



MCPB No. 12-133
Subdivision Regulation Waiver No. SRW 2011001
Big Woods Road
Date of Hearing: October 11, 2012

DEC 15 2012

RESOLUTION

WHEREAS, the Montgomery County Planning Board (“Planning Board” or “Board”) administers Montgomery County Code Chapter 50 (“Subdivision Regulations”); and

WHEREAS, under Section 50-34,¹ a preliminary subdivision plan must be filed with the Board for tentative or conditional approval prior to submission of a record plat, unless the proposed subdivision falls within one or more of the provisions for minor subdivision as set forth in Section 50-35A; and

WHEREAS, under Section 50-38(a)(1), the Planning Board may grant a waiver from the requirements of the Subdivision Regulations 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 provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest; and

WHEREAS, Andrew Grove (“Applicant”), the owner of an unplatted 2.5 acre parcel of land located at 20915 Big Woods Road (“Property” or “Subject Property”), in the Preservation of Agricultural and Rural Open Space master plan (“Master Plan”) area, claiming that he has been unduly delayed in obtaining a building permit due to the issuance of an erroneous letter by a governmental agency, wants to submit a record plat without the required submission of a preliminary plan of subdivision to avoid additional delay; and

WHEREAS, such request does not fall within any of the provisions for minor subdivision as set forth in Section 50-35A; and

¹ All Section references are to the Subdivision Regulations

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Spring, Maryland 20910

M-NCPPC Legal Department
www.MCParkandPlanning.org

Chairman's Office: 301.495.4605 Fax: 301.495.1320

E-Mail: mcp-chairman@mncppc.org

WHEREAS, on March 31, 2011, Applicant filed an application for approval of a Subdivision Regulation waiver request to allow the Property to go through the record plat process without the submission of a preliminary plan of subdivision; and

WHEREAS, Applicant's Subdivision Regulation waiver request application was designated Subdivision Regulation Waiver No. SRW 2011001, Big Woods Road ("Waiver"); and

WHEREAS, on September 28, 2012, Planning Board staff ("Staff") issued a memorandum to the Planning Board setting forth its analysis, and recommendation for approval of the Waiver subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Waiver by Staff and other appropriate governmental agencies, on October 11, 2012, the Planning Board held a public hearing on the Waiver, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Waiver; and

WHEREAS, on October 11, 2012 the Planning Board voted to approve the Waiver on motion of Commissioner Presley, seconded by Commissioner Anderson, with a vote of 4-0; Commissioners, Anderson, Carrier, Presley, and Wells-Harley voting in favor, with Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board APPROVES Subdivision Waiver Request No. SRW 2011001 to waive Section 50-34(a) of the Montgomery County Subdivision Regulations in order to permit a record plat to be submitted for the Property without the review and approval of a preliminary plan of subdivision, subject to the following conditions:

1. Road dedication and conservation easements must be shown on the plat.
2. All necessary easements for ingress/egress and public utilities must be shown on the plat.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the 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.*

Based on a letter issued by a Staff determination that the Property was exempt from the requirement to be platted prior to issuance of a building permit, Applicant proceeded to obtain building permits without platting the Property. The letter was found to be in error because the Property did not meet the exemption requirements, having changed in size and shape since June 1, 1958. The Property must be platted before a building permit is issued pursuant to Section 50-20 of the Subdivision Regulations. The Applicant is now delayed from obtaining a building permit. The delay to the Applicant is a practical difficulty that is a direct result of the erroneous letter upon which the Applicant relied. Furthermore, the only change in size and shape to the Property since June 1, 1958, is the conveyance of a 200 square foot portion of the Property to a neighbor for a well shaft.

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

The Waiver is the minimum necessary to provide relief from the requirements of the Subdivision Regulations because no lesser action can be taken to accommodate the recordation of a plat without submission and approval of a preliminary plan.

The Waiver is not inconsistent with the purposes and objectives of the General Plan because the Master Plan recommends the Property for residential uses. The eventual platting of the Property assures that the lot will conform to all zoning requirements, septic disposal regulations and forest conservation, and the house will be constructed in accordance with all building and zoning codes.

The Waiver is not adverse to the public interest because the recordation of a plat provides the same level of assurances for regulatory conformity as would a preliminary plan review. With the exception of stormwater management, nothing would be gained by requiring review of a preliminary plan because the site has already met all other requirements normally required under a preliminary plan review. Stormwater management will be reviewed by the Montgomery County Department of Permitting Services as part of the building permit application for any new structure on the Property. There will be no adequate public facility implications with respect to traffic, schools, fire and rescue services access or forest conservation whether or not a preliminary plan is processed.

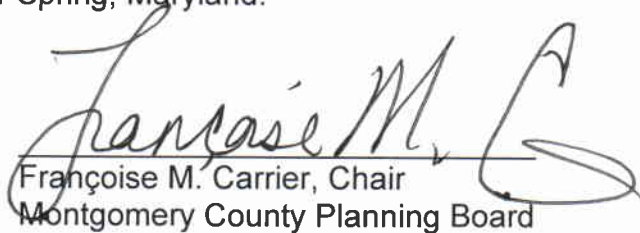
BE IT FURTHER RESOLVED, that the date of this Resolution is DEC 5 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, November 29, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board