

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-086
Administrative Subdivision No. 620230040
Willerburn Acres
Date of Hearing: July 27, 2023

SEP 21 2023

RESOLUTION

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

WHEREAS, on February 24, 2023, Robert Gamzeh (“Applicant”) filed an application for approval of an administrative subdivision plan of property that would create two lots on one acre of land in the R-90 zone, located about 450 feet northeast of the intersection of Seven Locks Road and Gainsborough Road at 11712 Gainsborough Road (“Subject Property”), in the Potomac Policy Area and the 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620230040, Willerburn Acres (“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 July 14, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 27, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620230040 to create two 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.

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

General Approval

1. This Administrative Subdivision Plan is limited to two lots for two single-family detached dwelling units.

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 June 29, 2023, and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
 5. Before recordation of 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 June 7, 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.
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7. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated May 20, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Administrative Subdivision Plan approval.

Other Approvals

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

Transportation

9. Before release of the second building permit, the Applicant must construct a six-foot wide sidewalk with a six-foot wide buffer from the street, along the Property frontage on Gainsborough Road, as well as an additional offsite connection that will tie into an existing sidewalk to the west. The Applicant must satisfy all necessary MCDPS requirements for the pedestrian connection construction.
10. Before the issuance of the first building permit, the Applicant must remove the existing driveway. New driveway access must be located at the southwest corner of the Property as shown on the Certified Administrative Subdivision Plan.

Record Plats

11. There shall be no clearing or grading of the site before recordation of the plat.

Easements

12. The record plat must show necessary easements.

Certified Administrative Subdivision Plan

13. The Applicant must include the Administrative Subdivision Plan Resolution, and agency approval letters on the approval or cover sheet(s).
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 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.*

15. Before submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:

- a. Include the approved Fire and Rescue Access plan in the certified set.
- b. Ensure plans and data tables reflect those approved by the Planning Board.

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:

The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for two lots, for two detached houses, in the R-90 zone (a residential zone).

50.6.1.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:*

1. *The lots are approved for the standard method of development;*

The Application was submitted for the standard method of development in the R-90 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 water wells or septic areas. The Property is designated with W-1 and S-1 categories and will be served by public water and sewer.

3. *Any required road dedications and associated public utility easements are shown on the plat and the Applicant provides any required improvements;*

This section of Gainsborough Road contains a right-of-way of 60 feet, as required by County Code Section 49-32, road design standards for Neighborhood Streets/Tertiary Residential Streets. Therefore, no additional right-of-way is necessary. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

4. *The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat; and*

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

5. *Forest conservation, stormwater management, and environmental protection requirements 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 F20230030). Included with the Forest Conservation Plan is a request for a tree variance for the removal of one onsite tree and impacts to two offsite 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. F20230030, with variance, and described in the findings related thereto.

The Application received an approved stormwater concept plan from the MCDPS, Water Resources Section on June 7, 2023. The Application will meet stormwater management goals through the use of Environmental Site Design (ESD) using drywells and micro-infiltration trenches. The Project meets all the requirements of Chapter 19.

1. *The Administrative Subdivision Plan satisfies the findings of Section 50.6.3.C of the County Code and meets the technical review requirements of Section 4.3 of the County Code.*
 - 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 Project does not propose any new residential blocks. The proposed subdivision is within an existing residential neighborhood with an established street grid and block design.

The Project meets all applicable sections of the Subdivision Ordinance including the requirements under Section 50.4.3.C. for flag lots. Proposed Lot 1 is regularly shaped, and Lot 2 is a flag lot. Overall, the lots are appropriate in size, shape, width, and orientation, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and the building type (single-family detached units) contemplated for the Property. Lots in the vicinity are typical of those following the existing curvilinear street pattern: a mix of regular- and irregular-shaped lots, and flag lots. The proposed lots are similar in shape and size to nearby lots located to the north and southeast of the Property. Per Section 50.4.3.C.b, 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 that appropriate separation between building envelopes can be achieved.

In approving a flag lot, the following criteria applies:

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 (a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot; and (b) the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts.

