of any rights-of-way, or utility easements, including stormwater management easements. The planting locations of these trees and any substitution of species from what is shown on the approved FFCP are subject to the approval of the M-NCPPC Forest Conservation Inspector.
 - k. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspector.
 - l. The Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulation.
 - m. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 11, 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.

4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Applicant must widen Three Sisters Road from approximately 18 feet in width to 20 feet in accordance with MCDOT Road Code Standard 211.02 from the Subject Property to Glen Road.
6. The Applicant must construct the cul-de-sac at the end of Three Sisters Road in accordance with MCDOT Road Code Standard 222.02.
7. Prior to submittal of a record plat, the Applicant must revise their traffic statement to conform with the 2016-2020 Subdivision Staging Policy including its person trips generation standards subject to MNCPPC Staff approval.
8. 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 May 9, 2017, 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.
9. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated May 17, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
10. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section in its letter dated May 31, 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 MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
11. The record plat must show necessary easements.
12. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

13. 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.
14. 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 stand method development.*

The lots were submitted and are approved for standard method development in the RE-2 zone.
 - B. *Written approval of any proposed well and septic area is received from the Department of Permitting Service, Well and Septic Section before approval of the plat.*

The Application has received approval from DPS, Well and Septic Section in their approval letter dated May 31, 2017 for the use of sand mound systems and water wells.
 - 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 the previously recorded Plat No. 6716 granted all the necessary right-of-way in 1962 in accordance with the Master Plan. The Application shows all necessary public utility easements. Furthermore, the Application

proposes to improve Three Sisters Road by improving the cul-de-sac to MCDOT Road Code Standard 222.02. Finally, the Applicant must improve Three Sisters Road by adding 2 additional feet of paving width using MCDOT Road Code Standard 211.02 to the intersection with Glen Road. Both road improvements are necessary to meet fire access requirements.

D. The requirements of 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 for of Chapter 22A have been met.

b. As discussed below, the Application has received approval from DPS, Water Resources Section in their approval letter dated April 12, 2017.

c. There 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, taking into account the design recommendations included in the Master Plan, and for the building type (single family homes) contemplated for the Subject Property.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 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 Application substantially complies with the 2002 Potomac Subregion Master Plan because the purpose of the Master Plan is to protect the

Subregion's natural environment and unique ecosystems, strengthen communities, maintain the transportation network, expand community facilities, and utilize historic preservation to contribute to the Subregion's unique sense of community. The Subject Property is located in the Travilah planning area of the Master Plan. The Master Plan provides no specific recommendations for the Subject Property other than to recommend the RE-2 zoning which would continue the large lot residential appearance of the planning area and help to preserve environmental features.

Planning, Land Use and Buildings

The Master Plan reconfirms the zoning applied to the Subject Property. The Travilah planning area is a low-density area which acts as a transition from the higher densities of the Potomac and North Potomac planning areas to lower densities in Darnestown and the natural environment of the Potomac River.

Travilah is a more rural portion of the Subregion. The lack of community sewer systems has ensured low-density residential neighborhoods. The Application conforms to the general guidance of the Master Plan by providing a low-density residential development served by septic systems.

Transportation

The Master Plan's Transportation Section does not identify Three Sisters Road as a master planned road; however, the road is a publicly dedicated and maintained roadway. Three Sister's Road does connect to Glen Road, a rustic road. The Master Plan's Transportation Section seeks to preserve the Subregion's existing character via the two-lane road policy and the rustic roads program. The Application is consistent with the guidance of the Master Plan. While the width of Three Sister's Road will be increased from 18 to 20 feet to meet fire department code requirements, the 20-foot-wide section is the minimum accepted pavement width for a two-way road in the Road Code.

Environment

The environmental recommendations in the Master Plan focus on water quality protection for the watersheds in the Subregion and protecting forests as well as wetlands. The Subject Property is located in the Sandy Branch tributary to the greater Watts Branch watershed. The Administrative Subdivision Plan provides the required stormwater and water quality features to protect the watershed and preserve existing forest under Montgomery County Code. Low density residential uses in the RE-2 Zone can help maintain good water quality standards.

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

Roads and Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the current 2016 Subdivision Staging Policy. The Subject Property is located in the Rural West Policy Area.

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because the three 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. As conditioned, prior to submittal of a record plat, the Applicant must revise their traffic statement to conform with the 2016-2020 Subdivision Staging Policy including its person trips generation standards.

