

Montgomery Planning

850 SLIGO AVENUE

PRELIMINARY PLAN AMENDMENT NO. 12019009B



Request to extend the plan validity period for the approved Preliminary Plan, the window during which the Applicant must record a plat for the Property, from June 15, 2024 to June 15, 2026.

No. 12019009B

Completed: 8/30/2024

MCPB

Item No. 7

9/12/2024

Montgomery County

Planning Board

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LOCATION/ADDRESS

850 Sligo Avenue, located at the southeast quadrant of the intersection of Fenton Street and Sligo Avenue, Silver Spring.

MASTER PLAN

2022 Silver Spring Downtown and Adjacent Communities Plan

ZONE

CR-3.0, C-3.0, R-3.0, H-70', Downtown Silver Spring Overlay Zone & Fenton Village Overlay Zone

PROPERTY SIZE

0.45 Acres

APPLICANT

Moonlight, Inc.

ACCEPTANCE DATE

May 22, 2024

REVIEW BASIS

Chapter 50

Summary:

- Staff recommends approval of the Preliminary Plan Amendment with two new conditions.
- On May 15, 2019, the Planning Board approved Preliminary Plan No. 120190090 to allow one lot for up to 85 age-restricted multifamily residential units and up to 6,912 square feet of non-residential uses.
- On October 16, 2019, the Planning Board approved Preliminary Plan Amendment No. 12019009A to remove the age-restriction associated with the previously approved multifamily residential use.
- On May 22, 2024, the Applicant filed a timely request to extend the validity period of the Preliminary Plan by two years, from June 15, 2024 to June 15, 2026.
- Staff has not received any correspondence regarding the Application.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 12019009B

Staff recommends approval, with two new conditions, of Preliminary Plan Amendment No. 12019009B to extend the plan validity period of the Preliminary Plan from June 15, 2024 to June 15, 2026. All site development elements shown on the latest electronic version of the Preliminary Plan Amendment No. 12019009B as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. Conditions 11 and 12 are in addition to all other conditions, which remain in full force and effect:

New Conditions

11. The Preliminary Plan will remain valid for an additional two (2) years from its original initiation date (as defined in Montgomery County Code Section 50.4.2.G), or until June 15, 2026, 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.
12. At the time of any future Site Plan amendment, Staff shall evaluate and adjust, if necessary, the previously approved streetscape improvements along the Site's three frontages on Sligo Avenue, Fenton Street, and Gist Street to comply with the *Silver Spring Streetscape Guidelines*, or other streetscape policy, as applicable.

VICINITY

A variety of retail and service uses occupy low-rise commercial buildings confronting the Property to the north and west. Single-family residential dwellings abut the east side of the Property. Single-family dwellings also confront the south side of the Property across Gist Avenue.

PROPERTY DESCRIPTION

The Property has a tract area of approximately 0.63 acres, which is reduced to a site area of approximately 0.45 acres after right-of-way dedications, and consists of part of Lots 14, 18-19, 25-28, and 49 in the “Blair” subdivision, as recorded among the Land Records of Montgomery County at Plat Nos. 229 and 624. The Property fronts on three public rights-of-way, Sligo Avenue to the north, Fenton Street to the west, and Gist Avenue to the south. It is improved with an unoccupied eight-level office building and surface parking lot. Vehicular access to the Site is accommodated by four curb cuts, two at Gist Avenue, one curb cut at Fenton Street, and one curb cut at Sligo Avenue.



Figure 3 - Subject Property

The Property does not contain any forest, streams, or environmental buffers. There are no known rare, threatened, or endangered species on-site; there are no 100-year floodplains, stream buffers, or wetlands on-site. There are no historic properties on-site.

