



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

MCPB No. 18-137  
 Preliminary Plan No. 120180220  
 Solera Reserve Kensington  
 Date of Hearing: December 20, 2018

JAN 22 2019

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on June 26, 2018, SM Kensington Senior Living RE, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.93 acres of land in the CRT-1.5 C-1.5 R-1.5 H-60 Zone, located at the southwest corner of the intersection of Metropolitan Avenue and St. Paul Street, Kensington (“Subject Property”), in the Kensington Policy Area and the 2012 Kensington Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120180220, Solera Reserve Kensington (“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 December 10, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 20, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on December 20, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Fani-Gonzalez, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120180220 to create one lot on the Subject Property, subject to

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

### **General Approval**

1. Density

This Preliminary Plan is limited to one lot for a maximum of 138,855 square feet of development including up to 1,000 square feet of commercial uses and up to 137,855 square feet of residential uses (including 12,662 sf of MPDU bonus density based on 15 percent MPDUs) for 63 Independent Living units and 79 Residential Care beds.

2. Sketch Plan Conformance

The Applicant must comply with the conditions of the Planning Board's approval for Sketch Plan No. 320180080.

### **Adequate Public Facilities and Outside Agencies**

3. Adequate Public Facilities

The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty (61) months from the date of mailing of this Planning Board Resolution.

4. Outside Agencies

- a) Except for Condition #5, the Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated July 16, 2018 and incorporates them as conditions of the Preliminary Plan approval. Except for Condition #5, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
- b) Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's (MDSHA) requirements for access and improvements to Metropolitan Avenue.
- c) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter dated October 29, 2018 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the

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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.

amendment does not conflict with any other conditions of the Preliminary Plan approval.

- d) The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (DHCA), in its letter dated November 1, 2018, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
- e) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated December 7, 2018 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### 5. Site Plan Approval

- a) Before clearing or grading the Subject Property, the Applicant must receive Staff certification of Site Plan No. 820180180. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, and sidewalks is determined through site plan review and approval.
- b) If an approved site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan amendment.

### **Environment**

#### 6. Forest Conservation

- a) The Applicant must comply with Final Forest Conservation Plan 820180180.
- b) Prior to Certified Site Plan, the Applicant must revise the Preliminary Forest Conservation Plan to revise calculations that include mitigations for Tree #01 and show mitigation plantings for the removal of Tree #02.

### **Transportation**

#### 7. Frontage Improvements

- a) The Applicant must provide a dedication of thirty-five (35) feet from the existing pavement centerline along the Subject Property frontage on Metropolitan Avenue and show this dedication on the record plat.

- b) The Applicant must construct an eight (8)-foot-wide sidepath along the Property's Metropolitan Avenue frontage.

### **Record Plats and Certified Preliminary Plan**

#### **8. Record Plats**

- a) There shall be no clearing or grading of the site prior to recordation of plat(s).
- b) The record plat must show necessary easements.
- c) The record plat must reflect all areas under common ownership.

#### **9. Certified Preliminary Plan**

Before approval of the Certified Preliminary Plan, the following revisions must be made subject to Staff review and approval:

- a) Include all applicable agency approval letters and the Preliminary Plan Resolution on the approval sheet(s).
- b) Show the location of a public improvement easement over the portion of public parking along St Paul Street that is located on the Property.
- c) Include 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 approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

**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 layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

Given the Sector Plan goals to promote a mixed-use Town Center with pedestrian-friendly connections to the vibrant neighborhoods that define Kensington and reinvigorate the Town Center while preserving Kensington's scale and historic character, the Planning Board finds the size, width, shape, orientation and location of the lot is appropriate for the use given the Zoning and

applicable Sector Plan recommendations. The lot was reviewed for compliance with the dimensional requirements for the CRT Zone as specified in the Zoning Ordinance, and the lot meets all the dimensional requirements of the Zone.

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

The Property is located within the 2012 *Kensington Sector Plan*. The Sector Plan's vision is *"To promote a mixed-use Town Center with pedestrian-friendly connections to the vibrant neighborhoods that define Kensington"* (page 1).

The Sector Plan's *"broad goal is to reinvigorate the Town Center while preserving Kensington's scale and historic character"* (page 1).

The Property is identified in the *CS-1, CS-2 Konterra and Metropolitan Avenue South* area, which is within the *Crafts/Services District* of the Sector Plan. The *Crafts/Services District* includes the West Howard Antiques District and service industrial activities on the south side of Metropolitan Avenue.

Within the *Crafts/Services District* the Sector Plan *"... proposes to preserve the character of this district. Aesthetic and environmental improvements should enhance the area's look and function without compromising its eclectic nature. The portion of this district on the south side of Metropolitan Avenue is recommended for the CRT Zone, with total maximum FARs of 1.5"*. (page 34).

