



Preliminary Plan Validity Extension, Preliminary Plan No. 120060830, Bennett Knolls

Chris Van Alstyne, Senior Planner, Area 3, Chris.VanAlstyne@montgomeryplanning.org, 301-495-4629

Sandra Pereira, Supervisor, Area 3, Sandra.Pereira@montgomeryplanning.org, 301-495-2186

Richard Weaver, Chief, Area 3, Richard.Weaver@montgomeryplanning.org, 301-495-4544

Completed: 09/13/18

Description

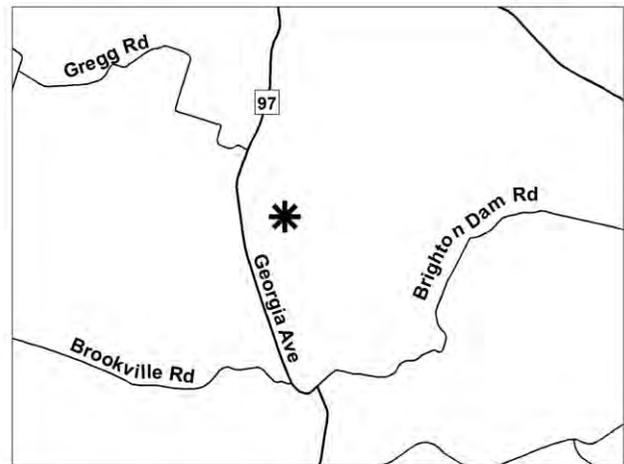
Regulatory Extension for Preliminary Plan No. 120060830: Bennett Knolls: Request for a 2-year extension to the validity period for the Preliminary Plan, which approved the creation of 29 lots for one-family detached residential units; located on the east side of Georgia Avenue (MD 97), approximately 1 mile north of Brookeville center; 218.99 acres; RC Zone; Olney Master Plan area.

Recommendation – Approval with conditions

Applicant: David Treadwell, on behalf of Central Union Mission

Submittal Date: May 23, 2018

Review Basis: Chapter 50, Section 4.2.H



Summary

- The Applicant requests a 2-year extension to the currently active Preliminary Plan No. 120060830.
- The Applicant justifies the extension as a necessary remedy for the difficulty of securing funding as a result of the post 2007 recession, an “unusual and unanticipated event beyond the applicant’s control”
- A preliminary plan validity period requires that all lots/parcels approved on a given preliminary plan must be recorded by record plat within the Plan validity period established in the Resolution/Opinion.
- Section 50.4.2.H.1.2 of the Subdivision Code states that only the Board is authorized to extend the validity period of a preliminary plan.
- The request for extension meets the required findings necessary to grant such an extension.
- Staff recommends that this Preliminary Plan validity period be extended by two years from the date of mailing of the Resolution for this application.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

Preliminary Plan No. 120060830:

Staff recommends approval to extend the Preliminary Plan by two years from the initial date of expiration, December 5, 2018 to December 5, 2020.

SECTION 2 – SITE LOCATION, HISTORY, AND DESCRIPTION

Site Location

The Subject Property, identified as Parcel 375 (liber 21162/Folio 580), is approximately 219 acres in size and is located roughly one mile north of Brookeville center on the east side of Georgia Avenue (MD 97), bounded to the north by Haulings River Regional Park and to the south by Bordly Drive. A major Pepco transmission line and right-of-way easement bisects the southwestern corner of the site.

Site Vicinity

The property is located in rural Brookeville (Figure 1). Surrounding the property are large lot, single-family detached residential homes in the RC zone to the east of MD 97 and agricultural fields and large lot, single family detached homes in the AR zone to the west of MD 97. To the south is the Town of Brookeville and to the north is the Haulings River Regional Park. The Property and its surroundings are located in the Olney Master Plan area.