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

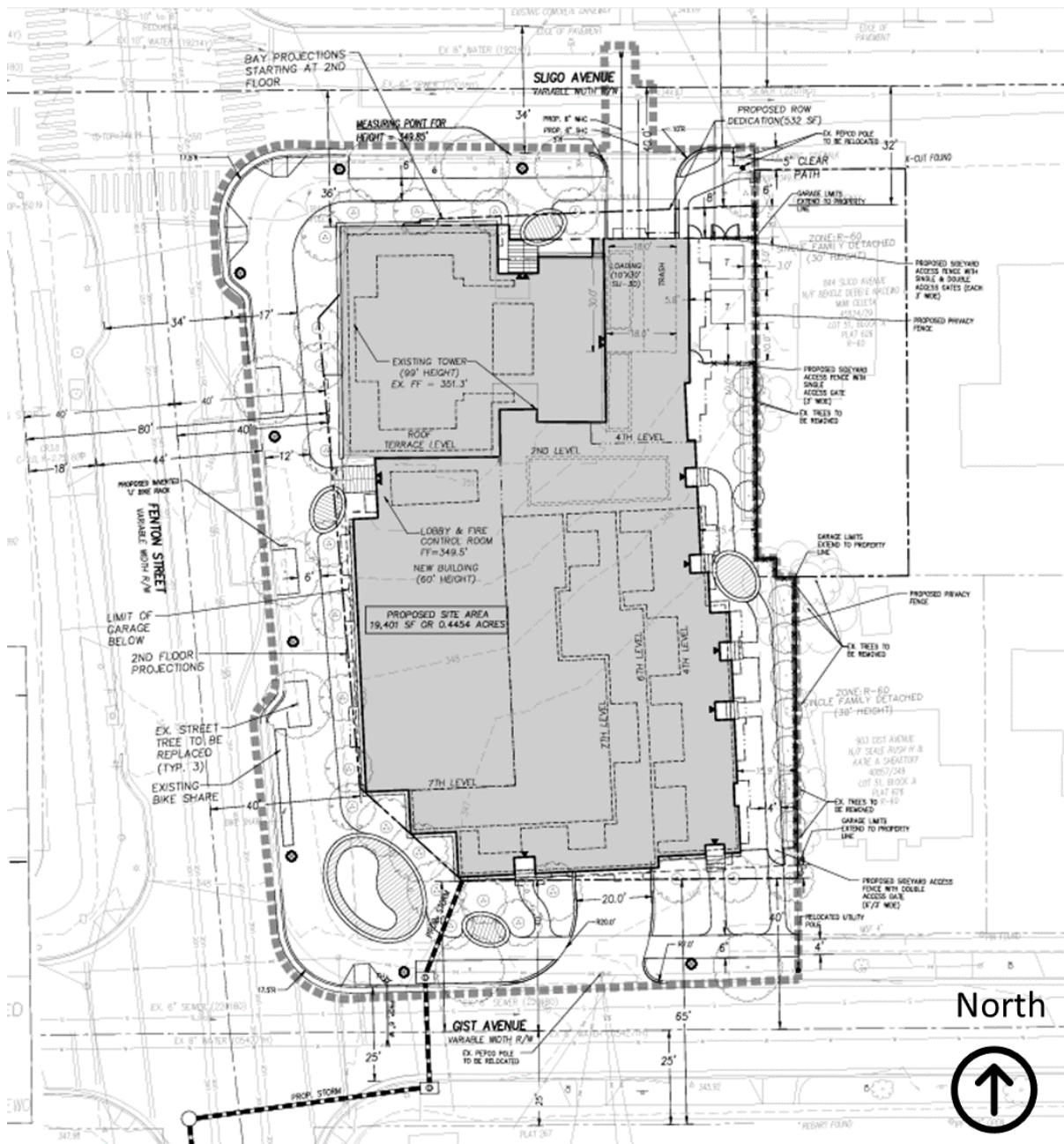
On May 3, 2018, the Planning Board approved Sketch Plan No. 320180090 (MCPB Resolution No. 18-025) and issued a corrected resolution on November 8, 2018. The approved development concept was for a mixed-used building with up to 82,941 square feet of gross floor area, inclusive of up to 76,029 square feet of residential use and up to 6,912 square feet of non-residential uses.

