

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

April 29, 2024

MCPB No. 24-045

Administrative Subdivision No. 620210160

BF Gilbert's Subdivision of Takoma Park

Date of Hearing: April 18, 2024

RESOLUTION

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

WHEREAS, on February 19, 2024, Jason Schechter and Kim Truong ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create two (2) lots on 0.60 acres of land in the R-60 zone, located at 37 Oswego Avenue, approximately 437 feet South of Ritchie Avenue ("Subject Property"), in the City of Takoma Park and in the 2000 *Takoma Park Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620210160, BF Gilbert's Subdivision of Takoma Park ("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 8, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 18, 2024, 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 Linden, with a vote of 4-0; Chair Harris, Commissioners Bartley, Hedrick, and Linden voting in favor with Vice Chair Pedeoem absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620210160 to create two (2) lots on the Subject Property, subject to the following conditions:¹

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.

General Approval

1. This Administrative Subdivision Plan is limited to two (2) lots for one (1) dwelling unit on each 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 October 24, 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 MCDOT if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
5. Before recordation of the plat(s), the Applicant must satisfy the City of Takoma Park requirements for stormwater management.
6. 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 March 22, 2024 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

7. 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

8. 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.

9. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Exemption Plan. Tree save measures not specified on the plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
10. The Applicant must provide for the control of invasives and supplemental native plantings for the onsite forest setting which is not in the Limits of Disturbance (LOD).
11. The Applicant must install street trees along the Oswego Avenue frontage subject to MCDPS-ROW and/or the City of Takoma Park review and approval as applicable. The street tree plantings must be installed as seasonally appropriate and prior to the issuance of the final Use and Occupancy Certificate for the new residence.

Record Plats

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

Easements

13. The record plat must show necessary easements.
14. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
15. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:
 - a. An 80-foot BRL from the rear setback for Lot 1 to the front setback for Lot 2.
 - b. A 50-foot BRL from the rear setback for Lot 2.
 - c. A 20-foot BRL from the north side of Lot 2, as shown on the certified Administrative Subdivision Plan.

Notes and Labels

16. The record plat must reflect all areas under common ownership.

Certified Administrative Subdivision Plan

17. The Applicant must include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).
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.
 - c) Update plans to reflect removal of right-of-way dedication and removal public frontage improvements as directed by the City of Takoma Park's in correspondence dated April 2, 2024.
 - d) Perform minor corrections/clarifications 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:

A. 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 or rural zone.

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;

Oswego Avenue is owned and maintained by the City of Takoma Park. As indicated in correspondence sent to Planning staff on April 2, 2024, the City Council of Takoma Park declined to review the project. City staff has reviewed

the project and is not seeking any additional dedication for public right-of-way or frontage improvements along Oswego Avenue.

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. The Property is located in the Silver Spring/Takoma Park Policy Area, which is categorized as an Orange Policy Area under the 2020 – 2024 Growth and Infrastructure Policy (the “GIP”). As demonstrated in the Applicant’s transportation exemption statement, dated August 23, 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.

B. *The Administrative Subdivision Plan meets the technical review requirements of Chapter 50, Section 4.3.*

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.*

a) *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. The Application is not proposing to create any new residential blocks.

b) *The lot design is appropriate for the development or use contemplated*

- I. *Flag lots - The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved. In approving a flag lot, the following provisions apply:***
- i. *in residential zones, the Board must require building restriction lines as needed to provide separation of at***

least 80 feet between the building envelope of the proposed flag lot and:

- 1. the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot; and***
 - 2. the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts;***
- ii. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot; and***
- iii. all building restriction lines must be shown on the plat.***

The Subject Property contains an existing single-family home and driveway and lies within an established subdivision zoned R-60. Lots within the vicinity are particularly narrow and deep with frontage widths ranging from 40 to 70 feet wide. Most lots range between 10,000 square feet to 15,000 square feet in size. However, the Subject Property maintains a width of approximately 90 feet and an area of approximately 25,000 square feet.

