




**MCPB**  
Item No.  
Date: 06.17.2021

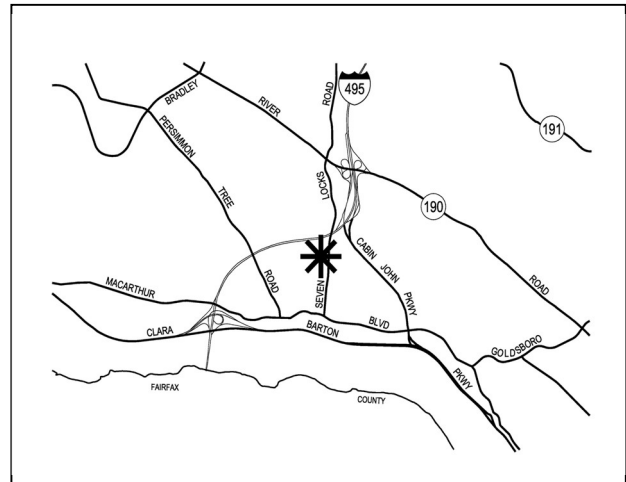
## 6940 Seven Locks Road (Franklin Property), Administrative Subdivision 620210070

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**Completed:** 6/7/2021

### Description

- Request to convert the existing unrecorded parcel to a record lot to allow the owner to raze the existing single-family detached dwelling and construct a new single-family detached dwelling on the lot, and a waiver from the requirement to provide frontage improvements
- Location: 6940 Seven Locks Road approximately 300 feet west of Cypress Grove Lane
- Zone: R-200
- Master Plan: 1990 *Bethesda-Chevy Chase*
- Property size: 0.69 acres
- Applicants: Emily Franklin and Ross Miller
- Acceptance Date: June 29, 2020
- Review Basis: Chapter 50, Chapter 22A, Chapter 59



### Summary

- Staff recommends **APPROVAL** of the administrative subdivision with conditions.
- The Administrative Subdivision proposes to convert the existing parcel to a lot to allow the owner to raze the existing single-family detached dwelling and construct a new single-family detached dwelling on the lot. No additional dwelling units are proposed.
- The Planning Director approved an extension to the review period from February 25, 2021 to March 25, 2021, per Section 50.6.3.B.3. The Planning Board approved a second extension from March 25, 2021 to June 24, 2021.
- This application is being reviewed by the Planning Board instead of the Planning Director because the Applicant is challenging the requirement to provide frontage improvements, including a sidewalk and bikeable shoulder.
- On May 14, 2021, the Applicant submitted a Waiver Request per Section 50-9.3 of relief from the requirements of Chapter 50-4.3. E.5 to construct a sidewalk along the site frontage. Staff does not support the Waiver Request.
- Staff has received correspondence from adjacent residents and property owners.
- The SWM Concept Approval and valid Forest Conservation Exemption have not been submitted at this time, however per 50.6.1.C.5. the forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.

## RECOMMENDATION AND CONDITIONS

### Administrative Subdivision Plan No. 620210070

Staff recommends approval of Administrative Subdivision Plan No. 620210070, and the denial of the requested Waiver, with the following conditions:

1. This Administrative Subdivision is limited to one (1) lot for one single-family dwelling unit.
2. The Adequate Public Facilities (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 their letters dated February 24, 2021, and May 28, 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 their letters, 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 dedicate the necessary right-of-way to achieve 30 feet between the property line and the right-of-way centerline of Seven Locks Road to achieve the master-planned width of 60 feet.
5. The record plat must show necessary easements.
6. Prior to recordation of the plat the Applicant must satisfy MCDPS requirements to ensure the construction of a 5-foot wide sidewalk with a 6-foot lawn panel and 2-foot maintenance buffer along the Property frontage on Seven Locks Road.
7. Prior to building permit, the Applicant must participate financially in the construction of the master-planned bikeable shoulders on the west side of Seven Locks Road, as approved by MCDOT.
8. Prior to Certification of the Administrative Subdivision Plan, the Applicant must revise the Plan to include a cross-section of Seven Locks Road showing the master-planned right-of way width, the sidewalks and master-planned bikeable shoulders on the west side of Seven Locks Road along the Property's frontage.
9. Prior to record plat approval, the Applicant must receive approval of a Fire Access Plan for the project from the Montgomery County Department of Permitting Services (MCDPS) Fire Prevention and Code Compliance Division.
10. Prior to record plat approval, the Applicant must satisfy the requirements for stormwater management and receive approval from the Department of Permitting Services, Water Resource Section.
11. The record plat must reflect a 90' rear building restriction line (BRL) as shown on the Certified Administrative Subdivision Plan.
12. Prior to Certification of the Administrative Subdivision Plan, the Applicant must submit and receive M-NCPPC Staff approval of a new Forest Conservation Exemption Request or a Preliminary/Final Forest conservation as applicable.
  - 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 as applicable.
13. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plans and/or Final Forest Conservation Plan as applicable. Tree save measures not specified on the Final Forest Conservation Plan and/or the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
14. 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.*

