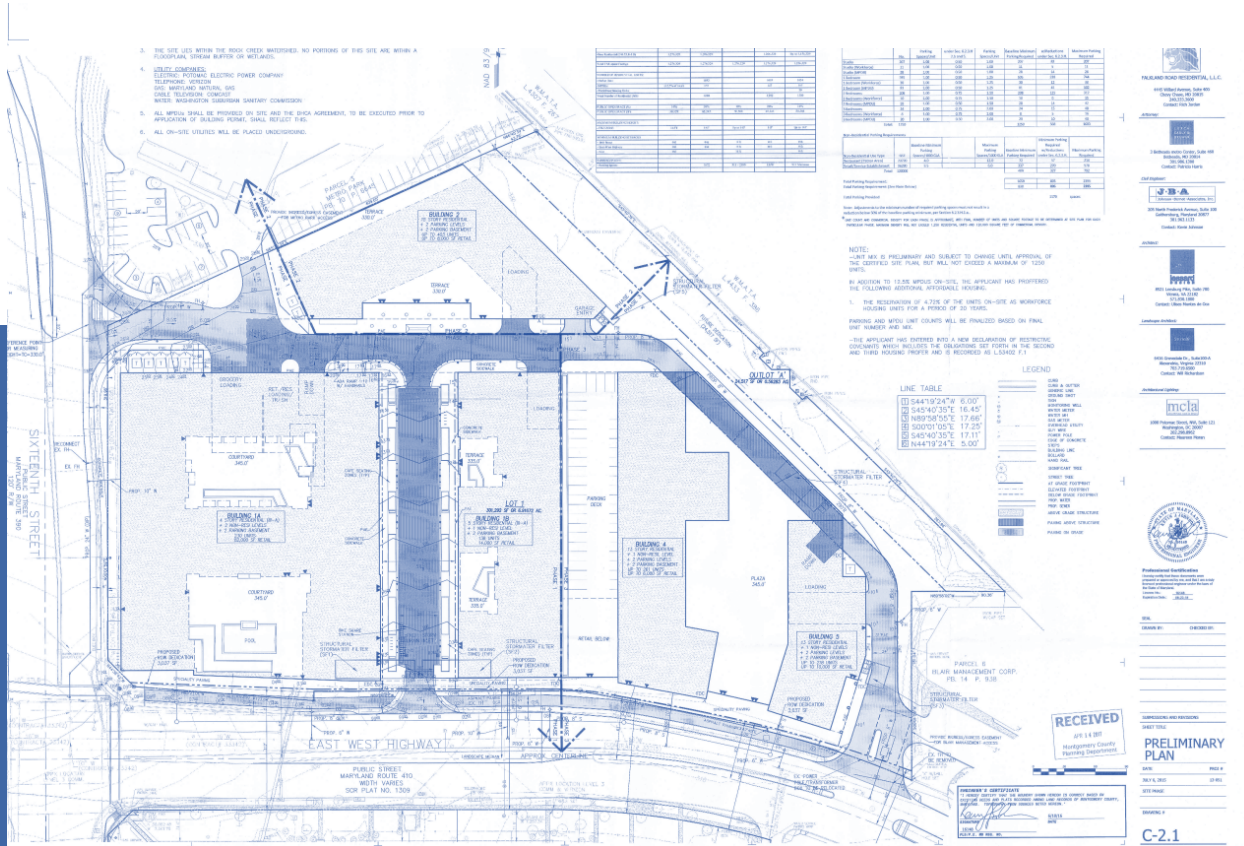


**Montgomery Planning**  
**FALKLAND NORTH**  
**PRELIMINARY PLAN AMENDMENT 12007056B**



**Description**

The Applicant requests a two-year extension of the preliminary plan validity period for the Falkland North development (Preliminary Plan No. 12007056A) approved in 2015. Preliminary plans of subdivision must be recorded on a plat within the validity period, or the preliminary plan is null and void. The plan validity extension will allow the Purple Line to finish construction on the Site and remove an associated temporary construction easement before the plat is recorded. The Applicant is not requesting to extend the Adequate Public Facilities (APF) review validity period.

