



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

MCPB No. 21-054

Administrative Subdivision No. 620210070  
6940 Seven Locks Road (Franklin Property)  
Date of Hearing: June 17, 2021

**JUL 15 2021**

**RESOLUTION**

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

WHEREAS, on June 29, 2020, Ross Miller and Emily Franklin ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create one lot on 0.69 acres of land in the R-200 zone, located at 6940 Seven Locks Road approximately 300 feet west of Cypress Grove Lane ("Subject Property"), in the 1990 *Bethesda-Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620210070, 6940 Seven Locks Road ("Administrative Subdivision Plan" or "Application"); and

WHEREAS, on May 14, 2021 the Applicant supplemented the application by filing a request for waiver pursuant to Section 50-9.3 of the County Code, related to sidewalk requirements ("Subdivision Waiver"); and

WHEREAS, following review and analysis of the Application, including the Subdivision Waiver, by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 7, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions, and denial of the Subdivision Waiver ("Staff Report"); and

WHEREAS, on June 17, 2021, the Planning Board held a public hearing on the Application, including the Subdivision Waiver, at which it heard testimony and received evidence submitted for the record on the Application and Subdivision Waiver; and

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

WHEREAS, on June 17, 2021, the Planning Board voted to approve the Application subject to certain conditions, and deny the Subdivision Waiver, on motion of Commissioner Verma, seconded by Commissioner Fani-Gonzalez, with a vote of 3-2; Commissioners Anderson, Fani-Gonzalez and Verma voting in favor; and Commissioners Cichy and Patterson voting against the motion.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620210070 to create one lot on the Subject Property, and DENIES the Subdivision Waiver, subject to the following conditions:<sup>1</sup>

1. This Administrative Subdivision is limited to one (1) lot for one single-family dwelling unit.
2. The Adequate Public Facilities (APF) review for the Administrative Subdivision will remain valid for sixty (60) months from the date of mailing of the Planning Board resolution.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in their letters dated February 24, 2021, and May 26, 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 these letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
4. The Applicant must dedicate the necessary right-of-way to achieve 30 feet between the Property line and the right-of-way centerline of Seven Locks Road to achieve the master-planned width of 60 feet.
5. The record plat must show necessary easements.
6. Prior to recordation of the plat the Applicant must satisfy Montgomery County Department of Permitting Services (MCDPS) requirements to ensure the construction of a 5-foot wide sidewalk with a 6-foot lawn panel and 2-foot maintenance buffer along the Property frontage on Seven Locks Road.
7. Prior to building permit, the Applicant must participate financially in the construction of the master-planned bikeable shoulders on the west side of Seven Locks Road, as approved by MCDOT.
8. Prior to Certification of the Administrative Subdivision Plan, the Applicant must revise the Plan to include a cross-section of Seven Locks Road showing the master-planned right-of way width, the sidewalks and master-planned bikeable shoulders on the west side of Seven Locks Road along the Property's frontage.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

9. Prior to record plat approval, the Applicant must receive approval of a Fire Access Plan for the project from the MCDPS, Fire Prevention and Code Compliance Division.
10. Prior to record plat approval, the Applicant must satisfy the requirements for stormwater management and receive approval from the MCDPS, Water Resource Section.
11. The record plat must reflect a 90-foot rear building restriction line (BRL) as shown on the Certified Administrative Subdivision Plan.
12. Prior to recording the plat, the Applicant must submit and receive M-NCPPC Staff approval of a new Forest Conservation Exemption Request or a Preliminary/Final Forest Conservation Plan as applicable.
  - a. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations as applicable.
13. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plans and/or Final Forest Conservation Plan as applicable. Tree save measures not specified on the Final Forest Conservation Plan and/or the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
14. The Certified Administrative Subdivision Plan must contain the following note:  
*Unless specifically noted on this plan drawing or in the conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s) approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of approval.*

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 50-6.1.C as follows:*
  - a. *The lots are approved for the standard method of development;*

The lot is approved for standard method development in the R-200 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 lot will not be served by a well or septic area, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

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

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

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

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

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

School Adequacy

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

Transportation Adequacy

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

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

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

*Local Area Transportation Review (LATR)*

The Project generates no new trips as it proposes replacing the existing home and does not propose any new residential units on the approved lot. As a result, the Application is not subject to the Local Area Transportation Review (LATR)<sup>2</sup> and vehicular access to the Site is determined to be adequate. As conditioned, the provision of new sidewalks on the Seven Locks Road frontage, will provide adequate access for pedestrians.

