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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-128
Preliminary Plan No. 120110250
509 & 513 Harding Drive
Date of Hearing: December 1, 2011

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on June 16, 2011, Jose and Isabel Teixeira and George Barnes ("Applicants"), filed an application for approval of a preliminary plan for resubdivision of one recorded lot and one unrecorded parcel for a lot line adjustment between two properties, with the two existing single-family detached dwelling units to remain, zoned R-60. The property is located on the north side of Harding Drive at the intersection with Kinross Avenue ("Property" or "Subject Property") in the Four Corners Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110250, 509 & 513 Harding Drive ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated November 18, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report" or "Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, on December 1, 2011, 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 December 1, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by

Approved as to
Legal Sufficiency:

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Commissioner Anderson; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120110250 for resubdivision of one recorded lot and one unrecorded parcel for a lot line adjustment between two properties with the two existing single-family detached dwelling units to remain, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units.
2. The Applicant must construct a five-foot wide sidewalk along the property frontage on Harding Drive, unless construction is waived by the Montgomery County Department of Permitting Services (MCDPS).
3. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
4. The record plat must show necessary easements.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report and presented at the Hearing, 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. *The Preliminary Plan substantially conforms to the Master Plan.*

The Four Corners Master Plan supports the retention and reconfirmation of the R-60 Zone and residential land-use for the Subject Property. The Application has been reviewed by jurisdictional agencies, and it has been determined that the use will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Master Plan. The Preliminary Plan creates two lots that are consistent with the zoning and residential use identified by the Master Plan. Therefore, the Planning Board finds that the Preliminary Plan is in substantial conformance with the Four Corners Master Plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

The lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area Transportation Review.

The lots do not generate three or more new peak-hour trips. Therefore, Policy Area Mobility Review (PAMR) mitigation is not required.

Harding Drive is a 50-foot wide tertiary residential street with no bikeway. This road is not listed in the 1996 Approved and Adopted *Four Corners Master Plan*. Additional dedication of roadway right-of-way is not required.

Sidewalks are required for lots in the R-60 Zone, but no sidewalks currently exist on Harding Drive along the frontage of the Subject Property or the entire street. Chapter 49 of the Montgomery County Code requires the installation of a sidewalk along the property frontage, but the Applicant may request that the Montgomery County Department of Permitting Services waive construction in exchange for a fee-in-lieu of providing the sidewalks.

Given the lack of sidewalks in the neighborhood, the Planning Board does not oppose such a waiver. The existing conditions of the neighborhood do not provide a desirable level of pedestrian safety along Harding Drive. However, requiring the Applicant to provide a sidewalk along the property frontage would create the only sidewalk in the neighborhood, which fails to resolve the overall neighborhood pedestrian safety issue. Therefore, the Planning Board supports a fee-in-lieu of the sidewalk construction and believes that the safety issue needs to be dealt with comprehensively through a County CIP project.

Other Public Facilities and Services

Other public facilities and services are available and are adequate to serve the proposed dwelling units. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. Electrical and telecommunications services are also available to serve the Property. While the Subject Property is within the Northwood school cluster, which is subject to a School Facilities Payment at the Elementary and High School levels, no new residential units are proposed. Therefore, no school facilities payment related to the Subdivision Staging Policy is required.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections

and, with the subdivision waiver discussed below, meets the resubdivision criteria. Staff has reviewed the proposed lot size, width, shape and orientation and finds them to be appropriate for the location of the subdivision.

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

The Property is subject to Chapter 22A Montgomery County Forest Conservation Law. However, per Forest Conservation Plan (FCP) Exemption request 42011020E approved August 31, 2010, the Applicant is exempt from the requirement of submitting an FCP. Under Chapter 22A-5(s), an exemption exists for an activity occurring on a tract of land less than 1.5 acres with no existing forest, no existing specimen or champion tree, and where the afforestation requirement would not exceed 10,000 square feet. Therefore, the Board finds this Preliminary Plan complies with the Montgomery County Environmental Guidelines and satisfies the requirements of the Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the Property. This finding is based on the determination by DPS that the Stormwater Management Concept Plan approval meets DPS' standards.*

The Montgomery County Department of Permitting Services Stormwater Management Section had no comment on the Preliminary Plan, as no new development was proposed.

6. *One lot is of the same character as to street frontage, alignment, shape, width, and suitability for residential use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report) ("Neighborhood"), as analyzed below. The other lot is granted a Subdivision Regulation Waiver providing relief from the frontage, size, width, and area requirements of Section 50-29(b)(2).*

Frontage: In the designated Neighborhood, lot frontage ranges from 34.5 feet to 94.5 feet. Twelve of the existing lots in the Neighborhood have 60 feet or less of frontage, while eight of the existing lots have 65 feet or more of frontage. Lot C3, with 80 feet of frontage on Harding Drive, falls within the upper-midrange of the Neighborhood. **Therefore, Lot C3 is of the same character as existing lots in the Neighborhood with respect to lot frontage.**

Lot 8 has 152 feet of frontage. This is the largest in the Neighborhood and does not fall within the range of all other lots. Previously, Lot C1 and Parcel 917 had 119.5 feet and 113 feet of frontage respectively. In their prior configuration, these two properties had the largest amount of frontage in the Neighborhood. Although the frontage for Lot 8 is

larger, the frontage for Lot C3 is smaller and much more in character with the existing lots in the Neighborhood. The two lots on the Subject Property both had single-family dwellings. These dwellings will be unaffected. The existing conditions, as perceived from Harding Drive, will not change. Also, by allowing the frontage of Lot 8 to increase, the approved lot is more in character with respect to Alignment, Size, and Shape as discussed below. **See Section 7 below, for a discussion of the Subdivision Regulations Waiver.**

