



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

MCPB No. 21-114

Administrative Subdivision No. 62020008A

Edgemoor – Lots 20 21 & Pt. Lot 2 Block 8

Date of Hearing: November 4, 2021

**NOV 29 2021**

**RESOLUTION**

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

WHEREAS, on March 25, 2020, Joel Glazer (“Original Applicant”), filed an application for administrative approval of an administrative subdivision plan of property that would create two lots on 1.52 acres of land in the R-90 zone, located on Moorland Lane, 234 feet east of Glenbrook Road (“Subject Property”), in the 1990 *Bethesda-Chevy Master Plan* (“Master Plan”) area; and

WHEREAS, the Original Applicant’s administrative subdivision plan application was designated Plan No. 620200080, Edgemoor - Lots 18 & 19 Block 8 (“Original Administrative Subdivision Plan”) and was administratively approved on July 20, 2020; and

WHEREAS, on July 12, 2021, Chad Sweet (“Applicant”) filed an application for approval of an administrative subdivision plan amendment for approval to combine two existing lots to create one single family lot and construct one single-family detached house (the “Project”); and

WHEREAS, Applicant’s Administrative Subdivision Plan Amendment was designated No. 62020008A, Edgemoor – Lots 20 21 & Pt. Lot 2 Block 8 (“Administrative Subdivision Plan Amendment” 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 September 27, 2021, setting forth its analysis and

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Approved as to

Legal Sufficiency: Matthew T. Mills

M-NCPPC Legal Department

recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 4, 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 November 4, 2021, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Rubin; seconded by Commissioner Cichy; with a vote of 5-0, Chair Anderson, Commissioners Cichy, Patterson, Rubin and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan Amendment No. 62020008A on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Administrative Subdivision Plan combines existing lot 21 and part of lot 2, block 8 into one lot for one single-family detached dwelling unit. Existing Lot 20 will be unaffected by this Application although it was included in original Administrative Subdivision Plan No. 620200080.
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. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated September 13, 2021, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
4. The record plat must show necessary easements.
5. The Applicant must dedicate the necessary right-of-way to achieve a minimum of 30 feet between the property line and the right-of-way centerline of Moorland Lane to achieve the prescribed total width of 60 feet for a secondary residential roadway in compliance with Chapter 49 of the County Code.
6. Prior to recordation of the plat, the Applicant must satisfy MCDPS requirements to ensure the construction of a 5-foot-wide sidewalk with an 11-foot lawn panel and 2-foot maintenance buffer along the Property frontage on Moorland Lane, unless otherwise determined by DPS.

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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 in interest to the terms of this approval.

7. The Planning Board has reviewed and accepts the recommendations of MCDPS, Fire Department Access and Water Supply Section in its letter dated September 13, 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.
8. The Planning Board has reviewed and accepts the recommendations of MCDPS, Water Resources Section in its stormwater management concept approval dated August 2, 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.
9. Subject to MCDPS approval, any concentrated outfall location from a stormwater management device on the subject property must be located at least 125 feet from the shared property line with 5316 Moorland Lane.
10. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
11. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.04 acres of afforestation/reforestation requirement.
12. Prior to the start of any demolition, clearing, grading, or construction that will require the removal of trees subject to the variance provisions of Chapter 22A Forest Conservation Law, the Applicant must submit a five (5)-year Maintenance and Management Agreement (MMA) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures.
13. Within the first planting season following the release of the first Sediment and Erosion Control Permit from MCPDS for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three (3) caliper inches totaling twenty-seven (27) caliper inches or as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
  - a. All onsite trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities,

PIEs, PUEs, ROWs, utility lines, and/or their associated easements, as shown on the certified Final Forest Conservation Plan.

14. 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.
15. 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.
16. The Certified Administrative Subdivision Plan must contain the following note:

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

BE IT FURTHER RESOLVED that having given full consideration to 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-90 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;*

The Applicant is required to provide road dedication in accordance with the Master Plan, which designates Moorland Road as a secondary residential roadway. Accordingly, in order to meet Master Planned right-of-way dimensions an additional dedication of 5 feet on Moorland Road, measured from the right-of-way centerline, will be required at the time of record plat. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

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

Adequate public facilities exist to support and service the Property in accordance with Section 50.4.3.J of the Subdivision Regulations. The Property is located in the Bethesda/Chevy Chase Policy Area, which is categorized as an Orange Policy Area under the 2020 – 2025 Growth and Infrastructure Policy (the “GIP”). As demonstrated in the Applicant’s traffic statement, dated March 8, 2020, the proposed Administrative Subdivision generates fewer than 50 peak-hour person trips and is therefore exempt from Local Area Transportation Review under the GIP without further review. Therefore, roads and transportation facilities are adequate to support the Application.

