



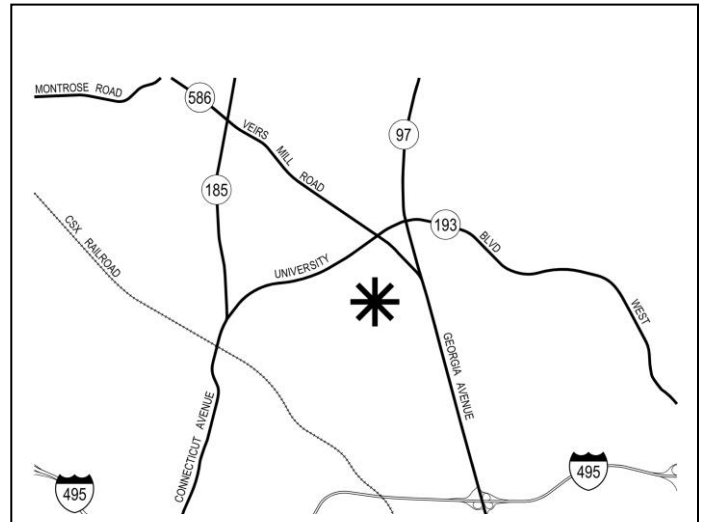
**Kensington Heights Limited Preliminary Plan Amendment 12011017A**

- C.M. Crystal Myers, Senior Planner, Area 2 Division, Crystal.Myers@montgomeryplanning.org, 301-495-2192
- K.A. Khalid Afzal, Supervisor, Area 2 Division, Khalid.Afzal@montgomeryplanning.org, 301-495-4650
- G.K. Glenn Kreger, Chief, Area 2 Division, Glenn.Kreger@montgomeryplanning.org, 301-495-4653

**Staff Report Date: 7/10/14**

**Description**

- Request to modify Condition No. 6 to replace the pedestrian connection to Westfield Wheaton Mall with an access easement;
- Located north of McComas Avenue and east of Melvin Grove Court in the 2012 *Wheaton CBD and Vicinity Sector Plan*;
- 1.8 acres in the RT-8 Zone;
- Applicant: Kensington Heights 2, LLC;
- Submitted date: May 14, 2014.



**Summary**

- Staff recommends approval with conditions. The Applicant is requesting a change in the revised condition.

## Recommendation and Conditions

Staff recommends approval of Limited Preliminary Plan Amendment No. 12011017A, Kensington Heights. All previous approvals remain in full force and effect, except as modified by the following condition:

### Modified Condition 6

~~The Applicant must provide a pedestrian connection between McComas Avenue and the Wheaton Mall property via the internal sidewalk, as shown on the Preliminary Plan.~~

The Applicant must provide an 8-foot wide public access easement, for a possible future sidewalk connection, as shown on the Preliminary Plan Amendment. This easement must be recorded on the record plat.

## Applicant's Concerns

The Applicant opposes the proposed modified condition and submitted a letter to the Planning Board expressing his concerns (Attachment D). He wants the condition to clearly express that the easement is for a possible future access for a path no wider than 5'. He fears that providing a "public access easement" on the Subject Site allows the public to continue using the site as an informal public access to the Mall property before the path is built. In communications with Staff, the Applicant proposed an alternate version of the modified condition:

*The Applicant must provide an 8-foot wide easement for possible future public access. This easement must be recorded on the record plat.*

Staff does not recommend changing the Staff's revised condition as proposed in this report because the project's approved Site Plan resolution states that the Preliminary Plan must provide a "public access easement". Staff notes that calling it a "public access easement" does not obligate the Applicant to allow people to trespass on the Subject Site. What is more important and relevant here is the actual language of the easement, which will be finalized later.

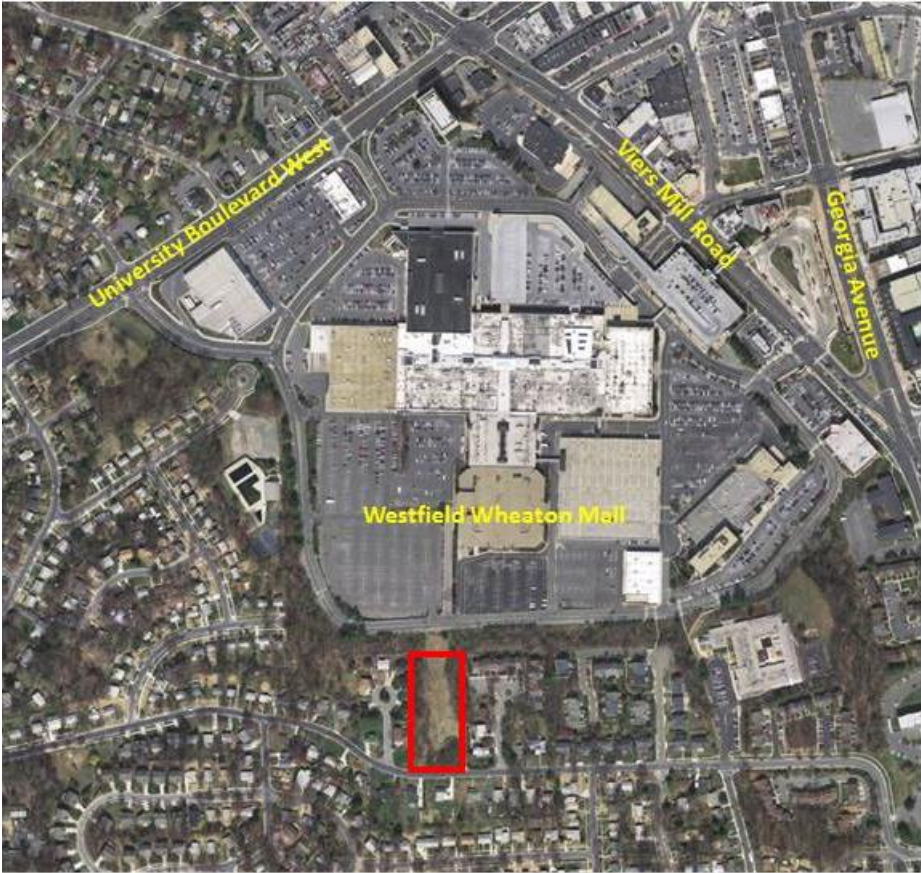
The Applicant has also stated that if the Planning Board wants to allow the public to continue using the Subject Site to access the Wheaton Mall property, he would prefer to build the pedestrian path now. However, Staff notes that the approved Site Plan 820140040 does not require the Applicant to build this path. Building the path now will require going back to the approved Site Plan and amending it to include the path in the proposed project.

**Project Description**

**Vicinity**

The Subject Site is located on the north side of McComas Avenue east of Melvin Grove Court. North of the Subject Site is Westfield Wheaton Mall, to the east is a small cluster of one-family detached houses and townhouses zoned RT-8, and to the west and south are R-60 zoned single-family detached houses. The Wheaton Metro Station is approximately one mile to the northeast at the intersection of Georgia Avenue and Reedie Drive.

**Figure 1: Vicinity Map**



## Site Description

The 1.8-acre site is zoned RT-8 and identified as Part of Lot 16 in the Kensington Heights subdivision (Subject Site). It contains a man-made mound created by the dirt and debris deposited on this site during construction of the Westfield Wheaton Mall (it was previously owned by Westfield Wheaton). The top of the mound is level with the Mall's ring road and makes parts of the property 18 feet higher than the adjacent residential properties. The Subject Site is vacant but contains an informal pedestrian path from McComas Avenue to the Westfield Wheaton Mall property.

