



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

MCPB No. 21-088
Administrative Subdivision No. 620200160
Hillmead (6421 Bradley Blvd)
Date of Hearing: July 29, 2021

OCT 14 2021

RESOLUTION

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

WHEREAS, on January 27, 2021, Hamid Reza Izadi ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create two lots on 1.06 acres of land in the R-60 zone, located at 6421 Bradley Blvd, 350 feet south east of Fallen Oak Drive ("Subject Property"), in the 1990 *Bethesda-Chevy Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620200160, Hillmead (6421 Bradley Blvd) ("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 19, 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, on July 29, 2021, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of [5-0]; Chair Anderson, Commissioner Cichy, Vice-Chair Fani-Gonzalez, and Commissioners Paterson and Verma voting in favor.

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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. 620200160 to create two lots on the Subject Property, subject to the following conditions:¹

1. This Administrative Subdivision is limited to two (2) lots for one (1) single-family dwelling unit on each lot.
2. The Adequate Public Facilities (APF) review for the Administrative Subdivision will remain valid for five (5) years from the date of mailing of the Planning Board resolution.
3. Access for the two lots subject to this Administrative Subdivision is limited to a single shared driveway entrance for both lots.
4. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated July 2, 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.
6. The Planning Board has reviewed and accepts the recommendations of the Maryland Department of Transportation State Highway Administration (“MDOT SHA”) in its letter dated June 29, 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 MDOT SHA if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
7. Prior to Certification of the Administrative Subdivision Plan, the Applicant must revise the Administrative Subdivision Plan to include a cross-section of Bradley Boulevard showing the sidepath on the north side of Bradley Boulevard along the Property’s frontage.
8. Before recording a plat for the Subject Property, the Applicant must satisfy SHA’s requirements for access and improvements including the construction of the sidepath along the Property frontage and connecting to the bus stop/crosswalk at Howell Road on the north side of Bradley Boulevard.

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.

9. 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 June 28, 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 – Water Resources Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
10. 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 June 21, 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.
11. The Applicant must install street trees along the Bradley Boulevard frontage subject to MDOT SHA review and approval. The street tree plantings must be installed as seasonally appropriate and prior to the Final Inspection for the new residence.
12. There shall be no clearing or grading of the site prior to recordation of plat.
13. Prior to any construction activity, demolition, clearing, or grading the Applicant must conduct an onsite meeting with the M-NCPPC Forest Conservation Inspector and the project arborist (hired by the Applicant) who is an International Society of Arboriculture (ISA) Certified Arborist and a Maryland Licensed Tree Care Expert.
14. The record plat must show necessary easements.
15. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:
 - a. A 231-foot minimum Building Restriction Line (BRL) associated with the front building line on Lot 1 (30-foot minimum BRL from the southwest property line shared with Lot 2).
 - b. A 133-foot BRL from the front lot line for Lot 2.
16. The Applicant must comply with the following conditions of approval of Preliminary/Final Forest Conservation Plan 620200160, approved as part of this Administrative Subdivision Plan.
 - a. Prior to certification of the Administrative Subdivision Plan, the Applicant must coordinate with M-NCPPC Staff to address updates and additions to the Forest Conservation/tree save plan notes, details, and

specifications in order to provide clarity and consistency across plan sheets.

- b. Prior to certification of the Administrative Subdivision Plan, the Applicant must revise plans/notes to include details and specifications for soil restoration in areas of the LOD which are not built (i.e. to remain in a lawn or landscape setting).
- c. Prior to certification of the Administrative Subdivision Plan, the Applicant must revise and/or update notes regarding phasing and specialized construction practices to minimize impact to trees and sensitive environmental features (such as sloped areas and highly erodible soils) to the satisfaction of Staff. The measures may include techniques such as air spading and temporary matting.
- d. Prior to certification of the Administrative Subdivision Plan, the Applicant must coordinate with M-NCPPC Staff to adjust the LOD and/or provide specialized construction techniques to reduce overall impact to trees where possible, particularly for trees 21 and 27.
- e. Prior to certification of the Administrative Subdivision Plan, the Applicant must coordinate with M-NCPPC Staff to update placement of utilities on Proposed Lot 2 such that the utilities maintain at least 5-feet of clearance from the proposed Category II Conservation Easement.
- f. The driveway and associated curbing located within the new Category II Easement must be removed and replaced with topsoil and/or mulch and be naturalized with native woody species. The Applicant must implement appropriate tree save measures during removal of the driveway as shown on the certified tree save plan and/or as directed by the M-NCPPC Forest Conservation Inspector.
 - i. The gravel portion of the driveway (and associated curbing) must be removed/addressed as part of the pre-construction measures and the area fenced off for the remainder of the construction.
 - ii. The concrete portion of the driveway (and associated curbing) must be removed/ addressed prior to Final Inspection for the new residence.
- g. Within the first planting season following the pre-construction meeting, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install plantings as shown on the certified FFCP. Adjustments to the planting locations, species and quantities are subject to M-NCPPC staff approval.

