



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

MCPB No. 21-048  
Administrative Subdivision Plan No. 620210110  
Hardings Subdivision, Lot 55  
Date of Hearing: June 10, 2021

**JUN 15 2021**

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review administrative subdivision applications when requested by the Director under Section 50.6.3 of the Subdivision Regulations; and

WHEREAS, on January 7, 2021, Joseph and Sin Kim (“Applicant”) filed an application for approval of an administrative subdivision plan that would create one (1) lot on 2.60 acres of land in the R-200 and the Upper Paint Branch Overlay zone, located on the south side of Sagebrush Terrace, approximately 400 feet east of Wildwood Drive (“Subject Property”), in the Fairland/Colesville Policy Area and 1997 *Fairland Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620210110, Hardings Subdivision, Lot 55 (“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 May 28, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 10, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

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Approved as to  
Legal Sufficiency: /s/ Matthew T. Mills  
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620210110 to create one (1) lot on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This Administrative Subdivision Plan is limited to one (1) lot for one (1) Single-Unit Living dwelling.
- 2) The Applicant must comply with the following conditions of approval for Preliminary/Final Forest Conservation Plan 620210110, approved as part of this Administrative Subdivision Plan:
  - a. 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.
  - b. The Applicant must comply with all tree protection and tree save measures shown on the approved FCP. 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 the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
  - d. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.24 acres of new forest planting and maintenance credited toward meeting the requirements of the FCP.
  - e. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - f. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install the permanent conservation easement fencing along the perimeter of the conservation

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<sup>1</sup> 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.

easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

- g. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as necessary per the direction of the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and sensitive nature of this watershed. The use of herbicides should be avoided where possible.
  - h. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, 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.
  - i. 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.
- 3) Prior to the start of any demolition, clearing, grading, or construction on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 8 percent of the Application within the Upper Paint Branch Overlay Zone and as shown on the Impervious Surface Exhibit on the approved Preliminary/Final Forest Conservation Plan. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Land Records.
  - 4) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated April 5, 2021, 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.
  - 5) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its Combined Preliminary/Final Water Quality Plan letter dated May 5, 2021, and hereby incorporates them as conditions of the

Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendment does not conflict with any other conditions of the Administrative Subdivision Plan 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 May 6, 2021 and 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 amendment does not conflict with other conditions of Administrative Subdivision Plan approval.
- 7) Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
- 8) The record plat must show all necessary easements.
- 9) The 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 prior to the expiration date 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 filed.
- 10) Prior to issuance of each building permit for a residential dwelling unit, the Applicant must obtain an assessment from the Montgomery County Department of Permitting Services (MCDPS) for Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy, as follows:
  - a. no elementary school UPP required;
  - b. no middle school UPP required; and
  - c. a Tier 1 high school UPP per unit.
- 11) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.
- 12) The Certified Administrative Subdivision Plan must contain the following note:

*“Unless specifically noted on this plan drawing or in the 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) approval. 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 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:

**Applicability, Section 6.1.C**

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

The lot was submitted and is approved for standard method development in the R-200 zone.

- 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.**

The lot proposes connection to public water and sewer. This finding does not apply to this Application.

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

The Administrative Subdivision Plan proposes no additional right-of-way dedication. The existing right-of-way granted by Plat No. 17260 along Sagebrush Terrace meets the minimum 60 ft. right-of-way for a secondary residential roadway. As a result, no additional right-of-way dedication is necessary. Since the proposed lot is located in an environmental overlay zone, the Application is not required to construct a sidewalk along the frontage of Sagebrush Terrace in accordance with Section 49-33(e) of the Montgomery County Code. Furthermore, the 2018 *Bicycle Master Plan* does not recommend any bicycle improvements to Sagebrush Terrace.

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

As conditioned and discussed below, the requirements for adequate public facilities have been met.

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

- a. The Application is subject to the requirements of Chapter 22A. As conditioned and discussed below in the Technical Review for Forest Conservation section, the Application satisfies forest conservation requirements.
- b. The Application has received an approval of the SPA Water Quality Plan from the Montgomery County Department of Permitting Services, dated May 5, 2021, which achieves stormwater management requirements via micro bioretention.
- c. The Subject Property is located within the Upper Paint Branch SPA and Upper Paint Branch Overlay Zone, which limits impervious surfaces to 8 percent. As conditioned and discussed below in the Technical Review for the Forest Conservation and Water Quality Plan sections, the Application satisfies the requirements of the SPA as outlined in the Environmental Guidelines.

