



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

MCPB No. 19-118
Administrative Subdivision No. 620190090
Waredaca Farm
Date of Hearing: October 3, 2019

NOV 01 2019

RESOLUTION

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

WHEREAS, on May 8, 2019, Waredaca Farm LLC. ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create one 2.33 acre lot without frontage on 192.94 acres of land (Parcel 606, Tax Map HW41) in the Agricultural Reserve zone, located on Howard Chapel Road, north of Damascus Road ("Subject Property"), in the Olney Policy Area and 2005 *Olney Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620190090, Waredaca Farm ("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 20, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 3, 2019, 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, on October 3, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Patterson, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson and Verma, voting in favor.

Approved as to

Legal Sufficiency: 
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NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620190090 to create one lot on the Subject Property, subject to the following conditions:¹

1. This Administrative Subdivision Plan is limited to one lot for a single dwelling unit.
2. The Applicant must comply with the following conditions of approval of Final Forest Conservation Plan No. 620190090, approved as part of this Administrative Subdivision Plan:
 - a) The Applicant must schedule the required site inspections with M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - c) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 - d) Mitigation must be provided for the removal of one (1) tree subject to the variance provision that is not included in the forest clearing calculations. Mitigation must be provided in the form of planting native canopy trees totaling 42.9 caliper inches, with a minimum planting stock size of three (3) caliper inches. The mitigation trees must be planted on the Subject Property, in locations shown on the approved Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.
3. Prior to the approval of a record plat, the Applicant must receive approval of a stormwater concept plan from the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated August 6, 2019, 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.

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.

5. 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 August 5, 2019, 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.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section in its letter dated July 26, 2019, 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.
7. The record plat must show necessary easements.
8. The record plat must reference the ingress/egress and utility easement to serve Lot 1.
9. The Certified Administrative Subdivision Plan must reflect the correct acreage for the farm remainder (190.61 acres).
10. The Applicant must include with the submission of each record plat an affidavit to verify the availability of a TDR for each lot shown on that plat. The record plat must include a note referencing the affidavit.
11. The Applicant must record a covenant for the unplatted balance of the tract noting that density and development rights have been used for the new lot and the covenant must be noted on the record plat for the lot.
12. The record plat(s) must contain the following note:

Agriculture is the preferred use in the Agricultural Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.
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 Planning Board Resolution.

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.B for creation of certain residential lots located in the Agricultural Reserve zone. Up to 5 lots for detached houses are permitted under these procedures in the AR zone if:

- a) Written approval for a proposed well and septic area is received from the Department of Permitting Services before approval of the plat;*

The Application has been reviewed by MCDPS – Well and Septic Section, which determined the well and septic location is acceptable as shown on the approved well and septic plan dated July 26, 2019.

- b) Any required road dedications and public utility easements along the frontage of the proposed lots are shown on the record plat, and the applicant provides any required improvements;*

The lot does not have frontage on a public road and instead, will access Howard Chapel Road via an ingress/egress and utility easement. No public improvements are required at this time because Howard Chapel Road is designated as a Rustic Road.

- c) The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat;*

The public facilities are adequate to service the new lot.

Roads and Transportation Facilities

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

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because the new single-family detached unit does 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.

An on-site well and septic system will be installed to serve the new lot. The use of a well and septic system is consistent with the existing W-6 and S-6 services categories designated for the Subject Property. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the well and septic location is acceptable as shown on the approved well and septic plan dated July 26, 2019.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section, which determined that the Subject Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated August 5, 2019. All other public facilities and services, police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

School Adequacy

With a net of one new one-family detached dwelling unit, the Application falls within the de minimis (three units or less) exemption. Therefore, the Application is exempt from any applicable residential development moratoria and it is unnecessary to test the project's estimated impact on school enrollment.

- d) A covenant is recorded for the unplatted balance of the tract noting that density and development rights have been used for the new lots and noted on the record plat for the lots;*

As conditioned, the Applicant must record a covenant for the unplatted balance of the tract noting that density and development rights have been used for the new lot and include a note on the record plat for the lot.

- e) Lots created in the AR zone through this procedure are 5 acres or less, unless approved by the Board; and*

The Application creates a 2.33 acre lot and therefore is below the maximum 5 acre size limit.

- f) Forest conservation and environmental protection requirements are satisfied before approval of the plat.*

A Final Forest Conservation Plan has been approved with the Administrative Subdivision Plan. The Applicant submitted a stormwater concept plan to MCDPS – Water Resources Section for their review. As conditioned, the Applicant must have an approved stormwater concept plan prior to approval of a record plat.

