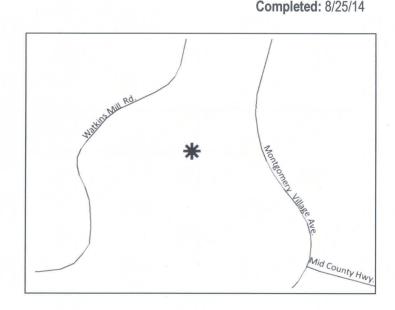
MCPB Item No.: 12 Date: 9/4/14

Montgomery Village - South Valley Park: Subdivision Regulation Waiver SRW - 201402, and Site Plan No. 820140070

P.B	Patrick Butler, Senior Planner, Area 2 Division, Patrick.Butler@montgomeryplanning.org, 301-495-4561
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14K	Glenn Kreger, Chief, Area 2 Division, Glenn.Kreger@montgomeryplanning.org, 301-495-4653

Description

- Request for waiver, per Section 50-38(a)(1) of the Subdivision Regulations, from the requirement to submit a preliminary plan of subdivision and associated record plat;
- Request for Site Plan approval of a joint restroom and concession stand approximately 900 square feet in size, and a restroom approximately 230 square feet in size. These permanent structures will replace temporary facilities at both locations;
- Located between Watkins Mill Road and Montgomery Village Avenue, in Montgomery Village;
- Subject Property is 30.3 acres in the TS Zone, in the 1985 Gaithersburg and Vicinity Master Plan area;
- Applicant: Montgomery Village Foundation Inc.
- Application Accepted: January 14, 2014.



Summary

- Staff recommends approval of the Subdivision Regulation Waiver (SRW) and Site Plan with conditions.
- This SRW will allow the Applicant to pursue Site Plan approval and a building permit without having to plat a remnant parcel that is a part of South Valley Park in Montgomery Village. The unplatted parcel already has several facilities and structures on it, including youth ball fields, children's play equipment, and a lawn theater. The Site Plan will allow for construction of two small permanent structures: a joint restroom and small concession stand near the youth ball fields, and a restroom near the lawn theater.
- Staff issued a Forest Conservation Exemption on September 3, 2013.
- Staff has not received any correspondence from residents or adjacent property owners.

SUBDIVISION REGULATION WAIVER RECOMMENDATION AND CONDITIONS OF APPROVAL

Staff recommends approval of SRW201402 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.

SITE PLAN RECOMMENDATION AND CONDITIONS

Staff recommends approval of two permanent structures: one restroom approximately 230 square feet in size, and one joint restroom and concession stand approximately 900 square feet in size, on approximately 30.3 gross acres in the TS Zone. All site development elements as shown on the plans submitted on July 7, 2014 are required except as modified by the following conditions:

1. Development Plan Conformance

The development must comply with the binding elements of DPA 02-2 (formerly G-806) and all previous applicable amendments.

2. Preliminary Plan Conformance with Subdivision Regulation Waiver

The development must comply with the conditions of approval for SRW201402.

3. Maintenance

Maintenance of all on-site facilities and open space is the responsibility of the Applicant and subsequent owner(s).

4. Architecture

The final exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the architectural drawings and plans dated January 14, 2014, unless modified as approved by Staff at Certified Site Plan.

5. Certified Site Plan

Prior to approval of the Certified Site Plan, the Applicant must make the following revisions and/or provide information subject to Staff review and approval:

- Include the Forest Conservation Exemption approval, stormwater management concept approval, and Planning Board Resolution approving this Site Plan in the Certified Site Plan set.
- b. Remove unnecessary sheets as identified by Staff.
- Make corrections and clarifications to details, calculations, recreation facilities, labeling, data tables, and schedules as needed and directed by Staff.
- d. Add height dimensions to the architectural drawings.
- e. Ensure consistency of all details and layout between architecture, and Site Plans.

SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

The South Valley Park Property (Property) is approximately 30.3 acres, zoned TS, and is located between Watkins Mill Road and Montgomery Village Avenue (outlined in red in the aerial map below). The Property is comprised of two platted parcels and one unplatted parcel (P895). Parcel P895 is approximately 28.45 acres in size. The Property is surrounded by town homes, multi-family units, and an elementary school. Montgomery Village has been developing and evolving since the 1960s. The proposed structures will be located on Parcel P895, which was not platted when the park was developed in the early 1970s. However, the park has athletic fields, a lawn theatre, a parking lot, a network of walking paths, and a small playground that are well-used by the community. The Property is owned and maintained by the Montgomery Village Foundation (MVF). The Property is located within the 1985 Gaithersburg and Vicinity Master Plan area, is irregularly shaped, and slopes from north to south. The southern portion of the property has a small stream and small ponds located on it. The only forested areas on the Property are in the vicinity of the stream. The proposed construction will not impact any of the environmental features onsite.



Figure 1 – Aerial Map

PROJECT DESCRIPTION

South Valley Park is one of the original open space parks included in the initial Development Plan for Montgomery Village created by the Kettler Brothers. The majority of this park is located on unplatted Parcel P895. South Valley Park has a long history of providing amenities for the community, including many Montgomery Village Sports Association (MVSA) activities, and a popular summer concert series. The Property never had permanent restroom facilities, and users continue to rely on portables. Vehicular access to the Property is provided from Watkins Mill Road, while pedestrian access is provided from multiple locations.

