

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-090
Administrative Subdivision No. 620220010
Lot 23 Willerburn Acres
Date of Hearing: July 28, 2022

AUG 11 2022

RESOLUTION

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

WHEREAS, on December 15, 2001, Jennifer Hemann (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create two lots on 0.83 acres of land in the R-90 zone, located approximately 450 feet south of the intersection of Whistler Court and Gainsborough Road at 11820 Gainsborough Road (“Subject Property”), in the Potomac Policy Area and 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620220010, Lot 23 Willerburn Acres (“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 15, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 28, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620220010 to create two lots on the Subject

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Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

Property, subject to the following conditions:¹

General Approval

1. This Administrative Subdivision Plan is limited to two lots for two single-family detached dwelling units.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities (“APF”) review for the Administrative Subdivision Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

Plan Validity Period

3. The Administrative Subdivision Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated June 16, 2022 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
5. Prior to recordation of plat(s) for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. Prior to recordation of plat(s) for the Subject Property, the Applicant must obtain an approved stormwater management concept plan from the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section.
7. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated

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.

May 19, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Administrative Subdivision Plan approval.

Other Approvals

8. Prior to recordation of plat(s) or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.

Environment/Forest Conservation

9. The Applicant must comply with the following conditions of approval for the Preliminary/Final Forest Conservation Plan No. 620220010, 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 ("FCP"). Tree save measures not specified on the FCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
 - c) Prior to the start of any demolition, clearing, grading or construction, whichever comes first, for this development Application, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.14 acres of afforestation requirement.
 - d) Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute 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 mitigation tree plantings associated with the tree variance.
 - e) Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, 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 mitigation trees, as shown on the FCP, and their necessary maintenance.
 - f) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-

NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.

- g) The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three caliper inches totaling nine caliper inches 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.
- h) 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.

Transportation/Existing Frontage Improvements

- 10. Prior to the release of the first building permit, the Applicant must construct a six-foot wide sidewalk along the Property frontage on Gainsborough Road and satisfy all necessary requirements of MCDPS for the construction.

Record Plats

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

Easements

- 12. The record plat must show necessary easements.

Certified Administrative Subdivision Plan

- 13. The Applicant must include the Administrative Subdivision Plan Resolution and agency approval letters on the approval or cover sheet(s).
- 14. The certified Administrative Subdivision Plan must contain the following notes:
 - a. *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.*
 - b. *The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs*

on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Administrative Subdivision Plan is required to be on-site at all times.

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

- a) Include the approved Fire and Rescue Access plan in the certified set.
- b) Ensure plans and data tables reflect approved plans and data tables in the staff report.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or 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 up to three 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;

Currently, the Gainsborough Road right-of-way, at this location, is 60 feet. No additional right-of-way is necessary as the Master Planned right-of-way

has been achieved. 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

As conditioned the requirements for adequate public facilities have been met, as discussed in more detail below.

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for the removal of one subject tree. The Administrative Subdivision Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned and as discussed in more detail below.

As conditioned, the Project will obtain an approved stormwater management concept plan from the Montgomery County Department of Permitting Services – Water Resources Section prior to approval of record plat. 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.

1. 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 proposed subdivision is within an existing residential neighborhood with an established street grid. Lots in the vicinity are typical of those following a curvilinear street pattern:

a mix of regular and irregularly-shaped lots. The proposed lots are similar in shape and size to those located to the north and south of the Property. The Application is not proposing to create any new residential blocks.

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

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. Proposed Lots 25 and 26 are 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 building type (single-family detached dwelling units) contemplated for the Property.

3. The Administrative Subdivision 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.

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

The proposed 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. A summary of this review is included in Table 1.

Table 1 - Development Standards in the R-90 Zone.

Standard	Required/Permitted	Proposed Lot 25	Proposed Lot 26
Minimum lot size	9,000 sq. ft. min.	20,260 sq. ft.	15,723 sq. ft.
Front setback	30 ft. min.	30 ft. min.	30 ft. min.
Side setback	8 ft. min.	8 ft. min.	8 ft. min.
Rear setback	25 ft. min.	25 ft. min.	25 ft. min.
Lot width at front lot line	25 ft. min.	90 ft.	108 ft.
Lot width at front building restriction line (BRL)	75 ft. min.	86 ft.	99 ft.

Standard	Required/Permitted	Proposed Lot 25	Proposed Lot 26
Lot coverage	Per Sec. 59-4.4.1.B	20% max. coverage of the lot area	30% max. coverage, less .001% per square foot of lot area exceeding 6,000 sq. ft.
Building height	35 ft. max.	35 ft. max.	35 ft. max.