## SECTION 1 – SITE DESCRIPTION

### Site Vicinity

The Project is located in Bethesda on Seven Locks Road, approximately 300 feet south of Cypress Grove Lane. The vicinity is developed with single-family detached dwellings. Cabin John Creek is located to the east across Seven Locks Road.



Figure 1 – Vicinity Map

### Subject Property and Analysis

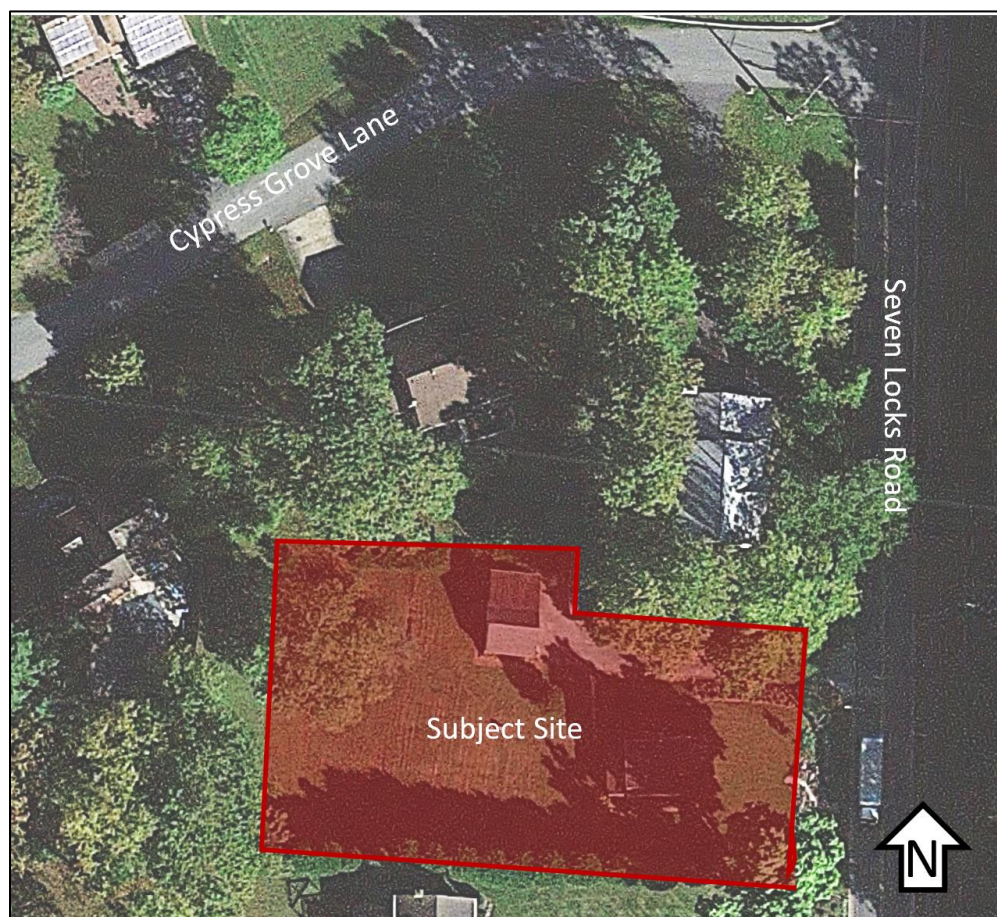
The Subject Property (Site, Property, or Project) is located at 6940 Seven Locks Road, on the west side of Seven Locks Road, zoned R-200 and is within the 1990 *Bethesda-Chevy Chase Master Plan*. The Property in its current size (29,892 square feet) and configuration, and as conveyed to the current owner in 2012 by deed recorded at Liber 43997, folio 001, appears to have been created in 1963 as a remnant after a conveyance pursuant to a deed recorded at Liber 3094, folio 249, and slightly modified by a conveyance to Montgomery County of 1,199 square feet for a portion of the road in 1981 by deed recorded at Liber 5064, folio 882.<sup>1</sup> Accordingly, the Property must go through the Administrative Subdivision process to create a record lot and does not qualify for any exemptions.<sup>2</sup> As depicted in Figure 2, the Property is

<sup>1</sup> The Property was part of a larger 4-acre tract created by deed in August of 1919 (Liber 282, Folio 401), then was conveyed in 1977 as 31,091 square feet by deed recorded at Liber 5064, folio 882, then was reduced by the 1,199 square feet conveyed to the County in 1981, and then conveyed in 2009 by deed recorded at Liber 38403, folio 240 before conveyance to the current owner in 2012]

<sup>2</sup> Pursuant to Section 50.3.3.B.4.a unplatted properties that have not changed in size or shape since June 1, 1958, which are proposed for single-unit living can be exempt from platting.



currently developed with a single-family house, a detached garage and a driveway with one access point from Seven Locks Road.



