

## BARNARD PROPERTY PRELIMINARY PLAN AMENDMENT NO. 11997040B

Request to extend the Preliminary Plan's validity period by an additional 18 months from the initiation date of this Preliminary Plan Amendment.

No. 11997040B

Completed: November 17, 2022

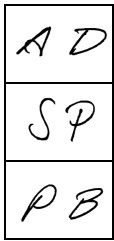
MCPB

Item No. 9

Dec 1, 2022

Montgomery County  
Planning Board  
2425 Reedie Drive, Floor 14  
Wheaton, MD 20902

## Planning Staff



Alexandra Duprey, Planner II, Upcounty, [Alexandra.Duprey@montgomeryplanning.org](mailto:Alexandra.Duprey@montgomeryplanning.org), 301-495-1309

Sandra Pereira, Supervisor, Upcounty, [Sandra.Pereira@montgomeryplanning.org](mailto:Sandra.Pereira@montgomeryplanning.org), 301-495-2186

Patrick Butler, Chief, Upcounty, [Patrick.Butler@montgomeryplanning.org](mailto:Patrick.Butler@montgomeryplanning.org), 301-495-4561

### LOCATION/ADDRESS

At the northwestern terminus of Bonny Brook Lane, abutting Seneca Springs Local Park to the west

### MASTER PLAN

2006 Damascus Master Plan

### ZONE

RE-2C

### PROPERTY SIZE

Approximately 30.2 acres (1,306,138 sq ft)

### APPLICANT

Benning & Associates, Inc.

### ACCEPTANCE DATE

April 29<sup>th</sup>, 2022

### REVIEW BASIS

Chapter 50



### Summary:

- On March 12, 2009, the Planning Board approved Preliminary Plan 119970400 (Barnard Property) to allow for 12 lots for 12 single-family detached dwelling units, one outlot to contain stormwater management facilities, and a public use trail easement.
- The Applicant states that due to reasons beyond their control, including significant health crises and considerable market uncertainties, unexpected delays have occurred.
- The Applicant requests to extend the Preliminary Plan's validity period by an additional 18 months from the initiation date of this Preliminary Plan Amendment, per Section 4.2. of Chapter 50.
- The Amendment will not result in any changes to the original Preliminary Plan proposal.
- Staff recommends **approval with conditions** of the Applicant's request to extend the period for which plats must be recorded.

## SECTION 1: RECOMMENDATION AND CONDITIONS

### PRELIMINARY PLAN NO. 11997040B

Staff recommends approval of Barnard Property, Preliminary Plan Amendment No. 11997040B, to extend the Preliminary Plan's validity period by eighteen months from the initiation date of this Preliminary Plan Amendment. The Subject Property is on 30.2 acres of land zoned RE-2C. All conditions of Preliminary Plan 119970400 remain in full force and effect with the addition of Condition 18 below:

