

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

November 5, 2024

MCPB No. 24-100
Administrative Subdivision No. 620240080
Paschal Land
Date of Hearing: October 17, 2024

RESOLUTION

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

WHEREAS, on December 27, 2023, Peter Kreeger (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create one (1) lot on 6.16 acres of land and one (1) agricultural remainder parcel in the Agricultural Reserve (AR) zone, located at 24724 Peach Tree Road, on the south side of Peach Tree Road, approximately 7,762 feet south of Old Hundred Road (“Subject Property”), in the Rural West Policy Area and 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 60240080, Paschal Land (“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 October 4, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 17, 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 Bartley, with a vote of 3-0; Chair Harris, Commissioners Bartley and Hedrick voting in favor with Vice Chair Pedeem and Commissioner Linden absent.

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 60240080 to create one (1) lot on the Subject Property, subject to the following conditions:¹

All site development elements shown on the latest electronic version of the Administrative Subdivision Plan No. 620240080 as of the date of this Staff Report submitted via ePlans to the Maryland-National Capital Park and Planning Commission (“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) single-family detached unit and one (1) farm remainder parcel.

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 August 22, 2024, 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 exemption letter dated October 9, 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

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.

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 MCDPS, Well and Septic Section in its letter August 1, 2024, 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 – Well and Septic Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 12, 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

9. 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.

Transportation

10. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing road:
 - a) All land necessary to accommodate forty (40) feet from the existing pavement centerline along the Subject Property frontage for Peach Tree Road.

Record Plats

11. There shall be no clearing or grading of the site prior to recordation of plat(s).
12. The record plat must show necessary easements.
13. The record plat must reflect common ingress/egress and utility easements over the existing driveway.
14. Any record plat for the Subject Property must contain the following note:

Agriculture is the preferred use in the AR Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.
15. The Applicant must include with the submission of each record plat an affidavit to verify the availability of a TDR for each lot shown on that plat. Include a note referencing the affidavit on record plat.
16. The Applicant must record a covenant for the unplatted balance (Agricultural Remainder) of the tract noting that density and development rights have been used for the new lot. Include a note on the record plat referencing the covenant.

Certified Administrative Subdivision Plan

17. 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.*
18. 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.

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.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:*
 - A. ***written approval for a proposed well and septic area is received from the Department of Permitting Services before approval of the plat;***

Approval of the existing and proposed well and septic systems were approved by MCDPS – Well and Septic Section on August 1, 2024.
 - B. ***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;***

The Property has frontage on one road, Peach Tree Road, which is classified as an Exceptionally Rustic Road between Barnesville Road and Old Hundred Road with an ultimate right-of-way of 80 feet. The Applicant is dedicating 0.06 acres of land which is sufficient to achieve the ultimate right-of-way width of 80 feet on Peach Tree Road (40 feet from the existing centerline). All necessary dedications and public utility easements will be shown on the record plat.

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

As discussed in the Findings Section below, all adequate public facilities requirements have been met for this Application.

D. 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;

As conditioned, the Applicant must record a covenant for the unplatted balance (Agricultural Remainder) of the tract noting that density and development rights have been used for the new lot and include a note on the record plat for the lot.

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

The proposed lot exceeds the five-acre maximum, primarily due to the requirement for frontage on a public road, in this case, via a pipestem. As shown in Figure 3, the body of the 6.16-acre lot is approximately four acres and the pipestem portion of the lot is approximately 2.16 acres. The body of the lot has been limited to the maximum extent possible, while still encompassing the existing fenced yard, well and septic reserve areas. The pipestem was intentionally designed to parallel the perimeter of the southern Property line to eliminate the segmentation of the agricultural remainder and still provide public road frontage, which is required. In this case, the typical minimum 25-foot-wide pipestem was expanded to 50 feet so 1.79 acres of the existing forest within the pipestem qualifies to be used for forest conservation purposes and protected within two Category I Conservation Easements as part of this Application and accompanying Forest Conservation Plan. Creation of this lot is not detrimental to the agricultural use on the Subject Property. For this reason, Staff supports the Applicant's request to create a 6.16-acre lot.

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

The Subject Property is subject to Chapter 22A of the County Code. As conditioned, the Forest Conservation Plan complies with the requirements of the

Forest Conservation Law. The Subject Property has a reforestation requirement of 0.12 acres which will be met on-site and protected with a Category I Conservation Easement.

MCDPS, Stormwater Management Section issued a Stormwater Management Concept plan exemption dated October 9, 2022. As discussed in the Findings Section below, Stormwater Management requirements for this Application have been 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.*

- a.) The block design is appropriate for the development or use contemplated

The Application will result in a single recorded lot.

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

As discussed in the Applicability Section above, the proposed flag lot is appropriate in the context of the Subject Property considering the existing improvements and agriculture being primary use of the Subject Property.

Creation of Flag Lots

Pursuant to Chapter 50, Section 6.3.B.5, the Planning Board must review this Application because the proposed lot is a flag lot.