Approximately two years ago, the MVSA received a matching capital grant from the State of Maryland for the construction of two small buildings to serve as restrooms and a concession stand in South Valley Park. MVF and MVSA have agreed to work together on the project to improve the park.

The Applicant has submitted a SRW request and a Site Plan (Attachment A) to construct a joint restroom and concession stand approximately 900 square feet in size near the ball fields (No. 1 in the image below), and a restroom approximately 230 square feet in size near the lawn theatre (No. 2 in the image below). These permanent structures will replace temporary facilities at both locations. Both facilities will only be open during events.

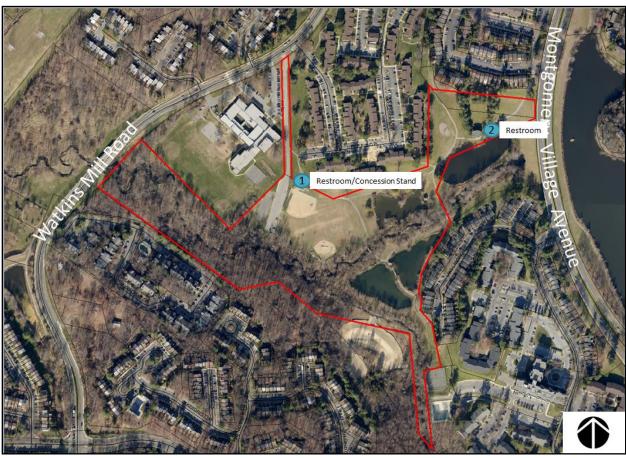


Figure 2 – General Locations of Proposed Restrooms and Concession Stand

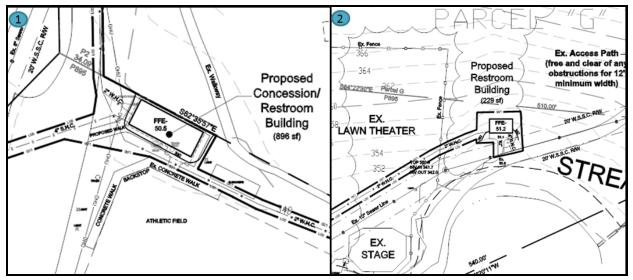


Figure 3 – Site Plan Details

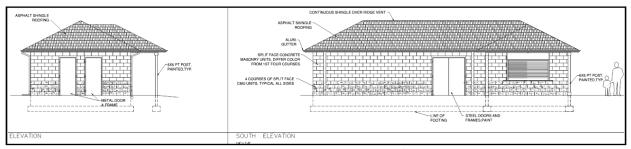


Figure 4 – Architectural Drawing of Restroom/Concession Stand

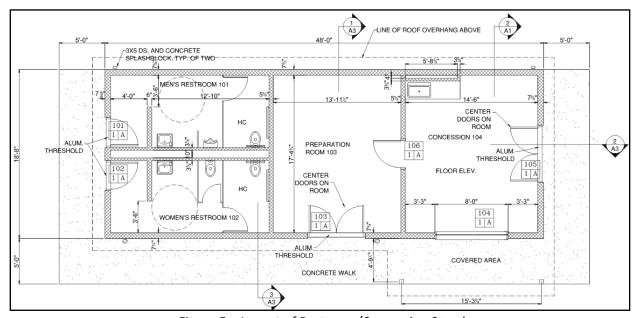


Figure 5 – Layout of Restroom/Concession Stand

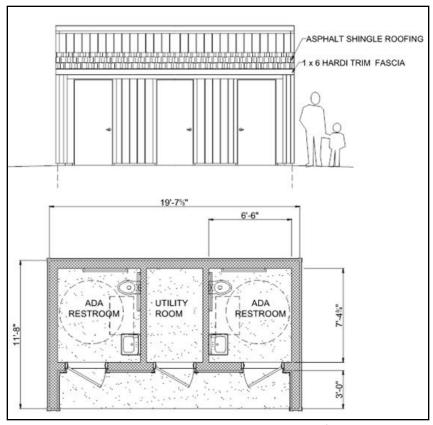


Figure 6 – Architectural Drawing and Layout of Restroom

SECTION 2: SRW REVIEW

Building permits are required for the two proposed structures. However, per Section 50-20(a) of the Subdivision Regulations,

"The Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, except a dwelling or structure on a farm strictly for agricultural use, unless the dwelling or structure would be located on a lot or parcel of land which is shown on a plat recorded in the County plat books, and which has access as prescribed in Section 50-29(a)(2)."

The subject property is an unplatted parcel of land and the Applicant is requesting a waiver of the above requirement to plat. The Planning Board has the authority to waive any provision of the Subdivision Regulations pursuant to Section 50-38(a)(1), which states:

"The Board may grant a waiver from the requirements of this Chapter 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."

APPLICANT'S JUSTIFICATION

In a letter dated June 6, 2014 (Attachment B), the Applicant outlined the following reasons for the SRW request:

- 1. The permanent facilities proposed will replace the temporary facilities already in-use onsite;
- 2. The submittal of a Preliminary Plan would be duplicative of the review already taking place as part of the Site Plan, and any aspects of subdivision that are not included (such as platting and dedication) are irrelevant because the Property boundaries are already well established and no additional dedication is required for Montgomery Village Avenue or Watkins Mill Road; and
- 3. The Planning Board has granted waivers for similar uses and circumstances in the past for other properties.

STAFF DISCUSSION

In staff's opinion, there are unusual circumstances and practical difficulties associated with this application that support the requested waiver. 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. To require that the parcel be platted now 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.

