



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAY 25 2011

MCPB No. 11-28
Preliminary Plan No. 120100290
Kensington Heights
Date of Hearing: April 14, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on May 20, 2010, Kensington Heights 2, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 27 lots on 3.02 acres of land in the RT-8 zone, located in the southwest quadrant of the intersection of University Blvd and the Wheaton Plaza access road ("Property" or "Subject Property"), in the Wheaton Central Business District and Vicinity Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100290, Kensington Heights ("Preliminary Plan" or "Application"); and

WHEREAS, on March 10, 2011, Applicant submitted a revision of the Preliminary Plan that would create 26 lots on the Subject Property; and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 1, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on April 14, 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

Approved as to
Legal Sufficiency:

 5/10/11

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WHEREAS, on April 14, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, 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 approved Preliminary Plan No. 120100290 to create 26 lots on 3.02 acres of land in the RT-8 zone, located in the Wheaton Central Business District and Vicinity Sector Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 26 lots for 1 one-family detached dwelling unit and 25 townhouses, including 13.7% moderately priced dwelling units (MPDUs).
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Specific conditions include:
 - a. The final forest conservation plan must include a plan to remove and manage non-native and invasive plants within the forest retention and planting areas.
 - b. Any unpaved paths and/or seating within protected forest areas must be shown on the final forest conservation plan.
 - c. Specific numbers, sizes, species, and planting locations for native trees that receive landscape credits in the forest conservation plan worksheet will be determined at site plan.
- 3) The record plat must reflect a Category I conservation easement over all areas of forest retention and forest planting. The Category I conservation easement may be modified to allow for limited unpaved paths and/or seating areas within protected forest areas on the site.
- 4) Specific noise mitigation measures for private, outdoor use areas will be determined at site plan.
- 5) Prior to issuance of building permits for the affected units, the following must be submitted to M-NCPPC Staff:
 - a. Certification from an acoustical engineer that the building shell for the dwelling units on proposed Lots 2-13 (identified as proposed Lots 4-14 in the noise analysis report) have been designed to attenuate projected interior levels to or below 45 dBA, Ldn using projected 2030 traffic noise levels identified in the noise analysis report, dated October 12, 2010.
 - b. Signed, notarized commitment to construct the dwelling units on proposed Lots 2-13 (identified as proposed Lots 4-14 in the noise analysis report) in

accord with the acoustical design specifications contained in the building shell analysis. Any changes to the building shell construction that may negatively affect acoustical performance must be approved in writing by the acoustical engineer to provide acoustical attenuation for affected units to the same level as the specifications in the building shell analysis. A copy of the written approval must be provided to M-NCPPC Staff.

- 6) The Applicant must dedicate and the record plat must show dedication of approximately 11,030 square feet of right-of-way for the extension of Findley Road, as shown on the Preliminary Plan.
- 7) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan and to the design standards imposed by all applicable road codes.
- 8) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a five-foot-wide sidewalk along the Property frontage on the extension of Findley Road, unless construction is waived by MCDPS.
- 9) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks and all sidewalks that connect between a private street and either University Boulevard or the Wheaton Plaza access road.
- 10) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 11) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to Commission Staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 12) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 22, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 13) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated September 13, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 14) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 15) No clearing, grading or recording of plats prior to certified site plan approval.
- 16) The final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 17) In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or right-of-way location, width, or alignment, the Applicant must

obtain approval of a preliminary plan amendment prior to certification of the site plan.

- 18) The Applicant must comply with the binding elements of County Council Resolution No. 16-1189 approving Local Map Amendment G-877.
- 19) Consistent with condition #1 above, the final number of MPDU's will be determined at the time of site plan.
- 20) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the site plan process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 21) Prior to certification of the Preliminary Plan, the plan drawing must be amended to specify a parcel letter for the common open space along the outside perimeter of the Subject Property.
- 22) The record plat must show necessary easements.
- 23) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

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. *The Preliminary Plan substantially conforms to the Sector Plan.*

The 1990 Wheaton Central Business District and Vicinity Sector Plan recommends low intensity residential uses for the Subject Property. The Property was rezoned in 2009 to RT-8, despite a recommendation in the Sector Plan for the RT-6 and C-T zones. Notwithstanding the recommendation in the Sector Plan, the hearing examiner and the County Council found that the proposed development and RT-8 zoning were in substantial conformance with the intent of the Sector Plan.

