

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**DATE MAILED:**

**July 29, 2025**

MCPB No. 25-089

Preliminary Plan Amendment No. 12014003A

Beall's Manor Subdivision Lots 1-3

Date of Hearing: July 24, 2025

## **RESOLUTION**

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

WHEREAS, on July 17, 2014, the Planning Board, by Resolution MCPB No. 14-54 dated July 29, 2014, approved Preliminary Plan No. 120140030, creating three (3) lots for three (3) single-family dwelling units on 2.0 acres of land in the R-200 zone, located at the terminus of Spearmint Lane, approximately 150 feet southeast of the intersection with Amberleigh Terrace ("Subject Property"), in the Cloverly Policy Area and 1997 *Cloverly Master Plan* ("Master Plan") area; and

WHEREAS, on March 6, 2025, Hawakil Bay Park, LLC ("Applicant") filed an application to amend and reinstate the previously approved Preliminary Plan No. 120140030 to allow three (3) lots for three (3) single-family dwelling units, and extend the Adequate Public Facilities (APF) validity period by 2.5 additional years; and

WHEREAS, Applicant's application to amend and reinstate the preliminary plan was designated Preliminary Plan Amendment No. 12014003A, Beall's Manor Subdivision Lots 1-3 ("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 July 11, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 24, 2025, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12014003A to amend and reinstate Preliminary Plan No.

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Approved as to  
Legal Sufficiency:

/s/ Emily Vaias  
M-NCPPC Legal Department

120140030, which was approved for three (3) lots for three (3) single-family dwelling units, and extend the Adequate Public Facilities (APF) validity period by 2.5 additional years by modifying the following condition and adding a new condition:<sup>1</sup>

### **Modified Condition**

12. The Adequate Public Facilities (APF) review for the Preliminary Plan Amendment will remain valid for two-and-a-half (2-1/2) years from the current expiration date (until February 29, 2028).

### **New Condition**

#### Plan Validity Period

14. The Preliminary Plan will remain valid for two (2) years from the initiation date (as defined in Montgomery County Code Section 50.4.2.G) of this Amendment, and before 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 set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, 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.

#### Preliminary Plan Reinstatement

Section 50.4.2.H.2.a of the Montgomery County Code states that failure to submit an extension request in a timely fashion will void all non-validated portions of a preliminary plan. Section 50.4.2.H.2.b. further states that the Board may reinstate a Preliminary Plan and establish a new validity period, with or without a new APF review, if the Applicant demonstrates practical difficulty or undue hardship.

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

For this Amendment, the reinstatement of the Preliminary Plan establishes a new 2-year Preliminary Plan validity period, and an extension of 2.5 years to the existing APF validity period. The reinstatement will allow the Applicant to plat the three lots for the single-family detached units, complete the required public infrastructure and improvements, and obtain building permits.

As detailed in Table 1 below, the Preliminary Plan was originally approved by resolution dated July 29, 2014, and provided a 5-year plan validity period, starting at the 30-day initiation date of August 28, 2014, which expired on August 28, 2019. Through County Council legislative actions, the Preliminary Plan was automatically extended by an additional two years by SRA No. 15-01 to August 28, 2021, and then extended a second time for an additional two years by SRA No. 20-01 to August 28, 2023.

*Table 1: Approved Staged Development Validity Period*

Action	Approved Development	Validity Duration	Updated Validity Expiration
Original Preliminary Plan Approval (MCPB Resolution No. 14-54)	120140030	5 years	8/28/2019
County Council Automatic Extension (SRA No. 15-01)	One automatic 2-year extension for active preliminary plans	2 years	8/28/2021
County Council Automatic Extension (SRA No. 20-01)	One automatic 2-year extension for active preliminary plans	2 years	8/28/2023

As detailed in the Statement of Justification for the reinstatement, the Applicant has experienced practical difficulty by acquiring the Subject Property with an expired Preliminary Plan validity, which prevented the Preliminary Plan from being validated. The previous owner did not plat the approved three lots and consequently the single-family detached dwelling units cannot be constructed as originally approved. In addition, the public infrastructure and improvements were not constructed for the three lots. The previous owners of the Property delayed implementing and validating the original Preliminary Plan, thus resulting in expiration of the Preliminary Plan. The Applicant's request for the reinstatement would allow them to move forward with platting the three lots, completing the public infrastructure and improvements per the original Preliminary Plan approval, and constructing the three single-family detached dwelling units.