Rather than being centered within the lot, the existing single-family home falls closer to the north property line. This positioning keeps the existing building away from the steep slopes along the property line to the south and the accompanying tree canopy. Additionally, a 20-foot side setback, as conditioned, will protect the neighboring trees and forest setting in keeping with the urban forestry practices described in the Master Plan.

While the existing lot has the size to accommodate two lots in the R-60 zone, the steep slopes to the south paired with the shape of the lot preclude the placement of a new single-family home closer to the front of the property. Through careful configuration and coordination with the Planning Staff, the Applicant has identified the proposed flag lot configuration as the only feasible way to proceed with the subdivision.

While narrow, the lot can accommodate a driveway to the rear of the Property which is currently contains open lawn and a shed, which will be removed. This central area to the rear of the property is generally flat, unlike other undeveloped areas on the Subject Property which either contain steep slopes or highly erodible soils.

Given these existing conditions, a flag lot configuration is the only viable option for this Application.

In order to establish compliance with the requirements for flag lots, the Applicant has proposed building restriction lines (BRLs) which establish an 80-foot separation between the existing house on Lot 1 and the building envelope for a proposed house on Lot 2.

Additionally, the Applicant proposed a 50-foot BRL between the building envelope and the rear property line; as the property to the rear is zoned R-30, this rear BRL provides 80-feet of separation between the proposed building envelope and the rear setback of existing R-30 development. As conditioned, all BRLs will be shown on the Plat.

C. 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.

D. 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-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and width, and can reasonably accommodate two single-family detached dwellings on each lot. A summary of this review is included in Table 1.

Table 1: R-60 Development Standards Table

R-60	Required by the Zone	Approved Lot 1	Approved Lot 2
Minimum Lot Area	6,000 square feet	20,099 square feet	21,683 square feet
Minimum Lot Width at BRL	60 feet	75 feet	700 feet
Minimum Lot Width at Front Lot Line	25 feet	63 feet	43 feet
Maximum Lot Coverage	35%	<35%	<35%
Front Setbacks, min.	25 feet or Established Building Line	25 feet or Established Building Line	35 feet or Established Building Line
Side Setbacks, abutting Residential, min.	8 feet min./ 18 feet total	8 feet / 18 feet min.	8 feet/18 feet min.
Rear Setbacks	20 feet	50 feet	50 feet
Maximum Building Height	35 feet	35 feet	35 feet

- 1. 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. The Application is not proposing to create any new residential blocks.**

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. The Application is not proposing to create any new residential blocks.

- 2. The Administrative Subdivision Plan substantially conforms to the Master Plan.**
 - a) Land Use**
 - b) Environment**
 - c) Transportation**

The Property is located within the 2000 *Takoma Park Master Plan*. The Master Plan reconfirmed the existing single family detached residential zoning throughout the Property's vicinity. While there are no recommendations in the Master Plan related to this Property, the Master Plan does specify several environmental and transportation related

recommendations that the Application has incorporated in the Proposal. As indicated in correspondence sent to Planning staff on April 2, 2024, the City Council of Takoma Park declined to review the project. City staff has reviewed the project and is not seeking any additional dedication for public right-of-way or frontage improvements along Oswego Avenue.

The Proposal will be controlling existing invasive species in the forested areas of the Property, per the Forest Conservation Exemption/Tree Save Plan, and will be minimizing impacts to the steep slopes and forested areas in the rear of the Property, consistent with the Master Plan's Urban Forestry Concept, and, as conditioned, will provide supplemental native plantings and new street trees. As proposed, the Project substantially conforms to the Master Plan.

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

a) Roads and other Transportation Facilities

I. Existing Facilities

Oswego Avenue is a Neighborhood Street with a prescribed right-of-way of 60 feet total, per Chapter 49 of the County Code. On-street parking is unrestricted. There are no existing sidewalks on either side of the roadway. There are no master-planned designated bikeways on Oswego Avenue.