- h. Prior to certification of the Administrative Subdivision Plan, the Applicant must revise the Forest Conservation Plan planting list to provide alternative plant species with a diversity of sizes, including shrubs, subject to M-NCPPC staff approval.
- i. Prior to certification of the Administrative Subdivision Plan, the Applicant must update plans to include the required bicycle and pedestrian sidepath and the associated limits of disturbance along the Site frontage and update the overall tables, notes, and figures as applicable.
- j. Prior to the start of any demolition, clearing, grading, or construction for this development Application the Applicant must record a Category II Conservation Easement as specified on the certified Final Forest Conservation Plan. The Category II 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.
- k. 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 supplemental forest plantings, any mitigation trees/plantings required by the FFCP, and associated maintenance.
- l. 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 plantings required by the FFCP. The MMA must include invasive species management control measures.
- m. Prior to any demolition, clearing, grading or construction on the project Site, the Applicant must record, in the Montgomery County Land Records, an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Cabin John Creek watershed to satisfy the reforestation requirement for a total of 0.37-acres of mitigation credit, or as shown on the FFCP. The offsite requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Cabin John Creek watershed, or by

making a fee-in-lieu payment if mitigation credits are not available at any bank.

- n. The Applicant must provide supplemental native species and invasive species management control measures within the proposed Category II Conservation Easement as shown on the FFCP. The cost to control non-native invasive species must be incorporated into the forest conservation financial surety.
 - o. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easement, as shown on the FFCP or to the satisfaction of M-NCPPC staff.
 - p. Prior to the Final Inspection for the new home, the existing overhead wires serving the existing home must be relocated out of the Category II Easement area and replaced within the LOD and/or in a manner which does not adversely impact trees. The Applicant must include plan notes regarding this coordination prior to certification of the Administrative Subdivision Plan.
17. The Applicant must comply with all tree protection and tree save measures shown on the certified 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.
 18. The Applicant must hire a project arborist to implement the tree save plan who is qualified as an ISA-certified Arborist and also a MD Licensed Tree Care Expert.
 19. 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.
 20. 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.
 21. Prior to approval of the Certified Administrative Subdivision Plan, the Applicant must address the following:
 - a. The Applicant must include all applicable agency approval letters and Administrative Subdivision Plan Resolution on the cover sheet(s).
 - b. Include 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.

- c. Coordinate with M-NCPPC staff regarding minor clarifications, corrections, and updates which may be needed.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C, for the creation of up to 3 lots for detached houses permitted in any residential zone.*

- 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-60 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;*

Bradley Boulevard, an Arterial, has a total width of 100 feet of right-of-way dedicated along the lot frontages (Plat 234); therefore, no further dedication is required as part of this Application.

As conditioned, the Applicant will construct the master-planned sidepath along the Site frontage and connecting to a nearby bus stop and crosswalk at Howell Road. The Applicant will coordinate with State agencies to finalize the design for the facilities as applicable.

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

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

Transportation access, provided by a single shared driveway, is adequate to serve the development by this Administrative Subdivision Plan.

Local Area Transportation Review (LATR)

The Project generates fewer than three (3) net new 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 Project’s de minimis impact and provision of new shared use path connecting to an existing bus stop and cross walk, vehicle and pedestrian access for the Administrative Subdivision will be adequate.

School Adequacy

This Application provides a net of one single family detached unit. The Application review was completed in July 2021, therefore the FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021 is applicable to this Project.

School Adequacy Test

The project is served by Bradley Hills ES, Thomas W. Pyle MS and Walt Whitman HS. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

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
Bradley Hills ES	663	503	75.9%	+160	No UPP	245	293	393
Thomas W. Pyle MS	1,502	1,577	105.0%	-75	No UPP	51	226	451
Walt Whitman HS	2,262	2,236	98.9%	+26	No UPP	206	479	818

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 FY22 Annual School Test, development projects approved within these school service areas are not automatically**

subject to Utilization Premium Payments as identified in the Table above.

