



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

ITEM # 5

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760



**MEMORANDUM**

**DATE:** June 25, 2004

**TO:** Montgomery County Planning Board

**VIA:** Richard Hawthorne, Acting Chief  
Development Review Division *ACH*

**FROM:** Richard Weaver, Senior Planner (301) 495-4544 *RW*  
Dolores M. Kinney, Senior Planner (301) 495-1321 *DK*

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Existing Lots 7, 8 and Part of Lot 9, Block A  
F. P. Nash's Subdivision and Dunn's Addition to North  
Kensington

**PROJECT NAME:** Lots 13, 15, 16 and 17 of Nash's Subdivision

**CASE #:** Preliminary Plan No. 1-04083

**REVIEW BASIS:** Chapter 50, Sec. 50-29 (b)(2), Montgomery County Subdivision  
Regulations, and Resubdivision Criteria

**ZONE:** R-60

**LOCATION:** Located on the north side of Plyers Mill Road, approximately 1200  
feet east of Route 193

**MASTER PLAN:** Kensington/Wheaton, PA-31

**APPLICANT:** Ida Yoder

**FILING DATE:** April 28, 2004

**HEARING DATE:** July 1, 2004

**STAFF RECOMMENDATION:** Denial, Pursuant to Section 50-29 (b) (2),  
Montgomery County Subdivision Regulations

## **PROJECT DESCRIPTION:**

This is an application to resubdivide three existing lots containing 23,749 square feet into four residential lots.

## **SITE DESCRIPTION:**

The property is identified as Lot 7 and Lot 8, which were part of the 1922, Joseph's Park Subdivision, and Part of Lot 9, which was approved with the 1952 Dunn's Addition to North Kensington Subdivision. The property is zoned R-60 and is located on the north side of Plyers Mill Road and east of Nash Place. Three of the proposed lots, Lots 13, 15 and 17, are developed with single-family dwellings. The proposed Lot 13 contains 7,066 square feet, the proposed Lot 15 contains 5,104 square feet, the proposed Lot 16 contains 5,022 square feet and the proposed Lot 17 contains 5,152 square feet.

The R-60 zone requires a minimum lot size of 6,000 square feet. The lots sizes range from 5,000 square feet to 10,173 square feet. The proposed subdivision application is submitted for consideration pursuant to Section 59-B-5.2 of the Zoning Ordinance, which allows the resubdivision of lots with minimum lot sizes of 5,000 square feet as stated in the following:

Any lot in the R-60 zone that have frontage of less than 180 feet or an area of less than 18,000 square feet before June 1, 1958, may be resubdivided into lots with frontage of not less than 50 feet and an area of not less than 5,000 square feet if the majority of the recorded lots in the same block have frontages of less than 60 feet or areas of less than 6,000 square feet. These resubdivided lots (except outlots) are buildable lots.

## **DISCUSSION OF ISSUES**

### **Conformance with Section 50-29(b)(2)**

#### **A. Statutory Review Criteria**

In order to approve an application for *Resubdivision*, the Planning Board must find that the proposed lots comply with all seven of the "Resubdivision" criteria as set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

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

## **B. Neighborhood Delineation**

In administering the Resubdivision section, the Planning Board must determine the appropriate “neighborhood” for evaluating the application.

The applicant proposes a neighborhood of 36 lots. The neighborhood extends one block west of Nash Street, one block north of Dupont Avenue, one block east of Lexington Street and includes lots which front on the north side of Plyers Mill Road. The neighborhood includes portions of three existing subdivisions, Nash’s Subdivision, North Kensington Subdivision and Dunn’s Addition to North Kensington. Two of the lots in the Dunn’s Addition to North Kensington abut the Lexington Court cul-de-sac, which accounts for their irregular shape.

## **Master Plan Compliance**

The subject property is part of the Kensington Wheaton Master Plan. The master plan does not specifically identify this property for discussion but does give general guidance and recommendations regarding zoning and land use. The master plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of one family detached homes. The proposed resubdivision complies with the recommendations adopted in the master plan in that it is a request for residential development.

## **Road Dedication**

The Master Plan for the Communities of Kensington-Wheaton and the Sector Plan for the Town of Kensington and Vicinity require the dedication of right-of-way along the frontage of the proposed Lot 17 for 100 feet from the opposite right-of-way line of Plyers Mill Road. A preliminary plan must substantially conform to the applicable master plan pursuant to Section 50-35 (k)(7)(l) which states the following:

*Relation to Master Plan.* In determining the acceptability of the preliminary plan submitted under the provisions of this Chapter, the Planning Board must consider the applicable master plan, sector plan, or an urban renewal plan approved in accordance with the provisions of Chapter 56. A preliminary plan must substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps, text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan or urban renewal plan recommendation no longer appropriate.

