



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

MCPB No. 17-085
Administrative Subdivision No. 620170040
North Hills of Sligo Park and Argyle Park
Date of Hearing: September 28, 2017

OCT 04 2017

RESOLUTION

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

WHEREAS, on May 2, 2017, Lorraine L. Renner Revocable Trust (9700 Lorain Ave) & Richard W. & A.B. West (9622 Lorain Ave) ("Applicants") filed an application for approval of an administrative subdivision plan to abandon a portion of the previously dedicated but unimproved twenty-foot-wide right-of-way (ROW) and create two new lots (Lot 30 – 9,973 sf and Lot 23 – 11,141 sf) by incorporating the abandoned ROW (2,672 sf) into the two existing and adjacent lots 1 and 29 (Lot 1 will get 1,348 square feet and Lot 29 will get 1,324 square feet) in the R-60 Zone with no new units, located in the west quadrant of the Lorain Ave and Granville Drive intersection, including Part of lot 1/lot 29, Block G/F, North Hills of Sligo Park/Argyle Park Subdivision ("Subject Properties") in the 1996 *Four Corners Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620170040, North Hills of Sligo Park and Argyle Park ("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.

Approved as to
Legal Sufficiency:

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620170040 to abandon a portion of the previously dedicated but unimproved twenty-foot-wide right-of-way (ROW) within the North Hills of Sligo Park and Argyle Park subdivisions, and create two new lots by incorporating the abandoned ROW into the two existing and adjacent Lots 1 and 29 on the Subject Properties, subject to the following conditions:¹

1. The approval is limited to the abandonment of a portion of the existing unimproved right-of-way of 2,672 square feet, within the North Hills of Sligo Park and Argyle Park Subdivisions, and creation of two new lots by incorporating the abandoned right-of-way into the two existing and adjacent Lots 1 and 29 (Lot 1 will get 1,348 square feet and Lot 29 will get 1,324 square feet). No new units will be created because of this abandonment.
2. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated August 11, 2017, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicants must comply with each of the recommendations as set forth in the letter, which MCDOT may amend if the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
3. The Applicants must record plat(s) to incorporate the abandoned 2,672 square feet portion of right-of-way into the two existing and adjacent Lots 1 and 29 (Lot 1 will get 1,348 square feet and Lot 29 will get 1,324 square feet) for the creation of two new lots, within the North Hills of Sligo Park and Argyle Park Subdivisions.
4. The record plat(s) must show necessary easements.
5. The Applicants must include the forest conservation exemption letter and Administrative Subdivision Plan Resolution on the approval sheet(s) of the Certified Administrative Subdivision Plan drawings.

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 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.

The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 50.6.1.C, Section 50.4.2.D, Section 50.8.4.A.2 and the requirements of Chapter 49-68(e) as follows:

Findings of Administrative Subdivision Regulations, Section 50.6.1.C. Applicability – Subdivision for creation of certain residential lots

Per Section 50.6.1.C, up to three lots for detached houses are permitted in any residential zone, if:

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

The existing residential structures/properties are to remain after the proposed subdivision is approved and constitute standard method development.

2. *Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat.*

Not applicable; the existing properties are connected to public water and sewer services and no change is proposed.

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

Lorain Avenue is a 50-foot-wide tertiary residential street, and Granville Drive is a 60-foot-wide secondary residential street. Neither is listed in the Four Corners Master Plan, and no additional dedication or public utility easements are required for this subdivision.

A typical preliminary plan of subdivision would require a 5-foot-wide sidewalk with a green panel along the Lorain Avenue frontage of each lot. However, since there is no construction involved in this application, no sidewalk or bikeway improvements are required.

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

This Application is for the creation of two new lots by incorporating the abandoned ROW into the two existing adjacent Lots 1 and 29 (Lot 1 will get 1,348 square feet and Lot 29 will get 1,324 square feet). This application does not result in the creation of any new undeveloped property or new construction, and is therefore not reviewed for APF.

The subdivision is served by existing public water and sewer systems. Fire and Rescue has reviewed the application and has determined that the Properties have appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses, health care and schools are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient. Electric, gas and telecommunications services are available and adequate.

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

Staff issued a Forest Conservation Exemption for the application on May 2, 2017 (Forest Conservation Exemption No. 42017115E). This Forest Conservation Exemption includes what is termed a simplified NRI as a part of the Exemption Plan, therefore a separate NRI is not required. The Exemption Plan conforms with the Montgomery County Planning Department's Environmental Guidelines and complies with Chapter 22A, the Forest Conservation Law.

The Applicants are not required to obtain approval for a stormwater management concept from the Montgomery County Department of Permitting Services (MCDPS), since no new residential units are proposed.

Section 50.4.3 Technical Review, Findings of 50.4.2.D – Preliminary Plans

Administrative Subdivision Plans must be reviewed under the necessary technical requirements of Section 50.4.3.

