



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

APR 13 2021

MCPB No. 21-030
Administrative Subdivision Plan No. 620210040
9119 Redwood Avenue
Date of Hearing: March 25, 2021

RESOLUTION

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

WHEREAS, on November 4, 2020, Shahram Taginya and Maria Taginya ("Applicant") filed an application for approval of an administrative subdivision plan of subdivision of property that would create 3 lots on 1.65 acres of land in the R-200 zone, located at 9119 Redwood Avenue, approximately 410 feet south of Bradley Boulevard ("Subject Property"), in the Potomac 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. 620210040, 9119 Redwood Avenue ("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 March 15, 2021 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 25, 2021, 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 March 25, 2021, the Planning Board voted to approve the Application subject to certain conditions, on motion of Vice-Chair Fani-Gonzalez, seconded by Commissioner Verma, with a vote of 5-0; Chair Anderson, Commissioner

Cichy, Vice-Chair Fani-Gonzalez, and Commissioners Patterson and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620210040 to create 3 lots on the Subject Property, subject to the following conditions:¹

1. This Administrative Subdivision is limited to three (3) lots for one (1) single-family dwelling unit on each lot.
2. The Adequate Public Facility (APF) review for the Administrative Subdivision will remain valid for sixty (60) months from the date of mailing of the 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 March 4, 2020, 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. The Applicant must receive approval, prior to plat from the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section.
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 February 23, 2021 and incorporates them as conditions of the 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 if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval
6. The record plat must show necessary easements.
7. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a 5-foot wide sidewalk along the property frontage on Redwood Avenue unless construction is waived by MCDPS. If construction of the sidewalk is waived, the Applicant must pay a fee-in-lieu for the total cost of implementation of the sidewalk as approved by MCDPS staff, in compliance with Section 49-40(b)(1)(C) of the County Code.
8. The Applicant must comply with the following conditions of approval of Preliminary Forest Conservation Plan 620210040, approved as part of this Administrative Subdivision Plan.

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.

- a. Prior to any demolition, clearing, or grading for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the reforestation requirement for a total of 0.25-acres of mitigation credit (or as determined on the certified Final Forest Conservation Plan). If there are no applicable planted forest mitigation banks, the reforestation requirement may be met via fee-in-lieu.
 - 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 Inspection Staff.
 - c. Prior to Administrative Subdivision Plan Certification, the Applicant must coordinate with M-NCPPC Staff to address minor updates to Forest Conservation plans, notes, and specifications in order to provide clarity and consistency across plan sheets.
9. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings consisting of native canopy trees, with a minimum size of 3 caliper inches, totaling 91.5 caliper inches as shown on the FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
 - a. All onsite trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
 - b. Prior to Plan Certification, the Applicant must coordinate with Staff regarding the location of onsite trees credited towards variance mitigation to eliminate conflicts with utilities and structures and to appropriately address Sector Plan recommendations for neighborhood character.
10. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
11. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

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

A. The lots are approved for the standard method of 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 Department of Permitting Services, 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;

Redwood Avenue provides direct access to fewer than 75 residential units and does not directly connect to other neighborhood uses, such as schools or libraries. As a result, Redwood Avenue meets the criteria for a Tertiary Residential Street with a 50-foot minimum right-of-way. Therefore, no further dedication is required as part of this Application. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

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

School Adequacy

The Property is served by Burning Tree Elementary School, Pyle Middle School and Whitman High School. Under the rules of the 2016 Subdivision Staging Policy, which applies to this application, and a net increase of only two new single-family-detached dwelling units, there is sufficient capacity at each of these schools to accommodate this Application.

Transportation

Transportation access is adequate to serve the development by this Administrative Subdivision Plan.

Local Area Transportation Review (LATR)

The Application generates fewer than three (3) peak hour trips and is considered to have a *de minimis* impact on the transportation network. As a

result, the Application is not subject to the Local Area Transportation Review (LATR). Based on the Applications' *de minimis* impact and provision of new sidewalks on the Redwood Avenue frontages vehicle and pedestrian access for the administrative subdivision will be adequate.

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

Although there is no forest existing on-site, this Application is subject to Forest Conservation Law; accordingly, a Preliminary Forest Conservation Plan was received in conjunction with this Application. The Plan shows a resulting afforestation requirement of 0.25 acres, which the Applicant is required to meet through an off-site forest mitigation bank or via fee-in-lieu. Due to the removal of several specimen trees, this Application is also subject to the Variance Provisions of the Forest Conservation Law. Accordingly, a Variance Request has been submitted with this Application and is described above; The Planning Board approves of the request.

Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) on February 23, 2020. The Applicant will meet stormwater management requirements through the use of dry wells, micro-infiltration trenches and non-rooftop disconnect.

