



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

MCPB No. 21-089  
Administrative Subdivision Plan No. 620190140  
Freeman Property  
Date of Hearing: July 29, 2021

**AUG 11 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 December 24, 2019, Benning and Associates, Inc. ("Applicant") filed an application for approval of an administrative subdivision plan that would create two lots on 7.65 acres of land in the R-200 zone, located on Sugarland Road, 1,200 feet northeast of Sugarland Lane ("Subject Property"), in the Rural West Policy Area and 1980 *Agricultural and Rural Open Space Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620190140, Freeman Property ("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 July 16, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 29, 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/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620190140 to create two lots on the Subject Property, subject to the following conditions:<sup>1</sup>

General Approval

1. This Administrative Subdivision Plan is limited to two (2) lots for one (1) existing single-family detached dwelling unit and one (1) new single-family detached dwelling unit.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities ("APF") review for the Administrative Subdivision Plan will remain valid for five (5) years from the date of mailing of this Planning Board Resolution.

Plan Validity Period

3. 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.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 8, 2021 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. 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 January 7,

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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.

2020 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.

7. The Planning Board has reviewed and accepts the recommendations of MCDPS – Well and Septic Section in its letter dated May 13, 2021 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of MCDPS, Fire Department Access and Water Supply Section in its letter dated March 29, 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.

#### Other Approvals

9. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.

#### Environment

##### Forest Conservation and Environment

10. The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan ("FFCP") No. 620190140, approved as part of this Administrative Subdivision Plan, including:
  - 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) Prior to recordation of the plat and 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 as specified on the approved Preliminary/Final 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.

- c) 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 FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- d) 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.
- e) The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
- f) Forest on Lot 2 that is outside both the limits of disturbance and the Category I Conservation Easement, as shown on the approved FFCP, must not be removed until the property owner installs a sand mound septic system in this area.

#### Transportation

##### Existing Frontage Improvements

- 11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a) All land necessary to accommodate forty feet (40 ft) from the existing pavement centerline along the Subject Property frontage for Sugarland Road, except for areas encumbered by an existing septic field and a 10-foot-wide buffer surrounding it. The Applicant must dedicate this area in the future if the existing septic field is removed or replaced.

#### Record Plats

- 12. There shall be no clearing or grading of the site prior to recordation of plat(s).

##### Easements

- 13. The record plat must show necessary easements.

#### Certified Preliminary Plan

- 14. The Applicant must include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).

15. The certified Administrative Subdivision Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

16. Prior to submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:

- a) Remove any area of right-of-way on all sheets currently encumbered by the existing septic field as well as a 10-ft wide buffer surrounding the field.
- b) Update the data table to reflect what was approved by the Planning Board.
- c) Revise the Conditional Use area to reflect the final lot sizes as shown on the Administrative Subdivision Plan dated July 8, 2021.

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 Application provides two lots under the standard method of 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 Subject Property will utilize a new on-site private well and sand mound systems. The Application has been reviewed by MCDPS Well and Septic Section, who determined the approved well and septic locations are acceptable as shown on the approved well and septic plan.



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

As conditioned and discussed below, the Administrative Subdivision Plan will provide an additional 40-ft width of ROW dedication as measured from the centerline of the road in conformance with the Rustic Roads Master Plan recommendation for a total ROW of 80 ft. A small portion of this dedication area contains a portion of a recently installed septic field. The area containing the septic field, as well as a 10 ft. wide buffer, will not be dedicated for ROW to allow for continued use of the system. In the future, the Applicant must dedicate this area if the existing septic field is removed or replaced. Since the approved lots are located along an exceptional rustic road, the Application is not required to construct a sidewalk along the frontage of Sugarland Road. Furthermore, the 2018 *Bicycle Master Plan* does not recommend any bicycle improvements to Sugarland Road.

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.**

The Application satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Additionally, the Application satisfies the stormwater management requirements of Chapter 19.

#### **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 approved lot sizes, widths, shapes and orientation are 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.

**Table 1 - Development Standards**

R-200 Zone	Required	Approved Lot 1	Approved Lot 2
Minimum Lot Area	20,000 sq. ft.	193,842 sq. ft. (+/-) (4.45 acres)	128,592 sq. ft. (+/-) (2.95 acres)
Minimum Lot Frontage	25 feet	25 feet or greater	25 feet or greater
Minimum Lot Width at B.R.L.	100 feet	100 feet or greater	100 feet or greater
Maximum Lot Coverage	25%	25% or less	25% or less
Min. Setbacks (for all lots)			
Front	40 feet	40 feet or greater	40 feet or greater
Side street setback	15 feet	15 feet or greater	15 feet or greater
Side	12 feet (Sum of side setbacks is 25 feet)	12 feet or greater (Sum of side setbacks 25 feet or greater)	12 feet or greater (Sum of side setbacks 25 feet or greater)
Rear	30 feet	30 feet or greater	30 feet or greater
Max. Building Height	50 feet	50 feet	50 feet
Site Plan Required	No	No	No

