



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

MCPB No. 19-072
Preliminary Plan No. 11998091D
Rock Spring Park
Date of Hearing: June 27, 2019

JUN 28 2019

RESOLUTION

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

WHEREAS, on August 5, 1999, the Planning Board approved Preliminary Plan No. 119980910, creating two lots on 1.5 acres of land, which are in addition to two previously approved office buildings on a total of 12.52 acres of land in the Commercial Residential (CR) zone, located between Fernwood Road and Rockledge Drive, approximately 500 feet north of Democracy Boulevard in North Bethesda ("Subject Property"), in the Rock Spring Central District of the *Rock Spring Sector Plan* ("Sector Plan") area; and

WHEREAS, the approval of Preliminary Plan No. 119980910 (MNCP No. 11-20) was subject to the Applicant submitting an Adequate Public Facilities (APF) agreement with the Planning Board limiting additional development to a maximum of 117,175 square feet of general office (Parcel 2AA) and 98,500 square feet of medical office uses (Parcel 5AA), with a maximum on-site development density of 463,651 square feet of general and medical office uses; and

WHEREAS, on October 10, 2005, the Planning Board approved an amendment to Preliminary Plan No. 119980910C which established a new five (5)-year APF validity period to allow the construction of the remaining 117,175 square feet of office use (known as the Lincoln Building on Lot 5AA). Pursuant to the Planning Board Resolution dated February 9, 2006, the APF validity period was set to expire prior to March 9, 2011 on the Subject Property; and

WHEREAS, Subsequently, the Montgomery County Council granted four consecutive automatic two (2)-year extensions of APF approvals for all valid plans. Therefore, the validity periods for this plan were granted an additional eight (8) years of validity, which extended the APF validity period until March 9, 2019; and

Approved as to
Legal Sufficiency:

Christina Sont 6/19/19

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WHEREAS, on March 4, 2019, Elizabethan Court Associates I & II, LP (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan to extend the Adequate Public Facilities (APF) validity period by five (5) years for 117,175 square feet of approved but unbuilt office space (known as the Lincoln Building) on the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan No. 119980910D, Rock Spring Park (“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 June 17, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 27, 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. 11998091D to permit the Adequate Public Facilities validity period to be extended and adds the following conditions:¹

1. The Adequate Public Facilities validity period be extended by five (5) years from the date of mailing of the Planning Board Resolution of this application.

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 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 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.

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 No. 11998091D was reviewed under Section 50.4.3.J.7 which allows the Planning Board to extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the applicable validity period, pursuant to a series of findings. The extension is generally limited to 2.5 years for any subdivision with an original validity period of seven years or less.

To grant an extension of the APF validity period, the Planning Board must consider the following findings of Sections 50.4.3.J.7.a. and 50.4.3.J.7.d.:

Section 50.4.3.J.7.a., Applications.

- 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 current APF validity period was set to expire prior to March 9, 2019. This Application was received by the Planning Department on February 8, 2019.

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

Under the approval of Site Plan No. 819900270, the Applicant included a phasing schedule within their overall Development Program. Per the Applicant, the remaining development is expected in a single phase and includes applying for building permits approximately two years following the securing of a tenant and prior to the expiration of this extension under current consideration.

- 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 what was 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 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 original Preliminary Plan (No. 119980910) associated with the Subject Property analyzed the property for adequacy of public facilities based on general office uses through a traffic impact study. The original determination found transportation was adequate for the approved office use. Staff has not required the Applicant to submit a revised traffic study, as no changes are proposed for the development.

- (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.

Section 50.4.3.J.7.d., Nonresidential or mixed-use subdivisions.

- i. *The Board may extend a determination of adequate public facilities for a preliminary plan for non-residential or mixed-use development beyond the otherwise applicable validity period if:*

- (a) *The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area (GFA) for the project;*

The Applicant has received permits for and constructed a total of 346,476 square feet of the total 463,651 square feet of approved gross floor area, for a total of approximately 74% of the original approved development, which exceeds the required threshold.

- (b) *all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and*

All infrastructure required by the Preliminary Plan conditions of approval has been constructed, which includes transportation improvements, storm water management, water and sewer mains, and utilities.

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

- (1) structures that comprise at least 10% of the total gross floor area approved for the project within the 4 years before an extension request is filed; or*
- (2) structures that comprise at least 5% of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60% of the total gross floor area approved for the project have been built or are under construction.*

Approximately 74% of the project has been built, and the Applicant has demonstrated that occupancy permits for 153,215 square feet of the total 463,651 square feet were secured for executed leases within the last four years prior to requesting the APF extension.

ii. For any development that consists of more than one preliminary plan, the requirements for 7.d.i. apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.

This finding is not applicable.

iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:

- (a) 2.5 years for a subdivision with an original validity period of 7 years or less; or*
- (b) 6 years for a subdivision with an original validity period longer than 7 years.*

Preliminary Plan No. 119980910 set a plan validity period of 25 months, or roughly two years, and an APF validity two years beyond the plan validity, for a total of 49 months, or four years, which is below the seven-year validity

required for a longer extension period. Thus, the Applicant is entitled to a 2.5 year extension of the APF validity period.

iv. The extension expires if the Applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Board or the Director has approved a revision to the schedule or phasing plan.

This finding is not applicable.

v. In addition to the extension permitted under 7.d.iii, the Board may approve one or more additional extensions of a determination of adequate public facilities, not to exceed a total of 2.5 or 6 years, as applicable, if:

(a) Development that comprises 30% or less of the total approved gross floor area for the project remains to be built of either the entire approved development or the share of the development to be built by that applicant; or

(b) The applicant will commit to reduce the amount of unbuilt development by at least 10%, and the validity period for the amount to be reduced will expire as scheduled.

Since less than 30% of the total approved project remains to be built, the Applicant qualifies for an additional 2.5-year extension of the APF validity period, for a total of five (5) years.

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 28 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 Cichy, seconded by Commissioner Fani-González, with Chair Anderson and Commissioners Fani-González and Cichy voting in favor, and Vice Chair Dreyfuss and Commissioner Patterson absent at its regular meeting held on Thursday, June 27, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board