

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 12, 2024

MCPB No. 24-023

Preliminary Plan No. 12021001A

4702 Chevy Chase Drive

Date of Hearing: February 29, 2024

RESOLUTION

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

WHEREAS, on January 7, 2021, the Planning Board, by Resolution MCPB No. 20-132, approved Preliminary Plan No. 120210010 to create one lot for multi-family residential development for up to 70 units on 0.48 acres in the CR-1.5, C-0.25, R-1.5, H-70' and Bethesda Overlay Zone (BOZ), located on Chevy Chase Drive approximately 130 feet east of Bradley Boulevard ("Subject Property"), in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan* ("Sector Plan") area; and

WHEREAS, on December 27, 2023, Winthrop Investment Group Inc. ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to extend the validity period for recordation of the plat by two years from February 7, 2024 to February 7, 2026 on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12021001A, 4702 Chevy Chase Drive ("Preliminary Plan," "Amendment," or "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 February 15, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 29, 2024, 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 Vice Chair Pedoeem, with a vote of 5-0 Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick and Linden voting in favor.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605

www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12021001A to extend the validity period for recordation of the plat by two years from February 7, 2024 to February 7, 2026 by adding the following condition:

15. The Preliminary Plan will remain valid for an additional two (2) years from its original initiation date (as defined in Montgomery County Code Section 50.4.2.G), or until February 7, 2026, 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.

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:

1. Extension Requests

- a. Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.***

The Applicant submitted a timely plan validity extension request to the Planning Board which was accepted on December 27, 2023. Planning Board Resolution No. 20-132 established a 36-month validity period for the original Preliminary Plan, with an original expiration date of February 7, 2024 (based on the initiation date as defined in Section 50.4.2.G of the Subdivision Ordinance).

- b. The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.***

Not applicable.

- c. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.***

The Applicant has provided a justification statement for the requested extension to the plan validity which requests an additional two years to record the plat for the Subject Property. The current validity period for Preliminary Plan No. 120210010 would have

expired on February 7, 2024. The Applicant explained that market uncertainties, rising interest rates and supply shortages, caused in large part by the COVID-19 pandemic, as well as the need to coordinate with a neighboring property owner regarding easements, tree plantings and sidewalk extensions, resulted in the delay recording the plat. The Applicant states this is the minimum time necessary, given that the associated Site Plan is being considered simultaneously with the Preliminary Plan Amendment request, which informs the additional easements necessary from neighboring properties to record the plat. Further, the approved extension will align with the adequate public facilities validity period.

2. *Effect of failure to submit a timely extension request.*

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

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 Applicant's validity extension justification states that significant, unusual and unanticipated events, beyond their 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 is not extended. Due to the significant and long-lasting economic difficulties posed by the COVID-19 pandemic including market uncertainty, rising interest rates, and supply shortages, coupled with the need for significant coordination with the adjacent property owner, the Applicant has been unable to proceed with the platting at the originally planned speed and schedule. The Preliminary Plan approval required several offsite sidewalk extensions that resulted in the need for coordination with the neighboring property owner, the Bethesda Fire Department, which is a non-profit board of volunteers and the time dedicated to coordinating these items was significantly longer than expected.

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

The Applicant provided justification outlining the validity extension request and the necessary justifications. These are found to qualify as a “significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant.”

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.**

No major requirements have changed since approval of Preliminary Plan No. 120210010 that would necessitate a change to the approved plans.

- 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.**

Given that the Applicant is also seeking approval of the associated Site Plan for the Project at the same time as this extension request, the Project has demonstrated it is still capable of being financed and constructed within a reasonable time frame. The Project is located within the Bethesda Overlay Zone which also has requirements that must be met within a specified time frame.

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 Preliminary Plan Amendment was properly noticed pursuant to the requirements of Chapter 50 and the latest Administrative Procedures for Development Review .

- 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 two-year extension to the Preliminary Plan validity period which would coincide with the approved Adequate Public Facilities Period expiring on February 7, 2026. This two year extension would be the minimum necessary to complete the record plat.

- c. The Board may only grant an extension to a preliminary plan within the plan’s APFO validity period unless a further extension is allowed by law.**

The associated Adequate Public Facilities approval was granted for five years from the initiation date of Planning Board Resolution No. 20-132, with an expiration of February 7, 2026, the requested validity extension would align with the existing APFO validity period.

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

This is the first request for a Preliminary Plan validity extension made for the original approval of Preliminary Plan No. 120210010.

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.

Not applicable.

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

March 12, 2024

(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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

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 Vice Chair Pedoeem, with a vote of 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor at its regular meeting held on Thursday, March 7, 2024, in Wheaton, Maryland.



Artie L. Harris, Chair
Montgomery County Planning Board

Rebecca Torma
101 Monroe Street, 10th floor
Rockville, MD 20850

Brenda Pardo
101 Monroe Street, 10th floor
Rockville, MD 20850

Marie LaBaw
2425 Reedie Drive, 7th Floor
Wheaton, Maryland 20902

Patricia Harris
7600 Wisconsin Ave., #700
Bethesda, MD 20814

Hans Schmidt
1320 Old Chain Bridge Road St 405
McLean, VA 22101

Max Gross
1320 Old Chain Bridge Road St 405
McLean, VA 22101

Tim Longfellow
3909 National Dr., Suite 250
Burtonsville, MD 20866

Luz Del Mar Rosado
8521 Leesburg Pike, Suite 700
Vienna, VA 22182

Ulises Montes De Oca
8521 Leesburg Pike, Suite 700
Vienna, VA 22182

Nick Driban
645 Baltimore Annapolis Blvd., Suite
214
Severna Park, MD 21146

Roberta Chu
714 7th Street SE
Washington, DC 20003

Julie McLean
4720 Chevy Chase Drive
Chevy Chase, Maryland 20815

Karen Hoffman
4720 Chevy Chase Dr.
Apt 205
Chevy Chase, MD 20815

Daniel Ben-Zadok
4620 Nottingham Drive
Chevy Chase, MD 20815

Edward Butler
4720 Chevy Chase Drive
Apt 404
Chevy Chase, MD 20815

Daniel Bushey
4702 Chevy Chase Drive
Unit 105
Chevy Chase, MD 20815

John Faig
4720 Chevy Chase Drive
Apt 106
Chevy Chase, MD 20815

Erin Finney
4800 Chevy Chase Drive
#202
Chevy Chase, MD 20815

Gail Poe
4720 Chevy Chase Dr.
Unit 204
Chevy Chase, MD 20815

Julie A McClean, CPA
4720 Chevy Chase Drive
Bethesda, MD 20815

4702 Chevy Chase Drive

Preliminary Plan Amendment No.
120210010A & Site Plan No. 820230120