In May 2019, the Planning Board approved Preliminary Plan No. 120190090 (MCPB Resolution No. 19-038) and Site Plan No. 820190050 (MCPB Resolution No. 19-039) to create one lot for up to 85 age-restricted multifamily dwelling units, with 12.5 percent MPDUs, and up to 6,912 square feet of non-residential uses.

In October 2019, the Planning Board approved Preliminary Plan Amendment No. 12019009A (MCPB Resolution No. 19-119) and Site Plan Amendment No. 82019005A (MCPB Resolution No. 19-120) to remove the age-restricted use from the multifamily component of the Project on the Subject Property; with all other previously approved aspects of the Project remaining unchanged.



Figure 4 – Site Plan No. 821090050 Illustrative Approved Building – View at Fenton Street & Sligo Avenue Intersection



PROPOSAL

The Applicant requests to extend the validity period for the Preliminary Plan for two (2) additional years. There are no other changes proposed. The approved validity period was for three (3) years from the initiation date for MCPB Resolution No. 19-038, which would have expired on June 15, 2022. The County Council, through the passage of Ordinance 19-12 in 2020, granted a two-year automatic extension to validity periods for all preliminary plans that were valid on July 28, 2020. This Council action extended the validity period of the Subject Preliminary Plan until June 15, 2024.

If granted, the two-year extension for the validity period of this Preliminary Plan would align it with the associated Adequate Public Facilities validity period granted with the original approval of the Preliminary Plan (five years from the initiation date for MCPB Resolution No. 19-038), expiring on June 15, 2026. With this validity period extension, the record plat would need to be approved and recorded by June 15, 2026. The Applicant has provided justification (Attachment B) addressing the criteria in Section 50.4.2.H.3.a.ii of the Subdivision Ordinance, which discusses the Applicant's efforts to move the Project forward and delays in recording a plat caused by significant, unusual, and unanticipated events, beyond the Applicant's control:

1) COVID-19 Pandemic and Market Conditions:

The Preliminary Plan approval for the Property coincided with the COVID-19 pandemic, which created long lasting impacts and considerable market volatility due to rising interest rates and rising construction costs. These events are beyond the Applicant's control and have resulted in significant increases to construction costs for the Project.

2) Failed Contracts with Several Interested Parties and New Potential Purchaser:

Since the original approval of the Preliminary Plan and other associated entitlements, the Applicant reports having entered into Letters of Intent with several potential purchasers for the Property and Project, but no sale and transfer of ownership materialized. The Applicant reports recently entering into a sale agreement with an affordable housing developer. The Preliminary Plan validity extension is needed to allow sufficient time for this potential purchaser to complete their due diligence and continue forward with the approved redevelopment project.

3) Property Rezoning as part of the Silver Spring Downtown and Adjacent Communities Plan Adoption:

Associated with the adoption of the 2022 *Silver Spring Downtown and Adjacent Communities Plan*, the Property was rezoned from CR-3.0, C-2.0, R-2.75, H-60T to CR-3.0, C-3.0, R-3.0, H-70 to increase flexibility for redevelopment and included in the new Downtown Silver Spring Overlay Zone. These zoning and sector plan changes caused potential contract purchasers to pause moving ahead to acquire the Property. The current contract purchaser is evaluating

possible opportunities from these zoning changes and requires additional time to complete their due diligence.

4) Applicant Progress toward Plan Finalization Recordation of a Plat:

The Applicant reports investing time and resources into preparing the plat for this Property that incorporates the requirements of the approved Preliminary Plan. The Applicant notes that the only significant outstanding prerequisites to complete prior to filing of the plat are to pay fees and bond public rights-of-way improvements. The Applicant has also moved the proposal forward toward realization through finalizing and certifying the Preliminary Plan and Site Plan, and their associated amendments.

