



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

DEC 28 2021

MCPB No. 21-132
Administrative Subdivision Plan No. 620190110
J&M Andrews Farms
Date of Hearing: November 4, 2021

RESOLUTION

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

WHEREAS, on April 21, 2021, Patricia Smith (PBS, Inc.) ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create one (1) lot on 33.92 acres of land in the AR zone, located on Westerly Road, approximately 1,000 feet west of West Willard Road and the Town of Poolesville; Parcel 480 on Tax Map CT12 ("Subject Property"), in the Poolesville Policy Area and 1980 Preservation of Agriculture and Rural Open Space Functional Master Plan ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620190110, J&M Andrews Farm ("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 October 22, 2021, setting forth its analysis and 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by motion of Commissioner Rubin, seconded by Commissioner Verma, with a vote of 5-0; Chair Anderson, Commissioners Cichy, Patterson, Rubin and Verma voting in favor.

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620190110 to create one (1) 30.66-acre lot (after dedication) on the Subject Property, subject to the following conditions:¹

All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

1. This Administrative Subdivision Plan is limited to one lot for one single-family detached dwelling unit.
2. The Applicant must comply with the following conditions of approval of Preliminary/Final Forest Conservation Plan No. 620190110, approved as part of this Administrative Subdivision Plan:
 - a. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan ("FFCP"). Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Prior to 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, forest planting and environmental buffers as specified on the approved 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.
 - d. Prior to the 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.
 - e. 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.

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.

3. The Applicant must dedicate and show on the record plat(s) the dedication of 35 feet of right-of-way from the existing pavement centerline along the Subject Property frontage for Westerly Road.
4. Prior to the approval of a record plat, the Applicant must receive approval of a stormwater concept plan from the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section.
5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 2, 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.
6. The Planning Board has reviewed and accepts the recommendations of the MCDPS Fire Department Access and Water Supply Section in its letter dated July 20, 2021, and hereby 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 amendments do not conflict with other conditions of Administrative Subdivision Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated June 25, 2021, and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
8. The record plat must show necessary easements.
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.
10. Prior to recordation of the plat, the Applicant must record a covenant for the unplatted balance of the tract noting that density and development rights have been used for the new lot and noted on the record plat for the lot.
11. The Applicant must include with the submission of the record plat an affidavit to verify the availability of a Transferable Development Right (TDR) for each lot shown on that plat. Include a note referencing the affidavit on record plat.

12. The record plat(s) must contain the following note:

Agriculture is the preferred use in the Agricultural Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.

13. 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.

14. 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.

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. Other limitations for site development may also be included in the conditions of the Planning Board's approval.

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

- 1. The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.B for the creation of certain residential lots located in the Agricultural Reserve zone. Up to 5 lots for detached houses are permitted under these procedures in the AR zone if:*

- A. Written approval for a proposed well and septic area is received from the Department of Permitting Services before approval of the plat;*

The Application has been reviewed by MCDPS – Well and Septic Section, which determined the proposed well and septic locations are acceptable as shown on the Administrative Subdivision Plan and approved in a letter dated June 25, 2021.

- B. Any required road dedications and public utility easements along the frontage of the proposed lots are shown on the record plat, and the applicant provides any required improvements;*

The Property has frontage on two roads, Whites Ferry Road to the north and Westerly Road to the south. Westerly Road is a Rustic Road (R-50) with an ultimate right-of-way of 70 feet. Whites Ferry Road is a County Arterial (CA-35) with an ultimate right-of-way of 80 feet. Dedication for Whites Ferry Road is not required at this time because the portion of the Property fronting on Whites Ferry Road will not be platted and will be left as an agricultural remainder parcel. The Applicant is dedicating 0.37 acres to achieve 35 feet from the existing centerline of Westerly Road. All necessary dedications and public utility easements will be shown on the record plat.

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

As the Board found below, public facilities are adequate to serve the proposed lot.

- D. A covenant is recorded for the unplatted balance of the tract noting that density and development rights have been used for the new lots and noted on the record plat for the lots;*

As conditioned, prior to recordation of the plat, the Applicant will record a covenant for the unplatted balance of the tract noting that density and development rights have been used for the new lot and noted on the record plat for the lot. The Applicant provided a deed confirming that a TDR has been retained for development of the proposed dwelling unit.

