

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-028
Preliminary Plan Amendment No. 12019004B
Poplar Grove
Date of Hearing: March 30, 2023 and June 1, 2023

JUN 16 2023

RESOLUTION

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

WHEREAS, on December 16, 2019, the Planning Board, by Corrected Resolution MCPB No. 19-109, approved Preliminary Plan No. 120190040, creating 176 lots and 45 parcels on 19.4 acres of land in the CR-2.0, C-1.75, R-1.0, H-145T and Germantown Transit Mixed Use Overlay Zone, located on the east side of Century Boulevard between Father Hurley Boulevard and the future Dorsey Mill Road ("Subject Property"), in the Germantown West Policy Area and the 2009 *Germantown Employment Area Sector Plan* ("Sector Plan") area; and

WHEREAS, on February 16, 2021, the Planning Board approved an amendment to Preliminary Plan No. 12019004A (MCPB No. 21-008) to amend conditions 2, 4, and 26 to update the phased APF validity period as modified by County Council legislation and to clarify that rough grading, stockpiling, sediment and erosion control, re-grading for stockpiling, and interim uses are allowed on the Subject Property; and

WHEREAS, on November 23, 2022, Symmetry at Cloverleaf, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to amend Conditions 2, 4, and 15 to extend the Preliminary Plan validity period by 3.5 years to match the existing APF validity period, adjust the validity period phasing schedule, and add a new Condition 33 to incorporate a cemetery maintenance agreement; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12019004B, Poplar Grove ("Preliminary Plan," "Amendment," or "Application"); and

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Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

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 May 12, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 30, 2023, the Planning Board held a public hearing on the Application and voted to continue the public hearing to a future date to allow the Applicant to address issues regarding cemetery maintenance; and

WHEREAS, on June 1, 2023, the Planning Board held a continued public hearing and voted to approve the Application subject to conditions, on the motion of Commissioner Bartley, seconded by Commissioner Hedrick, with a vote of 4-0; Chair Zyontz, Vice Chair Pedoeem, Commissioners Bartley and Hedrick voting in favor, with Commissioner Piñero being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12019004B to extend the Preliminary Plan validity period by 3.5 years to match the existing APF validity period, adjust the validity period phasing schedule, and to incorporate an interim cemetery maintenance agreement by modifying the following conditions and adding a new condition:¹

Modified Conditions

2. The Preliminary Plan will remain valid for up to ~~168~~ 210 months (~~14~~ 17.5 years) from the date of mailing of the Corrected Preliminary Plan Resolution, MCP No. 19-109 dated Dec. 16, 2019 ("Corrected Resolution"). This validity period and phasing schedule accounts for the extension granted by Montgomery County Council Ordinance No. 19-12 (Subdivision Regulation Amendment No. 20-01 – the "SRA") as approved on July 28, 2020. ~~The Phases may occur in any order.~~ Following an initial 24-month (2 year) extension period as provided by the SRA, which extends the Preliminary Plan's validity period to December 16, 2021, the Applicant must ~~meet at least one of the following four development triggers every three years (36 months)~~ record plats based on the following schedule:
 - i) Within 7 years of the expiration of the SRA extension period for the first phase to be developed (December 16, 2028).
 - ii) Within 10 years of the expiration of the SRA extension period for the second phase to be developed (December 16, 2031).
 - iii) Within 13 years of the expiration of the SRA extension period for the third phase to be developed (December 16, 2034).

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.

- iv) Within 15.5 years of the expiration of the SRA extension period for the final phase to be developed (June 16, 2037), for the Preliminary Plan to remain valid:

The Phases may occur in any order and are identified below:

- a. ~~Record plats for at least Phase IA - 70 townhouse units (Phase IA).~~
 - b. ~~Record plats for at least Phase IB - 106 additional (176 total) townhouse units (Phase IB).~~
 - c. ~~Record plats for parcels Phase II - Parcels E4, E6, F2, and G2 in the Maker and Multi-Family District (Phase II).~~
 - d. ~~Record plats for parcels Phase III - Parcels A1-A4 in the Mixed-Use Transit Oriented District (Phase III).~~
4. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for two hundred and ten (210) months (17.5 years) from the date of mailing of the Corrected Resolution, including the 12-year extension granted as part of this Preliminary Plan. This updated validity period and phasing schedule accounts for the extension granted by Montgomery County Council Ordinance No. 19-12 (Subdivision Regulation Amendment No. 20-01 – the "SRA") as approved on July 28, 2020, which extends the Preliminary Plan's validity period to December 16, 2021. The Applicant must comply with the following cumulative development triggers (trip generation rates as determined by the original Preliminary APF utilizing the 2011 LATR guidelines) for the APF to remain valid:
- a. Within seven years (84 months until December 16, 2028) from the ~~date of the mailing of the Corrected Resolution~~ expiration of the SRA extension period, building permits associated with this Preliminary Plan are issued for development for at least 70 townhouse units are issued by Montgomery County or equivalent generating at least 34 AM and 58 PM peak hour trips.
 - b. Within ten years (120 months until December 16, 2031) from the ~~date of the mailing of the Corrected Resolution~~ expiration of the SRA extension period, building permits associated with this Preliminary Plan are issued for development for 176 total townhouse units are issued by Montgomery County or equivalent generating at least 88 total AM and 119 total PM peak hour trips.
 - c. Within 13 years (156 months until December 16, 2034) from the ~~date of the mailing of the Corrected Resolution~~ expiration of the SRA extension period, building permits associated with this Preliminary Plan are issued for development by Montgomery County for an equivalent generating at least 222 total AM and 449 total PM peak hour trips.
 - d. By ~~17.5~~ 15.5 years (~~210~~ 186 months until June 16, 2037) from the ~~date of the mailing of the Corrected Resolution~~ expiration of the SRA extension period, all building permits associated with ~~the~~ this Preliminary Plan are

issued ~~for development by Montgomery County~~ totaling up to 1,015 total AM and 1,203 total PM peak hour trips.

15. In accordance with the timing mechanisms identified below, the Applicant must ensure construction of the following off-site improvements by satisfying MCDOT requirements for the following:

- b. No later than the submittal for any site plan for Phase II or Phase III, a major amendment to the site plan for Phase I that changes density, or a major amendment to the Preliminary Plan that has any impact on trip counts, ~~or five years from the mailing of this resolution~~, whichever comes first, the Applicant must perform a new signal warrant analysis for the intersection of Century Boulevard and Kinster Drive, and include any necessary supplemental analysis on the operations of Kinster Drive between Century Boulevard and Crystal Rock Drive, subject to the satisfaction of MCDOT. The Applicant shall design, construct and have inspected as complete by MCDOT or reimburse MCDOT for the cost of installing the signal at Century Boulevard and Kinster Drive at the time determined by the analysis.

New Condition

33. Prior to Certified Preliminary Plan, the Applicant must execute an interim cemetery maintenance agreement in coordination with Planning Staff and in a form approved by the M-NCPPC Office of the General Counsel, to be in effect until the maintenance plan required by Condition No. 11.a. in Preliminary Plan No. 120190040 is created and implemented.

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 of its Staff as presented at the hearing and/or 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.

3. *Public Facilities will be adequate to support and service the area of the subdivision*

Preliminary Plan Validity – Section 50.4.2.H

The Preliminary Plan Amendment requests a 3.5-year validity extension, which in addition to the 129 remaining months of validity, will be extended to 42 months following the initiation date of the Plan approval.

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 Board finds that significant, unusual and unanticipated events, beyond the Applicant's 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 were not to be extended. The Applicant provided justification detailing reasons for the extension as part of the submitted Application, chief among them being the continuing economic impacts from the COVID-19 global health pandemic. These impacts have led to increased costs and long lead times for building and construction materials, combined with historical rates of inflation. To date, the Applicant has expended extensive resources in pursuing development; should the plan not be extended, the Applicant risks losing these major investments.

5. *Planning Board action.*

- 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 3.5-year extension to the Preliminary Plan and states this is the minimum necessary to complete the validation. The

Board finds that the Applicant's request is the minimum time necessary given the scale and complexity of this development and is standard for a similarly sized application at a currently unbuilt stage.

- 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.*

This Application requests extension of the approved Preliminary Plan validity period of 14 years by an additional 3.5 years to match the existing APF validity period of 17.5 years.

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

This is the second request for a Preliminary Plan validity extension made for the original approval of Preliminary Plan No. 120190040.

- 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 complies with the requirement for Planning Board approval.

