

SHIVACHARAN

ADMINISTRATIVE SUBDIVISION PLAN NO. 620220060

Description

Request to create one lot for one new single-family detached dwelling unit.

No. 620220060

Completed: 11-23-2022

ADMINISTRATIVE
APPROVAL MEMO
MCPB Item No. 11
12-8-2022

2425 Reddie Drive
Floor 14
Wheaton, MD 20902

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

ADMINISTRATIVE SUBDIVISION PLAN 620220060

Staff recommends approval with conditions of the Administrative Subdivision Plan to create one lot for one new single-family detached dwelling unit. All site development elements shown on the latest electronic version of the Administrative Subdivision Plan No. 620220060 as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.

GENERAL APPROVAL

1. This Administrative Subdivision Plan is limited to one (1) lot for one (1) new dwelling unit for single-unit living.

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 per 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, per Montgomery County Code Section 50.4.2.G. 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 July 13, 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 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.
6. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated August 18, 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 – Well and Septic

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 MCDPS, Fire Department Access and Water Supply Section in its letter dated June 27, 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. *Clearing/Grading/Demo Condition*

Before recordation of the plat or start of any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.

ENVIRONMENT

9. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:
 - a. Record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers not already covered by an existing Category I Conservation Easement, as specified on the approved Preliminary and Final Forest Conservation Plan. The Category I Conservation Easement must exclude existing features that are within the environmental buffer and will remain as part of the development application, including the existing driveway and five additional feet on each side of the driveway. 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 prior to recordation of the Deed of Release of Scenic Easement for the existing Scenic Easement. The Book/Page of the existing and the new Category I Conservation Easements must be referenced on the record plat.
10. Before the start of any demolition, clearing, grading, or construction, whichever comes first, for this development application, the Applicant must:
 - a. Submit a Deed of Release of Scenic Easement for the entirety of the existing Scenic Easement recorded among the County Land Records in Liber 5594 and Folio 509, in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the new Category I Conservation Easement is recorded.
 - b. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 2.69 acres of new forest planting and maintenance, including invasive species management controls, credited towards meeting the requirements of the FCP.
 - c. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all

forest planting areas credited towards meeting the requirements of the FCP. The MMA includes invasive species management controls as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the nearby streams and wetlands. The use of herbicides should be avoided where possible.

- d. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
11. The Applicant must install the afforestation/reforestation plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the MCDPS for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
12. 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.
13. 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.
14. The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary and Final Forest Conservation Plan. Tree save measures not specified on the Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

TRANSPORTATION

15. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a. All land necessary to accommodate sixty (60) feet from the existing pavement centerline along the Subject Property frontage for Whites Ferry Road.

RECORD PLATS

16. There shall be no clearing or grading of the site before recordation of plat(s).

Easements

17. The record plat must show necessary easements.

CERTIFIED ADMINISTRATIVE SUBDIVISION PLAN

18. 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.*
19. Before 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.*

SECTION 2: SITE DESCRIPTION

VICINITY

Administrative Subdivision Plan No. 6220220060 is a request to consolidate properties identified as Parcel 788 and Lot 1, Tax Map CS63, and described by deed in Book 55661 Page 288; located at 17700 and 17800 White's Ferry Road and consisting of 25.24 acres, zoned AR ("Property" or "Subject Property") into one lot. The Property is within the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan* ("Master Plan") area. In all directions, the surrounding properties are all AR zoned and consist of farm properties, residences, and vacant land within the Agricultural Reserve.

