



MCPB  
Consent  
Item No: 1  
Date: 9/3/15

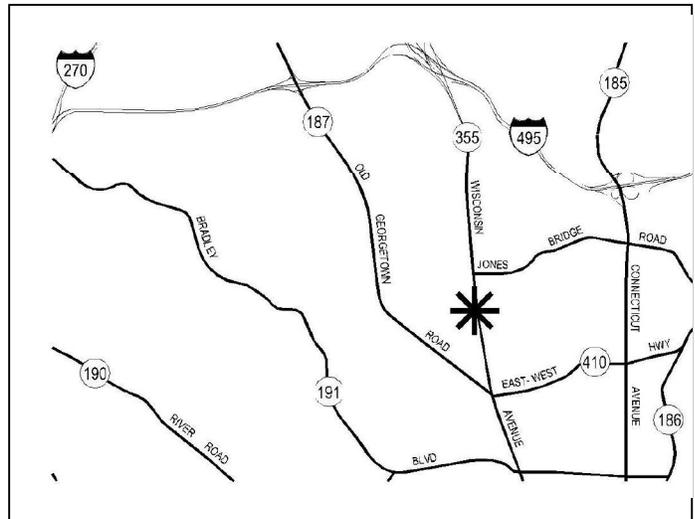
**8008 Wisconsin Avenue, Pre-Preliminary Plan Extension Request, 720150160**

- Neil Braunstein, AICP, Area 1, neil.braunstein@montgomeryplanning.org, (301) 495-4532
- Elza Hisel-McCoy, Supervisor, Area 1, elza.hisel-mccoy@montgomeryplanning.org, (301) 495-2115
- PAK* Robert Kronenberg, Chief, Area 1, robert.kronenberg@montgomeryplanning.org, (301) 495-2187

**Staff Report Date: 8/21/15**

**Description**

Location: Southwest quadrant of the intersection of Cordell Avenue and Wisconsin Avenue  
 Zone: CBD-1  
 Master Plan: Woodmont Triangle Amendment to the Bethesda CBD Sector Plan  
 Property size: 15,389 square feet  
 Application to extend the validity period for binding advice for a pre-preliminary application for up to six months, from September 21, 2015, to March 21, 2016  
 Applicant: Jemal's Surplus, LLC  
 Request Date: July 28, 2015



**Summary**

Under Section 50-33A of the Subdivision Regulations, the Planning Board may give an applicant binding advice on a pre-preliminary application. The advice remains binding on the Planning Board provided that the applicant files a preliminary plan application for the project within 90 days of the mailing date of the resolution for the pre-preliminary application. The Planning Board may, however, extend this period.

Discussions are underway between the applicant and the Maryland State Highway Administration regarding the complex design issues related to accommodation of the proposed bus rapid transit system on Wisconsin Avenue. The site-specific designs for the BRT station in front of the project site and the sidewalk area between the station and the building have not yet been determined. In addition, the applicant is also working on a noise study for the proposed building. Therefore, the applicant has requested, in a letter dated July 28, 2015, that the validity period for the pre-preliminary application be extended for six months, to March 21, 2016, to allow the applicant to address these issues.

Staff recommends **APPROVAL** of the extension request.

Attachment A: Applicant's extension request

July 28, 2015

**Emily Vaias**  
301.961.5174  
evaias@linowes-law.com

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

Re: 8008 Wisconsin Avenue – Pre-Preliminary Plan No. 720150160 (the “Pre-Preliminary Plan”): Request for six month extension of the Pre-Preliminary Plan validity date (the “Extension Request”)

Dear Chair Anderson and Members of the Planning Board:

On behalf of our client, Jemal’s Surplus LLC c/o Douglas Development Corporation (the “Applicant”), the owner of the properties (described below) which were the subject of the Pre-Preliminary Plan, and pursuant to Section 50-33A(b) of the Montgomery County Code (the “County Code”), we hereby request action of the Board to extend the validity of the Pre-Preliminary Plan by six months, or until March 21, 2016. This will allow the Applicant to continue working with the relevant State and County agencies regarding road rights-of-way and the Bus Rapid Transit line (“BRT”), combine the Site Plan and Preliminary Plan filings, and engage a noise consultant to prepare the necessary report that is required prior to filing the Preliminary Plan.

As a brief background, the Pre-Preliminary Plan was approved by the Planning Board (the “Board”) on June 18, 2015, along with the companion case, Project Plan No. 920150020 (the “Project Plan”). The properties subject to these two approvals include lots fronting on Wisconsin Avenue recorded as lots 569 – 572 in the Woodmont subdivision in Plat Book Number 1 at Plat Number 4, and the lot fronting on Woodmont Avenue recorded as lot number 641 in the Woodmont Subdivision and recorded at Plat 16377 (the “Properties”). The Pre-Preliminary Plan resolution of approval (the “Resolution”) was mailed on June 23, 2015. A copy of the Resolution as mailed is attached as Exhibit “A”.

