



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

MCPB No. 13-142
 Subdivision Review Waiver 2013-01
 AAA Gaithersburg
 Date of Hearing: July 22, 2013

SEP 25 2013

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to grant waivers from the requirements of Chapter 50, the Subdivision Regulations upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver request 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 July 12, 2013, FAL, LLC ("Applicant"), together with an application for site plan review filed an application for a waiver of the requirements under the Subdivision Regulations to i) dedicate additional master plan right-of-way on Pleasant Road and Shady Grove Road, ii) submit an amendment to Preliminary Plan No. 119820050, and ii) revise the Record Plat for a platted lot approximately 0.83 acres in size located at 16045 Shady Grove Road, Rockville, in the southeast quadrant of the intersection of Shady Grove Road and Pleasant Road ("Property" or "Subject Property"), within the Shady Grove Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's subdivision review waiver request was designated SRW 2013-01, AAA Gaithersburg ("Application"), and

WHEREAS, following review and analysis of the Application by Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board on July 12, 2013, setting forth its analysis and recommendation for approval of the Application ("Staff Report")¹; and

WHEREAS, on July 22, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ The Staff Report also included analysis and recommendations concerning the Applicant's site plan application, which is not addressed in this Resolution.

Approved as to
 Legal Sufficiency:

[Signature] 8/28/13

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WHEREAS, on July 22, 2013, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Anderson, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor. Commissioner Presley was absent from the hearing.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Subdivision Review Waiver 2013-01 waiving the requirements under the Subdivision Regulations so that the Applicant is not required to i) dedicate additional master plan right-of-way on Pleasant Road and Shady Grove Road, ii) submit an amendment to Preliminary Plan No.. 119820050, or ii) revise the Record Plat for the Property.

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 (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

In accordance with Section 50-38 of the Subdivision Regulations, practical difficulties or unusual circumstances, there are demonstrated practical difficulties not directly under the control of the Applicant that prevented full compliance with the requirements of the Subdivision Regulation from being achieved, and that the Application 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.

Specifically, the Application is for a waiver of the requirement to dedicate additional right-of-way for Pleasant Road and Shady Grove Road. The Sector Plan recommendations for additional right-of-way no longer apply and further dedication would significantly impact the developable area of the Property given the large setbacks and significant stormwater management requirements under County Code. Instead of providing the Sector Plan recommended right-of-way, the Applicant must to establish a 15-foot wide Public Improvement Easement ("PIE") along the Shady Grove Road frontage for future installation of public improvements by the Montgomery County Department of Transportation ("MCDOT") and public utilities (including Verizon and PEPCO), if necessary. The PIE will be recorded by deed in the County Land Records prior to certified site plan.

The Subject Property is a platted lot, Lot 16, Block B of the Michael C. Zetts subdivision. Section 50-25(a) of the Subdivision Regulations requires that a plat include roads and streets shown on any adopted master plan.

Shady Grove Road, currently a 120-foot wide right-of-way, is classified in the Sector Plan as a major highway with a minimum right-of-way of 150 feet. The Sector Plan did not take into account that the adjoining property to the south of the Subject Property is located within the City of Rockville. The City of Rockville will likely not require any additional right-of-way to be dedicated for any property redeveloping within the City's limits along Shady Grove Road. Thus, any additional right-of-way dedication along this stretch of Shady Grove Road would presumably have to come from the west side of Shady Grove Road, or those areas under Montgomery County jurisdiction. The Montgomery County Department of Permitting Services Right-of-Way Permitting staff agrees that no additional right-of-way dedication is necessary if a 15-foot wide PIE is established on the site plan in relation to the site's Shady Grove Road frontage for any public improvements that may be deemed necessary.

Pleasant Road, currently a 60-foot-wide right-of-way, is classified as a primary residential street with a minimum right-of-way of 70 feet. It is a ring road that connects to Shady Grove Road and provides access to a small enclave of commercial properties, including the Subject Property. The Sector Plan recommends Pleasant Road be widened to connect to and through the King Farm Development to the east of the Subject Property. The City of Rockville has abandoned the segment of Pleasant Road within the City limits just east of the Subject Property, and instead reconfigured that area to accommodate the Mattie JT Stepanek Park. Thus, the connection as recommended in the Sector Plan will not occur and the 70-foot right-of-way contemplated for Pleasant Road is not necessary.

Therefore, the additional right-of-way dedication along these two roads is no longer necessary. And if the dedications are no longer necessary, amendment to the preliminary plan and plat would be for naught.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 25 2013 (which is the date that this Resolution is mailed to all parties of record); and

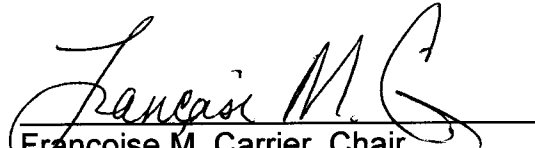
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Presley voting in favor and Commissioners Anderson and Dreyfuss absent at its regular meeting held on Wednesday, September 4, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board