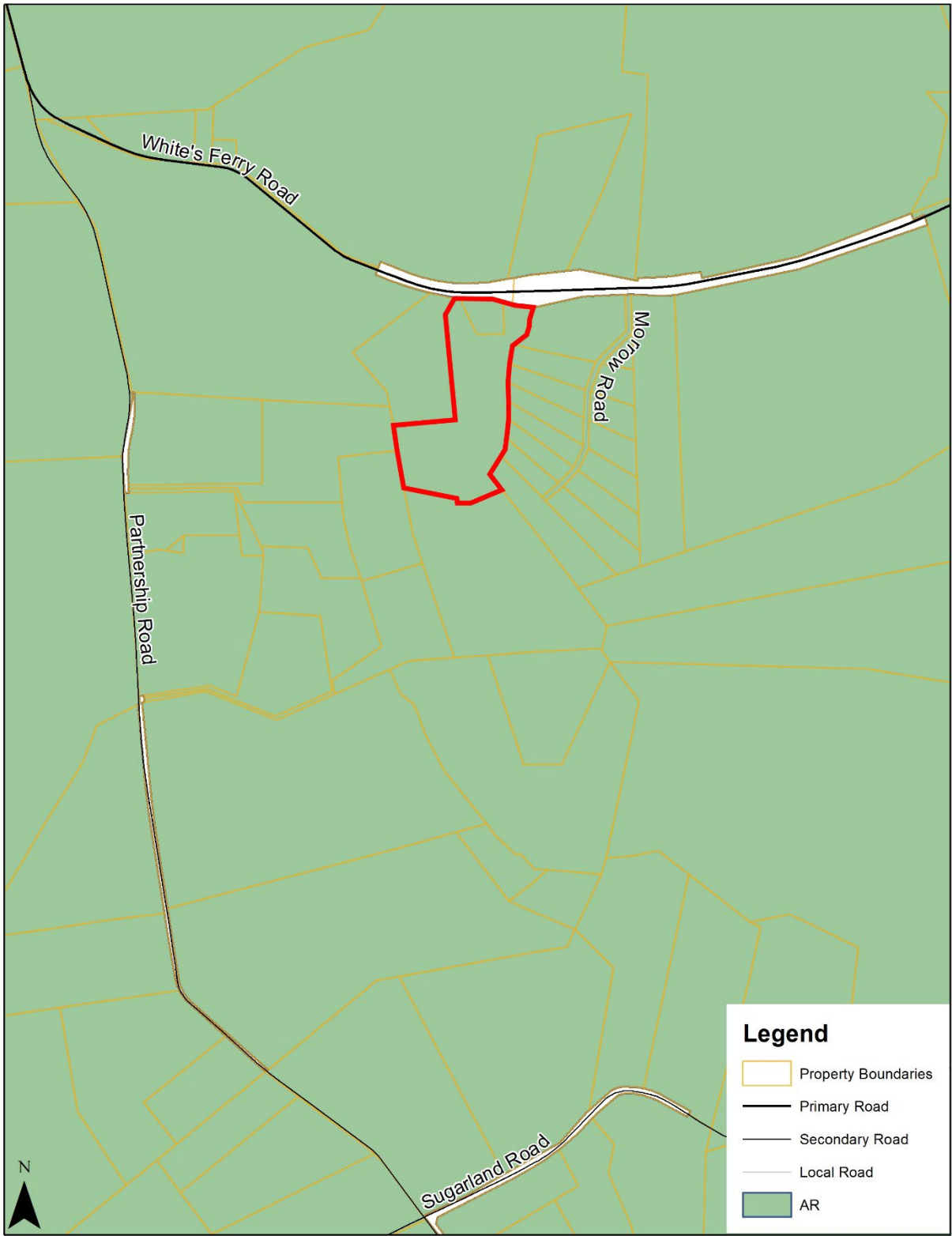


Figure 1 – Zoning Map with Subject Property (outlined in red)