The Project meets the applicable criteria to approve a flag lot. The position of the existing track of land in relation to surrounding properties and Gainsborough Road permits no other feasible way to subdivide the property. The Property has 146 feet of frontage along Gainsborough Road and a depth of 300 feet. In the R-90 zone, the minimum lot size is 9,000 square feet with a minimum lot width of 75 feet. A side-by-side configuration of two lots is infeasible due to the minimum lot width of 75 feet and the Property's shape in relation to its road frontage. Additionally, the Project meets all applicable development standards in the R-90 zone and Master Plan. As applicable to flag lots (Sec. 4.3.C.1.b.i.), the Project meets all appropriate building line restrictions and separation distances between buildings. Additionally, in response to community comments, the Applicant redesigned the Project and relocated the driveway and gas line to the western portion of the Property, avoiding impacts to trees along the east Property line. The existing driveway will be removed with light

equipment and impact no more than 15 percent of the critical root zone of Specimen Tree No. 1, which is located on the adjoining property to the east.

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. The Project provides adequate open areas as it meets all required building setbacks, maximum lot coverage, and minimum yard areas.

The proposed lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and width.

Data Table

Standard	Required/Permitted	Approved Lot 1 ²	Approved Lot 2 ³
Lot size, min.	9,000 sq. ft.	19,602 sq. ft.	24,198 sq. ft.
Lot width at front building restriction line (BRL), min.	75 ft.	121 ft.	146 ft.
Lot width at front lot line, min.	25 ft.	121 ft.	25 ft.
Lot coverage, maximum	20%	20%	20%
Front setback, min.	30 ft.	79 ft.	202 ft.
Side setback, min.	8 ft.	8 ft.	8 ft.
Rear setback, min.	25 ft.	25 ft.	25 ft.
Building height, max.	35 ft.	35 ft.	35 ft.

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

The Administrative Subdivision Plan substantially conforms to the recommendations within the Master Plan. The Master Plan does not make specific recommendations for the Subject Property but reconfirmed the existing single family detached residential zoning throughout the Property's vicinity. The Application demonstrates conformance to the Master Plan by proposing compatible infill housing within residential areas. Furthermore, the proposed subdivision will help to achieve the County's housing development objective by increasing the number of housing units in all communities. The proposed subdivision meets the Area Land Use Guidelines of the Master Plan through the redevelopment of a

² Lot 1 is subject to the requirements of Section 59.4.4.1.A (Established Building Line); the established building line is 79 feet.

³ Lot 2 is subject to the requirements of Section 50.4.3.C.1.b.i (Flag Lots).

property without creating significant demand or increase in public infrastructure and transportation needs.

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

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 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. 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 – 2025 *Growth and Infrastructure Policy* (the “GIP”).

Per the 2018 *Bicycle Master Plan*, no planned bicycle facilities are proposed for the section of Gainsborough Road fronted by the Subject Property. As a condition of this Application, the Applicant is constructing a six-foot-wide sidewalk along their frontage. The sidewalk will also contain a 6-foot-wide street buffer consistent with Complete Streets Design Guidelines recommendations for Neighborhood Streets. The proposed sidewalk will continue offsite 150 feet to the west and meet with an existing sidewalk terminus at the property line boundary of 11702 and 11706 Gainsborough Road. No additional master planned improvements are required for this Application.

Based on the school capacity analysis performed, using the FY24 Annual School Test, this Application is not subject to a Utilization Premium Payment. Therefore, no Utilization Premium Payment (UPP) condition is required.

Preliminary School Adequacy Test

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Beverly Farms ES	722	613	84.9%	+109	No UPP	194	254	362
Herbert Hoover MS	1,139	1,017	89.3%	+122	No UPP	248	350	521
Winston Churchill HS	1,991	2,129	106.4%	-138	No UPP	42	261	559

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

Forest Conservation Law

The Board finds that as conditioned and in concert with the accompanying Forest Conservation Plan No. F20230030, including the approved variance, the Application complies with the requirements of the Forest Conservation Law.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Project satisfies the requirements of Chapter 19. The Project received an approved stormwater concept plan from the MCDPS, Water Resources Section on June 7, 2023. The Project will meet stormwater management goals through the use of Environmental Site Design (ESD) using drywells and micro-infiltration trenches.

- 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 of which the Applicant has actual notice or constructive notice or that are included in the Montgomery County Cemetery inventory.

- 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 subdivision Application.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 21 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 approved and adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on 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, at its regular meeting held on Thursday, July 27, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board