



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

MCPB No. 20-103

Administrative Subdivision No. 620200060

OCT 08 2020

Tomar's Addition

Date of Hearing: October 1, 2020

RESOLUTION

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

WHEREAS, on February 12, 2020, YKB Investments, LLC ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create one lot on 0.13 acres of land in the R-60 zone, located at 10514 Warfield Street ("Subject Property"), in the 2012 Kensington Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620200060, Tomar's Addition ("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 18, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 1, 2020, 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. 620200060 to create one lot on the Subject

Property, subject to the following conditions:¹

1. The Administrative Subdivision Plan is limited to one lot for one single-family detached dwelling unit.
2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 28, 2020 and 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 if the amendment does not conflict with any other conditions of the Administrative Subdivision approval.
4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 1, 2020 and incorporates them as conditions of the Administrative Subdivision 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 if the amendment does not conflict with any other conditions of the Administrative Subdivision approval.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated March 10, 2020 and incorporates them as conditions of the Administrative Subdivision approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of the Administrative Subdivision approval.

Forest Conservation/Environment

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.

7. The Limits of Disturbance (LOD) on the Forest Conservation Exemption must be consistent with the LOD on the Sediment and Erosion Control Plan.
8. No clearing, grading, or any demolition may occur prior to receiving approval of the Sediment and Erosion Control Plan.

Transportation

9. The Applicant must provide and show on the record plat:
 - a. Five (5) feet Public Improvement Easement along Warfield Street in lieu of dedication.
 - b. Ten (10) feet Public Utility Easement along Warfield Street.

Record Plats

10. There shall be no clearing or grading of the site prior to recordation of plat(s).
11. The record plat must show all necessary easements.

Certified Preliminary Plan

12. The certified Preliminary Plan must show the following changes:
 - a. Remove Standard No. MC-2002.02 from sheet L-1.1.
13. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
14. The certified Preliminary 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 Preliminary 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.

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 Preliminary Plan use the standard method of development.

- B. *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.

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

All required road dedications and associated public utility easements will be shown on the record plat and the applicant will provide any required improvements.

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

The requirements for adequate public facilities will be satisfied before approval of the plat.

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

Forest conservation, stormwater management and environmental protection requirements will be satisfied before approval of the 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.*

The proposed lot was reviewed for compliance with the dimensional requirements for the R-60 Zone as specified in the Zoning Ordinance. The proposed lot dimensions, size, width, shape and orientation are appropriate

for the location of the subdivision and this type of development and will meet all dimensional requirements for area, frontage, width, and setbacks in the zone. The proposal is consistent with the intent of the R-60 Zone that reads as follows:

“... to provide designated areas of the County for moderate density residential uses. The predominant use is residential in a detached house. A limited number of other building types may be allowed under the optional method of development.”

Pursuant to Section 59.4.4.9 of the current Zoning Ordinance, applicable development standards for a Standard Method development in the R-60 Zone are as follows:

R-60		Provided
Lot Area	6,000sf	Lot 1
		6,000sf
Principal Building Placement		
Lot Width at Front Lot Line / Front Building Line	25' / 60'	60' / 60'
Front Setback (Minimum)	25'	≥25'
Side Setback	Sides: 8' min. 18' total	8' or more each side
		18' or more total
Rear Setback	20'	≥20'
Building Height	35'	35' or less
Lot Coverage	35% (max)	35% or less

While the proposed lot meets the requirements of Chapter 59, the Application requires a finding under Section 50.4.3.E.2.a.i. to reduce the amount of dedication on Warfield Street to allow the Property to remain at or above 6,000 square feet in size in order to meet the R-60 Zone lot area requirements.

50.4.3.E.2.a.i. – Design Standards – Right-of-Way

Per Section 50.4.3.E.2.a.i., “The Planning Board may approve a narrower than standard road right-of-way, if it meets minimum fire access

requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration.”

In this case, approving a 50-foot ROW meets minimum fire access requirements and allows better use of the tract under consideration.

As stated previously, the MCDOT has agreed with Planning Staff that while this road would typically be classified as a Secondary Residential Street with a 60-foot ROW, this road can be accepted as a Secondary Residential Street with a 50-foot ROW. MCDOT and the Planning Board support this request, as in addition to meeting minimum fire access requirements and allowing better use of the tract under consideration, the narrower 50-foot ROW also continues to allow for safe and acceptable pedestrian and vehicular circulation and an overall reduction of pavement width.

50-9 Subdivision Regulation Waiver

The Applicant proposes to provide a 5-foot Public Improvement Easement (PIE) in lieu of dedication, with frontage improvements including a 5-foot sidewalk.

While the proposed lot meets the requirements of Chapter 59, the Application requires waivers of Sections 50.4.3.D.3.a and 50.4.3.E.3.b to allow the Applicant to provide a 5-foot PIE in lieu of dedication on Warfield Street to allow the Property to remain at or above 6,000 square feet in size in order to meet the R-60 Zone lot area requirements.

Section 50.4.3.D.3.a. reads:

“Roads. In its consideration of the approval of a subdivision, the Board must require dedication and platting of adequate area to provide public roads and other public transportation facilities. These must be coordinated with other existing, planned, or platted roads, other features in the district, or with any road plan adopted or approved as a part of the General Plan.”