**Figure 2: Site Map**



## Previous Approvals

### Schematic Development Plan

On October 12, 2010, the Montgomery County Council rezoned the Subject Site from R-60 to RT-8. The approved Schematic Development Plan allows for up to 14 single-family detached and townhouse dwelling units and contains four binding elements (County Council Resolution 16-1518). The binding elements are not affected by this Amendment.

### Preliminary Plan

On July 26, 2012, the Planning Board approved with conditions Preliminary Plan No. 120110170 (MCPB 12-96) for up to 11 townhouse lots and three single-family detached dwelling lots. On March 26, 2013, the Planning Board amended Conditions No. 3 and No. 5 of the approved Preliminary Plan through a corrective resolution (Attachment A) to require the Applicant to pay a fee-in-lieu, prior to the issuance of building permits, if the sidewalk on the McComas Avenue frontage of the site is not constructed by the Applicant (Condition No. 3); and to require a sidewalk only on one side of the internal private road rather than on both sides (Condition No. 5). These modifications were part of the hearing and approval of the Preliminary Plan, but were inadvertently omitted from the original Planning Board Resolution.

### Site Plan

On May 8, 2014, the Planning Board approved with conditions Site Plan No. 820140040 (MCPB 14-25) for 11 townhouses and three single-family detached dwellings. As part of this approval, the Planning Board decided that the Applicant should provide an easement on their property for a 5-foot wide path connection to the Wheaton Mall property rather than construct the path as required by the approved Preliminary Plan (Attachment B).

### History of the Pedestrian Connection on this Property

This pedestrian connection to Wheaton Mall has been an issue of debate and discussion since the first application for rezoning of this property. On May 1, 2009, the Planning Board held a public hearing on the Local Map Amendment case. Staff recommended, and the Applicant agreed, that a pedestrian connection be explored at the time of Site Plan review. Some of the residents who attended the public hearing opposed this recommendation because they feared a pedestrian connection would invite criminal activity into the area. The Board decided that this issue would be better addressed at Site Plan.

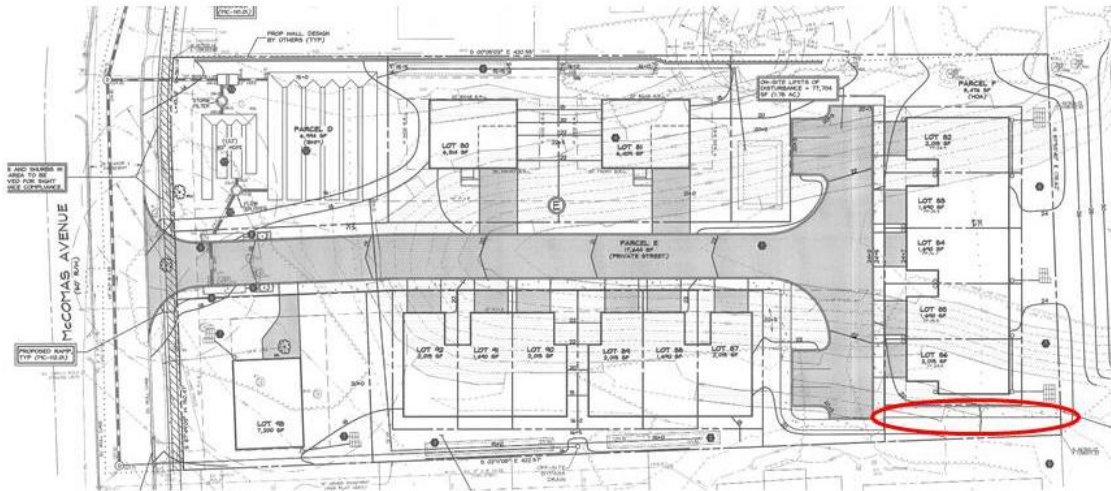
During the Hearing Examiner's public hearing on November 6, 2009, some residents and the Montgomery County Office of the People's Counsel expressed concern that this connection could invite crime into the area. In response, the Hearing Examiner recommended, and the Council approved, a non-binding general note to the Schematic Development Plans that states: "No pedestrian sidewalk access to Wheaton Plaza is being provided or proposed per the direction of the community."

On July 19, 2012, the Planning Board decided against this note and approved the Preliminary Plan with a pedestrian connection to the Mall property line. The Board approved the Preliminary Plan showing a pedestrian path on the Subject Site connecting the McComas Avenue sidewalk to the Mall's Ring Road via a future path on the Mall property. This was done with the idea that a future redevelopment of the Mall property along the Mall's Ring Road should provide a safe pedestrian path between the pedestrian path on the property and the Mall Ring Road, providing a safe and adequate connection that currently exists only as an informal dirt path.

At the Site Plan hearing on May 1, 2014, the Planning Board heard testimony from the Mall representatives who expressed opposition to a pedestrian connection to the Mall at this location. They did not believe there was a need for this connection and that it raised liability concerns. Since there is a significant grade difference between this property and the Mall's Ring Road, an ADA compliant path will likely be a long path with one or more switchbacks to accommodate wheelchair users. Wheaton Mall representatives argued that there were other locations in this community which were more convenient and adequate for such a connection. One community representative expressed strong support for the Staff's recommendation to require the Applicant to build the path as part of the proposed project.

The Board decided that the Applicant should not be required to build the path. However, since the approved Preliminary Plan already required the Applicant to build the path, the Planning Board gave the Applicant the option to either build the path as shown on the Preliminary Plan or apply for a Preliminary Plan Amendment to change Preliminary Plan condition of Approval No. 6 from building the path to providing an access easement on the record plat to allow a future construction of the path in connection with redevelopment of the adjacent Wheaton Mall property. The Applicant chose the Preliminary Plan Amendment option instead of building the path, and has submitted this application.

**Figure 3: Location of Pedestrian Connection**



### **Community Concerns**

Staff received e-mail correspondence from an area resident, President of the Kensington Heights Civic Association (KHCA), and the KHCA Land Use Committee Chair expressing their opposition to the proposed modification (Attachment C). They feel that removing the requirement for a pedestrian connection is contrary to the Master Plan goal to make the area more walkable. Staff informed them that the pedestrian connection is still possible. An access easement preserves the possibility for a connection in the future.

### **Analysis and Findings**

All previous findings for Preliminary Plan 120110170 as approved by the Planning Board remain valid. The approved validity period also remains unchanged.

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The 2012 Approved and Adopted *Wheaton CBD and Vicinity Sector Plan* does not specifically recommend a pedestrian connection on the Subject Site. It recommends pedestrian connections to the Wheaton Mall property from other locations around the Mall. Page 61 shows existing connections to the Mall off of Torrance Court, Stephen Knolls Elementary School property, and Faulkner Place. It shows a future connection off of Peregoy Drive.

On page 53 it states: "Also consider additional shared use path connections through the buffer to the neighboring community." The buffer area is the portion of the Wheaton Mall property between the Mall Ring Road and the southern portion of the property line of the Mall with abutting residences. The path in question would connect to this buffer area.

Staff finds that the proposed Amendment does not materially change the existing approval for uses and square footage. The Property is currently limited to a total of 11 townhouse lots and 3 single-family dwelling lots in the RT-8 Zone. This Amendment makes no changes to these limitations.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*  
The development of this site continues to be limited to the density and uses approved with the original approval. The prior finding of Adequate Public Facilities, including fire and rescue access, roads, water and sewer remains valid for the square footages approved.
3. *The size, shape, width and orientation of the proposed lots are appropriate for the location of the subdivision and for the uses contemplated.*  
The lots are of the appropriate dimensions with respect to size, shape, width and orientation to accommodate the uses expected to occur on this property. The proposal remains in conformance with all applicable sections of the Subdivision Regulations.
4. *The Application satisfies all the applicable requirements of the Montgomery County Forest Conservation Law, Chapter 22A of the Montgomery County Code.*  
The original approval by the Planning Board included provisions to satisfy the requirement of Chapter 22A as shown on the approved preliminary forest conservation plan. The Property continues to be bound by the conditions of the approved Forest Conservation Plan.
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 fact that the Montgomery County Department of Permitting Services approved a stormwater management concept for the entire site at the time of the original Preliminary Plan approval. This Amendment does not change the elements of that concept.