#### **New Condition:**

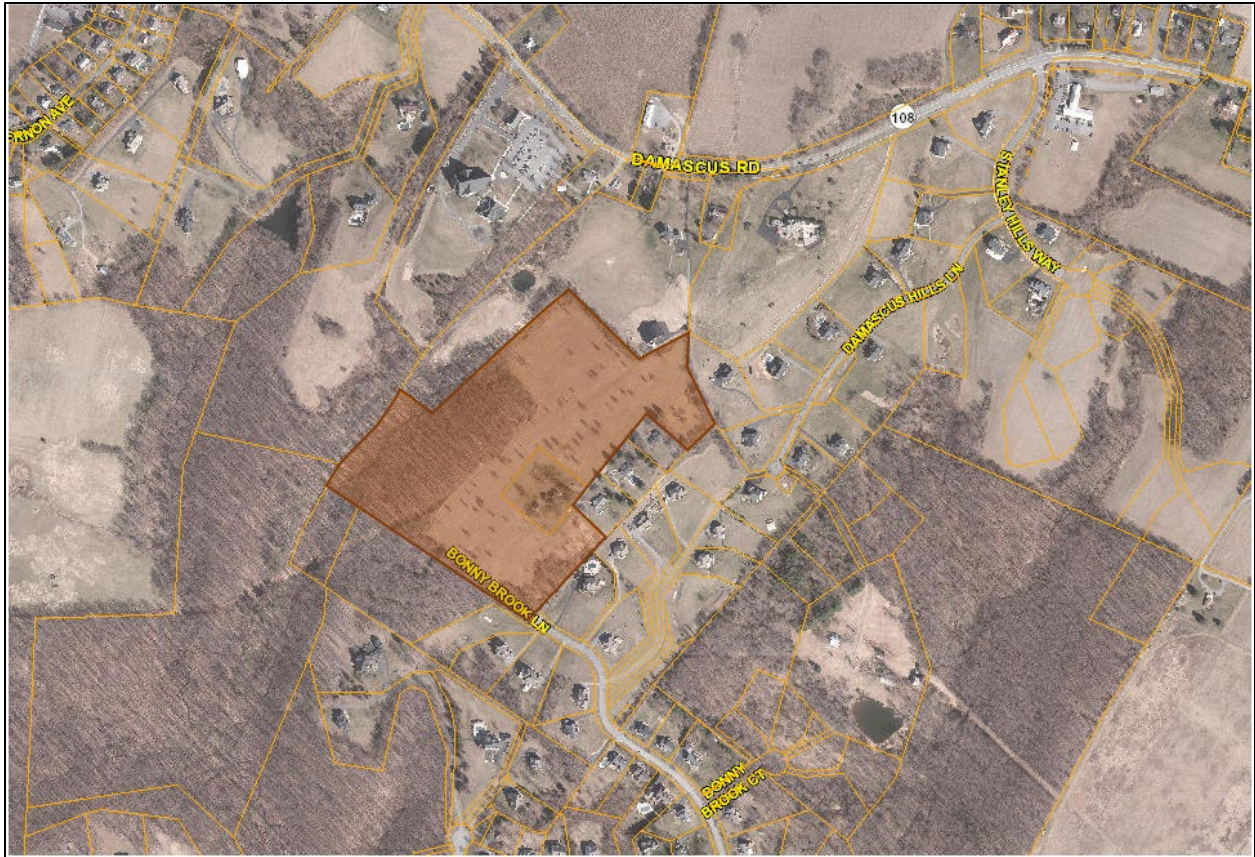
##### **18. Plan Validity Period**

The Preliminary Plan will remain valid for 18 months from the initiation date of this Preliminary Plan Amendment (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.

## SECTION 2: SITE DESCRIPTION

The Subject Property or Property, Figure 1, consists of two unplatted parcels with a combined area of 30.2 acres. It is located at the terminus of Bonny Brook Lane. The zoning on the Property is RE-2C. The Property is developed with a single-family detached residence and associated detached garage, which are proposed to remain. Surrounding properties are developed with single-family detached residences in the RE-2C zone. Seneca Spring Local Park is located immediately west of the Subject Property.

The Property is located within the Upper Great Seneca Creek watershed. An unnamed tributary to Upper Great Seneca Creek crosses the western portion of the Property. The Property contains 4.65 acres of stream valley buffer, with 3.85 acres of high priority forest. There is one area of moderately steep slopes with highly erodible soils located along the proposed extension of Bonny Brook Lane. There are 10.3 acres of forest on the Subject Property.



*Figure 1 – Map and outline of the Subject Property.*

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

#### Preliminary Plan No. 119970400

The Preliminary Plan that covers the Subject Property (No. 119970400) was approved by Planning Board Resolution No. 09-28, dated March 30, 2009 (“Preliminary Plan”) [Attachment A]. The Preliminary Plan approved the subdivision of the Property for 12 lots on 30.2 acres of land at the terminus of Bonny Brook Lane (“Subject Property”).

Preliminary Plan Amendment No. 11997040A was submitted in 2020 before the Preliminary Plan was set to expire. However, this was withdrawn when the Montgomery County Council granted another automatic 2-year extension in July 2020.