Analysis Conclusion

Based on the school capacity analysis performed, using the FY2022 Annual School Test, this application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Property will be served by public water and public sewer and there is sufficient capacity and infrastructure available for other utilities such as electrical, telecommunications, and gas. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Property.

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

The Administrative Subdivision is subject to Chapter 22A of the County Code. There are 0.37-acres of forest onsite and the Property has approximately 14 specimen sized trees located on or near the site. The Applicant submitted a Preliminary/Final Forest Conservation Plan that includes physical retention of most of the onsite forest (although considered as cleared for calculation purposes). Accordingly, the Forest Conservation worksheet requires a 0.46-acre planting requirement. The Preliminary/Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law through 0.09-acres of landscaping credit associated with the onsite 0.21-acre Category II Conservation Easement. The remaining requirement of approximately 0.37-acres will be met via offsite bank or payment via fee-in-lieu, as conditioned. Additional discussion regarding Forest Conservation is below in Finding 2.D.

The Stormwater Management Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) in a letter dated June 28, 2021. The approval letter indicates that the Applicant will meet stormwater management requirements onsite, without the use of waivers, via drywells, micro-bioretenion, and

bioretention planter boxes. As conditioned, all stormwater requirements will be met and Applicant must comply with each of the recommendations as set forth in the MCDPS approval letter.

Furthermore, under 50.4.3.K. the Board must restrict the subdivision or development of any land for environmental protection relative to highly erodible soils, steep slopes and the associated objectives of Chapter 22A relating to conservation of trees and forest resources. However, the modified BRL(s) and Category II Conservation Easement, along with other enhancements and special measures which are required as conditions of approval, adequately address protection of the environmentally sensitive areas as required under 50.4.3.K. 2.b.ii.

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 does not 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. The lots 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.

Other properties in the vicinity within the R-60 zone range from 6,000 square feet in size to more than 50,000 square feet. While the predominant shape of the lots in the vicinity are rectangular, there are existing lots adjacent to the subject property (towards the northeast) which are configured similarly to the layout of this

Application. The lots meet the minimum development standards for the R-60 zone in terms of size, street frontage, setbacks, and meet the infill development standards for lot coverage. Therefore, the lot design is appropriate for the development and use contemplated.

- iii. *The Preliminary Plan provides for required public sites and adequate open spaces*

The Property was reviewed for compliance with Section 50.4.3.D, “Public sites and adequate open spaces,” of the Subdivision Code. There are Master Plan recommendations for public facilities or local recreation requirements for the Subject Property regarding a sidepath. As conditioned, the Applicant must satisfy SHA’s requirements for the construction of the sidepath along the Property frontage and connecting to the bus stop/crosswalk at Howell Road. Adequate roadway dedication has already been provided and an associated 10-foot Public Utility Easement (PUE) is recorded along the Bradley Boulevard frontage.

- iv. *The Lots and Use comply with the basic requirements of Chapter 59*

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

Development Standards in the R-60 Zone

Standard	Required/Permitted	Approved	
		LOT 1	LOT 2
Minimum lot size	6,000 sq ft	26,889 sq feet	19,161 sq feet
Min Lot Width at Front Building Line	60 feet	130 feet	109 feet
Min Lot Width at Front Lot Line	25 feet	86 feet	64 feet
Maximum Density (units/acre)	7.26	1	1
Max Lot Coverage	20% ¹	5,377 SF (max)	3,832 SF (max)
Front setback	25 feet (min)	231 feet ²	133 feet ^{2, 3}
Side setbacks	8 feet (min)	15 (min)	15 (min)
Sum of Side setbacks	18 feet (min)	30 feet (min)	30 feet (min) ³
Rear setbacks	20 feet (min)	20 feet (min)	20 feet (min)
Max Building Height to highest point on any roof.	35 feet	≤ 35 feet	≤ 35 feet

¹Maximum lot coverage is 20% for lots ≥ 16,000 sf per Residential Infill Compatibility, Section 59.4.4.1.B.

²Front setbacks for the lots were increased to enhance protection of environmentally sensitive areas.

³Established Building Line applies per Section 59.4.4.1.A.

