



DEC 20 2011

**MCPB No. 11-119**  
**Subdivision Plat No. 220111080**  
**Edgemoor (5300 Moorland Lane)**  
**Date of Hearing: November 10, 2011**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, on April 11, 2011, Lawrence and Linda Mann ("Applicant"), filed an application for approval of a subdivision record plat to create a 16,553 square foot lot through minor subdivision from two unplatted parts of lots, created by deed on June 17, 1937, and September 27, 1965, located on the south side of Moorland Lane, west of its intersection with Fairfax Road ("Property" or "Subject Property"), in the Bethesda Chevy Chase Master Plan ("Master Plan") area; 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, Section 50-35A(a) of the Subdivision Regulations provides specific circumstances referred to as minor subdivisions in which the submission of a preliminary subdivision plan is not required, thereby nullifying the requirements of 50-34 for preliminary plan review; and

WHEREAS, no provisions of Section 50-35A(a) apply to the Subject Property, including Section 50-35A(a)(3) in which parts of lots created by deed prior to June 1, 1958, may be platted as a minor subdivision because the Subject Property includes a part of a lot created **after** June 1, 1958; and

WHEREAS, the Planning Board has the authority to grant a waiver from the requirements of the Subdivision Regulations pursuant to Section 50-38(a)(1) upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance, and that the waiver i) is the minimum necessary to provide relief, ii) is not

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

**MNCPPC Legal Department**  
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inconsistent with the purposes and objectives of the Master Plan, and iii) is not adverse to the public interest; and

WHEREAS, the Applicant's Subdivision Regulations waiver request ("Waiver") was submitted for concurrent review with the Subdivision Plat application No. 220111080, Edgemoor (also known as 5300 Moorland Lane) ("Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 28, 2011, setting forth its analysis, and recommendation for denial of the Waiver, and as a result a denial of the Application ("Staff Report"); and

WHEREAS, on November 10, 2011, the Planning Board held a public hearing on the Waiver and the Application (the "Hearing"); and

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

WHEREAS, on November 10, 2011, after discussion of the testimony and evidence, a motion for approval was made by Commissioner Anderson; seconded by Commissioner Dreyfuss, but the motion failed with a vote of 2-2, Commissioners Anderson and Dreyfuss voting in favor; Commissioners Carrier and Wells-Harley voting against; with Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board denied the Waiver of the Subdivision Regulations; and

BE IT FURTHER RESOLVED, that although the Applicant presented its justification for the Board to find practical difficulties or unusual circumstances to support the Waiver, including the following, the Board did not find that practical difficulties or unusual circumstances existed to grant the Waiver:

1. Applicant is a single family as opposed to a developer;
2. The house is proposed to be built on the same footprint;
3. The existing house is already non-conforming and the Application is simply trying to correct a non-conforming problem;
4. The Applicant could plat a part of the Property through minor subdivision, but could not then rebuild on the same footprint;
5. Applicant did not create the problem they were attempting to resolve;
6. Except for a resubdivision analysis required under Section 50-29(b)(2), no other analysis under the Subdivision Regulation would be required;
7. Legislation has been introduced (although not yet acted upon) that would expand Section 50-35A to cover their situation and allow them to proceed

- through minor subdivision; and  
8. There is no opposition from the surrounding community; and

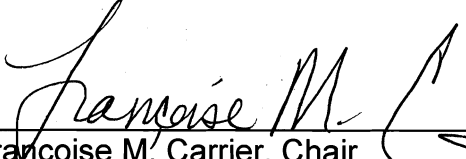
DEC 20 2011 BE IT FURTHER RESOLVED, that the date of this Resolution is (which is the date that this Resolution is mailed to all parties of record); and

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).

\* \* \* \* \*

**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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss present and voting in favor of the motion, and Commissioner Presley temporarily absent, at its regular meeting held on Thursday, December 15, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board