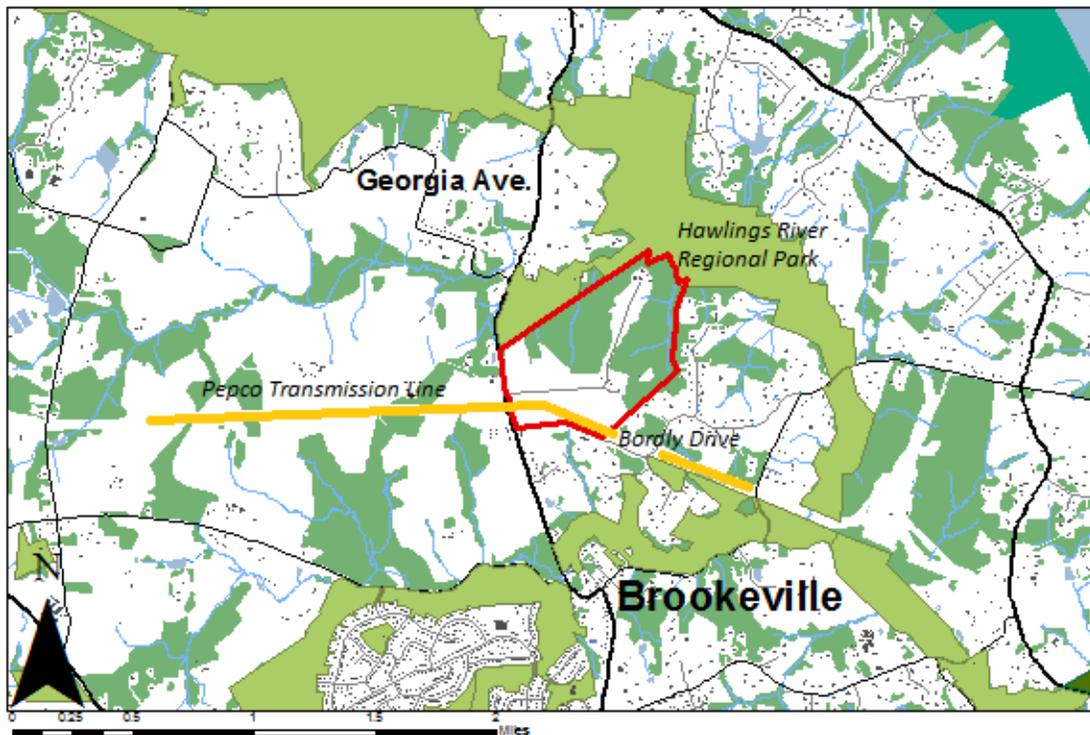


Figure 1 – Vicinity Map

Site Description



Figure 2 – Aerial Map

The Subject Property currently hosts Camp Bennett, a non-profit religious camp and retreat center for the homeless as well as underprivileged children. The Property has six main camp buildings used for camp housing and related activities as well as several minor miscellaneous-use structures. The Property is largely undeveloped, with the majority (118 acres) forested. The Property lies within the Hawlings River watershed (a Use IV stream.)

SECTION 3 – HISTORY AND PROPOSAL

History

The Montgomery County Planning Board approved Preliminary Plan No. 120060830 on November 5, 2007, which subdivided the portion of the Property closest to Georgia Avenue into 29 lots— 28 new residential lots along with one lot to the northeast for the 48-acre “Camp Bennett.” According to Ch. 50.4, a preliminary plan validity period requires that all lots/parcels approved on a given preliminary plan must be recorded by record plat within the plan validity period established in the resolution. The Resolution established a 36-month validity period for the Preliminary Plan with an initial expiration date of December 5, 2010. The Montgomery County Council adopted legislation granting four separate 2-year extensions, for a total of eight years, of all preliminary plans valid as of March 31, 2009; this extended the validity of the Preliminary Plan to December 5, 2018. An application to extend validity by an additional year was received by the Montgomery County Planning Department on May 23, 2018, and revised to 2 years by correspondence dated August 6, 2018 (Attachment B).