Based on the findings discussed above, Staff recommends approval of this Limited Preliminary Plan Amendment.

## **Conclusion**

The proposed Limited Preliminary Plan Amendment does not alter the Planning Board's previous findings and compliance with the Forest Conservation Law, Subdivision Regulations, the Zoning Ordinance, and adequate public facilities requirements. The proposed project remains compatible with the surrounding area. All previous approvals remain in full force and effect, as modified by the Amendment. Staff recommends approval with conditions listed at the beginning of this report.

## **Appendices:**

- A. Preliminary Plan Corrected Resolution No. 12-96
- B. Site Plan Resolution 14-25
- C. Email Correspondence from Community Members
- D. Applicant's Opposition Letter



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

Agenda Date: 3/14/13  
Agenda Item No. 1 (A)

**MAR 26 2013**

**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Rose Krasnow, Interim Planning Director *RK*

VIA: Glenn Kreger, Area 2 Chief *GK*  
Khalid Afzal, Area 2 Supervisor *KA*  
Patrick Butler, Area 2 Senior Planner *PB*

DATE: March 4, 2013

Re: Correction of Resolution for Preliminary Plan No. 120110170, MCPB  
No. 12-96, Kensington Heights

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Attached, please find a redlined version of the Resolution for Preliminary Plan No. 120110170 Kensington Heights. The Resolution was mailed out to all parties of record on July 26, 2012.

This correction is to address modifications to Condition No. 3 and No. 5 that occurred on the record at the public hearing. These modifications were inadvertently omitted from the final draft of the resolution prior to mailing. The correction of these mistakes will ensure consistency with the intended conditions of approval.

No. 3 should have been modified to read:

3. The Applicant must construct a five-foot wide sidewalk along the McComas Avenue frontage and extend the sidewalk off-site to the intersection of McComas Avenue with Melvin Grove Court and the intersection of McComas Avenue with Littleford Lane prior to issuance of a building permit. All sidewalk improvements are to be located within the public right-of-way (ROW). If the sidewalk is constructed by the County prior to issuance of a building permit for the proposed development, the Applicant must pay a fee-in-lieu to the Annual Sidewalk Program (CIP No. 506747) for the sidewalk improvements listed above.

No. 5 should have been modified to read:



5. The Applicant must provide a five-foot sidewalk along ~~both sides~~ the east side of the north-south internal private street, as shown on the Preliminary Plan.

cc: David Lieb, Associate General Counsel



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

**MAR 26 2013**

MCPB No. 12-96  
Preliminary Plan No. 120110170  
Kensington Heights  
Date of Hearing: July 19, 2012

**CORRECTED RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review preliminary plan Applications; and

WHEREAS, on February 3, 2011, Kensington Heights 2, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 14 lots on 1.81 acres of land in the RT-8 Zone, located on the north side of McComas Avenue approximately 60 feet east of the intersection of Melvin Grove Court and McComas Avenue ("Subject Property"), in the Wheaton CBD and Vicinity Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan Application was designated Preliminary Plan No. 120110170, Kensington Heights ("Preliminary Plan" 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 July 6, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 19, 2012 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

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110170 to create 14 lots on the Subject Property, subject to

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Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to fourteen (14) lots for a maximum of three (3) single-family detached dwelling units, and a maximum of eleven (11) single-family attached townhouse units.
2. The Applicant must dedicate, and the record plat must reflect, a 60-foot right-of-way (measured from the opposite right-of-way line) for McComas Avenue.
3. The Applicant must construct a five-foot wide sidewalk along the McComas Avenue frontage and extend the sidewalk off-site to the intersection of McComas Avenue with Melvin Grove Court and the intersection of McComas Avenue with Littleford Lane prior to issuance of a building permit. All sidewalk improvements are to be located within the public right-of-way (ROW). If the sidewalk is constructed by the County prior to issuance of a building permit for the proposed development, the Applicant must pay a fee-in-lieu to the Annual Sidewalk Program (CIP No. 506747) for the sidewalk improvements listed above.
4. The Applicant must satisfy the Policy Area Mobility Review (PAMR) test by mitigating one new peak-hour trip. The Applicant has the option of paying \$11,300 to MCDOT in lieu of providing an off-site transportation improvement. The PAMR payment could be applied toward the construction of the off-site sidewalk extension required above.
5. The Applicant must provide a five-foot sidewalk along ~~both sides~~ the east side of the north-south internal private street, as shown on the Preliminary Plan.
6. The Applicant must provide a pedestrian connection between McComas Avenue and the Wheaton Mall property via the internal sidewalk, as shown on the Preliminary Plan.
7. The Applicant must provide handicapped ramps at the crosswalk across the internal private street at the intersection with McComas Avenue.
8. The Applicant must provide at-grade crossings of the sidewalks across all driveways of the internal private street.
9. The Applicant must file a Final Forest Conservation Plan concurrently with the Site Plan.
10. The Final Forest Conservation Plan must include mitigation plantings for variance trees removed.
11. The Final Forest Conservation Plan must include detailed and specific tree protection measures for off-site trees affected by development.
12. The Applicant must demonstrate compliance with Section 50-32(b) of the Subdivision Regulations, to the Department of Permitting Services, prior to Planning Board approval of the Site Plan.
13. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated April 13, 2012 and does

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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.

hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

14. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated September 1, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
15. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
16. The record plat must reflect a permanent public use and access easement over all private streets and adjacent parallel sidewalks.
17. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
18. No clearing, grading, or recording of plats prior to Certified Site Plan approval.
19. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at Site Plan.
20. 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.
21. The Applicant must comply with the Binding Elements of the Schematic Development Plan approved by the County Council in Local Map Amendment G-879.
22. 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 at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
23. The Adequate Public Facility review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
24. All necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that, having considered 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 Planning Board FINDS, with the conditions of approval, that:

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

There is no specific recommendation or comment in the Sector Plan for this site other than the general retention and preservation of the existing residential neighborhoods. The *Wheaton CBD and Vicinity Sector Plan* was amended in 2011, and the 2011 Sector Plan confirmed RT-8 zoning for the site.

One of the general goals of the Sector Plan's zoning recommendations is to protect existing residential neighborhoods (page 31, Planning Board Draft as modified by the Council Resolution of Approval). On page 33, it further states that the "heights and densities decrease closer to the single-family residential communities surrounding Wheaton's commercial areas and no change in zoning is recommended for the developed low-density stable residential communities that surround the more dense central areas."

The proposed Preliminary Plan meets all standards and requirements of the RT-8 Zone confirmed by the Sector Plan, and it preserves the existing residential neighborhood near the dense central area of the Sector Plan by allowing for the development of the vacant parcel into a mix of single-family attached townhomes and single-family detached units. Therefore, the Planning Board finds the proposed Preliminary Plan is in substantial conformance with the goals and objectives of the 2011 *Wheaton CBD and Vicinity Sector Plan*.

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

Site Location and Vehicular Site Access Point

The site is located on McComas Avenue between Littleford Lane and Melvin Grove Court within an existing residential neighborhood, adjacent to the Westfield Wheaton Mall. The proposed development would create a private street from McComas Avenue, which terminates in two hammerheads.

On-Site Circulation

Internal circulation will be adequate with a two-way private street with driveways for both the single family detached and townhouse units.

