



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

MCPB No. 20-117
Preliminary Plan No. 11981142A
Qiagen
Date of Hearing: October 29, 2020

NOV 17 2020

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 November 15, 1989, the Planning Board approved Preliminary Plan No. 1-81142 creating 9 lots on 24 acres of land to construct up to 37,500 square feet of office use in formerly the I1 zone, and currently split between the IM-2.5 H-80 and EOF-1.5 H-75 zones, located on the north side of Germantown Road (MD Route 118) at the northeastern intersection of Dawson Farm Road ("Subject Property"), in the Germantown West Policy Area and in the 1989 Germantown Master Plan ("Master Plan") area; and

WHEREAS, on August 10, 1994, the Planning Board approved an amendment to Preliminary Plan No. 1-81142 (Opinion dated August 10, 1994) to increase approved development to up to 192,500 square feet of office use on the Subject Property; and

WHEREAS, on August 29, 1994, the Planning Board approved an amendment to Preliminary Plan No. 1-81142 (Opinion dated August 29, 1994) to construct up to 400,000 square feet of office use on the Subject Property; and

WHEREAS, on March 28, 1997, the Planning Board approved an amendment to Preliminary Plan No. 1-81142 (Opinion dated March 28, 1997) to include a phasing plan and extend the validity of the plan on the Subject Property to October 1, 2001; and

WHEREAS, on February 24, 2000, the Planning Board approved an amendment to Preliminary Plan No. 1-81142R (Opinion dated February 24, 2000) to revise previous conditions of approval and lot layout in order to approve 4 lots on 18.45 acres of land and to construct up to 400,000 square feet of development, split between up to 130,000 square feet of R&D office use; 100,000 square feet of manufacturing; 100,000 square feet of warehouse uses along with previously constructed buildings on the Subject Property; and

WHEREAS, on September 20, 2012, the Planning Board approved Minor Subdivision No. 220121880 to consolidate former lots 5 and 6 into one lot on the Subject Property; and

WHEREAS, the Planning Board approved Preliminary Plan No. 1-81142 with a 144-month validity period for the finding of Adequate Public Facilities (“APF”), until August 29, 2006; and

WHEREAS, in an opinion dated August 14, 2007 the Planning Board approved an extension of the validity period for the Finding of Adequate Public Facilities for Preliminary Plan No. 1-81142R with a 72-month validity period for the finding for APF, until August 29, 2006; and

WHEREAS, the validity period for the finding for Adequate Public Facilities for Preliminary Plan No. 1-81142R was subsequently extended by Montgomery County Council action to August 29, 2022; and

WHEREAS, on July 20, 2020, QIAGEN Sciences, Inc. (“Applicant”) filed a timely application for approval of an amendment to the previously approved preliminary plan(s) to extend the validity period for the finding for APF for 72 months, until August 29, 2028; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan No. 11981142A, Qiagen (“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 October 16, 2020, setting forth its analysis and recommendation for approval of the Application (“Staff Report”); and

WHEREAS, on October 29, 2020, 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, on October 29, 2020 the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Vice Chair Fani-Gonzalez, with a vote of 5-0; Chair Anderson, Commissioners Cichy, Fani-Gonzalez, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 11981142A to extend the validity period for the finding of Adequate Public Facilities for the Preliminary Plan by 72-months, subject to the following

conditions¹:

- 1) The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid until August 29, 2028. This is 72 months, or 6 years, from the previous expiration date of August 29, 2022 as established by SRA No. 20-01. This revised expiration date does not account for any additional extensions as granted by County Council action following this approval; such legislative extensions may be accounted for by adding additional duration beyond this date, if applicable, in accordance with approved legislation.

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:

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.

Chapter 22A, Forest Conservation.

The Preliminary Plan Amendment meets the requirements of Chapter 22A. The Subject Property has previously satisfied Chapter 22A and Forest Conservation Law as part of the review and approval of Site Plan 81998022I. The Subject Property contains environmental features as delineated in the approved Forest Conservation Plan. The Subject Property is located within the Little Seneca Creek watershed, classified by the State of Maryland as Use I-P waters; it is not located within a Special Protection Area or the Patuxent River Primary Management Area. The Application is in compliance with the Environmental Guidelines and all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

Waiver of 50.4.3.J.7.d.i.c

This application requires a waiver of limited findings of 50.4.3.J.7.d.i.c. These findings are:

The Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

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.