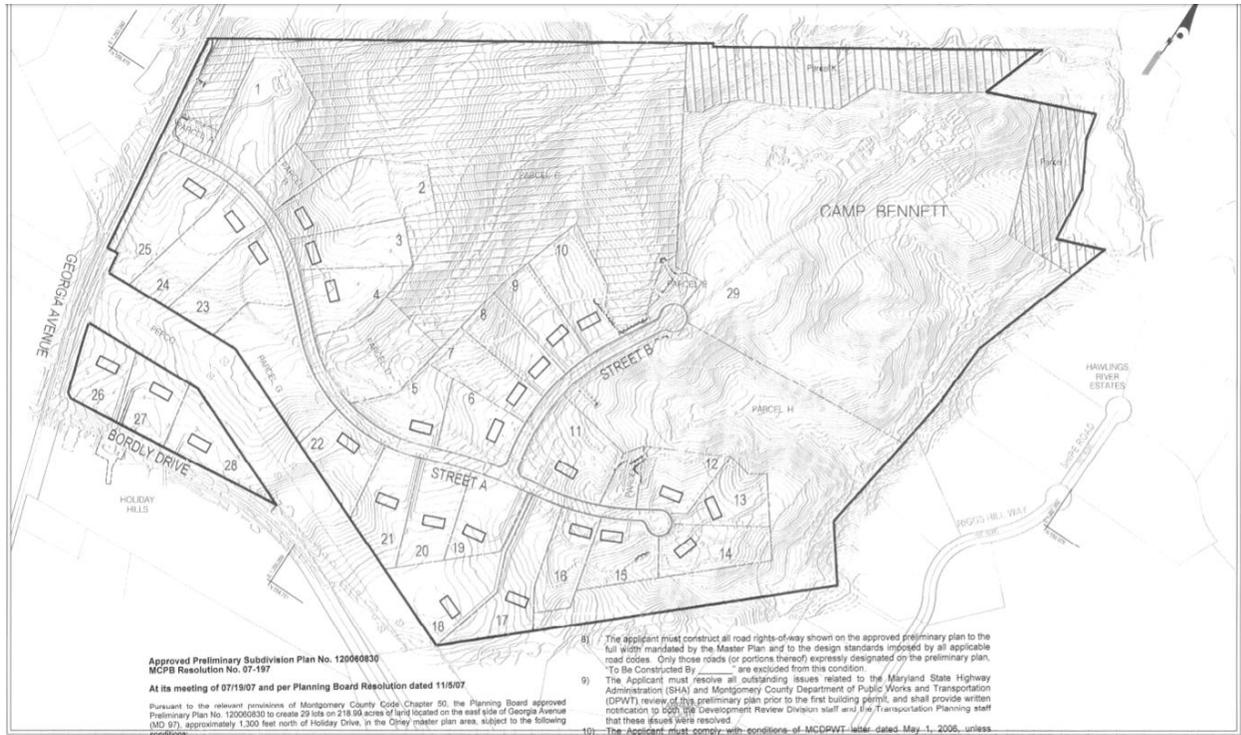


Figure 3 – Approved Preliminary Plan

Current Application and Proposal

The Applicant seeks a 2-year extension of Preliminary Plan No. 120060830, submitted May 23, 2018. The Applicant, through a letter as part of the application, explains that the extension is necessary following the severe decline in demand for rural, up-county real estate following the 2007 recession, during which all progress on the development paused. This extension will allow the Applicant to renew the platting process. Additionally, the additional time will be needed for the purchase and conveyance of a small sliver of County-owned land, re-evaluate the site’s stormwater management needs, and allow time to enter a Letter of Intent agreement with a prospective buyer.

Lots 27 and 28 (as seen in Figure 3) as approved by the Preliminary Plan are currently blocked from street access to Bordly Drive by a thin sliver of land currently owned by Montgomery County (Figure 4).



Figure 4 — Current Montgomery County Property

This slice of property went unnoticed through the original Preliminary Plan process and did not become apparent until later review of the plats. The process to acquire this property is expected to take up to two years.

Additionally, the Applicant is currently undergoing negotiations with a prospective buyer for the residential lots to enter a Letter of Intent agreement. The Applicant believes it will take additional time to finalize the contract. Additional time will be needed to revise plans, finalize grading, satisfy remaining conditions necessary for the recordation of plats, and to process and record plats. For these reasons, Staff believes a two year extension is warranted.

SECTION 4 – ANALYSIS AND FINDINGS, 50.4.2.D

Grounds for Preliminary Plan Extension

Section 50.4.2.H of the Subdivision Regulations allows the Board to consider the extension of Preliminary Plan validity and sets the following conditions:

- 1. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.*

The Applicant sent a request to extend the validity period for Preliminary Plan No. 120060830 on May 22, 2018. The Application was accepted on May 23, 2018. This is prior to the expiration of the Preliminary Plan on December 5, 2018.

- 2. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.*

The Applicant provided justification detailing reasons for the extension as part of the submitted application, among them being the unanticipated economic difficulties brought on by the 2007 recession. The extension is primarily now needed to allow additional time for the purchase and conveyance of a small sliver of land, re-evaluate the site's stormwater management needs to ready the site for sale, and allow time to enter a Letter of Intent agreement with a prospective buyer. The

Applicant requested a validation date of December 5, 2020; a two-year extension was explained to be the minimum time needed to accomplish the plating process. Staff finds that a two-year extension is the minimum time needed to accomplish these tasks given the typical time frames for platting, conveying County-owned property, and finalizing the sale of land.

3. *The Board may grant an extension only if it finds the applicant meets at least one of two conditions:*

B. The occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.

The Applicant explains that the post 2007 recession economy made residential development untenable for years. While the Applicant received an automatic 8-year extension as a result of County Council legislation, market conditions in the rural up-county region have only now started to fully recover from the recession. Staff finds this to amount to an unanticipated event beyond the Applicant's control.

SECTION 5: CONCLUSION

Based on this analysis, the Applicant has qualified for an extension of the Preliminary Plan validity period, and staff recommends approval.

ATTACHMENTS

Attachment 1 – Previous Resolution (MCPB No. 07-197) for Preliminary Plan No. 120060830

Attachment 2 – Applicant's Extension Request

Attachment 3 – Applicant's Supplemental Request



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

NOV -5 2007

MCPB No. 07-197
Preliminary Plan No. 120060830
Bennett Knolls
Hearing Dates: February 1, 2007, and July 19, 2007

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 February 15, 2006, Central Union Mission ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 30 lots on 218.99 acres of land zoned Rural Cluster (RC) and located on the east side of Georgia Avenue (MD 97), approximately 1,300 feet north of Holiday Drive ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060830, Bennett Knolls ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, the Planning Board held a public hearing on the Application on February 1, 2007, and, in response to a request from the Applicant deferred action on the Application until a second hearing on July 19, 2007 (the February 1, and July 19 meetings are referred to collectively herein as the "Hearing"); and

AS TO LEGAL SUFFICIENCY
DYD 10/12/07
MONTGOMERY COUNTY PLANNING BOARD

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.