- 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.*

- a. The block design is appropriate for the development or use contemplated*

The Application proposes no new residential blocks.

- b. The lot design is appropriate for the development or use contemplated*

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. The lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and the intent of the AR zone, to preserve and support agriculture. In this case, by permitting a single family detached dwelling unit for a family member of the farm owner, it promotes the continuation of intergenerational transfer of farmed property.

- c. The Preliminary Plan provides for required public sites and adequate open areas.*

The lot was reviewed for compliance with Section 50.4.3.D, “Public Sites and Adequate Public Facilities,” of the Subdivision Code. There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

d. The Lots and Use comply with the basic requirements of Chapter 59

The lot was reviewed for compliance with the dimensional requirements for the AR zone as specified in the Zoning Ordinance. The lot meets the dimensional requirements for area and width in that zone but does not have frontage on a public road. Per Chapter 50, Section 4.3.C, "every lot must abut on a public or private road" however,

- i. *The Board may approve a maximum of 2 lots that do not abut a public or private road if the lots will be served by a private driveway that serves no other lots without frontage.*
- ii. *The access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.*

The lot meets the above conditions (i & ii) by providing a 35-foot-wide access easement and utility easement on Parcel P20 between Howard Chapel Road and the lot. A new 20-foot-wide private driveway with a modified apron will be installed to serve the individual lot and is acceptable to Fire and Rescue Services. With the exception of water and sewer, which is not available in this part of the County, other utilities are available along Howard Chapel Drive and will be brought into the Subject Property as needed within the access easement. A summary of this review is included in the Data Table on the Certified Administrative Subdivision Plan.

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

2005 Olney Master Plan

The Subject Property is located within Northern Olney Area of the of the Master Plan (pg.17). In Northern Olney, specifically west of Georgia Avenue, the Master Plan retained the RDT Zone (now AR) in an effort to maintain rural character and protect the Patuxent River and Hawlings River watersheds. The low density of the AR Zone (1 lot per 25 acres) provides significant protection to the aforementioned watersheds that play an important role supplying drinking water to the Triadelphia and T. Howard Duckett reservoirs. The Subject Property is encumbered by an Ag Easement which limits residential development. Creation of a new

single-family residential lot from the existing 192 acre farm is consistent with the intent of the Master Plan and the terms of the Ag Easement.

1996 Rustic Roads Functional Master Plan

The lot will access Howard Chapel Road (R-54) which is identified as a Rustic Road in the 1996 Rustic Roads Functional Master Plan for the portion of the road between Damascus Road (MD 650) and the Patuxent River (Howard County Line). Howard Chapel Road has an ultimate right-of-way width of 70 feet. The new driveway entrance will be located along the western side of Howard Chapel Road, approximately 1/4 of a mile north of MD 650.

The Rustic Roads Functional Master Plan states that while traveling north from Damascus Road “the western side has views of horse pastures and modern homes”.

The new driveway is located along the northern boundary of Parcel 20 so as not to interrupt the existing horse pasture, and no tree clearing is required to construct the driveway. As such the new driveway will not adversely affect the views described in the Rustic Road Functional Master Plan. The new driveway access from Howard Chapel Road is the minimum width permitted by the MCDPS – Fire Access and Water Supply Section and maintains the existing character of horse pasture along this portion of the road and is therefore consistent with the intent of the Rustic Roads Master Plan.

The Rustic Roads Advisory Committee (“RRAC”) has reviewed the Application to determine if it has any effect on Howard Chapel Road. In a letter dated September 20, 2019, the RRAC determined that the committee generally supports the proposal. The Application has also been reviewed by the MCDOT, which determined that the new driveway has adequate site distance as shown on the Administrative Subdivision.

No dedication is required as part of this Application because the lot does not front on a right-of-way. Because of its Rustic Road designation, there are no existing or recommended sidewalks or bikeways.

- 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 Subject Property is located in the Rural East Policy Area.

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because the new single-family detached unit does 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.

An on-site well and septic system will be installed to serve the new lot. The use of a well and septic system is consistent with the existing W-6 and S-6 services categories designated for the Subject Property. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the well and septic location is acceptable as shown on the approved well and septic plan dated July 26, 2019.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section, which determined that the Subject Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated August 5, 2019. All other public facilities and services, police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

School Adequacy

With a net of one new one-family detached dwelling unit, the Application falls within the de minimis (three units or less) exemption. Therefore, the Application is exempt from any applicable residential development moratoria and it is unnecessary to test the project's estimated impact on school enrollment.