Specifically, the Sector Plan states on page 46 that "low intensity new developments [in this area] are encouraged to buffer existing single-family residences from adverse effects associated with major traffic arteries." The

Application will accomplish this goal by providing buffering for existing dwellings from University Boulevard and the Wheaton Plaza access road.

The Sector Plan also recommends on page 48 the use of "Townhouse and Planned Development zoning. This zoning would encourage the development of a variety of housing types on individual parcels. Higher density development should be sited closer to the Metro station, to the business district, and to major roads. Lower density development (primarily single-family homes) would be developed adjacent to existing single-family areas." The proposed subdivision meets this goal by providing higher density townhouse residential development adjacent to University Boulevard and the Wheaton Plaza mall (i.e., closer to the business district and major roads).

The Proposed Street and Highway Plan on page 96 of the Sector Plan shows that Findley Road should be extended onto the Subject Property and ended in a cul-de-sac. The Application accomplishes this objective.

Based on the above, the Planning Board finds that the Preliminary Plan substantially conforms to the recommendations of the Sector Plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Vehicular access to the proposed subdivision will be provided by an extension of Findley Road onto the Subject Property. Findley Road will be terminated in a cul-de-sac just inside the western property line. The one one-family detached dwelling will have driveway access from the cul-de-sac. A private loop street, with two entrances from the proposed cul-de-sac will provide access to the townhouses. Pedestrian access will be provided by sidewalks on Findley Road, University Boulevard, and the Wheaton Plaza access road, and walkways leading into the site from those streets.

The Application does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. To satisfy the Policy Area Mobility Review (PAMR) requirements of the Adequate Public Facilities (APF) test, any development located within the Kensington/Wheaton Policy Area is required to mitigate 10 percent of its new peak-hour trips. The Application, as a result of being located within a Metro Station Policy Area (MSPA), is estimated to generate 18 percent fewer trips compared to similar uses located outside an MSPA and, therefore,

satisfies the 10 percent PAMR trip mitigation requirement. Based on the above finding, the Application satisfies the PAMR requirements of the APF test.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

A private street is proposed to provide access to and frontage for the 25 townhouse lots. Section 50 29(a)(2) of the Subdivision Regulations requires that lots must front on a street that has been dedicated to public use or that has acquired the status of a public street. The proposed private street meets the minimum standards necessary to make the finding that it has acquired the status of a public street. These standards, as previously applied by the Planning Board for townhouse lots, include a 20-foot pavement width, five-foot sidewalk width, an appropriate circulation pattern, and an appropriate paving cross-section. The road will also be placed within an easement that ensures it remains fully accessible to the public. Therefore, the Planning Board finds that the proposed private street has acquired the status of a public street.

The lots were reviewed for compliance with the dimensional requirements for the RT-8 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Preliminary Forest Conservation Plan

As required by the County Forest Conservation Law (Section 22A of the County code), a Preliminary Forest Conservation Plan (PFCP) was submitted with the Application.

The PFCP proposes to retain 0.47 acres and clear 0.55 acres of existing onsite forest. The reforestation requirement is 0.46 acres. The Applicant will meet this requirement through 0.18 acres of onsite reforestation, 0.09 acres of onsite landscape credits, and 0.19 acres of offsite measures (reforestation at an offsite location or buying credits at a forest bank). The final offsite location will be determined with the Final FCP at Site Plan.

The PFCP includes a conceptual landscape plan that shows the general locations and species of native trees that may be planted within the subdivision and are proposed for use as landscape credits towards meeting part of the subdivision's reforestation requirement. The concept is acceptable, but the details of the species, amounts, planting locations, and allowed credit should be reviewed and determined at the site plan stage. Some of the landscaped areas may also be considered to be suitable as a visual screen for some of the residences from traffic noise on University Boulevard.

The Application is an optional method of development in the RT-8 zone, a one-family zone, and, therefore, a minimum amount of forest must be retained onsite. Section 22A-12(f) of the County Forest Conservation Law states:

- (1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.
- (2) Retention, reforestation and afforestation. Forest retention must be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:

(B) In a planned unit development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold...

For the Subject Property, the applicable conservation threshold is 0.65 acres. The Forest Conservation Law allows for some flexibility of the above requirement for onsite forest retention. Section 22A-12(f)(3) states that "if the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping." That is, if onsite forest retention cannot be used to partly or entirely meet the conservation threshold amount, then onsite forest planting may be used to meet this threshold amount.

