

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: JAN 24 2006

Action: Approved Staff
Recommendation

Motion of Commissioner Robinson,
seconded by Commissioner Bryant with
a vote of 4-0
Chairman Berlage and Commissioners
Bryant, Robinson, and Wellington
voting in favor. Commissioner Perdue
was necessarily absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan No. 1-05047
NAME OF PLAN: Kensington View (Resubdivision)

The date of this written opinion is JAN 24 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On 10/18/04, William Wells ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the R-60 zone. The application proposed to create 1 lot on 0.23 acres of land located at the northeast quadrant of the intersection of Upton Drive and Kensington Boulevard, in the Kensington/Wheaton master plan area. The application was designated Preliminary Plan No. 1-05047 ("Application" or "Preliminary Plan"). On 04/21/05, Preliminary Plan No. 1-05047 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

I. SITE AND PROJECT DESCRIPTION

The subject property consists of a single recorded lot, currently referred to as Lot 6 of Block J in the Kensington View subdivision, totaling 10,068 square feet ("Property" or "Proposed Lot 11"). The Property is vacant with a number of mature trees, but no forest. Kensington Boulevard abuts the Property to the northwest and Upton Drive abuts the Property to the south. The Property was platted in 1925 and remains in its original platted configuration. At the time of platting, a building setback was established for all lots within the Kensington View Plat that abut Kensington Boulevard, providing for a 40 foot setback from the edge of the Kensington Boulevard right-of-way. The setback was not established to conform to a zone, as the plat pre-dates any County Zoning Ordinance. Rather, the setback was designed to facilitate the prospect of development of Kensington Boulevard as a parkway, potentially with a stream down the middle. The setback associated with Kensington Boulevard severely limits the ability to develop the Property with a residential unit that is consistent with the existing housing stock in the neighborhood. The setback results in a buildable area of approximately 2,000 square feet and of an irregular shape.

Kensington Boulevard is a discontinuous road that has not been built to a full section road typical of a seventy-foot right-of-way. The road currently terminates adjacent to the Property in a cul-de-sac. It does not connect to Upton Lane as may once have been anticipated. As discussed below, there is no desire either by MCDPWT or the Wheaton CBD Sector Plan to make the full width improvements to Kensington Boulevard.

This Application requests that the Planning Board reduce the side yard setback established by the 1925 record plat from 40 feet to the standard R-60 side yard setback of 15 feet. Since the 40 foot setback is not a zoning setback and, therefore, not established by the Zoning Ordinance, the Applicant has submitted a preliminary plan of resubdivision to bring this request before the Planning Board. Since the application

requests modification of a recorded lot, it is being reviewed as a resubdivision pursuant to Section 50-29(b)(2) of the Subdivision Regulations.

II. DISCUSSION OF ISSUES

A. Reduction of setback

The Application requests a reduction in the setback to Kensington Boulevard established on the record plat in 1925. The Wheaton CBD Sector Plan includes the Property and Kensington Boulevard right-of-way. The Sector Plan is silent on the future improvements to Kensington Boulevard and does not encourage connection of this road to Upton Drive, nor does it recommend that Kensington Boulevard expand into a wider, parkway-type road. In a letter dated March 11, 2005, MCDPWT states: "We do not see the need to extend Kensington Boulevard at this time."

Since the Master Plan is silent on the future of Kensington Boulevard, the Applicant provided additional historical perspective on the vision for Kensington Boulevard through a letter submitted by Applicant's engineer, a life long resident of Montgomery County.¹ The letter examines the intended development of Kensington Boulevard at the time of the 1925 record plat. While originally envisioned as a boulevard with a 70-foot right-of-way, a median for storm drainage, and as a connection between Kensington and Wheaton, Kensington Boulevard has not developed in accordance with this vision.

Within the immediate vicinity of the Property, all lots front on Kensington Boulevard with the exception of two lots on East Avenue: Lot 7 and Lot 13. These two lots have homes constructed upon them and have side yards abutting Kensington Boulevard. Both lots were able to meet the 40-foot setback. However, Lot 7 was built across a lot line and encompassed part of Lot 8 in order to do so. As construction over a lot line is no longer allowed, the Applicant has no realistic opportunity to purchase additional land from adjacent lot owners so as to situate a house and respect the 40-foot setback.

The majority of lots in the Kensington View neighborhood have been developed, and the majority of those structures built on lots fronting on Kensington Boulevard have respected the 40 ft. setback. Exceptions are the structures on lots at the intersection of Midvale Road and Kensington Boulevard, which appear to have been built within the 40-foot setback.

Besides the Property, no other lots appear to be constrained by the 40-foot setback (save for the two structures already constructed within the setback). Reduction of the required 40-foot setback along Kensington Boulevard would not allow for new development; however, granting similar requests by other property owners might allow

¹ Letter of Walter Petzold, February 17, 2005.

modest expansion of existing homes. The Preliminary Plan proposes a new home on the Property with a setback of 20 feet from the side property line.

B. Conformance with Section 50-29(b)(2) - Resubdivision

In order to consider an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

In administering the Resubdivision section, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. In this instance, the neighborhood selected by the Applicant and agreed to by Staff consisted of nineteen (19) lots, including all platted lots contiguous to the Property and other lots that are in close proximity to the Property along the existing road network ("Neighborhood"). As analyzed in detail in its staff report, staff recommended to the Board that the Neighborhood provided an adequate sample of the lot and development pattern of the area. The Board concurs with Staff's analysis and expressly adopts the Neighborhood delineated by Staff for analysis purposes.