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 and their construction would meet the other requirements of the subdivision regulations. 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. DPS agreed to forego the requirement to submit a Stormwater Management Concept for this project based on the proposed improvements being quite 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). DPS agreed that because the proposed work is quite limited in scope and due to the topographical location of the proposed project, stormwater management will be handled via disconnection credits.

Staff finds that submission of a Preliminary Plan of subdivision presents an unnecessary practical difficulty for the Applicant 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. As such, Staff recommends waiving this requirement. The waiver is the minimum required to provide the necessary relief because all other requirements of the regulations are being met. Granting the waiver is not inconsistent with the objectives of the General Plan because the area was designated TS, the Property was subsequently identified and developed as recreation and open space by the Development Plan, and the proposed restrooms will enhance the existing recreation facilities and community use. Finally, it is not adverse to the public interest, because the proposed structures support the designated open space use of the parcel and they are undergoing separate Site Plan review.

Therefore, staff recommends approval of a waiver of the requirement to submit a Preliminary Plan and record plat for this Property with the conditions specified above.

SECTION 3: SITE PLAN REVIEW

ENVIRONMENT

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #42014036E) was approved by staff on September 3, 2013. The 30.3-acre site contains a stream running east to west, with an associated floodplain. The stream and floodplain are enclosed in an environmental buffer. The property is within the Whetstone Run subwatershed of the Great Seneca Creek – a Use I watershed. The proposed project does not have any activities within any streams, wetlands, or environmental buffers and is therefore in compliance with the Environmental Guidelines.

Forest Conservation

This property is subject to the Chapter 22A Montgomery County Forest Conservation Law. However, this property is exempt from the requirements of submitting a forest conservation plan per 42014036E, approved on September 3, 2013. This exemption covers an activity occurring as a modification to an existing developed property because:

- 1. No more than 5000 square feet of forest will be cleared;
- 2. The modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and
- 3. The modification does not require approval of a new subdivision plan.

Any changes from the approved exemption request may constitute grounds to rescind or amend any approval actions taken and to take appropriate enforcement actions. If there are any subsequent modifications planned to the approved plan, a separate amendment must be submitted to M-NCPPC for review and approval prior to those activities occurring.

MASTER PLAN

The 1985 Gaithersburg and Vicinity Master Plan identified the area as Town Sector (TS) Zone, and the Property was subsequently identified as an open space/recreational area. Therefore, staff finds the proposed facilities and uses are consistent with the recommendations of the Master Plan.

DEVELOPMENT STANDARDS

The proposed development is in the TS Zone. Section 59-C-7.28(c) states, "Standards for width and area of lots, side and rear yards, setbacks, lot coverage, height and groupings of buildings, and similar requirements shall be established at the time of site plan approval." Staff finds the following proposed setbacks and standards are consistent with the TS Zone and the use proposed:

DEVELOPMENT STANDARDS:			
ZONE: TS	Req.		
Property Size	30.3 ac		
Building Setback	2'		
Building Height	14'		

ANALYSIS AND FINDINGS – Sec 59 D 3.4 (c)

1. The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.

The Site Plan is not subject to a development plan, diagrammatic plan, schematic development plan, or project plan.

2. The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.

The Property is zoned TS. The purpose of the TS Zone is to, "provide a classification which will permit development of, or additions to, planned new towns or additions to existing urban developments." Montgomery Village is a "new town", which has been developing and evolving since the 1970s. The TS Zone also indicates that new towns are to be self-sufficient by "containing as nearly as possible all of the commercial, employment, cultural and recreational facilities desirable and necessary for the satisfaction of the needs of its residents." The proposed facilities are ancillary to and will enhance the cultural and recreational facilities existing onsite.

Per Section 59-C-7.28(c), "Standards for width and area of lots, side and rear yards, setbacks, lot coverage, height and groupings of buildings, and similar requirements shall be established at the time of site plan approval." Staff finds the location and height of the proposed structures are appropriate in the Zone.