Three Sisters Road is a secondary residential street with 60 feet of right-of-way. The right-of-way granted with the recording of Plat No. 6716 was 60 feet in width, therefore, no additional right-of-way dedication is necessary as part of this Application.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize on-site septic systems and water wells. There is no planned access to public sewer or water service in this area; therefore, wells and sand mounds for septic service will be utilized on-site. The MCDPS – Well and Septic Section reviewed the Application and issued a letter of approval on May 31, 2017.

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 May 9, 2017. During the review, access to the Subject Property was determined to be inadequate by MCFRS in terms of the width of Three Sisters Road and the existing pavement of the cul-de-sac at the end of Three Sisters Road. The Applicant submitted plans to widen Three Sister Road and upgrade the cul-de-sac to MCDOT standards to ensure adequate fire truck turn around. This alternative has been approved by MCFRS, MCDOT and is supported by the Planning Board. All of the private infrastructure encroachments in the public right-of-way will have to be removed in order to construct the required improvements.

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. The Application is located in the Winston Churchill High School, Hoover Middle School, and Potomac Elementary School areas. None of these school levels are identified as a school in moratorium. Therefore, adequate school capacity exists to address all students generated by this Application.

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

1. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by Chapter 22A, a combined Preliminary/Final Forest Conservation Plan (FCP) for the project was submitted with the Administrative Subdivision Plan application. The total net tract area for forest conservation purposes is 10.18 acres which includes 9.86 acres for Parcel 3 and 0.32 acres of off-site work for the widening of Three Sisters Road. The Subject Property is zoned RE-2 and is considered Medium Density Residential under the Trees Technical Manual. This results in an afforestation requirement of 2.04 acres. The Applicant is meeting and exceeding this requirement by installing afforestation plantings of 2.80 acres at the rear of the Subject Property within the stream buffer and proposed Category I 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 ten 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 described in the Staff Report, impacts to the Protected Trees are

necessary to allow for development of the Subject Property, including the location of septic systems.

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.*

Granting the variance will not confer a special privilege on the Applicant as the removal of the six trees and impacts to four others is due to the location of the trees and necessary site design requirements imposed by governmental agencies and master plan recommendations. Therefore, 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, current health conditions of the trees and necessary requirements of this Administrative Subdivision application. Three of the specimen trees proposed to be removed (Trees #22, #25 and #26) are located within the primary and reserve sand mound septic fields for Lot 38. The necessary slope grading and design criteria for the sand mounds greatly restricts the area on which they can be located. In this case, the best area on Lot 38 for the sand mounds also coincides with the location of two specimen trees. Two other specimen trees (Trees #2 and #20) are proposed to be removed due to their overall poor health. It is felt that the construction impacts to these two trees has the potential of creating hazard trees in the future and is advisable to remove them now. The last tree proposed to be remove (Tree #41) is within the right-of-way of Three Sisters Road and will be severely impacted due to required roadway improvement to Three Sisters Road. The Applicant will pursue all practical methods available to save Tree #41, but would like the ability to remove if the need warrants. The four specimen trees being impacted are as a result of necessary roadwork on Three Sisters Road, installation of the sand mound septic systems on Lots 37 and 38, and the required removal of the existing stable structure at the rear of the Subject Property within the stream buffer.

- 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 the 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 trees by planting eighteen (18) larger caliper trees on-site. The 18 mitigation trees will eventually provide more shade and more groundwater uptake than what the existing trees currently provide. Therefore, 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 totaling 53 inches (DBH) 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.

Stormwater management requirements are met as provided in Chapter 19 of the County Code. The Administrative Subdivision Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on May 17, 2017. The Application will meet stormwater management goals for each new lot via microbiorention and permeable pavement.

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

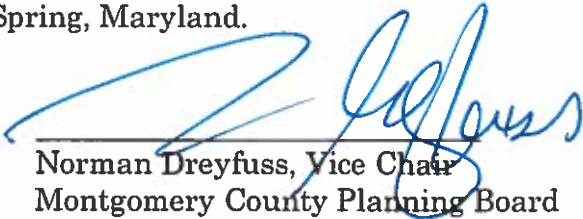
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 06 2017 (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Cichy, seconded by Commissioner Fani-González, with Vice Chair Dreyfuss and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Chair Anderson absent at its regular meeting held on Thursday, September 28, 2017, in Silver Spring, Maryland.


Norman Dreyfuss, Vice Chair
Montgomery County Planning Board