

**8008 WISCONSIN AVENUE  
PRELIMINARY PLAN AMENDMENT NO. 12016005A**



**Description**

Request for a two-year extension of the validity period for 8008 Wisconsin Avenue Preliminary Plan No. 120160050, originally approved in 2016 for 106 multi-family dwelling units and 5,793 square feet of non-residential uses. The extension will allow a contract purchaser additional time to meet prerequisites for platting and construction of the approved development program.

No. 12016005A

Completed: July 10, 2023

MCPB

Item No. 5

July 20, 2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

## Planning Staff

AB	Adam Bossi, Planner III, Downcounty Planning, <a href="mailto:Adam.Bossi@montgomeryplanning.org">Adam.Bossi@montgomeryplanning.org</a> , 301-495-4529
SD	Stephanie Dickel, Supervisor, Downcounty Planning, <a href="mailto:Stephanie.Dickel@montgomeryplanning.org">Stephanie.Dickel@montgomeryplanning.org</a> , 301-495-4527
U	Elza Hisel-McCoy, Chief, Downcounty Planning, <a href="mailto:Elza.Hisel-McCoy@montgomeryplanning.org">Elza.Hisel-McCoy@montgomeryplanning.org</a> , 301-495-2115

### LOCATION/ADDRESS

Southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue in downtown Bethesda

### MASTER PLAN

2017 *Bethesda Downtown Sector Plan*

### ZONE

CR-3.0 C-3.0 R-2.75 H-145 and Bethesda Overlay Zone

### PROPERTY SIZE

0.32 acres

### APPLICANT

Toll MD X Limited Partnership

### ACCEPTANCE DATE

May 25, 2023

### REVIEW BASIS

Chapter 50

## Summary:

- Chapter 50.4.2.H.3.ii. of the Subdivision Regulations allow the Planning Board to extend the validity period of a Preliminary Plan if it finds that the occurrence of significant, unusual, and unanticipated events, beyond an applicant's control, and not caused by the applicant, have substantially impaired their ability to validate the plan, and exceptional or undue hardship would result to the applicant if the plan were not extended.
- The Planning Board approved Preliminary Plan No. 120160050 in 2016 under the 2006 *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* to create one lot on 0.32 acres of land in the CBD-1 zone for a maximum of 150,375 square feet of multi-family residential use for up to 106 dwelling units, including 15% MPDUs, and 5,793 square feet of non-residential uses.
- This Amendment requests an extension of the validity period of the Preliminary Plan for two years, to October 16, 2025, to allow a contract purchaser for the Property additional time to meet prerequisites for platting and construction of the approved development. This extension will align the validity periods for the Preliminary Plan with the Adequate Public Facilities (APF) finding.
- Staff recommends APPROVAL of the amendment to extend the validity period of the Preliminary Plan.

## TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS .....	3
PRELIMINARY PLAN 12016005A.....	3
SECTION 2: SITE DESCRIPTION.....	3
VICINITY.....	3
PROPERTY DESCRIPTION.....	4
SECTION 3: PROJECT DESCRIPTION.....	5
PREVIOUS APPROVALS.....	5
PROPOSAL.....	6
SECTION 4: PRELIMINARY PLAN 12016005A FINDINGS AND ANALYSIS.....	6
SECTION 5: COMMUNITY OUTREACH .....	9
SECTION 6: CONCLUSION .....	9
ATTACHMENTS .....	9

## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### PRELIMINARY PLAN 12016005A

Staff recommends approval with conditions of the Preliminary Plan Amendment No. 12016005A to extend the validity period of Preliminary Plan for two (2) years from October 16, 2023 to October 16, 2025. No changes are proposed to the previously approved development scheme, and therefore no revised plan drawings were submitted with this Application. All previous conditions of approval of Preliminary Plan No. 120160050 remain in full force and effect. Staff recommends one new condition of approval, Condition 19:

19. The Preliminary Plan as amended will remain valid until October 16, 2025, 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 request for an extension filed.