**Technical Review, Section 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 Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation is

appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type (Single-Unit Living) contemplated for the Property.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The Administrative Subdivision Plan substantially conforms to the 1997 *Fairland Master Plan*. The Subject Property is located in the Low/Moderate Density plan concept plan on Page 17 of the *Master Plan*. The *Master Plan* does not specifically identify the Subject Property, nor does it make any specific recommendation(s). One of the objectives of the *Master Plan* is to increase housing options. To achieve this, the *Master Plan* recommends that development "maximize the percentage of single-family detached units in developable areas" (Page 28). The *Master Plan* makes this recommendation because detached single-family units make up the smallest percentage of the three housing types identified in the *Master Plan*. The Application proposes one lot for a Single Living Unit. Thus, the Application, given its limited scope, does contribute to the *Master Plan's* objective to increase single-family detached housing. Finally, the 2018 *Bicycle Master Plan* recommends no improvements to Sagebrush Terrace. As a result, no frontage improvements are proposed.

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

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

Roads and Transportation Facilities

Sagebrush Terrace is a secondary residential street that is not specifically identified in the *Master Plan*. Since the 1997 *Fairland Master Plan* does not specifically identify Sagebrush Terraces' right-of-way, per section 49-32 (d)(4) a secondary residential street must have a minimum 60 ft. right-of-way. Furthermore, the 60 ft. of existing right-of-way granted by Plat No. 17260 also validates dedication adequacy. Therefore, no additional right-of-way dedication on Sagebrush Terrace is necessary.

The Subject Property consists of approximately 150 feet of frontage along Sagebrush Terrace and is located in the Fairland/Colesville Policy Area. The 2018 *Bicycle Master Plan* does not recommend any bicycle improvements along Sagebrush Terrace. Since Sagebrush Terrace fronts on a public street, the Applicant would generally be required to install sidewalks along the Subject Property frontage. However, the Subject Property is located in the Upper Branch Overlay Zone which limits impervious surfaces to 8 percent. Also, in the vicinity

of Sagebrush Terrace, there are no existing sidewalks for potential connectivity. In these instances, Section 49-33(e) of Montgomery County Code waives the installation of sidewalks at the discretion of the Planning Board and/or the Department of Permitting Services as outlined below:

Section 49-33, road construction requirements

(e) (1) If a lot or lots front on a public road, the permittee must install sidewalks, master-planned bikeways, ramps, curbs, and gutters, except any sidewalk:

- (C) on a tertiary residential street, or in an environmentally sensitive area with limits on the amount of impervious surface allowed, if in either case the Planning Board finds that a sidewalk is unnecessary for pedestrian movement; or
- (D) on a secondary or tertiary residential street or service drive where the Department of Permitting Services finds that a sidewalk will not connect potentially to other sidewalk segments.

Local Area Transportation Review (LATR)

The estimated impact of the proposed single-family detached residence is one (1) AM and one (1) PM peak-hour person trip. As a result, this Application is exempted from additional Local Area Transportation Review (LATR) because the proposed land use generates fewer than 50 peak-hour person trips. The Applicant included a Transportation Exemption Statement as part of this Application.

Transportation access is safe and adequate for the proposed use. This plan is consistent with the *2018 Bicycle Master Plan* and the *1997 Fairland Master Plan* and satisfies the Adequate Public Facilities (APF) test under the 2016 - 2020 Subdivision Staging Policy.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Subject Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer services.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section. The Application received an approved Fire Access Plan in a letter dated May 6, 2021.