- E. Lots created in the AR zone through this procedure are 5 acres or less, unless approved by the Board; and*

The 30.66-acre lot exceeds the 5-acre lot size limit and requires Planning Board action. The lot shape and proposed house location, at the southwest corner of the Property allows retention of a large contiguous area of farmable land on the proposed lot making it adequate to establish a farm on the Subject Property.

F. Forest conservation and environmental protection requirements are satisfied before approval of the plat.

As discussed below, a Final Forest Conservation Plan has been submitted with the Administrative Subdivision Plan. The Applicant has submitted a stormwater concept plan to MCDPS – Water Resources Section for their review. As conditioned, the Applicant must have an approved stormwater concept plan prior to approval of a record plat.

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.

a. The block design is appropriate for the development or use contemplated

The Application proposes no new residential blocks.

b. The lot design is appropriate for the development or use contemplated

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. The proposed lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and the intent of the AR zone, to preserve and support agriculture. In this case, by permitting a single family detached dwelling unit on a lot with over 25 acres to farm, it promotes the continuation of on-site agriculture.

c. The Preliminary Plan provides for required public sites and adequate open areas.

The lot was reviewed for compliance with Section 50.4.3.D, “Public Sites and Adequate Public Facilities,” of the Subdivision Code. There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

d. The Lot and Use comply with the basic requirements of Chapter 59

The lot was reviewed for compliance with the dimensional requirements for the AR zone as specified in the Zoning Ordinance. The lot meets the dimensional requirements for area and width in the AR zone and is suitable to support a single-family detached house and agriculture. A summary of this review is included below in the Administrative Subdivision Plan Data Table in the Staff Report and Certified Administrative Subdivision Plan.

The Application is consistent with Section 59.4.2.1.C of the Zoning Ordinance, which states that in the Agricultural Reserve Zone “residential uses must be located and arranged to support agriculture as the primary use and to support the rural character of the area”. This Application will create a single lot capable of supporting a single-family detached house and small-scale agricultural production.

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

The Administrative Subdivision Plan substantially conforms to the 1980 *Preservation of Agriculture and Rural Open Space Master Plan* (AROS). The AROS Plan, which makes recommendations for land in the AR Zone, has as its primary objective the preservation of farmland and the creation of policies that encourage the continuation of farming and associated activities. This objective has generally been implemented by encouraging preservation of large contiguous blocks of farmable land when subdivision occurs. This Application creates one large lot that is suitable as an individual farm.

With the evolution of farm activities that can be done on smaller properties, the proposed lot created by this proposal may successfully encourage continued farming in this part of the County and further the goals of the Master Plan.

1996 Rustic Roads Functional Master Plan

The lot will access Westerly Road (R-50) which is identified as a Rustic Road in the 1996 *Rustic Roads Functional Master Plan* (“Functional Master Plan”) for the portion of the road between Edwards Ferry Road and the Town of Poolesville Limits. Westerly Road has 20 feet of existing pavement and an ultimate right-of-way width of 70 feet.

The Functional Master Plan states that the significant features of Westerly Road in this location while traveling west from Poolesville are the long open views of three farmsteads and the surrounding fields. The new driveway and house are located so as not to interrupt the existing viewshed, and no tree or hedge row clearing is required to construct the driveway. As such the proposed

driveway will not adversely affect the views described in the Functional Master Plan. The new driveway access point from Westerly Road is the minimum width permitted by the MCDPS – Fire Access and Water Supply Section and maintains the existing character of horse pasture along this portion of the road and is consistent with the intent of the Functional Master Plan.

The Rustic Roads Advisory Committee (“RRAC”) has reviewed the Application, and in a letter dated June 3, 2021, the RRAC offered their support of the Application. The Application has also been reviewed by the MCDOT, which in a letter dated October 4, 2021, recommended approval with conditions. Prior to approval of the record plat, the Applicant will need to verify that adequate sight distance can be achieved at the entrance of the new driveway, which may require relocation of an existing utility pole along the Property frontage.

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

Roads and Transportation Facilities

The transportation Adequate Public Facilities test is satisfied under the 2021-2024 Growth and Infrastructure Policy. The Property is located in the Rural West Policy Area.