And Section 50.4.3.E.3.b. reads:

“Existing public roads. In a preliminary plan or administrative subdivision plan application containing lots fronting on an existing State, County, or municipally maintained road, the subdivider must provide any additional required right-of-way dedication and reasonable improvement to the road in front of the subdivision, including sidewalks and bicycle facilities, as required by the Master Plan, the Road Design and Construction Code or by a municipality, whichever applies.”

Per Section 50.9., the Planning Board may grant a waiver from a requirement of Chapter 50 after making the following required findings.

I. Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare:

Instead of dedicating 5-foot of the Property's frontage for additional Warfield Street ROW, the Applicant is providing a 5-foot PIE along the frontage of the Subject Property. The PIE will have the same legal effect as dedication because both establish a perpetual easement for public use and under both mechanisms the underlying fee simple ownership is retained by the grantor. There will be no practical difference between the proposed 5-foot PIE and ROW dedication because the easement area will be the same size, in the same location (5-foot along the Subject Property frontage), and used for the same purposes and by the same people, *i.e.* the public for driving, walking and parking vehicles, and by the County for maintenance and road improvements.

II. The intent of the requirement is still met:

The only technical difference between dedication and a PIE that impacts the Subdivision Plan is that dedication reduces the lot size and a PIE does not. Thus, with a PIE, the Subdivision Plan will create a buildable lot. Because a PIE and dedication will achieve the same end result, dedication is not needed to ensure the public health, safety and general welfare, and the PIE will fulfill the intent of Section 50.4.3.D.3.a and 50.4.3.E.3.b of the Montgomery County Code by providing additional public right-of-way for Warfield Street.

III. The waiver is:

a. the minimum necessary to provide relief from the requirements:

The requested waiver, which will allow the Applicant to grant a 5-foot PIE rather than dedicate 5-foot of frontage of the Subject Property, is the minimum necessary to provide relief from Sections 50.4.3.D.3.a and 50.4.3.8.3.b. The Applicant is not avoiding the requirement to provide additional Warfield Street ROW but doing it via a different mechanism.

b. consistent with the purposes and objectives of the General Plan.

While the 2012 *Kensington Sector Plan* (the "Master Plan") and 2018 *Master Plan of Highways and Transitways* Designations do not recommend a specific ROW width for Warfield Street, the waiver will enhance the Master Plan transportation network by increasing the width for Warfield Street and providing sidewalks, a tree panel, an 8-foot-wide on-street parking lane and two 10-foot drive lanes. The

additional width supports the Master Plan recommendation to "[e]ncourage pedestrian-centered urban design by using narrower urban road sections from the County's context-sensitive design standards."

Therefore, the Planning Board approves the Subdivision Regulation Waiver request and accepts the 5-foot PIE in lieu of dedication.

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

The Property is in the 2012 *Kensington Sector Plan* but not specifically mentioned in the Plan. However, it does meet the general recommendations.

For example, the Plan recommends:

Encourage pedestrian-centered urban design by using narrower urban road sections from the County's context-sensitive design standards.

The reduction of the ROW from 60-feet to 50-feet meets the Sector Plan goals. Additionally, the Application will build the first segment of sidewalk on Warfield Street.

Increase tree canopy cover along streets and within medians, within existing neighborhoods, commercial areas, and on parkland.

The Application will provide a 6-foot green panel with street trees to shade Warfield Street, which currently has no street trees.

Master-Planned Roadways and Bikeways

Warfield Street is not classified in the *Kensington Sector Plan* or the *Master Plan of Highways and Transitways*; the existing right-of-way (ROW) is 40-feet and the street is partially unpaved. Warfield Street features a unique assembly of uses and zoning—residential, industrial, and commercial. The Planning Board's desired condition for Warfield Street is a Secondary Residential Street (MC-2002.02) with a reduced 50-foot ROW, including two 10-foot travel lanes and an eight-foot parking lane. The existing conditions warrant a reduced ROW, which will retain the neighborhood's character while ensuring safe and adequate vehicular access.

The Applicant is providing a five-foot public improvement easement (PIE) along the property's frontage to enable Warfield Street to be reclassified as a Secondary Residential Street with a 50-foot reduced right-of-way. Requiring roadway dedication will preclude development of this parcel. A 5-foot PIE will also be required for future development on the east side of Warfield Street to ensure the 50-foot ROW is provided. Ultimately, on-street parking

is proposed for the east side of Warfield Street, pending future redevelopment. In the interim, until the east side of Warfield Street is redeveloped, on-street parking is proposed on the west side, adjacent to the property frontage.

Thus, with the 5-foot PIE and required frontage improvements, the project is in conformance with the 2012 *Kensington Sector Plan*.

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

As discussed above, all public facilities will be adequate to support and service the subdivision.

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

A Forest Conservation Plan Exemption, No. 42020062E, was approved on November 22, 2019, satisfying all requirements of the Forest Conservation Law.

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

The Administrative Subdivision Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on April 1, 2020.

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.M.

Not applicable; the Applicant is not aware of any burial sites and the Property is not included in the Montgomery County Inventory.

G. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

Not applicable.

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 08 2020** (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 Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, October 1, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board