Public Transit Service

The site is located approximately a half-mile from the nearest bus stop located at the intersection of Georgia Avenue (MD-97) and Windham Lane, and approximately one-mile from the Wheaton Metrorail Station.

Sector-Planned Roadway and Bikeway

McComas Avenue is not designated as a master planned roadway in the 2011 *Wheaton CBD and Vicinity Sector Plan*. It is a secondary residential street, with a 60-foot wide ROW. The Sector Plan recommends a signed shared roadway (on road bikeway), PB-7, along McComas Avenue.

Pedestrian Facilities

There are very few sidewalks in the surrounding neighborhood. Along the north-side of McComas Avenue, there is a four-foot wide sidewalk with an eight-foot wide tree panel that is approximately 800 feet east of the site. There are also sidewalks along sections of Littleford Lane and Torrance Drive, which are both in close proximity to the site.

Sidewalks do not exist along this section of McComas Avenue fronting the site. As described in the conditions above, the Applicant must provide a sidewalk along their frontage of McComas Avenue to Melvin Grove Court to the west and Littleford Lane to the east.

Local Area Transportation Review (LATR)

The proposed residential development will generate eight AM peak-hour trips within the peak-period (6:30 to 9:30 a.m.) and twelve PM peak-hour trips within the peak-period (4:00 to 7:00 p.m.). The table below illustrates the trips generated by the proposed land use:

Land Use	No. of Units	Peak-Hour Trips	
		AM	PM
Townhouse Units	11	5 (AM)	9 (PM)
Single-Family Detached Units	3	3	3
Total	14	8	12

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to LATR review.

Policy Area Mobility Review (PAMR)

The PAMR test requires the applicant to mitigate one (10% of the 12) new peak-hour trip generated by the proposed residential development within the weekday AM and PM peak-periods. To satisfy the PAMR test, the Applicant could contribute \$11,300 per PAMR trip for a total of \$11,300 toward transportation infrastructure improvements

within the greater Kensington/Wheaton Policy Area or could apply the required payment toward the offsite extension of the sidewalk.

#### Other Public Facilities

Other public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy resolution currently in effect. The Applicant is not required to make a School Facilities Payment. Electrical, gas, and telecommunications services are available to serve the Property.

Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds public facilities are adequate to support and service the area of the Preliminary Plan.

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

#### Lot Frontage on a Private Street

Section 50-29(a)(2) of the Subdivision Regulations requires "that individually recorded lots shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road."

In the case of this subdivision, the proposed streets on which 13 of the 14 lots front meet the minimum standards necessary to make the finding that they have the status of a public road. The private roads will be constructed to the minimum public road structural standards, have a 20-foot pavement width with adequate turning radii at intersections where needed for emergency access, have an appropriate paving cross-section elsewhere for private vehicles, and have an appropriate circulation and turnaround pattern. The private roads will be placed within an easement that ensures they remain fully accessible to the public. The 14<sup>th</sup> lot fronts on a public street.

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50-29(a) of the Subdivision Regulations, and Chapter 59, the Zoning Ordinance. The Planning Board finds that the size, shape, width, and area of the lots are appropriate for the location of the subdivision.

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

### Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), #420072910, on August 31, 2007, and recertified on January 8, 2010. As stated previously, the 1.81-acre Subject Property contains no forest, streams, wetlands, or environmental buffers. However, the site contains significant areas of man-made steep slopes due to previous use of the property as a stockpile site. The property is located in both Rock Creek and Sligo Creek watersheds; both are Use I watersheds. The proposed project is in compliance with the *Environmental Guidelines*.

### Unsafe Land

Section 50-32(b) of the Subdivision Regulations reads:

“The board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.”

As stated above, the Subject Property was used as a stockpile area during an expansion of the Westfield Wheaton Mall and has unknown amounts of fill. The Subject Property is graded as a plateau running north-south, sloping steeply from the Mall site, to the south, east and west. Parts of the site are 18' higher than adjacent properties. The Applicant is proposing to remove up to 14' of fill from the site, so that the finished topography more closely matches the surrounding properties. In order to ensure the stability of the site, the Applicant must work with the Department of Permitting Services to develop a plan for fill removal prior to site plan approval.

### Forest Conservation

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and a Preliminary Forest Conservation Plan (“PFCP”) has been submitted for Planning Board approval. There are 0.00-acres of forest on-site and all forest conservation requirements will be met off-site.

### Variance

The Applicant is requesting a variance for removal of two specimen trees (variance tree V-1), a 39-inch diameter black tupelo and (variance tree V-2), a 31-inch tulip poplar. Both stand near the right-of-way of McComas Avenue, and will be impacted by the grading and stormwater management facilities that are both necessary for development of the site.

### *Forest Conservation Variance*

Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees,



*Unwarranted Hardship*

In this case, an unwarranted hardship is caused by the need to remove the existing fill on the Subject Property in order to develop it safely and suitably. Removing the fill results in the need to remove all existing trees onsite. This includes the two trees that are considered high priority for retention. The Planning Board finds that the Applicant has a sufficient unwarranted hardship to further consider a variance.

*Variance Findings*

The Planning Board has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The Planning Board finds that removal of variance trees V-1 and V-2 is due to the removal of fill and placement of stormwater management facilities. The process of regrading the property will disturb the entire site, regardless of the proposed development program. Granting the variance will not confer a special privilege on the Applicant that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Planning Board finds that the variance is a result of the large amounts of fill on the Subject Property that were placed there through previous redevelopment on the Westfield Wheaton Mall property, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The Planning Board finds that variance trees V-1 and V-2 are impacted by the required grading and stormwater management facilities. There are no conditions relating to land or building use, either permitted or nonconforming, on a neighboring property that have played a role in the need for this variance.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The Planning Board finds that granting the variance will not violate State water quality standards or cause measurable degradation in water quality. Removal of variance trees V-1 and V-2 will be compensated for by allowing the installation of

stormwater management treatments where none currently exist. None of the trees proposed for removal are within any environmental buffers, as there is none on site.

*Mitigation for Trees Subject to the Variance Provisions*

The proposed variance for the removal of two trees must be mitigated by additional plantings on the Final Forest Conservation Plan. Mitigation should be at a rate that approximates the form and function of the trees removed. Therefore, the Planning board is requiring the replacement to occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH, which is consistent with mitigation required on previously approved plans. The Planning Board therefore requires the addition of six (6) native canopy trees with a minimum size of 3" DBH.

Therefore, based on the analysis above the Planning Board finds the Preliminary Forest Conservation Plan meets the Environmental Guidelines and Forest Conservation Law. The variance approval is incorporated into the Planning Board's approval of the Preliminary Forest Conservation Plan.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 1, 2011. The stormwater management concept includes the use of dry wells, micro-bioretenion, and non-rooftop disconnect. Additional treatment is provided by the use of Filterra(s) and a volume based StormFilter. Due to existing storm drain capacity and downstream flooding concerns in the Town of Kensington overbank (10 year control) and extreme flood protection (100 year control) are required.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months (5 years) from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, or a request for an extension must be filed; and

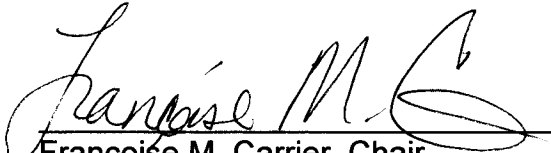
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is           MAR 26 2013           (which is the date that this Resolution is mailed to all parties of record); and

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).