No. 12007056B  
 Completed: 01-09-2023

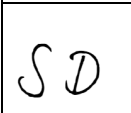
MCPB  
 Item No. xx  
 01-19-2023

Montgomery County  
 Planning Board  
 2425 Reedie Drive, Floor 14  
 Wheaton, MD 20902

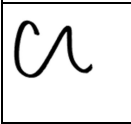
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### Summary:

- Chapter 50 of the County Code (Subdivision Regulations) allows the Planning Board to extend the Preliminary Plan validity period if the Board finds that delays by the government have prevented the applicant from meeting terms of conditions of the plan approval, and validating the plan, provided such delays are not caused by the applicant (Section 50.4.2.H.).
- The Planning Board approved Preliminary Plan 12007056A to create one lot for up to 1,250 dwelling units and up to 120,000 square feet of non-residential uses (retail, restaurant or service) and one outlot for future dedication to the Purple Line. The preliminary plan validity period for this project expired October 28, 2022, however the Applicant requested and submitted an extension, accepted on September 22, 2022, which is allowed under Section 50.4.2.H.1.a of the code.
- Preliminary Plan Amendment No. 12007056B requests extending the preliminary plan validity period an additional two years to align with the Adequate Public Facilities (APF) validity period for the project: October 28, 2024.
- The extension will allow MDOT MTA to complete Purple Line construction on the site and subsequently release the associated temporary construction easement held by MDOT MTA. MDOT MTA indicated in a letter to the Property owner that the agency still needs a portion of the Subject Site for a Temporary Construction Area of the Purple Line light rail public transit project.
- Staff recommends APPROVAL with conditions.

#### LOCATION/ADDRESS

Northeast corner, intersection of 16th Street and East-West Highway, Silver Spring CBD

#### MASTER PLAN

2022 *Silver Spring Downtown and Adjacent Communities Sector Plan*

#### ZONE

CR 3.0: C 0.75, R 3.0, H 45 T

#### PROPERTY SIZE

9.77 acres

#### APPLICANT

JBG Smith

#### ACCEPTANCE DATE

September 22, 2022

#### REVIEW BASIS

Chapter 50 of the County Code

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## SECTION 1: EXECUTIVE SUMMARY

On September 10, 2015, the Planning Board approved Preliminary Plan Amendment 12007056A for the creation of one lot for up to 1,250 dwelling units and up to 120,000 square feet of non-residential uses (retail, restaurant or service) and one outlot for the future dedication to the Purple Line. In accordance with the Subdivision Regulations, the plan validity period for the amended Preliminary Plan would expire on October 28, 2020. The plan validity period is the time in which the Applicant must finalize the approved preliminary plan of subdivision by recording a plat in the Land Records. Except as described below, a subdivision not platted within the plan validity period becomes void and must go through the subdivision process again.

On July 28, 2020, the County Council adopted Subdivision Regulation Amendment 20-01, which provided a two-year legislative extension to all regulatory approvals. As a result, the preliminary plan validity period expiration date for Preliminary Plan 12007056A was pushed back to October 28, 2022. The Applicant submitted, and the Planning Department accepted, this current request to extend the validity period before the October expiration.

A portion of the Site is located within a Temporary Construction Area for the Purple Line, documented in a temporary easement. The Maryland Transit Administration (MTA) indicates that at least part of that area is still needed (Attachment C). Rather than record a plat with a temporary easement, the Applicant has submitted the proposed Preliminary Plan Amendment 12007056B to extend the preliminary plan validity period by two years, to October 28, 2024, to allow MTA to complete their work on the Site and extinguish the temporary easement. The proposed extension will align the plan validity period with the Adequate Public Facilities (APF) validity period. Per Chapter 50, the preliminary plan validity period cannot extend beyond the APF validity period.

Chapter 50 of the County Code allows the Planning Board to extend the validity period of a preliminary plan if delays by the government have prevented the applicant from meeting terms of the plan approval and validating the plan, provided such delays are not caused by the applicant. The construction of the Purple Line is ongoing, and until this portion of the Purple Line construction is complete, the Applicant cannot validate the plan and move forward with the approved Preliminary and Site Plans for the Site. The Applicant is not responsible for the delay in validating the plan.

Staff recommends approval of Preliminary Plan Amendment 12007056B with a new condition that extends the preliminary plan validity period. A detailed discussion of the findings is included below.

Additionally, during review of the Application, the Friends of Sligo Creek notified Planning Staff that two trees identified in the approved Forest Conservation Plan (FCP) for transplant (FCP trees “WW” and “XX”) appear to have been removed without updating the FCP. Planning staff has notified the Applicant of the issue. Staff recommends a new condition of approval requiring the Applicant to update the approved FCP to address the removals prior to recording the plat. Updating the FCP may require an amendment to the Site Plan.