*Figure 2 – Aerial Site Map*

The Subject Property is located within the Cabin John Creek Watershed, a Use I-P watershed<sup>3</sup>. The Property has an expansive lawn and does not contain forest, although a forest stand is located within 100 feet' of the study area, just across Seven Locks Road, and will be unaffected by this Application. The Subject Property also contains mature trees, including one specimen tree which measures 30 inches" or greater. Other specimen trees are present offsite but within the study area.

The Property contains steep slopes of 15-25% on soil classified by the Montgomery County Environmental Guidelines as highly erodible. These sensitive environmental features are located to the rear of the Property, while the front of the Property is generally flat until it again slopes near the driveway entrance on Seven Locks Road. Aside from the mature trees, soil, and slopes, there are no other environmentally sensitive features such as wetlands, 100-year floodplain or stream valley buffers, and the Site is not located within a Special Protection Area. There are no cultural facilities or historic sites located within or adjacent to this site nor any known endangered species or critical habitats.

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<sup>3</sup> Use I-P: WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY  
Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; industrial water supply; and public water supply.

## SECTION 2 – PROPOSAL

### Proposal

The Applicant proposes to create a record lot from the existing 0.69-acre parcel in order to obtain needed permits from the Department of Permitting Services to raze the existing single-family detached dwelling and construct a new single-family detached dwelling. The Project proposes direct access and frontage on Seven Locks Road. In Figure 3 (below) the proposed lot configuration demonstrates that the proposed lot can accommodate the proposed single-family dwelling, in conformance with the standards for the R-200 zone. It is important to note, however, that the future single-family dwelling footprint is illustrative and final design and location will be determined at the time of building permit.