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

Environmental Guidelines

The Subject Property is located within the Upper Patuxent Watershed, which is classified by the State of Maryland as Use Class III waters. The Subject Property consists of rolling topography that slopes down from Damascus Road to the northern property line. There are multiple forest stands on the Subject Property: one in the northwest corner and one in the northeast corner, with a few smaller pockets in the center of the Subject Property for a total of 55.5 acres of existing forest onsite. There are multiple streams on the Subject Property which generally align with the existing forest stands.

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420011680 for this Property was approved on January 26, 2001. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD calls out the Subject Property to be a total of 192.94 acres of which 55.5 acres are existing forest. The Subject Property contains multiple streams and their environmental buffers.

Patuxent River Watershed/Impervious Surface Limits

The Subject Property is located within the Patuxent River and Hawlings River watersheds. The Master Plan references to the Patuxent River Watershed Functional Master Plan, which delineates a Primary Management Area (PMA) limiting uses and restricting impervious area in low-density zones.

Due to its proximity to tributary streams, a portion of the Subject Property is located within the Patuxent River PMA. The PMA is an area of land located within ¼ mile (1,320 feet) of the Patuxent River and Hawlings River mainstems, and ½ mile (660 feet) of all tributaries of the Patuxent and Hawlings Rivers. The PMA consists of the stream valley buffer and the transition area. There are specific requirements outlined in the Environmental Guidelines for properties located within the PMA. The stream valley buffer is delineated based on the normal criteria outlined in the Environmental Guidelines. The Environmental Guidelines note that overall imperviousness within the transition area should not exceed ten percent.

The Application does not propose any impacts on the stream valley buffer and the impervious levels will be less than 10%. The Application is in compliance with all PMA regulations.

1. Forest Conservation

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

The original Final Forest Conservation Plan ("FFCP") for the Subject Property was submitted and approved in conjunction with a Special Exception S-2463. A new FFCP was submitted as part of the Administrative Subdivision Plan Application and given the number 620190090.

This Subject Property is zoned AR which is assigned a Land Use Category of Agricultural and Resource Areas (ARA) in the Land Use Table of the

Environmental Guidelines. This gives the Subject Property an afforestation requirement of 20% of the net tract and a conservation threshold of 50%.

The total tract area is 192.94 acres with 55.50 acres of forest with no forest clearing. The Application is above the break-even point of the forest conservation worksheet and does not have any afforestation or reforestation requirements. All existing forest onsite is already in Category I Conservation Easement so no new easements will be required.

The FFCP meets all applicable requirements of Chapter 22A of the County Code.

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.

In accordance with Section 22A-21(a), the Applicant requested a Variance to allow the removal or CRZ impact to one Protected Tree, tree number ST-2, a Scarlet Oak (*Quercus coccinea*) with a DBH of 42.9 inches as identified on the FFCP. The removal and/or impact to the subject tree is necessary to enable the installation of a new septic system. Poor soil conditions in the area restricted the location on the Subject Property where the new septic system could be installed and function properly. Without the septic system, the Applicant would suffer an unwarranted hardship as the Subject Property could not support a residential dwelling unit. The Board agrees that the Applicant would suffer an unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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 tree is due to placement of the septic system and poor soil conditions. 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 variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based on existing site conditions and the need to build a new septic system.

- 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 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 tree being removed is not located within a stream buffer. The Application proposes mitigation for the removal of the tree by planting larger caliper trees on-site. The four mitigation trees will eventually provide more shade and more groundwater uptake than the existing tree currently provide. Therefore, the Board concurs 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 total DBH removed, equal to 10.73 caliper inches. In this case, the Applicant is planting four 3 inch caliper overstory trees native to the Piedmont Region of Maryland, on the Subject Property. 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.*

As conditioned in this Resolution, the Applicant must receive approval of a stormwater management concept from the MCDPS – Water Resources Section prior to record plat. Preliminarily, stormwater management goals will be met via drywells and a micro-infiltration trench.

F. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.

There is no record or other evidence to suggest that a burial site is located within the boundary of the Subject Property. Therefore, this finding does not apply.

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 NOV 01 2019 (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 Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, October 24, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board