

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

December 27, 2023

MCPB No. 23-121
Administrative Subdivision No. 620230130
14915 Mount Nebo Road
Date of Hearing: November 16, 2023

RESOLUTION

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

WHEREAS, on July 26, 2023, Ioana Ballinger (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create one (1) lot on 10.07 acres of land in the AR zone, located 14915 Mount Nebo Road, on the east side of Mount Nebo Road, approximately 4,600 feet south of West Offutt 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. 620230130, 14915 Mount Nebo Road (“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 November 3, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 16, 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 Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620230130 to create one (1) 9.65 acre lot 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 one lot for one detached dwelling unit.

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 30, 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 1, 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 MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section in its letter dated September 28, 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.

8. Before approval of the record plat, the Applicant must obtain approval of a Well and Septic Plan from the Montgomery County Department of Permitting Services, Well and Septic Section for the proposed private well and septic system.

Transportation

Existing Frontage Improvements

9. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) Approximately 0.42 acres of land as necessary to accommodate thirty-five feet (35) from the existing pavement centerline along the Subject Property frontage for Mount Nebo Road.

Record Plats

10. There shall be no clearing or grading of the site prior to recordation of plat(s).
11. 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.
12. The record plat must show necessary easements.
13. 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.

Certified Administrative Subdivision Plan

14. 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.*

15. 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 applicability 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;

As conditioned, before approval of the record plat, the Applicant must obtain approval of a Well and Septic Plan from the MCDPS, Well and Septic Section for the proposed private well and septic system.

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, Mount Nebo Road, which is classified as *Rustic Road (R-19)* with an ultimate right-of-way of 70 feet. The Applicant is dedicating 0.42 acres of land which is sufficient to achieve the ultimate right-of-way width on Mount Nebo Road (35 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;

Adequate public facilities exist to support and service the Property in accordance with Section 50.4.3.J of the Subdivision Regulations, as discussed in Findings Section below.

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;

This criterion is not applicable, because the entire tract of land subject to the Application is being recorded as a buildable lot and recorded on a record plat.

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

The proposal seeks to convert the existing 10.07-acre parcel into a lot that exceeds the 5-acre lot size limit and requires Planning Board action. The lot shape and proposed house location, on the unforested area on the west side of the Property, allows for maximum retention of a large contiguous area of high priority forest, including a stream. After dedication, the proposed lot will be 9.65 acres.

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan, which was submitted with and approved at the same time as this Application (designated as F20230440). Included with the Forest Conservation Plan is a request for a tree variance for impact to one on-site trees that are 30 inches or greater diameter at breast height ("DBH"). The Administrative Subdivision Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the accompanying Forest Conservation Plan No. F20230440, with the variance, and described in the findings related thereto.

The Application received approval of a Stormwater Management Concept Plan from the MCDPS, dated August 1, 2023, per Chapter 19 of the County Code. The Stormwater Management Concept demonstrates that stormwater will be managed through bio-retention.

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 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, taking into account the exemption from the minimum lot area and width of the AR zone and the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the single-family residential detached dwelling contemplated for the Property. The Application does not propose any new residential blocks.

Density of the AR Zone

Per Section 59.4.2.1.F of the Zoning Ordinance, only one single-family dwelling unit per 25 acres is permitted in the AR zone. A development right has to be retained for each single-family dwelling. The Subject Property is approximately 10.07 acres in size and would have been assigned two TDRs (one TDR/5 acres) in 1981, when the property was rezoning RDT (now AR).

Exemption

The 10.7 acre Property cannot be platted under the current AR zoning standards; however, the Subject Property qualifies for an exemption under Section 7.7.1.D.9. of the Zoning Ordinance, *Exempted Lots and Parcels in the Agricultural Zone*, which states that a parcel in the Agricultural Reserve, created before January 6, 1981, is exempt from the minimum lot area and lot width requirements of the AR zone, but must satisfy the requirements of the applicable zone before its classification into the AR zone.

According to the following deed history submitted by the Applicant and verified by Staff, the 10.07 Subject Property was created on January 2, 1977. The Mackenzie Property/Parent Tract was created by deed on July 1, 1953, recorded in Book 1811 and Page 484. The Subject Property is the remaining piece of the parent tract after 24 acres was deeded (Book 3427/Page 085) on October 25, 1965 and 30.17 acres was deeded (Book 4898/Page 239) on January 21, 1977, leaving the Subject Property as a remainder. Parcel 158 has been in the same size, shape, and configuration since prior to January 2, 1977.

On January 21, 1977, the Property was zoned Rural, which required a minimum lot size of five acres and minimum lot width of 300 feet at the front building line. After dedicating 0.42 acres of right-of-way, the 9.65-acre lot conforms to the dimensional standards of the AR zone, except for lot area and lot width which conform to the standards of the former Rural zone. A summary of this review is included below in the Certified Administrative Subdivision Plan Data Table.

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 P.A. 17, the Poolesville and Vicinity Area of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*. The Master Plan recommended rezoning the area from the Rural to RDT (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 historic agricultural character of the area. The developable portion of the Subject Property is being located close to the existing road, protecting the existing forest and stream resources behind the house, which is in substantial conformance with the goals of the Master Plan.

2023 Rustic Roads Functional Master Plan Update

The lot will access Mount Nebo Road, which is identified as a Rustic Road in the 2023 *Rustic Roads Functional Master Plan Update* (“RRFMP Update”). The RRFMP Update was approved by County Council in July 2023. Although the approved plan still needs to be approved and adopted by Montgomery County and The Maryland-National Capital Park and Planning Commission, guidance from the RRFMP Update has been used to evaluate the Application.