II. Proposed public transportation infrastructure

Oswego Avenue is owned and maintained by the City of Takoma Park. As indicated in correspondence sent to Planning staff on April 2, 2024, the City Council of Takoma Park declined to review the project. City staff has reviewed the project and is not seeking any additional dedication for public right-of-way or frontage improvements along Oswego Avenue.

III. Proposed private transportation infrastructure

There is no proposed private infrastructure included in the Application.

b) Local Area Transportation Review (LATR)

The Project 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).

c) Schools

School Adequacy Test

The project is served by Bethesda ES, Westland MS and Bethesda-Chevy Chase HS. Based on the FY24 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2. FY2024 Annual School Test Projections (2027-2028 School Year)

	Program Capacity	Enrollment	%Utilization	Surplus/ Deficit
Takoma Park/Piney Branch ES	1,222	1,102	90.2%	+120
Takoma Park MS	1,330	1,028	77.3%	+302
Montgomery Blair HS ²	2,867	2,804	97.8%	+63

Table 3. FY2024 School Test Results

School	Adequacy Status	Tier 1 Adequacy Ceiling	Tier 2 Adequacy Ceiling	Tier 3 Adequacy Ceiling
Takoma Park/Piney Branch ES	No UPP	205	365	548
Takoma Park MS	No UPP	428	568	768
Montgomery Blair HS	No UPP	243	637	1,067

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 FY24 Annual School Test, Takoma Park/Piney Branch Elementary School, Takoma Park Middle School and Montgomery Blair High School do not require any UPP as identified in Table 3.

Analysis Conclusion and Condition of Approval

Based on the school capacity analysis performed, using the FY2024 Annual School Test, this application is not subject to a Utilization Premium Payment.

² Projected enrollment reflects the estimated impact of CIP P651908, which will reassign students between the Down County Consortium, Bethesda-Chevy Chase High School, Walter Johnson High School, Walt Whitman High School, and Charles Woodward High School in 2026.

d) Other Public Facilities and Services

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 Growth and Infrastructure Policy currently in effect.

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

Technical Review 50.4.3.K

A. Forest Conservation

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

The Subject Property received approval of Forest Conservation Exemption 42023134E on April 2, 2024. The Property is subject to Chapter 22A Forest Conservation Law but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(s)(2). The Subject Application qualifies for an exemption, under Section 22A-5(s)(2) as an activity occurring on a tract less than one acre that is not located in a Commercial Residential (CR) zone 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; will not result in development within an environmental buffer; and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved.

Due to the proposed impacts/removals of specimen trees, the special provisions for a tree save plan are in effect under Chapter 22A-6, and a tree save plan with mitigation plantings has been incorporated into the exemption. Additionally, the overall plans feature Building Restriction Lines (BRL) and Limits of Disturbance (LOD), which generally protect the areas of steep slopes and highly erodible soils. Although approximately 0.03 acres of forest clearing is proposed, the amount is well under the allowed maximum. Furthermore, the forest clearing does not occur in the portion of priority forest associated with the highly erodible soils. Therefore, the application satisfies the exemption requirements.

There are no additional environmental protection requirements to be met.

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

As conditioned, the Project will satisfy all applicable Stormwater Management requirements with the City of Takoma Park prior to approval of record plat.

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

April 29, 2024

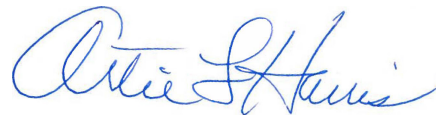
(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

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 Linden, with a vote of 4-0. Chair Harris, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, Vice Chair Pedoeem abstaining, at its regular meeting held on Thursday, April 25, 2024, in Wheaton, Maryland and via video conference.



Artie Harris, Chair
Montgomery County Planning Board