## SECTION 2: SITE DESCRIPTION

### VICINITY

The Property is located at the southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue in downtown Bethesda. It is bound by Wisconsin Avenue to the east, Cordell Avenue to the north, Woodmont Avenue to the west, and to the south by existing low-rise commercial buildings approved for redevelopment (8000 Wisconsin Avenue, Site Plan No. 820190040). Surrounding properties are developed with a mix of residential, office, hotel, and commercial uses in the CR 5.0 and CR 3.0 zones. The Bethesda Metrorail Station is located approximately one-half mile to the south of the Property. The Site and surrounding area are within the boundaries of the *2017 Bethesda Downtown Plan* area and Bethesda Overlay Zone.

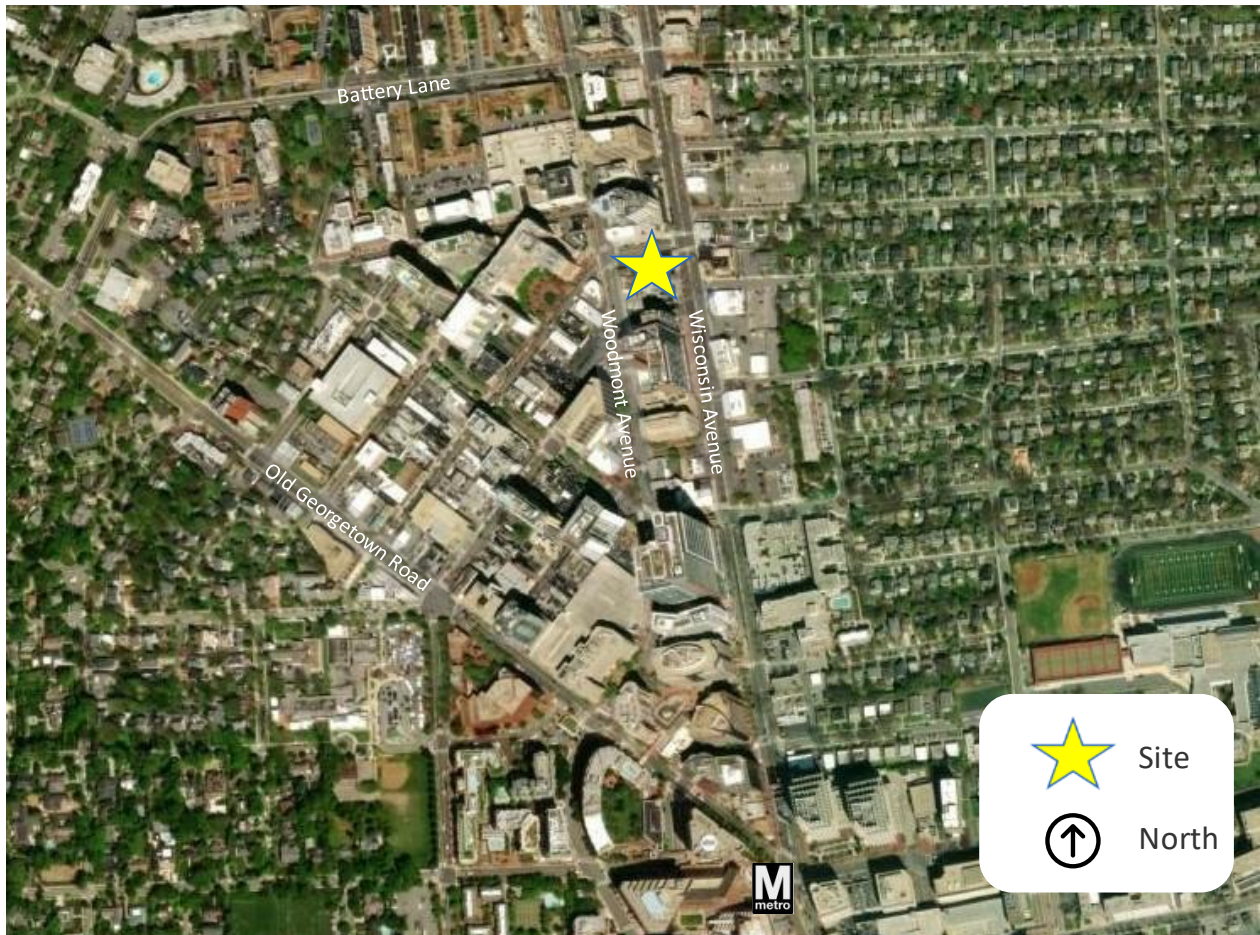


Figure 1 – Vicinity Map

## PROPERTY DESCRIPTION

The Subject Property consists of five platted lots that comprise 13,962 net square feet (0.32 acres). The gross tract area, including previous right-of-way dedications for Woodmont, Cordell, and Wisconsin Avenues is 27,077 square feet (0.62 acres). The Site is entirely developed with now-vacant low-rise commercial buildings and surface parking. It is in the Lower Rock Creek watershed, which is a Use 1 watershed<sup>1</sup>. There are no sensitive environmental features onsite. The Site is in the CR-3.0 zone, but the Proposal is approved for development under the previous CBD-1 zone of the Zoning Ordinance in effect on October 29, 2014.

<sup>1</sup> Use I: WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE- 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.





Figure 2 – Subject Property

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

On June 23, 2015, the Planning Board approved Project Plan No. 920150020 (MCPB No. 15-62) for a 14-story, mixed-use building containing a maximum of 151,953 square feet of multi-family residential use, consisting of up to 140 dwelling units (including a minimum of 15% MPDUs), and 4,500 square feet of non-residential uses (retail, restaurant, or service) on 13,962 net square feet of land in the CBD-1 zone, and within the 2006 *Woodmont Triangle Amendment* to the 2000 *Bethesda CBD Sector Plan* area.

On June 23, 2015, the Planning Board approved Pre-Preliminary Plan No. 720150160 (MCPB No. 15-63) to provide the Applicant binding advice with respect to configuration of the right-of-way and a public improvement easement on the Wisconsin Avenue frontage of the Site.