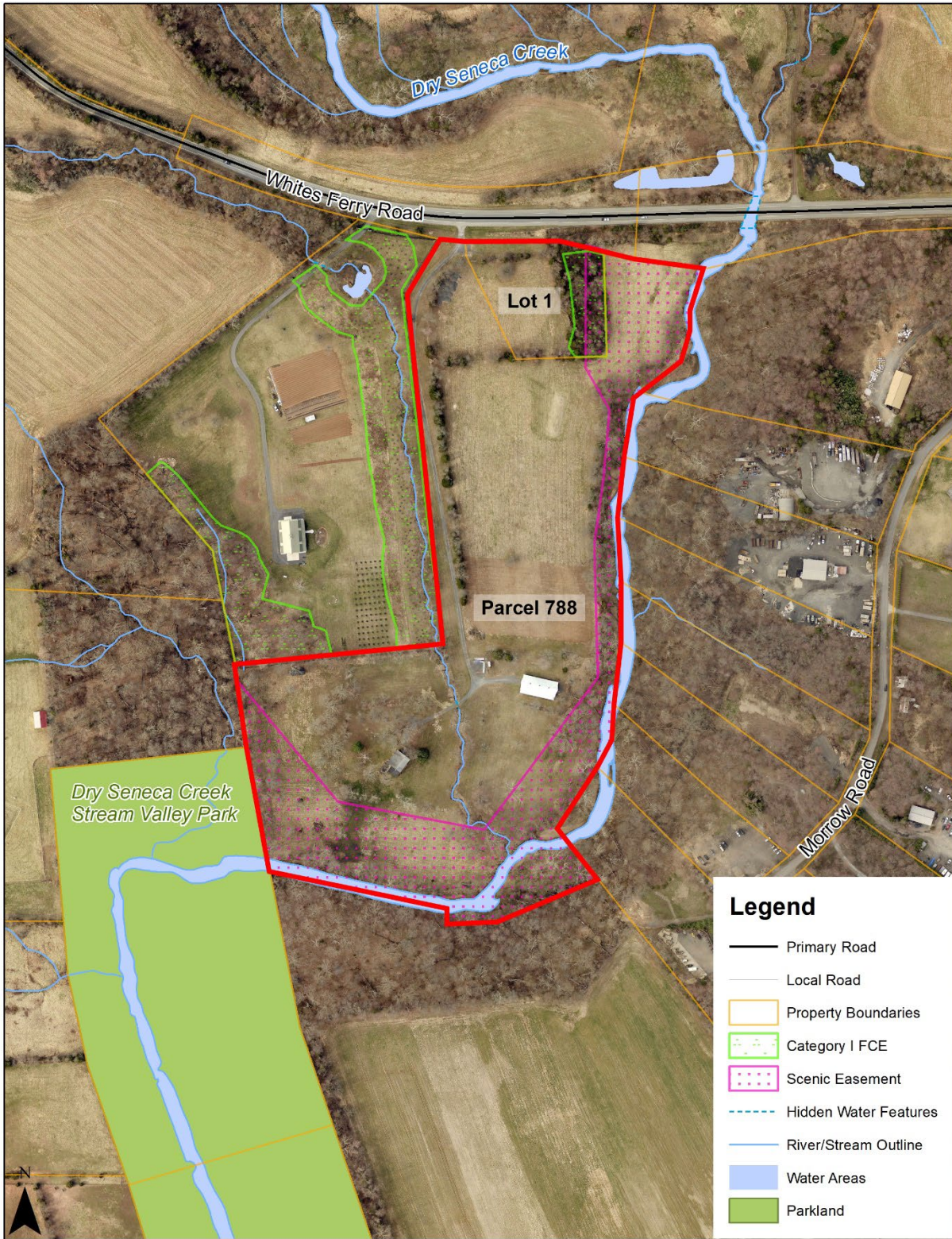


Figure 2 – Aerial View of the Subject Property

PROPERTY DESCRIPTION

The Subject Property is located within the Dry Seneca Creek watershed, which is classified as Use Class I-P by the State of Maryland. The Property contains 0.85 acres of forest. There is an existing Category I Conservation Easement and Scenic Easement on the Subject Property. The Property is bounded to the east and the south by Dry Seneca Creek, with a small tributary bisecting the Property and extending to the north near Whites Ferry Road. This section of Whites Ferry Road is not currently identified as a Rustic Road. Lot 1 is vacant and substantially unmaintained, while Parcel 788 is developed with an existing single-family detached residence and supporting accessory structures, with the surrounding field grass and lawn areas largely maintained (Figure 2). The Subject Property is actively utilized for agriculture purposes. The existing residence and driveway are positioned in locations that effectively maximized the usable acreage for agriculture. Dry Seneca Creek Stream Valley Park is located to the southwest of the Subject Property.

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

PRE-PRLEMINARY PLAN¹

Pre-Preliminary Plan No. 720110010 was approved by Planning Board Resolution MCPB No. 12-28 dated July 23, 2012 (Attachment I) for the creation of one lot as shown on Plat No. 24746. Per this Resolution, one child lot of 2.0 acres was created via the minor subdivision process outlined in the Subdivision Regulations (Chapter 50). An associated Preliminary Forest Conservation Plan was approved as part of this application. Final Forest Conservation Plan SC2008002 was approved for the 2.0-acre child lot by Staff in a memo dated January 24, 2013. This Administrative Subdivision Application and associated Final Forest Conservation Plan, if approved, supersedes the previously approved subdivision and forest conservation plan.

