

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

**MCPB Item # 6**  
**DATE: Dec. 2, 2004**



**MEMORANDUM**

**DATE:** November 23, 2004

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RAK*  
Development Review Division

**FROM:** Richard Weaver, Planner Coordinator (301) 495-4544 *RAW*  
Catherine Conlon, Acting Supervisor *CK*  
Development Review Division

**REVIEW TYPE:** Subdivision Review Waiver

**APPLYING FOR:** Request for Waiver of Chapter 50, Section 50-20 (a)

**PROJECT NAME:** Union Cemetery

**CASE #:** 05-002

**REVIEW BASIS:** Chapter 50, Sec. 50-38 (a)(1), Montgomery County Subdivision Regulations

**ZONE:** RE-1

**LOCATION:** Located on the north side Spencerville Road opposite intersection with Kruhm Road

**MASTER PLAN:** Fairland

**APPLICANT:** Union Cemetery Association

**FILING DATE:** October 13, 2004

**HEARING DATE:** December 2, 2004

**STAFF RECOMMENDATION:** Denial.

## DISCUSSION:

### Background

This is a request by the Union Cemetery Association ("Association") to waive Section 50-20 (a) of the Montgomery County Subdivision Regulations, which speaks to the limitations on the issuance of building permits. The Association wishes to replace an existing 289 square foot shed on the property with a shed measuring 24 ft. by 36 ft. (816 sq. ft.) to house tools and machinery incidental to maintenance of the cemetery. The Association submitted the appropriate building permit for the shed construction to the Montgomery County Department of Permitting Services (MCDPS); that permit was forwarded to the Development Review Division staff and has been placed on hold pending resolution of the issues identified in this report.

### Site Description

The Association owns and operates an existing cemetery covering 13.5 acres and located on the south side of Spencerville Road (MD198) opposite the intersection with Kruhm Road. The cemetery has been in existence since the mid 1800's and has no other improvements other than a gazebo for cremation ceremonies, and a bituminous lane providing access to the burial plots. The cemetery is located on three unplatted parcels. The subject waiver application has been submitted to request that the Planning Board allow release of a building permit for the shed on an unplatted parcel.

### Limitations on Issuance of Building Permits

Attached, please find the applicant's letter requesting the waiver of Section 50-20 (a) of the Montgomery County Subdivision Regulations. Specifically, Section 50-20 (a) reads as follows:

*"A building permit must not be approved for the construction of a dwelling or other structure, except structures or dwellings located on a farm strictly for agricultural use, unless such structure is to be located on a lot or parcel of land which is shown on a plat recorded in the plat books of the county and which has access as prescribed in Sec. 50-29 (a)(2); provided, that such permit may be issued for the following:*

- (1) A parcel covered by an exception specified in 50-9 of this chapter;*
- (2) A parcel covered by a valid site plan approved no more than four years prior to October 8, 1985, under Division 59-D-3, on which construction had begun as of that date, or on the medical center; or*

(3) *A parcel covered by a special exception approved under Division 59-G-1, which was being implemented as of October 8, 1985.*"

#### Waivers Pursuant to Section 50-38

The waiver request has been filed pursuant to Section 50-38 (a)(1) of the Subdivision Regulations, which grants the Planning Board authority to waive any or all requirements of Chapter 50 based on the following findings:

*"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provided relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."*

#### Applicant's Position

The applicant has requested this waiver in response to staff's determination that under Section 50-20 (a), a plat must be recorded in order for the building permit to be issued. The applicant has approached an engineering firm and received a cost estimate for plat preparation (\$29,800) that exceeds the budget for the shed reconstruction alone (\$13,000). In their waiver letter the applicant cites the cost of plat preparation as a practical difficulty in support of the waiver. The applicant also cites the time of plat preparation as a practical difficulty in that the Association must store and transport tools and machinery from an off-site location to and from the cemetery. The applicant is also concerned about dedication of frontage and the certification of burial sites required for that dedication.

#### Staff Position

Staff and the applicant have discussed the merits of the waiver request and release of the building permit in detail. Staff has not historically supported waiver requests based upon financial hardship. Therefore, staff has offered a potential resolution to the issue that involves submission of a record plat as a minor subdivision pursuant to Section 50-35A (a)(7) – Plats for Existing Places of Worship, Private Schools, Country Clubs, Private Institutions, and Similar Uses Located on Unplatted Parcels (Section Attached). Staff believes platting under the minor subdivision process is the appropriate procedure to follow under the Subdivision Regulation. It does provide the applicant a relatively quick means to plat only the parcel on which the shed is located and allow release of the building permit. Staff feels that the requirements of platting under a 50-35A (a)(7) minor subdivision can be minimized given the small-scale nature of the building permit. These requirements are:

- 1) Satisfaction of APF: The operation of a cemetery creates few, if any, peak hour trips and would not require a traffic study.
- 2) Street dedication: The parcel upon which the shed is located has no frontage on a public road, therefore; no dedication will be required.
- 3) Forest conservation: The property would receive an exemption from forest conservation as an existing developed property on which forest is not being cleared.
- 4) SPA requirements: SPA requirements would likely be waived based on limited imperviousness.
- 5) Landscape and lighting plan: Staff believes that a landscape and lighting plan is not required given the minimal nature of improvements.
- 6) Adherence to any previous special exception approvals: There are no special exception approvals for the property as it pre-dates the present day Zoning Ordinance.

### **CONCLUSION:**

Staff does not believe the appropriate findings can be made to justify the waiver request. Staff acknowledges the financial impact of platting the parcel, however; it has not been Planning Board practice to base a determination of "practical difficulty" on financial hardship. Further, staff does not believe that transporting tools or machinery constitutes a practical difficulty since the Association is currently operating in this manner. Staff believes that the minor subdivision process provides a streamlined process for recording a plat and will allow release of the pending building permit in a timely manner. The platting process can be accomplished, once a complete application is received, within 60 days. Based on these factors, staff recommends denial of the application for waiver.

Attachments

Waiver Letter  
Section 50-35A (a)(7)

*Staff has received no correspondence on this item*