On September 16, 2016, the Planning Board approved Project Plan Amendment No. 92015002A (MCPB No. 16-055), Preliminary Plan No. 120160050 (MCPB No. 16-083), and Site Plan No 820160130 (MCPB No. 16-084) to decrease the previously approved residential floor area to a maximum of 150,375 square feet of multi-family residential use on one lot, consisting of no more than 106 multi-family dwelling units including 15% MPDUs, and a maximum of 5,793 square feet of non-residential use. The total floor area of the Project Plan was limited to 156,168 square feet. The Preliminary Plan approval included a Plan validity period ending October 16, 2021, and an APF approval period ending October 16, 2025.

On July 28, 2020, the County Council adopted Subdivision Regulation Amendment 20-01 which provided a two-year extension to unexpired subdivision applications approved before July 28, 2020. This Regulation Amendment applies to Preliminary Plan 120160050, and extends its originally approved validity period from October 16, 2021, to October 16, 2023. The APF approval period was not impacted by this action of the County Council.

## PROPOSAL

This Application proposes to amend the Preliminary Plan by extending its validity period by two years, to October 16, 2025, which aligns with the APF validity period. This Amendment does not propose any modifications to the previously approved development program or conditions of approval. The Applicant asserts the requested extension is the minimum necessary to allow for transfer of ownership of the Property to a contractor purchaser who is willing and able to proceed expeditiously to platting and construction of the approved development.

Within the validity period of the Preliminary Plan, the new lot approved must be recorded on a plat in the Land Records of Montgomery County. If the Plan is not recorded on a plat within this period, the approval becomes null and void and building permits for the redevelopment of the Property cannot be released. Recordation of a plat is a critical step in the entitlement process.

## SECTION 4: PRELIMINARY PLAN 12016005A FINDINGS AND ANALYSIS

The Proposal does not alter the intent of the Findings and Analysis previously approved by the Planning Board, which remain applicable.

Section 50.4.2.H of the Subdivision Regulations pertains to extension of the validity period for Preliminary Plans.