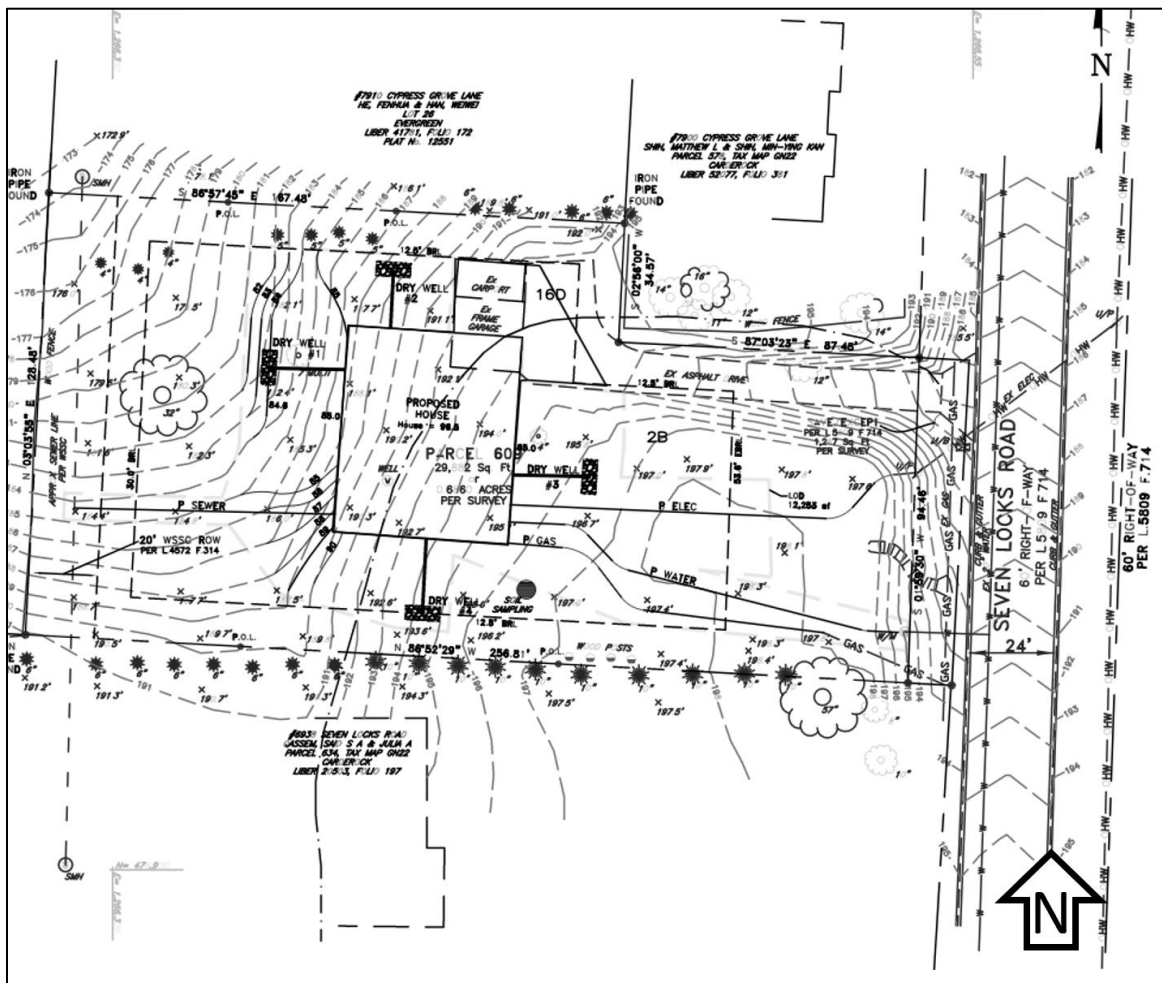


Figure 3: Proposed Administrative Subdivision Lot Configuration

### Environmental Guidelines

As previously mentioned in the project description, the Subject Property is located within the Cabin John Creek Watershed, and the Project does not contain or affect any forest area. However, the Subject Property contains environmentally sensitive features including mature trees, and slopes of 15-25% on soil classified by the Montgomery County Environmental Guidelines as highly erodible (located to the rear of the property); no other environmentally sensitive features are present. The mature trees will be appropriately protected by the approval of a modified building restriction line (BRL) and tree save plan which will set the LOD at a reasonable distance from the retained onsite and offsite trees while also

providing tree protection/stress reduction measures. The area of slopes/ highly erodible soils toward the rear of the property is currently in a stable condition within the existing lawn and generally not associated with trees that would be cleared; therefore, the modified BRL and tree save plan will provide adequate protection of the onsite environmentally sensitive areas.

Given that the site has steep slope/highly erodible soil and is in the Palisades Staff recommends a 90' rear BRL to protect the soils/slopes. As conditioned, a 90' rear BRL would help protect the steepest part of the slopes and protect most of the erodible soil area.

#### Forest Conservation

In lieu of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), a simplified NRI in support of a Forest Conservation Exemption request was submitted by the Applicant. This Exemption Request, No. 42021028E, was approved for the Subject Property on October 19, 2020. However, the approved exemption issued was granted under Chapter 22A-5(n) which is for a minor subdivision and the Property does not meet the criteria for a minor subdivision set forth in Section 50.7.1 of the County Code.<sup>4</sup> As of the writing of this report, a new exemption request (42021212E) has been submitted but is still under intake review. The recommended conditions of approval include provisions for a Preliminary/Final Forest conservation to be submitted if it is ultimately determined that the Project does on qualify for an exemption.

#### *Stormwater Management (SWM)*

Per Section 50.6.1.C.5, the Applicant must obtain Stormwater Management approval from MCDPS prior to Record Plat.

#### Access and Circulation

Access to the proposed lot will continue to be provided by the existing asphalt driveway on Seven Locks Road. As conditioned, the Applicant will dedicate 30 feet from the centerline to achieve the total master-planned width of 60 feet. Additionally, as conditioned, the Project will provide a new 5-foot wide sidewalk with a 6-foot lawn panel and 2-foot maintenance buffer along Seven Locks Road and will participate in the implementation of the master-planned, 4-foot bikeable shoulder on the west (Site) side of Seven Locks Road. The Project proposes replacing the existing house and not increasing the overall density on the Site. Therefore, the site will not generate any net new person trips onto the local and regional network. As a result, the Application is not subject to the Local Area Transportation Review (LATR). Therefore, subject to the conditioned frontage improvements, access to the site for vehicles, pedestrians and bicyclists will be adequate.