PROPOSAL

The Applicant proposes to create one lot, from Parcel 788 and Lot 1, on 25.24 acres. The existing structure and accessory structures will be razed to construct a new single-family detached house. The proposed septic system and reserve sand mound areas are located to the east of the proposed residence. Access to White's Ferry Road is provided by an existing single private driveway, which is to remain. The Application proposes to remove the Scenic Easement on the Property and replace it with

¹ Per Section 50.5.1.A, before a subdivider submits a preliminary plan, the subdivider may seek advice on limited aspects of a future subdivision plan from the Planning Department Staff, the Development Review Committee, or the Board as appropriate, or seek a binding decision from the Board.

an M-NCPPC standard Category I Conservation Easement, which will provide greater protections for the stream valley.

ENVIRONMENT

As required by the Forest Conservation Law, the Application includes a Preliminary/Final Forest Conservation Plan (“FCP”). Included with the FCP is a request for a tree variance for impacts to subject trees. The FCP proposes to retain the existing 0.85 acres of forest and plant the required 2.9 acres of forest onsite to satisfy the requirements of the Forest Conservation Law. All retained and planted forest and areas of stream buffer that are not encumbered by features of the development will be protected with Category I Conservation Easements. Please see the Analysis in Section 4 for an expanded explanation of the FCP.

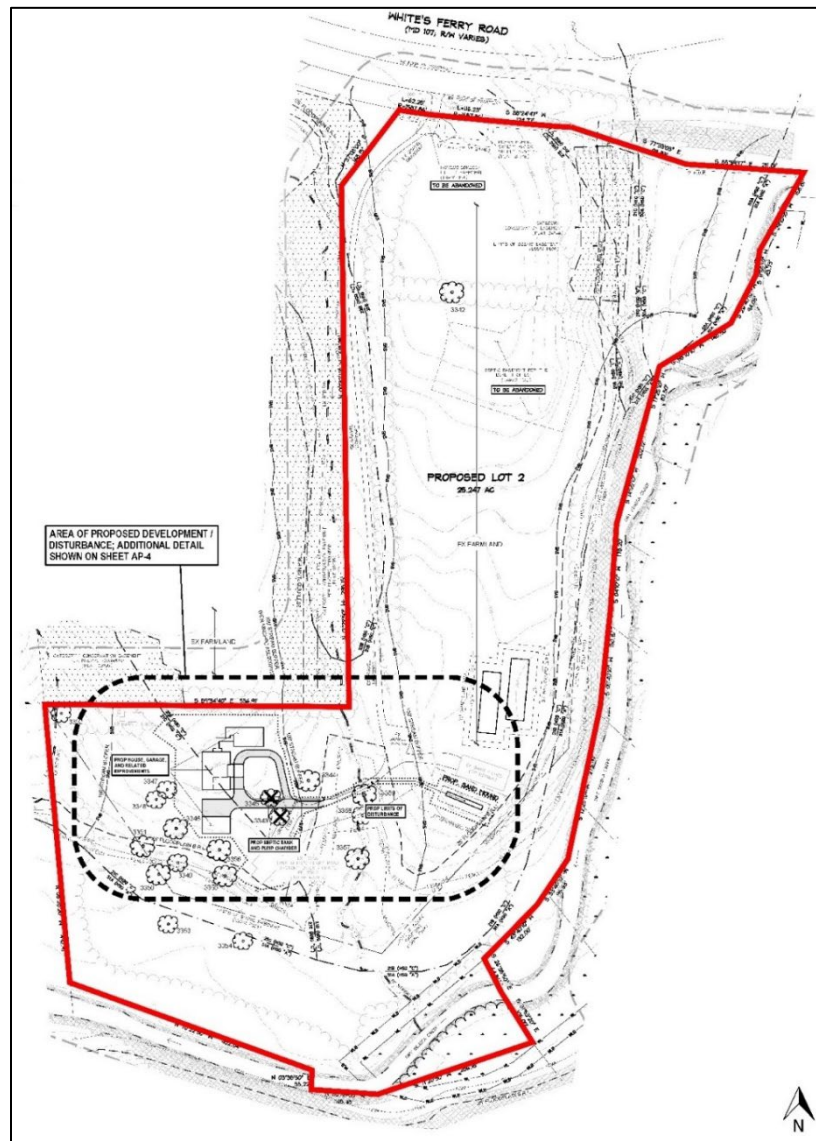


Figure 3 – Administrative Subdivision Plan

SECTION 4: COMMUNITY OUTREACH

A pre-submittal community meeting is not required for an Administrative Subdivision Plan. However, applicants must post signs on the development site and provide written public notice. A Notice of Application was sent to all required parties by the Applicant on May 10, 2022. The notice gave the interested parties 15 days to review and comment on the contents of the Application. Due to this Application being scheduled for a public hearing before the Planning Board, a Notice of Public Hearing has also been sent to all required parties.