### **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.***

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

The Applicant requests to extend the validity period of the Preliminary Plan due to the occurrence of significant, unusual, and unanticipated events, beyond the Applicant's control, and not caused by the Applicant, that have substantially impaired their ability to validity to the Plan. These events include the adoption of the 2017 *Bethesda Downtown Sector Plan* and associated rezoning of the Property, the COVID pandemic, and market volatility. The Applicant contends such events hampered their ability to validate the Plan, and that exceptional or undue hardship would result if the Plan's validity period were not extended.

The Preliminary Plan was approved approximately seven months prior to the adoption of the current 2017 *Bethesda Downtown Sector Plan*. As such, the Applicant took time to evaluate implications of the new Sector Plan's recommendations and associated zoning change for the Property prior to validation of their development approvals.

The COVID Pandemic public health emergency and associated challenges began to emerge as the Applicant was completing their assessment of the impacts of the *Downtown Plan* on their approved development plan. Impacts of the pandemic have grown and evolved through most of the Preliminary Plan's validity period. Working through these challenges slowed finalization of entitlements.

Lastly the Applicant contends that market volatility, inflation and rising interest rates have impacted their ability to finalize the entitlement process.

These unusual circumstances unfolded in sequence over the full lifetime of the validity period for the Preliminary Plan. The Applicant now reports entering into a contract to sell the Property to a purchaser who is willing and able to proceed to platting and construction of the approved development program. An extension of the validity period of the Preliminary Plan is requested to allow the contractor purchaser sufficient time to satisfy conditions of approval and other prerequisites for platting. The Applicant further contends that exceptional hardship would occur if the Preliminary Plan validity was not extended as it would cause significant challenges for the impending sale of the property and realization of the Project. Additionally, it would result in the loss of the



Applicant's investment in the Proposal, inclusive of density purchased from sending properties in the Bethesda CBD made prior to the County's 2017 adoption of the *Bethesda Downtown Sector Plan*, and associated zoning updates, which changed how additional development density can be purchased and transferred in downtown Bethesda.

**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 Regulations (Chapter 50) are pertinent to the scope of this Application. No revisions to the previously approved Preliminary Plan are needed for the Proposal to conform to the Regulations.

- 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 indicated they have entered into an agreement to sell the Property to another developer who is able to proceed to platting and permitting of the approved redevelopment project prior to the termination of its existing APF validity period, October 16, 2025. The Applicant further noted that approval of the requested extension of the Preliminary Plan validity period is critical to the viability of the impending transfer of ownership of the Site.

**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.**

This Application was submitted in conformance with the noticing requirements of Chapter 50 and the Administrative Procedures for Development Review. This included sending mailed notices to required parties and property owners and posting the Site with signage. The Planning Board will review and act on the Application at a duly noticed public hearing.

- 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 Applicant has indicated that the two-year extension request this is the minimum time needed for to complete prerequisites for platting, including coordinating with multiple public agencies to fulfill various permit and bonding requirements.

- 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.**

The Preliminary Plan's APF validity period ends on October 16, 2025. The Applicant is requesting to extend the validity period of the Preliminary Plan for two years, from October 16, 2023 to October 16, 2025. This will align the validity periods of the Plan and APF.

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

This Application is the first request for an extension of the Preliminary Plan validity period.

- 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 approved Preliminary Plan did not include a phasing schedule, nor does this Amendment, as the Project is to be constructed in a single phase.

## SECTION 5: COMMUNITY OUTREACH

The Applicant sent notice of the Application to all required parties on May 22, 2023 and posted the Site with required signage. Staff did not receive community correspondence regarding this Proposal as of date of this Staff Report.

## SECTION 6: CONCLUSION

As conditioned, Preliminary Plan Amendment 12016005A satisfies the findings under Section 50.4.2.H. Therefore, Staff recommends approval of the application with the new condition, Condition 19, specified at the beginning of this report.

### ATTACHMENTS

*Attachment A: Statement of Justification*

*Attachment B: Prior Approvals*