

# **Montgomery County Planning Board**

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**JUL 26 2023**

MCPB No. 23-074  
Preliminary Plan Amendment No. 12012006C  
**North Bethesda Market II**  
Date of Hearing: July 13, 2023

## **RESOLUTION**

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

WHEREAS, on April 9, 2012, the Planning Board, by Resolution MCPB No. 12-30, approved Preliminary Plan No. 120120060, creating one lot on 4.41 acres of land in the CR-4, C-3.5, R-3.5, H-300 and CR-3, C-1.5, R-2.5, H-150 zones, located at the southeast quadrant of the intersection of Nicholson Lane and Woodglen Drive ("Subject Property"), in the White Flint Policy Area and 2010 *White Flint Sector Plan* ("Sector Plan") area; and

WHEREAS, on February 12, 2015, the Planning Board approved an amendment to Preliminary Plan No. 120120060 (MCPB No. 15-010) to create five lots and three private road parcels, and approve a maximum of 740,528 square feet of development on the Subject Property; and

WHEREAS, on August 11, 2021, the Planning Board approved an amendment to Preliminary Plan No. 12012006A (MCPB No. 21-072) to reconfigure lots and private street parcels and adjust phasing on the Subject Property; and

WHEREAS, on June 21, 2023, AvalonBay Communities, Inc., Woodglen Master Owner, LLC, and Woodglen Master Owner II LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the preliminary plan validity period by two years and amend a condition to allow for demolition of existing buildings prior to platting on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12012006C, North Bethesda Market II ("Preliminary Plan," "Amendment," or "Application"); and

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Approved as to  
Legal Sufficiency: /s/ Matthew T. Mills  
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 June 30, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 13, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Harris and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12012006C to extend the preliminary plan validity period by two years and amend a condition to allow for demolition of existing buildings prior to platting on the Subject Property by *modifying* the following conditions:<sup>1</sup>

3. The Preliminary Plan Amendment will remain valid for ~~60 months~~ 84 months from its Initiation Date pursuant to Planning Board Resolution MCPB 15-010 (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan Amendment must be recorded in the Montgomery County Land Records or a request for an extension filed.

21. There shall be no clearing or grading of the site prior to recordation of plat(s), except for demolition of the existing structures and related site infrastructure.

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.*

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<sup>1</sup> 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. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.
  - a. The block design is appropriate for the development or use contemplated
  - b. The lot design is appropriate for the development or use contemplated
  - c. The Preliminary Plan provides for required public sites and adequate open areas
    - i. Master Planned Sites
    - ii. Local Recreation
    - iii. Transportation and Utilities
  - d. The Lot(s) and Use comply with the basic requirements of Chapter 59

The Subject Preliminary Plan Amendment is limited to the extension of the Preliminary Plan validity period, as well as a condition change that would allow the Applicant to demolish existing structures and related infrastructure prior to the recordation of plats. The Subject Preliminary Plan Amendment does not propose any changes to the previously approved subdivision, and therefore this finding is not applicable.

2. The Preliminary Plan substantially conforms to the Master Plan.

The Subject Preliminary Plan Amendment is limited to the extension of the Preliminary Plan validity period, as well as a condition change that would allow the Applicant to demolish existing structures and related infrastructure prior to the recordation of plats. The Subject Preliminary Plan Amendment does not change any aspect of conformance with the White Flint Sector Plan, and therefore this finding is not applicable.

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

The Subject Preliminary Plan Amendment is limited to the extension of the Preliminary Plan validity period, as well as a condition change that would allow the Applicant to demolish existing structures and related infrastructure prior to the recordation of plats. The Subject Preliminary Plan Amendment does not propose any changes to the previously approved adequate public facilities finding, and therefore this finding is not applicable.

4. All Forest Conservation Law, Chapter 22A requirements are satisfied. The Subject Preliminary Plan Amendment is limited to the extension of the Preliminary Plan validity period, as well as a condition change that would allow the Applicant to demolish existing structures and related infrastructure prior to the recordation of plats. The Subject Preliminary Plan Amendment does not propose any changes to the previously approved Forest Conservation Plan, and therefore this finding is not applicable.

5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.

The Subject Preliminary Plan Amendment is limited to the extension of the Preliminary Plan validity period, as well as a condition change that would allow the Applicant to demolish existing structures and related infrastructure prior to the recordation of plats. The Subject Preliminary Plan Amendment does not propose any changes to stormwater management on the Subject Property, and therefore this finding is not applicable.

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.

Not applicable to this Property.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

Subdivision Section 50.4.2.H.3.a allows the Planning Board 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 Applicant has provided the following justification for the extension of the Preliminary Plan validity period:

“The Applicant purchased the Property on June 5, 2020 and has been diligently pursuing Amendments to the Project approvals since that time, despite the significant economic and market disruption resulting from COVID-19 that was beyond the Applicant’s control. These Amendments are necessary to right-size the Project to current market conditions, such that this much-anticipated redevelopment of the Property can occur in the near-term. To this end, Sketch Plan Amendment No. 32011003B and Preliminary Plan Amendment No. 12012006B were approved by the Montgomery County Planning Board on July 29, 2021. The approved Sketch Plan Amendment contemplated that the first development phase could be broken up into one or two sub-phases (either building the retail parcel concurrently with the multi-family residential building, or separately). However, the Applicant still wanted to deliver a more robust first phase and as such, sought to bring a multi-family residential development partner on-board. To this end, the Applicant has entered into an agreement with AvalonBay Communities, Inc. (“AvalonBay”). This partnership will allow for a critical mass of desirable, additional density in White Flint, which the Applicants believe will serve as a catalyst for more reinvestment nearby. The Applicant and AvalonBay are now concurrently seeking a Site Plan Amendment for the comprehensive development of Phase 1, which includes up to 292,500 square feet of development, including up to 7,500 square feet of non-residential use (excluding the existing 67,260 square foot office building, which will remain) and up to 285,000 square feet of residential use (or up to 280 dwelling units). A future site plan amendment will be filed at a later date to accommodate the remainder of the approved development when market conditions permit. As discussed herein, the Applicant has been diligently pursuing the necessary plan amendments to implement the Project, since purchasing the Property in 2020. However, to ensure there is adequate time to process the Record Plat application and vest the Preliminary Plan, once the Site Plan Amendment is approved, the Applicant is seeking this extension.”

Staff recommends approval of the extension to the Preliminary Plan validity period based on the Applicant’s explanation above. The Applicant is proposing a modest extension of only two years to the previously approved validity period, which will keep the Preliminary Plan validity concurrent with the validity period of the Project’s Adequate Public Facilities approval. Additionally, the Applicant has made concrete efforts to move forward with the project, including bringing on a residential development partner. The extension of the Plan Validity period will give the Applicant a more realistic opportunity to realize the full vision proposed in the Preliminary Plan. The extension of the Plan Validity period is also for a modest two years, which is not an unreasonable amount of time and will align the

Plan Validity expiration with that of the Adequate Public Facilities finding. Staff believes the extension of the Plan Validity period provides a realistic and achievable timeframe for the Applicant to submit a plan application to realize Phase 2 of the proposed development before the expiration of Plan and Adequate Public Facilities validity. Staff recommends approval of the Preliminary Plan validity extension.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 26 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 motion of Commissioner Bartley, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners, Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, July 20, 2023, in Wheaton, Maryland and via video conference.

  
Artie L. Harris, Chair  
Montgomery County Planning Board

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North Bethesda Market II: Preliminary Plan Amendment  
12012006C, Site Plan Amendment 82012004B and  
Forest Conservation Plan F20230170