



**MCPB No. 10-140**  
**Subdivision Regulations Waiver No. SRW 201001**  
**Kensington Heights**  
**Date of Hearing: September 23, 2010**

**NOV 16 2010**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, on February 12, 2010, Christopher and Mary Ann Carter (“Applicant” or “Applicants”), filed an application for approval of a subdivision regulations waiver request to allow a lot line adjustment of approximately 4,875 square feet to proceed through minor subdivision between two lots, situated back to back, located on the south side of University Boulevard West, 300 feet west of Hobson Street (“Property” or “Subject Property”), in the Kensington/Wheaton 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)(1)a. of the Subdivision Regulations the total area of land that is permitted to be adjusted through the minor subdivision process must not exceed five percent (5%) of the combined area of the lots involved; and

WHEREAS, the Applicant’s proposed lot line adjustment of 4,875 square feet amounts to eighteen percent (18%) of the combined lot area (26,775 square feet) and therefore does meet the requirements of Section 50-35A(a)(1)a.; and

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

WHEREAS, Applicant’s Subdivision Regulations waiver request application was designated Subdivision Regulations Waiver No. SRW 201001, Kensington Heights (“Waiver” or “Application”); and

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Silver Spring, Maryland 20910 Chairman’s Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, August 30, 2010, setting forth its analysis, and recommendation for approval of the Application subject to certain conditions (Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on September 23, 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 September 23, 2010, the Planning Board approved the Application on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Dreyfuss, Wells-Harley, Carrier, Presley, and Alfandre voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Subdivision Waiver Request No. SRW 201010 to waive Section 50-35A(a)(1)a of the Montgomery County Subdivision Regulations in order to permit a lot line adjustment of eighteen percent (18%) of the combined lot area, approximately 4,875 square feet, between two lots located on the south side of University Boulevard West, 300 feet west of Hobson Street ("Property" or "Subject Property"), in the Kensington/Wheaton Master Plan area ("Master Plan"), subject to the following conditions:

1. Applicant must submit a Record Plat application within 90 days of the date of mailing of the Board's Resolution for this decision.
2. All necessary easements for ingress/egress and public utilities must be depicted on the plat.

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, with the conditions of approval, that:

1. *Practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved.*

The Board finds that there are unusual circumstances associated with this application in that the existing garage/workshop on the larger of the two lots covered by the application is utilized exclusively by the residents of the dwelling on the other lot, the Applicants. Practical difficulties also exist in that the existing

garage/workshop is sited upon the subject lots in a way that prevents it from being combined on a new lot with the dwelling it supports through the minor subdivision process. The maximum permitted lot line adjustment of 5% would create a situation whereby the Applicants would not be able to retain the existing garage, or would have to attempt to relocate the structure within the boundary of the resulting lot; neither of which satisfies the Applicant's objectives. The alternative to creating the desired lots through the minor subdivision process is to require the submission of a preliminary plan, however, the Board finds that such a requirement constitutes another practical difficulty in that the more complex and time-consuming preliminary plan review would not be an efficient use of staff or Applicant resources, particularly since the proposal will not change any of the existing site conditions or have a perceptible impact on any of the adjoining properties. Therefore, the Board grants a waiver of Section 50-35A(a)(1)a of the Subdivision Regulations pursuant to Section 50-38(1) to permit an adjustment of the shared rear line between the lots on the Subject Property that will involve 18% of the combined lot area.

2. *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 Planning Board finds that a waiver to permit a change involving 18% of the combined lot area is the minimum necessary to provide relief from the requirements because it results in a lot line that will accommodate the minimum setback requirements of the garage/workshop within the proposed lot on which the Applicants reside.

The Board also finds that the waiver is not inconsistent with the purposes and objectives of the General Plan because the Kensington/Wheaton Master Plan, which was adopted in conformance with the General Plan, recommends that the property be developed for residential uses, with R-60 zoning. The proposed lots that will be created through the minor subdivision procedure substantially conform with the recommendations adopted in the Master Plan in that they maintain existing one-family residences on proportionally sized lots (13,640 and 13,135 square feet, respectively) that are consistent with surrounding development patterns and the current R-60 zoning designation. The proposed lot line adjustment will not alter the existing pattern of development or land use, consistent with the Master Plan recommendation to maintain the existing land use.

Finally, the Board finds that the waiver is not adverse to the public interest because although a preliminary plan of subdivision could be submitted to

effectuate the Applicant's desired lot line adjustment, the plat resulting from following this process would be no different than the one being requested through minor subdivision. Nothing would be gained by requiring review of a preliminary plan because the site is already developed with a two one-family residences and the garage/workshop, all of which are to be retained under this proposal. There will be no land disturbance activities, further development upon, nor modification to the structures on the existing site under this proposal. There will be no adequate public facilities implications with respect to traffic, schools, fire and rescue services access or forest conservation whether or not a preliminary plan is processed. As such, the level of review that would be afforded by approval of a preliminary plan would yield no additional public benefit in this instance.

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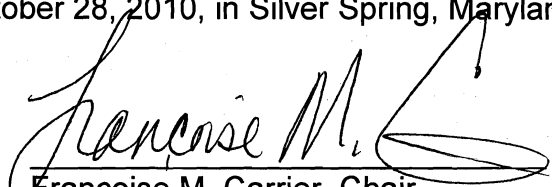
BE IT FURTHER RESOLVED, that the date of this Resolution is \_\_\_\_\_ (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Presley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, October 28, 2010, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board