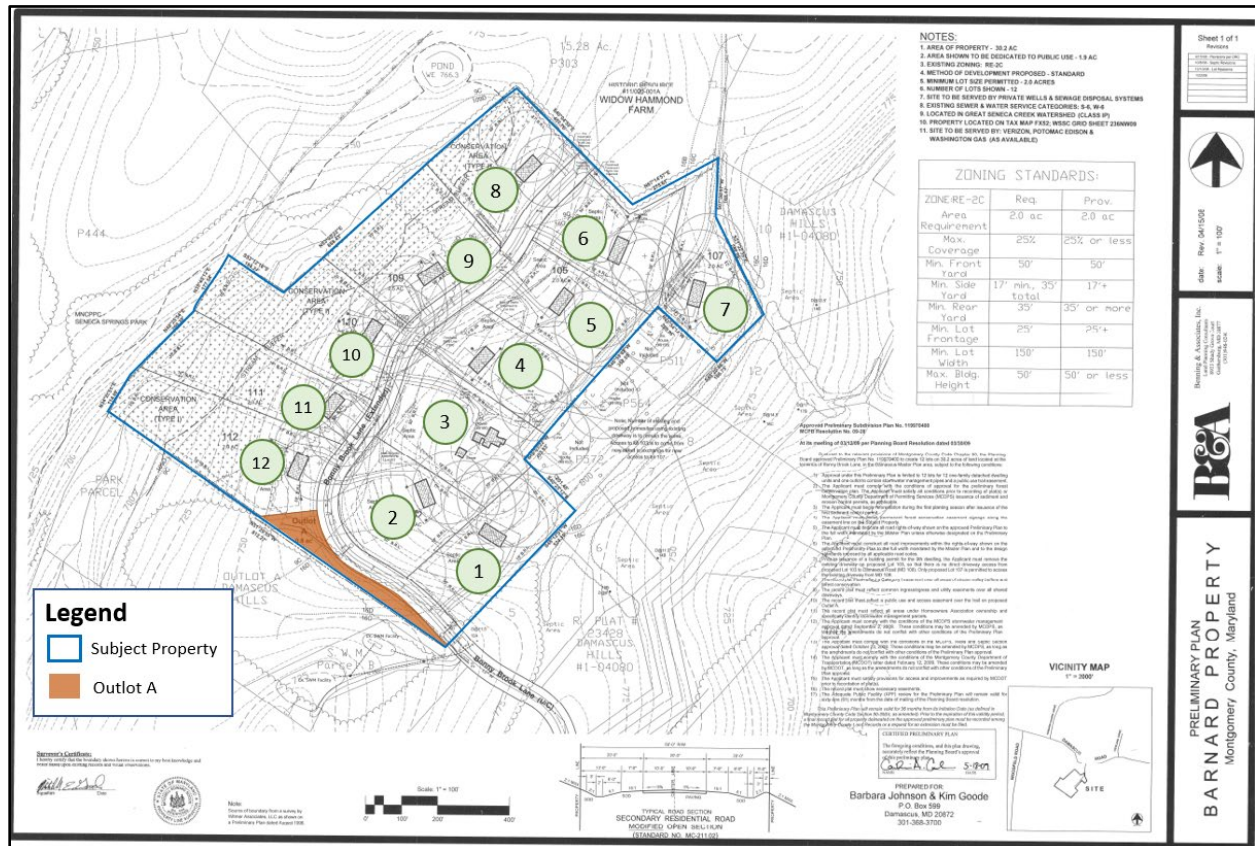


Table 1 outlines the automatic extensions applicable to this Preliminary Plan. Through a series of automatic extensions detailed in Chapter 50, Section 3.2., the validity period was extended from April 2012 to April 2022. The applicant submitted their request for an extension of the Preliminary Plan validity period via Amendment No. 11997040A on April 28, 2020. Their request was made prior to the July 28, 2020 cutoff date set by SRA No. 20-01. Therefore, the request was timely, and the Preliminary Plan qualified for an additional 2-year extension until April 30, 2022.

*Table 1 - Preliminary Plan Validity Period*

Plan Name / Legislation	Action Type	Initiation / Effective Date	Incremental Validity Period	Expiration of Amended Validity
119970400	Preliminary Plan	4/30/2009	3 years	4/30/2012
11997040A	Preliminary Plan Am.	Withdrawn	--	--
SRA No. 11-01	Legislation	4/30/2012	6 years	4/30/2018
SRA No. 15-01	Legislation	4/30/2018	2 years	4/30/2020
SRA No. 20-01	Legislation	4/30/2020	2 years	4/30/2022

As shown in Figure 1, the Preliminary Plan approved 12 lots designated for 12 single family detached dwelling units. There is an outlot for stormwater management and a public use trail easement, both along the southern portion of the Subject Property.



*Figure 2 - Approved Preliminary Plan with an outline of the Subject Property, a highlighted outlot area, and the 12 lots numbered.*

## SECTION 4: COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and pre-submission meeting requirements for the submitted Application. As of the date of this Staff Report, Staff has not received any correspondence from the community regarding this Application.

