

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-071

Administrative Subdivision No. 620230060

Edgemoor

Date of Hearing: July 13, 2023

JUL 26 2023

RESOLUTION

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

WHEREAS, on December 8, 2022, Oliver Carr ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create two (2) lots on 0.96 acres of land in the R-60 zone, located at 7611 Fairfax Road, approximately 100 feet south of Wilson Lane ("Subject Property"), in the Bethesda Chevy Chase Policy Area and 1990 Bethesda-Chevy Chase Master Plan ("*Master Plan*") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620230060, Edgemoor ("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 3, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 13, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 5-0; Chair Harris, Vice Chair Pedocem, Commissioners Bartley, Hedrick and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620230060 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 April 26, 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 March 2, 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 ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated March 16, 2023
-

and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Administrative Subdivision Plan approval.

Other Approvals

8. Before approval of a record plat or any demolition, clearing, or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.

Environment

9. 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.
10. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
11. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
12. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 35 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
13. Before certification of the Administrative Subdivision Plan, the Applicant must update Forest Conservation Plan notes/details in order to provide maintenance and care procedures, prepared by an ISA Certified Arborist, for the protection and monitoring of perimeter trees within the existing Category I Conservation Easement.
14. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:

- a. Install permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- b. Execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of the General Counsel for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings, and trees along the perimeter of the existing Category I Conservation Easement. The MMA includes invasive species management control measures, tree protection measures, and monitoring as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
- c. Submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.05 acres of afforestation/reforestation requirement.
- d. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls and protection measures as determined by an ISA certified arborist, credited toward meeting the requirements of the FCP.

Transportation

Frontage Improvements

15. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a six-foot wide sidewalk with a five-and-one-half-foot-wide vegetated street buffer along the property frontage across Lot 23 and the portion of Lot 24 not subject to the Category I Forest Conservation Easement (Liber 10728, Folio 501).
16. Only one curb cut for a residential driveway will be permitted for each of the proposed lots.

Record Plats

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

Easements

18. The record plat must show necessary easements.
19. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
20. The record plat must reflect the following building restriction lines as shown on the Administrative Subdivision Plan:

- a. A 15-foot BRL offset from the Category I Conservation Easement located on proposed Lot 24.

Certified Administrative Subdivision Plan

21. The Applicant must include the stormwater management concept approval letter and Administrative Subdivision Plan Resolution on the approval or cover sheet(s).
22. 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.
23. 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.
 - c. Revise plans to show only one driveway per lot; remove the circular driveway shown on Lot 23.
 - d. Update Forest Conservation Plan to revise tree save measures following removal of the circular driveway and updates to driveway/frontage.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for up to 3 lots for detached houses permitted in any residential or rural zone.*

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

The lots were submitted and are approved for standard method development in the R-60 zone.

B. Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat;

The lots will not be served by wells or septic areas, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

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

The Applicant is not required to provide additional road dedication in accordance with Chapter 49 of the County Code which designates Fairfax Road as a tertiary residential street. As shown on Plat 245, 50 feet of right-of-way has been dedicated along the Site frontage, which is the minimum required for a tertiary street. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

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

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

The Property is located in the Bethesda/Chevy Chase Policy Area, which is categorized an Orange Policy Area under the 2020 – 2024 Growth and Infrastructure Policy (the "GIP"). As demonstrated in the Applicant's traffic statement, dated November 18, 2022, 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.

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 block design is appropriate for the development or use contemplated;

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

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

Master Planned Sites

Local Recreation

Transportation and Utilities

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

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations. The proposed lot sizes, widths, shapes, and orientations are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type (single-family homes) contemplated for the Property.

The 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 accommodate a building which can reasonably meet the setback requirements in that zone. A summary of this review is included in Table 1.

Table 1: R-60 Development Standards Table

R-60	Required by the Zone	Proposed for Approval	
		Lot 23	Lot 24
Minimum Lot Area	6,000 square feet	20,099 square feet	21,683 square feet
Minimum Lot Width at BRL	60 feet	109 feet	117 feet
Minimum Lot Width at Front Lot Line	25 feet	110 feet	117 feet
Maximum Lot Coverage	20% (infill)	<20%	<20%
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	20 feet	20 feet
Maximum Building Height	35 feet	<35 feet	<35 feet

*Per Montgomery County Code Section 4.4.1.A.4, if the Established Building Line applies, the applicant may choose to use the average front setback of the 2 abutting lots as the front setback.

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

The Administrative Subdivision Plan substantially conforms to the 1990 Bethesda-Chevy Chase Master Plan. The Master Plan does not make specific recommendations for the Subject Property but reconfirms the existing single-family detached residential zoning throughout the Master Plan area. The proposed project demonstrates conformance to the Master Plan by proposing compatible infill detached housing within an existing residential neighborhood. The proposed subdivision will meet the County's housing policy objectives by increasing housing stock near a major activity center, and being walkable to a local neighborhood public school, local parks and Downtown Bethesda.