The development introduces residential uses with ancillary retail near the Kensington MARC Station, with pedestrian and streetscape improvements that help to both promote and reinvigorate the Town Center. The development has gone through multiple reviews with Planning Staff, Historic Preservation Commission (HPC) Staff, the Town of Kensington and the HPC, and as a result, the buildings and public spaces will provide significant aesthetic and environmental improvements that will enhance the area's look and function while echoing the materials and architectural vocabulary of the Historic District.

Within the *CS-1, CS-2 Konterra and Metropolitan Avenue South* area, the Sector Plan recommends:

- Preserving existing retail and service industrial uses in this area
- The opportunity to introduce some residential uses while maintaining the existing nonresidential uses in place.
- A height of 60 feet to accommodate additional density in a mixed-use development with public benefits, such as quality design, streetscape, open space, or public parking, and create a mixed-use, pedestrian-centered realm on both sides of Metropolitan Avenue.

- The remainder of the area which includes the Subject Property is recommended for CRT 1.5: C 1.5, R 1.5, H 60.

This Application, as conditioned, is consistent with the recommended zone and height requirements for the area as envisioned by the Sector Plan. The mixed-use development provides residential possibilities with 15% MPDUs and up to 1,000 square feet of non-residential uses. The development is also consistent with the recommendation of revitalization to this area, while providing an appropriate mix of public benefits, high quality design that has been carefully considered in the context of the Historic District, enhanced streetscape and pedestrian realm along Metropolitan Avenue, and thoughtfully designed public open space at the intersection of Metropolitan Avenue and St. Paul Street.

Thus, the Preliminary Plan substantially conforms to the applicable recommendations of the 2012 *Kensington Sector Plan*.

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

### Transportation

#### *Vehicular Access*

Vehicular access for the residential development's garage and drop-off/pick-up loop is from Metropolitan Avenue. The commercial space in the historic structures will be accessed from St. Paul Street.

#### *Sector/Master-Planned Roadways and Bikeways*

The master-planned transportation facilities are designated below in accordance with the 2012 *Kensington Sector Plan* and the 2018 *Bicycle Master Plan*.

Metropolitan Avenue (MD-192) is designated as a Business District Street, B-4, with a recommended 70-foot right-of-way. The existing right-of-way varies between 40 and 56 feet along the Property frontage. To fulfill the required dedication, the Applicant must dedicate a total of 35 feet from Metropolitan Avenue's centerline. The 2018 *Bicycle Master Plan* does not recommend bicycle facilities along this segment of Metropolitan Avenue.

According to the Town of Kensington, St. Paul Street is a public right-of-way that is under the jurisdiction and control of the Town, although there does not appear to be a definitive record of dedication for the road. The Town and the Applicant have come to a preliminary agreement that allows the Town to maintain jurisdiction and control of St. Paul Street, including the public parking, while also recognizing existing easements and agreements. A portion of the

public parking along St. Paul Street is located on the Property, and the Applicant will grant a public improvement easement over this area.

The *Kensington Sector Plan* recommends a new pedestrian/bicycle connection (LB-6) over the CSX rail right-of-way and the Bicycle Master Plan recommends an off-street trail crossing the CSX right-of-way between St. Paul Street and Howard Avenue. However, the Planning Board finds that a CIP project would be a more appropriate mechanism to construct this connection given the cost and complexity required of such a project.

#### Pedestrian Facilities

Metropolitan Avenue currently has five (5)-foot-wide sidewalks, a two (2) to three (3)-foot-wide ornamental brick buffer, and a minimal green panel. The Applicant will provide an eight (8)-foot-wide asphalt sidepath with a seven (7)-foot-wide green panel along the Metropolitan Avenue frontage. The Applicant will provide a seven (7)-foot-wide sidewalk along St. Paul Street.

#### Public Transit Service

The site is adjacent to the Kensington MARC Station. In addition to MARC service, the nearest public transit routes are as follows:

- Ride On Route 4 operates along Howard Avenue, Kent Street, and Stoneybrook Drive between the Kensington (i.e., Knowles Avenue & Armory Avenue) and Shady Grove Metrorail Stations with half-hour headways on weekdays only.
- Ride On Route 5 operates along Metropolitan Avenue between the Twinbrook Metrorail Station and the Shady Grove Metrorail Station with half-hour headways on weekdays and weekends.
- Ride On Route 33 operates along Howard Avenue and Kensington Parkway between the Glenmont Metrorail Station and the NIH/Medical Center Metrorail Station with half-hour headways on weekdays only.

The nearest bus stops are located at the Metropolitan Avenue/St. Paul Street intersection, the Howard Avenue/Fawcett Street intersection, and the Kent Street/Stoneybrook Drive intersection.

Connecticut Avenue (MD 185) is located approximately 1,300-feet to the west, where the following two bus routes operate:

- Ride On Route 34 operates along Cedar Lane to Connecticut Avenue to University Boulevard between Aspen Hill (i.e., Grand Road & Bel Pre Road)

and the Friendship Heights Metrorail Station with half-hour headways on weekdays and weekends.