The Application to reinstate the Preliminary Plan does not alter the intent of the original approval and the only changes to conditions of approval are those necessary to complete the record plat process and extend the APF validity period, as detailed below.

#### **Adequate Public Facilities (APF) Validity Extension**

Section 50.4.3.J.7 of the Montgomery County Code authorizes the Board to extend the validity period for a determination of APF, subject to the following findings:

7. *Extensions.*

a) *Application. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*

i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.*

The Applicant filed the request to extend the current APF validity period on March 6, 2025, before August 29, 2025, the current expiration date.

ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

The development of the three-lot residential subdivision is a single-phase project, subject to the proposed APF validity period.

iii. *For each extension of an adequate public facilities determination:*

(a) *the applicant must not propose any additional development above the amount approved in the original determination;*

No additional development is proposed.

(b) *the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional public improvements or conditions are required.

(c) *the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;*

The development falls within the Cloverly Policy Area, which is classified as a Yellow Policy Area under the 2024-2028 *Growth and Infrastructure Policy* ("GIP"). A Transportation Impact Study ("TIS") was not required as part of this Application. As demonstrated in the Applicant's Transportation Exemption Statement ("TES") dated February 9, 2025, the development will generate less than 30 net new vehicle trips during the morning and evening peak hours. More specifically, the development is expected to generate three (3) net new vehicle trips during the morning peak hours and four (4) during

the evening peak hours (Table 2 below). Therefore, the Application falls within the 30 net new vehicle trips threshold, and it is exempt from providing further transportation analysis addressing Local Area Transportation Review ("LATR") Guidelines. Lastly, as previously confirmed by MCDOT, the Application will meet the requirements and comments as stipulated in their letter dated March 21, 2014, and all the public infrastructure and improvements will be constructed as part of the approval of this Application.

*Table 2: Trip Generation Analysis*

	ITE Trip Generation Vehicle Rates		Adjusted Vehicle Rates Cloverly Policy Area		Total Vehicle Trips	
	AM	PM	AM	PM	AM	PM
Proposed: Three (3) Single Family Detached Units	3	4	3	4	3	4
Net New Vehicle Trips					3	4

*(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and*

Not applicable because the lots are not recorded and are thus not part of a subdivision covered by a previous APF determination.

*(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.*

The three (3) unbuilt units will not generate more than 10 students at any school serving the development or any more students than were approved with the original Preliminary Plan so no new adequacy school test is required. The number of students generated by this Amendment, pursuant to the FY26 Annual School Test, is estimated to be zero at all three levels during an average year throughout its life.

Section 50-4.3.J.7.c of the Subdivision Regulations sets forth the specific criteria that must be satisfied for approval of the extension of the APF determination for exclusively residential subdivisions, as follows:

- c) *Exclusively residential subdivisions. The Board may extend a determination of adequate public facilities for an exclusively residential subdivision beyond the otherwise applicable validity period if the Department of Permitting Services has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Board may approve one or more extensions if the aggregate length of all extensions for the development does not exceed:*
- i. *2.5 years for a subdivision with an original validity period of 7 years or less; or*
  - ii. *6 years for a subdivision with an original validity period longer than 7 years*

The original validity period for the APF was seven (7) years, therefore, the extension can be for two-and-one-half (2.5) years. However, because the Preliminary Plan has not been validated nor plats recorded, the Applicant has not obtained any building permits or commenced construction for any lots. Therefore, a waiver from the requirement under 50-4.3.J.7.c to have "building permits for at least 50 percent of the entire subdivision" is needed.

#### **Subdivision Waiver – Section 50-9.1**

Section 50-9.1 of the Subdivision Regulations authorizes the Board to modify or waive any portion of the Subdivision Regulations. In granting a waiver, the Planning Board must make certain findings, set forth in Section 50-9.3.A.

