

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-097  
Administrative Subdivision No. 620220050  
Block F Kilmarock  
Date of Hearing: September 22, 2022

SEP 29 2022

## RESOLUTION

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

WHEREAS, on March 22, 2022, Ronald N. Goodman (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create two lots on 0.82 acres of land in the R-60 zone, located on the north side of Prospect Street approximately 25 ft W of Barron Street (“Subject Property”), in the Silver Spring/Takoma Park Policy Area and 2000 *East Silver Spring Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620220050, Block F Kilmarock (“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 September 9, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 22, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Rubin, 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 No. 620220050 to create two (2) 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:<sup>1</sup>

1. This Administrative Subdivision Plan is limited to two (2) lots for one (1) dwelling unit on each lot. Lot A has an existing single-family dwelling unit, approved to remain. Lot B is subdivided for the purpose of constructing a new single-family dwelling unit.
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).
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.
4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter of August 12, 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. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated August 31, 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 MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated August 16, 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.

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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.

8. 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.
9. 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.
10. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plans. Tree save measures not specified on the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
11. Prior to the issuance of the first above-grade building permit or right-of-way permit (whichever comes first), the Applicant must make a de minimis payment of \$6,912 to MCDOT towards the construction of a pedestrian improvement within the East Purple Line Transportation Policy area. The payment will be indexed based on the Federal Highway Administration's National Highway Construction Cost Index from the mailing date of the Planning Board Resolution to the date of the issuance of the first above-grade building permit or right-of-way permit (whichever comes first). Proof of payment is required.
12. The record plat must show necessary easements.
13. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
14. The record plat and certified plan set must reflect the following building restriction lines ("BRLs") as shown on the Administrative Subdivision Plan:
  - a. A 25-foot BRL offset from the stream valley buffer in the northwest corner of the property, as shown on the approved Forest Conservation Exemption (No. 42023017E) for Lot A.
  - b. A 140-foot BRL from the rear property line for Lot B.
15. The Applicant must include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).
16. 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.

17. Prior to submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:
  - a. Show resolutions and approval letters on the certified set
  - b. Include the approved Fire and Rescue Access plan in the certified set
  - c. Update plan sheets to show the stream valley buffer and related 25-foot BRL offset from the stream valley buffer on Lot A as well as the 140-foot rear BRL on Lot B, subject to Staff approval.

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 3 lots for detached houses permitted in any residential zone.*

*C) Subdivision for creation of certain residential lots. Up to 3 lots for detached houses may be created in any residential or rural residential zone under these procedures if:*

1. *The lots are approved for the standard method of development;*

The lots were submitted and are approved for standard method development in the R-60 zone.

2. *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.

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

Prospect Street is classified as a tertiary residential roadway. In accordance with Chapter 49 Section 32, the minimum right-of-way is 50 feet, and per Plat 681, was previously dedicated along the Site frontage. Therefore, no additional right-of-way is necessary as the Code-prescribed minimum 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 record plat.

The Site qualifies for a de minimis payment in lieu of constructing the required sidewalks along the Site frontage. The Subject Plan demonstrates that sidewalks are not precluded, and as conditioned, the Applicant will make a payment of \$6,912 to participate in the future construction of a pedestrian facility within the East Purple Line Transportation Policy Area.

*4. 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.

### **Transportation Adequacy Test**

The Property is located in the East Purple Line Policy Area, which is categorized as a Red Policy Area under the 2020 – 2024 Growth and Infrastructure Policy (the “GIP”). As demonstrated in the Applicant’s traffic statement, dated February 10, 2022, the Administrative Subdivision generates fewer than three (3) 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.

### **School Adequacy Test**

The Application is served by Rolling Terrace Elementary School, Silver Spring International Middle School and Montgomery Blair High School. 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 FY23 Annual School Test, development applications approved within these school service areas are not automatically subject to Utilization Premium Payments.

Based on the school capacity analysis performed, using the FY2023 Annual School Test, this application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required, and there are adequate school facilities to support the Application.

### **Utilities and Public Services Review**

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 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.