## SECTION 2: RECOMMENDATIONS AND CONDITIONS

### PRELIMINARY PLAN 12007056B

Staff recommends approval with conditions of the Preliminary Plan Amendment No. 12007056B to extend the preliminary plan validity period by two (2) years. No changes are proposed to the previously approved preliminary plan Amendment, and therefore no drawings were submitted with the Application. All previous conditions of Preliminary Plan No. 12007056A, remain in full force and effect. Staff recommends two new Conditions.

#### **New Conditions**

30. The Preliminary Plan as amended will remain valid for two (2) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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.

31. Before recording the plat, the Applicant must amend the previously approved Forest Conservation Plan (FCP) to account for the current Property conditions, including any tree removals.

## SECTION 3: SITE DESCRIPTION

### VICINITY

The Subject Property is located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410) at the edge of the Silver Spring Central Business District. The adjacent uses consist primarily of multi-family residential dwellings, including low-rise, walk-up garden apartments and high-rise buildings, but also include an office building, single-story retail uses, and the CSX, Metro, and future Purple Line tracks to the northeast. The Site is within walking distance of the Silver Spring Metro and MARC commuter rail stations, as well as the future Transit Center and Capital Crescent Trail.

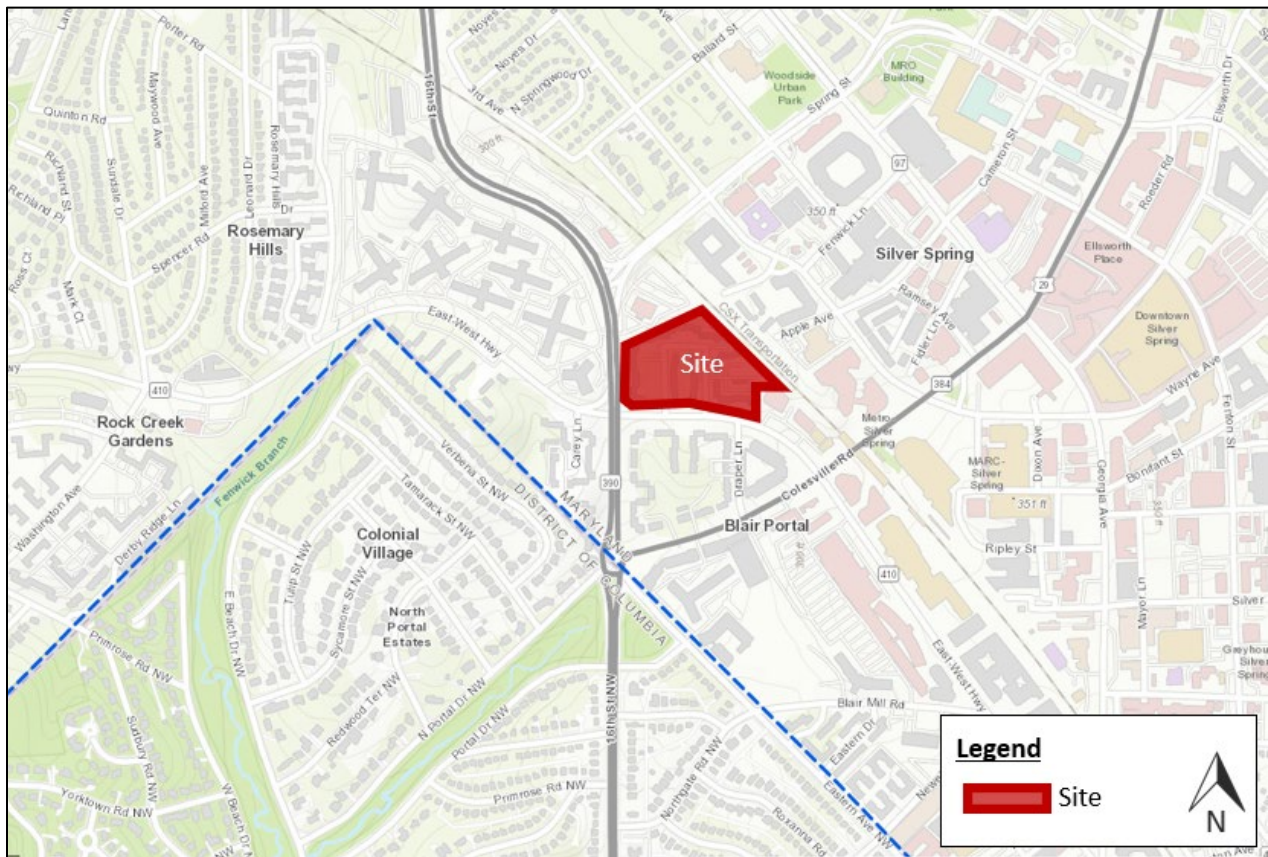


Figure 1 - Vicinity Map

## PROPERTY DESCRIPTION

The Subject Property is currently developed with multi-family housing and has no forest onsite. However, the Site contains numerous trees, many of which are significant or specimen in size. There are no streams or wetlands onsite but there is an ephemeral channel which appears to have historically sustained a stream flow. The hydrology in the vicinity has been altered by development and extensive grading for the adjacent railroad corridor. The channel currently does not meet stream definition and is not buffered. The Site is located within the Rock Creek watershed, a use I watershed<sup>1</sup>

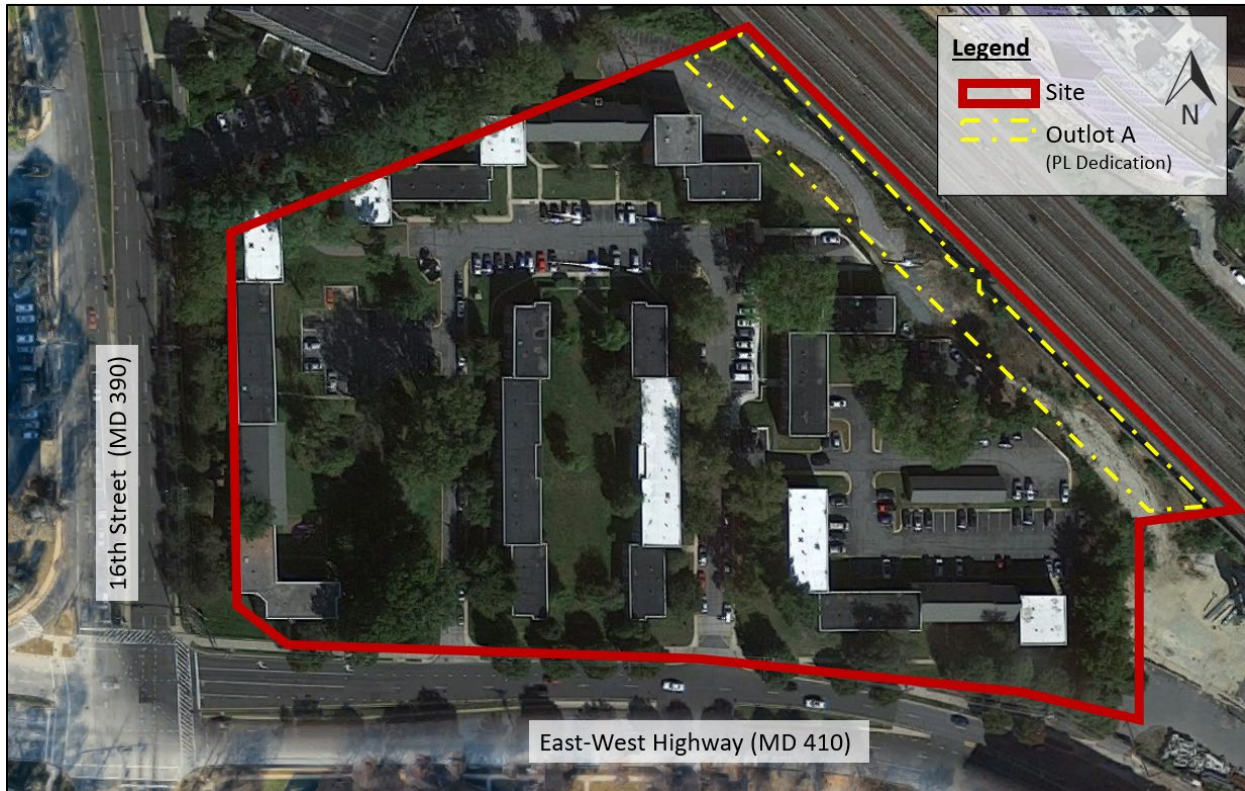


Figure 2 - Subject Property

<sup>1</sup> Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply and industrial water supply.