3. The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.

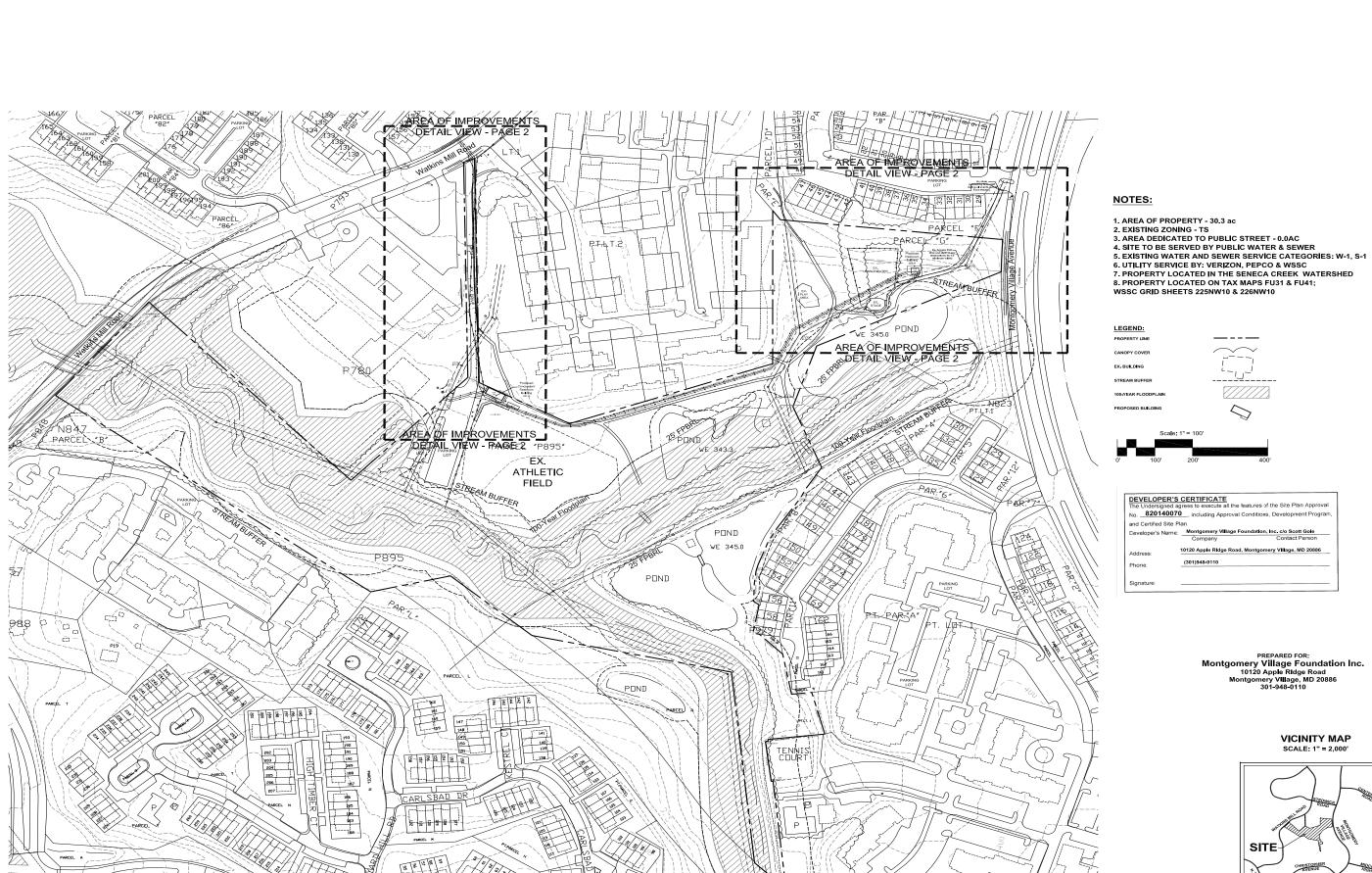
The proposed structures are appropriately located in a park near existing recreational facilities, and existing driveways, parking lot, sidewalks and paths already provide access to the proposed facilities. Staff finds that the proposed structures and existing structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.

- 4. Each structure and use is compatible with other uses and other site plans, and with existing and proposed adjacent development.
 - The buildings shown on Site Plan are compatible with the existing uses and development, and will improve South Valley Park for the existing adjacent development.
- 5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable laws.
 - a. Staff issued an exemption from Forest Conservation on September 3, 2013.
 - b. The Department of Permitting Services issued an email exempting the project from submitting a Stormwater Management Concept on August 5, 2013.
 - c. The proposed facilities are outside of the relevant stream buffers and environmental features onsite.

Staff recommends approval of the Site Plan with the conditions specified above.

ATTACHMENTS:

- A. Site Plan
- B. Applicant SRW Justification Statement
- C. Architectural Drawings/Building Heights



Rev. 8/13/14

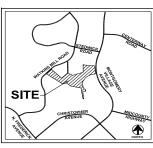
Sheet 1 of 2





SOUTH VALLEY PARK
Montgomery Village, Maryland

VICINITY MAP SCALE: 1" = 2,000'



DEVELOPMENT STANDARDS: ZONE: TS Property Size 30.3 ac

14'

√PLAY ;AREA

DETAIL VIEW:
PROPOSED RESTROOM BUILDING
1"= 40'

POND

PARKING

LOT

PARCE

Ex. Access Path (free and clear of any obstructions for 12' minimum width)

STREAMBUFFER

Restroom Bullding

EX. — —

_354-

EX. STAGE

345.0

Ex. Gate
(opened by MVF staff
during all events at the

Avenue

Möntgomery Village

Grass Median

Building Setback 2'

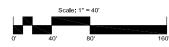
Building Height

4

To

SOURCE OF TWO-FOOT CONTOUR INTERVAL TOPOGRAPHY: THOMAS A . MADDOX, PLS. 8933 SHADY GROVE CT GAITHERSBURG, MD 20877 301-984-5804





PROPOSED CONCESSION / RESTROOM BUILDING
1"= 40'



No. <u>820140070</u>, including Approval Conditions, Development Program, and Certified Site Plan

Sheet 2 of 2 Revisions Rev. 8/13/14



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SOUTH VALLEY PARK
Montgomery Village, Maryland

ATTACHMENT B



MONTGOMERY VILLAGE FOUNDATION, INC. 10120 APPLE RIDGE ROAD MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.montgomeryvillage.com

June 6, 2014

Ms. Francoise Carrier, Chair Montgomery County Planning Board M-NCPPC 8787 Georgia Avenue Silver Spring, MD 20910

Re: Request for Subdivision Regulation Waiver - §50-20(a)

Property: South Valley Park, Montgomery Village **Applicant:** Montgomery Village Foundation (MVF)

Dear Ms. Carrier and Members of the Board:

I am writing to you in support of MVF's request that it be relieved of the requirement to create a record plat for South Valley Park as a prerequisite to the issuance of building permits for two small buildings MVF wants to build that will greatly improve the experience of park users.

