



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

MAR 30 2009

MCPB No. 09-28
Preliminary Plan No. 119970400
Barnard Property
Date of Hearing: March 12, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

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 November 21, 1996, Barbara Johnson and Kim Goode ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 12 lots on 30.2 acres of land located at the terminus of Bonny Brook Lane ("Property" or "Subject Property"), in the Damascus Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 119970400, Barnard Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 27, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on March 12, 2009, 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

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
 Legal Sufficiency:

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WHEREAS, on March 12, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor; Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 119970400 to create 12 lots on 30.2 acres of land located at the terminus of Bonny Brook Lane ("Property" or "Subject Property"), in the Damascus Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 12 lots for 12 one-family detached dwelling units and one outlot to contain stormwater management pipes and a public use trail easement.
- 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.
- 3) The Applicant must begin reforestation during the first planting season after issuance of the first sediment control permit.
- 4) The Applicant must install permanent forest conservation easement signage along the easement line on the Subject Property.
- 5) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 6) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes.
- 7) Prior to issuance of a building permit for the 9th dwelling, the Applicant must remove the existing driveway on proposed Lot 103, so that there is no direct driveway access from proposed Lot 103 to Damascus Road (MD 108). Only proposed Lot 107 is permitted to access the existing driveway from MD 108.
- 8) The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 9) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 10) The record plat must reflect a public use and access easement over the trail on proposed Outlot A.
- 11) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 12) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 2, 2008. These conditions may be

- amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 13) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated October 23, 2008. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 14) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated February 12, 2009. These conditions may be amended by MCDOT, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 15) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
 - 16) The record plat must show necessary easements.
 - 17) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) 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, 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 Damascus Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing RE-2C zoning. The proposed subdivision substantially conforms with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation. The proposed lots will be similar to surrounding lots with respect to dimensions, orientation, and shape, and the proposed residences will have a similar relationship to the public street and surrounding residences as existing residences in the area. The proposed subdivision will not alter the existing pattern of development or land use, consistent with the Master Plan recommendation to maintain the existing land use.

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

Roads and Transportation Facilities

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 Local Area Transportation Review. The Application date of November 21, 1996 predates the requirements for the Policy Area Mobility Review. Therefore, the Application is also not subject to Policy Area Mobility Review.

Access to 11 of the 12 proposed lots will be via the proposed extension of Bonny Brook Lane, a public, secondary residential street with an open section and a 60-foot wide right-of-way. One of the lots, proposed Lot 107, will be accessed via an existing private driveway from Damascus Road (MD 108). In order not to increase the number of lots currently accessed by the private driveway, the Applicant has proposed to shift the access to the existing dwelling on proposed Lot 103 from the private driveway to the extension of Bonny Brook Lane. A condition is included to require that the existing driveway on proposed Lot 103 be removed prior to issuance of a building permit for the 9th lot, to ensure that direct access from this lot to Damascus Road (MD 108) will not continue after development of the Subject Property.

The extension of Bonny Brook Lane is proposed to end at the northern property boundary with a temporary turnaround. A standard cul-de-sac termination is not proposed because it is expected that Bonny Brook Lane will be extended further to the north when the adjacent property is subdivided into residential lots.

Sidewalks are not required on the extension of Bonny Brook Lane because the minimum allowed lot size in the subdivision is two acres, and no sidewalks have been constructed on the existing portion of Bonny Brook Lane. Pedestrians can safely walk in the roadway because of the low traffic volumes.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by private wells and private septic systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the Property has

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 Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical and telecommunications 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. 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 RE-2C zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

There are 10.3 acres of existing forest on the Subject Property. The overstory is dominated by a mixture of Tulip Tree, Red Maple, and Chestnut Oak. The lower understory is dominated by a mixture of Black Cherry and Virginia Scrub Pine.

