



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

MCPB No. 15-140
Subdivision Regulations Waiver No. SRW201501
Gertson Property
Date of Hearing: October 15, 2015

NOV 25 2015

RESOLUTION

WHEREAS, under Montgomery County Code Section 50-34(a), a proposed subdivision must generally be submitted to the Montgomery County Planning Board in the form of a preliminary plan before the submission of a record plat, unless the subdivision can proceed under the minor subdivision procedures described in Section 50-35A, in which case approval of a preliminary plan is not required; and

WHEREAS, under Montgomery County Code Section 50-35A(a)(6), parcels developable for only one single family detached dwelling unit and created by deed before June 1, 1958 may be platted under the minor subdivision procedures; and

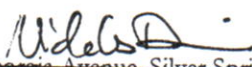
WHEREAS, on May 15, 2015, Jennifer Richberg ("Applicant") filed an application for a waiver of the requirements of the Subdivision Regulations in order to permit her to plat, under the minor subdivision procedures, her 5.86 acre parcel created in 1963, located at 15800 Kruhm Road in Burtonsville ("Subject Property") in the RC Zone and Fairland Master Plan ("Master Plan") area; and

WHEREAS, the Planning Board may grant a waiver of the requirements of the Subdivision Regulations under 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 request for a subdivision regulations waiver was designated Subdivision Regulations Waiver No. SRW201501, Gertson Property ("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 Planning Board dated October 2, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

 11/18/15

WHEREAS, on October 15, 2015, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 15, 2015, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Subdivision Regulations Waiver No. SRW201501 and waives Section 50-34(a) of the Subdivision Regulations to allow the platting of the Subject Property under the minor subdivision procedures without approval of a preliminary plan, subject to the following conditions:¹

1. Applicant must submit a complete Record Plat application within 120 days of the date of mailing of the Board's Resolution for this decision.
2. All necessary easements for ingress/egress and public utilities for the lot without frontage must be shown on the plat.

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 (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.*

The unusual circumstance that justifies the Waiver is the fact that the Applicant's parcel is the result of a consolidation of two pre-1958 parcels in 1963. At that time, a property owner would not have been aware that the consolidation of the parcels would jeopardize the ability to build on the property at some time in the future. Moreover, for some time after the 1963 consolidation, the Subject Property was likely able to get a building permit without the platting requirement. That allowance was changed by action of the County Council in the 1980's.

While the 1963 consolidation did change the size and shape of the two original parcels, it did not materially alter their ability to accommodate a house nor did it

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

create any issues for zoning conformance. No other buildable parcels were created by this consolidation, no additional lots are requested by the Applicant, and the Subject Property remains in excess of the minimum size requirements of the RC zone and meets all other zoning standards.

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.*

Based on the unusual circumstances described above, the Planning Board finds that the Waiver is the minimum necessary to provide relief from the requirements of the Subdivision Regulations. The Subject Property is no longer exempt from platting and must be recorded by plat before a building permit can be issued. The submission and review of a preliminary plan would simply delay the Applicant and provide no useful purpose or benefit the public interest.

Moreover, the Waiver is not inconsistent with the purposes and objectives of the General Plan as amended by the Master Plan. The Master Plan does not specifically mention the Subject Property but does recommend the area retain the RC zoning. The Subject Property, if platted, would retain the RC zone and meet the size and dimensional requirements of the zone.

3. *The Subject Property is adequately served by a private driveway.*

Section 50-29(a)(2) generally requires that all lots abut a public street or road, although it gives the Planning Board the authority to approve no more than two lots on a private driveway if such access is adequate to serve the lots for emergency vehicles and installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.

The Subject Property is currently landlocked and does not have frontage on a public road, but it has a twenty-foot ingress/egress, utility, and maintenance easement to Kruhm Road through the parcel to the east, which is under common ownership. The Board finds that the existing private driveway access meets the requirements of Section 50-29(a)(2) and is adequate to serve the Subject Property, which is proposed to be platted as a buildable lot through the minor subdivision procedures.

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

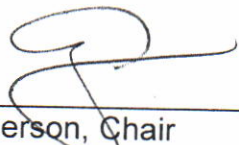
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 25 2015 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 Commissioners Presley and Fani-González voting in favor of the motion, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, November 19, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board