Background

South Valley Park is one of the original open space parks included in the initial Development Plan for Montgomery Village created by the Kettler Brothers. The work to create these two small buildings will take place on three parcels in the Park, located between Watkins Mill Road and Montgomery Village Avenue. Two of those parcels are the platted, but the majority of the park is located on a parcel (P-895) that was not platted separately when the park was developed in 1974.

The park has athletic fields, a lawn theatre, parking lot, walking paths, and a tot lot that are well-used by the community. The Park has never had permanent restroom facilities, users have always relied on portables.

Two years ago, the Montgomery Village Sports Association (MVSA) received a matching capital grant from the state of Maryland for the construction of two small buildings to serve as restrooms and a concession stand in South Valley Park. MVF and MVSA have agreed to work together on the project, since it is MVF who owns the property. The combined square footage of the buildings will be 1,125 square feet, which is less than 0.1 % of the area of the Park.

Standard for Granting a Waiver

The benefits gained from the record plat requirement from §50-20(a) of Chapter 50 are well known. For long-standing un-platted properties that have not been brought into the County's modern era land use plans, §50-20(a) provides a mechanism to verify property boundaries and establish further requirements for roads and other infrastructure so that neighboring property owners and the municipalities have reliable information to make informed decisions about additional land use development.

Over the years, the Board's standard for granting a waiver of the requirements of Chapter 50 has evolved from focusing on the traditional standard from variance law, which focuses on whether unusual and unique *physical* characteristics of a property itself create a hardship for its owner to comply with the Code, to the current standard set forth in §50-38(a) (1) permitting a waiver from the requirements of Chapter 50

". . . 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."

This standard recognizes that in many waiver requests presented to the Board, the Board has granted the waiver as a result of balancing the potential benefits of creating a record plat versus the burden on the applicant of creating the record plat. Thus the Board has looked at many aspects of a request, including factors such as whether the existing development around the subject property has already been completed, whether the roads around the property are well-established, the costs of the completing the record plat process, the effect of delay while the record plat is completed, and whether, overall, there is a public benefit for requiring a property to be platted.

This type of review has resulted in waivers for properties that have long histories of operation and integration with the other neighboring land uses, and in particular,

there have been waivers granted for several golf courses to make modest changes in their building facilities, and waivers granted as well for other parks.

For example, Montgomery Village Golf Course was granted a waiver to enclose its Clubhouse deck area in 1996 and to build a single family home for use by its groundskeeper in 1999. In the Black Hill Regional Park, the visitor center next to the lake was built on a deed parcel that was not included on a plat recorded in the County's land records. The park consists of several large unplatted parcels which contain other buildings such as picnic shelters and restroom facilities. South Valley Park is smaller than Black Hill Regional Park but its uses and circumstances are similar.

Analogously, the waiver requested for South Valley Park compares to the circumstances of agricultural properties where accessory uses which require a building permit are permitted without a plat. Section 50-9(a) (2) allows building permits on agricultural properties as an exception to platting. The new buildings proposed for South Valley Park are accessory to the primary use of the property as are accessory buildings to farming activities on agricultural properties.

Summary and Conclusion

MVF's request for a waiver from §50-20(a) is rooted in the unusual circumstance of its role as private sector administrator of a 30 + acre park for its 40,000 community residents. The Park has a long history of providing amenities for the community, including many Montgomery Village Sports Association activities, and a summer concert series that rivals that of many municipalities. MVF believes that this request is the minimum action that will provide relief from the platting requirement. There does not appear to be any lesser action that the Board can take to provide the relief MVF seeks.

The platting process for this parcel is unlikely to provide the usual land use benefits that platting provides, as explained in more detail below.

A strong benefit of platting is to document modern boundaries of a property. But through the County's Development Plan process, the boundaries of the Park have been well established. The three parcels that are involved in the project are (i) "Part of Lot 2" as originally recorded by plat 9237 in 1969, (ii) Parcel G as originally recorded by plat 10815 in 1974, and (iii) Parcel 895 (where the proposed new buildings would be located) which is an un-platted deed parcel. Parcel 895 consists of 28.45 acres.

The contours and limits of the park have been additionally established by the well-documented development of adjacent properties including residential communities and Watkins Mill Elementary School.

Another benefit of platting is to establish modern standards for necessary roads on a parcel. However, this parcel has frontage on Watkins Mill Road and Montgomery Village Avenue and the land for these two roads has already been dedicated and conveyed to ultimate right-of-way widths.

Balanced against these circumstances, which illustrate the absence of benefits that would accrue from platting, are the substantial burdens to MVF if it is required create a record plat. The effort in time and cost to record a plat for Parcel 895 would be significant given the amount of survey work required for a property of this size and irregular shape. The use of the property as open space and its already-developed character belie the need for many of the additional investigations and reviews included in the plat process. The platting requirement creates a practical difficulty for MVF because it will impose a disproportionate significant additional project cost on this small project, without gaining benefits for MVF or the public. The previous developments of the park and surrounding land have already achieved those benefits that are associated with platting.