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.

i. The block design is appropriate for the development or use contemplated

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to create any new residential blocks.

ii. The lot design is appropriate for the development or use contemplated

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. Lots A, B, and C are appropriate in size, shape, width, and orientation, taking into account the recommendations of

the 1990 *Bethesda-Chevy Master Plan*, the existing lot pattern of surrounding properties, and the building type (single-family detached dwelling units) contemplated for the Property.

- iii. *The Administrative subdivision Plan provides for required public sites and adequate open areas*

The Property 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.

- iv. *The Lot(s) and Use comply with the basic requirements of Chapter 59*

The approved 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. A summary of this review is included in Table 1.

Table 1 – Development Standards in the R-200 Zone

Standard	Required/Permitted	Approved Lot A	Approved Lot B	Approved Lot C
Tract Previous Dedication Approved Dedication Site Area	n/a			
Standard	Required/Permitted	Approved Lot A	Approved Lot B	Approved Lot C
Minimum lot size ¹	20,000 sq ft	24,355 sq ft	24,672 sq ft	22,756 sq ft
Front setbacks ²	40 ft. min.	must meet minimum or EBL		
Side setbacks	12 ft. min., 25 ft. total	12' or more one side		
		25' or more total		
Rear setbacks	30 ft. min.	30' or more		
Lot Width at Front lot line	25'	100' or more		
Lot Width at Front BRL	25'	100' or more		
Lot Coverage	25%	4,871 square feet or less	4,925 square feet or less	4,551 square feet or less
Building Height	35 ft max	35'		

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

The Property is located within the 1990 *Bethesda-Chevy Chase Master Plan*. The Master Plan reconfirmed the existing single family detached residential zoning throughout the Property's vicinity. The Application demonstrates conformance to the Master Plan by proposing a moderate level of new housing development achieving a greater housing supply. The approved subdivision will meet the housing development objective by increasing the housing density on a larger property. The approved subdivision meets the Area Land Use Guidelines through the redevelopment of a property without creating major demand increase in public infrastructure and transportation needs.

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

As approved in Administrative Subdivision No. 620210040, public facilities will be adequate to support and service the area of the subdivision. Under the rules of the 2016 Subdivision Staging Policy, which applies to this Application, the Application provides a net increase of only two new single-family dwelling units. The Property is served by Burning Tree Elementary School, Pyle Middle School and Whitman High School. The Planning Board finds that there is sufficient capacity at each of these schools to accommodate this Application. The development will increase the structures on the Property from one to a total of three and will provide access driveways associated with each home. Transportation access is adequate to serve the development by this Administrative Subdivision Plan. The Application generates fewer than three (3) peak hour trips and is considered to have a *de minimis* impact on the transportation network. As a result, the Application is not subject to the Local Area Transportation Review (LATR). Based on the Applications' *de minimis* impact and provision of new sidewalks on the Redwood Avenue frontages vehicle and pedestrian access for the administrative subdivision will be adequate.

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

1. Forest Conservation

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

i. Environmental Guidelines

Aside from the numerous specimen and significant trees onsite, there are no other environmentally sensitive features on or

adjacent to the Property such as forest, stream buffers, wetlands, or flood plains. There are no rare, threatened, or endangered species within the boundaries of the Application.

ii. Forest Conservation

There is no forest existing on-site, however this Application still subject to Forest Conservation Law. An Administrative Subdivision Forest Conservation Plan was received in conjunction with this Application. The Plan shows a resulting afforestation requirement of 0.25 acres, which has been conditioned to be met via off-site forest mitigation bank or fee-in-lieu. Due to the removal of several specimen trees, this Application is also subject to the Variance Provisions of the Forest Conservation Law. Accordingly, a Variance Request has been submitted with this Application and is described below; The Planning Board approves this variance request. As conditioned, all Forest Conservation Requirements will be met.

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 19 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.

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

Unwarranted Hardship for Variance Trees

Per Section 22A-21, a variance may only be granted if the Director or Planning Board as applicable, finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The Planning Board has determined that the Applicant has shown that enforcement of the Law for the designated trees would result in an unwarranted hardship for the following reasons: Not granting the variance would severely limit the site's developable area, due to the Zoning Code requirements associated with this development on this irregularly shaped

lot. Alternative designs and relocation plans were considered; however, those designs did not result in the ability to retain additional specimen trees.

