



MCPB No. 10-54
Subdivision Plat No. 220100550
The Hunt Club (Lee Property)
Date of Hearing: May 6, 2010

MAY 25 2010

RESOLUTION

WHEREAS, on January 5, 2010, Soo Won and Young Lee ("Applicant"), filed an application for approval of a subdivision record plat to create a 2.33 acre lot through minor subdivision for an unplatted parcel, created by deed on December 29, 1978, located on the south side of Glen Road, approximately 800 feet west of its intersection with Three Sisters Road ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and


WHEREAS, the provisions for approval of minor subdivisions are contained in Chapter 50 of the Montgomery County Code, the Subdivision Regulations ("Subdivision Regulations") and the Montgomery County Planning Board ("Planning Board" or "Board") has the authority to administer this chapter; and

WHEREAS, pursuant to Section 50-35A(a)(6) of the Subdivision Regulations only parcels created by deed prior to June 1, 1958, may be platted as a lot through minor subdivision, thereby nullifying the requirements of 50-34 for preliminary plan review; and

WHEREAS, the Planning Board has the authority to grant a waiver of this requirement pursuant to Section 50-38(a)(1) of the Subdivision Regulations; and

WHEREAS, the Applicant's Subdivision Regulations waiver request was submitted for concurrent review with the Subdivision Plat application No. 220100550, The Hunt Club (also known as Lee Property) ("Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 23, 2010, setting forth its analysis, and recommendation for approval

Approved as to
 Legal Sufficiency: 

of the Application, including the request for a Subdivision Regulations waiver (“Staff Report”); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on May 6, 2010, the Planning Board held a public hearing on the Application (the “Hearing”); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on May 6, 2010, the Planning Board approved the Application on motion of Commissioner Dreyfuss; seconded by Commissioner Hanson; with a vote of 3-0, Commissioners Dreyfuss, Hanson, and Presley voting in favor; with Commissioners Wells-Harley and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Subdivision Plat No. 220100550, including a request to waive the requirement of Section 50-35A(a)(6) of the Montgomery County Subdivision Regulations that a parcel be created by deed prior to June 1, 1958, in order to permit recordation of a lot for an unplatted parcel, the lot containing 2.33 acres of land located on south side of Glen Road, approximately 800 feet west of Three Sisters Road (“Property” or “Subject Property”), in the Potomac Subregion Master Plan area (“Master Plan”); and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Subdivision Record Plat, included in the Staff Report as Attachment E, complies with requirements for minor subdivision approvals allowed in Section 50-35A of the Subdivision Regulations, provided that the Board grants a waiver as requested by the applicant pursuant to Section 50-38(a)(1) of the aforementioned regulations.*
2. *The Board finds that with respect to the Applicant's waiver request:*
 - a. *Practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved.*

Unusual circumstances that warrant a waiver exist in this case in that the property's unclear subdivision status, notably an April 9, 1979 Exception to Subdivision Regulations memorandum issued by the

Development Review Division of the Montgomery County Planning Department has contributed to excessive delay and confusion among varying County agencies involved in the review of a building permit. On the one hand, the form memorandum contains a handwritten modification, "Prop. appears as not included on prel. plan 1-78051, addition to existing residence OK as exception to Sub. Regs." This note calls into question whether this property was truly excepted from the subdivision regulations. On the other hand, the standard form language included on the same memorandum explicitly states, "Since this parcel qualifies as an exception to the Subdivision Regulations, no record plat will be required for the release of a building permit by this office." This letter, in conjunction with the lack of initial direction from county agencies regarding the need to submit a preliminary plan of subdivision, led the Applicant to believe that a preliminary plan and plat was not required for their property.

Upon further inquiry by a prior consultant for the Applicant, Staff determined that the Property does not qualify as an Exception to platting under the current regulations and informed the Applicant that a preliminary plan would need to be approved and a plat recorded prior to the issuance of building permit. Already having spent considerable time and effort in pursuing a building permit under the assumption that a preliminary plan would not be necessary, imposition of further delays on the Applicant that would be involved with processing a preliminary plan are unwarranted.

- b. The Waiver is the minimum necessary to provide relief from the requirements, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest.*

The waiver is minimum necessary to provide relief from the requirements because no lesser action can be taken which would legally permit the recordation of a plat for the property through the minor subdivision process while acknowledging the applicant's request.

The Waiver is not inconsistent with the purposes and objectives for the General Plan because the Potomac Subregion Master Plan, which was adopted in conformance with the General Plan, recommends that the property be developed for residential uses, with RE-2 zoning. The proposed lot conforms with the recommendations of the Master Plan in that it proposes a single-family residential home consistent with adjoining residential development along Glen Road and in accordance with the RE-2 zoning standards. The proposed lot will not alter the existing pattern of development or land use, consistent with the Master Plan recommendation to maintain the existing land use.

The Waiver is not adverse to the public interest because although the property was not created by deed prior to June 1, 1958, the failure of which would typically require the approval of a preliminary plan, the end result is the same, a recorded lot. The property is already developed with a one-family residence and resulting lot created by this process only proposes a replacement of the existing dwelling with a new one-family residence. Thus, there would be no additional public benefit to mandating full compliance with the regulations. The forthcoming recordation of the lot will eliminate any question and confusion as to legal subdivision status of the property, and will render the April 9, 1979 memorandum irrelevant.

BE IT FURTHER RESOLVED, that the date of this Resolution is MAY 25 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion, and any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, May 20, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board