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

The Administrative Subdivision Plan substantially conforms to the 1980 *Agricultural and Rural Open Space Master Plan*. The Master Plan designates the area, which includes the Subject Property, as being one of several "Rural Communities and Villages" of the upper county (p. 38 of Master Plan) and confirms the R-200 zoning of the "historic rural settlements." The Subject Property is one of several properties clustered together and located along the south side of Sugarland Road. These properties are surrounded on all sides by AR-zoned land. The approved subdivision of the Subject Property into two single-family lots is consistent with the R-200 zone and with the intent of the Master Plan to maintain the area as a "rural settlement." Sugarland Road was designated as an "exceptional rustic road" by the 1996 *Rustic Roads Functional Master Plan* and identified as having "pastures, and horse farms with silos, visible on both sides of the road" (p. 152 of the 1996 *Rustic Roads Master Plan*). While there is not a direct mention of any specific scenic views or vegetation along this stretch of roadway, the Subject Property will retain the existing buildings, including horse barns, which supports the Master Plan recommendations for this area. Only one new

driveway will be provided for Lot 2 and there are not any improvements anticipated to Sugarland Road. The Application is consistent with the recommendations of the Master Plan and *1996 Rustic Roads Functional Master Plan* by retaining the existing features of the Subject Property, such as the existing buildings, horse barns, and associated activities, providing limited improvements for access to-and-from the Property, and supporting the intent to maintain Sugarland Road as an exceptional rustic road. The creation of the two lots will continue to protect the existing environmental features of the Subject Property and the character of Sugarland Road as an exceptional rustic road.

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

#### Roads and Other Transportation Facilities

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

#### *Existing Facilities*

The Subject Property is along Sugarland Road, identified as an Exceptional Rustic Road with an 80-foot. recommended ROW. Much of the length of road exists as prescriptive ROW only. The road itself maintains a rustic condition, with narrow, variable pavement typically falling below 20 feet in width.

#### *Public transportation infrastructure*

No improvements are requested for Sugarland Road in conformance with the intent of Section 50.4.E.5.c to maintain the road's rustic character.

As conditioned, the Applicant will provide a total of 40-ft width of ROW dedication as measured from the centerline of the road in conformance with the *Rustic Roads Master Plan* recommendation for a total ROW of 80 ft. A small portion of this would-be dedication area contains a portion of a recently (2016) installed septic field. As conditioned, the area containing the septic field as well as a 10 ft. wide buffer will not be dedicated for ROW to allow the field to continue to be used. In the future, the Applicant must dedicate this area if the existing septic field is removed or replaced. Area dedicated for ROW otherwise cannot accept such constructed features. There will be no detriment to Sugarland Road as the underground septic field does not impose any harm to the viewshed. The need for ROW for the road is primarily for the preservation of roadside features, which will overall be maintained.

#### Local Area Transportation Review (LATR)

The Applicant submitted a transportation statement that shows the proposed 2-lot residential subdivision generates 50 or fewer additional peak-hour person trips; therefore, the Application is exempt from review under the LATR guidelines.



Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the approved lots. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize a private well and sand mound septic system. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the approved well and septic locations are acceptable as shown on the approved well and septic plan dated May 13, 2021.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. The Application has received an approved Fire Access Plan based on the letter dated March 9, 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 Application is served by Poolesville ES, John Poole MS, and Poolesville HS. Based on the FY2022 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

**Table 2 - Applicable FY2022 School Adequacy**

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus / Deficit		Tier 1	Tier 2	Tier 3
Poolesville ES	539	513	95.2%	+26	No UPP	111	134	215
John Poole MS	468	406	86.8%	+62	No UPP	188	213	232
Poolesville HS	1,508	1,373	91.0%	+135	No UPP	315	437	663

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. Under the FY2022 Annual School Test, development projects approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in Table 2.

Based on the school capacity analysis performed, using the FY2022 Annual School Test, this Application is not subject to a Utilization Premium Payment.

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

Natural Resource Inventory / Forest Stand Delineation

The Natural Resource Inventory / Forest Stand Delineation ("NRI/FSD"), Plan No. 420191060, for the Subject Property was approved on February 19, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Lower Dry Seneca Creek watershed, a Use I-P stream. The Subject Property is 7.65 acres in size and contains 4.41 acres of high priority forest. There are two existing specimen trees, ST-7 and ST-9, that are 30-inch Diameter Breast Height ("DBH") or greater on the Subject Property. One is located within the identified forest stand and the other is located outside of the forest adjacent to the existing horse stable and paddock area. There are no streams, seeps, springs, wetlands or other sensitive environmentally features on the Subject Property.

Preliminary / Forest Conservation Plan

The Application satisfies all of the applicable requirements of the Forest Conservation Law ("FCL"), Montgomery County Code, Chapter 22A, and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. As required by Chapter 22A, an FFCP was submitted with this Application. The total net tract area for forest conservation purposes is 7.39 acres which includes the Subject Property of 7.65 acres, minus roadway dedication of 0.26 acres. The Property is zoned R-200 and is classified as High Density Residential (HDR) as defined in Section 22A-3 of the FCL and as specified in the Trees Technical Manual, Table 2. The Subject Property contains 4.41 acres of forest. The Applicant will remove 2.32 acres of forest and retain 2.09 acres of forest. This results in a total reforestation requirement of 0.00 acres, or no required reforestation. All retained forest will be protected by being placed into a Category I Conservation Easement.

There are 2 specimen sized trees on the Subject Property, Trees ST-7 and ST-9. Tree ST-7 is located in the retained forest on Lot 2 and ST-9 is located between the existing stable and the septic sand mounds on Lot 1. Tree ST-7 is well outside of the approved limits of disturbance ("LOD") for Lot 2. There will not be any construction on Lot 1 with this Application, so there are no impacts to Tree ST-9. Since neither specimen tree will be impacted with this Application, no tree variance request is required for these 2 trees.

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

The Administrative Subdivision Plan received an approved stormwater plan approval from the Montgomery County Department of Permitting Services, Water

Resources Section on January 7, 2020. The Application will meet stormwater management goals through the use of a planter box and non-rooftop disconnect.

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.*

The Application is in conformance with the conditions of Conditional Use 16-15 and associated minor amendment.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is ~~\_\_\_\_\_~~ **AUG 11 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, July 29, 2021, in Wheaton, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board