The Applicant was approved for four phases with the initial Preliminary Plan, which provided flexibility for any of the phases to be completed in any order so long as every 36 months (3 years) one of the phases was completed. The following Preliminary Plan amendment incorporated the 2-year validity extension afforded by the July 28, 2020, Council-sponsored Subdivision Regulation Amendment ("SRA"), which automatically extended all valid projects by two years. The amendment did not extend the APF validity but accounted for the 2-year validity extension by modifications to the phasing schedule. The Application proposes to extend the Preliminary Plan validity period by 3.5 years to match the existing APF validity period of 17.5 years and correspondingly to adjust the validity period phasing schedule. The extended Preliminary Plan period would be 17.5 years, matching the APF validity period.

This Application will extend the validity period for each of the four phases by 3.5 years. The record plats would be submitted accordingly with the revised Preliminary Plan validity and phasing, as reflected in Table 1 below.

Table 1 – Development Phasing

Phases	Development	Discrete Phase Vehicle Trips*	Timing		
			Phase Length	Cumulative	Expiration
Phase IA	Plats for 70 TH dwellings	34 AM/58 PM Peak Hour	84 months (7 years)	84 months (7 years)	12/16/2028
Phase IB	Plats for 106 TH dwellings	54 AM/61 PM Peak Hour	36 months (3 years)	120 months (10 years)	12/16/2031
Phase II	Plats for Parcels E4, E6, F2, & G2	134 AM/330 PM Peak Hour	36 months (3 years)	156 months (13 years)	12/16/2034
Phase III	Plats for Parcels A1 – A4	793 AM/754 PM Peak hour	30 months (2.5 years)	186 months (15.5 years)	6/16/2037

* As determined by the 2011 LATR guidelines methodology approved in the Preliminary Plan

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.*

The original approval established the finding for the four requirements, as specified in 50.4.3.M.1, for a known cemetery identified on a Property, the Waters Family cemetery. While the first three requirements do not pertain to this amendment, the fourth requirement does apply and is satisfied as follows:

- d. *The burial site must be protected by arrangements sufficient to assure the Planning Board of its future maintenance and preservation, as specified in the Montgomery County Planning Board's guidelines for burial sites.*

Currently, arrangements for maintenance and preservation are in place at the time of development of the Property, as conditioned in the original approval of Preliminary Plan No. 120190040. The arrangements will be determined with the Phase 1 Site Plan and include the construction of a planned park space that includes the cemetery. To address this finding in the interim, this Amendment provides arrangements to ensure maintenance and preservation for the period of time between the present and whenever development commences on the Property.

As conditioned, the Applicant will execute an interim maintenance agreement consistent with the short-term goals for cemetery maintenance in Appendix B of the Montgomery County Planning Board Guidelines for Burial Sites. The proposed maintenance agreement will include:

- **Landscaping:** The Applicant proposes ground cover in the form of Pennsylvania sedge, or vinca/periwinkle, or similar groundcover, to be planted around each gravestone. This will eliminate the need for mowing near the gravestones and reduce the chances that a gravestone is bumped or damaged by a mower.
- **Mowing:** The area within the fence surrounding the cemetery that is not treated with landscaping, if any, will be mowed twice during the growing season (April-October) - late spring and late summer.
- **Other Upkeep:** Twice during the growing season (April-October), late spring and late summer, the landscaping within the fenced-in cemetery will be weeded, and any litter in the landscaping disposed of. Any clippings left on the gravestones will be gently hand-brushed off so that the clippings do not attract moisture or begin to grow on the gravestones.

Planning Board staff will visit the cemetery site during the summer and again in the fall to assess whether the maintenance, as proposed, successfully addresses concerns about the site becoming overgrown to the point that markers are not visible or potentially at risk for damage. Planning staff will work with the Applicant to adjust the maintenance as needed. Historic Preservation staff will review the agreement one year following the Planning Board date to evaluate whether the cemetery is being maintained and kept to the required standard. If the cemetery appears to be overgrown to the point that the markers are not visible or there is reason to believe the markers are at risk, the Applicant would then be required to revise the maintenance agreement as needed.

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 16 2023 (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).

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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 the motion of Commissioner Hedrick, seconded by Commissioner Pedoeem, with a vote of 3-0-1; Chair Zyontz, and Commissioners Hedrick, and Pedoeem, voting in favor of the motion, Vice Chair Piñero abstaining and Commissioner Bartley necessarily absent, at its regular meeting held on Thursday, June 8, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
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