#### *Request for Waiver from Frontage Improvements*

On May 14, 2021, the Applicant submitted a waiver requesting relief from requirements in Chapter 50 (Subdivision Regulations), for a sidewalk along the frontage of the Property. The Applicant explained that the future sidewalk would be isolated and would not connect to existing sidewalks immediately north or south of the Property. Furthermore, the current County Improvement Program (CIP) does not include projects that would construct sidewalks on the west side of Seven Locks Road within the vicinity of the Site. The Applicant identified five other properties that built new homes within the vicinity of the Site since 2015, and none of them were required to build sidewalks along Seven Locks Road. The Applicant also noted that there is a pedestrian pathway on the opposite side of Seven Locks Road and suggests that a sidewalk segment on the Site side of the roadway is unnecessary.

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<sup>4</sup> Pursuant to Section 50.7.1 G., an unplatted parcel created by deed before June 1, 1958, can proceed as a minor subdivision if it is developable for only one detached house.

A summary of the applicable subsections of Chapters 49 (Streets and Roads) and 50 (Subdivision Regulations), which require sidewalks along Site frontages is included below.

### **Code-Required Sidewalks**

Per Section 49-33(e)(1), "If a lot or lots front on a public road, the permittee must install sidewalks, master planned bikeways, ramps, curbs, and gutters." Exceptions from this requirement are listed below:

- (A) In front of a lot that is larger than 25,000 square feet for a single-family detached dwelling in a rural zone;
- (B) On any roadway classified as exceptional rustic, rustic country arterial, or country road;
- (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 feels that the sidewalk is unnecessary for pedestrian movement;
- (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.

Additionally, Section 50-4.3.E.3.b. states, "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 required right-of-way dedication and reasonable improvement to the road in front of the subdivision, including sidewalks and bicycle facilities as required by Master Plan, the Road Design and Construction Code or by a municipality, whichever applies." Furthermore, Section 50-4.3.A.1., requires substantial conformance with the applicable master plan. Per the 2018 *Master Plan of Highways and Transitways*, Seven Locks Road between the Capital Beltway and River Road, is a Primary Residential Roadway and therefore Planning and DOT staff has determined that the Site's frontage does not meet the exceptions under Section 49-33.(e)(1). Also, page 102 of the 1990 *Bethesda-Chevy Chase Master Plan*, includes a recommendation that sidewalks should be provided along Primary Streets. It further explains that the Bethesda – Chevy Chase area has a large need for sidewalks compared to other areas of the County. Seven Locks Road, along the Site frontage is classified as a Primary Residential Roadway, and therefore participation in the implementation of the sidewalks along the Site frontage is required to make a finding for master-plan conformance.

Further, under Section 49-40 of the Code the Director of DPS is authorized to grant certain waivers; however, as discussed above, Seven Locks Road is a Primary Residential Street for which DOT can and is denying the waiver related to sidewalk construction. It is important to note that Section 49-40(b)(1)(C) states that, the Director [of Permitting Services] may allow an applicant to pay a fee if the applicant can show that building a sidewalk as required would cause "extreme hardship." It further states that, "the fee must equal the full cost to build the sidewalk include the design and supervision costs." As presented, the Applicant has not demonstrated that construction of the sidewalk would be an extreme hardship. There are no permanent structures located in the vicinity of the future sidewalk. There is sufficient buildable space on the lot for the proposed house with the sidewalk construction. There are no wetlands, endangered species, or environmentally or historically significant resources in the area. Vehicular access is also not precluded by the sidewalk as both a sidewalk and a driveway can fit on the Site. There is no practical difficulty or unusual circumstance associated with this Property that would support not constructing the sidewalk.



Analysis of the Waiver request is discussed in further detail within Section 3 – Analysis and Findings of this Report.

### **SECTION 3 – ANALYSIS AND FINDINGS, CHAPTER 50**

#### **Applicability, Section 6.1.C**

**1. The lots are approved for the standard method of development;**

The lot 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 will not be served by a well or septic area, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

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

Seven Locks Road is master-planned as a Primary Residential Roadway with a 60-foot right of way. As conditioned, the Applicant will be required to dedicate the right-of-way needed to provide 30 feet between the property line and the centerline of Seven Locks Road to achieve the total master-planned width of 60 feet.

As conditioned the Applicant will participate in the construction of the sidewalks and master-planned bikeable shoulders along the Site frontage. The Applicant will coordinate with County agencies to finalize the design and fee-in-lieu for both facilities as applicable.

The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

**4. 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 Bannockburn Elementary School, Pyle Middle School and Whitman High School. Under the rules of the 2016 Subdivision Staging Policy, which applies to this application, the Project generates no new students as it proposes no net increase in dwelling units. Thus, there is sufficient capacity at each of these schools to accommodate this project.

**Transportation Adequacy**

Transportation access is adequate to serve the proposed development by this Administrative Subdivision as conditioned.