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

The Administrative Subdivision Plan substantially conforms to the recommendations within the 1990 Bethesda-Chevy Chase Master Plan.

i. Land Use

The Property is located in the “Mid-Bethesda - Northern B-CC” area of the 1990 Bethesda-Chevy Chase Master Plan which is described as a mature, stable area, predominantly zoned R-60, R-90 with the westernmost portion being zoned R-200. The Master Plan reconfirmed the existing single family detached, low-density residential zoning throughout the Property’s vicinity and recommended a moderate level of development within the mature community. The Application provides two residential lots (with a net of one additional lot) for a detached house on each lot meeting the development standards of the R-60 zone. Therefore, the Administrative Subdivision Plan substantially conforms to the land use recommendations of Master Plan through the redevelopment of a property without creating a significant demand increase in public infrastructure and transportation needs.

ii. Environment

The Subject Property is not specifically referenced in the Bethesda-Chevy Chase Master Plan; however, the Master Plan has numerous general recommendations and major goals that apply to the redevelopment of the site. The B-CC Plan has extensive language concerning the preservation of natural resources (such as wooded areas, steep slopes, highly erodible soils and mature trees) throughout the plan area even when located outside of a stream buffer, which among other concerns, could otherwise adversely impact the character of the community and also result in large amounts of sediment wash off into streams. These Master Plan goals are addressed by the Application in a number of ways including the extensive tree save plan, the new onsite Category II Easement area, modified Building Restriction Lines (BRLs) to further protect the easement and environmentally sensitive areas from potential future impacts, new plantings (and invasive species control) within the conservation easement, and the conditioned soil restoration within portions of the LOD which serves to enhance the permeability of the soil for improved health of existing and

additional trees and helping to increase stormwater infiltration, further minimizing offsite runoff. Additionally, new street trees are required along the roadway frontage where none currently exist.

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

As discussed in Finding 1.D above, public facilities will be adequate to support and service the area of the subdivision.

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

Technical Review 50.4.3.K

1. Forest Conservation

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

a. Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Subject Property on December 4, 2020. The Subject Property is located within the Cabin John Creek Watershed, a Use I-P watershed. The Property contains mature trees subject to the Variance provision of the Forest Conservation Law, including a number of specimen trees which measure 30-inches or greater in diameter-at-breast height (DBH). The mature trees are generally located throughout the Property and along the bordering neighboring properties. The site contains a mix of moderate to steep slopes; much of the steeply slopes area lies within the wooded portion of the Property near the driveway spur. This same area is also located within Lot 2 on the plans. Steep slopes are also present to the west of the Property on the hillside within the stream buffer as well as in the offsite forested area to the east.

The stream buffer is attributed to Bulls Run stream, which lies approximately 200 feet east of the Property. The stream valley buffer in this location is particularly wide due to the presence of the steep slopes and associated gradients including slopes of $\geq 25\%$ as well as slopes of 15%-25% on soil classified by the Montgomery County Environmental Guidelines as highly erodible.

There are no known rare, threatened, or endangered species on or near the site; there are no 100-year floodplains or associated BRLs, however there are highly erodible soils, steep slopes and minor portions of streams buffers on site. The environmentally sensitive features found onsite include numerous significant and specimen trees, and isolated pockets of steep slopes and highly erodible soils (as defined in the County Environmental Guidelines). Along the northern boundary of the site, there is an existing off-site Category I Forest Conservation. There are no historic features on or near the site.

b. Forest Conservation Plan

A Preliminary/Final Forest Conservation Plan 620200160 was submitted as part of the Application. The Property is in the R-60 zone and shows that the entire 0.37-acres of onsite forest is considered to be removed for calculation purposes. Accordingly, the FFCP shows a 0.46-acre forest planting requirement. The Applicant will satisfy this requirement partly through onsite landscape planting (0.09-acres) and offsite in a forest conservation mitigation bank or payment of fee-in-lieu (0.37-acres).

The site contains environmentally sensitive areas such as steep slopes and mature trees within a forest setting. The Chapter 22A Regulations associated with the Forest Conservation Law prioritize retention of trees and plantings located on such environmentally sensitive areas. Further, the Master Plan recommends these same features be preserved and protected whenever possible. With these strategies in mind, the Applicant will provide a total of approximately 0.21-acres of Category II Conservation Easement which will be further protected by an increased BRL for the new single-family home.

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 includes CRZ impact to eight (8) 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 Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship due to the unique layout of the site, which features existing structures including a concrete and gravel spur off of the existing driveway. This driveway spur is bordered by stone walls and curbing; both of these features extend into a forested area of the site which contains mature and specimen trees (where naturalization and enhancements are required). The site is also bounded by adjacent lots which are populated with many mature and specimen trees whose CRZ's extend onto the Subject Property. Given the existing Site composition and proximity, nearly any construction activity on the site would require impact to subject trees. Accordingly, the Applicant has minimized subject tree impact where possible (no subject removals are proposed) and will implement specialized construction techniques and construction phasing to further lessen the impact to subject trees and other environmentally sensitive features of the Site. There would be an unwarranted hardship if a variance were not considered.