1. *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 layout of the subdivision, including size, width, shape, orientation and density of lots and location meets all the requirements of the R-60 Zone as shown by the development standards table in the Staff Report and as discussed below.

Analysis of Setback Requirements

The 9622 Lorain Avenue (Lot 1) property does not meet the minimum side setback on the north side where the house is currently set back 6.5 feet from the lot line.

Currently, the 9700 Lorain Avenue (Lot 29) Property does not meet the minimum 8-foot side setback requirement on either side of the lot. On the north side, the house is 6.8 feet from the lot line; on the south side, the existing house crosses the lot line, encroaching into the ROW by 0.3 feet.

If the portion of the ROW subject to this application is abandoned and incorporated into the existing lots, the resulting side setback for the new lot for 9622 Lorain Avenue will measure 16.5 feet on the north side and will meet the minimum requirement. Therefore, this property will be in compliance with all the dimensional requirements for the R-60 Zone. As for 9700 Lorain Avenue, the resulting side setback for the new lot will measure 9.7 feet on the south side and will meet the requirement on one side but not the north side, which will continue to measure 6.8 feet. However, the Department of Permitting Services (DPS) has determined that this is an existing legal nonconformance, and that any alterations or additions to the existing home will require that the current zoning setbacks be met. Therefore, with the exception of the existing legal nonconformance, the lots meet all dimensional requirements of the R-60 Zone, and the incorporation of the ROW into the adjacent lots will decrease the degree of current legal non-conformance.

Design of Road

This Application does not result in the creation of any new undeveloped property or result in new construction. Therefore, the existing designs of the lot, block pattern, or the road are not being altered.

2. The preliminary plan substantially conforms to the master plan.

The Subject Properties are located within the 1996 Four Corners Master Plan area. The Master Plan seeks to preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods as the foundation of the community by assuring that new development, infill development, and special exception uses are compatible with the existing residential character.

The Master Plan does not specifically address the Subject Properties, but reconfirms the existing R-60 zoning for the residential neighborhoods in the Four Corners Master Plan area.

The Master Plan identifies the Subject Properties and surrounding areas as suitable for one-family detached housing (R-60). This Administrative Subdivision Plan is in conformance with the general recommendations of the Master Plan as it does not propose any change to the existing residential character of the neighborhood. The application will not alter the existing pattern of development

or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing residential land use.

Section 50.8.4.A.2. – Abandonment of Land Dedicated for Public Use

Per Section 50.8.4.A.2., the Planning Board is authorized under Section 49-68 of the Montgomery County Road Code to abandon all or part of land dedicated to public use, if the land has not been in public use.

The existing 20-foot wide ROW is unimproved; there are no public utilities in the ROW; and the ROW was never in public use. The ROW is not necessary for anticipated public use since it is unlikely that this ROW will be improved for a road connection because a road is not needed here; it is not identified in the Master Plan; the ROW is only 20-foot-wide and could only accommodate an alley; and there is a significant grade difference between Lorain Avenue and Brunett Avenue.

In May 2017, MCDOT considered the ROW a desirable location to make an east-west bicycle connection from Brunett Avenue to the Indian Spring Terrace and Franklin Knolls neighborhoods to the east of the Subject Properties. However, following further consideration, MCDOT and Staff concluded that a bicycle connection is not recommended between Brunett Avenue and Lorain Avenue due to the steep grades within this ROW. It will be very difficult to engineer a safe bike path with such a steep grade over such a short distance, and there are multiple trees and abundant vegetation which would need to be removed. An alternative alignment or location was also not appropriate. And, it would be unsafe for cyclists to cross Colesville Road from Granville Drive to Hastings Drive because the intersection is practically in the exit ramp of I-495. Drivers merging from the Beltway will not expect or anticipate the presence of cyclists. Pedestrian infrastructure does not currently exist and is not proposed between these houses.

Findings of Montgomery County Code - Roads and Street Regulations – Section 49-68 (e) Abandonment of Previously Unused Right-of-Way

Per Section 49-68(e) of the County Code, if the Planning Board finds that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision.

Based on the analysis above, the existing 20-foot wide ROW is unimproved, there are no public utilities in the ROW, and the ROW never appears to have been in

public use. Review of the adopted and emerging master plans and careful analysis of the ROW have allowed the Planning Board to determine that the ROW is not anticipated for future public use. Due to the significant grade, vegetation, and existing dwellings between Brunett Avenue and Loraine Avenue, an alternative alignment or location is not appropriate. The Planning Board finds that the abandonment will not adversely affect the public interest, and that the right-of-way may be incorporated into the record plat(s) for the existing/adjacent lots of 9622 and 9700 Lorain Avenue.

BE IT FURTHER RESOLVED that this Administrative Subdivision Plan will remain valid for thirty-six (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 SEP 04 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).

* * * * *

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



Casey Anderson, Chair
Montgomery County Planning Board