Per Section 50-9.3.A, to grant a waiver, the Planning Board must find that:

1. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

As noted above, since Preliminary Plan 120140030 was approved, practical difficulties for the Applicant have arisen. The prior owner did not plat the three lots and consequently the single-family detached dwelling units cannot be constructed. Additionally, the public infrastructure and improvements were also not constructed as per the original Preliminary Plan approval. The previous owners of the Property delayed implementing and validating the original Preliminary Plan, thus resulting in the expiration of the Preliminary Plan. The Applicant is unable to satisfy the requirements of 50-4.3.J.7.c because the Montgomery County Department of Permitting Services ("MCDPS") is required to have issued building permits for at least 50% of the entire subdivision before the application for extension is filed. This requirement would have necessitated that for an application as small as this to have filed for two of the three building permits. Two of the three lots would then be ready to record plats, leaving the remaining lot to move forward with the APF at building permit process. A small property, such as the Subject Property, would more than likely be a singular plat, which

would also be concurrently validated. The small size of this project makes it both impractical and inefficient to have already implemented 50% of the building permits for the Subject Property. The Applicant will need to not only have the Preliminary Plan reinstated, as discussed above, but also have the current APF validity period extended so that the three lots can be platted to move forward in a single phase with the subdivision and building permits issued. In this case, the strict application of this section is not needed to ensure public health, safety and general welfare. The required improvements and infrastructure associated with this Amendment will improve elements of public safety by upgrading existing pedestrian and bicycle connections, and the project will add to a more complete community with much needed housing within the community. In addition, the Application will continue to comply with Chapter 59 (Zoning) and Chapter 22A (Forest Conservation).

2. *the intent of the requirement is still met; and*

The intent of the requirement being waived is "DPS issuing building permits for at least 50% of the entire subdivision before the application for extension is filed." The intent of the requirement for 50% building permits suggests that an Applicant needs to prove that progress was made on a subdivision prior to expiration of the APF, meaning there was good intention to complete the project, but issues were encountered along the way. For this Amendment, the small size of the project makes it both impractical and not useful to apply this metric of 50% of the building permits for the Subject Property. The Applicant has demonstrated their commitment to moving forward more quickly by acquiring the Property and fixing the existing issues. The Applicant acquired the Subject Property from a previous owner that never validated the Preliminary Plan by platting the three lots. This resulted in the expiration of the Preliminary Plan validity period. The Applicant will need to not only have the Preliminary Plan reinstated, as discussed above, but also have the current APF validity period extended so that the three lots can be platted to move forward with the subdivision and building permits issued. The intent of the requirement will be met with the reinstatement of the Preliminary Plan and the extension of the APF validity period. The Applicant will fully comply with the Conditions of Approval by platting the three lots and completing the required public infrastructure and improvements as specified in MCDOT's letter dated March 21, 2014.

3. *the waiver is:*

- a) *the minimum necessary to provide relief from the requirements; and*
- b) *consistent with the purposes and objectives of the General Plan.*

As discussed, the Applicant cannot meet the criteria to extend an exclusively residential subdivision because the Preliminary Plan must be validated before meeting any of the thresholds identified in the criteria. As such, a waiver of Section 50-4.3.J.7.c is the minimum necessary to provide relief from the requirements. This Application, including the waiver, will provide a reasonable amount of time for the Applicant to plat the three residential lots and complete the public infrastructure and improvements as conditioned by the original Preliminary Plan. Once realized, this subdivision will provide needed housing within Montgomery County. The waiver is consistent with the objectives of the General Plan (Thrive 2050) because the development will provide needed housing and improvements to connectivity for pedestrian, bicycle, and vehicular infrastructure. The Application will provide three single-family detached dwelling units, which meets the General Plan's recommendation for increasing the overall housing supply to meet the needs of a growing population. The Application will also provide a 15-foot-wide public improvement easement ("PIE") on Lot 3, along the common property line with Parcel A. The PIE will serve as a pedestrian connection to a future pedestrian path to connect to New Hampshire Avenue, which meets the General Plan's recommendation for emphasizing multimodal transportation and providing connectivity for walking, biking, and transit to-and-from the new dwelling units. Lastly, the Application directly ties into the existing framework of the surrounding subdivision and improves the last piece of developable property within the North Sherwood Forest neighborhood in Silver Spring.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

**July 29, 2025**

(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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution approved and adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, July 24, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board