WHEREAS, on January 12, 2007, Staff provided the Board with a memorandum setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions, and on July 19, 2007, Staff provided the Board with a supplemental memorandum containing further discussion of the Staff's analysis (collectively, the "Staff Report"); and

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

WHEREAS, on July 19, 2007, at the conclusion of the Hearing, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Bryant; seconded by Commissioner Lynch; with a vote of 4-0, Commissioners Bryant, Cryor, Lynch, and Robinson voting in favor; Commissioner Hanson temporarily 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. 120060830 to create 29 lots on 218.99 acres of land located on the east side of Georgia Avenue (MD 97), approximately 1,300 feet north of Holiday Drive ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to twenty-nine (29) lots for twenty-eight (28) residential dwelling units and an existing camp retreat.
- 2) The Applicant must revise the preliminary plan to remove proposed lot 2 and include the area of proposed lot 2, and associated forest, in the park dedication.
- 3) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must meet all conditions prior to the recording of plat(s) or DPS issuance of sediment and erosion control permit(s), as applicable. Conditions include but are not limited to the following:
 - a) Reforestation planting list must be revised to use a minimum size of 1" caliper native trees at 200 trees per acre, at least 5 species of trees, and 33 native shrubs per acre.
 - b) The Applicant must meet reforestation requirements that cannot be done onsite through the purchase of credits from a forest mitigation bank or by planting forest at an offsite location. The Applicant must identify the specific forest mitigation bank or offsite forest planting area for staff review and approval prior to the pre-construction meeting.
 - c) Final forest conservation plan to include the following:

- i. Survey of trees 6 inches and greater, diameter at breast height, for 25 feet on either side of the proposed limits of disturbance, and delineation of their critical root zones.
 - ii. Detailed forest planting plan and notes
 - iii. Permanent signs and/or fences to be located along the boundary of the Category I conservation easements. Where conservation easement areas include non-forested areas or planting areas, the boundaries must be marked by permanent fences and signs.
 - iv. A note stating that forest or tree clearing for septic fields on each lot cannot exceed that area shown within the limits of disturbance (LOD) on the approved preliminary forest conservation plan (FCP) prior to authorization by the M-NCPPC inspector to remove the tree protection fence.
 - v. Revise the tree protection fence to a chain link fence (four feet high), snow fence (four feet high), super silt fence, or 14 gauge 2 inch x 4 inch welded wire fencing supported by steel T-bar posts (minimum 4 feet high) with high visibility flagging.
- 4) The record plat must show dedication as well as centerline of the following rights-of-way, consistent with the 2005 Approved and Adopted Olney Master Plan:
 - a) Georgia Avenue - minimum of 60 feet from the centerline of the road right-of-way.
 - b) Bordly Drive - minimum of 35 feet from the centerline of the road right-of-way.
 - c) Proposed interior secondary residential public street "Street A" - full width of 60 feet from Georgia Avenue to interior "Street B".
 - d) Proposed interior tertiary residential public street "Street A" - full width of 50 feet between interior "Street B" and "Street A" cul-de-sac.
 - e) Proposed interior secondary residential public street "Street B" - full width of 60 feet from "interior Street A" to "Street B" cul-de-sac.
- 5) The record plat must show required corner truncation at all public street intersections.
- 6) The Applicant must make additional payments equivalent to 50% of the applicable transportation impact tax for the area (consistent with the 2003-2005 Annual Growth Policy - Policy Element, Section TL1) to the Montgomery County Department of Permitting Services (DPS), prior to release of any building permit for the proposed new dwelling units to mitigate traffic impact related to the subject development at the intersection of Georgia Avenue and New Hampshire Avenue (MD 650) in Sunshine.

- 7) Access to the subdivision from Georgia Avenue (MD 97) shall be restricted to the proposed interior residential public street called "Street A".
- 8) The Applicant must construct all road 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. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
- 9) The Applicant must resolve all outstanding issues related to the Maryland State Highway Administration (SHA) and Montgomery County Department of Public Works and Transportation (DPWT) review of this preliminary plan prior to the first building permit, and shall provide written notification to both the Development Review Division staff and the Transportation Planning staff that these issues were resolved.
- 10) The Applicant must comply with conditions of DPWT letter dated May 1, 2006, unless otherwise amended.
- 11) Compliance with conditions of DPS (Health Dept.) septic approval dated December 21, 2006.
- 12) Compliance with the conditions of approval of the DPS stormwater management approval dated December 13, 2006, unless otherwise amended.
- 13) Compliance with conditions of SHA approval letter dated March 31, 2006, prior to issuance of access permit.
- 14) Applicant to dedicate to M-NCPPC the following forested open space areas:
 - a) proposed Parcel "C", consisting of approximately 42 acres;
 - b) the open space land that is located along the north side of the proposed 61.89 acre parcel where the current camp is located, including the Hawlings River and surrounding steep slope areas, consisting of approximately 8.5 acres and designated on the Plan as "Easement Area for Future Dedication";
 - c) the open space land that is located on the northeast corner of the proposed camp parcel, consisting of approximately 4.4 acres and designated on the Plan as "Easement Area for Future Dedication"; and
 - d) all forested land that lies within what was proposed as Lot 2.