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. As of date of this Staff Report, no correspondence has been received.

SECTION 5: FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 120190090 (MCPB Resolution No. 19-038) and 12019009A (MCPB Resolution No. 19-119), to create one lot for residential development for up to 85 multifamily residential units, with 12.5 percent MPDUs, and up to 6,912 square feet of non-residential uses on the Subject Property with conditions and established a 36-month validity period from the initiation date as defined by Section 50.4.2.G of the Subdivision Ordinance.

Preliminary Plan Amendment No. 12019009B requests to extend the validity period of the Preliminary Plan from June 15, 2024 to June 15, 2026. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which all remain applicable.

In accordance with 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 plan validity extension request to the Planning Board which was filed on April 24, 2024 and accepted on May 22, 2024. Planning Board Resolution No. 19-038 (Attachment A) established a 36-month validity period for the

Preliminary Plan, with an original expiration date of June, 15, 2022 (based on the initiation date as defined in Section 50.4.2.G of the Subdivision Ordinance). The validity period was extended by an additional two years in 2020 with the County Council's issuance of Ordinance No. 19-12 (Attachment C), resulting in an expiration date of June 15, 2024.

- 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.***

This requirement is not applicable. As previously approved, the Project is to be completed in a single phase. The Subject Application is a request of the Planning Board to extend the validity period for the Preliminary Plan.

- 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), which requests an additional two years to record the plat for the Preliminary Plan. The current validity period for Preliminary Plan No. 120190090, as amended with Preliminary Plan No. 12019009A, would have expired on June 15, 2024. A timely request to extend the validity period was filed as noted in Finding 1.a. above. The Applicant states the two-year extension request is the minimum time necessary for the contract purchaser to complete their due diligence and record a plat.

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

The request was received in a timely manner.

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***

The Applicant reports prior attempts to contract with third-party developers to complete the platting process and proceed with construction failed to fully materialize. The COVID pandemic, associated economic instability, and uncertainty associated with zoning changes to the Property stemming from the County's adoption of the 2022 *Silver Spring Downtown and Adjacent Communities Plan* are noted as contributing factors for

the delay in this development materializing. The Applicant has indicated recently entering into a contract for this Project with an affordable housing developer and that this new contractor purchaser requires the two-year extension of the Preliminary Plan validity period to complete their due diligence prior to platting.

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 received multiple entitlement approvals for their proposed development at the onset of the COVID-19 pandemic, which brought significant and unforeseen challenges, and an extended timeline to the realization of the approved Project. Sketch Plan No. 320180090 was approved by the Planning Board in May 2018. This Preliminary Plan and Site Plan No. 820190050 were approved by the Planning Board in May 2019, with an amendment to both Plans approved by the Planning Board in October 2019. By March 2020, the World Health Organization declared the COVID outbreak a pandemic.

The significant and long-lasting economic difficulties posed by the COVID-19 pandemic, including market uncertainty, rising interest rates, and rising construction costs, have impacted the overall cost to complete the Project, and slowed its realization. The Applicant's statement of justification supporting the validity extension request (Attachment B) states that despite their best efforts, the significant, unusual, and unanticipated events rooted in the COVID-19 pandemic, were beyond their control and not caused by the Applicant but have impaired their ability to validate the plan. The Applicant further reports that they are currently working with a new potential contract purchaser for Project and that the purchaser requires additional time to complete their due diligence prior to recording a plat. The requested extension to the Preliminary Plan validity period is necessary to allow for this and an undue hardship would result if the validity period were not extended to allow for the contract purchaser to complete their evaluation and move the Project forward.

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". This justification also notes the Applicant's efforts to proceed with the Project, with potential purchasers electing not to move forward.