The park property and all other properties within Montgomery Village are zoned T-S (Town Sector). The T-S zone was created to be self-sufficient by "containing as nearly as possible all of the commercial, employment, cultural and recreational facilities desirable and necessary for the satisfaction of the needs of its residents". §59-C-7.2. Certainly, the requested waiver will allow MVF to more speedily provide a long desired amenity to South Valley Park, and is not adverse to the General Plan, or the public interest as set forth in the goals of the Town Sector zone.

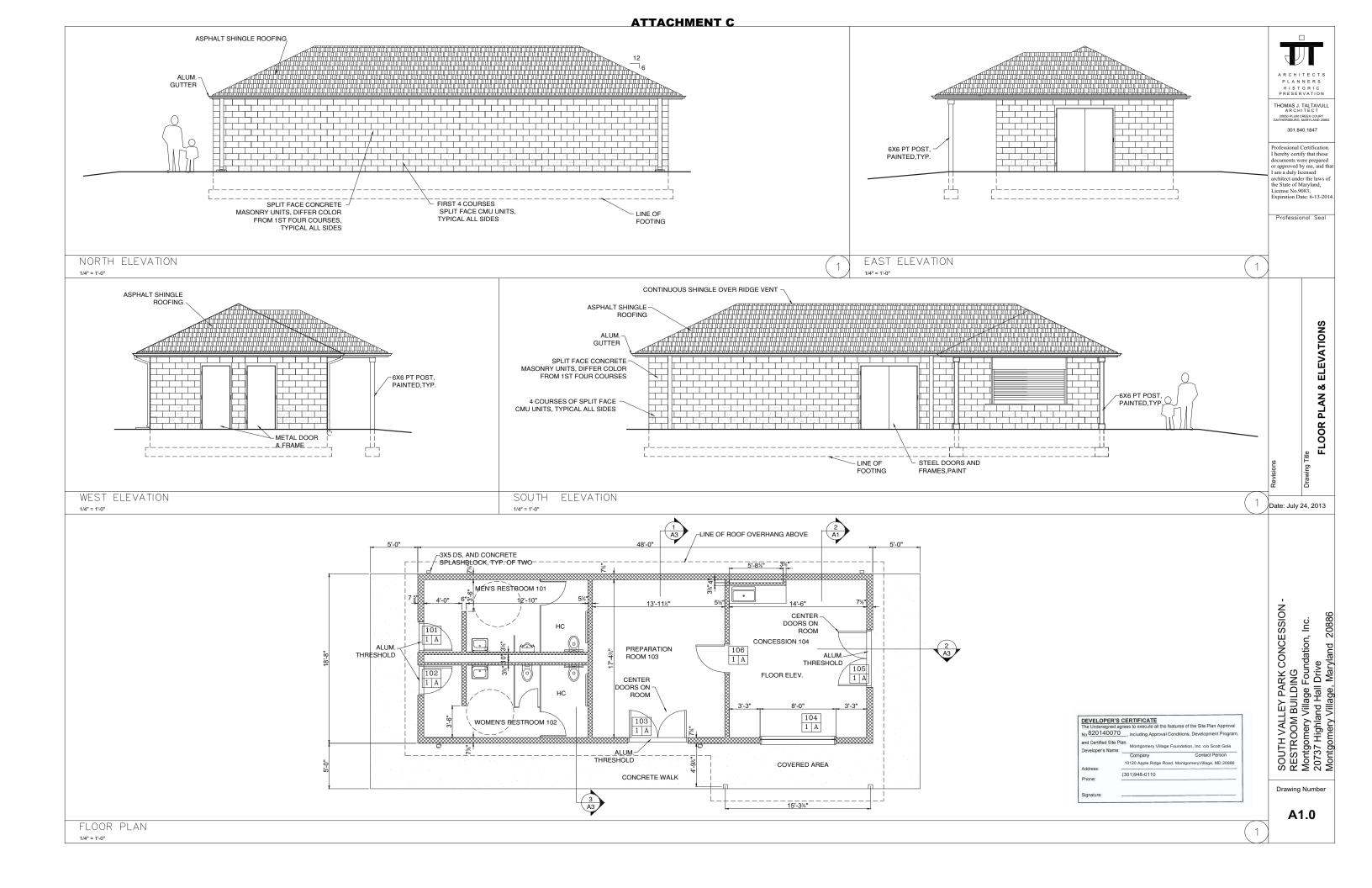
Based on the information presented herein, and for the reasons advanced above, MVF believes the criteria for a waiver are met, and MVF respectfully requests a waiver from §50-20(a).