- 15) Land that is to be dedicated to park shall be conveyed free of trash and unnatural debris, and the Applicant shall clearly stake and sign boundaries between parkland and private properties.
- 16) The areas designated as "Easement Area for Future Dedication" shall be recorded as separate parcels with an easement or covenant that provides for dedication to M-NCPPC when the camp ceases to operate or ownership of the land is transferred. The language of the easement or covenant shall be approved by M-NCPPC. The Liber and Folio of the easement/covenant shall be noted on the record plat for the parcels.
- 17) Record plat to reflect a Category I easement over all areas of stream valley buffer and forest conservation which are not part of the park dedication. The areas designated as "Easement Area for Future Dedication" shall be included in the Category I conservation easement until such time as they are conveyed to M-NCPPC.
- 18) Record plat to reflect all areas included in Rural Open Space.
- 19) Record plat to reflect common ingress/egress and utility easements over any shared driveways.
- 20) Record plat to reference the Common Open Space Covenant recorded at Liber 28045, Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 21) Record Plat must reflect all parcels under Homeowners Association control, and separately designate stormwater management parcels.
- 22) Record plat to have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."
- 23) 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 opinion.
- 24) Other necessary easements must be shown on the record plat.
- 25) The future proposed septic field area located in forest on the camp retreat lot (proposed Lot 30) may only be cleared if no alternative non-forested area is

available, and only for that area specifically needed for a septic field as approved by DPS.

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 (except as modified herein), 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 Central Union Mission property is located in northern Olney and is covered by both the Olney Master Plan, and the Functional Master Plan for the Preservation of Agriculture and Rural Open Space. This Property is identified in the 2005 Olney Master Plan as a Legacy Open Space Target property. It is first mentioned in the Land Use Chapter on page 18. Under Northern Olney, the Plan states: "As Northern Olney faces increasing pressure for more development, additional tools are recommended to be used to protect resources important to water supply protection and sensitive natural resources. The Legacy Open Space Program is one of the tools and is described in detail in the Implementation Chapter." On Page 19, under Recommendation #2 and #3, the Plan states:

"2. Protect forested areas and wetlands, particularly the large interior forests on the Spurrier (Becker), Carmen, Mitchell, Nash, Central Union Mission and Pepco properties. Consider Legacy Open Space funding and forest conservation banking for easement protection. Add the Carmen property and portions of the Spurrier, Mitchell, Central Union Mission and Nash properties to proposed parkland (see Implementation Chapter for Legacy Open Space recommendations for these properties). If development is proposed on these properties, use appropriate regulatory and park dedication tools to protect the key resource areas.

3. Protect forested areas and wetlands that contribute to the health of the drinking water supply through the development process and applicable conservation programs."

On page 150 in the Implementation Chapter, the Plan identifies this Property as #7 in the Natural Resources and Legacy Open Space table, and states that this Property has "two large forested areas immediately adjacent to parkland, and provides important ecological buffer to the Hawlings River Biodiversity Area." It recommends adding the Property to Water Supply Target area (Class II), and recommends the following:

- Protect high priority forest through easement with current use (camp on site).
- If land use changes, preferred option is to seek dedication or acquisition of the portion of the forest that adjoins the Hawlings River Stream Valley Park. (The existing camp should be allowed to continue operations and M-NCPPC should restrict public access on parkland for as long as the camp is in operation.) Use easements to protect the rest of the forest. At the time of subdivision, easements could be used to protect all or part of the high priority forest if deemed appropriate by the Planning Board.

A map on page 114, Existing and Proposed Parkland, shows a major forested portion of the Property as proposed parkland.

The Planning Board finds that key forest and wetland areas on the Property, which are prioritized for retention as part of the Property's designation by the Master Plan as a Class II Legacy Open Space Water Supply target area, will be adequately preserved by the Application after the deletion of proposed Lot 2. The Board further finds that the combined use of park dedication, easements for future park dedication, and Category I conservation easements will provide adequate long-term protection of these areas. The Board also finds that the total area of park dedication, although smaller than the proposed parkland identified in the Master Plan, meets the intent of the Plan because most of the highest priority forest area will be protected.

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

Roads and Public Transportation Facilities

The Planning Board finds that proposed vehicle and pedestrian access to the site will be safe and adequate with the recommended conditions. The proposed vehicular access point for the residential dwellings has been approved by the State Highway Administration (SHA) subject to the closing of other existing driveways that currently provide access to the Property. Two new public cul-de-sac streets constructed within the Property will provide adequate internal circulation for the new lots. The Board finds that sidewalks are not necessary on the internal roads because the roadways can be safely used by pedestrians in this lower density subdivision.