- Metrobus Route L8 operates along Connecticut Avenue between the Aspen Hill (i.e., Grand Road & Bel Pre Road) and the Friendship Heights Metrorail Station with half-hour headways on weekdays and weekends.

#### Local Area Transportation Review (LATR)

Per the 2016 Subdivision Staging Policy, *“if use and occupancy certificates for 75% of the originally approved development were issued more than 12 years before the LATR study scope request, the [traffic statement] study must be based on the increased number of peak-hour trips rather than the total number of peak-hour trips.”* Mizell Lumber & Hardware operated on the site since 1931, exceeding the twelve (12)-year threshold for use and occupancy. Therefore, the traffic statement was based only on the increased number of peak-hour trips by the senior housing rather than the total number of peak-hour trips.

Under the 2016-2020 Subdivision Staging Policy, a traffic study is not required because the number of weekday peak-hour morning and evening person trips is fewer than the standard of fifty (50) or more trips. In addition, the number of transit, pedestrian, and bike trips is fewer than the fifty (50)-trip standard. Therefore, the LATR test is satisfied and a traffic study is not required.

#### School Capacity

This Preliminary Plan is subject to the FY2019 Annual School Test. However, the Annual School Test does not apply to this Property because the proposed use does not generate any children/students.

#### Other Public Facilities and Services

The Property is proposed to be served by public water and sewer. This Application has been reviewed by the Montgomery County Department of Permitting Services Fire Department Access and Water Supply Comments, which has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by 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.

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 #420180750) on November 20, 2017. The site lies in the Lower Rock Creek watershed and contains no forest, streams, wetlands, or floodplains, or any associated buffers.

#### Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Forest Conservation Plan in conjunction with the Preliminary Plan and Site Plan. There is no forest onsite, and the 0.30-acre afforestation requirement will be met by fee-in-lieu payment.

#### A. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

The Applicant submitted a variance request to remove one tree and to impact, but not remove, one tree that are considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

#### *Unwarranted Hardship for Variance Tree Impacts*

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The variance is necessary due to the constraints of the existing historic buildings, the need to build underground parking and the infill nature of this development. The Property is constrained by existing development on all sides, which limits flexibility in grading.

The Board makes the following findings necessary to grant the Variance:

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

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to

design the development around the existing historic buildings. The Applicant will also not be able to construct the underground parking without being able to disturb the existing trees.

2. *The need for the 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 that are the result of actions by the Applicant. The variance is necessary due to the constraints of the existing historic buildings, the need to build underground parking and the infill nature of this development. The impact to the trees is the minimum disturbance necessary to build the proposed senior living facility, with associated infrastructure.

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

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

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

The Applicant will plant four (4) three (3)-inch caliper native shade trees to replace the form and function of the variance tree proposed for removal. In addition, the site will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management.

#### *Mitigation for Trees Subject to the Variance Provisions*

The Applicant is requesting a variance to remove one tree. The one (1) tree will be mitigated at a rate of one (1)-inch caliper per four (4)-inches DBH removed, using a minimum three (3)-inch caliper native shade tree. The Applicant will plant four (4) three (3)-inch caliper trees which must be shown on the Final Forest Conservation Plan prior to Certified Site Plan.

#### *County Arborist's Recommendation of the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of

Environmental Protection. The variance request was sent to the County Arborist on and no response has been received to date.

*Variance Disposition*

Based on the analysis above, the Planning Board approves the variance.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Applicant received approval of its stormwater management concept from the Montgomery County Department of Permitting Services, Water Resources Section on October 29, 2018. The concept plan proposes to meet the required stormwater management goals via twelve (12) on-site micro-bioretention planters and two surface micro-bioretention facilities that are intended to treat the public right-of-way. A waiver is being requested because the entire required volume cannot be treated in on-site ESD or structural measures.

6. *Any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.*

Noise

The Property is impacted by two types of transportation noise types – train and mixed automotive traffic (cars and trucks). The Property is located on the north side of the CSX Transportation railroad tracks, which are heavily used for both passenger and freight trains, and on the south side of Metropolitan Avenue. The Montgomery County “Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development” is used to review traffic noise impacts on residential developments. In this area of the County, the Guidelines recommend a maximum value of 65 dBA Ldn for exterior recreation areas and 45 dBA Ldn for indoor residential spaces.

The Applicant submitted a noise study, analyzing existing noise impacts from current traffic and future traffic volumes. The Property is impacted by transportation noise and requires mitigation to meet interior and exterior noise levels. As conditioned, the appropriate noise mitigation measures will be implemented prior to issuance of any Use and Occupancy Certificate for any residential unit.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, 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 JAN 22 2019 (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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Fani-González and Cichy voting in favor, and Vice Chair Dreyfuss and Commissioner Patterson absent at its regular meeting held on Thursday, January 17, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board