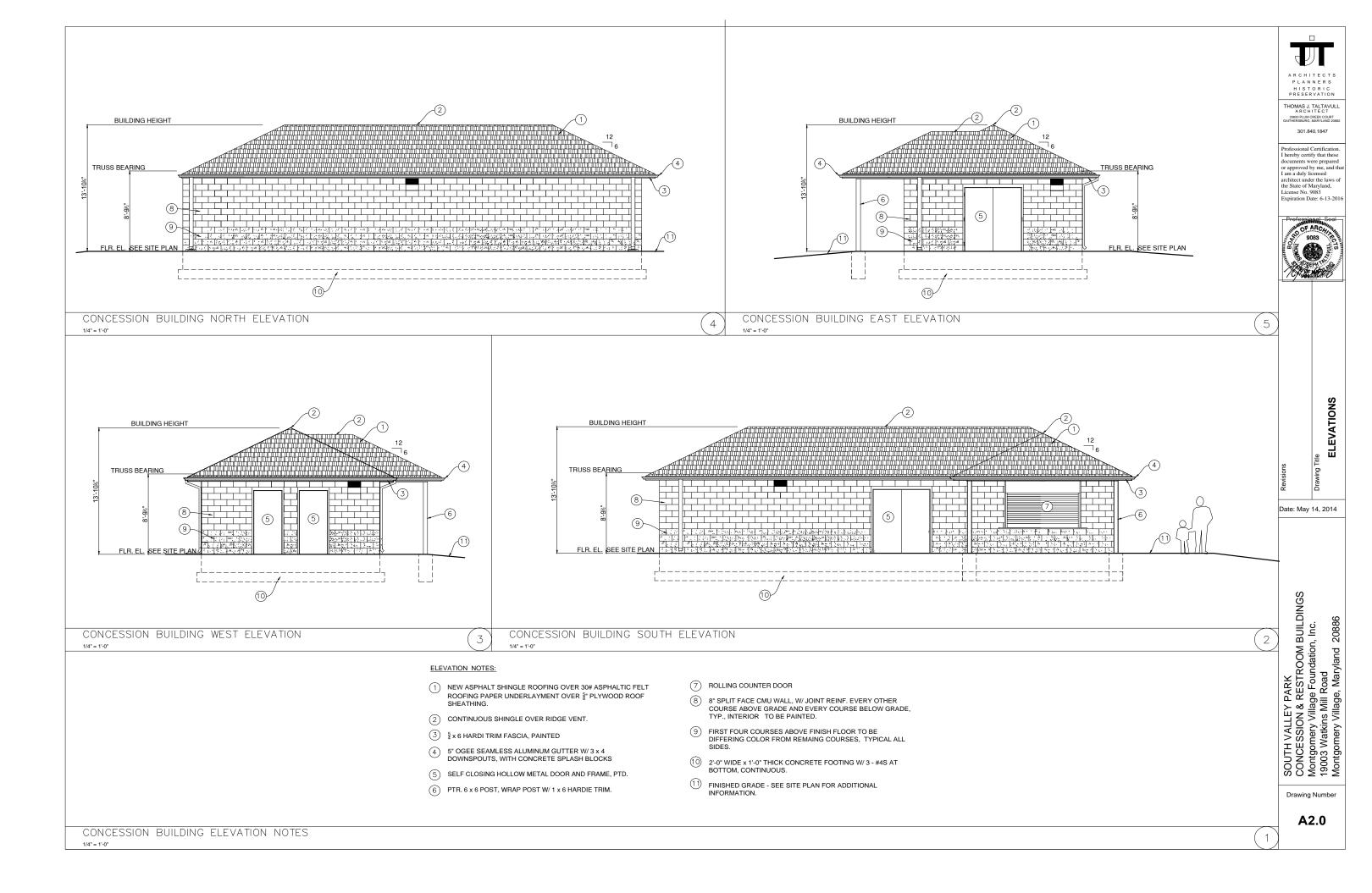
Sincerely,

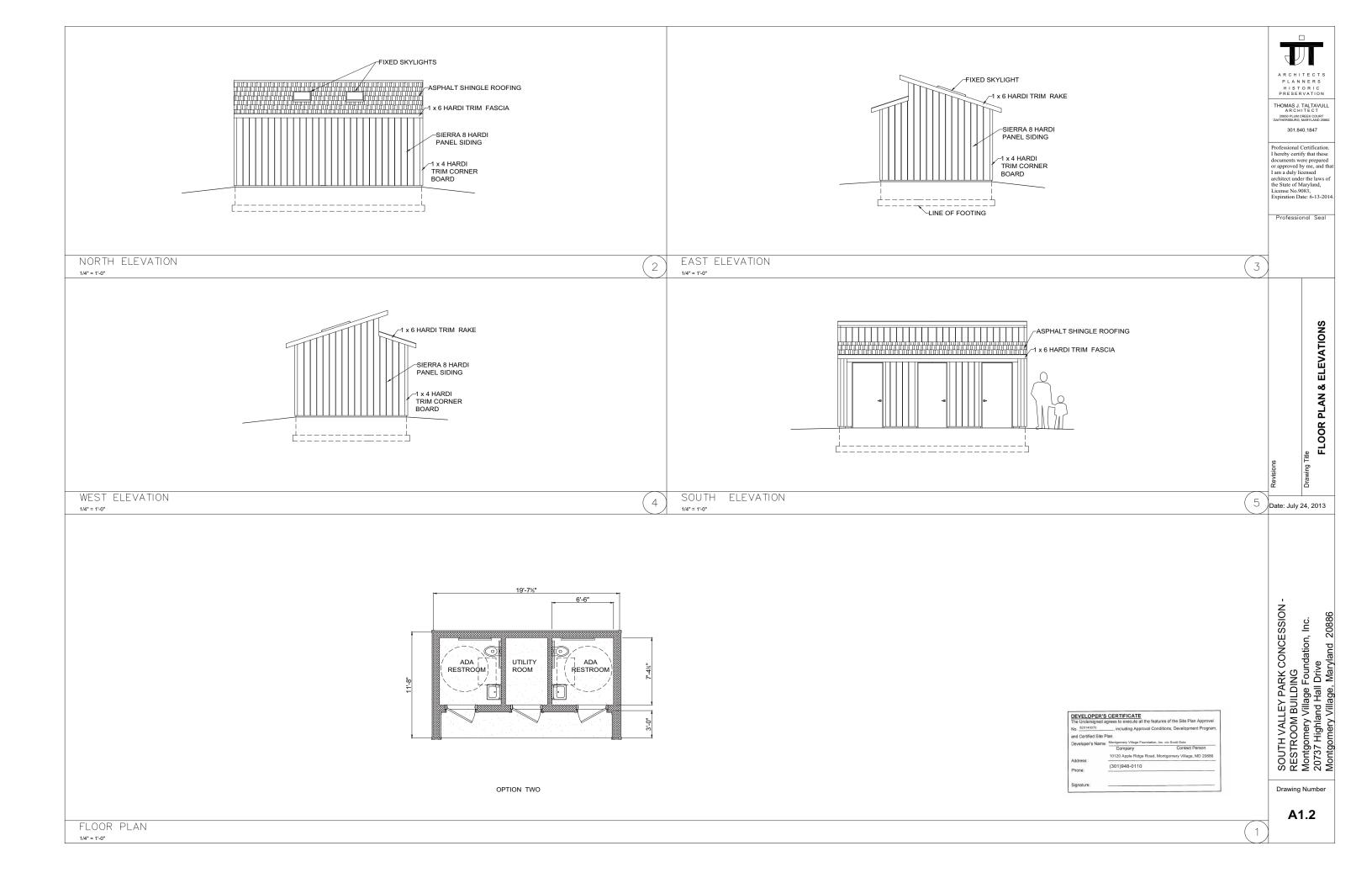
Christopher Hitchens

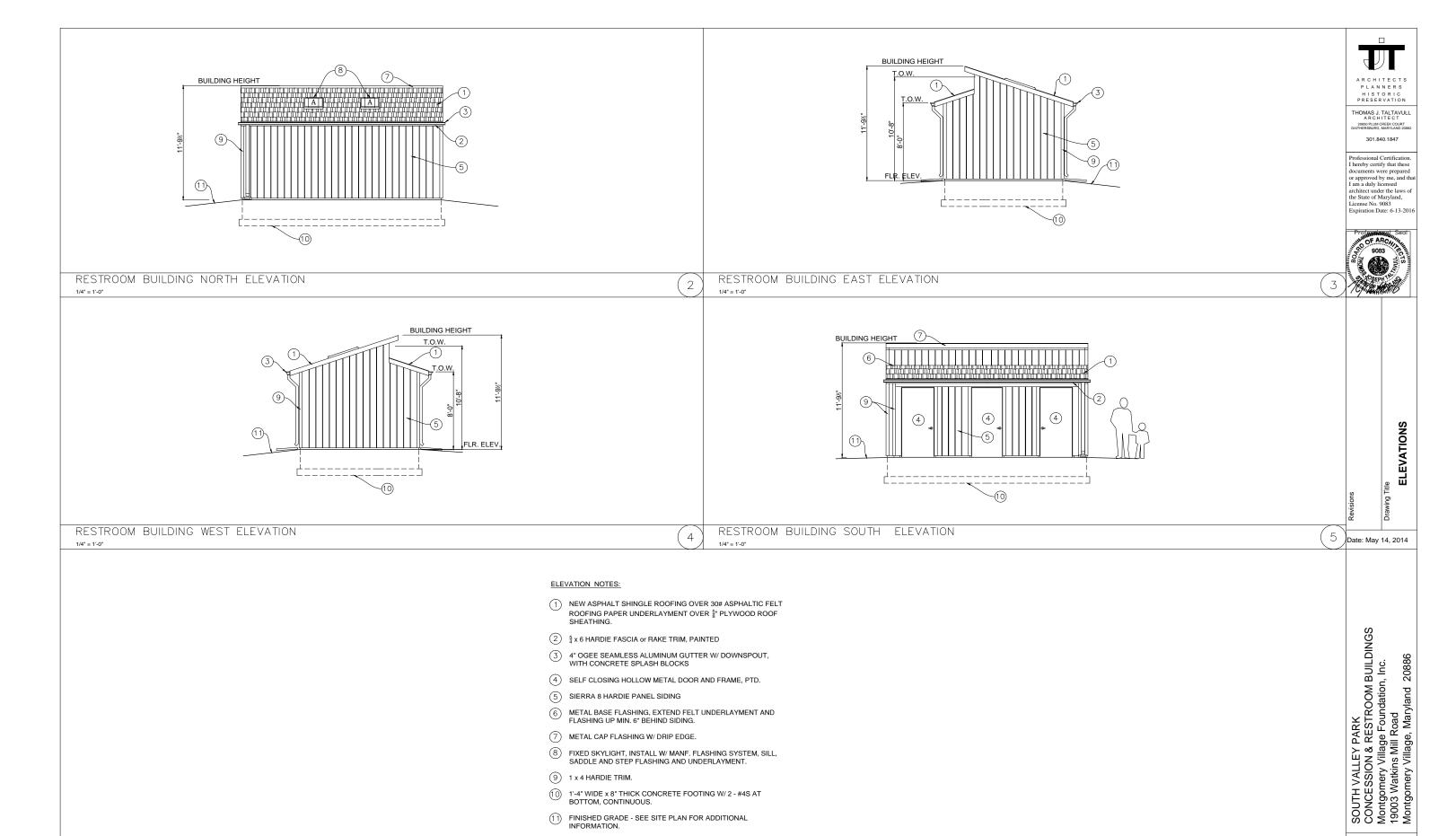
General Counsel

Montgomery Village Foundation, Inc.









Drawing Number

A2.1

RESTROOM BUILDING ELEVATION NOTES