A traffic study was required for the Application in accordance with the *Local Area Transportation Review (LATR) Guidelines* since the development, with the existing and proposed uses, will generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. - 9:30 a.m.) and evening (4:00

p.m. - 7:00 p.m.) peak-periods. The traffic study estimated that the build-out of the site (with existing and proposed uses) will generate approximately 38 peak-hour trips during the weekday morning peak-period and 42 peak-hour trips during the weekday evening peak-period. As a result, under Total Traffic or Build conditions, Critical Lane Volume (CLV) at the intersection of Georgia Avenue and New Hampshire Avenue in Sunshine exceeds the congestion standard for the Rural Policy Area (1,400 CLV) during the morning peak-hour. To address this condition, the Planning Board finds that the Applicant must pay the applicable transportation impact tax, and make an additional payment equal to 50% of the applicable tax, prior to receiving any building permits for the proposed development. The Board finds that this payment is acceptable because implementing the otherwise necessary roadway improvements is not feasible given their scope. The Planning Board, therefore, finds that the Application satisfies LATR requirements.

Other public facilities and services

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed units. The Property will be served by private septic and wells that have been approved by the Montgomery County Department of Permitting Services, Well and Septic section. 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 and services, such as schools, police stations, firehouses and health services are operating within the standards of the Growth Policy Resolution currently in effect.

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

The Planning Board finds that size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision. The proposed lots were reviewed for compliance with the dimensional requirements specified in the Zoning Ordinance for the RC zone. The lots as proposed will meet all applicable dimensional requirements for area, frontage, width, and setbacks in that zone. The proposed cluster development will be compatible with surrounding development in that the proposed lots will be appropriately located and sized. The plan meets the minimum requirement for 60% rural open space, and the location of the open space will protect environmentally sensitive area, scenic vistas, and priority forest.

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

The Planning Board finds that the Application meets the applicable forest conservation requirements through a combination of onsite forest retention and onsite, plus offsite forest planting. The preliminary forest conservation plan (FCP) reflects 94.26 acres of proposed forest retention, and 34.52 acres of forest to be cleared. The proposed forest clearing generates a requirement for 35.30 acres of reforestation. This reforestation requirement will be partially met by planting 6.33 acres of currently unforested onsite area. The remaining requirement (28.97 acres) will be met by buying credits in a forest bank, or through forest planting on an offsite property. Section 22A-12(f)(1) of the County Forest Conservation Law requires that a site developed in an agricultural and resource area "must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement." For this Application, the minimum onsite forest requirement is met by retaining a total of 94.26 acres.

The Master Plan identifies high priority forest on the Subject Property that should be protected as part of the proposed development. The Planning Board finds that a sufficient amount of this high priority forest will be protected within the proposed park dedication area, taking into account the deletion of proposed lot 2 and the incorporation of that area in the park dedication.

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 ("DPS") that the Stormwater Management Concept Plan meets DPS' standards.*

The DPS Stormwater Management Section approved the stormwater management concept for the project on December 13, 2006. The proposed stormwater management plan includes on-site water quality control and onsite recharge via nonstructural (grass swales and sheet-flow to buffers) and structural (sand filters and bioretention) methods.

6. *Due to shape, topography and location of natural features on the Property, an overlength cul-de-sac is required to provide street access to the site.*

The roadway design for the property includes the creation of two cul-de-sac roads which will be greater than 500 feet in length. Per Section 50-26(d) of the Montgomery County Code, a cul-de-sac road should be no longer than 500 feet unless a greater length is justified by reason of property shape, size, topography, large lot size, or improved street alignment. The Planning Board finds that the design of these over-length roadways are justified by the topography and shape of the Property and the fact that the proposed street alignment provides protection of environmentally sensitive areas and avoids

stream and wetland crossings. If a roadway loop or other connection were required for these roads, sensitive environmental areas would be impacted.

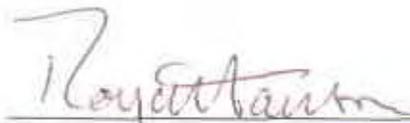
BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is NOV - 5 2007 (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).

* * * * *

At its regular meeting, held on Thursday, October 25, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by Commissioner Bryant, with Commissioners Bryant, Cryor, and Lynch voting in favor, with Commissioner Hanson abstaining and Commissioner Robinson absent, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120060830, Bennett Knolls.



Royce Hanson, Chairman
Montgomery County Planning Board

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

May 22, 2018

Erin E. Girard
301.961.5153
egirard@linowes-law.com

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Bennett Knolls; Preliminary Plan No. 120060830 ("Preliminary Plan")

Dear Chairman Anderson and Members of the Planning Board:

On behalf of our client, Central Union Mission ("Mission" or "Applicant"), the owner of the property that is the subject of the above-referenced Preliminary Plan, and pursuant to Section 50.4.2.H of the Montgomery County Code (the "Code"),¹ the purpose of this letter is to request a one-year extension of the validity period for the Preliminary Plan until December 5, 2019.