Section 50-4.3.E.3.b requires administrative subdivision applications containing lots fronting on an existing State, County, or municipally maintained road, provide additional right-of-way dedication and reasonable improvements to the road in front of the subdivision including sidewalks and bicycle facilities required by the Master Plan and the Road Design and Construction

Code. In this case, sidewalks are required along Primary Residential Roadways (Section 49-33(e.1)) and are recommended in the 1990 *Bethesda Chevy Chase Master Plan* (page 102). Bikeable shoulders are recommended along Seven Locks Road between MacArthur Boulevard and The Capital Beltway (I-495) in the 2018 *Bicycle Master Plan*. Participation in these facilities is reasonable and is therefore conditioned for approval of this administrative subdivision. Therefore, as conditioned, the Subject Application will provide for adequate access for the proposed development.

#### *Local Area Transportation Review (LATR)*

The Project generates no new trips as it proposes replacing the existing home and does not propose any new residential units on the proposed lot. As a result, the Application is not subject to the Local Area Transportation Review (LATR)<sup>5</sup> and vehicular access to the Site is determined to be adequate. As conditioned, the provision of new sidewalks on the Seven Locks Road frontage, will provide adequate access for pedestrians.

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

The Application must meet the requirements of Chapter 22A of the Montgomery County Code prior to recordation of the plat. As described above, Staff anticipates an updated exemption request that will appropriately reflect this Application's status as an Administrative Subdivision rather than a minor subdivision. Per Section 50.6.1.C.5, the Applicant must receive approval of a Forest Conservation exemption for the proposed Administrative Subdivision prior to record plat and comply with any and all applicable requirements of Chapter 22A Forest Conservation Law. However, the recommended conditions of approval include provisions for a Preliminary/Final Forest conservation to be submitted if a determination is ultimately made that the Project does not qualify for an exemption. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

Since the existing single family detached dwelling is on an existing parcel and is governed by the Administrative Subdivision process, the Stormwater Management requirements must also be approved prior to the approval of plat, per Chapter 50.6.1.C.5 by MCDPS Stormwater Management Section.

There are no additional environmental protection requirements to be met.

#### **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***

#### ***a. 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 proposed subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to create any new residential blocks.

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<sup>5</sup> Page 40 of the LATR states, "Developments that generate less than 5 peak-hour vehicle trips (i.e. subdivisions of four or fewer single-family detached houses) are not generally included" in LATR review.

*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 proposed lot is appropriate in size, shape, width, and orientation, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the proposed building type (single-family detached dwelling unit) contemplated for the Property. The subject application is a conversion from a parcel to a lot and lot lines will not change the existing parcel lines

*c. The Preliminary 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.

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

The proposed lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, and width, and can reasonably accommodate the proposed one single-family detached dwelling. A summary of this review is included in Table 1.

*Table 1 – Development Standards in the R-200 Zone*

<b>Standard</b>	<b>Required/Permitted</b>	<b>Proposed Lot</b>
Minimum lot size <sup>1</sup>	20,000 sq ft.	29,882 sq ft.
Front setbacks	40 ft. (min.)	Must meet minimum <sup>2</sup>
Side setbacks	12 ft. (min.; 25 ft. total)	Must meet minimum <sup>2</sup>
Rear setbacks	30 ft. (min.)	Must meet minimum <sup>2</sup>
Lot Width at Front lot line	25 ft.	Must meet minimum <sup>2</sup>
Lot Width at Front BRL	25 ft.	Must meet minimum <sup>2</sup>
Lot Coverage	25%	Must not exceed maximum <sup>2</sup>
Building Height	35 ft. (max)	Must not exceed maximum <sup>2</sup>

<sup>1</sup> The proposed lots will exceed the minimum requirement for the R-200 zone, lot size may be adjusted during final record plat review.

<sup>2</sup> Determined by the Department of Permitting Services at the time of building permit.

**2. The Administrative Subdivision Plan substantially conforms to the Master Plan or Urban Renewal 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. While there are no recommendations in the Master Plan related to this Property, the Master Plan does recommend a minimum right-of-way width for Seven Locks Road along the Site frontage. As conditioned, the Applicant will dedicate 30-feet from the right-of-way centerline to achieve the total master-planned width of 60 feet. The minimum right-of-way width was confirmed by the 2018 *Master Plan of Highways and transitways*. As recommend in the 2018 *Bicycle Master Plan*, the Applicant will participate in the financial implementation of the 4-foot bikeable shoulders on the west (Site) side of Seven Locks Road. As conditioned, the Project substantially conforms to the Master Plan.