Currently, Lot 17 contains of 5,152 square feet and is 80 feet from the opposite right-of-way line on Plyers Mill Road. An additional 20 feet of dedication on Plyers Mill Road is required to comply with the Master Plan right-of-way dedication. However, an existing structure exists in the proposed right-of-way area. In these situations, staff typically recommends an easement for future dedication to be shown on the plat and

conveyed when the structure is ever removed. Staff's finding is that if the easement for dedication is ever conveyed, the resulting lot would be below the minimum 5,000 square feet, resulting in a non-conforming lot. It has been the practice of the Planning Board to consider lots in the context of net lot size after any dedication(s).

### **Lot Frontage**

Pursuant to Section 59-B-5.2 of the Zoning Ordinance regarding the resubdivision of R-60 lots, the Ordinance allows for the resubdivision of lots in the R-60 zone into lots with frontages of not less than 50 feet and areas of not less than 5,000 square feet if the majority of lots in the same block have frontages of less than 60 feet and areas less than 6,000 square feet. Proposed Lot 13 is currently a non-conforming, part of a lot, (Pt. 6), in that it was created by deed. It has only 40 feet of frontage. Based on staff's review, a majority of lots in the neighborhood do not have frontages of less than 50 feet, nor do they have areas less 6,000 square feet. It is staff determination that Proposed Lot 13 does not meet the minimum requirements of the Zoning Ordinance

### **ANALYSIS**

#### **Comparison of the Character of Proposed Lots to Existing**

Determinations regarding resubdivision applications are subject to Section 50-29)b(2) of the Subdivision Regulations. Approval is based on a high correlation in characteristics between the characteristics of the proposed lot and the existing properties in the delineated neighborhood. Specifically, these characteristics are shape, size, alignment, width, frontage, area and suitability for residential use. Staff concludes that the proposed resubdivision does not comply with the area, size, frontage, and shape criteria of Section 50-2(b)(2). As set forth below, the attached tabular summary supports this conclusion.

Staff finds that there is **not** a high correlation with the following four resubdivision criteria.

**Area:** The neighborhood consists of 36 lots. Lot areas range from 1,110 to 3,500 square feet. Proposed lots range in area from 324 (Lot 17 after dedication) to 2,925. The proposed resubdivision will result in a lot with the smallest lot area and would not be consistent in character with the other lots in the neighborhood. **The high correlation in character with the other lots would not exist as it pertains to area.**

**Lot Size:** The lots in the existing neighborhood range in size from 5,000 square feet to 10,173 square feet. The proposed lots range in size from 4,532 square feet (Lot 17 after dedication) to, 7,066 square feet. The proposed resubdivision will result in a nonconforming lot, with the smallest lot size and would not be consistent in character with the other lots in the neighborhood. **The high**

**correlation in character with the other lots would not exist as it pertains to area.**

**Lot Frontage:** The lot frontages are 50 feet to 225 feet. The proposed resubdivision will have lots with frontages ranging from 40 (Proposed Lot 13) to 62 feet, which will create a lot with the smallest frontage and in the neighborhood. The proposed resubdivision will result in a lot with the smallest lot frontage and would not be consistent in character with the other lots in the neighborhood. **Therefore, the proposed resubdivision will not have a high correlation with the other lots in the neighborhood in respect to lot frontage.**

**Shape:** Twenty-one (21) lots in the existing neighborhood are rectangular in shape and three (3) lots are irregular in shape. In an attempt to provide additional square footage for Lot 15 to satisfy the minimum lot size requirement, the proposed subdivision is adjusting the lot line between Lot 15 and Lot 13. This adjustment is creating two irregularly shaped lots, which will become two (2) of five (5) irregularly shaped lots in the neighborhood, but two of the only lots with unusually irregular shapes of this kind. **The proposed Lot 13 and the Proposed Lot 15 will not have a high correlation with the other lots in the neighborhood in reference to shape.**

Although there is a high correlation with the remaining three resubdivision criteria, (alignment, width and suitability), the above evaluation of the proposed resubdivision demonstrates that the proposed lots will not have a high correlation in character with the other lots in the neighborhood as they pertain to area, size, frontage and shape.

## **CONCLUSION:**

Section 50-29 (b)(2) of the Subdivision Ordinance specifies seven criteria for which resubdivided lots must substantially comply. They are: street frontage, alignment, size, shape, width, area and residential use within the existing block, neighborhood or subdivision. Staff has determined in the analysis of the resubdivision criteria, that the proposed lot is not of the same character with respect to area, size, frontage and shape of the above criteria as other lots in the delineated neighborhood. Furthermore, the resubdivision is proposing to create lots which do not comply with the Zoning Ordinance. The proposed resubdivision will result in a nonconforming lot with frontage, which does not comply with the minimum frontage requirements of the Zoning Ordinance. Additionally, the eventual road dedication, which is required of the proposed lots, will result in a lot which is below the minimum lot size requirements of the Zoning Ordinance and create another nonconforming lot, if the resubdivision plan was approved. Lot frontage and lot size for any subdivision must comply with the minimum required provisions of the Zoning Ordinance. Therefore, staff recommends denial of the subject preliminary plan.

## **Attachments**

- Attachment 1 Vicinity Development Map
- Attachment 2 Neighborhood Delineation Map
- Attachment 3 Proposed Development Plan
- Attachment 4 Tabular Summary
- Attachment 5 Correspondence