



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

MCPB No. 19-080
Preliminary Plan No. 12003110D
Cabin Branch
Date of Hearing: July 11, 2019

JUL 17 2019

RESOLUTION

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

WHEREAS, in an opinion dated June 22, 2004, the Planning Board approved Preliminary Plan No. 120031100 and 12003110A for 1,600 dwelling units, 500 senior units, and 1,538,000 square feet of commercial space, on 540 acres of land in the CRT – 0.5, C-0.25, R-0.25, H-130, CRT – 0.5, C-0.25, R-0.25, H-65 Zone and TDR zones, located approximately 1 mile south west of Clarksburg between Clarksburg Rd (MD 121), West Old Baltimore Road and I-270 (“Subject Property”), in the Clarksburg Policy Area and Clarksburg Master Plan (“Master Plan”) area; and

WHEREAS, on October 6, 2008, the Planning Board approved an amendment to Preliminary Plan No. 12003110A (MCPB No. 08-117) to allow 286 additional residential dwelling units and 886,000 square feet of additional commercial space on the Subject Property; and

WHEREAS, on December 23, 2014, the Planning Board approved an amendment to Preliminary Plan No. 12003110B (MCPB No. 14-111) to modify the finding of Adequate Public Facilities to require the construction of additional roadways and water quality improvements for the Subject Property; and

WHEREAS, on March 19, 2019, Cabin Branch Management, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the period of validity for the Preliminary Plan as well as for the finding of Adequate Public Facilities for the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan No. 12003110D, Cabin Branch (“Amendment”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the

Approved as to
Legal Sufficiency:

Planning Board, dated June 28, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 11, 2019 the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12003110D to extend the validity period of each of the four stages of the Preliminary Plan by three years (36 months) and to extend the finding of Adequate Public Facilities of the Preliminary Plan by three years (36 months) by modifying the following conditions:¹

26) The Preliminary Plan will remain valid for 126 months (10.5 years) from the initiation of the Planning Board Resolution. Record Plats must be recorded based on the following staging sequence:

- Stage I (expires 36 months from the initiation date of this Planning Board Resolution): 420 dwelling units, 125 senior housing units and 380,000 square feet commercial.
- Stage II (expires 66 months from the initiation date of this Planning Board Resolution) 404 dwelling units, 250 senior housing units, 380,000 square feet commercial.
- Stage III (expires 96 months from the initiation date of this Planning Board Resolution): 388 dwelling units, 125 senior housing units, 380,000 square feet commercial.
- Stage IV (expires 126 months from the initiation date of this Planning Board Resolution): All remaining development.

27) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for 126 months (10.5 years) from the initiation date for Preliminary Plan Amendment No. 12003110D.

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

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.

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

Adequate Public Facilities Validity – Section 50.4.3.J

This Application was reviewed under 50.4.3.J.7 which sets the procedures to extend the validity period for an APF finding. The Planning Board has made the following findings:

- a. *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 expires.*

The Application was filed on March 19, 2019. This is prior to the expiration date for Stage 1 of the Preliminary Plan of May 6, 2019.

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

This application modifies the approved development schedule as follows (Table 1):

Table 1: Approved and Proposed Staged Validity Period

Stage	Approved Development	Preliminary Plan Validity Expiration*
Stage I	420 dwelling units 125 senior housing units 380,000 square feet commercial	August 2022

Stage II	404 dwelling units 250 senior housing units 380,000 square feet commercial	February 2025
Stage III	388 dwelling units 125 senior housing units 380,000 square feet commercial	August 2027
Stage IV	All Remaining Development	February 2030

*based on estimated month of Preliminary Plan initiation

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;

The Applicant does not propose any development beyond that approved in the original determination.

(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 are being 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.

A full review of the Property’s transportation adequacy was conducted for the 2008 Preliminary Plan No. 12003110B (Attachment B of the Staff Report). Site Plan 820050150 and its amendments A-G provided the infrastructure framework for the development. The Applicant has provided significant investment in public infrastructure, including the reconstruction and rerouting of MD-121 and West Old Baltimore Road west of I-270, the improvement of the MD-212/I-270 interchange which included a new overpass, and the construction of Broadway and Cabin Branch Avenues.

Additionally, a traffic study (Attachment C of the Staff Report) was conducted for the Clarksburg Premium Outlets in 2014. The study found that major intersections would continue to operate well below the 1,425 Critical Lane Volume (“CLV”) congestion threshold for the

major intersections detailed in Table 5. The Subject Property is therefore found to be in line with the original expectations of the existing APF determination with no need for an additional study to be conducted at this time. An extension will not be adverse to the public interest.

Table 5: Future Congestion Projections

Intersection	Total Future AM Peak Hour CLV (1,425 Standard)	Total Future PM Peak Hour CLV (1,425 Standard)
Clarksburg Road (MD 121)/ I-270 NB off-ramp	762	1,118
Clarksburg Road (MD 121)/ I-270 SB off-ramp	610	883
Clarksburg Road (MD 121)/ Goldeneye Ave (Whelen Rd)	614	770
Clarksburg Road (MD 121)/ Cabin Branch Avenue	483	669

Source: Clarksburg Premium Outlets Local Network Transportation Analysis. Wells and Associates, Inc. April 2, 2014

(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.