By approving the Pre-Preliminary Plan, the Board provided binding advice memorializing the months of negotiations between the Applicant, the Planning Department, the County Department of Transportation and the State Highway Administration (“SHA”) regarding the configuration of the rights-of-way along the Properties. Because this is the first project in the Bethesda Central Business to deal with the proposed BRT right-of-way, and there are several projects making their

Casey Anderson, Chair  
and Members of the Montgomery County  
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way through this process now, it is anticipated that the documents and decisions related to the Properties will help guide the future actions along Wisconsin Avenue in Bethesda. Accordingly, some additional time is requested in order for these discussion and important negotiations to be meaningful. With Summer break approaching, it will be very difficult to accomplish this by the impending September 21, 2015 deadline for the Pre-Preliminary Plan expiration.

In addition, Condition No. 5 of the Project Plan requires that “with submission of a preliminary plan application, the Applicant must provide a noise analysis (prepared by an engineer specializing in acoustics) which includes exhibits of existing noise contours and 20 year projection. If applicable, the analysis must also describe the mitigation techniques needed to attenuate current noise levels to no more than 65dBA Ldn for areas of common outdoor activity and for interior levels not to exceed 45 dBA Ldn.” This will require the Applicant to engage a noise consultant, which has not been part of the design team up to this point in time. Again, with the Summer break approaching, it would be very difficult to complete such studies by the September deadline. Further, it may take several months to complete the study and propose the mitigation that may be necessary.

Lastly, the additional time will allow for the possibility of combining the Site Plan and Preliminary Plan filings, such that they can be processed together. The joint filing will result in a more efficient and coordinated process for both the Applicant and Staff. The Applicant anticipates that the requested six-month extension should be sufficient to address these issues, and it looks forward to processing the preliminary plan for this exciting project.

We thank you for your consideration of this Extension Request, and ask that it be scheduled for the consent agenda on the earliest available hearing date after the Board reconvenes in September. We understand that this Extension Request must be acted on before the Pre-Preliminary Plan validity period expires on September 21, 2015. Please do not hesitate to contact us if you have any questions or require any additional information.

Sincerely,

**LINOWES AND BLOCHER LLP**



Emily J. Vaias

Enclosure

Casey Anderson, Chair  
and Members of the Montgomery County  
Planning Board  
July 28, 2015  
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cc: Catherine Conlon, M-NCCP  
Neil Braunstein, M-NCPPC  
Elza Hisel-McCoy, M-NCPPC  
Norman Jemal, Douglas Development  
Patrick Cooper, Compass Development  
J. Chris Earley, Greening Urban  
Siti Abdul-Rahman, WDG  
Laurel Heile, Parker Rodriguez  
Samantha Mazo, Linowes and Blocher LLP

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

JUN 23 2015

MCPB No. 15-63  
 Pre-Application No. 720150160  
 8008 Wisconsin Avenue  
 Date of Hearing: June 18, 2015

**RESOLUTION**

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

WHEREAS, on April 10, 2015, Jemal's Surplus, LLC ("Applicant"), filed a pre-application for binding advice on the configuration of the right-of-way along the Subject Property frontage on Wisconsin Avenue and truncation at the intersections of Woodmont Avenue and Cordell Avenue and Wisconsin Avenue and Cordell Avenue, on 13,962 net square feet of land in the CBD-1 zone, located in the southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue ("Subject Property"), in the Bethesda CBD Policy Area, and Woodmont Triangle Amendment to the Bethesda CBD Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's pre-application was designated Pre-Application No. 720150160, 8008 Wisconsin Avenue ("Pre-Application"); and

WHEREAS, following review and analysis of the Pre-Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 5, 2015, setting forth its analysis and recommendation for approval of the Pre-Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 18, 2015, the Planning Board held a public hearing on the Pre-Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Pre-Application; and

WHEREAS, at the hearing the Planning Board voted to provide binding advice on the Pre-Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board provides binding advice on Pre-Application No. 720150160 to configure the right-of-way along

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Approved as to  
 Legal Sufficiency *Christina Somet 6/4/15*  
 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
 M-NCPPC Legal Department  
 www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

Exhibit "A"

the Subject Property frontage as described in Condition No. 1 below, subject to the following conditions:<sup>1</sup>