Alignment: The road network in the Neighborhood is predominantly a grid pattern and the majority of the lots in the Neighborhood are perpendicular in relationship to Harding Drive. Ten lots are perpendicular, seven lots are corner, and three lots are angled to Harding Drive. Lot C1 and Parcel 917 were angled in alignment with Harding Drive. With this resubdivision, the lots become perpendicular in alignment, which is more in character with the majority of lots in the Neighborhood. **The approved lots are of the same character as existing lots with respect to the alignment criterion.**

Size: Lot sizes in the Neighborhood range from 5,000 square feet to 9,613 square feet. Fourteen of the existing lots in the Neighborhood are 6,815 square feet or smaller; three of the existing lots in the Neighborhood range in size between 7,303 square feet and 7,507 square feet; and three of the existing lots in the Neighborhood are 9,131 square feet or larger. Lot C3 is 7,072 square feet. **Therefore, the size of approved Lot C3 is in character with the existing lots in the neighborhood.**

Proposed Lot 8 is 14,767 square feet in size. Parcel P917 was 16,762 square feet in size. Although Lot 8 is now the largest in the Neighborhood, it will be platted slightly smaller than its current configuration as Parcel P917. Parcel P917 was unrecorded and could plat in its prior configuration without being subject to the resubdivision criteria. The lot line adjustment actually creates a smaller lot than would be recorded if Parcel 917 were to be platted independent of Lot C1, and thus it is more in character with the lots in the Neighborhood. Again, the lots are currently developed with single-family dwellings, which will remain, and no new construction is proposed at this time. **See Section 7 below, for a discussion of the Subdivision Regulations Waiver.**

Shape: Thirteen existing lots in the Neighborhood are rectangular, six are trapezoidal, and one is irregular. Lot C1 was triangular and Parcel 917 was trapezoidal in their configuration. The approved lots are rectangular, which is more in character with the existing lots in the Neighborhood. **The shape of the approved lots is in character with shapes of the existing lots in the Neighborhood.**

Width: Lot widths in the Neighborhood range from 36 feet to 80 feet. The lot widths for the most part are evenly dispersed within the range. Lot C3 will have a lot width of 65 feet. **Therefore, Lot C3 will be in character with existing lots in the Neighborhood with respect to width.**

Lot 8 has the largest lot width at 135 feet and does not fall within the range of all other lots in the Neighborhood. Parcel P917, in its configuration, had a lot width of 126 square feet, which was the largest lot width in the Neighborhood. Although the lot width has slightly increased by nine feet, the resulting lot is more in character with the Neighborhood with respect to Size and Shape. The approved properties are developed with single-family dwellings, which will remain, and no new construction is proposed at this time. **See Section 7 below, for a discussion of the Subdivision Regulations Waiver.**

Area: The buildable area of lots in the Neighborhood ranges from 1,221 square feet to 4,586 square feet. Lot C3 has a buildable area of 2,869 square feet. **Lot C3 falls within the range and is of the same character with existing lots in the Neighborhood.**

Parcel P917, in its configuration, had a buildable area of 7,882 square feet, which was the largest buildable area in the Neighborhood. Lot 8 has the largest buildable area at 6,892 square feet which is not within the range of all other lots. However, the area of Lot 8 is significantly smaller than the area of P917. **See Section 7 below, for a discussion of the Subdivision Regulations Waiver.**

Suitability for Residential Use: The existing and the approved lots are zoned residential and the land is developed for residential use. The lots are therefore in character with the rest of the neighborhood.

7. Subdivision Regulations Waiver, 50-38

The Planning Board, pursuant to Section 50-38(a)(1), grants a waiver to the requirements of Section 50-29(b)(2) for frontage, size, width, and area for Lot 8. Practical difficulties exist that prevent full compliance with the requirements and 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.

As pointed out above, Lot 8 has the largest dimensional characteristics with respect to frontage, size, width, and buildable area (area) for all lots within the Neighborhood. The waiver, pertaining only to Lot 8, resolves a practical difficulty caused by the location of a single-family detached dwelling built near the center of unplatted Parcel 917. The Applicants wish to retain their respective houses. Three equally divided lots on the Subject Property would meet the resubdivision criteria. However, doing so would require demolishing or relocating the house on Parcel 917. The Subdivision Regulations Waiver request was not to increase the number of lots, but merely to plat around existing houses on two developed properties. Dividing the Subject Property

more truly in half would create two lots that fall outside of the range with respect to the frontage, size, width, and buildable area criteria.

Given the size and location of the house and its associated structures, there are no better options that would result in a more logical lot around the house than the current configuration of Lot 8 as shown on the Preliminary Plan. The Preliminary Plan drawing represents the most reasonable configuration of Lot 8 that accommodates the existing improvements and resubdivides Lot C1 into a lot that is more in character with the surrounding Neighborhood. The requested waiver of the frontage, size, width, and area criteria of the resubdivision analysis for Lot 8 is the minimum necessary to provide relief from this requirement. The waiver is not adverse to the objectives of the General Plan and not adverse to the public interest. The Preliminary Plan was distributed to the members of the Development Review Committee and there were no objections to the frontage, size, width, and area of proposed Lot 8.

Therefore, the Planning Board, pursuant to Section 50-38(a)(1), grants a waiver to the requirements of Section 50-29(b)(2) for frontage, size, width, and area for Lot 8.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is MAR 7 2021 (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 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).

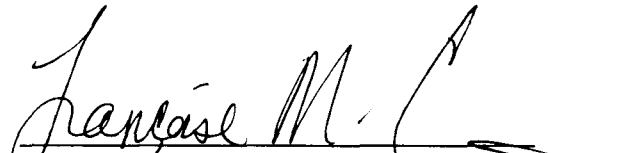
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CERTIFICATION

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners

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Anderson and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, February 23, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board