As noted above, the Property is served by public water and sewer and is classified in the W-1 and S-1 categories. Public water and sewer mains currently serve the Property, which will be adequate to serve the proposed subdivision. Dry utilities including electricity, gas, and telephone are also available to the Property. 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.

#### Transportation Adequacy

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

The Applicant received approval for the vehicular site access, and as proposed and conditioned, the Applicant will construct a minimum 5-foot sidewalk with an 11-foot tree lawn.

**Local Area Transportation Review (LATR)**

The Project generates fewer than 50 new person trips in the morning and evening peak hours. As a result, the Application is not subject to the Local Area Transportation Review (LATR).

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

The Subject Property is subject to Chapter 22A of the County Code. As conditioned, the Amended Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on August 2, 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 microbioretention. There are no additional environmental protection requirements to be met.

*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.*

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot sizes, widths, shapes, and orientations 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 the building type (single-family homes) contemplated for the Property.

The lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and width, and can accommodate a building which



can reasonably meet the setback requirements in that zone. A summary of this review is included in following table, Table 1.

**Development Standards in the R-90 Zone**

<b>R-90</b>	<b>Required by the Zone</b>	<b>Previously Approved</b>	<b>Proposed for Approval</b>
Minimum Lot Area	9,000 sq. ft.	Lot 20 = 42,310 sq. ft. Lot 21 = 21,025 sq. ft.	Existing Lot 20 = 42,310 feet Proposed Lot 22 = 32,625 sq. ft.
Minimum Lot Width at B.R.L.	75 feet	Lot 20 = 207 feet Lot 21 = 145 feet	Existing Lot 20 = 207 feet Proposed Lot 22 = 225 feet
Minimum Lot Width at Front Lot Line	25 feet	Lot 20 = 206 feet Lot 21 = 145 feet	Existing Lot 20 = 206 feet Proposed Lot 22 = 225 feet
Maximum Lot Coverage	30%	Lot 20 = 20% Lot 21 = 20%	Existing Lot 20 = 20% Proposed Lot 22 = 20%
Front Setbacks, min.	30 feet or Established Building Line	Lot 20 = 30 ft. Lot 21 = 42.6 ft.	Existing Lot 20 = 30 ft. Proposed Lot 22 = 33.3 feet
Side Setbacks, abutting Residential, min.	8 feet min./ 25 feet total	Must Meet Minimum <sup>1</sup>	Must Meet Minimum <sup>1</sup>
Rear Setbacks, abutting Residential, min.	25 feet	Must Meet Minimum <sup>1</sup>	Must Meet Minimum <sup>1</sup>
Maximum Building Height	30 ft Mean / 35 ft Peak	Must Meet Minimum <sup>1</sup>	Must Meet Minimum <sup>1</sup>
Site Plan Required	No	No	No

<sup>1</sup> As determined by MCDPS at the time of building permit.

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

***i. Land Use***

The Master Plan reconfirmed the existing single family detached, low-density residential zoning throughout the Property's vicinity. The project demonstrates conformance to the Master Plan by proposing a moderate level of new housing development achieving

a greater housing supply. The proposed subdivision will meet the housing development objective by increasing the housing density on a larger property. The proposed subdivision meets the Area Land Use Guidelines through the redevelopment of a property without creating a significant demand increase in public infrastructure and transportation needs.

ii. Environment

The Bethesda-Chevy Chase Master Plan has recommendations regarding the preservation of natural resources, including wooded areas/trees. These Master Plan goals are addressed via the conditioned tree save measures and onsite mitigation plantings, and street tree plantings.

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

As discussed above regarding the Findings of Section 50.6.1.C.4, 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

The Subject Property is located within the Little Falls Watershed, and the Project does not contain or affect any forest area. However, the Subject Property contains environmentally sensitive features including mature trees, and areas with slopes of 15-25%. These slopes do not lie on soils classified as highly erodible; rather, the entire project area lies on soil type 2UB - Glenelg-Urban land complex, which is typical of developed suburban areas. There are several mature and specimen trees on the Property which are proposed to be impacted and/or removed in conjunction with the work proposed. Due to the presence of these trees, the Applicant will implement measures to limit the proposed tree impacts and provide mitigation where trees must be removed.



