



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

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

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:¹

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

¹ 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 14th 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

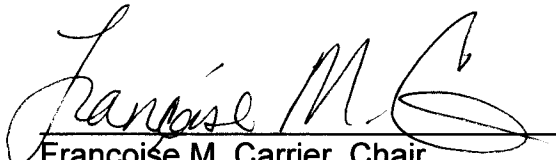
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 26 2013 (which is the date that this Resolution is mailed to all parties of record); and

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