



FEB 2 2012

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

MCPB No. 11-116
Subdivision Waiver Request No. SRW 201203
Huntington Terrace
Date of Hearing: November 17, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50 ("Subdivision Regulations"), the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to administer the Subdivision Regulations, including the authority to grant waivers from the Subdivision Regulations; and

WHEREAS, Kenneth Ramirez and Vera Ashworth ("Applicants") own 7,500 square feet of land consisting of two parts of unplatted lots in the F-30 zone, located on the South side of Lincoln Street, 75 feet east of the intersection of Jefferson Street ("Property" or "Subject Property"), in the Bethesda/Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, the Applicants have partially demolished the house and intend to construct a new house on the Property, which in accordance with Section 50-20(a) of the Subdivision Regulations must be located on a lot or parcel of land shown on a recorded plat; and

WHEREAS, the Property qualifies for minor subdivision – submission of a plat without a preliminary plan of subdivision – under Section 50-35A (3) of the Subdivision Regulations; and

WHEREAS, on October 25, 2011, in accordance with Section 50-38 of the Subdivision Regulations, Applicants filed an application for approval of a waiver from the Subdivision Regulations requesting that the Planning Board permit Planning Board staff ("Staff") to sign off on a building permit application for a dwelling that will be located on a lot that is not shown on a recorded plat; and

Approved as to
Legal Sufficiency:


MNCPPC Legal Department

8787 Georgia Avenue, Spring, Maryland 20910 Chairman's Office: 301.495.1605 Fax: 301.495.1320

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WHEREAS, Applicants' application for approval of a waiver from the Subdivision Regulations was designated Subdivision Regulation Waiver No. SRW 201203, Huntington Terrace ("Waiver" or "Application"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 4, 2011, setting forth its analysis, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on November 17, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on November 17, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Anderson; with a vote of 4-0, Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor, and Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Subdivision Regulation Waiver No. SRW 201203 to waive section 50-20(a) of the Subdivision Regulations to permit Staff to sign off on a building permit application for a dwelling that will be located on a lot that is not shown on a recorded plat, subject to the following condition:

- 1) The Applicants must submit an application for a plat of the Subject Property within 120 days of issuance of a building permit.

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, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *Practical difficulties or unusual circumstances exist that prevent full compliance with the requirements of the Subdivision Regulations from being achieved.*

The Applicants partially demolished a dwelling on a parcel of land and proposed to replace it with a new dwelling. However, a building permit could not

be issued because the Property consists of two parts of lots rather than a single lot appearing on a recorded plat, as required by Section 50-20(a) of the Subdivision Regulations.

Before demolishing the dwelling, the Applicants believed that the Property consisted of one single lot appearing on a recorded plat because several recorded plats, several deeds, and the tax records of the State of Maryland incorrectly refer to the Property as a platted lot.

The Planning Board finds that the public record contains inaccurate and misleading information with respect to the Property and that this constitutes an unusual circumstance. The Applicants relied on this inaccurate and misleading information before initiating demolition of their existing dwelling, rendering it uninhabitable. Design and contracting for construction of the new dwelling has begun but must be stopped pending issuance of the building permit. Delays at this stage of the process add cost and time to the project that is not the fault of the Applicant.

- 2. The Waiver is the minimum necessary to provide relief from the requirements of the Subdivision Regulations, 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 because the only Subdivision Regulation being waived is Section 50-20(a) to allow the Applicant to move forward with construction on a timely schedule. With the condition of approval a plat will be filed to correct the inaccuracies in the public records, which serves the public interest. The Waiver is not inconsistent with the purposes and objectives of the General Plan since a dwelling that existed prior to its partial demolition is being replaced at the same location on the Property. The development density will not be increased.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicants" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval; 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 FEB 2 2012 (which is the date that this Resolution is mailed to all parties of record); and

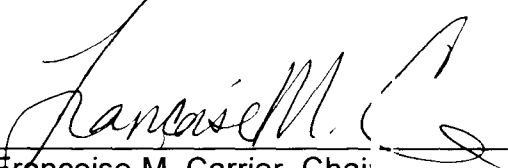
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley abstaining, at its regular meeting held on Thursday, January 26, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board