- (1) structures that comprise at least 10 percent 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 percent of the total gross floor area approved for the project within the 4 years before an extension request*

Development of the Subject Property has been slower than anticipated but has progressed. Since the time QIAGEN bought the property in 2000, a total of 181,800 sq. ft. of approved gross floor area has been constructed, and the site now serves as the US headquarters for the firm. However, the findings for 50.4.3.J.7.d.i.c require applicants to submit evidence that progress has been made in building out the total approved development, in particular that recent construction has been completed and confirmed by DPS. While Qiagen has been approved for a building permit for Building 3 as approved under 2019's Site Plan Amendment 81998022I and will therefore meet this requirement sometime in the near future, no construction has occurred within the last four years to strictly meet the requirement. In the meantime, Qiagen has taken on a vital role in combating the Covid-19 pandemic by developing and manufacturing test kits on the Subject Property. The Applicant requests a waiver of these findings in order to continue to construct the already approved development in support of these essential activities.

The Board may modify any portion of Chapter 50 through a waiver request if the following findings specified under Ch.50.9.3 can be satisfied:

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;*

Qiagen purchased the property 10 years into the approved APF validity period. In the intervening time, the 2008 recession hampered efforts to continue development of the site. Nevertheless, the site has taken an ever-greater role in the growth of Qiagen's US operations and now serves as the firm's US headquarters and a main point of manufacture. In response to the Covid-19 pandemic, Qiagen has developed and is in the approval phase of a rapid test kit for the virus, with plans for the kit to be manufactured at this location. It is clear however, that the manufacturing space currently available is inadequate to meet overwhelming demand. With no clear end to the pandemic, it is vital to provide flexibility to allow approved development on the Subject Property to support the manufacture of this and potentially other drugs and tools for the foreseeable future. Approval of the Application is essential to ensure public health, safety, and general welfare.

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

The intent of section 50.4.3.J.7.d.i.c is still being met; this section intends to serve as a check to ensure approved development is proceeding and that approved APF findings allocating valuable public infrastructure is not being reserved on a dormant property without a plan or intention for its use. As explained previously, there is an approved building permit (Attachment B) for a large multiuse building to support Qiagen's nationwide activities, and the urgent need for Covid-19 related medical supplies demonstrates a clear desire and need for continued development.

3. *The waiver is:*

a. *The minimum necessary to provide relief from the requirements;*

Waiving the requirements under 50.4.3.J.7.d.i.c is the minimum necessary to ensure the Application remains in compliance with Chapter 50. Without waiving this section, the Applicant would be unable to strictly meet the built development thresholds as delineated by 50.4.3.J.7.d.i.c and would therefore be unable to proceed with the extension request under 50.4.3.J.7.d. The Applicant also cannot simply rely on a 2-year extension as provided by the County Council as that duration of time is not enough to plan, review, and receive all relevant approvals for a new building prior to expiration of the APF validity.

b. *Consistent with the purposes and objectives of the General Plan;*

Granting this waiver would still allow the Preliminary Plan to remain consistent with the General Plan. This waiver does not pose a safety risk and in fact serves in support of public health; it meets all intents of 50.4.3.J.7.d.i. Additionally, approval of the waiver enhances the County's vision for Germantown in creating an urban, mixed-used, transit-oriented community. Through approval of this Application, The Subject Property will continue to provide valuable high-skill employment adjacent to the Germantown MARC rail station as well as being within walking and biking distance within the larger primarily residential community.

All required findings to meet the standards to grant a waiver request under Ch.50.9.3 are satisfied for 50.4.3.J.7.d.i.c.

Adequate Public Facilities Validity – Section 50.4.3.J

This Application is reviewed under 50.4.3.J.7 which sets the procedures to extend the validity period for an APF finding. The Planning Board must consider 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 July 20, 2020. This is prior to the expiration date for the Preliminary Plan of August 29, 2022.