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

The Application must meet the requirements of Chapter 22A of the Montgomery County Code prior to recordation of the plat. Per Section 50.6.1.C.5, the Applicant must receive approval of a Forest Conservation exemption for the approved Administrative Subdivision prior to record plat and comply with any and all applicable requirements of Chapter 22A, Forest Conservation Law. As conditioned, the Application must receive an updated exemption approval that will appropriately reflect this Application's status as an Administrative Subdivision rather than a minor subdivision. The condition also requires the Applicant to submit a Preliminary/Final Forest Conservation Plan if a determination is ultimately made that the Project does not qualify for an exemption. Therefore, as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation.

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

There are no additional environmental protection requirements to be met.

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<sup>2</sup> Page 40 of the LATR states, "Developments that generate less than 5 peak-hour vehicle trips (i.e. subdivisions of four or fewer single-family detached houses) are not generally included" in LATR review.

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 approved subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to 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 approved lot is appropriate in size, shape, width, and orientation, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the approved building type (single-family detached dwelling unit) contemplated for the Property. The subject Application is a conversion from a parcel to a lot and lot lines will not change the existing parcel lines

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

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

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

The approved lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, and width, and can reasonably



accommodate the approved one single-family detached dwelling. A summary of this review is included in Table 1.

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

<b>Standard</b>	<b>Required/Permitted</b>	<b>Approved Lot</b>
Minimum lot size <sup>1</sup>	20,000 sq ft.	29,882 sq ft.
Front setbacks	40 ft. (min.)	Must meet minimum <sup>2</sup>
Side setbacks	12 ft. (min.; 25 ft. total)	Must meet minimum <sup>2</sup>
Rear setbacks	30 ft. (min.)	90 ft. <sup>3</sup>
Lot Width at Front lot line	25 ft.	Must meet minimum <sup>2</sup>
Lot Width at Front BRL	25 ft.	Must meet minimum <sup>2</sup>
Lot Coverage	25%	Must not exceed maximum <sup>2</sup>
Building Height	35 ft. (max)	Must not exceed maximum <sup>2</sup>

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

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

<sup>3</sup> A 90' rear BRL is conditioned to protect the soils/slopes.

**3. The Administrative Subdivision Plan substantially conforms to the Master Plan or Urban Renewal Plan**

The Property is located within the 1990 *Bethesda-Chevy Chase Master Plan*. The Master Plan reconfirmed the existing single family detached residential zoning throughout the Property's vicinity. While there are no recommendations in the Master Plan related to this Property, the Master Plan does recommend a minimum right-of-way width for Seven Locks Road along the Site frontage. As conditioned, the Applicant will dedicate 30 feet from the right-of-way centerline to achieve the total master-planned width of 60 feet. The minimum right-of-way width was confirmed by the 2018 *Master Plan of Highways and transitways*. As recommend in the 2018 *Bicycle Master Plan*, the Applicant will participate in the financial implementation of the 4-foot bikeable shoulders on the west (Site) side of Seven Locks Road. As conditioned, the Project substantially conforms to the Master Plan.

It is also important to note that this Property is located within the Palisades subarea of the 1990 *Bethesda-Chevy Chase Master Plan*. The Palisades is identified in the Master Plan as an area with distinctive environmental features, such as steep slopes and mature trees, which should be preserved and protected whenever possible. The area of slopes/highly erodible soils toward the rear of the

Property is currently in a stable condition within the existing lawn and generally not associated with trees that would be cleared; therefore, the Planning Board is not recommending formal protection of the onsite areas (beyond the protection of the tree save plan and expanded BRL). As this proposal for the Subject Property is limited in scope and does not contain further development which would result in the loss of these environmental features, the Planning Board finds that the implementation of tree protection measures as shown in the submitted Tree Save Plan appropriately addresses the environmental concerns cited within the Master Plan. County approved sediment control practices and the utilization of root pruning and tree protection fences have been approved to protect the environmental resources found onsite as well as the significant and specimen trees on neighboring properties. Given that the Site has steep slope/highly erodible soil and is in the Palisades, the Planning Board approves a 90-foot rear BRL to protect the soils/slopes (as conditioned). A 90-foot rear BRL will help protect the steepest part of the slopes and protect most of the erodible soil area. As conditioned, the Project substantially conforms to the Master Plan.

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

As approved, public facilities will be adequate to support and service the area of the subdivision.