Table 1: Trees to be Impacted but Retained

TREE #	TYPE	DBH	CRZ Impact (%)	CONDITION	APPROVED STATUS
263	Tulip Poplar	45"	26%	Good	SAVE
264	Tulip Poplar	33"	27%	Good	SAVE
266	Tulip Poplar	30"	21%	Good	SAVE
268	Tulip Poplar	39.5"	30%	Fair	SAVE
269	Tulip Poplar	40"	40%	Good	SAVE
271	Sweet Gum	36"	7%	Good	SAVE
272	Tulip Poplar	32"	13%	Good	SAVE
275	Tulip Poplar	39"	19%	Good	SAVE
276	Tulip Poplar	33"	6%	Good	SAVE

Table 2: Trees to be Removed

TREE #	TYPE	DBH	CRZ Impact (%)	CONDITION	APPROVED STATUS
247	Tulip Poplar	38.5"	57%	Good	REMOVE
249	Tulip Poplar	31"	51%	Good	REMOVE
250	Tulip Poplar	33"	78%	Fair	REMOVE
251	Tulip Poplar	42"	70%	Fair	REMOVE
252	Tulip Poplar	38.5"	100%	Good	REMOVE
253	Tulip Poplar	35.5"	37%	Fair	REMOVE
254	White Ash	33"	100%	Good	REMOVE
258	White Ash	38"	88%	Poor	REMOVE
259	Southern	35.5"	84%	Good	REMOVE

	Red Oak				
260	Tulip Poplar	41"	82%	Good	REMOVE

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, The Planning Board finds that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship due to the unique layout of the site, which consists of trees located in close proximity to structures to be removed, as well as mature trees located near the front of the site where access will be required for the buildable area.

The Site, originally recorded as Lot A and Part of Lot 1, Block 3, as recorded in deed Book 15997/Page 027 and in Plat Book 46, Plat 3512, is comprised of a residential lot of approximately 71,738 square feet. The Site has a triangular shape which, in this case, limits the arrangement of developable area due to factors such as the frontage requirements of the zone as well as utility easements and dedications associated with the redevelopment.

As a result of the triangular shape of the Site, the removal and impact to the many of the property's specimen trees is unavoidable with this redevelopment. As conditioned, impacts and removals associated with this Application will be minimized and tree protection techniques such as root pruning and tree protection fencing will be completed in coordination with an ISA Certified Arborist and the M-NCPPC Forest Conservation Inspector.

- 1. 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 disturbance to the Protected Trees is due to the reasonable development of the Property. The development will remove existing structures to allow three lots with driveways associated with each home. The disturbance of existing trees is the result of the removal of existing structures and these impacts would be significant regardless of how many lots are approved. As conditioned, the impacts are avoided/minimized to the greatest extent possible and are generally associated with the frontage and utility easement requirements on this irregularly shaped site and the demolition of an existing structure, which could proceed without Planning Board

approval separate from this subdivision. Therefore, the variance request would be granted to any Applicant in a similar situation, assuming all other criteria are met.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

As stated above, the requested variance is due to the existing lot shape, proximity of subject trees to structures for removal, and the location of subject trees in relation to required land dedication and access areas. Frontage requirements in addition to the tapering shape of the lot limit the buildable area of the site. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts; as shown in Figure 2, the narrower area in the rear of the site allows space to retain mature trees, where not impacted by the existing structure for removal, and to plant mitigation trees. In all, the approach in the design and redevelopment of the site is based according to site limitations and provides appropriate mitigation where tree removal is unavoidable. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant, and the variance can be granted under this condition provided that the impacts are avoided/minimized, and any necessary mitigation requirements are fulfilled.

3. *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 not as a result of land or building use on a neighboring property.

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

The Subject Property is not directly associated with any streams, wetlands or related buffers. The Site is, however, currently developed with a single-family home accessed via a circular gravel driveway. There are presently no environmental site design stormwater management practices onsite, which is typical of the area. The existing stormwater management is limited to the natural drainage and uptake provided by the lawn area and trees on the property.

The development will increase the structures on the Property from one to a total of three and will provide access driveways associated with each home. The proposal further details that Lot A will make use of a permeable pavement in its driveway while both Lot A and Lot C will provide permeable walking paths to the approved homes. Further stormwater management is provided via planter boxes and micro-infiltration trenches as shown on the Administrative Subdivision Plans. As conditioned, the development will fully comply with current state and county water quality standards. Degradation in water quality is not expected as this site will improve water quality through the implementation of several stormwater best management practices designed using ESD criteria per the Maryland Stormwater Design Manual and the Montgomery County Stormwater Regulations. Further, the Planning Board approves the use of soil restoration techniques in addition to the required mitigation plantings which will help maximize the permeability of the soil, serving to further reduce runoff. Therefore, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation in water quality or violate State water quality standards.

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 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. As a result of the removal of 10 subject trees, for a total of 366" DBH removed, mitigation in the form of at least 91.5 caliper inches is required and recommended as a condition of approval. The Applicant will provide 93 caliper inches of variance mitigation planting, which fulfills this requirement. 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.

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on February 23, 2021, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that onsite stormwater will be managed using dry wells, micro-infiltration trenches and non-rooftop disconnect.

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 APR 13 2021 (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 Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, April 8, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board