As of the date of this Staff Report, no correspondence has been received.

SECTION 5: FINDINGS AND ANALYSIS

APPLICABILITY, SECTION 50.6.1 OF THE SUBDIVISION ORDINANCE

The Application meets the criteria for the Administrative Subdivision process per Section 50.6.1.B as demonstrated below:

B) Subdivision for creation of certain residential lots located in the Agricultural Reserve zone. Up to 5 lots for detached houses may be created under these procedures in the AR zone if:

1. 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 received written approval for a proposed well and septic area, and abandonment and removal of the existing septic facility, from the MCDPS – Well and Septic Section in the letter dated August 18, 2022 (Attachment G).

2. 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;

As conditioned and discussed below, the Application provides the required road dedications and public utility easements along the frontage of the proposed lot on Whites Ferry Road, and the Applicant provides the required improvements.

3. the requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat;

As conditioned and discussed below, the requirements for adequate public facilities have been met.

- 4. 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;**

There is not an unplatted balance of the tract, therefore the finding is not applicable.

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

The proposed 25.24-acre lot is greater than 5 acres, which requires Planning Board approval.

- 6. forest conservation plan approval and stormwater management and environmental protection requirements, if applicable, are satisfied before approval of the plat.**

As conditioned and discussed below in the Technical Review for Forest Conservation section, the Application satisfies all applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A, and is compliant with the Montgomery County Planning Department's Environmental Guidelines. Additionally, as conditioned and discussed below, the Applicant must receive approval of a stormwater management concept prior to record plat.

FINDINGS REQUIRED BY SECTION 50.6.3.C, INCLUDING TECHNICAL REVIEW CRITERIA OF SECTION 50.4.3 OF THE SUBDIVISION ORDINANCE

- 1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.**

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape, and orientation is appropriate for the location of the subdivision, considering the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the building type (Single-Unit Living) contemplated for the Property.

Single-Unit Living, as defined by Section 59.3.3.1.B of the Zoning Ordinance, is a permitted use in the AR zone according to the Use Table in Section 59.3.1.6. The lot will meet all the dimensional requirements for area, frontage and width and can accommodate a building which can reasonably meet the setback requirements in the AR zone. A summary of this review is included in Table 1.

Table 1 - Development Review Table

AR Zone	Required by the Zone	Proposed for Approval
Minimum Lot Area	40,000 sq. ft.	1,099, 759 sq. ft. (25.24 acres)
Minimum Lot Frontage	25 feet	25 feet or greater
Minimum Lot Width at B.R.L.	125 feet	125 feet or greater
Maximum Lot Coverage	10%	10% or less
Minimum Setbacks (for principal structures)		
Front	50 feet	50 feet or greater
Side	20 feet	20 feet or greater
Rear	35 feet	35 feet or greater
Minimum Setbacks (for accessory structures)		
Front	50 feet	50 feet or greater
Side	15 feet	15 feet or greater
Rear	15 feet	15 feet or greater
Maximum Building Height	50 feet	50 feet or less
Site Plan Required	No	No

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

1980 Preservation of Agriculture and Rural Open Space Functional Master Plan

This Property is part of the Western Sector Recommendations and is within the northern part of the Poolesville Planning Area (page 17). The northern portion of the Poolesville Planning Area is included in the Agricultural Reserve and is consistent with agricultural preservation land use policies as expressed in this Plan. While there are no site-specific recommendations for this Property, some general recommendations are that farmland, rural open space, and residential development (rural communities and large lot development) can be compatible land-uses within the Agricultural Preservation Study Area, if appropriately located.

The 25.24-acre property is zoned AR and located on Whites Ferry Road, just outside of Poolesville. At this location it would be expected that a large lot development (1 lot) and farmland/Rural Open Spaces would be compatible. A main goal of the Plan is preservation of critical masses of farmland and rural open space. Of the approximately 25-acre property, about 7.56 acres will remain in active commercial agriculture, preserving a large area of contiguous and active farmland. The area of the Subject Property to remain in agriculture is located immediately adjacent to Whites Ferry Road (Country Connector) and will have full access for farm equipment. This Application substantially conforms to the Master Plan for the preservation of agriculture and rural open space.