\* \* \* \* \*

**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 Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, March 14, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



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

**MAY 8 2014**

MCPB No. 14-25  
Site Plan No. 820140040  
Kensington Heights  
Date of Hearing: May 1, 2014

**RESOLUTION**

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on October 23, 2013, Kensington Heights 2 LLC ("Applicant"), filed an application for approval of a site plan for three one-family detached dwelling units and eleven townhouses on 1.81 acres of RT-8 zoned-land, located north of McComas Avenue and east of Melvin Grove Court ("Subject Property"), in the Wheaton Central Business District and Vicinity Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820140040, Kensington Heights ("Site Plan" 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 April 17, 2014, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 1, 2014, 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

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820140040 for three one-family dwelling units and eleven townhouses on the Subject Property, subject to the following conditions:<sup>1</sup>

<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. Development Plan Binding Elements  
The Applicant must comply with the binding elements of the Schematic Development Plan approved by the County Council in Local Map Amendment G-879, on October 12, 2010, by Resolution No. 16-1518.
2. Preliminary Plan Conformance  
The Applicant must comply with the conditions of approval for Preliminary Plan No. 120110170, as listed in the MCPB Resolution No. 12-96 approved by the Planning Board on March 26, 2013, unless amended by the Planning Board. However, the Applicant shall not be required to build the sidewalk connection to the Wheaton Mall property as stated in condition of approval # 6 of Preliminary Plan No. 120110170, but must provide a public access easement in its place adequate to accommodate the future construction of a sidewalk connection. The future construction of a sidewalk connection to the Wheaton Mall property within the easement area will not require an amendment to this Site Plan.
3. Prior to approval of the certified site plan, the Applicant must file for and receive approval of an amendment to Preliminary Plan No. 120110170 to:
  - a) remove the Preliminary Plan's condition of approval # 6 and the requirement to build a sidewalk connection from the Subject Property's internal sidewalk system to the Wheaton Mall property, and
  - b) add a requirement to provide a public access easement adequate to accommodate construction of such a sidewalk connection in the future.
4. Final Forest Conservation Plan
  - a) Prior to any demolition, clearing, or grading, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an M-NCPPC-approved off-site forest mitigation bank to satisfy the afforestation requirement.
  - b) Limits of disturbance (LOD) shown on the Sediment and Erosion Control Plan must be consistent with the LOD on the Final Forest Conservation Plan.
5. The Applicant must construct the private internal street(s) to applicable Montgomery County tertiary residential street structural standards and must construct all sidewalks, both on and off the Subject Property, to applicable ADA standards.
6. The Planning Board has accepted the conditions of the Montgomery County Department of Permitting Services Right-of-Way Permitting and Plan Review Section in its letter submitted electronically on March 19, 2014; and hereby incorporates them as conditions of this Site Plan approval. Therefore, the Applicant must comply with each of the conditions as set forth in the letter, which

may be amended by MCDPS provided that the amendments do not conflict with the other conditions of the Site Plan approval.

7. On-Site Lighting

- a) The lighting distribution and photometric plan must conform to IESNA standards for residential development.
- b) Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting public roads and residential properties.
- c) The height of the light poles, including the mounting base, shall not exceed 14'-6".
- d) All on-site, down-light fixtures must be full cut-off fixtures to prevent potential glare or excess illumination on adjacent properties.

8. Landscape Surety

Prior to issuance of the first building permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b) The cost estimate must include all applicable elements, including, but not limited to plant material, on-site lighting, retaining walls and railings, private roads, paths and associated improvements.
- c) The bond or surety shall be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety will be followed by inspection and release of the surety.

9. The fence on top of the retaining walls along the eastern and western boundaries of the Subject Property must have a transparent design, subject to Staff approval at Certified Site Plan.

10. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the Certified Site Plan. The development program must include the following items in the phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Sediment Control Plan and M-NCPPC inspection and approval of all protection devices.

- b) Prior to issuance of the tenth building permit, on-site amenities including, but not limited to, sidewalks, private street lamps, landscaping and trash receptacles must be installed. Street tree planting may wait until the next planting season following street construction.
- c) Prior to issuance of the tenth building permit, the off-site sidewalk of approximately 250 feet along McComas Avenue must be completed.
- d) The development program must provide phasing of stormwater management, sediment and erosion control, and other features.

#### 11. Certified Site Plan

Prior to approval of the Certified Site Plan, the following revisions to the Site Plan must be made and/or information provided subject to Staff Review and approval:

- a) Include the Final Forest Conservation Plan approval, Stormwater Management concept approval, development program, and Site Plan Resolution on the approval or cover sheet.
- b) Add a note stating that "M-NCPPC staff must inspect all protection devices prior to clearing and grading."
- c) Modify the data table to reflect the development standards enumerated in the Planning Board Resolution of approval.
- d) Ensure that all details and the development layout are consistent between the Site Plan and the Landscape Plan.
- e) Adjust front building lines in the townhouse row for lots 82 through 86 to comply with Montgomery County Code Section 59-C-1.7222(b).

BE IT FURTHER RESOLVED, that all site development elements as shown on the Kensington Heights drawings electronically submitted to M-NCPPC by April 3, 2014, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that, having considered 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 Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The Site Plan conforms to all the non-illustrative elements of the approved Schematic Development Plan described in County Council Resolution No. 16-1518 approving Local Map Amendment G-879, which rezoned the Subject

Property from R-60 to RT-8. The County Council resolution contains the following four binding elements, which the Site Plan meets.

1. *Vehicular access to this site shall be limited to McComas Avenue.*  
 The only vehicular access to the Subject Property is on McComas Avenue.
  2. *Building coverage shall not exceed 25% of the gross tract area.*  
 The Site Plan is limited to 22.4% building coverage.
  3. *The maximum number of dwelling units shall be 14. The final number of dwelling units will be established at site plan review.*  
 The Site Plan is approved for 14 dwelling units.
  4. *Any units that have frontage on McComas Avenue shall be one-family detached homes.*  
 Only Lot 93 has frontage on McComas Avenue, and it is approved for a one-family detached dwelling unit.
2. *The Site Plan meets all of the requirements of the zone in which it is located and where applicable conforms to an urban renewal plan approved under Chapter 56.*

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the RT-8 Zone.

**Data Table: Applicable Development Standards – RT-8 Zone**

Development Standards	Required	Approved and Binding on the Applicant
<b>Minimum Tract Area: (59-C-1.731a)</b>	20,000 sq. ft.	78,762 sq. ft. (1.81 ac.)
<b>Maximum Density of Development (County Council Resolution 16-1518)<sup>1</sup></b>	14 DUs	14 DUs
<b>Maximum Building Height (townhouses) (59-C-1.733)</b>	35'	35'



<b>Minimum Building Setbacks (townhouses) (59-C-1.732)</b>		
From any detached dwelling lot or land classified in a one-family, detached, residential zone.	30'	30'
From an adjoining lot:		
(1) Side (end unit)	10'	10'
(2) Rear	20'	20'
<b>Lot Area and Width<sup>2</sup> : (single- family detached units) (59-C-1.32)</b>		
Minimum Lot Area	6,000 sq. ft.	6,069 sq. ft.
Minimum Lot Width at Street Line	25'	25'
Minimum Width at Front Building Line	60'	60'
<b>Maximum Building Height (single-family detached units)<sup>2</sup> (59-C-1.327)</b>		
To Highest Point	35'	35'
To Mean Height	30'	30'
<b>Minimum Building Setbacks (single-family detached units)<sup>2</sup> (59-C-1.323)</b>		
From a street line	25'	25' <sup>3</sup>
From an adjoining lot:		
(1) Side	8' one side, 18 ft. sum of both sides	8' one side, 18' sum of both sides
(2) Rear	20'	20'
<b>Coverage and Green Area (59-C-1.734)</b>		

Maximum Building Coverage (County Council Resolution 16-1518)	25% <sup>4</sup>	22.4% (17,638 sq. ft.)
Minimum Green Area (59-C-1.734)(b))	50%	53% (41,796 sq. ft.)
<b>Parking (59-E-3.7)</b>	28 spaces (2 spaces/DU)	34 spaces

<sup>1</sup> County Council Resolution 16-1518, adopting Local Map Amendment G-879, limits density to a maximum of 14 dwelling units (11 townhouses and 3 one-family detached units), which is consistent with the RT-8 Zone's maximum density of development of 8 units per acre listed in 59-C-1.731(b).

