

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-109
Preliminary Plan Amendment No. 11997040B
Barnard Property
Date of Hearing: December 1, 2022

DEC 14 2022

RESOLUTION

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

WHEREAS, on March 12, 2009, the Planning Board, by Resolution MCPB No. 09-28, approved Preliminary Plan No. 119970400, creating 12 lots on 30.2 acres of land in the RE-2C zone, located at the northwestern terminus of Bonny Brook Lane, abutting Seneca Springs Local Park to the west (“Subject Property”), in the Damascus Policy Area and *2006 Damascus Master Plan* (“Master Plan”) area; and

WHEREAS, on April 29, 2022, Benning & Associates, Inc. (“Applicant”) filed an Application for approval of an amendment to the previously approved preliminary plan to extend the Preliminary Plan’s validity period by an additional 18 months from the initiation date of this Preliminary Plan Amendment; and

WHEREAS, Applicant’s Application to amend the preliminary plan was designated Preliminary Plan Amendment No. 11997040B, Barnard Property (“Preliminary Plan,” “Amendment,” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated November 19, 2022, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 1, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Presley, seconded by Commissioner Branson, with a vote of 4-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson and Piñero voting in favor, with Commissioner Hill voting against.

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 11997040B to extend the Preliminary Plan's validity period by an additional 18 months from the initiation date of this Preliminary Plan Amendment by adding the following new condition:¹

18. 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.

BE IT FURTHER RESOLVED that all other Preliminary Plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as provided in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

This Amendment does not alter the intent, objectives, or requirements in the originally approved Preliminary Plan and all findings not specifically addressed remain in effect, unless specifically changed by this amendment.

Per Section 50.4.2.H of the County Code, the Board makes the following findings:

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.*

The Applicant submitted a timely extension request to the Planning Board on April 29, 2022. Planning Board Resolution No. 09-28 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.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- 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. The request for an 18-month validity extension is the minimum time needed and 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 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. The Planning Board 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 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.

No additional conditions or revisions to the plan are required. The twelve lots and road meet contemporary subdivision standards and fire access requirements. The Preliminary Plan also includes a forest conservation area and a public trail that further the public interest.

- 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.*

The proposed single-family lots in this area of Damascus per the RE-2C zone are likely to be in demand and capable of being financed and marketed within a reasonable time frame. 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 had 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. The Planning Board agrees with the Applicant's request as the minimum time needed 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 Preliminary Plan's Adequate Public Facilities Ordinance (APFO) approval has an additional 2 years of validity before expiration on April 30, 2024. The approved Preliminary Plan Amendment validity period will not extend beyond that date.

- 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. A prior initial request for extension 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.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 14 2022 (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 the motion of Commissioner Hill, seconded by Commissioner Piñero, with a vote of 4-0; Chair Zyontz, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, Commissioner Presley necessarily absent, at its regular meeting held on Thursday, December 8, 2022, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

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Barnard Property

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