Mount Nebo Road, formerly Shepard Road, was designated rustic in the 1996 *Rustic Roads Functional Master Plan*, and the description of the road was brought over to the RRFMP Update largely unchanged. The RRFMP Update states that the road has outstanding natural features and historic value. The significant features identified in the RRFMP Update include the “Alignment with curves and elevation changes along half of the road”.

Mount Nebo Road has an ultimate right-of-way width of 70 feet. A new 10-foot-wide driveway with 5-foot wings (standard residential driveway apron) will be constructed to serve the Subject Property. In the northwest corner of the Property, abutting Nebo Road, the Applicant is recording a Montgomery Fire & Rescue Services Public Safety Water Supply Easement for a possible future cistern. No improvements to the road or access to the cistern easement are planned or being constructed at this time.

The Rustic Roads Advisory Committee (“RRAC”) reviewed the Application At their meeting on July 20, 2023, to determine if it has any effect on Mount Nebo Road. The RRAC supports the proposal with the proposed driveway apron design. 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.

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 Road designation, there are no existing or recommended sidewalks or bikeways.

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

a) Roads and other Transportation Facilities

i. Existing Facilities

Mount Nebo Road is classified as a Rustic Road with an approximate right-of-way width of 70 feet. The existing road is currently 20 feet wide. No bicycle or pedestrian facilities exist along the entirety of Mount Nebo Road.

ii. Proposed public transportation infrastructure

Per the 2018 *Bicycle Master Plan*, no bicycle facilities are master planned for the section of Mount Nebo Road along the Subject Property's frontage. The Application is exempt from providing frontage improvements based on Section 49-33 of the County Code. Section 49-33(d)(A) states that residential properties of over 25,000 square feet within a rural Road Code area are exempt from providing sidewalks or master-planned bikeways. The Subject Property is approximately 10.07 acres (438,649 square feet) and within a rural Road Code Area.

Additionally, Section 49-33(d)(B) excuses properties from frontage improvements if they are located on a road classified as Rustic or Exceptional Rustic. As previously stated, the Subject Property fronts on Mount Nebo Road, a Rustic Road. Therefore, the Application is exempt from providing pedestrian and bicycle facilities. No additional master planned improvements are required for this Application. Therefore, roads and transportation facilities are adequate to support the Application.

b) Local Area Transportation Review (LATR)

The Property is located in the Rural West Policy, which is categorized as green Policy Area under the *2020 – 2024 Growth and Infrastructure Policy* (the "GIP"). As demonstrated in the Applicant's Traffic Exemption Statement ("TES") dated June 1, 2023, the proposed Administrative Subdivision generates fewer than 50 peak-hour person trips in the morning and evening peak hours 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.

c) School Adequacy Test

The FY24 Annual School Test, approved by the Planning Board on June 22, 2023 and effective July 1, 2023 is applicable to this application. The project is served by Poolesville ES, John Poole MS and Poolesville 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 1 - Applicable FY2024 School Adequacy

School	Projected School Totals, 2027				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Poolesville ES	562	602	107.1%	-40	No UPP	45	73	157
John Poole MS	478	488	102.1%	-10	No UPP	116	141	160
Poolesville HS	1,508	1,439	95.4%	+69	No UPP	249	371	597

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, development projects approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in Table 1.

Analysis Conclusion and Condition of Approval

Based on the school capacity analysis performed for the one single-family house, using the FY2024 Annual School Test, this application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

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 (“GIP”).

Other public facilities and services are available and adequate to serve the lot. The Subject Property is in the W-6 and S-6 water and sewer service categories, respectively, and will utilize a new on-site private well and a sand mound septic system, consistent with the current service categories. As conditioned, before approval of the record plat, the Applicant must obtain

approval of a Well and Septic Plan from the MCDPS, Well and Septic Section for the proposed private well and septic system.

The Application has been reviewed by the Montgomery County Department of Permitting Services, 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 Fire Department Access Plan dated September 28, 2023.

Dry utilities including electricity, gas, and telephone are also available to the Property. Other utilities, public facilities and services, such as telecommunications, police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 Growth and Infrastructure Policy.

The Application can be adequately served by all other public facilities and services.

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

1. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. Preliminary/Final Forest Conservation Plan No. F20230440 (“FFCP”) was submitted for concurrent review with the Application for Administrative Subdivision Plan No. 620230130. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies 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 55% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 9.69 acres, which includes additions for off-site improvements and deductions for the right of way not being improved as part of this Application. There is a total of 8.17 acres of existing forest on the Subject Property with the Applicant proposing to remove 1.22 acres of forest. This results in no afforestation/reforestation requirement.

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

The Application received approval of a Stormwater Management Concept Plan from the MCDPS, dated August 1, 2023, per Chapter 19 of the County Code. The Stormwater Management Concept demonstrates that stormwater will be managed through bio-retention.

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

There are no known burial sites on or adjacent to the Subject 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:

December 27, 2023

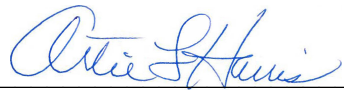
(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal 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 the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, its regular meeting held on Thursday, December 21, 2023, in Wheaton, Maryland and via video conference.



Artie Harris, Chair
Montgomery County Planning Board