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

MCPB No. 11-135
Preliminary Plan No. 120110040
Kensington Nursing, LLC
Date of Hearing: October 13, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on October 10, 2010, Kensington Nursing, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 6.28 acres of land in the R-60 zone, located on the Southeast quadrant of the intersection of McComas Avenue and Drumm Avenue ("Property" or "Subject Property"), in the Kensington/Wheaton Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110040, Kensington Nursing, LLC ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on October 13, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 13, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, dated 12/19/11, written over a horizontal line.

8787 Georgia Avenue, Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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Commissioner Anderson; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50 the Planning Board approved Preliminary Plan No. 120110040 to create three lots on the Subject Property, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units and one lot for a 170-bed nursing home.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Specific conditions include:
 - a. Approval of a final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
 - b. The final sediment control plan must be consistent with the final limit of disturbance as approved by Staff.
 - c. Any earth disturbance, including removal of the existing shed and gravel, within the critical root zone of any tree that is subject to the forest conservation variance must be supervised by a qualified tree expert.
- 3) The Applicant must place a Category I conservation easement over retained and planted forest as shown on the preliminary forest conservation plan. Conservation easements must be shown on record plats.
- 4) The Applicant must place a Category II conservation easement over planted forest as shown on the preliminary forest conservation plan. Conservation easements must be shown on record plats.
- 5) The Applicant must install permanent forest conservation easement signage along the perimeter of the forest conservation easements.
- 6) The record plat must include a notation that if the existing house on Lot 24 is demolished, a new house must be built completely outside of the environmental buffer.
- 7) The Applicant must dedicate and the record plat must show dedication of 30 feet of right-of-way, as measured from the centerline, along the Property frontage for McComas Avenue, and 30 feet of right-of-way, as measured from the centerline, along the Property frontage for Drumm Avenue.
- 8) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a four-foot-wide sidewalk along the Property frontage on McComas Avenue where a sidewalk does not exist, unless construction is waived by MCDPS.

- 9) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 29, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated February 15, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 13) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 14) The record plat must show other necessary easements.
- 15) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The Kensington Wheaton Master Plan identifies the Subject Property as Site No. 22 in the Land Use and Zoning Plan (page 48). The Master Plan recommends that the existing R-60 zoning be retained, and that the site be developed with single-family residential cluster development. The Preliminary Plan is in substantial conformance with the Master Plan because the subdivision creates two new lots for residential development consistent with the Master Plan recommendation, the R-60 zoning designation, and surrounding development patterns. Although the two-lot residential subdivision is not a "cluster subdivision," the two residential lots are located near the edge of the site, so that

in the event that the nursing home lot is redeveloped for residential uses, a new cluster subdivision would not be precluded. In the meantime, the nursing home is operating pursuant to an approved special exception and is permitted in the R-60 zone. Therefore, the Planning Board finds that the Preliminary Plan substantially conforms with the recommendations adopted in the Master Plan.

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

The Preliminary Plan does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. In addition, the Preliminary Plan does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

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

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

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

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

A. Forest Conservation

As required by the County Forest Conservation Law (Section 22A of the County Code), a Preliminary Forest Conservation Plan (FCP) for the project dated July 27, 2011, was submitted with the Preliminary Plan.

The Preliminary FCP retains and protects 0.62 acres of forest, much of which is located on steep slopes and within the environmental buffer in a Category I conservation easement. Approximately 0.02 acres of forest will be cleared in the proposed public utility easement along McComas Avenue. There is a 0.35 acre forest planting requirement that will be met by planting 0.35 acres of forest adjacent to the existing forest on-site. The majority of this forest will be planted within the currently unforested portion of the environmental buffer, a portion of which will be located on steep slopes. Approximately 0.28 acres of this planting will be protected in a Category I conservation easement, and the remaining 0.07 acres will be protected in a Category II conservation easement. Consistent with Section 22A.00.01.08(G), up to twenty percent of the planting requirement may be comprised of landscape credit, and the Applicant will implement that measure by planting and protecting 0.07 acres in a Category II conservation easement. The Preliminary FCP results in 0.88 acres of forest protected in a Category I conservation easement and 0.07 acres protected in a Category II conservation easement.

The existing house that will remain is partially located within the environmental buffer. The house predates the implementation of the Environmental Guidelines and environmental buffer determination requirements. An existing shed and gravel surfaced area located in the rear of the existing house and within the environmental buffer will be removed. The approved Preliminary Plan includes a condition requiring that the record plat reflect that if the house is demolished and replaced in the future, the new construction is to be located outside of the environmental buffer. This practice is consistent with previously reviewed and approved plans where existing structures are located within an environmental buffer.

With the recommended conditions of approval, the Application is in compliance with the Montgomery County Environmental Guidelines and the Forest Conservation Law.

B. Forest Conservation Variance.

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or

any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will not require the removal of any Protected Trees, although the project will impact three Protected Trees. Although the Applicant has committed to tree preservation measures to help ensure the Protected Trees survive construction, a variance is necessary to permit the impact. In accordance with Section 22A-21(a) of the County Code, the Applicant requested a variance and alleged that it would suffer unwarranted hardship without the variance to disturb the CRZ of the Protected Trees; that Applicant would be denied reasonable and significant use of its Property.