## PROPOSAL

The Applicant requests the preliminary plan validity period be extended two years, as allowed per Section 50-4.2.H of the County Code (Subdivision Regulations). As summarized above, the current preliminary plan validity period expired on October 28, 2022 and the two-year extension request would extend the validity period to October 28, 2024. The preliminary plan validity period is the time in which the Plan of Subdivision must be recorded on a plat in the Land Records of Montgomery County. If the Plan is not recorded on a plat within the plan validity period, the approval of the preliminary plan is null and void and must be resubmitted for approval. Without an updated plat, building permits cannot be released for redevelopment of the property. Recording the plat is a critical step for redevelopment of the Site.

The Applicant states that the Maryland Department of Transportation still needs a portion of the Site for Temporary Construction Area of the Purple Line light rail project (July 30, 2020 letter, Attachment C). An estimated end date for the Temporary Construction Area was not provided. Despite the Applicant completing its obligations to accommodate the Purple Line construction, the Applicant does not want to consider any development on the Property in accordance with the earlier approvals until the work associated with the Purple Line on the Site is complete and the Property restored.

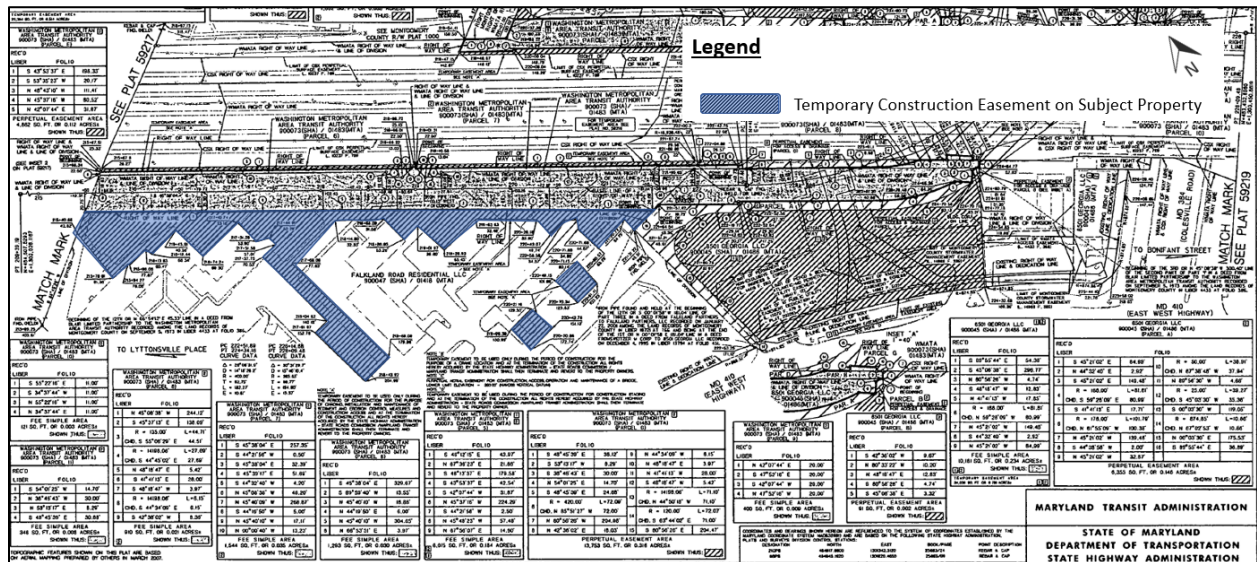


Figure 3– Selection of Plat 59218 Showing Approximate Extents of the Temporary Construction Easement on Site

During review of the Subject Application, the Friends of Sligo Creek notified Planning Staff that two trees that were identified for transplant in the approved Forest Conservation Plan (FCP) (trees “WW” and “XX”) appear to have been removed without updating the FCP. Planning staff has notified the Applicant of the issue. To ensure that the FCP is addressed, Staff recommends adding a new Condition of Approval, Condition No.31 which requires the Applicant to update the FCP with an acceptable mitigation adjustment prior to recording the plat for the Property. Updating the FCP may require an amendment to the Site Plan.

## SECTION 5: PRELIMINARY PLAN 12007056B FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 12007056A, MCPB No. 15-39, to create one lot and one outlot on the Subject Property with conditions.

Preliminary Plan Amendment 12007056B requests to extend the preliminary plan validity period by two years. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable.

Section 50-4.2.H. of the County Code pertains to extension of a plan validity period.

