



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

JAN 28 2016

MCPB No. 16-007
 Subdivision Regulations Waiver No. SRW201502
 Neve Property
 Date of Hearing: January 21, 2016

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, 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, on October 12, 2015, Dr. Rachel Neve and Dr. Frederick Boyce ("Applicant") filed an application for a waiver of the requirements of the Subdivision Regulations requiring the submission of a Preliminary Plan under Section 50-34(a) to plat a 0.47-acre parcel created in 1960, located at 3138 Fairland Road in Fairland ("Subject Property") in the R-90 Zone and Fairland Master Plan ("Master Plan") area; and

WHEREAS, Applicant's request for a subdivision regulations waiver was designated Subdivision Regulations Waiver No. SRW201502, Neve 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 January 8, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 21, 2016, 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

Approved as to
 Legal Sufficiency:

M. C. D. 1/14/16
 M-NCPPC Legal Department

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 Regulations Waiver No. SRW201502 and waives Section 50-34(a) of the Subdivision Regulations to allow the platting of the Subject Property without the submittal or 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. The record plat must show a dedication of 40 feet of right-of-way from the centerline of Fairland Road.
3. At the time of building permit, the Applicant shall pay a school facilities payment at the high school level for being located in the Paint Branch High School cluster which is inadequate in terms of capacity.

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.*

For some time after the Subject Property was created in 1960, it was exempt from platting entirely. This allowance was changed in the mid-1980s. However, the size and shape of the Subject Property has been consistent since its creation in 1960, and there is no public benefit to subjecting the Applicant to the requirements of preliminary plan review before allowing a plat to be recorded for the Subject Property. Dedication will be provided at the time a record plat is recorded. Stormwater management and sediment control will be addressed at the time of building permit. Because of the size of the Subject Property, it is exempt from the requirements of Forest Conservation Law. And after dedication, the Subject Property will continue to meet the minimum size requirements of the R-90 zone and will meet all other zoning standards except width at the front building restriction line, which has been addressed by a variance granted by the

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.

Board of Appeals. Under these unusual circumstances, the Planning Board finds that this Waiver is justified.

- 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 R-90 zoning. The Subject Property, if platted, would retain the R-90 zone and meet the size and dimensional requirements (with the granted variance) of the zone.

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 JAN 28 2016 (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 Dreyfuss, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, January 21, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board