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

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

Granting the variance will not confer a special privilege on the Applicant, as disturbance to the Protected Trees is due to the limited development area of the site. Impacts to two of the Protected Trees will occur as a result of the Board's requirement that the Applicant remove an existing gravel area and shed within the environmental buffer. The third tree will be impacted by minimal grading activity in the vicinity of the existing house and parking area. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. The impacts to the Protected Trees cannot be avoided and in some cases will improve the existing conditions surrounding these trees. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions and stormwater management best management practices (i.e., removal of impervious surface from within the critical root zone) for site development. A variance is also necessary to accommodate the required widening of an existing driveway, all of which are necessary to achieve an adequate development per existing regulations and requirements.

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

The requested variance is a result of the existing and proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

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

MCDPS has found the stormwater management concept for the proposed project to be acceptable and conditionally approved it on September 29, 2010. The granting of this variance request will not result in the removal of any trees located within the environmental buffers, and the impacts to the CRZs are minimal. The impacts to two of the trees are due to the removal of existing gravel and a shed that are currently located within the environmental buffer. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

C. Forest Conservation Variance mitigation

Any earth disturbance, including removal of the existing shed and gravel, within the CRZ of any Protected Tree must be supervised by a qualified tree expert. No other mitigation is required for this variance because there are no Protected Trees proposed for removal. There is minimal disturbance within the CRZs, but the trees will receive adequate tree protection measures.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The MCDPS Stormwater Management Section approved the stormwater management concept on September 29, 2010. The stormwater management concept consists of environmental site design to the maximum extent possible via landscape infiltration, rain barrels, and through removal of some of the existing asphalt driveway and gravel parking. Any remaining volume of runoff will be treated in the existing wet pond. Onsite recharge is provided via landscape infiltration.

6. *The Application conforms with Section 50-29(b)(2) of the Subdivision Regulations pertaining to resubdivision. The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential*

use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report and approved by the Board) ("Neighborhood").

Frontage: In a neighborhood of 100 lots, lot frontages range from 25 feet to 262 feet. Forty-one of the lots have frontages of 60 feet or less, 57 lots have frontages of 61 feet to 160 feet, and the remaining two lots have frontages of more than 240 feet. Lot 24 has a frontage of 136 feet, and Lot 25 has a frontage of 64 feet. The new lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: Seventy-two of the existing 100 lots in the neighborhood are perpendicular in alignment, 12 are corner lots, and the remaining 16 are radial lots. The two new lots are perpendicular and of the same character as existing lots with respect to the alignment criterion.

Size: The lots in the delineated neighborhood range from 5,500 square feet to 20,987 square feet. Five of the lots are between 5,500 square feet and 6,000 square feet, 86 lots are between 6,000 and 12,000 square feet, and nine are between 12,000 and 22,000 square feet in size. Lot 24 is 35,234 square feet and Lot 25 is 16,922 square feet. Although Lot 24 will be the largest in the neighborhood and Lot 25 will also be one of the largest, the fronts of the lots are constrained with a stream buffer and steep slopes. The presence of these environmental causes forces the houses on the lots to be placed farther from the street and an increase in the lot size. The proposed lot sizes are in character with the size of existing lots in the neighborhood after consideration of the environmental constraints.

Shape: Sixty-eight of the existing lots in the neighborhood are rectangular, 31 are irregular, and one is triangular. The two proposed lots are rectangular. The shapes of the proposed lots will be in character with shapes of the existing lots.

Width: The lots in the delineated neighborhood range from 49 feet to 155 feet in width. Forty-eight of the lots have widths of 49 feet to 60 feet, 44 lots have widths of 61 feet to 80 feet, and the remaining eight lots have widths of 81 feet up to 155 feet. Lot 24 has a width of 134 feet and Lot 25 has a width of 70 feet. The new lots will be in character with existing lots in the neighborhood with respect to width.

Area: The lots in the delineated neighborhood range from 3,025 square feet to 8,395 square feet of buildable area. Sixty-five of the lots have a buildable area between 3,000 and 5,000 square feet, 32 lots have a buildable area between 5,000 and 7,000 square feet, and the remaining three lots are

between 7,000 and 8,395 square feet in buildable area. Lot 24 has a buildable area of 5,140 square feet and Lot 25 has a buildable area of 3,570 square feet. These buildable area measurements exclude the area of the lot that is within the stream buffer. The new lots will be of the same character as other lots in the neighborhood with respect to buildable area.

Suitability for Residential Use: The existing and the new lots are zoned residential and the land is suitable for residential use.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 19 2012 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

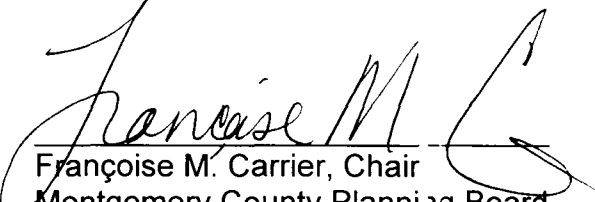
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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley

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abstaining, at its regular meeting held on Thursday, January 12, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board