It is also important to note that this Property is located within the Palisades subarea of the 1990 *Bethesda-Chevy Chase Master Plan*. The Palisades is identified in the Master Plan as an area with distinctive environmental features, such as steep slopes and mature trees, which should be preserved and protected whenever possible. The area of slopes/highly erodible soils toward the rear of the property is currently in a stable condition within the existing lawn and generally not associated with trees that would be cleared; therefore, and Staff is not recommending formal protection of the onsite areas (beyond the protection of the tree save plan). As this proposal for the Subject Property is limited in scope and does not contain further development which would result in the loss of these environmental features, Staff finds that the implementation of tree protection measures as shown in the submitted Tree Save Plan appropriately addresses the environmental concerns cited within the Master Plan. County approved sediment control practices and the utilization of root pruning and tree protection fences are proposed to protect the environmental resources found onsite as well as the significant and specimen trees on neighboring properties. Given that the site has steep slope/highly erodible soil and is in the Palisades Staff recommends a 90' rear BRL (approximated in the image below) to protect the soils/slopes (as conditioned). A 90' rear BRL would help protect the steepest part of the slopes and protect most of the erodible soil area. As conditioned, the Project substantially conforms to the Master Plan.

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

As discussed in findings 6.1.c.4 above, public facilities will be adequate to support and service the area of the subdivision.

No new person trips will be generated by the proposed Administrative Subdivision Plan and as conditioned, the Applicant is required to provide a 5-foot sidewalk with a 6-foot lawn panel and 2-foot maintenance buffer along the Site frontage. The Applicant will participate in the master-planned bikeable shoulders via fee-in-lieu. A description of the correspondence and analysis regarding the fee-in-lieu, sidewalks and connectivity is below in the community outreach section. Therefore, as conditioned, the Project will provide adequate vehicle, bicycle and pedestrian access within the service area of the subdivision.

**4. *All Forest Conservation Law, Chapter 22A requirements are satisfied***

In lieu of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), a simplified NRI in support of a Forest Conservation Exemption request was submitted by the Applicant. This Exemption Request, No. 42021028E, was approved for the Subject Property on October 19, 2020. However, the approved exemption issued was granted under Chapter 22A-5(n) which is for a minor subdivision.

As this property conveyed 0.03 acres of land to Montgomery County on November 24, 1981, this property is no longer eligible to proceed as a minor subdivision and must submit an exemption request for an Administrative Subdivision Application. This Application is subject to Forest Conservation Law and staff anticipates that this Project will be exempt from the requirement to submit a Forest Conservation Plan. Per Section 50.6.1.C.5, the Applicant will receive approval of a Forest Conservation exemption for the proposed Administrative Subdivision and comply with any and all applicable requirements of Chapter 22A Forest Conservation Law. However, the recommended conditions of approval include provisions for a Preliminary/Final Forest conservation to be submitted if a determination is ultimately made that the Project does not qualify for an exemption. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

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

Since the existing single family detached dwelling is on an existing parcel and is governed by the Administrative Subdivision process, the Stormwater Concept Plan and the associated requirements must be approved by MCDPS Stormwater Management Section prior to the approval of the record plat in accordance with the Subdivision Regulations, Chapter 50.6.1.C.5.

**Subdivision Waiver, Section 50.9.3**

*Section 50.9.3 Waivers from Chapter 50 Subdivision Regulations*

*To grant a waiver, the Board must find that:*

- 1. 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;*
- 2. the intent of the requirement is still met; and*
- 3. the waiver is:*
  - a. the minimum necessary to provide relief from the requirements; and*
  - b. consistent with the purposes and objectives of the General Plan.*

On May 14, 2021 the Applicant submitted a waiver request in accordance with Section 50-9.3, requesting relief from participation in the implementation of sidewalks along the Site frontage on Seven Locks Road<sup>6</sup>. In the waiver request the Applicant explains that a sidewalk improvement along the Site frontage would not connect to other existing sidewalks and would potentially create an unsafe walking condition if it were installed. Additionally, the Applicant argues that other, comparable projects in the area were not required to build sidewalks when they built their new residences. Finally, the Applicant suggests that the County may have chosen not to install a sidewalk when the asphalt trail was installed on the opposite side of Seven Locks Road in the 1980s.

Staff carefully reviewed the waiver request and considered the arguments made by the Applicant. After additional discussions with the Montgomery County Department of Transportation (MCDOT), Staff does not believe the minimum criteria for a waiver from Chapter 50 of the County Code has been met and therefore does not support the waiver request.