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

Public facilities will be adequate to support and service the Application.

Roads and other Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the current Growth and Infrastructure Policy (“GIP”). The Property is located in the Rural West Policy Area.

Whites Ferry Road is classified as a Country Connector with approximately 120 feet of right-of-way. The Applicant is required to dedicate 60 feet of right-of-way from centerline for a total right-of-way of 120 feet along the Property’s frontage. The Bicycle Master Plan recommends bikeable shoulders along the section of Whites Ferry Road from Partnership Road (westbound) to Darnestown Road (eastbound). An existing 8-foot shoulder along the Property’s frontage meets the Bicycle Master Plan recommendation; no additional improvements are required.

Per Section 49-33 (e) of the County Code, sidewalk improvements are not required, because the Property is larger than 25,000 square feet and is located in a rural zone.

Local Area Transportation Review (LATR)

As stated in the 2022 LATR guidelines, trip generation rates for projects that contain four or fewer single-family dwelling units and generate less than five peak-hour trips are not considered. Therefore, the Applicant is not required to submit a traffic study.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize a new on-site private well and sand mound septic system. The Application has received approval from the MCDPS – Well and Septic Section in the letter dated August 18, 2022 (Attachment G).

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. The Application has received an approved Fire Access Plan based on the letter dated June 27, 2022 (Attachment F). The Fire Access Plan provides adequate access for fire protection from Whites Ferry Road.

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.

Schools Adequacy Test

The Application does not produce a net increase in housing units because the Subject Property contains an existing detached house, which will be replaced by the proposed house on the new lot being created. Therefore, a School Adequacy Test is not required.

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

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 impacts to subject trees. 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.

a) Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420221300 for this Property was approved in February 2022. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The NRI/FSD identifies the 25.2-acre Subject Property located within the Dry Seneca Creek Watershed, which is classified as Use Class I-P by the State of Maryland. The Subject Property contains approximately 0.85 acres of forest which is comprised of two separate forest stands. A 0.55-acre forest stand located in the northern part of the Property, adjacent to Whites Ferry Road is protected by an existing Category I Conservation Easement as well as a partially overlapping Scenic Easement related to a prior subdivision application. The Scenic Easement, between the owner of the Property at that time and M-NCPPC, was recorded over a portion of the Subject Property in 1980 as a protective mechanism for the Dry Seneca Creek stream valley (Attachment C). As conditioned, this Application proposes to remove the Scenic Easement and replace it with an M-NCPPC standard Category I Conservation Easement, which will provide greater protections for the stream valley. The second forest stand is comprised of 0.30 acres of forest and located in the far southern portion of the Property, on the south side of Dry Seneca Creek. In addition, the Property contains 21 trees that have a diameter at breast height (“DBH”) of 24 inches or greater, 11 of which have a DBH of 30 inches or more.

There are two streams on or immediately adjacent to the Property. The first stream, Dry Seneca Creek, is located offsite and adjacent to the eastern Property line, and eventually meanders onsite at the southernmost part of the Subject Property. There is an expansive 100-year floodplain and stream buffer that extend onto the Property. The second stream is a tributary to Dry Seneca Creek, and it is located offsite and adjacent to the western Property line. This stream eventually flows onto the Subject Property and under the existing driveway before meeting up with Dry Seneca Creek as the southern end of the Property. There are wetlands located onsite along Dry Seneca Creek at the southern end of the Property. There are no mapped highly erodible soils; however, there are areas of steep slopes greater than 25 percent located adjacent to Dry Seneca Creek, along the eastern Property line. The Property does not contain any known rare, threatened or endangered species, and no historic resources or cemeteries are known to exist on the Property.

The Property includes areas under existing scenic easements and conservation easements associated with prior development plan approvals.

b) Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan (“FCP”) with the current development application (Attachment D). 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 approved Environmental Guidelines.