No new person trips will be generated by the approved Administrative Subdivision Plan and as conditioned, the Applicant is required to provide a 5-foot sidewalk with a 6-foot lawn panel and 2-foot maintenance buffer along the Site frontage. The Applicant will participate in the master-planned bikeable shoulders via fee-in-lieu. Therefore, as conditioned, the Project will provide adequate vehicle, bicycle and pedestrian access within the service area of the subdivision. Further, the Board denies the Applicant's requested Subdivision Waiver regarding the construction of sidewalks (see discussion below).

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

In lieu of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), a simplified NRI in support of a Forest Conservation Exemption request was submitted by the Applicant. This Exemption Request, No. 42021028E, was approved for the Subject Property on October 19, 2020. However, the approved exemption issued was granted under Chapter 22A-5(n) which is for a minor subdivision. Because this Application is an Administrative Subdivision, the Forest Conservation Law must be satisfied properly, and as stated in Finding 1.e above, and as conditioned, this Application will satisfy all requirements of Chapter 22A, Forest Conservation prior to recordation of the plat.



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

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

### **Subdivision Waiver, Section 50.9.3**

#### *Section 50.9.3 Waivers from Chapter 50 Subdivision Regulations*

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

- 1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*
- 2. the intent of the requirement is still met; and*
- 3. the waiver is:*
  - a. the minimum necessary to provide relief from the requirements; and*
  - b. consistent with the purposes and objectives of the General Plan.*

On May 14, 2021 the Applicant submitted a waiver request in accordance with Section 50-9.3, requesting relief from participation in the implementation of sidewalks along the Site frontage on Seven Locks Road<sup>3</sup>. In the waiver request the Applicant explains that a sidewalk improvement along the Site frontage would not connect to other existing sidewalks and would potentially create an unsafe walking condition if it were installed. Additionally, the Applicant argues that other, comparable projects in the area were not required to build sidewalks when they built their new residences. Finally, the Applicant suggests that the County may have chosen not to install a sidewalk when the asphalt trail was installed on the opposite side of Seven Locks Road in the 1980s.

The Planning Board carefully reviewed the waiver request and considered the arguments made by the Applicant, as well as those of Staff and the Montgomery County Department of Transportation (MCDOT). The Planning Board finds that the minimum criteria for a waiver from Chapter 50 of the Subdivision Code have not been met and therefore denies the Subdivision Waiver.

First, Sections 49-33(e)(1) and 50-4.3.E.3.b of the County Code and the 1990 *Bethesda-Chevy Chase Master Plan* provide that sidewalks are required and

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

envisioned on Primary Residential Roads, such as Seven Locks Road along the Site frontage, regardless of whether or not the sidewalk segment will connect to existing sidewalks. There is no practical difficulty or unusual circumstance associated with this Property that would support not constructing the sidewalk. There will be sufficient space within the right-of-way to build the sidewalk, and there are no precluding existing conditions such as wetlands or endangered species along the Site frontage. While grading may be required, this is not considered an unusual circumstance.

As to the potential safety issue, the Planning Board finds that off-street facilities can be constructed without creating potential conflicts. Sidepaths and sidewalks are often constructed piecemeal by the private sector, with the intention that they will be connected to in the future with either more private investment or a future Capital Improvement Project (CIP). On-street facilities that abruptly start and stop can create potential conflicts, which is why the Planning Board supports the Applicant's request to participate in the bikeable shoulders along the Site frontage via fee-in-lieu, as proposed by MCDOT.

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

Regarding the Applicant's final argument, that the County specifically chose not to build a sidewalk on the west (Site) side of Seven Locks Road when installing the asphalt pathway on the east side of the street, the Board disagrees with this assumption. In coordination with MCDOT, it was determined that the asphalt path on the side of Seven Locks Road opposite the Site appears to have been built in the 1980's as a walking/biking pathway along the west side of Cabin John Park. The trail continues north of the Site under the Beltway and across Bradley Boulevard where a more recent segment switches over to the east side of the roadway and continues north towards Rockville. There is no specific drawing or other documentation about the trail segment opposite the Site, but typically these pathways were built on only one side of the street. It is likely that the east side was chosen because the majority of the frontage is along public land rather than private property and right-of-way would have been easier and less expensive to acquire. The Planning Board does not agree with the Applicant's argument that the choice to install a shared use path on the east side of the street was intended to preclude a sidewalk on the west side of Seven Locks Road in the future.

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

BE IT FURTHER RESOLVED that this Administrative Subdivision Plan will remain valid for thirty-six (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 JUL 15 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 Verma, seconded by Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting to adopt the Resolution at its regular meeting held on Thursday, July 8, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board