

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-038
Administrative Subdivision No.620210080
Jerome Freibaum Lot 4
Date of Hearing: April 20, 2023

MAY 10 2023

RESOLUTION

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

WHEREAS, on April 6, 2022, Jerome Freibaum (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create two (2) lots on 0.59 acres of land in the R-60 zone, located on the north side of Elgin Lane, approximately 155 feet east of its intersection with Pyle Road (“Subject Property”), in the Bethesda Chevy Chase Policy Area and 1990 Bethesda-Chevy Chase Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620210080, Jerome Freibaum Lot 4 (“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 April 10, 2023 providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 20, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Pedoeem, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick and Pedoeem voting in favor.

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620210080 to create two (2) lots on the Subject Property, subject to the following conditions:¹

General Approval

1. This Administrative Subdivision Plan is limited to two (2) lots for two (2) single-family dwelling units, one (1) unit per lot.

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 March 17, 2023 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations 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 8, 2022 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Water Resources Section if the

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.

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 MCDPS Fire Department Access and Water Supply Section in its letter dated March 16, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Administrative Subdivision Plan approval.

Other Approvals

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.

Environment

9. Before any clearing, grading, or demolition necessary to construct the project, the Applicant must obtain Planning Department approval of the certified Tree Save Plan which addresses the following items:
 - a. Revise landscaping layout, sizes, details, notes and specifications to minimize impacts on the existing trees to be retained.
 - b. 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, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the Tree Save Plan. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Specify watering during time of drought and deadwood pruning as a minimum part of the maintenance and monitoring.
 - d. Revise applicable tree tables and plan notes to clarify that all onsite portions of the tree care/stress reduction measures are to be performed, while portions of the recommended work to occur offsite would need prior permission from the neighboring owner(s); add plan notes requiring that good faith efforts to obtain the permission(s) shall be performed in a timely manner.
 - e. Provide supplemental clarifications/information regarding the control of invasive species, subject to Staff approval.

- f. Specify the careful removal of the dumped construction debris (such as rubble and dead sod).
 - g. Show sidewalk installation, associated Limits of Disturbance (LOD) and the subsequent landscape replacement as an inset reflecting the proposed layouts with the sidewalk and an alternate if the sidewalk is not ultimately installed (waiver granted).
 - h. Revise the tree protection fence and root pruning to be located within the LOD.
 - i. Reduce the LOD impacts to Tree 54 and/or provide specialized construction techniques to minimize the overall construction impacts.
 - j. Coordinate with Staff regarding clarifications/corrections of the overall plan, notes, and tables.
10. 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.
11. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree-Save Plan. Tree-save measures not specified on the Tree-Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

Transportation

Existing Frontage Improvements

12. 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 25 feet from the existing pavement centerline along the Subject Property frontage for Fallwind Lane.
13. Before recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS for construction of a six-foot-wide sidewalk with a six-foot-wide buffer along the Property frontage on Elgin Lane.
14. Before recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS for construction of a six-foot-wide sidewalk with a six-foot-wide buffer along the Property frontage on Fallwind Lane.

Record Plats

15. There shall be no clearing or grading of the site before recordation of plat(s).
16. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:
 - a. Lot 101:
 - i. Front setback: Twenty-five (25) feet;
 - ii. Side setbacks: Eight (8) feet and ten (10) feet; for a sum of eighteen (18) feet;
 - iii. Rear setback: Variable width, twenty-five (25) feet minimum.
 - b. Lot 102:
 - i. Front setback: Twenty-five (25) feet;
 - ii. Side setbacks: Eight (8) feet and twelve (12) feet; for a sum of twenty (20) feet;
 - iii. Rear setback: Variable width; twenty (20) feet minimum.

Schools

17. Before issuance of each building permit for a residential dwelling unit, the Applicant must obtain an assessment from Montgomery County Department of Permitting Services (MCDPS) for Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy, as follows:
 - a. 1.00 of a Tier 1 elementary school UPP per unit;
 - b. No middle school UPP required; and
 - c. No high school UPP required.

Certified Administrative Subdivision Plan

18. The Applicant must include all applicable agency approval letters including the stormwater management concept approval letter, the approved Fire and Rescue Access plan and Administrative Subdivision Plan Resolution on the Certified Administrative Subdivision Plan.
19. 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 preconstruction meeting with the M-NCPPC inspector. A copy of the approved Certified Administrative Subdivision Plan is required to be on-site at all times.*

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: 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:

- 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-60 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;***

No right-of-way dedication is necessary for Elgin Lane as the master planned roadway width has already been achieved. As conditioned, the Applicant will dedicate right-of-way on Fallwind Lane to comply with the minimum right-of-way requirements for a tertiary street in accordance with Chapter 49-32(d)(5). There are no public utility easements associated with the Application.

d. 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

The Property is located in the Bethesda-Chevy Chase Policy Area, which is categorized as an Orange Policy Area under the 2020–2024 *Growth and Infrastructure Policy*. The Project generates fewer than three net new peak hour person trips and is therefore considered to have a de minimis impact on the transportation network. Therefore, the Application is exempt from further analysis under the Local Area Transportation Review per the 2020-2024 *Growth and Infrastructure Policy*. Therefore, roads and transportation facilities are determined to be adequate to support the Application.

Schools

The project is served by Bannockburn Elementary School, Thomas W. Pyle Middle School and Walt Whitman 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 projects approved within Bannockburn Elementary School service area require a Tier 1 UPP. Therefore, this Application is subject to a Tier 1 Elementary School UPP and No Middle School UPP or High School UPP.