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

The Administrative Subdivision Plan substantially conforms to the recommendations within the 2002 *Potomac Subregion Master Plan* (“Master Plan”). The Master Plan does not make specific recommendations for the Subject Property but reconfirmed the existing single family detached residential zoning throughout the Property’s vicinity. The Application demonstrates conformance to the Master Plan by proposing compatible infill housing within residential areas. The proposed subdivision will meet the County’s housing development objective by increasing the housing density on a larger property. The proposed subdivision meets the Area Land Use Guidelines of the Master Plan through the redevelopment of a property without creating significant demand or increase in public infrastructure and transportation needs.

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

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 Potomac Policy Area, which is categorized as a Yellow Policy Area under the *2020 – 2025 Growth and Infrastructure Policy* (the “GIP”). As demonstrated in the Applicant’s traffic statement, dated November 18, 2021, 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 in this report, 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 GIP currently in effect.

Roads and other Transportation Facilities

As conditioned, the Applicant will ensure the construction of a six-foot wide sidewalk along the Property frontage on Gainsborough Road to improve the pedestrian transportation infrastructure.

Local Area Transportation Review (LATR)

The Application generates fewer than 50 peak-hour person trips and is considered to have a de minimis impact on the transportation network. As a result, the Application is not subject to additional Local Area Transportation Review (LATR). Transportation will be adequate to serve the Application.

School Adequacy Test

The school adequacy test was completed in May 2022. Therefore, 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 plan proposes one net new single-family detached unit.

The Project is served by Beverly Farms Elementary School, Herbert Hoover Middle School and Winston Churchill High School. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2 - Applicable Fiscal Year 2022 School Adequacy

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Beverly Farms ES	689	580	84.2%	+109	No UPP	194	247	351
Herbert Hoover MS	1,139	1,060	93.1%	+79	No UPP	205	307	478

Winston Churchill HS	1,969	2,096	106.4%	-127	No UPP	53	267	563
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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, Beverly Farms Elementary School, Herbert Hoover Middle School and Winston Churchill High School do not require any UPP as identified in Table 2. If the project 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. Therefore, no UPP condition is required.

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

1. Forest Conservation

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for the removal of one subject tree. The Administrative Subdivision Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420212650 for this Property was approved in July 2021. The NRI/FSD identifies the 0.83-acre Subject Property located within the Cabin John Creek watershed, which is classified by the State of Maryland as Use I-P waters. There is no forest on the Property; however, there are ten trees with a diameter at breast height (“DBH”) of 24 inches or more located on or immediately adjacent to the Property, including one tree with a DBH of more than 30 inches. There are no streams, wetlands, 100-year

flood plain, stream buffers, steep slopes, highly erodible soils, or other sensitive environmentally features located on the Property.

Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan ("FCP") with the Administrative Subdivision Plan No. 620220010 (Attachment C). The Application satisfies the applicable requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code, and complies with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned R-90 and is assigned a Land Use Category of High Density Residential ("HDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 0.83-acre Subject Property plus 0.11 acres of offsite disturbance associated with this Application, for a total net tract area of 0.94 acres. There is no existing forest within the net tract area. Since there is no forest on the Property, the Application results in an afforestation requirement of 0.14 acres. The Applicant proposes to meet the planting requirement by paying a fee-in-lieu as permitted under Section 22A-12(g)(2) since the planting requirement is less than 0.5 acres and there are no priority or appropriate on-site planting areas on the two proposed lots, which will both be less than 0.5 acre in size. The Application proposes to remove eight (8) trees that are between 24-29.9 inches DBH and one (1) tree that is greater than 30 inches DBH. The removal of Tree #5, which is greater than 30 inches DBH requires approval of a variance.

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 removal of one Protected Tree 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 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 removal and disturbance to the specified tree is due to the proposed development of the Property, location of the tree and necessary site design requirements. The Property contains a large tree located within the developable area of the site. Granting a variance to allow disturbance within the developable portion of the site and meet the objectives of the Master Plan is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application.

- 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 a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

- 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 Protected Tree being removed is not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of the Protected Tree by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed tree. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

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 one inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

Prior to recordation of a plat, the Applicant must obtain an approved stormwater management concept plan from the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section, per Chapter 19 of the County Code.

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

This finding is not applicable as there are no known burial sites of which the Applicant has actual notice or constructive notice or that are included in the Montgomery County Cemetery inventory.

G. Any other applicable provision specific to the property and necessary for approval of the Administrative Subdivision is satisfied.

No other provisions apply to this Administrative Subdivision Application.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 11 2022 (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 the motion of Commissioner Rubin, seconded by Vice Chair Verma, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.



Casey Anderson, Chair
Montgomery County Planning Board

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620220010 Lot 23 Willerburn Acres