Westerly Road (R-50) is a Rustic Road requiring 70 feet of right-of-way in accordance to the 1996 *Rustic Roads Functional Master Plan*. The Application proposes to grant 35 feet of right-of-way from the centerline. This amount of right-of-way dedication conforms to the Functional Master Plan requirements.

A traffic study is not required to satisfy the APF’s Local Area Transportation Review (LATR) test because the new single-family detached unit does not generate 50 or more person trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

An on-site well and septic system will be installed to serve the new lot. The use of a well and septic system is consistent with the existing W-6 and S-6 services categories designated for the Property. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the proposed well and septic location is acceptable as shown on the Administrative Subdivision Plan and approved in a letter dated June 25, 2021.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated July 20, 2021.

With the exception of water and sewer, which is not available in this part of Montgomery County, other utilities are available along Westerly Road and will be brought into the site as needed.

All other public facilities and services, police stations, and health services are currently operating within the standards set by the 2021-2024 Growth and Infrastructure Policy.

School Adequacy

The FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021 is applicable to this Application. This Application proposes one single-family detached unit.

The Application is served by Poolesville ES, John Poole MS and Poolesville HS. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 1 – 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 FY22 Annual School Test, Poolesville ES and John Poole MS and Poolesville HS do not require a UPP as identified in Table 1.**

If the Application is estimated to generate more students than the identified ceilings, then UPPs or partial payments at multiple tiers may still be required. Based on the school capacity analysis performed, using the FY2022 Annual School Test, this Application is not subject to a Utilization Premium Payment.

The following provides the UPP factor matrix:

| School Name | Tier 1 | Tier 2 | Tier 3 |
|----------------|--------|--------|--------|
| Poolesville ES | 0.000 | 0.000 | 0.000 |
| John Poole MS | 0.000 | 0.000 | 0.000 |
| Poolesville HS | 0.000 | 0.000 | 0.000 |

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

1. Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420190760 for this Property was approved on April 25, 2019. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property, including existing forest and stream buffer on the proposed agricultural remainder parcel.

2. Forest Conservation

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

Chapter 50, Section 6.1 of the County Code permits subdivision of land by filing an Administrative Subdivision Plan instead of a Preliminary Plan of Subdivision in limited circumstances. Under 50.6.1.B.6, the forest conservation requirements for an Administrative Subdivision are required to be met prior to approval of the record plat. The Applicant has submitted a Preliminary/Final Forest Conservation Plan with this Application.

This Application proposes to create a lot and a farm remainder out of the existing farm parcel to accommodate a single-family detached structure, while maintaining enough acreage to function as farmland. The Application consists of a 33.92-acre parcel. The Application is consistent with Section 59.4.2.1.C of the Zoning Ordinance, which states that in the

Agricultural Reserve Zone “residential uses must be located and arranged to support agriculture as the primary use and to support the rural character of the area”. Areas of the Application not related to the residential portions of the Property will be actively farmed and remain in agriculture.

The Subject Property is 33.92 acres in size in the AR Zone. The AR Zone is assigned a Land Use Category of Agricultural Resource Area as defined in Section 22A-3 of the FCL and in the Land Use Table of the Trees Technical Manual. This results in an afforestation requirement of 20% of the Net Tract Area.

The Application has a tract area of 33.92 acres. The Applicant is agriculturally exempting off 28.82 acres which will be kept in active commercial agriculture and is covered with an Agricultural Declaration of Intent (see Sheet 1 of the FFCP). The FFCP shows a total Net Tract Area of 4.80 acres. There is no existing forest on the proposed lot. This results in an afforestation requirement on the FFCP Worksheet of 0.96 acres. The afforestation requirement will be met offsite at a ratio of 2:1 on the farm remainder portion of the Property retaining and preserving 1.95 acres of existing offsite forest in a Category I Conservation Easement.

The Application satisfies 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.

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

As conditioned, the Applicant must receive approval of a stormwater management concept from the MCDPS – Water Resources Section prior to record plat.

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 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. Therefore, this finding does not apply.

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 DEC 28 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, Patterson, and Verma voting in favor of the motion, and Commissioner Rubin absent at its regular meeting held on Thursday, December 16, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board