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

This application presents the following schedule (Table 4):

Table 4: Proposed Staged Validity Period

Stage	Approved Development	Scale	Proposed Duration*
Stage I	Building 3 (Site Plan Amendment 81998022I)	157,700 sq. ft.	Years 1 through 3
Stage II	Future Manufacturing and Warehousing Building(s)	144,900 sq. ft.	Year 3 to Expiration
Final	Total (Including Built)	544,000 sq. ft.	Prior to Expiration

*Stage date does not account for any extensions granted by County Council beyond this application

- 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 traffic study is not requested at this time. The Subject Property fronts Germantown Rd. (MD 118), a Major Highway most recently analyzed under the 2019 MARC Rail Communities Plan. While the Plan envisions continued growth for the Germantown community, intersections along Germantown Rd. were found to be adequate to operate under future conditions. In fact, the Plan recommended limited reduction in road capacity via a ‘road diet’ on nearby Middlebrook Road. This excess areawide capacity has largely been the result of a significantly lower amount of commercial development in the area as compared to what has been envisioned and zoned across Germantown. All nearby intersections within the project vicinity remain comfortably within acceptable CLV levels, as detailed in Table 5:

Table 5: Recent Intersection Analysis

Intersection	Existing AM Peak Hour CLV	Existing PM Peak Hour CLV	CLV Standard	Year
Germantown Rd. at Middlebrook Rd.	769	1029	1500	2019
Germantown Rd at Wisteria Dr.	630	1151	1500	2014
Germantown Rd. at Dawson Farm Rd.	576	606	1425	2016
Germantown Rd. at Clopper Rd.	1026	1131	1425	2017

(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.

The Preliminary Plan, originally approved for two lots, was consolidated along with the underlying APF approvals under Minor Subdivision Plan 220121880; there is now only one unified APF finding for the Subject Property.

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 Preliminary Plan was not originally staged, though two buildings as well as a structured parking garage have been constructed to date. The Applicant has constructed most of the major infrastructure needed to serve the remaining stages of the project, including contributions to construct public roads, the construction of new driveways and parking, as well as the provision of water, sewer, and electric utilities. Both findings are met.

c. Exclusively residential subdivisions.

This Application is not an exclusively residential subdivision. This finding and its sub-findings are not applicable.

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential 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 for the project;

To date, 241,400 sq. ft., or 44% of the 544,000 sq. ft. of the total approved gross floor area for the project, has been constructed. This finding is satisfied.

(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;

Four separate contributions for local infrastructure improvements were required as conditions of approval for the Preliminary Plan. All contributions have been provided and documented in the Applicant's SOJ (Attachment B). These are:

- 1) Payment to Manekin, LLC for share of the construction of the third southbound lane on Aircraft Drive at Maryland Route 118
- 2) Payment to Montgomery County for improvements to the Great Seneca Highway/Middlebrook Road intersection
- 3) Payment to Centex Homes for share of the construction of a right turn lane on southbound Great Seneca Highway to westbound Clopper Road
- 4) Payment to Elm Street Development for share of the construction of A-254 (Dawson Farm Road) between Great Seneca Highway and Maryland Route 118.

This finding is satisfied.

(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 percent 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 percent of the total gross floor area approved for the project within the 4 years before an extension request*

This finding is satisfied through the Waiver Request of 50.4.3.J.7.d.i.c as reviewed above and approved by the Planning Board.

ii. For any development that consists of more than one preliminary plan, the requirements of 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.

The Preliminary Plan, originally approved for two lots, was consolidated along with the underlying APF approvals under Minor Subdivision Plan 220121880; there is now only one unified APF finding for the Subject Property.

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.*

The Preliminary Plan was originally approved for 12 years and is therefore qualified to apply for 6 years.

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.

The Applicant made the request in a timely manner. The Application was filed on July 20, 2020, prior to the expiration date for APF for the Preliminary Plan of August 29, 2020.

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

NOV 17 2020 (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 Verma, with Chair Anderson, Vice Chair Fani-Gonzalez, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, November 5, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board