### PROPOSAL

The proposed Preliminary Plan Amendment to extend the plan validity period by 18 months is procedural in nature, with the sole purpose of allowing additional time for submittal of the required plats, and results in no change to the original approval. In the Applicant's Statement of Justification (Attachment B), the Applicant noted that the financial crisis of 2007-2008 was especially detrimental to the applicant's progress. Additionally, one of the applicants experienced a health crisis that took focus and energy away from the development. These issues have resulted in unavoidable delays in recording the plats.

## SECTION 5: PRELIMINARY PLAN 11997040B ANALYSIS AND FINDINGS

The Applicant requests an extension of the Preliminary Plan's eligible period, per Section 4.2. of Chapter 50, for plat recordation by eighteen months from the initiation date. The Preliminary Plan Amendment does not alter the intent and objectives, in the originally approved Preliminary Plan, and all findings remain in full force and effect, except as modified below.

Per Section 4.2 of Chapter 50, to approve a Preliminary Plan validity extension, the Board must make the following analysis and findings as part of its approval.

### 1. Extension Requests

- a. *Only the Board is authorized to extend the validity period. 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 submitted a timely extension request to the Planning Board on April 29, 2022. Planning Board Resolution No. 09-28 (Attachment B) established a 36-month validity period for the Preliminary Plan, with an original expiration date of April 30, 2012 (based on the initiation date being one month after the mailing date). Through five separate County-wide legislative actions, this date has been extended by 10 years to April 30, 2022.

- b. *The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.*

Not applicable.

- c. *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 has provided a justification statement for the requested extension to the plan validity (Attachment B). The request for an 18-month validity extension will allow the Applicant to record plats necessary to continue the development process.

2. *Effect of failure to submit a timely extension request.*

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

3. *Grounds for extension.*

- a. *The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:*
  - i. *delays by the government or some other party after the plan approval have 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*
  - ii. *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's validity extension justification (Attachment B) states that significant, unusual and unanticipated events, beyond their control and not caused by the Applicant, have impaired their ability to validate the plan, and that an undue hardship would result if the validity period were not extended. Due to the significant and long-lasting economic difficulties imposed by the 2008-2009 recession, the difficulties posed by the COVID-19 pandemic, as well as the Applicant's personal health issues, the Applicant has stated that they have been unable to proceed with the platting at the originally planned speed and schedule. Staff finds this justification sufficient. This extension will provide the Applicant a window for completing the necessary plat recordation.

- b. *The applicant bears the burden of establishing the grounds in support of the requested extension.*

The Applicant provided justification (Attachment B) outlining the validity extension request and the necessary justifications. These are found to qualify as a "significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant."

4. *Planning Board considerations for extension.*

- a. *The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.*

Staff does not recommend the Board require the Applicant to conform to any changes that have occurred in Chapter 50 since the initial approval date, because there have been no changes to the Preliminary Plan since approval.

- b. *The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Board or the Director.*

Staff does not recommend that additional information on the feasibility of the project be required. The Amendment will not result in any changes to the original Preliminary Plan proposal. The Applicant maintains that the approved Preliminary Plan is viable.

5. *Planning Board action.*

- a. *After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.*

The Preliminary Plan Amendment complies with the notice requirements of Chapter 50 and is scheduled for a public hearing before the Board.

- b. *If voting to approve an extension, the Planning Board must only grant the minimum time it deems necessary for the applicant to validate the plan.*

The Applicant has requested an 18-month extension to the Preliminary Plan validity period and states this is the minimum necessary to complete the validation. Staff agrees with the Applicant's request as a reasonable amount of time given the scale and complexity of this development.

- c. *The Board may only grant an extension to a preliminary plan within the plan's APFO validity period, unless a further extension is allowed by law.*

The plan's Adequate Public Facilities Ordinance (APFO) has an additional 2 years of validity before expiration on April 30<sup>th</sup>, 2024.

- d. *An applicant may request, and the Board may approve, more than one extension.*

This is the first request for a Preliminary Plan validity extension made for the original approval of Preliminary Plan No. 119970400. As mentioned before, there was a prior initial request for extension that was withdrawn when an automatic extension period was granted by the County Council.



- e. *Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of the validity period.*

Not applicable.

## SECTION 6: CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and comply with the recommendations of the Damascus Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the Application has been reviewed previously by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, Staff recommends approval to extend the validity period of this preliminary plan by 18 months with the condition specified above.