In addition to the grounds noted in the Applicant's statement of justification, the Applicant has made good-faith efforts to move forward through the entitlement process pursuing and receiving certification of the Preliminary Plan on October 10, 2019, receiving approval of a Site Plan (No. 820190050) and certifying the Site Plan on October 10, 2019. Amendments to the Preliminary Plan and Site Plan were also sought by the Applicant and approved by the Planning Board in 2019. Further, the approved, amended Preliminary Plan No. 12019009A and Site Plan No. 82019005A were certified on October 16, 2019 and December 11, 2019, respectively. Completion of these tasks shows investment in the Project and intention to move forward under these approved entitlements.

Further, the Applicant has reported they are engaging with an affordable housing developer who is interested in bringing the Project to fruition, and that this third party is actively completing due diligence in support of this effort. The extension of the validity period for the Preliminary Plan is necessary to allow for this effort to be completed.

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.***

At the time of the 2018 and 2019 approvals of the Sketch, Preliminary and Site Plan Applications, and associated amendments, the Property was zoned CR-3.0, C-2.0, R-2.75, H-60T and Fenton Village Overlay Zone and located within the *2000 Silver Spring Central Business District Sector Plan* area. Since that time, the zoning and guiding sector plan for the Property changed. In 2022, the County adopted the *Silver Spring Downtown and Adjacent Communities Plan*, superseding the *2000 Silver Spring Central Business District Sector Plan*. The new Sector Plan updated goals and recommendations for the Plan area that did not substantially change the general development vision for the Subject Property. The development program, as previously approved, is in general conformance with these new or updated requirements as outlined below. Staff is not recommending any revisions to this Preliminary Plan be considered to further align the approval with new requirements.

- *Rezoning of the Property to CR-3.0, C-3.0, R-3.0, H-70*

The approved Preliminary Plan supports the development of up to 85 multifamily residential units and ground floor retail uses with a total FAR of 3.0. The previously approved development plan adaptively reuses the existing 99-foot-tall building on-site and expands its gross floor area with an addition with a maximum height of 60 feet. The approved uses, density and heights of the development program conform with the updated zoning of the Property.

- *Inclusion of the Property in the newly created Downtown Silver Spring Overlay Zone.*

This Overlay Zone contains development standards to guide implementation of the Sector Plan that did not exist at the time of approval of the Preliminary Plan and Site Plan associated with the Property. The development standards of this Overlay Zone focus on building height, density, MPDUs, public benefit points, and public open space, and the approved development program is generally in conformance with these standards. Staff is not recommending revisions be considered to the previously approved Preliminary Plan to further conformance with these requirements as noted below:

- *Building Height and Density* – The approved development height and density conform with the Downtown Silver Spring Overlay Zone development standards.
- *MPDUs* – The approval includes a minimum of 12.5 percent MPDUs, or 11 of the 85 dwelling units approved, as was required at the time of Preliminary Plan approval. The Downtown Silver Spring Overlay Zone requires a minimum of 15 percent MPDUs, or 13 of the 85 dwelling units approved. To fully conform with the Overlay Zone requirement, two additional MPDUs would need to be provided. Staff is not recommending plan revisions be made to accommodate two additional MPDUs in this circumstance, as it would be overly burdensome to the Applicant this late in the entitlement process to require them to revise the previously approved residential unit arrangement and then have to further amend the approved Preliminary Plan and seek a separate amendment of the approved Site Plan.
- *Public Benefit Points* – The approved development program provides public benefits totaling over 100 points (119.2 points approved). Points were granted in the public benefit categories of Transit Proximity, Connectivity and Mobility, Quality of Building and Site Design, and Protection and Enhancement of the Natural Environment. The Downtown Silver Spring Overlay Zone modified the public benefit points schedule for Downtown by eliminating points for Transit Proximity and requiring achievement of 10 points for Exceptional Design. The approved development program received five points for Exceptional Design and received public benefit points for Transit Proximity. The public benefit points program was approved for this Project with its Site Plan. Staff does not recommend the pursuit of a Site Plan amendment to modify the approved public benefit program, as a Site Plan Amendment is not required.