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently



operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

School Adequacy Test

The proposed Application is served by Fairland ES, Benjamin Banneker MS and James Hubert Blake HS. Based on the FY21 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

***Table 1. Applicable FY2021 School Adequacy.***

<u>School</u>	<u>Projected School Totals, 2024</u>				<u>Adequacy Status</u>	<u>Adequacy Ceilings</u>		
	<u>Program Capacity</u>	<u>Enrollment</u>	<u>% Utilization</u>	<u>Surplus/ Deficit</u>		<u>Tier 1</u>	<u>Tier 2</u>	<u>Tier 3</u>
<u>Fairland ES</u>	<u>648</u>	<u>608</u>	<u>93.8%</u>	<u>+40</u>	<u>No UPP</u>	<u>125</u>	<u>170</u>	<u>267</u>
<u>Benjamin Banneker MS</u>	<u>824</u>	<u>838</u>	<u>101.7%</u>	<u>-14</u>	<u>No UPP</u>	<u>112</u>	<u>151</u>	<u>275</u>
<u>James Hubert Blake HS</u>	<u>1,743</u>	<u>1,954</u>	<u>112.1%</u>	<u>-211</u>	<u>Tier 1 UPP</u>		<u>138</u>	<u>400</u>

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. If an application is estimated to generate more students than the identified ceilings, then payments at multiple tiers will be required.

Based on the school capacity analysis performed using the FY2021 Annual School Test, there are adequate school facilities to support this project at the elementary and middle school levels, but not at the high school level. Therefore, the Applicant is required to make Tier 1 high school Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy.

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

A. Forest Conservation

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

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law, a Preliminary and Final Forest Conservation Plan (FCP) for the Application was submitted with the Administrative Subdivision Plan Application. The total net tract area for forest conservation purposes is 2.63 acres, which includes the 2.60-acre Property and 0.03 acres of offsite disturbance. The Property is zoned R-200 and is considered High Density Residential (HDR) under the *Trees Technical Manual*.

The Application removes approximately 0.30 acres of forest and retains 2.22 acres of forest. While this does not result in a planting requirement under the Forest Conservation Law, the Application includes 0.24 acres of forest planting within the stream buffer to meet the *Environmental Guidelines* requirement that all stream buffers located within a SPA be reforested. The Application protects the retained and planted forest as well as the stream and wetland buffers with a Category I conservation easement. The Application does not disturb any trees subject to the Tree Variance provision of the Forest Conservation Law, so a Tree Variance is not required.

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

As part of the requirements of the Special Protection Area, a Special Protection Area Water Quality Plan must be reviewed in conjunction with this Administrative Subdivision Plan since this Property proposes land disturbance within the Upper Paint Branch SPA. Under the provisions of the law, the Montgomery County Department of Permitting Services (MCDPS), the Planning Board, and the Montgomery County Department of Environmental Protection (MCDEP) have different responsibilities in the review of the Water Quality Plan.

MCDPS has reviewed and conditionally approved the elements of the Preliminary/Final Water Quality Plan under its purview as outlined in their May 5, 2021 letter. The Application will meet stormwater management goals through the use of micro bioretention. MCDEP has reviewed the Water Quality Plan and will require payment of a stream monitoring fee and Best Management Practices monitoring fee. MCDEP's requirements are incorporated into the Preliminary/Final Water Quality Plan approval letter provided by MCDPS. As part of this Application, the Planning Board's responsibility is to determine if environmental buffer protection, SPA forest conservation requirements, and site imperviousness limits have been satisfied.

Planning Board Special Protection Area Review Elements

*Environmental Buffer Protection*

The Application does not propose any disturbance within the environmental buffers and the buffers will be protected with a Category I conservation easement.

*Forest Conservation Planting Requirements*

This Application meets all applicable requirements of Chapter 22A of the County Code. The Application proposes to remove 0.30 acres and retain 2.22 acres of forest. There is no forest planting requirement under the Forest Conservation Law; however, the Application proposes to reforest 0.24 acres of unreforested environmental buffer to meet SPA requirements outlined in the *Environmental Guidelines* that all environmental buffers be reforested. The retained and planted forest will also be protected with a Category I conservation easement.

*Imperviousness*

Impervious surface restrictions for development applications in the Upper Paint Branch SPA are set forth in the Upper Paint Branch Overlay Zone. As per Chapter 59, Section 4.9.19, imperviousness is restricted to a maximum of 8 percent of the tract of any application for development. The Application includes the creation of one lot for a Single-Unit Living dwelling and access driveway. The Application proposes 3,724 square feet of impervious surface within the 113,448 square foot Property, resulting in 3.3 percent imperviousness. The Application demonstrates conformance with the impervious surface limits of the Overlay Zone by proposing a level of imperviousness below 8 percent.

6. *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 evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

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

There are no other applicable provisions specific to the Property that are necessary for approval.

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 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 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 JUN 15 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 Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, June 10, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board