The Subject Property is zoned AR and is assigned a Land Use Category of Agricultural and Resource Area (“ARA”) 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 20% and a conservation threshold of 50% of the net tract area. The net tract area of 17.69 acres is based on the 25.25-acre Property minus the 7.56 acres that will remain in agricultural production. The Applicant has provided an Agricultural Declaration of Intent for the area to remain in agricultural production. There is a total of 0.85 acres of existing forest on the Subject Property. The Application proposes to retain all existing forest; however, since the amount of forest is less than the afforestation threshold, it results in a planting requirement of 2.69 acres. The Application proposes to meet the planting requirement on-site by planting forest in two areas of the Property that are adjacent to existing forest and stream buffer and/or within unforested portions of the stream buffer. All the retained and planted forest will be protected in a Category I Conservation Easement.

The development must comply with Section 22A-12(f) of the Montgomery County Code. This section of the Code states that for developments in an ARA, at a minimum, on-site forest retention must equal 25% of the net tract area. In this case, the amount of existing forest, 0.85 acres, is less than 25% of the net tract area, 4.42 acres. Per Section 22A-12(f), if existing forest is less than the minimum required retention, all existing forest must be retained, and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold, the afforestation threshold is the minimum on-site forest requirement. The Applicant proposes to retain all of the 0.85 acres of existing forest and plant 2.69 acres of forest, resulting in a total of 3.54 acres of forest on-site, which equals the afforestation threshold. Therefore, the Application has demonstrated compliance with this section of the Code.



Figure 4 – Preliminary / Final Forest Conservation Plan

Forest Conservation Variance Findings

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these trees, including removal of the subject tree or disturbance within the 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; area at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request

The Applicant submitted a variance request in a letter dated August 19, 2022 (Attachment E). The Applicant proposes to impact five (5) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 2) and Figure 5. None of the Protected Trees are proposed to be removed and none of the trees are located within forest.

Table 2 – Protected Trees to be Impacted

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
3344	Black Locust (<i>Robinia pseudoacacia</i>)	39.5"	33%	Fair condition
3346	White Oak (<i>Quercus alba</i>)	37"	14%	Good condition
3355	White Oak (<i>Quercus alba</i>)	35"	27%	Good condition
3356	White Oak (<i>Quercus alba</i>)	34"	27%	Good condition
3359	Black Locust (<i>Robinia pseudoacacia</i>)	32"	18.7%	Fair condition