### 50-4.2.H.

#### 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*

*(1) 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*

*(2) 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 has worked diligently with the Maryland Department of Transportation Maryland Transit Authority (MTA) in connection with MTA's acquisition of a portion of the Falkland North property to accommodate construction of the Purple Line. These negotiations culminated in 2018 with the recordation of a deed reflecting the Applicant's conveyance of 25,115 square feet of land area in fee simple to MTA and the granting of a Temporary Construction Easement involving 22,394 square feet of land area to facilitate the construction of the Purple Line on the Subject Site (Attachment D).

Subsequent to reaching an agreement between the two parties, MTA issued the Property Owner a letter dated July 30, 2022 (Attachment C), explaining that they would need to continue the temporary construction easements. Given that the Purple Line construction within and adjacent to the temporary construction easement the Applicant granted to MTA has not yet been completed, it is reasonable to assume that the construction easements will need to remain in place for at least the next two years.

MTA is an agency of the Maryland State Government, and the Purple Line light rail transit line is a State infrastructure project expanding across two counties. In this case, the status of the State infrastructure project is preventing the Applicant from recording a plat for the Site and moving forward with pulling building permits. The Applicant has and continues to comply with the requests of MTA. The status of the Purple Line construction is outside of the control of the Applicant. Therefore, findings 50-4.2.H.3.a.(1) and 50-4.2.H.3.a.(2) have been met. MDOT MTA has not indicated how much additional time is needed for the construction of the Purple Line on and within the vicinity of the Subject Site; however, because the plan validity cannot be extended beyond the Adequate Public Facilities (APF) validity, two years is both the minimum and the maximum time period allowed for this extension.

**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.**

None of the recent changes to the Subdivision Ordinance (Chapter 50) are pertinent to the scope of the Subject Application. Therefore, no revisions to the previously approved Preliminary Plan Amendment are needed for compliance with the Subdivision Ordinance. However, the proposed Condition 31 requires the Applicant to update the Forest Conservation Plan to reflect the current Property conditions.

- 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 has indicated that the Preliminary Plan is still viable, and the approved development will be marketable once the Purple Line construction is complete, and even more so once the light rail transit line is operational.

**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 Applicant has complied with all noticing requirements as set forth in Chapter 50 and the Administrative Procedures for Development Review.

- b) If voting to approve an extension, the Board must only grant the minimum time it deems necessary for the applicant to validate the plan.**

The latest publicly accessible information on the Purple Line indicates that the rail line is projected to open for service by 2026, but construction within the vicinity of the Site may be completed before then. Section 50-4.2.H.5.c limits extensions to a preliminary plan extension to within the plan's APF validity period, therefore, the request for a two-year extension is the minimum time permitted for the Applicant to validate the preliminary plan.

***c) The Board may only grant an extension to a preliminary plan within the plan's APF validity period, unless a further extension is allowed by law.***

Accounting for all Council approved legislative extensions, the Adequate Public Facilities (APF) validity period is set to expire October 28, 2024. The request of the Subject Application is to align the preliminary plan validity period to the same expiration date. Therefore, as requested the Subject Application meets the requirements of this finding.

***d) An applicant may request, and the Board may approve, more than one extension.***

***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.***

The Subject Application is the first request for an extension of the plan validity period. Another extension request may be required in the future if construction of the Purple Line within the vicinity of the Site is not completed prior to October 28, 2024. According to 4.2.H.5.c, the Board may only grant an extension to a preliminary plan within the plan's APF validity period. Granting an extension through October 28, 2024 meets that requirement.

## SECTION 6: COMMUNITY OUTREACH

The Applicant sent notice of the Subject Amendment to all required parties on September 26, 2022. The notice gave the interested parties 15 days to review and comment on the contents of the Amendment. As noted in this staff report, the Friends of Sligo Creek notified Staff of the removal of two trees identified for transplanting in the FCP. Staff discussed the matter with a representative of the Friends of Sligo Creek and had subsequent conversations with the Applicant. As a result of these discussions, a condition of approval is included with the staff report that requires the FCP to be amended and updated prior to recording the plat. No other correspondence has been received prior to the posting of the staff report.

## SECTION 7: CONCLUSION

As conditioned, the Preliminary Plan Amendment 12007056B application satisfies the findings under Section 50-4.2.H. Therefore, Staff recommends approval of the Preliminary Plan Amendment 12007056B with the conditions specified at the beginning of this report.

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### ATTACHMENTS

*Attachment A: Statement of Justification*

*Attachment B: Prior Approvals*

*Attachment C: MDOT MTA Letter to the Applicant*

*Attachment D: Deed to the Maryland Transit Administration as recorded in the Montgomery County Circuit Court Land Records Book 56827 Page 7 (October 31, 2018)*