In performing the analysis, Staff applied the above-noted resubdivision criteria to the Neighborhood. Staff concluded that the Property falls within the neighborhood ranges for the resubdivision criteria and is of the same character with respect to the resubdivision criteria as other lots within the defined Neighborhood. Therefore, Staff concluded that the proposed resubdivision complies with the criteria of Section 50-2(b)(2). The Board finds that the tabular summary and graphical documentation support Staff's conclusion.

III. SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated April 14, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the public hearing. The Applicant appeared at the public hearing represented by legal counsel and *his engineer, who testified that the Applicant supported the Staff recommendation. No other party testified in support of or in opposition to the Application. Additionally, the record includes no correspondence either in support of, or in opposition to, the Application.*

IV. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds based upon the uncontested evidence of record that:

- a) Pursuant to MONTGOMERY COUNTY CODE § 50-35(l), that the Preliminary Plan No. 1-05047 substantially conforms to the Kensington/Wheaton master plan.
- b) Pursuant to MONTGOMERY COUNTY CODE § 50-35(k), public facilities will be adequate to support and service the area of the proposed subdivision.
- c) Pursuant to MONTGOMERY COUNTY CODE § 50-29(a)(1), the size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) Finds, pursuant to MONTGOMERY COUNTY CODE § 50-29(b)(2), that the proposed lot is of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood as evaluated in the staff report, and incorporated herein by reference.
- g) The Record of this application does not contain any contested issues. Therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

² The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05047 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05047, subject to the following conditions:

- 1) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 2) Record plat to provide for dedication of an additional 10 feet of right-of-way for Upton Road.
- 3) Compliance with conditions of MCDPWT letter dated March 11, 2005, including no portion of the garage to be located closer than 20 feet to the sidewalk, unless otherwise amended.
- 4) Compliance with the conditions of approval for the MCDPS stormwater management approval.
- 5) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

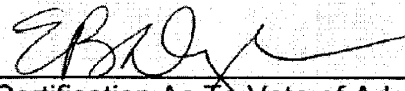
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MR 1/9/06
Approved for legal sufficiency
M-NCPPC Office of C...ncel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, January 12, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Kensington View (Resubdivision), Preliminary Plan 1-05047. Commissioner Perdue was absent.



Certification As to Vote of Adoption
Technical Writer

PLAT NO. 220060400

Capital View Park

Located on the northeast corner of Capitol View Avenue and Metropolitan Avenue

R-60 Zone, 3 Lots

Community Water, Community Sewer

Planning Area: Kensington-Wheaton

Macon Construction, Applicant

The record plat has been reviewed by MNCPPC staff and other applicable agencies as documented on the attached Plat Review Checklist. Staff has determined that the plat complies with Preliminary Plan No. 120050050, formerly 1-05005, as approved by the Board; and that any minor modifications reflected on the plat do not alter the intent of the Board's previous approval of the preliminary plan

RECORD PLAT REVIEW SHEET

Plat Name: <u>Capitol View Park</u>	Plat File Number: <u>2-06040</u>
Submission Date: <u>8/25/05</u>	Due Date: <u>10/10/05</u>
DRD Plat Reviewer: <u>Dolores Kennedy</u>	DRD Prelim. Plan Reviewer: <u>Dolores Kennedy</u>

Initial DRD Review:

Signed Preliminary Plan: Date 4/8/05 Checked: Initial Dmc Date 9/27/05
 Planning Board Opinion: Date 4/12/05 Checked: Initial Dmc Date 9/27/05
 Site Plan Required For this Development? Yes No Verified By: _____ (Initial)
 Site Plan Name: N/A Site Plan Number: _____
 Planning Board Opinion: Date _____ Checked: Initial TA Date 2/13/06
 Site Plan Signature Set: Date _____ Checked: Initial TA Date 2/13/06
 Lot #'s & Layout Lot Area Zoning Bearings & Distances Coordinates Plan #
 Road/Alley Widths Easements Open Space Non-standard BRLs N/A Adjoining Land
 Vicinity Map Septic/Wells N/A D/R note N/A Surveyor Cert. Owner Cert. Tax Map
 Child Lot Note N/A
 Site Plan Reviewer Plat Approval: N/A Checked _____ Initial _____ Date _____

Agency Reviews Req'd	Reviewer	Date Sent	Date DUE	Date Rec'd	Comments
Envir.	<u>Candy Bottom</u>	<u>9/26/05</u>	<u>10/10/05</u>		
Research	<u>Bobby Fleury</u>			<u>9/29/05</u>	
St. Hwy.	<u>Doug Mills</u>				<u>NO response</u>
DPS	<u>Granville Campbell</u>				<u>N/A</u>
PEPCO	<u>Jose Washington</u>			<u>x</u>	<u>OK</u>
Parks	<u>Doug Powell</u>			<u>N/A</u>	<u>N/A</u>
DRD	<u>Steve Smith</u>			<u>9/30/05</u>	<u>OK</u>

Final DRD Plat Review:

DRD Review Complete: Initial Dmc Date 10/13/05
 (All comments rec'd and incorporated into mark-up)
 Engineer Notified - (Pick up Mark-up): _____
 Final Mylar w/Mark-up & PDF Rec'd.: Initial TA Date 2/10/06
Board Approval of Plat:
 Plat Agenda: _____
 Planning Board Approval: _____
 Chairman's Signature: _____
DPS Approval of Plat:
 Engineer Pick-up for DPS Signature: _____
 Final Mylar for Reproduction Rec'd: _____
Plat Reproduction: Initial _____ Date _____
 Addressing: _____
 File Card Update: _____
 Final Zoning Book Check: _____
 Update Address Books with Plat #: _____
 Update Green Books for Resubdivision: _____
 Notify Engineer to Seal Plats: _____
 Engineer Seal Complete: _____
 Complete Reproduction: _____
 Send to Courthouse for Recordation: _____

No. _____