1. Any preliminary plan submitted based on this binding advice must show the following right of way configuration:
  - a. Dedication of 13.5 feet of right-of-way along the Subject Property's Wisconsin Avenue frontage to provide 61 feet of right-of-way to the centerline to support a future right-of-way width of 122 feet from the opposite right-of-way line as required in the *Countywide Transit Corridors Functional Master Plan* ("Functional Master Plan").
  - b. Dedication of 5 feet of right-of-way along the Subject Property's Woodmont Avenue frontage to provide 40 feet of right-of-way to the centerline totaling 80 feet from the opposite right-of-way line as required in the *Bethesda CBD Sector Plan*.
  - c. Provision of a 10-foot-wide public improvement easement ("PIE") along the Wisconsin Avenue frontage to accommodate a proposed bus rapid transit ("BRT") station and/or sidewalk areas around the station. At the intersection of Wisconsin Avenue and Cordell Avenue, the PIE must be expanded to cover the area equivalent to a 20-foot right-of-way truncation. The project's underground parking garage will be permitted to extend under the PIE, and, starting at 15 feet above grade, the building structure will be permitted to extend over the PIE.
  - d. Provision of reduced right-of-way truncations – 20 feet at the intersection of Woodmont Avenue and Cordell Avenue and no truncation at the intersection of Wisconsin Avenue – instead of the required 25-foot standard truncation.
2. Any subsequent plat must note the liber and folio of the recorded PIE.
3. The subsequent site plan must include a note that states that the Applicant must not place any structures or other items, including temporary items, which would interfere with pedestrian movement on the sidewalk or obstruct sight distance within the area that would have been the 20-foot truncation area at the intersection of Wisconsin Avenue and Cordell Avenue.

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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.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and 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:

1. *The provision of an easement is an acceptable alternative to right-of-way dedication for the Subject Property frontage on Wisconsin Avenue.*

The existing Wisconsin Avenue right-of-way along the Subject Property frontage is 90 feet wide, measured from the opposite right-of-way line. The Sector Plan recommends a right-of-way width of 104 feet, and the Functional Master Plan recommends a 122-foot width to accommodate the future BRT system on Wisconsin Avenue. In addition, the Functional Master Plan recommends a width of 142 feet to accommodate BRT stations at the intersection of Cordell Avenue and Wisconsin Avenue. The station will be located in the street right-of-way adjacent to the Subject Property, either along the curb or in a median. In order to provide the recommended right-of-way width, the Applicant would need to dedicate 13.5 feet for Wisconsin Avenue, including the BRT route, and an additional 10 feet for the BRT station. However, due to the constrained size of the Subject Property, full dedication as recommended by the Sector Plan and the Functional Master Plan would reduce the building footprint to the point that the project would not be feasible.

In order to maintain the viability of the project, the Applicant proposes to dedicate right-of-way to create the 122 feet necessary for Wisconsin Avenue, including the BRT route, but to provide an easement for the final 10 feet needed for the BRT station. Unlike right-of-way, an underground garage can project under the easement area, and a building can project over the easement area. The Applicant is proposing that a garage project under the easement and a building project over the easement, starting at the second story. These projections are seen by the Applicant as necessary to develop a viable project on the size-constrained Subject Property. The 10-foot easement area will serve as a pedestrian walkway around the future BRT station. Provision of an easement instead of right-of-way dedication will accommodate the future BRT station and the needs of the project. In its letter of April 21, 2015, The Maryland State Highway Administration ("MDSHA") agrees with provision of the easement and projection of the building into the easement area above the second floor and underground for the garage.

2. *The proposed non-standard truncation is appropriate at the intersections of Wisconsin Avenue and Cordell Avenue and Woodmont Avenue and Cordell Avenue.*

Section 50-26(c)(3) of the Subdivision Regulations requires that the property lines of corner lots be truncated 25 feet from the intersection. This provides additional right-of-way area at intersections that ensures that adequate sight distance is available and creates space for traffic channelization. But the regulation also allows the Planning Board to specify a greater or lesser truncation depending on the specific sight distance and channelization needs at the intersections adjacent to the Subject Property.

In this case, the existing Subject Property has a 20-foot truncation at the intersection of Woodmont Avenue and Cordell Avenue, and the Applicant is proposing to continue to provide this 20-foot truncation. Full 25-foot truncation at this intersection is not necessary because adequate sight distance exists. The intersection is signalized, which further enhances its safety and removes the concern that there is not sufficient space within the right-of-way to place traffic signal equipment. Providing full truncation would negatively impact the design of the proposed project and the provision of the required public use space.

The Applicant is also proposing to provide no truncation of the right-of-way at the intersection of Wisconsin Avenue and Cordell Avenue, but to provide an area in the MDSA easement that would be equivalent to a 20-foot truncation. Full truncation at this intersection is not necessary because adequate sight distance exists. The intersection is signalized, which further enhances its safety and addresses the concern for sufficient space within the right-of-way to place traffic signal equipment. Providing full truncation would negatively impact the design of the proposed project and the provision of the required public use space by further reducing the size of the already constrained Subject Property. Providing the equivalent of truncation by way of the easement instead of right-of-way dedication will allow the building to project above and the garage to project below a portion of the truncation area. In order to ensure that the easement area remains functionally equivalent to truncation, this Resolution includes a condition of approval that requires that the Applicant not place anything in the area that otherwise would have been the 20-foot truncation that would obstruct site distance or pedestrian movement.

BE IT FURTHER RESOLVED, that this Pre-Application will remain valid for 90 days from the date of the Planning Board's action, and that prior to the expiration of this validity period, a preliminary plan application must be filed, or the Pre-Application will expire unless it is extended by Action of the Planning Board; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 23 2015 (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 Fani-González, seconded by Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, June 18, 2015, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board