## ATTACHMENTS

*Attachment A: Preliminary Plan Resolution MCPB No. 09-28*

*Attachment B: Applicant's Statement of Justification*



**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**

**RESOLUTION<sup>1</sup>**

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

---

<sup>1</sup> 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:

8787 Georgia Avenue, Suite 100, Bethesda, MD 20814 Chairman's Office: 301.495.4605 Fax: 301.495.1320

**www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org**

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 9<sup>th</sup> 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

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

Douglas Tanner  
Damascus Manor Homeowners Assn.  
25636 Coltrane Drive  
Damascus, MD 20872

Kathie Hulley  
Damascus Community Alliance  
21809 Diller Lane  
Boys, MD 20841

Contact  
Washington Metro Area Transit Author  
600 Fifth Street, NW  
Washington, DC 20001

President  
Plantations Community Assn., Inc.  
P.O. Box 222  
Damascus, MD 20872

Congresswoman Donna Edwards  
U.S. House of Representatives  
434 Cannon House Office Building  
Washington, D.C. 20515-2004

John Luke  
Montgomery County Air Park  
7940 Air Park Road  
Gaithersburg, MD 20879

Hank Jacob  
Greenhills Condo I  
7605 Arlington Road  
Bethesda, MD 20814

George Sauer  
Citizens for a Better Montgomery  
8307 Post Oak Road  
Potomac, MD 20854-3479

Jim Humphrey  
Montgomery County Civic Federation  
5104 Elm Street  
Bethesda, MD 20814

Kim Howell  
Damascus Valley Park  
955A Russell Avenue  
Gaithersburg, MD 20879

Wayne Goldstein  
Montgomery County Civic Federation  
3009 Jennings Road  
Kensington, MD 20895

Bret Duncan  
Damascus Valley Park  
9959 Valley Park Drive  
Damascus, MD 20872

Julius Cinque  
Northern Montgomery County Alliance  
22300 Slidell Road  
Boys, MD 20841

Alan Siefert  
Greenhills Condo IV  
20440 Century Blvd. Ste. 100  
Germantown, MD 20874

Ronald McNabb  
TROT  
12435 Meadowood Dr.  
Silver Spring, MD 20904

Mike Rodtang  
Greenhills Condo IV  
12100 Green Ridge Drive  
Boys, MD 20841

Pedro Porro  
Spanish Speaking People of Montgomery  
5729 Bradley Boulevard  
Bethesda, MD 20814

Timothy Hoffacker  
Greenhills Condo. Section IV  
10509 Nickelby Rd.  
Damascus, MD 20872

Wayne Goldstein  
Montgomery Preservation, Inc.  
3009 Jennings Road  
Kensington, MD 20895

James Flood  
Seneca Brook Homeowners Assn.  
7979 Old Georgetown Rd, #800  
Bethesda, MD 20814

Jim Fary  
Sierra Club - Montgomery County Group  
2836 Blue Spruce Lane  
Silver Spring, MD 20906-3166



Adjacent and Confronting Property Owners & Other Interested Parties List/Labels

David W. McKee  
Benning & Associates, Inc.  
8933 Shady Grove Court  
Gaithersburg, MD 20877

Rita W. Gale  
Montgomery County Public Libraries  
21 Maryland Avenue, Suite 310  
Rockville, MD 20850

Damascus Valley Park  
Douglas Shenton, c/o PMP Management Co  
955A Russell Avenue  
Gaithersburg, MD 20879

Mr. Robert Domergue, Principal  
Damascus High School  
25921 Ridge Road  
Damascus, MD 20872

Mrs. Louise Worthington, Principal  
John T. Baker Middle School  
25400 Oak Drive  
Damascus, MD 20872

Ms. Rebecca Jones, Principal  
Damascus Elementary School  
10201 Bethesda Church Road  
Damascus, MD 20872

Barbara Johnson & Kim Goode  
P.O. Box 599  
Damascus, MD 20872

JOHNSON, BARBARA J  
9162 DAMASCUS RD BOX 147  
DAMASCUS MD 20872

Mrs. Gayle Mollet, Principal  
Clearspring Elementary School  
9930 Moyer Road  
Damascus, MD 20872