Originally, the Applicant proposed a subdivision with 27 lots with no onsite forest retention and 0.44 acres of onsite forest planting. This proposal was not in conformance with Sections 22A-12(f)(2)(B) and (f)(3) and the Applicant would have had to request a waiver from these provisions.

However, the Applicant later revised the Preliminary Plan to delete one of the one-family detached lots, convert a second one-family detached lot into a townhouse lot, and re-arrange the remaining lots to create a 0.65-acre combined onsite forest retention and planting area. The revised layout does not provide the entire onsite forest through retention alone. This is because the density of the RT-8 zone, in combination with infrastructure requirements such as the full cul-de-sac at the public road termination on the site, limits the amount of forest retention that can occur onsite. The maximum possible forest retention is provided by the revised layout and is in conformance with Section 22A-12(f)(3).

The Preliminary Plan complies with the Forest Conservation Law's minimum onsite forest requirement for an optional method of development in a one-family residential zone (Section 22A-12(f)(2)(B)) and provides the maximum possible on-site forest retention in combination with onsite reforestation (Section 22A-12(f)(3)).

In order to protect the onsite forest, a modified Category I conservation easement will be placed over the retained forest area. The modified conservation easement would allow for a limited amount of unpaved paths and seating for use and enjoyment by the residents of the subdivision.

Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise, such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require eight Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact three Protected Trees that will not be removed. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure that the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant because disturbance and removal of the specified trees are due to the development of the site, consistent with the density approved in the rezoning to RT-8. The trees and/or their critical root zones lie within the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this Applicant. The Planning Board has granted variances to applicants of other sites for impacts or removal of large trees within the developable portion of these other sites.

- ii. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The County Council determined that the Subject Property is appropriate for townhouse development and provides an appropriate transitional land use from the shopping center to the adjacent one-family detached residential development.

The extent and type of development on the site is based on the goal of the District Council to provide a transitional use on this site between the mall

and the residential uses. Therefore, the variance request is not based on the result from actions by the Applicant.

- iii. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

- iv. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan has been approved by the Montgomery County Department of Permitting Services.

The Planning Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *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.*

The MCDPS Stormwater Management Section approved the stormwater management concept on December 22, 2009. The stormwater management concept consists of onsite channel protection measures via underground storage; onsite water quality control via disconnects, infiltration filters, and a stormfilter; and onsite recharge via drywells and an infiltration trench.

6. *The Application complies with all applicable binding elements of County Council Resolution No. 16-1189 approving Local Map Amendment G-877.*

Local Map Amendment G-877 was approved on November 10, 2009, and rezoned the Subject Property from R-60 and C-T to RT-8. The resolution approving the local map amendment contains seven binding elements:

1. The maximum number of dwelling units shall be 27 including moderately priced dwelling units (MPDUs). The final number of dwelling units including a minimum 12.5% MPDUs will be established at site plan review.
2. Any units that have lot frontage and direct access on the proposed cul-de-sac and are contiguous to the existing R-60 neighborhood (or are separated from that neighborhood only by a common area) shall be one-family detached homes.
3. The maximum number of units in a townhouse row shall not exceed four units except for any townhouse units facing the proposed Findley Road cul-de-sac, which must not exceed three units per row. Likewise, any townhouse units directly confronting the common property line with houses that front on Faulkner Place must not exceed three units per row. If townhouse rows are located around the Findley Road cul-de-sac or confront the common property line with houses that front on Faulkner Place, these particular units shall be designed to have the appearance of one-family dwelling units with one front door per elevation. The final design, layout, and location will be established during site plan review.
4. The one-family detached units identified on the Schematic Development Plan as Units 1, 2, and 3 shall be set back a minimum distance from the common property line as follows:
 - Unit 1: 25 feet (side)
 - Unit 2: 30 feet (side) and 35 feet (rear)
 - Unit 3: 35 feet (rear)
5. Vehicular access to this site shall be limited to Findley Road.
6. Building coverage shall not exceed 25% of the gross tract area.
7. Green area provided shall not be less than 55% of the gross tract area.

The Application is in compliance with each of the binding elements, as evidenced on the Preliminary Plan.

BE IT FURTHER RESOLVED, that 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.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that 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 Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

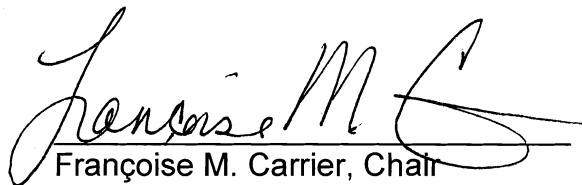
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 25 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, May 19, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board