<sup>2</sup> Pursuant to 59-C-1.71(a), one-family detached dwelling units in the RT-8 Zone are subject to the R-60 Zone development standards.

<sup>3</sup> For lot 93 only; no other lots on the Subject Property have frontage on a public street.

<sup>4</sup> County Council Resolution 16-1518, adopting Local Map Amendment G-879, limits building coverage to 25%, which is more stringent than the maximum building coverage set by 59-C-1.734(a).

**Row Design**

Section 59-C-1.722(b) of the Montgomery County Code states that “[t]hree continuous, attached townhouses is the maximum number permitted with the same front building line. The variations in building line must be at least 2 feet.”

As depicted on the Application, the row of five townhouses on lots 82 through 86 share the same front building line. To comply with Section 59-C-1.7222(b), the front building line of this row must be varied by at least two feet to ensure that no more than three continuous townhomes share the same front building line. As conditioned above, the Applicant must reflect this variation on the Certified Site Plan, subject to Staff review and approval.

Urban Renewal Plan

The Subject Property is not within an Urban Renewal area.

- 3. The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

#### Buildings and Structures

The Site Plan shows the townhouses placed away from the single-family houses on the adjacent properties. The townhouses are set back more than the required 30 feet from single family lots. And lot 93, the only lot fronting on McComas Avenue, complies with the fourth binding element on the applicable Schematic Development Plan by proposing a one-family detached dwelling. The locations of the building and structures are adequate, safe, and efficient.

#### Open Space

The RT-8 Zone does not have an open space requirement. It does have a minimum 50% green area requirement, which the Site Plan meets by providing 53% of the Subject Property as green area. The two parcels on the Subject Property proposed for stormwater management use will serve as a green area.

#### Landscaping & Lighting

The Landscaping Plan shows that a mix of shrubs, shade trees, and ornamental trees will be planted throughout the Subject Property. They are mainly located around the western and southern border of the Subject Property to buffer the development from neighboring residential properties.

The Lighting Plan shows traditional residential street lamps throughout the property. The illumination levels along the boundaries except McComas Avenue are at zero foot candles (fc). The illumination levels along McComas Avenue are no higher than 0.3 fc. All lighting fixtures will be full cut-off to prevent excessive glare from spilling into adjacent properties.

The landscaping and lighting on the Subject Property are adequate, safe, and efficient.

#### Recreation Facilities

Because, the Site Plan is proposing fewer than 25 dwelling units, it is exempt from meeting the adequacy test for recreation under the Montgomery County Recreation Guidelines. The Site Plan does provide for a safe, adequate, and efficient sidewalk system that allows for passive recreation and safe linkages to the south of the Subject Property.

#### Pedestrian and Vehicular Circulation

Pedestrian and vehicular circulation will be safe, adequate, and efficient, as described below.

*On-Site Vehicular Circulation*

Internal circulation will be adequate with the following internal private roads: 1) a north-south road from McComas Avenue; and 2) an east-west driveway that terminates in hammerheads at its eastern and western termini.

*Sector-Planned Roadway and Bikeway*

McComas Avenue is a secondary residential street with a 60-foot wide right-of-way that is not listed in the Sector Plan. The Sector Plan recommends a signed shared roadway (on-road bikeway), PB-7, along McComas Avenue. McComas Avenue is adequate to serve the Subject Property.

*Public Transit Service*

The Subject Property is located approximately half-a-mile from the nearest bus stop located at the intersection of Georgia Avenue (MD-97) and Windham Lane. Ride-On routes 7, 8, 9, 31, 34, 37, 38, and 48 and Metrobus routes C2, C4, Q1, Q2, Q4, Q6, Y5, Y7, Y8, and Y9 operate along this segment of Georgia Avenue. The Wheaton Metrorail Station is located approximately one mile away from the Subject Property.

Available public transit is adequate to serve the Subject Property.

*Pedestrian Facilities*

Sidewalks do not exist along the Subject Property's frontage on McComas Avenue, and there are very few sidewalks in the surrounding neighborhood. A four-foot wide sidewalk exists along McComas Avenue with an eight-foot wide tree panel, approximately 800 feet east of the Subject Property. There are sidewalks along nearby Littleford Lane and Torrance Drive.

The Site Plan shows the following pedestrian facilities pursuant to approved Preliminary Plan No. 120110170:

1. A five-foot wide sidewalk along the site's McComas Avenue frontage, continuing off-site approximately 250 feet west to the intersection with Melvin Grove Court. The off-site sidewalk will be within the public right-of-way.
2. A five-foot wide sidewalk along the east side of the north-south internal private street.

3. Handicapped ramps at the new five-foot wide sidewalk and crosswalk across the internal private street at the intersection with McComas Avenue.
4. At-grade crosswalks connecting sidewalks across all driveways of the internal private street.

With the required improvements, pedestrian facilities will serve the Subject Property adequately, safely, and efficiently.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The single-family units and townhouses on the Subject Property are compatible with the neighboring residential uses in the area. The property on the east side of the Subject Property is occupied by a similar RT-8 community of one-family detached houses and townhouses. Behind the Subject Property to the north is the Wheaton Mall property, and to the west and south are R-60 houses.

In locations along the Subject Property's boundaries where the townhouses are closest to neighboring one-family detached dwelling lots, the townhouses are set back more than the 30 feet required by the RT-8 Zone. The townhouses along the east side of the project, on lots 92 through 87, are approximately 35 feet from the single family lots on Littleford Lane, and the townhouse on lot 82 is approximately 33 feet from the neighboring Melvin Grove Court lot on its western boundary.

The retaining walls on the Subject Property will be compatible with the houses that abut the Subject Property's eastern and western boundaries. At its highest point, the western retaining wall will be approximately four feet high, with a fence/railing of no more than three feet. The fencing will have a transparent design in order to reduce its impact. The retaining wall by the northwest corner of the Subject Property, near Melvin Grove lot 46, will be no more than one-and-a-half feet high and will not require fencing. The eastern retaining wall will be approximately three feet at its highest point with a fence/railing of no more than three feet. A residential privacy fence is allowed up to six feet in height, so the height of the retaining wall and fence/rail will be similar to the height of a typical residential fence.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

Forest Conservation

The development application is subject to the Chapter 22A of the County Forest Conservation Law. The Final Forest Conservation Plan ("FFCP") submitted with the Site Plan is consistent with the Preliminary Forest Conservation Plan (PFCP). There is no forest on the Subject Property, and the 0.35-acre forest conservation requirement will be met off-site. Approval of the PFCP included approval of a variance for the removal of two trees identified as a high priority for retention or protection. As a part of the approval, the Planning Board required the Applicant to plant six, 3" caliper trees. The FFCP includes the required mitigation plantings, and the Board finds that the FFCP complies with the requirements of the Forest Conservation Law.

