



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

SEP 9 2014

**MCPB No. 14-78**  
**Subdivision Regulation Waiver No. SRW 201402**  
**Montgomery Village – South Valley Park**  
**Date of Hearing: September 4, 2014**

**RESOLUTION**

WHEREAS, pursuant to Section 50-20(a) of the Subdivision Regulations (Chapter 50 of the Montgomery County Code), a building permit must not be approved for a dwelling or other structure, unless the dwelling or structure would be located on a lot or parcel shown on a plat; and

WHEREAS, on January 14, 2014, Montgomery Village Foundation Inc. ("Applicant"), together with its application for site plan approval, filed an application for approval of a subdivision regulation waiver from the requirement to submit a preliminary plan of subdivision and associated record plat prior to issuance of a building permit to construct a joint restroom and concession stand to replace temporary facilities on a 30.3 acre property used as a community recreational park, zoned TS, and located between Watkins Mill Road and Montgomery Village Avenue, in Montgomery Village ("Subject Property"), in the Gaithersburg Vicinity Master Plan ("Master Plan") area; and

WHEREAS, the Planning Board has the authority to grant a waiver of 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 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, Applicant's Subdivision Regulation waiver request application was designated Subdivision Regulations Waiver No. SRW 201402, Montgomery Village – South Valley Park ("Waiver" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the

Approved as to  
 Legal Sufficiency:

*Cheryl M. ... 9/2/14*  
 M-NCPPC Legal Department



Planning Board, dated August 25, 2014 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 4, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Subdivision Waiver Request No. SRW 201402 to allow a building permit on an unrecorded parcel without the review and approval of a preliminary plan of subdivision and record plat, subject to the following conditions:

1. Subdivision Regulation Waiver 201402 is limited to the addition of a restroom approximately 230 square feet in size, and a joint restroom and concession stand approximately 900 square feet in size.
2. The Applicant must obtain site plan approval of the proposed restroom and joint restroom and concession stand facilities.

BE IT FURTHER RESOLVED, that, having considered 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, 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.*

The submission of a preliminary plan of subdivision is unusual in this case because the boundary of the parcel is already sufficiently established by the surrounding record plats, and the construction of the proposed structures meets all other requirements of the subdivision regulations. The fact that the subject parcel was not platted along with the surrounding subdivision plans is an unusual circumstance. Typically open space parcels are recorded along with the lots they support, but for some reason, that did not occur here. If it had, there would be no subdivision issues related to the proposed structures since they are typical of the type of facilities that would be found in a community open space that is operated as a park. For the Planning Board to require that the parcel be platted at this time would subject the Applicant to an unnecessary effort to survey and plat property lines that have been sufficiently established by the surrounding plats, and constitutes a practical difficulty given the property's size.



Furthermore, several permanent facilities and at least one structure associated with the amphitheater have existed onsite for decades. These facilities provide recreational opportunities for the residents of Montgomery Village. The proposed structures would be replacing the temporary restrooms currently in-use onsite. None of the other requirements generally associated with preliminary plan approval would be necessary. The rights-of-way for Watkins Mill Road and Montgomery Village Avenue have been established via plat, and no additional dedication is required for either road. The proposed restroom facilities and concession stand that support the athletic events do not increase the number of vehicular trips generated by the existing uses, nor require any additional improvements other than the proposed construction. There is sufficient access to the proposed structures via the existing parking lots and paved path network. The Montgomery County Department of Permitting Services (“DPS”) agreed to forego the requirement to submit a Stormwater Management Concept because the proposed improvements are limited in scope (less than 2,500 square feet of disturbance, and amounting to less than 1% of the gross tract area of the Property), and due to the topographical location of the proposed improvements, stormwater management will be handled via disconnection credits.

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 Waiver is the minimum necessary to provide relief from the requirements because all other requirements of the Subdivision Regulations are being met, and no lesser action can be taken to relieve the Applicant from the requirement to process a preliminary plan and record plat to accommodate the issuance of a building permit.

The Waiver is not inconsistent with the purposes and objectives of the General Plan because the Master Plan, which was adopted in conformance with the General Plan, recommends that the Property be developed as recreation and open space. The proposed restrooms, replacing temporary facilities, will enhance the existing recreation facilities and community use of this open space improved as a community park consistent with the Master Plan.

The Waiver is not adverse to the public interest because the proposed structures replace temporary facilities in the same locations that support the designated open space use of the parcel. Together with this Application, the Applicant has filed for site plan review. Stormwater management will be reviewed by DPS as part of the building permit application for any new structure on the

Subject 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 or record plat is processed. As such, there appears to be no public benefit that would be afforded by approval of a preliminary plan or record plat.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 9 2014 (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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Presley voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, September 4, 2014, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board