Section 4.3.C.1.b. of the Subdivision Regulations states that the Planning Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to the surrounding properties and right-of-way permit no other feasible way to subdivide and the Board determines that the appropriate separation between building envelopes can be achieved.

In this case, the creation of a flag lot is acceptable, considering the shape of the Property, the location of the existing house, active agricultural fields and the fact that the Property is zoned AR.

As discussed in Section I, the existing house was built in 2003, adjacent to the existing driveway. Additionally, Section 4.2.1.C of the Montgomery County Zoning Ordinance (Ch.59) states that, in the AR zone, “residential uses must be located and arranged to support agriculture as the primary use and to support the rural character of the area”. Creating a flag lot in the proposed configuration allows the lot to have road frontage, while permanently protecting existing forest in a Category I Easement and leaving the agricultural remainder parcel as a contiguous parcel for the continuation of existing agricultural operations.

No additional Building Restriction Lines are required on the lot and because the proposed lot is in an agricultural zone, not a residential zone, the provisions of Section 50.4.3.C.b.i-iii do not apply to this Application

- c.) The Administrative Subdivision Plan provides for required public sites and adequate open areas

There are no public site recommendations for the Subject Property. As discussed below, dedication is being provided for Peach Tree Road.

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

The Preliminary Plan meets all applicable sections of the Subdivision Code. The proposed lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*, and the intent of the AR zone, to preserve and support agriculture.

The Planning Board has historically sought to reduce the size of new residential lots in the AR zone to be the minimum necessary to accommodate the house and an on-site well and septic, and to maximize agricultural opportunities elsewhere on farmed properties. As discussed above, the lot is the minimum land area necessary to accommodate the existing house and associated infrastructure, while providing frontage on Peach Tree Road.

The lot was reviewed for compliance with the dimensional requirements for the AR zone as specified in the Zoning Ordinance.

Table 1: Development Standards – AR zone

Standard	Required/Permitted	Proposed
Max. Density	1 unit/25 acres	1 unit/115.24 acres
Minimum lot size	40,000 sq ft	40,000 sq ft or larger
Min. lot width at front	125 ft.	125 ft. or more

Standard	Required/Permitted	Proposed
building line		
Min lot width at front lot line	25 ft.	25 ft. or more
Front setbacks	50 ft. min.	50 ft. or more
Side setbacks	20 ft. min.	20 ft. ft. or more
Rear setbacks	35 ft. min.	35 ft. or more
Max Lot Coverage	10%	Not to exceed 10%
Max Building Height	50 ft.	50 ft.
TDR Required	1	4 available

The Applicant has provided documentation to verify that an adequate number of Transferable Development Rights (TDRs) remain on the Property to record the proposed subdivision. In 1980, the Property was approximately 115.24 acres when it was rezoned RDT (now AR). The Property was granted 23 TDRs (1 TDR per 5 acres). Four (4) of the 23 TDRs are “buildable TDRs”. To date 19 TDRs have been recorded, leaving 4 available TDRs. One of the four TDRs was already retained in 2003 when the house was constructed.

This Application requires 1 TDR, which will be recorded during the platting process. The lot will meet all dimensional requirements for area, frontage, width, and setbacks in the AR zone. A summary of this review is included in Table 1.

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

1980 Preservation of Agriculture and Rural Open Space Functional Master Plan

The Subject Property is located within Planning Area (P.A.) 10, the Bennett and Little Bennett Watershed Area of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*. The Master Plan recommended rezoning the area from the Rural zone to the RDT zone (now the AR zone). The Master Plan does not make any site-specific recommendations for the Subject Property. This Application does not adversely affect the agricultural character of the area. No new development is proposed by this Application. By utilizing the existing driveway for access and configuring the lot around the existing house and fenced yard, impact to the active agriculture on the approximately 109-acre Agricultural Remainder parcel is being minimized. Therefore, the Application is in substantial conformance with the goals of the Master Plan.

2023 Rustic Roads Functional Master Plan Update

The proposed lot will access Peach Tree Road, which is identified as an Exceptional Rustic Road between Barnesville Road and Old Hundred Road (MD 109) in the 2023 Rustic Roads Functional Master Plan Update (“RRFMP”). Peach Tree Road was designated rustic in the 1996 Rustic Roads Functional Master Plan,

and the description of the road was brought over to the 2023 RRFMP Update largely unchanged.

The RRFMP describes the Exceptional Rustic Road section of Peach Tree Road as a 5.62 miles long paved road, ranging from 14 to 18 feet wide, with no shoulders, centerline or edge of pavement markings.

According to the RRFMP the significant features that apply to the road section adjoining the Subject Property include tree canopies, banks adjacent to the road with vegetation, and a narrow twisting alignment through interesting terrain north of Comus Road. Peach Tree Road has an ultimate right-of-way width of 80 feet. No improvements to Peach Tree Road area proposed at this time.

The Rustic Roads Advisory Committee (“RRAC”) reviewed the Application at their meeting on April 25, 2024, to determine if it has any effect on Peach Tree Road. The RRAC supports the Application. The Application has also been reviewed by the MCDOT, which determined that the new driveway has adequate site distance as shown on the Administrative Subdivision (Attachment C). As previously discussed, the Applicant is dedicating the necessary right-of-way along the frontage of the Subject Property to achieve the Master Plan recommended width. Because of its Rustic designation, there are no existing or recommended sidewalks or bikeways.