Stormwater Management

As stated in the September 1, 2011, approval letter from the Department of Permitting Services, the stormwater management concept for the Subject Property is acceptable for water resources protection.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 18 2014 (which is the date that this resolution is mailed to all parties of record); and

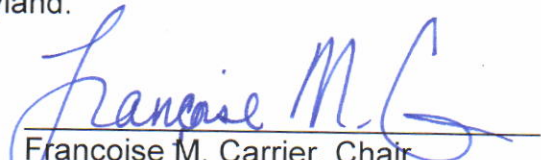
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**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 Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, May 1, 2014, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Françoise M. Carrier, Chair  
Montgomery County Planning Board

Attachment C

From: Myers, Crystal  
Sent: Friday, June 20, 2014 4:03 PM  
To: 'eleanorduckett@comcast.net'  
Subject: RE: Preliminary Plan Amendment 12011017A - Kensington Heights

Hello Ms. Duckett,

Thank you for your email. I understand your concern and we (Planning Board Staff) actually brought up that very argument at the Planning Board Hearing for the site plan on 5/1 but the Planning Board decided against the Staff Recommendation about the sidewalk and consequently against what was approved in the Preliminary Plan. The Preliminary Plan was approved with the sidewalk connection. At the Site Plan Hearing the Board decided to no longer require the Applicant to build the connection. Instead they decided to have the Applicant provide an access easement for a future connection. The Preliminary Plan amendment that you were notified about is occurring because the Planning Board decided to remove the sidewalk from the Site Plan. Therefore, the Preliminary Plan needs to be amended.

Since the Board discussed the sidewalk issue at the Site Plan Hearing Staff was originally planning to prepare this case as a Consent Item to the Planning Board which means it would not undergo a full Planning Board Hearing. However, because of your email is in opposition to the Preliminary Plan Amendment we will be scheduling it as a full Planning Board Hearing item which will allow for discussion and public testimony. We are planning for a July 17 hearing for this Amendment. Let me know if you are interested in testifying.

And, Here is the video from the Site Plan case if you are interested in hearing their discussion about the sidewalk connection. (item 11)

[http://mncppc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=1183](http://mncppc.granicus.com/MediaPlayer.php?view_id=2&clip_id=1183)

Crystal  
Crystal Myers,AICP  
Area 2, Senior Planner  
8787 Georgia Ave. Silver Spring, MD 20910  
[301] 495.2192  
<mailto:crystal.myers@mncppc-mc.org>  
[www.montgomeryplanning.org](http://www.montgomeryplanning.org)

? Please consider the environment before printing this e-mail. Thank you

From: eleanorduckett@comcast.net [<mailto:eleanorduckett@comcast.net>]  
Sent: Friday, June 20, 2014 1:14 PM



To: Myers, Crystal  
Subject: Preliminary Plan Amendment 12011017A - Kensington Heights

Dear Ms. Myers,

I am writing to you as a private resident that was very involved with the recently approved Wheaton Sector Plan. I recently received an amendment letter from CAS Engineering stating that they are requesting a change to their plans that would allow the removal of a condition (#6) that required construction of a sidewalk to the Wheaton Mall property and replacing this condition with a public access easement. I do not agree with this change. As a Smartgrowth area, one of the goals of the Wheaton Sector Plan was to make Wheaton a more pedestrian friendly area, especially between the downtown core/Metro and the surrounding neighborhoods. I believe that these paved linkages, rather than easements, should be constructed as various developments are built.

Thank you for your time,

Eleanor Duckett  
11111 Midvale Road  
Kensington, MD 20895

From: Myers, Crystal  
Sent: Monday, June 23, 2014 4:52 PM  
To: 'eleanorduckett@comcast.net'  
Subject: RE: Preliminary Plan Amendment 12011017A - Kensington Heights

Hi Eleanor,

Yes, Chair Carrier will be our Planning Board Chair on the 17th and on the 24th (there's a possibility the case will be heard on the 24th).

Crystal

Crystal Myers,AICP  
Area 2, Senior Planner  
8787 Georgia Ave. Silver Spring, MD 20910  
[301] 495.2192  
mailto:crystal.myers@mncppc-mc.org  
www.montgomeryplanning.org

? Please consider the environment before printing this e-mail. Thank you

From: eleanorduckett@comcast.net [mailto:eleanorduckett@comcast.net]  
Sent: Monday, June 23, 2014 2:41 PM  
To: Myers, Crystal  
Subject: Re: Preliminary Plan Amendment 12011017A - Kensington Heights

Hi, Crystal,  
One last question - will there be a new Planning Board Chair for the new July 17 hearing or will Chair Carrier be there?  
Eleanor

From: "Crystal Myers" <crystal.myers@montgomeryplanning.org>  
To: "Cordry, Karen" <karenc425@aol.com>, eleanorduckett@comcast.net  
Cc: IntFingers@aol.com  
Sent: Monday, June 23, 2014 2:19:26 PM  
Subject: RE: Preliminary Plan Amendment 12011017A - Kensington Heights

Hi again Ladies,

Well you can try to change the Planning Board's mind at the upcoming Preliminary Plan Amendment. But yes the main issue is that Westfield is opposed to the connection to their property so you may want to work to change their minds. The Planning Board is having the Applicant dedicate an access easement for a future connection. So if the Amendment passes there will be land set aside on the property for the connection to be built in the future. But the future Kensington Heights owners and Wheaton Mall owners would have to agree to allow for it to be built.

Crystal Myers,AICP  
Area 2, Senior Planner  
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mailto:crystal.myers@mncppc-mc.org  
www.montgomeryplanning.org

? Please consider the environment before printing this e-mail. Thank you

From: Karenc425 [mailto:karenc425@aol.com]  
Sent: Monday, June 23, 2014 12:10 PM  
To: eleanorduckett@comcast.net; Myers, Crystal  
Cc: IntFingers@aol.com  
Subject: Re: Preliminary Plan Amendment 12011017A - Kensington Heights

Indeed, not only is it almost a mile by roads --but it requires going through at least 2-3 LONG stoplights to get there, so walking is a MUCH preferable way of getting there for the new home residents and everyone nearby. We just had sidewalks approved and built along McComas and were definitely looking forward to having them connect up with access to the mall for those coming from the south and west. Cutting off this access point is a big concern for us.

That said - maybe some lobbying of Westfield directly might help.  
Karen Cordry

-----Original Message-----

From: eleanorduckett <eleanorduckett@comcast.net>  
To: Crystal Myers <crystal.myers@montgomeryplanning.org>  
Cc: IntFingers <IntFingers@aol.com>; Cordry, Karen <karenc425@aol.com>  
Sent: Mon, Jun 23, 2014 12:05 pm  
Subject: Re: Preliminary Plan Amendment 12011017A - Kensington Heights  
Hi, Crystal,

I am concerned because this Preliminary Plan was approved because of it's proximity to

Metro, but it is 1,500 feet based on pedestrian access, not vehicular access and now the sidewalk to the Mall property will not be built. If the sidewalk were built now, the cost would be less because of all of the other sidewalks that will be built at the same time (and those costs are always passed on through the sales price) and, let's face it, no Home Owner's Association would have a reason to build this at a later time and the Planning Board will not be able to request it after this Site Plan approval. Also, without this sidewalk, Westfield would have no reason to connect to a grass easement at any time in the future. My concerns include:

\* The site is 1,500 feet from Metro via the Mall, but 4,900 feet from Metro via the roads. The applicant stated a desire to construct a pedestrian connection from the back of the property to the Mall. Because of this pedestrian proximity (1,500 feet), the applicant received higher density (RT vs. R-60) and only needed to mitigate one trip (\$11,300) which could be used towards the off-site extension of the McComas Avenue sidewalk (page 8 at

[http://www.montgomeryplanningboard.org/resolutions\\_archive/documents/12-096\\_20120719\\_03142013\\_120110170\\_kensingtonheights.pdf](http://www.montgomeryplanningboard.org/resolutions_archive/documents/12-096_20120719_03142013_120110170_kensingtonheights.pdf).)

