

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**Date Mailed:**

December 23, 2024

MCPB No. 24 -116  
Subdivision Waiver Request No. SRW202501  
923 Gist Avenue (Blair Section 1)  
Date of Hearing: December 5, 2024

## **RESOLUTION**

WHEREAS, on October 2, 2024, 923 Gist LLC (“Applicant”) filed a Subdivision Waiver Request pursuant to Division 50.9 of the Montgomery County Code in order to waive the requirements of Section 50.8.2.C.1 of the Subdivision Ordinance to allow a record plat to be approved without the approval of a Preliminary Plan on 0.18 acres of land in the CR-3.0, C-3.0, R-3.0, H-130’ and the Fenton Village Overlay Zone, located at 923-925 Gist Avenue approximately 210 feet east of Georgia Avenue (“Subject Property”), in the Silver Spring CBD Policy Area and 2022 *Silver Spring Downtown and Adjacent Communities Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s request was designated Subdivision Waiver Request No. SRW202501, 923 Gist Avenue (“Subdivision 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 November 25, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 5, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of **5-0**; Commissioners Bartley, Hedrick, Linden, Chair Harris and Vice Chair Pedoeem voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Subdivision Waive Request No. SRW202501 to waive the requirements of Section 50.8.2.C.1 of the Subdivision Ordinance to allow a record plat to be approved without the approval of a Preliminary Plan on the Subject Property, subject to the following conditions:<sup>1</sup>

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<sup>1</sup> 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.

1. This Subdivision Waiver is limited to one lot totaling 7,200 square feet (0.16 acres).
2. The Subdivision Waiver will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and before the expiration date of this validity period, a final record plat for all property delineated on the approved Subdivision Waiver must be recorded in the Montgomery County Land Records or a request for an extension filed.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated November 13, 2024, and incorporates them as conditions of the Subdivision Waiver. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Subdivision Waiver.
4. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing road:
  - a) All land necessary to accommodate 35 feet from the existing pavement centerline along the Subject Property frontage for Gist Avenue.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or 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. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

The Subdivision Waiver is requested given the practical difficulty of the existing layout and physical improvements onsite. The Property is comprised of two record lots and an unsubdivided parcel, for which the existing structure crosses these interior lot lines. The structure and interior lot lines have existed in this condition since the early 1930s, with existing improvements for access to public roads and utilities. The Property does not fit under any of the criteria within Chapter 50 for Minor Subdivisions, which could expedite the process for record plat review, as these provisions are typically only extended to residential properties and/or uses. Therefore, the Property would be subject to a detailed preliminary plan, where there is little benefit given the long-time existing improvements.

A building permit for the minor 800-square foot addition is under review with the Montgomery County Department of Permitting Services (MCDPS) for compliance with various health, safety, building code, and accessibility regulations. No other physical improvements or public infrastructure are necessary to ensure the public health, safety, and general welfare.

The Applicant's proposal demonstrates conformance with Chapter 59 (Zoning Ordinance) use and development standards as a lot within the CR zone, and proposes a commercial use and density allowed within the standard method of development. The Property is located within the Silver Spring Parking Lot District, therefore any onsite parking may be reduced with a payment to the Parking Lot District as specified in Chapter 60 of the County Code. The current tax rate for the Parking Lot District is zero (July 2024-June 2025). Any further parking requirements will be determined by MCDPS Zoning Division through the building permit process.

2. *the intent of the requirement is still met; and*

The intent of the requirements of Chapter 50 are still being met, as the Subdivision Waiver was reviewed by the Development Review Committee to ensure the proposed lot consolidation is in keeping with the necessary requirements of various agencies. As described in Finding 1 above, the Applicant will be dedicating necessary right-of-way that would be required during Preliminary Plan, and all other agency requirements typically reviewed during Preliminary Plan are either not required based on the level of development or will be reviewed during the building permit process. The Subdivision Waiver will allow the Applicant to record a plat establishing one lot of record, formally reflecting how the Property has functioned and transferred owners throughout the decades. With the creation of one lot of record the intent of Section 50.3 is fully being met, which states that "a building permit may only be issued for a building located on a lot shown on a plat recorded in the County Land Records... in a manner that does not result in the building or structure crossing a lot line."

3. *the waiver is:*

a) *the minimum necessary to provide relief from the requirements; and*

The proposed Subdivision Waiver is the minimum necessary to provide relief from the requirements, as it remains in conformance with the remaining criteria found in Section 50.8.2.C for Record Plat Approvals. With the approval of ZTA No. 23-06, no Site Plan is required given the proposed addition will be less than 15 feet in height and less than 1,000 square feet. The Subdivision Waiver was reviewed by the Development Review Committee and the Applicant will dedicate land to accommodate the master planned right-of-way along Gist Avenue.

b) *consistent with the purposes and objectives of the General Plan.*

*Thrive Montgomery 2050 General Plan* ("Thrive") encourages concentrated growth in centers of activity through compact, infill development and redevelopment to maximize efficient use of land (page 73). *Thrive* also encourages Complete Communities and identifies elements necessary to complete centers, allowing flexible approaches to accommodate infill and redevelopment that improves access to amenities at a neighborhood scale (page 87). The

Applicant for this Subdivision Waiver is a small business owner that intends to grow a neighborhood serving use in downtown Silver Spring where environmentally-friendly transportation options and public infrastructure exist to enhance the Fenton Village Community. Therefore, the Subdivision Waiver request is consistent with the purposes and objectives of *Thrive*.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

December 23, 2024

(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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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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 the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, December 19, 2024, in Wheaton, Maryland and via video conference.



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Artie L. Harris, Chair  
Montgomery County Planning Board

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