Other Public Services

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 2020–2024 *Growth and Infrastructure Policy*.

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

The Project is subject to Chapter 22A of the County Code and a Forest Conservation Exemption 42018202E was confirmed under Section 22A-5(s)(2) for the Subject Property on October 18, 2018. The exemption covers an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area must also be preserved under the terms of the exemption. The Subject Property meets the criteria for the exemption; there is no forest on or near the site, however, since specimen trees are removed by the Project, the Tree Save Plan provisions under 22A-6(b) are in effect, and a Tree Save Plan has been prepared along with proposed mitigation plantings. The Property is 25,532 square feet (0.59 acres), with an additional off-site disturbance area of approximately 2,943 square feet shown in the right-of-way for a total net tract area of approximately 28,475 square feet or 0.65 acres. This amount is well under the 43,560 square foot (1 acre) limit allowed under 22A-5(s)(2).

The Application received approval of a Stormwater Management Concept Plan from the Department of Permitting Services Water Resources Section in its approval letter dated August 8, 2022, per Chapter 19 of the County Code. The SWM Concept Plan demonstrates that stormwater will be managed through Environmental Site Design measures such as drywells. 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.*

The proposed lot has been reviewed for compliance with Chapter 50, the Subdivision Regulations. The layout of the two-lot subdivision, including its size, width, shape, orientation, and density of lots is appropriate given its location within an existing residential neighborhood. The two-lot subdivision allows for retention of an existing home on Lot 101 and potential for development of a new single-family dwelling on Lot 102. The layout meets the applicable requirements of the R-60 zone in Chapter 59.

The block design is appropriate for the development or use contemplated;

The block design is existing and appropriate for the proposed development and use. The proposed Administrative Subdivision is limited to the splitting of one existing residential lot into two residential lots. Each lot includes frontage along public rights-of-way. This proposal does not change the existing, established block design and is consistent with the existing residential uses in the neighborhood.

The lot design is appropriate for the development or use contemplated;

The Administrative Subdivision will replace an existing through lot with two single frontage lots. The two new lots are designed to support one single-family dwelling each. The two new lots each front on public rights-of-way.

The Administrative Subdivision Plan provides for required public sites and adequate open areas;

Master Planned Sites

The 1990 *Bethesda-Chevy Chase Master Plan* does not include specific recommendations for the subject Site.

Local Recreation

The proposed subdivision does not include the dedication of land for public recreation purposes.

Transportation and Utilities

The proposal is determined to have a *de minimis* impact on the local transportation system. As conditioned, the Applicant will dedicate right-of-way on Fallwind Lane to comply with the minimum right-of-way requirements for a tertiary street in accordance with Chapter 49-32(d)(5). In accordance with 2021 *Complete Streets Design Guide*, sidewalks will be provided along both frontages.

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

The Proposal meets all applicable sections of the Subdivision Regulations. The proposed single-family residential use, as well as the size, width, shape, and orientation of the two lots conform to the requirements of the R-60 Zone.

	Required/Permitted	Approved Lot 101	Approved Lot 102
Lot Area (sf)	6,000	15,492	10,040
Lot width at front building line (ft)	60	71	88
Lot width at front lot line (ft)	25	66	73
Density (units/acre)	7.26	2.78	4.38
Lot coverage (max)	35%	20%	12%
Front setback (ft)	25	25	25
Side setback (ft)	8	8 & 10	8 & 12
Sum of side setbacks (ft)	18	18	20
Rear setback (ft)	20	Variable, Min. 25	Variable, Min. 20
Building height	35	Less than 35	Less than 35

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

The *1990 Bethesda-Chevy Chase Master Plan* (Master Plan) does not include specific land use, environmental, or transportation recommendations for the subject Site. However, it includes general recommendations for preserving the character of existing neighborhoods and for the protection and restoration of tree canopy in the Palisades area that apply to the Application.

Land Use

The Application conforms with the Master Plan recommendation for preserving the character of existing neighborhoods as it creates one new lot for one new single-family dwelling in an established neighborhood of single-family dwellings.

Environment

The Application includes a Tree Save Plan that shows impacts to existing trees on the Site and provides for replacement tree plantings on both proposed lots. As conditioned the impacts will be minimized and mitigation trees are proposed in addition to other supplemental onsite

native landscape plantings. Furthermore, a more restrictive building restriction line (BRL) is imposed on each of the lots to help ensure the that plantings are not disturbed by future construction activities.

Transportation

The Master Plan does not include transportation recommendations for the Site. The Proposal is considered to have a de minimis impact on the transportation network given its limited scope.

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

As discussed in Finding 1.d. above, public facilities are adequate to support and service the area of the subdivision.

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

A Forest Conservation Exemption 42018202E, was confirmed under section 22A-5(s)(2) on October 18, 2018, for the Subject Property. As conditioned, the Exemption and associated Tree Save Plan comply with the requirements of the Forest Conservation Law.

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

All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied. The proposed subdivision received Stormwater Management Concept Approval from the Department of Permitting Services dated August 8, 2022.

- 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 provision is not applicable to this Property as there is no notice of any burial site.

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 proposed 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 MAY 10 2023 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner Piñero, with a vote of 3-0; Chair Zyontz, Vice Chair Piñero, and Commissioner Hedrick voting in favor of the motion, Commissioner Bartley and Pedoeem were necessarily absent, at its regular meeting held on Thursday, May 4, 2023, in Wheaton, Maryland and via video conference.


Jeffrey Zyontz, Chair
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