\* Pages 6, 21, 23, 26, and 27 of the Planning Board Agenda of LMA G-879 all contain reasons for this pedestrian connection [http://www.montgomeryplanningboard.org/agenda/2009/documents/20091029\\_Local\\_Map\\_Amendment\\_G\\_879.pdf](http://www.montgomeryplanningboard.org/agenda/2009/documents/20091029_Local_Map_Amendment_G_879.pdf)

\* It is not clear how residents of Kensington Heights will know that the grass easement exists or that they will not be trespassing if they use it.

As far as Westfield goes, I don't understand how their liability increases if the sidewalk were built. The liability already exists any time any shopper uses their property and especially in this area of the Mall that residents are currently using without sidewalks. I went back to the original APF grant that Westfield was given in 2001 and it was very clear that the APF had pedestrian circulation requirements. I am not sure that the Planning Board was aware of this when they, very quickly, dropped the sidewalk on May 1 or whether the conditions of the APF grant were only for Phase I (Giant, Macy's, etc.) or also for Phase II (Costco). I don't believe the Planning Board can require Westfield to do anything at this time, but I firmly believe removal of this sidewalk will affect what they may do in the future. The original Westfield APF (attached) states:

\* Page 26 - "The Board recommends that the Department of Permitting Services and the Department of Public Works and Transportation give special attention to improving the pedestrian environment in and around the site. This is a highly urban location where pedestrian circulation is just as important as vehicular traffic. The Board believes that the County should be more aggressive in pursuing improved pedestrian connections from the project site to the adjoining residential community, the Wheaton Marketplace, and the Wheaton Metro Center."

\* Page 33 - "These include submission of a pedestrian circulation plan..."

\* Page 37 - "Prior to issuance of building permits, the applicant must submit, for Planning Staff review and comments to DPS, a pedestrian circulation plan showing how pedestrians get from Metro and the neighborhoods to the Mall entrances and how they circulate through the Plaza site. All crosswalks, pedestrian refuges in

medians and sidewalks should be shown."

Thank you for sending me the link to the Hearing (there was a Costco Gas Special Exception Hearing that day that many Kensington Heights residents were required to attend). It was very informative and discouraging. It was especially disturbing that Westfield is ignoring what they were told by the Planning Board in 2001. If the Planning Board and Planning Staff are both requesting this change, is there any use in showing up at the Hearing on July 17?

Eleanor Duckett

From: "Crystal Myers" <crystal.myers@montgomeryplanning.org>

To: IntFingers@aol.com

Cc: "Cordry, Karen" <karenc425@aol.com>, eleanorduckett@comcast.net

Sent: Monday, June 23, 2014 10:47:58 AM

Subject: RE: Preliminary Plan Amendment 12011017A - Kensington Heights

Hello Donna,

Yes it was nice meeting you back in May and thank you for providing testimony to the Board. But as you know the Planning Board expressed support for the Mall's position over Staff's recommendation for the sidewalk connection and decided to require an access easement on the property. They directed Staff to work with the Applicant to amend the preliminary plan with this modification. So as Planning Board Staff we are following the Board's decision and are recommending in favor of the modification.

But you are welcome to testify in opposition of this recommendation.

Crystal Myers, AICP

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? Please consider the environment before printing this e-mail. Thank you

From: IntFingers@aol.com [mailto:IntFingers@aol.com]

Sent: Friday, June 20, 2014 5:20 PM

To: Myers, Crystal

Cc: karenc425@aol.com; eleanorduckett@comcast.net

Subject: RE: Preliminary Plan Amendment 12011017A - Kensington Heights

Hi Crystal -- We met at the PB hearing on the 2609 McComas Ave. development on May 1, at which I testified on behalf of KHCA. Eleanor Duckett forwarded your email to

me.

Now that it looks like there will be a PB hearing on the amendment regarding the sidewalk, perhaps it would make sense to coordinate our various presentations. Having the developer of 2609 McComas build the sidewalk (rather than merely save the space for it to be built in the future) will put more pressure on Westfield to build their part of the connection, so it would be better to have it there than not. We can see no reasonable stumbling block to Westfield building a slightly meandering (so, ADA-compliant) path to the Mall. Connectivity is part of the Sector Plan's vision and a very minor expense for them, even considering the ongoing cost of keeping it maintained in the winter and trash-free throughout the year. The County gave Westfield \$6 million for the Macy's garage and, more recently, \$4 million to help build the Costco wing; the least (and I do mean least!) they could do is to make this connection.

Jim Agliata's comment at the May 1 PB hearing about not having a sidewalk connection in order to "keep crime from the Mall from getting into the neighborhood" (not exact quote but close enough) was shocking to me -- what is he saying about "his mall" and "his security team"?!?

Anyway, I will be on vacation next week, without email or cell service, but returning to Real Life on June 30, so will contact you then. Looking forward to working together, along with Eleanor from Kensington View and anyone else who wants to chime in.

- Donna

Donna R. Savage  
Chair, Land Use Committee  
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Those who say it cannot be done should not interrupt the person doing it. - Chinese Proverb

Sterling Mehring  
*Kensington Heights 2, LLC*  
2505 Forest Glen Rd.  
Silver Spring, MD 20910  
July 9, 2014

Planning Board  
MNCPPC  
8686 Spring St  
Silver Spring, MD 20910

**Re: Preliminary Plan 12011017A**

Dear Board Members:

Thank you again for taking the time to consider our application for a change in the approval conditions.

I have lost count of the number of plans I have presented to this Board but it is close to two dozen since the 1980's. All have been in lower Montgomery County where citizen involvement is the most intense. All have been characterized by subdued opposition if not elimination of opposition on previously contentious development sites. In no small part this is due to my commitment to face to face meetings and openness with all neighbors. This is now policy, but it has always been my natural orientation.

I want to be involved in walk able communities, its smart growth and it is smart marketing. The market wants that. I want to live where I can walk to shop and get to METRO. I thought our discussion at the Site Plan hearing for this site clearly concluded the question whether it was 'Good Planning' here to build a public side walk that invites and encourages pedestrians to a point where there was no safe facility to enter the Mall, nor a safe facility to greet pedestrians. The staff argued that it was a good idea. The Chair said it was not, and I understood the will of the Board was to find a solution that would not preclude such an access in the future if a future Sector Plan contemplated this location and/or improvements were made on the host end to accommodate it.

The applicant has a simple position. Lets agree on what is Good Planning and work together to accomplish that efficiently. I thought it was gesture of cooperation on my part to offer to take on the expense and time commitment to go through the intricate process to modify the Preliminary Plan conditions in order to accomplish a worthwhile goal and improve the plan. This could have been made much easier and less expensive but I knew what I was taking on.

I respectfully object to the Staff's insistence on the wording of the condition and therefore am writing this letter. The wording would make it the right of any citizen to ignore the established access and sidewalks, and to walk to the end of the public sidewalk easement

Planning Board, MNCPPC

July 9, 2014

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in our community, cross our community property and walk up the hill to the mall creating a new volunteer path. Explicitly this makes what is now a trespassing event into a right of access. And the new community would not be entitled to fence or restrict access on their property.

My objections are twofold: This appears to subvert the will of the Board as I understood it. Second it means the applicants time, effort and costs to collaborate with the Board's will now appear to the community to be merely an effort to avoid building a short sidewalk. We are not that stingy and it would be a silly trade in any case.

I am asking the Board to modify the condition to make clear the easement we grant is for a possible future access, no wider than needed for 5' path. Alternatively if the Board reconsiders its position and determines that it would be Good Planning to create the access easement and build the path to the end of our property line we are agreeable to that for pragmatic reasons. We request, in that case, that the Board affirm the site plan as it sees fit, and allow us to continue with our development process without further requirements for signage, public notice, applications, or fees.

I regret I am out of the country and cannot do the courtesy of delivering this message in person. We certainly do not want to continue the hearing, however.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sterling Mehring". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sterling Mehring  
Kensington Heights 2, LLC  
Manager