Thus, the proposed subdivision is in substantial conformance with the 2023 Rustic Roads Functional Master Plan.

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

a.) Roads and other Transportation Facilities

i. Existing Facilities

The Subject Property contains frontage on a public road – Peach Tree Road. As part of this Application, 40 feet of right-of-way is being dedicated from the property line to the centerline of Peach Tree Road to satisfy the master planned right-of-way for Peach Tree Road.

Peach Tree Road does not contain any pedestrian or bicyclist facilities. The nearest existing and master planned bicycle and pedestrian facilities are located north of the Proposed Development along the intersection of Frederick Road with Prescott Road.

ii. Proposed public transportation infrastructure

The 2018 *Bicycle Master Plan* has no recommendations for Peach Tree Road. In addition, per Chapter 49, Article 8, roadways classified and designated as rustic roads are meant to retain certain physical features that add value to the character of the area. Furthermore, under Chapter 50, Article 2, during the subdivision process, improvements that are contrary to the rustic roads law or regulations shall not be required, unless such improvements are recommended to be made to address safety. Therefore, the Subject Property is precluded from providing any frontage improvements, as the 2024 Complete Streets Design Guide is not applicable to the Application.

The Application has been reviewed by the Montgomery County Department of Transportation (MCDOT), which determined in its letter dated August 22, 2024, that the proposed driveway will have adequate sight distance on Peach Tree Road to serve the Subject Property. MCDOT also reviewed the Applicant's storm drain study and determined that no improvements to the downstream public storm drain system are necessary for the Application.

b.) Local Area Transportation Review (LATR)

The existing single-family detached unit in the Subject Property will remain. The Subject Property is located in the Rural West Policy Area, which is categorized as a Green Policy Area under the *2020 – 2024 Growth and Infrastructure Policy (GIP)*. As demonstrated in the Applicant's traffic statement, dated November 13, 2023, the proposed Administrative Subdivision generates fewer than 50 peak-hour person trips. Thus, it is exempt from Local Area Transportation Review under the GIP without further review, and the roads and transportation facilities are adequate to support the Application.

c.) Schools

The Property is served by Clarksburg ES, Rocky Hill MS and Clarksburg HS. Based on the FY25 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2: FY2025 Annual School Test Projections (2028-2029 School Year)

	Program Capacity	Enrollment	%Utilization	Surplus/ Deficit
Clarksburg ES	365	338	92.6%	+27
Rocky Hill MS	1,012	1,094	108.1%	-82
Clarksburg HS ²	2,020	1,934	95.7%	+86

Table 3: FY2025 School Test Results

School	Adequacy Status	Tier 1 Adequacy Ceiling	Tier 2 Adequacy Ceiling	Tier 3 Adequacy Ceiling
Clarksburg ES	No UPP	112	129	155
Rocky Hill MS	No UPP	44	121	273
Clarksburg HS	No UPP	266	490	793

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 FY25 Annual School Test, Clarksburg ES, Rocky Hill MS and Clarksburg HS do not require any UPP.

d.) Other Public Facilities and Services

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are available and currently operating within the standards set by the 2020-2024 Growth and Infrastructure Policy (“GIP”).

The Subject Property is in the W-6 and S-6 water and sewer service categories, respectively, and will utilize an existing on-site private

² Projected enrollment is modified to estimate the impact of Crown HS (CIP P651909), reflecting the scope of the boundary study approved by the Board of Education on March 19, 2024. Due to the delay of the Damascus HS Major Capital Project (CIP P652102), some of the boundary changes can be implemented in phases.

well and septic system, consistent with the current service categories. As shown on the Administrative Subdivision plan, additional land is being preserved as a potential location for future an additional septic field in case additional adsorption capacity is needed. The Application showing the existing private well and on-site septic system was reviewed by MCDPS – Well and Septic Section and approved on August 1, 2024.

The Application has been reviewed MCDPS –Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles as shown on their approved access plan dated March 12, 2024.

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 Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Preliminary/Final Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s Environmental Guidelines.

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

This finding is based upon the determination by Montgomery County Department of Permitting Services that the Stormwater Management Concept Plan meets applicable standards.

The Application received approval of a Stormwater Management Concept Plan exemption from the MCDPS, October 9, 2022, per Chapter 19 of the County Code. The existing house is being retained, so stormwater management is not required. There are no additional environmental protection requirements to be met at this time.

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

This finding is not applicable to this Property.

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

November 5, 2024

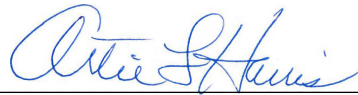
(which is the date that this Resolution is mailed to all parties of record); and

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 Bartley, with a vote of 3-0-2; Chair Harris, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Vice Chair Pedoeem, and Commissioner Linden abstaining, at its regular meeting held on Thursday, October 31, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board