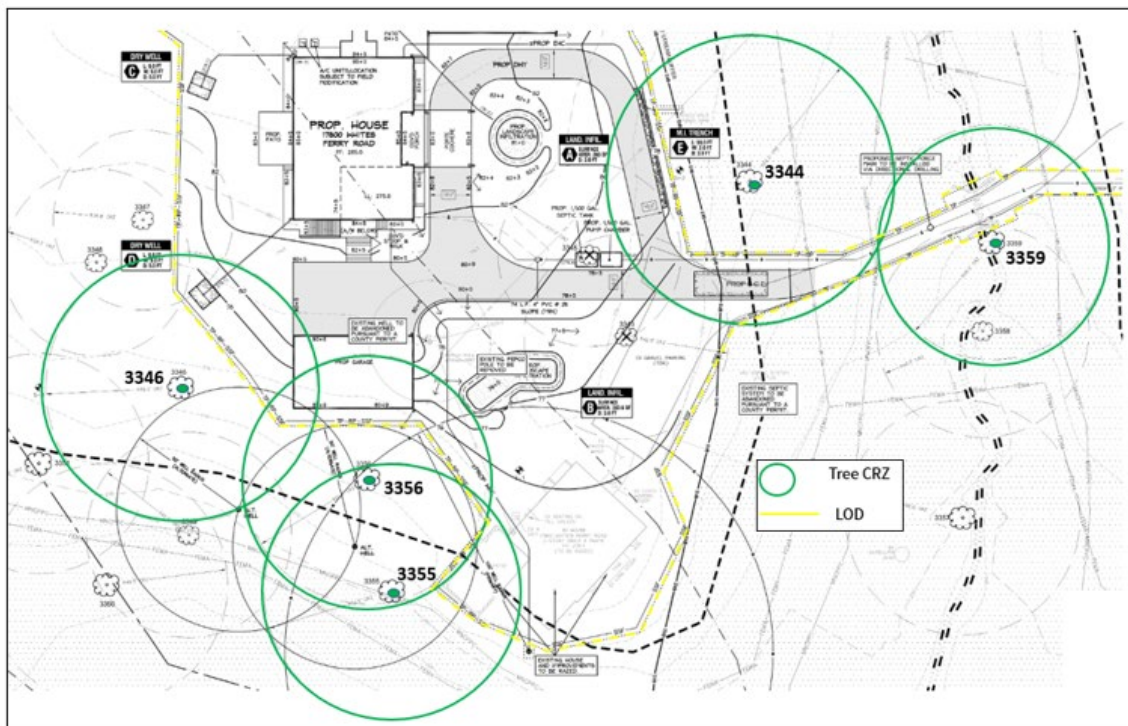


Figure 5 - Tree Variance

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the

unwarranted hardship is caused by the necessary layout of the proposed development on the Property, which is dictated by the existing site conditions, including land in active agriculture, forest and stream buffers, and soils suitable for septic, development standards of the zone, Montgomery County agency requirements, and requirements associated with Master Plan objectives. The project has been designed to avoid the removal of any Protected Trees and minimized impacts as much as possible to the five Protected Trees that require a variance. In addition, the Application proposes to maximize the area available for the existing agricultural use on the Property and to access to the proposed house via the existing driveway. The Applicant will demolish the existing house and build a new larger house in the same general vicinity, outside of the stream buffer and existing forest, and within the developable area of the Property. The inability to impact these five trees would potentially render portions of the Property undevelopable for this project. Therefore, there is a sufficient unwarranted hardship to justify a variance request, because the Applicant would otherwise be denied the ability to use the Property for one house and maximize the area available for agriculture, which is a reasonable and significant use of the Property.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board, for a variance to be granted.

- i. *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 disturbance to the specified trees is due to the development of the Property, location of the trees, and necessary site design requirements. The Property contains numerous large trees 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.

- ii. *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 on existing site conditions and the requirements to meet development standards.

- iii. *Is not based on a condition relating 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.

- iv. *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. None of the Protected Trees will be removed and the Property is not located in a Special Protection Area. The root zones of the Protected Trees will be impacted during construction, will regenerate, allowing the trees to provide the same water quality benefits that they do today. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

There is some disturbance within the CRZ of five Protected Trees; however, they will receive adequate tree protection measures including temporary tree protection fencing during construction and root pruning, their roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is recommended for trees that are impacted but retained.

Recommendation on the Variance

The variance request to impact Protected Trees as illustrated on the FCP should be granted.

c) *Environmental Guidelines and Stream Buffer Impacts*

The southern, western and eastern Property boundaries overlap streams with associated stream buffers. This Application includes unavoidable impacts to one onsite tributary stream and stream buffers. There is an existing driveway from White's Ferry Road that provides access to the existing house and the proposed new house. This driveway is located within the stream buffer along the western edge of the Property and includes a stream crossing to reach the house. The existing driveway will remain and provide access to the new house. In addition, the Application includes the installation of a septic line that follows the alignment of the driveway, including the stream crossing, that will connect the septic tank serving the house to the sand mounds. The line will be installed through directional boring to minimize the impacts to the stream. The new house and the sand mounds are located on opposite sides of the stream, necessitating these impacts. Montgomery County Well and Septic Division acknowledged that the septic system did not meet the criteria to function successfully if located west of and on the same side of the stream as the house. Relocation of the house to the east side of the stream where the septic sand mounds are located would result in loss of more stream buffer and remove additional land on prime agricultural soils out of agricultural production. Some of the impacts to the stream and buffer currently exist, and the proposed additional impacts have been minimized as much

as possible, allowing for access to and construction of the new house with an adequate septic system to serve the house, while maximizing the land available for agriculture use.

5. 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.

6. 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 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 Burial Inventory.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

There are no other applicable provisions specific to the Property that are necessary for approval.

SECTION 6: CONCLUSION

The Administrative Subdivision meets the requirements of Section 50.6.3.C and the technical requirements of Section 50.4.3 of the Subdivision Regulations, and the applicable requirements of Section 50.6.1.B. The lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*. Access and public facilities will be adequate to serve the proposed lot, and the Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

ATTACHMENTS

Attachment A: Statement of Justification

Attachment B: Administrative Subdivision Plan Composite

Attachment C: Scenic Easement to be Abandoned

Attachment D: Forest Conservation Plan Composite

Attachment E: Tree Variance Request

Attachment F: MCDPS Fire Department Access and Water Supply Approval Letter, June 27, 2022

Attachment G: MCDPS Well and Septic Approval Letter, August 18, 2022

Attachment H: MCDOT Approval Letter, July 13, 2022

Attachment I: MCPB Resolution No. 12-28