Factual Background

Central Union Mission is a non-profit religious organization that owns a 219-acre property in the RC (Rural Cluster) zone located at 20501 Georgia Avenue ("Property") north of Olney. In addition to its family ministries, emergency shelter programs, rehabilitation services, and programs distributing food, clothing and furniture to those in need from six locations throughout the metropolitan region, the Mission also operates a non-profit retreat for underprivileged children and homeless men on the Property, which it has owned for over 80 years. In fact, for seven weeks each summer the Mission hosts over 400 inner city children on the Property, giving them an opportunity to swim, sing, hike, play sports and make crafts.

To realize the economic potential of the Property in order to advance its important community-serving purposes, in 2007 the Mission obtained approval of the Preliminary Plan, which subdivided the portion of the Property closest to Georgia Avenue into 28 residential lots, while maintaining the 48-acre "Camp Bennett" parcel to the northeast. The Preliminary Plan was approved by Planning Board Resolution 07-197 dated November 5, 2007, a copy of which is attached hereto as Exhibit "A" (the "Resolution"). The Resolution established a 36-month validity period from the Initiation Date for the Preliminary Plan, resulting in an initial expiration date of December 5, 2010. Subsequent to this approval, the Montgomery County Council adopted legislation that automatically extended the validity period of the Preliminary

¹ Pursuant to Section 3 of Ordinance No. 18-19, the Applicant is pursuing the extension request under the provisions of Section 50 of the Code that went into effect on February 13, 2017 rather than the provisions in effect at the time the Preliminary Plan was approved.

**L&B 6873852v1/05736.0002

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
May 22, 2018
Page 2

Plan to December 5, 2018. See Ordinance No. 18-04 (granting an 8-year extension to any preliminary subdivision plan that was valid on March 31, 2009).

Shortly after approval of the Preliminary Plan in 2007, the residential market for the approved lots largely disappeared, preventing the Mission from selling the residential lots to a third party. In order to keep its approval active, however, the Mission spent significant funds preparing and submitting plans and applications in furtherance of its approval, and satisfying a number of the Preliminary Plan's conditions of approval. In this regard, the Preliminary Plan was certified on December 8, 2009 and the Final Forest Conservation Plan approved on March 24, 2010. Final Erosion and Sediment Control and Stormwater Management Plans were submitted in January 2010 and went through three review cycles, and an administrative waiver for the Stormwater Management grandfathering was approved in April 2011. Other related plans, including Grade Establishment, Storm Drain and Paving, Street Tree and Lighting, and Temporary Traffic Control were also prepared and submitted for review. Associated with the approved Forest Conservation Plan for the Property, in 2011 an Easement for Future Dedication that reserved for dedication to the Maryland-National Capital Park and Planning Commission approximately 62 acres of land was recorded in the Land Records ("Easement for Future Dedication"). See Declaration of Easement for Future Dedication recorded in the Land Records of Montgomery County at Liber 41338, folio 227, a copy of which is attached as Exhibit "B".

The record plats were also submitted in June of 2010. Through the review of the plats, it became apparent that a slice of property owned by Montgomery County separated future lots 27 and 28 from Bordly Drive, the conveyance of which land back to the Mission would be required for access to those lots.² This issue was not identified in, or contemplated by, the Preliminary Plan approval. Negotiations with the County on this conveyance ran from 2011-2012, at which time the Mission suspended the negotiations for cost reasons.

Also during this time, the State of Maryland, followed by Montgomery County, adopted comprehensive changes to stormwater management laws and regulations. Although, as noted above, the Project initially obtained a grandfathering waiver from application of the new regulations in 2011, due to the various issues identified herein, the Mission was not able to perfect the grandfathering in the requisite period of time, causing it to lapse. With the new stormwater regulations now applying to the Property, which was designed and approved under the old standards, significant re-evaluation must be done by the project engineer. It is

² This sliver of land was previously owned by the Mission but it was acquired by the County in connection with improvements to Bordly Drive.

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
May 22, 2018
Page 3

understood that, at a minimum, a new stormwater concept plan and final stormwater approval will be necessary prior to recordation of the plat, which could take an additional 9-12 months.

In 2014, the approved residential lots on the Property finally became the subject of a Letter of Intent with a residential developer. In early 2015, however, the Letter of Intent expired without any purchase and sale agreement entered into. The residential lots were again the subject of a Letter of Intent with a different buyer in 2016, which resulted in a Purchase and Sale Agreement being entered into in September 2016. At that point in time, it appeared very likely that the Preliminary Plan would be validated by the recordation of plats by the contract purchaser prior to its expiration date. Unfortunately, however, this buyer dropped the contract in early 2017. The residential lots are currently the subject of a new Letter of Intent with yet another prospective buyer, with contract negotiations ongoing. Upon execution of this contract, the Mission expects to be able to proceed with expending the resources necessary to revise and update the stormwater plans for the Property, finalize grading, and satisfy the remaining conditions necessary for recordation of the plats. Given the time necessary to finalize the contract, revise the plans, and prepare, process and record the record plats, however, the Mission believes a one-year extension of the Preliminary Plan validity period is necessary.