- *Public Open Space* – The approved development program provides five percent (970 square feet) of the site area as public open space in an offsite area, directly adjacent to the southwest corner of the Property. The required quantity of public open space to be provided by this proposal is unchanged by the Downtown Silver Spring Overlay Zone. As approved by Site Plan No. 820190050, this public open space will be developed as a “corner park” with landscaped seating areas that will face out toward the intersection of Fenton Street and Gist Avenue, where it will serve as a small greenspace on the Sector Plan envisioned Green Loop through Downtown Silver Spring.
- *Revisions to the development standards for the Fenton Village Overlay Zone*

The development standards for the Fenton Village Overlay Zone have generally been made less prescriptive since the 2019 approval of this Preliminary Plan and its associated Site Plan. Current development standards in the Fenton Village Overlay Zone focus on building height, retail bays, site plan requirements and existing buildings. The development program, as previously approved, is in general conformance with the updated development standards for the Fenton Village Overlay Zone.

Overall, Staff does not recommend revisions to the Preliminary Plan to conform with current requirements because the previous approvals are in substantial conformance with those new requirements.

However, Staff identified an opportunity for minor revision of the streetscape layout as approved by Site Plan No. 820190050 to bring these features into conformance with the desired streetscape dimensions recommended by the 2022 *Silver Spring Downtown and Adjacent Communities Plan*, and to allow for consistency in the redevelopment of key elements in the public realm, and establishment of the Green Loop. The approved widths of streetscape elements and the current widths specified by the Sector Plan and associated Design Guidelines are noted in the table below.

Previously Approved and Recommended Widths for Streetscape Elements

| Roadway | Approved Preliminary Plan No. 120190090 | | | Silver Spring Downtown Sector Plan | | |
|---------------|--|----------|---------|------------------------------------|----------|----------------|
| | Street Buffer | Sidewalk | Bikeway | Street Buffer | Sidewalk | Bikeway |
| Sligo Avenue | 6ft | 6ft | None | 6ft | 8-10ft | None |
| Fenton Street | 15ft (tree pits & sidewalks) | | None | 6ft | 10ft | West side only |
| Gist Street | 7.5ft | 4ft | None | 6ft | 6ft | None |

Based on Staff's analysis, adjusting the widths of these streetscape elements as noted in the table would not require additional dedication of right-of-way nor would it necessitate revision to any major elements of the approved Site Plan. Staff recommends these adjustments be required if and when the Applicant seeks a future amendment to the Site Plan. A recommended condition of approval for such is included herein.

- 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 Applicant states that the Project is still viable, as noted in Finding 3.b above, and that significant effort has been made to move the Project forward.

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 was properly noticed pursuant to the requirements of Chapter 50 and the latest Administrative Procedures for Development Review.

- 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 a two-year extension to the Preliminary Plan validity period, which would coincide with the approved Adequate Public Facilities Period expiring on June 15, 2026. This two-year extension would be the minimum necessary to complete the record plat.

- 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 associated Adequate Public Facilities approval was granted for five years from the initiation date of Planning Board Resolution No. 19-038, with an expiration of June 15, 2026. The requested Preliminary Plan validity extension would align with the existing APFO validity period.

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. 120190090.

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, as the project is proposed to be built in one phase.

SECTION 6: CONCLUSION

As conditioned, the Preliminary Plan Amendment satisfies the findings of the Subdivision Regulations and substantially conforms to the recommendations of the 2022 *Silver Spring Downtown and Adjacent Communities Plan*. Therefore, Staff recommends approval of the Preliminary Plan Amendment No. 12019009B with the two additional conditions specified at the beginning of this report.

ATTACHMENTS

Attachment A: Prior Approvals - Preliminary Plan 120190090 & Site Plan 820190050 & amendments

Attachment B: Applicant Statement of Justification - Preliminary Plan Amendment No. 12019009B

Attachment C: Montgomery County Ordinance No. 19-12