Furthermore, although the numerical CRZ disturbance related to Tree 5 is apparently high, due to site conditions which have limited growth root (such as the existing driveway, retaining walls and the associated grade separation) and the use of specialized construction techniques to carefully demolish and naturalize the driveway spur nearest to the tree, the actual disturbance to tree is effectually lower than the numerical figures would suggest. Further, the construction impacts to Tree 5 (aside from the careful demolition of the driveway spur) are generally to occur on the fringes of the CRZ rather than in closer proximity to its trunk. Additionally, tree protection work is conditioned to occur under the direction of an ISA Certified Arborist who is also a MD Licensed Tree Care Expert (MD LTE) and in coordination with the M-NCPPC Forest Conservation Inspector; the disturbance will be limited to the minimum practical extent.

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

- a. *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 which provides modified BRLs, an onsite conservation easement and associated supplemental plantings. The Applicant's proposal also includes extensive tree protection measures throughout portions of the site, soil restoration as conditioned, and careful phasing of construction activities. Although the site is greatly covered by the CRZs of subject trees, the Applicant has taken steps to minimize the impacts to the greatest extent possible while avoiding the removal of any subject trees. Further, per conditions of approval, the Applicant will conduct construction activities under the direction of an ISA-Certified Arborist who is a Maryland Licensed Tree Care Expert. The project includes onsite supplemental tree plantings both within the conservation easement as well as outside of the easement area in addition to other enhancements such as the removal of invasive species. Therefore, the variance request would be granted to any Applicant in a similar situation.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. As stated above, the requested variance and associated tree impacts are due to the extensive coverage of the CRZs of subject trees throughout the site as well as existing site features whose removal will ultimately result in an improved environment for some of the mature and subject trees. Although the implementation of new site features such as a revised driveway layout, adequate public facilities/utilities, and stormwater management features necessitate the variance request, the Application reflects considerable efforts to lessen overall site impacts. Further, the Application includes an onsite Category II Easement area, with supplemental plantings and invasive species control and expanded BRLs, in order to provide long-term protection to specimen Tree 5 and other mature trees within the site area. In all, the approach in the design and redevelopment of the site is based according to site limitations and provides appropriate mitigation where tree impact is unavoidable. Notably there is no removal of subject trees associated with the Application. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant. The Variance is based on development allowed under the existing zoning and required by existing site conditions and

necessary design requirements of this application. The Variance can be granted under this condition so long as the impacts are avoided or minimized, and any required mitigation is provided.

- c. 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 not based on a condition relating to land or building use on a neighboring property. Rather, the requested variance is based on meeting the site's R-60 zoning requirements while working within the overall lot constraints.

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

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 wetlands; although a minor portion of stream buffer from nearby Bulls Run stream is mapped on minor fringes of the site, these minor areas are not impacted by this Application. The Site is currently developed with a single-family home accessed via an asphalt driveway which features a concrete and gravel spur. There are presently no stormwater management facilities onsite. The development will continue the use of the single access driveway entrance which will be shared by both homes. As conditioned the Applicant will install supplemental plantings within the site and the Category II Easement; these plantings and the conditioned soil restoration will help the maintain the permeability of the soil which serves to aid reducing runoff and promoting passive stormwater management. Additionally, the Category II Easement and tree save areas will continue to provide passive stormwater management. Further, per the SWM concept approval letter dated June 28, 2021, adequate stormwater management is achieved (without waivers) using dry wells, bioretention, and microbioretention planter boxes. Therefore, as conditioned, this Application will not cause measurable degradation in water quality or violate State water quality standards.

Mitigation for Protected Trees

No subject trees will be removed in association with this Application. Therefore, no mitigation planting is required.

- 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 June 28, 2021, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed onsite (with no waiver) using planter box drywells, micro-bioretenion, and bioretention planter boxes.

Furthermore, the Site is not in a Special Protection Area (SPA) that would necessitate a water quality plan and the Site is not associated with a floodplain.

- F. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.*

There are no known burial sites associated with the Subject Property.

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

There are no other applicable provisions associated with the subdivision.

BE IT FURTHER RESOLVED that this Administrative Subdivision Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 14 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).

* * * * *

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 and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, September 23, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board