Request for Preliminary Plan Extension

Pursuant to Section 50.4.2.H *et seq.* of the Code, an applicant may request an extension of the validity period for an approved preliminary plan prior to the previously established validity period expiration. As grounds for such an extension request, an applicant must demonstrate that 1) delays by the government or some other party after the plan approval prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or 2) the occurrence of significant, unusual and unanticipated events beyond the applicant's control and not caused by the applicant have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to applicant if the plan were not extended. *See* Section 50-35.4.2.H.3 of the Code.

As explained more fully above, subsequent to the approval of the Preliminary Plan, the housing market for the approved lots essentially collapsed. This unanticipated event essentially caused the Mission to put on hold all of its plans to sell the approved residential lots until the market returned. Despite this unfortunate reality, however, the Mission continued to try to validate the Preliminary Plan by expending substantial funds on the legal and engineering work necessary to attempt to negotiate the purchase of the portion of Bordly Drive needed for access, draft and

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
May 22, 2018
Page 4

record the Easement for Future Dedication, prepare and submit many of the technical drawings reviewed above, and prepare the record plats. Additionally, while the residential portions of the Property have been under various contracts and letters of intent with prospective purchasers, none of these purchasers have proceeded, and the negotiations related thereto have caused further delay beyond the control of the Mission.

The undue hardship that the invalidation of the Preliminary Plan would have on the Mission is clear. The Mission has applied significant resources to filing, prosecuting and obtaining approval of a preliminary plan that it believed would result in the highest and best use of its Property. In fact, to date, the Mission has invested over \$1 million to prepare the land for sale; funds that have come at the expense of services for the poor and homeless. The Mission's intent and continuing objective with the approval was to yield significant funds to further advance its worthy objectives of assisting those most in need within the community. An invalidation of the plan would therefore directly and adversely affect the Mission's resources and outreach efforts, to the detriment of all of those who rely on the Mission for services.

Additionally, the Mission executed and recorded the Easement for Future Dedication in good-faith reliance on its Preliminary Plan entitlement. This future dedication will significantly benefit the County through dedication of approximately 62 acres; however, invalidation of the Preliminary Plan would significantly harm the Mission, who recorded the document in reliance on an approved subdivision.

Conclusion

Based on the foregoing, we believe a one-year preliminary plan extension to allow for the recordation of the record plats is justified and reasonable, and in the best interests of the County. Associated with this request, enclosed please find a completed application and filing fee. Thank you for your consideration of this request. If you have any questions or concerns, or require any additional information, please feel free to contact me.

Very truly yours,

LINOWES AND BLOCHER LLP



Erin E. Girard

Enclosures

cc: Mr. David Treadwell

Van Alstyne, Chris

From: Girard, Erin E. - EEG <EGirard@linowes-law.com>
Sent: Monday, August 06, 2018 2:28 PM
To: Van Alstyne, Chris
Cc: Pereira, Sandra
Subject: Bennett Knolls Extension Request

Chris,

As a supplement to our May 22, 2018 letter requesting a one-year extension of the validity period for Preliminary Plan No. 120060830, the purpose of this email is to revise the request to seek a two-year extension. Given the issues remaining to be addressed, as detailed in the May 22, 2018 letter, we believe a two-year extension would be more realistic and afford the Mission sufficient time to resolve the remaining issues and record a plat without having to request an additional extension. Additionally, pursuant to Condition No. 23 of the Preliminary Plan, the Adequate Public Facility review period for the Preliminary Plan will expire on December 5, 2020. By seeking a two year extension of the preliminary plan, rather than the one-year extension originally requested, the expiration dates could align

Please let me know if you have any questions or concerns with this amended request. Thank you.

Erin E. Girard
Partner

Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814

Direct: 301.961.5153
Main: 301.654.0504
E-mail: egirard@linowes-law.com
LinkedIn: www.linkedin.com/in/eringirard
Website: www.linowes-law.com

This e-mail message is intended only for the addressee and may contain confidential and/or privileged material. Any interception, review, retransmission, dissemination, or other use of, or taking of any action upon this information by persons or entities other than the intended recipient is prohibited by law and may subject them to criminal or civil liability. If you received this communication in error, please contact us immediately at the direct dial number set forth above, or at (301) 654-0504, and delete the communication from any computer or network system. Although this e-mail (including attachments) is believed to be free of any virus or other defect that might negatively affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free, and no responsibility is accepted by the sender for any loss or damage arising in any way in the event that such a virus or defect exists.