There are no known rare, threatened, or endangered species on or near the Site; there are no 100-year floodplains, highly erodible or hydric soils, streams, wetlands or associated buffers on site. Aside from the watershed itself, the mature significant and specimen trees, and isolated pockets of steep slope, there are no other environmentally sensitive resources associated with the Subject Property nor any historic features on or near the site. As conditioned, this Application will maintain compliance with the Montgomery County Environmental Guidelines.

b. Forest Conservation Plan

An NRI/FSD (420201220) was approved for the Subject Property on February 25, 2020. Although there is no forest existing on-site, this Application is subject to Forest Conservation Law; accordingly, an amended Final Forest Conservation Plan was received in conjunction with this Application. The previous Forest Conservation Plan included an afforestation requirement of 0.23 acres, which the Applicant met via fee-in-lieu. As a result of the work proposed with this Amendment, there is an additional requirement of 0.04-acres of afforestation which the Applicant will meet via fee-in-lieu.

The Subject Property contains two specimen trees, sized at 30 inches in diameter at breast height (DBH) and numerous trees of at least 24 inches DBH. There are also specimen trees adjacent to the Subject Property, which lie off-site. Given the location of many of these trees on the lot, as well as the required driveway removals, many of these trees will be impacted by this Application. Following the review process, the Applicant has made efforts to reduce the LOD and provide measures for the protection of impacted trees both on and off site. Further, mitigation for trees proposed to be removed has been shown on the plan. Due to the proposed impacts and removal of specimen trees, this Application is also subject to the Variance Provisions of the Forest Conservation Law. Accordingly, a variance request has been submitted with this Application and is described below.

2. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any

disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the CRZ impact to two (2) Protected Trees and the removal of three (3) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance. The extents of impacts to critical root zones vary, as detailed within the associated Final Forest Conservation Plan sheets, however efforts to minimize impacts using tree protection measures have been specified in all plans and notes. Per Section 22A-21, a variance may only be granted if the Director or Planning Board, as applicable, finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The Planning Board has determined that the Applicant has shown that enforcement of the Forest Conservation Law for the designated trees would result in an unwarranted hardship due to the layout of the site with regard to the onsite and offsite specimen trees. In order to remove the existing dual driveway aprons and locate the proposed driveway onsite, with appropriate spacing from neighboring lots, Specimen Tree-2 will necessarily be impacted. Further, in proposing a building envelope which complies with R-90 setback requirements, incorporates the necessary stormwater management facilities, and functions with the resulting driveway location, certain tree impacts will occur due to the overlapping critical root zones (CRZ) of subject trees which cover nearly a quarter of the site. Alternative designs, which included alternative stormwater management layouts and reduced grading and site improvements, were considered however these considerations did not result in the ability to retain additional trees. Therefore, the Planning Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

- 1. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The impact/removal of variance trees is unavoidable due to their location and with respect to the proposed development of the property. As it is a property owner's right to make maximum use of any planning and zoning option while still providing the greatest protection of specimen trees, no special privileges have been requested or provided to the Applicant with this Variance Request. A variance

request would be granted to any Applicant in a similar situation with the proposed protective measures included as a component of construction.

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

As stated above, the requested variance and associated tree impacts are due to the concerns related to the improvement of the site while adhering to certain constraints. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

The development proposal for the site includes the planting of variance mitigation trees, including planting for Tree-9 which is declared as a removal with intent to save the tree. These tree plantings and revised grading serve to improve soil permeability, support the infiltration and uptake of water onsite, and reduce areas contributing to water runoff and erosion; these measures will be especially effective given that Proposed Lot 22 currently contains areas of steep slope and uncovered, compacted soil which does not appropriately combat runoff issues.

Further, the Applicant proposes a development which will meet current State and local stormwater management standards while the site currently does not; adherence to the current standards has been verified by the submission, and subsequent approval dated August 2, 2021, of a Stormwater Management Plan to the Department of Permitting Services. MCDPS found the plan acceptable for providing the required stormwater treatment onsite via micro-bioretenention planter boxes, without the use of waivers. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. As a result of the proposed removal of three subject trees, for a total of 108" DBH removed, mitigation in the form of at least 27 caliper inches is required. Planting 27 caliper inches of variance mitigation onsite, fulfills this requirement, as conditioned. No mitigation is required for Protected Trees impacted but retained.

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

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on August 2, 2021, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed onsite (with no waiver) using micro-bioretenention planter boxes.

- 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 Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is NOV 29 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 Rubin, with Chair Anderson and Commissioners Cichy, Patterson, Verma, and Rubin voting in favor of the motion at its regular meeting held on Thursday, November 18, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board