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

The Administrative Subdivision is subject to Chapter 22A of the County Code. There is no forest onsite, however the Property has two mature trees onsite as well as many significant or specimen sized trees and forest located adjacent to the site. As described above, an updated layout was submitted by the Applicant which minimizes impact to the environmentally sensitive features of the site. The current proposal, as conditioned, will provide two Building Restriction Lines (BRLs); one on each lot, which protects the onsite stream valley buffer and steep slopes, and provides for the retention of trees previously proposed for removal as well as mitigation for newly impacted/removed trees.

This Application is subject to Forest Conservation Law but is exempt from the requirement to submit a Forest Conservation Plan under Chapter 22A-5(s)(2). As described herein and conditioned, this Application satisfies all requirements of Chapter 22A, Forest Conservation.

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on August 31, 2022, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed onsite (with no waiver) using micro bioretention.

2. *The Administrative Subdivision Plan, pursuant to Section 50.6.3.B.5, meets the findings required by Section 50.6.3.C, including technical review criteria of Section 50.4.3.*
  - 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 approved 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-60 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.

### **Building Restriction Line**

Section 4.3.K of Chapter 50 of the County Code (Subdivision Regulations) provides technical review criteria for the environmental review of subdivision plans. Section 4.3.K.b.ii allows the Board to require a building restriction line (BRL), which must be shown on the plat, to protect floodplains and other environmentally sensitive or unsafe building areas. Section 4.3.K.b.iv specifies that any building restriction line must provide at least a 25-foot setback between any building and unsafe area. A greater setback must be provided where necessary for positive drainage between the building and unsafe areas.

The revised Forest Conservation Exemption application (42023017E), approved by Staff, identifies a stream valley buffer delineated along the northwest corner of Lot A, and then a smaller section of the buffer intersects a portion on the western side of Lot A, just north of the existing masonry garage. The larger section along the northwest corner is prioritized because of its proximity to the stream and the overlapping sensitive environmental features which include areas of forest within the stream buffer as well as steep slopes of at least 25% grade. The smaller section of stream buffer is not prioritized for protection by BRL given its proximity to the existing garage, which will fall within a minimum buffer of 25 feet; this area is also outside of the mapped forest stand and contains only a fringe extent of steep slopes.

The Forest Conservation Exemption also identified steep slopes (at least 25%) along the rear (north) portion of Lot B (approximately 140 feet from the rear property line) as well as a grouping of several mature and specimen trees.

To protect the floodplain, stream valley within Lot A, and the steep slopes and mature specimen trees within Lot B, the conditions of approval include two building restriction lines; one offset 25 feet from the stream valley buffer along the northwest corner of Lot A and another, 140 feet from the rear property line on Lot B. This BRL was measured from the rear lot line, after applying the minimum setback required (25 feet) between any building and environmentally sensitive or unsafe area per Section 4.3.K.b.iv of the County Code, as directed by the Board during the Public Hearing. These conditions align with the Subdivision Regulations and Chapter 22A of the County Code (Forest Conservation- Trees) to ensure protection of these environmentally sensitive areas, while allowing for reasonable future development on the approved lots.

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

The Administrative Subdivision Plan substantially conforms to the Master Plan. While the Master Plan does not specifically identify the Subject Property, this approved development is proposing single-family houses, which aligns with the established character of high-quality residential neighborhoods this area.

No designated bicycle facilities are recommended by the 2018 *Bicycle Master Plan*. As conditioned, the Applicant will participate in the construction of the required sidewalks along the Prospect Street frontage by way of a de minimis payment.

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

The Application 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). Accordingly, and as further discussed above with regard to the Application's compliance with 50-6.1.C.4, there exist adequate public facilities to support the area of the subdivision.

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

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

This Application is subject to Forest Conservation Law but is exempt from the requirement to submit a Forest Conservation Plan per Chapter 22A-5(s)(s) as this Application does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest, any forest in a stream buffer or special protection area, any specimen or champion tree, or trees subject to a previous forest conservation plan. This exemption, no. 42023017E, was confirmed on September 8, 2022. Therefore, as conditioned, this Application satisfies all requirements of Chapter 22A, Forest Conservation.

*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.



The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services, on August 31, 2022, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed onsite (with no waiver) using micro bioretention.

*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*

Not applicable to this Property.

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

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 29 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).

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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 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, September 29, 2022, in Wheaton, Maryland and via video conference.



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Casey Anderson, Chair  
Montgomery County Planning Board

**Ron Goodman**

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