Not Applicable.

- b. The Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii if the applicant shows that financing has been secured for either:
 - i. completion of at least one new building in the next stage of the amended development schedule; or**

ii. completion of infrastructure required to serve the next stage of the amended development schedule.

The Applicant has constructed most of the major infrastructure needed to serve the remaining stages of the project, including improvements to major public highways, the construction of new internal roads and avenues, as well as the provision of water, sewer, and electric utilities.

c. Exclusively residential subdivisions.

This Application is being reviewed under section e; this finding and subsequent sub-findings are not applicable.

d. Nonresidential or mixed-use subdivisions.

This Application is being reviewed under section e; this finding and subsequent sub-findings are not applicable.

e. The Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:

i. the preliminary plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million, as adjusted annually by the consumer price index, to comply with specified infrastructure conditions;

The Applicant has provided significant investment in public infrastructure, including the reconstruction and rerouting of MD-121 and West Old Baltimore Road west of I-270, the improvement of the MD-212/I-270 interchange which included a new overpass, and the construction of Broadway and Cabin Branch avenues. The combined investment in these projects exceeds \$90 million (Attachment D of the Staff Report).

ii. the applicant has met or exceeded the required infrastructure conditions during the original validity period; and

iii.

The Applicant has met and exceeded the required infrastructure conditions during the original validity period for the project. The Applicant has constructed most of the major infrastructure needed to serve the remaining stages of the project, including improvements to major public highways, the construction of new internal roads and avenues, as well as the provision of water, sewer, and electric utilities.

iv. the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.

The Applicant's satisfaction of the required infrastructure conditions has provided a significant, necessary public benefit, meeting the goals of the Clarksburg Master Plan. This includes the construction of Cabin Branch Avenue, reconstruction of Clarksburg Road and the Clarksburg Road MD-212/I-270 interchange.

Preliminary Plan Validity – Section 50.4.2.H

The Preliminary Plan Amendment application requested a three-year (36-month) validity extension for each of the 4 stages of development for the Preliminary Plan. These 36 months are in addition to any months of validity remaining for each stage of development as approved by Preliminary Plan No. 12003110B and extended by County Council legislation. The Board considered the following analysis and findings as part of this 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. The request was received on March 19, 2019 which is prior to the validity expiration for Stage I of the development on May 6, 2019.

- 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 D of the Staff Report). The current validity period for Stage I of the application expired on May 6, 2019. The request for 36 months of extended validity will allow the Applicant to continue the development of what is a large-scale and complex project. Due to the significant and long-lasting economic difficulties imposed by the 2007 recession, the Applicant has stated that they have been unable to proceed with the project at the originally planned speed and schedule. The resulting economic changes to the northern half of Montgomery County have significantly reduced demand for office, retail and general commercial use, for which this application has nearly 2 million square feet of ground floor retail remaining. Additionally, demand for housing has softened in the Clarksburg region. The Applicant has stated that these structural economic issues have been the result of significant, unusual and unanticipated events beyond their control. The Applicant proposes through this application to shift each of the four stages of the development 3 years out, finalizing the buildout of the Subject Property by February of 2030. The additional three years is the minimum time required for this scale of development, which accounts for the need to plan and finance new construction, obtain any additional Planning Board approvals, and receive permits for and construct new structures. Although the majority of the approved development remains to be built, this extension will provide the Applicant a development window comparable to that expected for similar projects of this scale.

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 D of the Staff Report) 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 is not extended. The Applicant provided justification detailing reasons for the extension as part of the submitted Application, chief among them being the significant and long-lasting effects of the 2007 recession which has reduced demand for new construction in the northern half of the county. To date, the Applicant has expended extensive resources in pursuing development on the Subject Property of over \$90 million, much of which was invested in public infrastructure that serves the greater community. Should the plan not be extended, the Applicant risks losing these major investments.

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

The Applicant provided The Board with justification (Attachment D of the Staff Report) outlining the validity of the extension request and the necessary justifications. As mentioned, the Applicant justified the request primarily based on the significant and long-lasting adversity of the 2007 recession and subsequent negative economic changes to northern Montgomery County which The Board finds 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.*

The Board does require the Applicant to conform to any changes that have occurred in Chapter 50 since the initial approval date.

- 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 Board does not recommend that additional information on the feasibility of the project be required. The Board recognizes that much of the remaining development is composed of approximately 1.86 million sq. ft. of approved office space. Following the recession, the market for office space in the I-270

corridor, and up-county in general, has been anemic. Nevertheless, there is hope that a recovery in demand for commercial space will occur in the near future.

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 noticed as other amendments pursuant to the requirements of Chapter 50 and the Development Manual and is scheduled for a public hearing before the Board as required.

- 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 3-year extension to the Preliminary Plan and states this is the minimum necessary to complete the validation. The Board finds the Applicant's request to be 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. As part of this application, the APFO validity period will be extended by an additional three years to match the Preliminary Plan validity period.*
- d. *An applicant may request, and the Board may approve, more than one extension.*

This is the first request for a plan validity extension made for the current Preliminary Plan approval.

- 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.*

This application is being reviewed as a minor amendment to the Preliminary Plan with a full review and hearing by the Planning Board.

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

JUL 17 2019 (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 Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, July 11, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board