

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

April 29, 2024

MCPB No. 24-044

Preliminary Plan Amendment No. 12020022A

Avondale

Date of Hearing: April 18, 2024

RESOLUTION

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

WHEREAS, on November 12, 2020, the Planning Board, by Resolution MCPB No. 20-123, approved Preliminary Plan No. 120200220, creating one lot for multi-family residential development of up to 60 units on 0.33 acres of land in the CR 1.5 C 0.25 R 1.5 H 70' and BOZ zoned-land, located at on Avondale Street approximately 200 feet east of Wisconsin Avenue ("Subject Property") in the Bethesda CBD Policy Area and 2017 Bethesda Downtown Sector Plan ("Sector Plan") area; and

WHEREAS, on December 12, 2023, SJ Investment Corporation ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to extend the validity period from January 3, 2024, to January 3, 2026 on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12020022A, Avondale ("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 April 1, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 18, 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 Commissioner Linden, with a vote of 4-0; Chair Harris, Commissioners Bartley, Hedrick, and Linden voting in favor with Vice Chair Pedoeem absent.

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Approved as to

Legal Sufficiency: /S/ Allison Myers
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12020022A to extend the validity period from January 3, 2024, to January 3, 2026, by adding the following condition:¹

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 January 3, 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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan and all findings not specifically addressed remain in effect.

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 filed on November 7, 2023 and accepted on December 12, 2023. Planning Board Resolution No. 20-123 established a 36-month validity period for the Preliminary Plan, with an original expiration date of January 3, 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.**

This provision is not applicable, as the Applicant requested an extension of the length of the validity period.

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.

- 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 Preliminary Plan. The current validity period for Preliminary Plan No. 120200220 would have expired on January 3, 2024. The Applicant states this is the minimum time necessary, given that the third-party contractor began the record plat process, however final engineering must be completed prior to the plat being recorded.

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***

The Applicant had entered into a contract with a third-party developer in June of 2022 to complete the platting process and proceed with construction. However, citing market volatility and difficulties in securing financing, the third party informed the Applicant in June of 2023 that they could not proceed with the purchase of the property. These events left the Applicant insufficient time to fulfill the platting prerequisites necessary to validate the plan and record the plat. These include full engineered design, permitting and bonding of upgrades to Avondale Street including road widening, public storm drain extensions, utility relocations, upgrades to sidewalks, street trees and streetlights. For these reasons, the Board finds that delays, not caused by the Applicant, have prevented the Applicant from validating the plan.

- 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 also 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 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 rising construction costs have impacted the overall cost of the Project.

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.” This justification also details the progress the Applicant and third-party developer made prior to the third-party developer pulling out of the contract. This includes certification of the Preliminary Plan in June of 2021, approval from the Planning Board for the associated Site Plan (No. 820210140) in September of 2021, certification of the Site Plan in May of 2022, and submittal of a record plat application in April of 2023. Permit drawings for the subsequent building permit application are also in the early stages of preparation.

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 applicable requirements have changed since approval of Preliminary Plan No. 120200220 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.

The Board finds that the Project is still viable and as noted in Finding 3.b above, significant effort has been made to move the Project forward. The Applicant’s statement of justification also references the Zoning Text Amendment (“ZTA”) that was approved by County Council on June 27, 2023, which acknowledges that projects within the Bethesda Overlay Zone (“BOZ”) are facing challenges due to continued inflation and rising interest rates as a result of the COVID 19 pandemic. ZTA 20-02 provides an extension of site plan implementation deadlines within the BOZ due to these market challenges. Based on provisions of the Zoning Ordinance for projects within the BOZ, this project is required to have an application accepted by the Montgomery County Department of Permitting Services (“MCPDS”) within two years of the resolution mailing for the associated Site Plan (No. 820210140). ZTA 20-02 automatically extended this deadline, requiring this project to have a permit application accepted by MCDPS for the core and shell of the building to November 21, 2024 (three years from the date of resolution for Site Plan No. 820210140).

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 and was considered at a public hearing.

- 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 January 3, 2026. The Board finds that a 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. 20-123, with an expiration of January 3, 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. 120200220.

- 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 provision is not applicable, as the Application does not include a revised phasing schedule.

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

April 29, 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 motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 4-0. Chair Harris, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, Vice Chair Pedoeem abstaining, at its regular meeting held on Thursday, April 25, 2024, in Wheaton, Maryland and via video conference.



Artie Harris, Chair
Montgomery County Planning Board