WHITMEYER, DONLD H JR & STACEY L  
25243 BONNY BROOK LN  
DAMASCUS MD 20872

D R HORTON INC  
15810 GAITHER DR STE 220  
GAITHERSBURG MD 20877-1437

STANLEY, ROY E & K A  
PO BOX 194  
DAMASCUS MD 20872-0194

MCDANIEL, ROBERT G & A L  
9156 DAMASCUS RD  
DAMASCUS MD 20872-1223

JOHNSON, DONALD L & D M  
9160 DAMASCUS RD  
DAMASCUS MD 20872-1223

MULLIS, WILLIAM F ET AL TR  
1217 COYOTE CT  
ABINGDON MD 21009-4313

Kim Howell  
Damascus Valley Park  
955A Russell Avenue  
Gaithersburg, MD 20879

Bret Duncan  
Damascus Valley Park  
9959 Valley Park Drive  
Damascus, MD 20872

James Flood  
Senecabrook Homeowners Assn.  
7979 Old Georgetown Rd, #800  
Bethesda, MD 20814

Kathie Hulley  
Damascus Community Alliance  
21809 Diller Lane  
Boys, MD 20841

Civic and Hon

Associations List/Labels within one mile of the subject property

Benning & Associates, INC.  
8933 Shady Grove Ct.  
Gaithersburg, MD 20877

Attn: Dave McKee

Adjacent and Confronting Property Owners List/Labels for the subject property

MULLIS, WILLIAM F ET AL TR  
9200 MAIN ST  
DAMASCUS MD 20872

## Attachment B

### Benning & Associates, Inc.

Land Planning Consultants  
8933 Shady Grove Court  
Gaithersburg, MD 20877  
(301)948-0240

April 29, 2022 (Revised 11-17-22)

Mr. Patrick Butler, Chief  
Upcounty Planning Area  
Montgomery County Planning Department  
2425 Reddie Drive, 14th Floor  
Wheaton, MD 20902

Re: Statement of Justification for Barnard Property (MNCPPC #11997040B)

Dear Mr. Butler,

This statement accompanies a request to extend the validity period of Preliminary Plan number 119970400 (Barnard Property). The Preliminary Plan was approved by the Planning Board on March 12, 2009 and the adopted Resolution was mailed on March 30, 2009. The approvals were for 12 single-family residential lots in the RE2C zone.

The Plan is set to expire on April 30, 2022. An extension of 18 months from the initiation date is requested to validate the Preliminary Plan. The applicants intend to submit for an amendment to the approved Preliminary Plan during this time period as they have determined it is no longer practical to develop the site as it was originally approved.

Section 50.4.2.H. of the County Code states the following with respect to the “extension of a plan validity period”:

1. *Extension request.*
  - a. *Only the Board is authorized to extend the validity period. 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.*

By submission of application 11997040B made on April 29, 2022, the applicants hereby request that the Planning Board extend the validity period of the Barnard Property plan number 119970400.

3. *Grounds for extension.*

b. *The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:*

- i. *delays by the government or some other party after the plan approval have 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;*

Delays by the government or some other party have not prevented the applicants from validating the plan.

- ii. *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 Barnard Property is a family-owned property which was originally purchased by the father / grandfather of the applicants in 1950. The applicants and other family members continue to live on or adjacent to the property to this day. Development of the Barnard Property has always been intended to expand upon the "family compound" to allow younger generations to continue to live in the area.

The Preliminary Plan for the Barnard Property was approved during the aftermath of the financial crisis of 2007-2008. The financial crisis was especially detrimental to the applicant's plans to develop the site as a family compound given the large amount of public improvement required to develop the site.

As the economy improved, the applicants began to move forward with plans to complete the recordation of the lots by completing the necessary engineering and other documents needed for Record Plat approval. However, in recent years, one of the applicants experienced several health crises. These crises took focus and energy away from the development of the Barnard Property until just recently.

The automatic extensions granted to by the Planning Board to plans approved during this time period have allowed the Preliminary Plan for this property to remain valid. However, given that these extensions are due to expire and the family has not been in position until just recently to complete the recordation of the lots, additional time is needed to allow this project to be completed.

If the application to extend the validity period was not extended, the family would be dealt another significant blow towards their goal of developing this family-owned property.

We have requested an extension of 18 months to allow time to obtain approval of an amendment and to then complete the recording of the Barnard Property subdivision. If this request is approved, time will be needed to complete the appropriate submissions of final plans and documents and to give review agencies adequate time to review and approve these materials.

Your consideration of this request is greatly appreciated. Should any further information be needed for your evaluation of this request, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'David W. McKee', with a stylized, flowing script.

David W. McKee