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

i. Existing Facilities

Fairfax Road is classified as a tertiary residential street. As shown on Plat 245, 50 feet of right-of-way has been dedicated along the Site frontage, which is the minimum required for a tertiary street. A four-foot-wide sidewalk, buffered by a five-and-one-half-foot street buffer runs along the Site frontage today.

ii. Proposed public transportation infrastructure

As stated previously, no additional right-of-way dedication is needed. The existing four-foot-wide sidewalk will be widened to six-feet to comply with the 2021 Complete Streets Design Guide along the majority of the Site frontage. Widening is not required along the portion of proposed Lot 24 subject to the existing Category I Forest Conservation Easement.

iii. Proposed private transportation infrastructure

No private transportation infrastructure is proposed.

iv. 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).

v. 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: Applicable FY2023 School Adequacy								
School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus / Deficit		Tier 1	Tier 2	Tier 3
Bethesda ES	561	539	96.1%	+22	No UPP	107	135	219
Westland MS	1,073	862	80.3%	+211	No UPP	337	426	587
Bethesda-Chevy Chase HS ²	2,475	2,420	97.8%	+55	No UPP	235	550	922

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 2.

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. Therefore, no UPP condition is required and there are adequate school facilities to support the Application.

vi. Other Public Facilities and Services

The Property is served by public water and sewer and is classified in the W-1 and S-1 categories. Public water and sewer mains currently serve the Property, which will be adequate to serve the proposed subdivision. Dry utilities including electricity, gas, and telephone are also available to the Property. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy currently in effect.

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

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

Technical Review 50.4.3.K

1. Forest Conservation

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

This Project is subject to Chapter 22A, Forest Conservation Law, and has included a Final Forest Conservation Plan with this Application. The Final Forest Conservation Plan shows that the Subject Property contains 0.18 acres of forest, 0.17 acres of which is protected via Conservation Easement. This area of forest will be maintained and enhanced via supplemental plantings while the minor portion of forest which spread outside of the easement is proposed for removal in conjunction with construction activity necessary for the subdivision. As such, the 0.01 acres of forest are counted as cleared in the Forest Conservation Worksheet. In total, as a result of the tract area, forest clearing, and the residential use of this project, the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated afforestation/reforestation requirement of 0.05 acres which will be met via fee-in-lieu, as conditioned.

2. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal four (4) trees and CRZ impact to three (3) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

Table 3: Trees to be Impacted but Retained

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
7	Scarlet Oak	43"	3.5%	Good	SAVE
8	Japanese Pagoda	44"	17.4%	Good	SAVE
14	American Elm	39"	10.4%	Good	SAVE

Table 4: Protected Trees to be Removed

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
4	Norway Spruce	30.5"	49%	Good	REMOVE
11	Red Maple	30"	48%	Poor	REMOVE
12	Red Maple	34"	36%	Poor	REMOVE
13	Short Leaf Pine	34"	81%	Good	REMOVE

The Board makes the following findings necessary to grant the Variance:

- a. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance would not confer a special privilege on the Applicant, as the need to impact and remove the protected trees is based on existing conditions of the site and location of the protected trees. As detailed above, both the removals and the root zone impacts are unavoidable in order to develop the Property to meet permitting. The inability to remove and impact the subject trees would limit the development of the Property which is already encumbered by the existing 0.17-acre conservation easement.

- b. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project. In order to provide safe and adequate use

of the Property while limiting overall site disturbance, impacts to and removal of some specimen trees are necessary.

- c. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions on the Property and not as a result of land or building use on a neighboring property.

- d. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The site is not located in the vicinity of a stream buffer, wetland or special protection area. Further, the removal of tree 13 is necessary in order to conduct construction to generate overall improved drainage on the site.

Additionally, the planting of variance mitigation trees will address water quality goals by providing shading, water retention and uptake, and evapotranspiration.

Finally, a stormwater management plan addressing water quality through Environmental Site Design will be provided for the development, for subsequent review and approval by the Montgomery County Department of Permitting Services. There are existing drainage issues associated with the site which are expected to be alleviated with this project. At this time, the Applicant has proposed a stormwater management treatment area onsite which makes use of environmental site design methods which will ultimately have an improvement on water quality. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately one inch caliper for every four inches DBH of removal, using onsite trees that are a minimum of three inches caliper, overstory trees native to the Piedmont Region of Maryland. For the 140 diameter-inches of protected trees to be removed, the Applicant must provide mitigation of at least 35 caliper-inches of replacements. No mitigation is required for Protected Trees impacted but retained.

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.

This Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Division on March 2, 2023. There are no known stormwater management facilities existing on the Property. The Application will meet stormwater management goals through drywells to treat stormwater runoff without the use of waivers. A detailed stormwater management review will occur at the time of detailed plan review and all facilities will be designed using the latest MCDPS guidelines.

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

Not Applicable.

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.

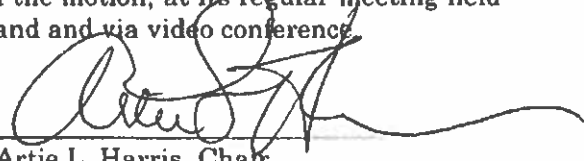
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 26 2023 (which is the date that this Resolution is mailed to all parties of record); and

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 motion of Commissioner Bartley, 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 20, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board