

MAR 7 2012



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

**MCPB No. 11-127**  
**Subdivision Plat No. 220110700**  
**Battery Park Section 2**  
**Date of Hearing: 12/01/11**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, on January 12, 2011, Carlos Garzon ("Applicant"), filed an application for approval of a subdivision record plat to create a 1,797 square foot lot through minor subdivision for a part of a lot created by deed on December 6, 1987, located at 7818 Old Georgetown Road in the south quadrant of its intersection with Cordell Avenue ("Property" or "Subject Property"), in the Bethesda Central Business District Sector Plan area ("Master Plan"); and

WHEREAS, the provisions for approval of minor subdivisions are contained in Chapter 50 of the Montgomery County Code, the Subdivision Regulations ("Subdivision Regulations"), and the Montgomery County Planning Board ("Planning Board" or "Board") has the authority to administer this chapter; and

WHEREAS, the Applicant requested minor subdivision approval pursuant to either Section 50-35A(a)(3), or Section 50-35A(a)(4) of the Subdivision Regulations; and

WHEREAS, the Planning Board has the authority to grant a waiver of the requirements in Chapter 50 of the Montgomery County Code pursuant to Section 50-38(a)(1) of the Subdivision Regulations; and

WHEREAS, the Applicant submitted a Subdivision Regulations waiver request for concurrent review with the Subdivision Plat application No. 220110700, Battery Park Section 2 ("Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 18, 2011, setting forth its analysis, and recommendation for

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Approved as to  
Legal Sufficiency:

*Christina Sorenson* 2/13/12

8787 Georgia Avenue, Suite 209, Bethesda, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

approval of the Application, including the request for a Subdivision Regulations waiver ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 1, 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 December 1, 2011, the Planning Board approved the Application on motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Subdivision Plat No. 220110700, including a request to waive the requirement of Section 50-35A(a)(3) of the Montgomery County Subdivision Regulations that a part of a lot be created by deed prior to June 1, 1958, in order to permit recordation of a new lot containing 1,797 square feet of land located at 7818 Old Georgetown Road in the south quadrant of its intersection with Cordell Avenue ("Property" or "Subject Property"), in the Bethesda Central Business District Sector Plan area ("Master Plan"); and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Subdivision Record Plat, included in the Staff Report as Attachment B, complies with requirements for minor subdivision approvals allowed in Section 50-35A of the Subdivision Regulations, provided that the Board grants a waiver as requested by the Applicant pursuant to Section 50-38(a)(1) of the aforementioned regulations.*

The Applicant requested a minor subdivision approval pursuant to either Section 50-35A(a)(3), or Section 50-35A(a)(4) of the Subdivision Regulations.

Under Section 50-35A(a)(4) of the Subdivision Regulations, a preliminary plan is not required for a resubdivision creating internal ownership lots within an existing commercial, industrial or multi-family residential *lot* to reflect a change in ownership, deed, mortgage, or lease line. This provision is not applicable

because the entire lot is not before the Planning Board for the purpose of creating an internal ownership lot.

Under Section 50-35A(a)(3) of the Subdivision Regulations, a preliminary plan is not required for the creation of a single lot from part of a lot if, in addition to other requirements, the part of the lot was created by deed recorded prior to June 1, 1958. However, the part of the lot at issue was created as an ownership parcel by deed dated December 6, 1987. Thus, this provision is applicable only if the Planning Board issues a waiver as to the recordation date requirement.

2. *The Board finds that with respect to the Applicant's request for a waiver of the Subdivision Regulations;*
  - a. *Practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved.*

Unusual circumstances that warrant a waiver exist in this case in that Staff delays in scheduling a discussion of the waiver request with the Board resulted in the Applicant spending a considerable amount of time and expense in a detailed plat review process that would have been avoided if the analysis of the waiver had been expedited and the Applicant had been directed to submit the necessary preliminary plan. By necessity in the absence of a preliminary plan, the plat review included consideration of the subdivision issues. Now that the review of the submitted record plat has been completed and it has been found by Staff to be ready for approval, it would create an undue hardship on the Applicant to require more time and money to be spent on a preliminary plan that would cover the same issues that have already been resolved. The project will not be reviewed in any more detail during the Preliminary Plan process than has already occurred during the roughly 12 month preparation of the plat to its final stage.

- b. *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. As discussed above, no lesser action can be taken which would legally permit the recordation of a plat for the Property through the minor subdivision process while acknowledging the Applicant's request.

The waiver is not inconsistent with the purposes and objectives for the General Plan because the Bethesda Central Business District Sector Plan, which was adopted in conformance with the General Plan, recommends that the Property be developed for commercial use with C-2 zoning. The proposed lot conforms to recommendations of the Master Plan in that it contains an existing commercial use that is consistent with adjoining standard-method commercial development along Old Georgetown Road and is in accordance with the C-2 zoning standards.

The waiver is not adverse to the public interest. Although the Property was not created by deed prior to June 1, 1958, the failure of which would typically require the approval of a preliminary plan, the end result is the same, a recorded lot. The Property is already developed with a small commercial building and no modifications to that building are proposed. Since the necessary subdivision requirements have been incorporated into the review of the record plat, there would be no additional public benefit to mandating full compliance with the regulations.

Therefore, the Planning Board grants the waiver of the recordation date requirement in Section 50-35A(a)(3) of the Subdivision Regulations.

BE IT FURTHER RESOLVED, that the date of this Resolution is MAR 7 2012 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion, and 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).

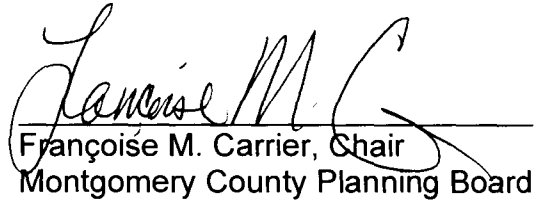
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### CERTIFICATION

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners

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Anderson and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, February 23, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board