First, Sections 49-33(e).(1) and 50-4.3.E.3.b of the County Code and the 1990 *Bethesda-Chevy Chase Master Plan* provide that sidewalks are required and envisioned on Primary Residential Roads, such as Seven Locks Road along the Site frontage, regardless of whether or not the sidewalk segment will connect to existing sidewalks. There is no practical difficulty or unusual circumstance associated with this Property that would support not constructing the sidewalk. There will be sufficient space within the right-of-way to build the sidewalk, and there are no precluding existing conditions such as wetlands or endangered species along the Site frontage. While grading may be required, this is not considered an unusual circumstance.

As to the potential safety issue, it is Staff's professional judgement that off-street facilities can be constructed without creating potential conflicts. Sidepaths and sidewalks are often constructed piecemeal by the private sector, with the intention that they will be connected to in the future with either more private investment or a future Capital Improvement Project (CIP). On-street facilities that abruptly start

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<sup>6</sup> As a point of clarification, the Applicant requested a waiver from Section 50-4.3.E.5.b. which was a typo and should have been Section 50-4.3.E.3.b. The analysis remains the same.



and stop can create potential conflicts, which is why staff supports the Applicant's request to participate in the bikeable shoulders along the Site frontage via fee-in-lieu. Planning staff has coordinated review of the County Code as it applies to the Subject Application with MCDOT staff, who support this interpretation of the Code and County transportation policies.

Staff has reviewed the neighboring properties identified by the Applicant where newly built homes did not accompany new sidewalks or other frontage improvements. Of the five addresses provided by the Applicant, only three were reviewed by the Planning Department as Preliminary Plan amendments and these were from the early 1990s, when participation in sidewalk improvements was not required.

Regarding the Applicant's final argument, that the County specifically chose not to build a sidewalk on the west (Site) side of Seven Locks Road when installing the asphalt pathway on the east side of the street, Staff disagrees with this assumption. Staff coordinated with MCDOT staff to research the history of the asphalt path on the side of Seven Locks Road opposite the Site and it appears to have been built in the 1980's as a walking/biking pathway along the west side of Cabin John Park. The trail continues north of the Site under the Beltway and across Bradley Boulevard where a more recent segment switches over to the east side of the roadway and continues north towards Rockville. Staff was unable to find specific drawings or other documentation about the trail segment opposite the Site, but typically these pathways were built on only one side of the street. It is likely that the east side was chosen because the majority of the frontage is along public land rather than private property and right-of-way would have been easier and less expensive to acquire. Staff does not believe that the choice to install a shared use path on the east side of the street was intended to preclude a sidewalk on the west side of Seven Locks Road in the future.

For these reasons, Staff, in direct coordination with MCDOT, has determined that the requested waiver from participation in the installation of sidewalks along the Site frontage does not meet the necessary findings for approval. The Applicant has not demonstrated that there are any unusual circumstances of the Site or Application, nor that the sidewalk is not needed to ensure public health, safety, and general welfare. The County's Vision Zero Policy and the 1990 *Bethesda-Chevy Chase Master Plan* strongly encourage separating pedestrians from motorists via designated sidewalks along roadways such as Primary Residential Streets. Furthermore, by not participating in the implementation of the sidewalks, the Applicant is not offering the minimum necessary to provide relief from the requirements and the waiver does not make a case that is consistent with the purposes and objectives of the General Plan or any other applicable Master or Sector Plan.

#### **SECTION 4 – COMMUNITY OUTREACH**

A pre-submittal community meeting is not required for an Administrative Subdivision Plan; however, Applicants must post signs on the development site and provide written public notice. A notice of the Application was sent to all required parties by the Applicant on June 30, 2020. The notice gave the interested parties 15 days to review and comment on the contents of the Application and the Request for Waiver. In addition to mailing a written notice, a sign was posted in compliance with the Zoning Code. As of posting this report Staff has received correspondence on the Project from adjacent residents and property owners in regard to newly built homes not required to construct new sidewalks or other frontage improvements.

## **SECTION 5 – CONCLUSION**

The Administrative Subdivision Plan No. 620200070 meets the technical requirements of Section 50.4.3 of the Subdivision Code, and the applicable requirements of Section 50.6.1.C, as conditioned. The proposed lot meet all requirements established in the Subdivision Code and the Zoning Ordinance and substantially conform to the recommendations of the 1990 *Bethesda-Chevy Chase Master Plan*, as conditioned. Therefore, Staff recommends approval of this Administrative Subdivision Plan with conditions enumerated at the beginning of this report.

### **Attachments**

Attachment A – Administrative Subdivision Plan

Attachment B – Agency Letters

Attachment C - Exemption Memo 42021028E and Tree Save Plan

Attachment D – Correspondence