The preliminary forest conservation plan indicates the removal of 4.3 acres and retention of 6 acres of total forest on the Subject Property. The applicable conservation threshold for this site is 7.08 acres. As a result of the forest removal and the conservation threshold, this site has a reforestation requirement of 2.96 acres. The preliminary forest conservation plan proposes to meet the 2.96-acre requirement through 1.38 acres of on-site reforestation planting in an unforested stream valley buffer area, and 1.58 acres of off-site planting or a fee-in-lieu payment. The fee-in-lieu payment option cannot be used in this case because the Forest Conservation Law prohibits the use of this alternative on properties larger than five acres and reforestation areas greater than ½-acre. As a result, a condition of approval is included that requires the Applicant to meet the 1.58-acre reforestation requirement using off-site options, including approved banks, but excluding payment of a fee-in-lieu. Both the 1.38-acre on-site plantings and the 1.58-acre off-site requirement will be protected by placing these areas in Category I conservation easements.

The 7.38 acres of on-site Category I conservation easement (6 acres of retention and 1.38 acres of reforestation) will be placed to the rear of five of the proposed lots. The preliminary forest conservation plan does not show any house footprints within 50-feet of the forest conservation easement or the stream valley buffer, and the proposed lots will have sufficiently large rear yards outside of the conservation easement. However, the preliminary forest conservation plan only shows generalized house locations depicting 70 x 40 foot rectangular boxes. The Planning Board, through the approval of the Preliminary Plan, establishes the building envelope, but not the precise building locations. The builder has the flexibility to locate each residence anywhere within the building envelope (subject to septic limitations), including at the environmental buffer. If the builder constructs the house or any house feature at or near the environmental buffer this would provide an inadequate yard space and encourage the homeowner to enter the conservation easement area to create a useable backyard area. In order to delineate the forest conservation easement and discourage encroachments into the forest conservation easement, a condition is included requiring the Applicant to install permanent forest conservation easement signage along the easement line on the Subject Property.

The Application meets all applicable requirements of the county Forest Conservation Law.

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 determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the Stormwater Management Concept Plan on September 2, 2008. The Stormwater Management Concept Plan includes on-site quality control and recharge through the use of on-lot methods. Channel protection is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second in two of the three drainage areas. The area of the roadway near existing inlet #4 will have channel protection volume storage included within the 2-foot flat-bottomed swale by amending the soils within the channel.

6. *Creation of a cul-de-sac in excess of 500 feet in length is appropriate.*

The Preliminary Plan proposes the extension of Bonny Brook Lane from its current terminus at the southeast corner of the Subject Property to a new, temporary turn-around at the northern Property boundary. The street could

potentially be extended further to the north, in the event that the adjacent property is developed for residential lots in the future. In that case, Bonny Brook Lane could be connected at a new intersection to Damascus Road (MD 108). Until that connection is made, Bonny Brook Lane is an overlength cul-de-sac – i.e., longer than 500 feet – pursuant to Section 50-26(b) of the Subdivision Regulations. The existing cul-de-sac is approximately 1,600 feet in length, and the extension of the street to the northern property line would increase the length to approximately 3,400 feet. Section 50-26(b) of the Subdivision Regulations allows the Planning Board to exceed the 500-foot length when property shape, size, topography, large lot size, or improved street alignment warrant it.

The size and shape of the Subject Property and the existing road pattern in the area make it infeasible to do anything other than an extension of the existing cul-de-sac street because there are no other streets with which to make a connection. The Property is not large enough to create an internal looped street network. In addition, the proposed road configuration has been approved by the Montgomery County Fire and Rescue Service. Therefore, the Planning Board finds that the overlength cul-de-sac is appropriate for this subdivision.

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 50-35(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 the date of this Resolution is MAR 30, 2009 (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

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Planning Commission on motion of Commissioner Presley, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, and Presley present and voting in favor of the motion, and Commissioner Alfandre absent, at its regular meeting held on Thursday, March 26, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board