

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

July 26, 2024

MCPB No. 24-064
Preliminary Plan Amendment No. 12017029A
Old Angler's Cove
Date of Hearing: July 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 February 21, 2019, the Planning Board, by Resolution MCPB No. 19-013, approved Preliminary Plan No. 120170290, creating three (3) lots on 1.87 acres of land in the R-200 zone, located approximately 2,500 feet west of Brickyard Road ("Subject Property"), in the 2002 *Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, on March 14, 2024, Benjamin B. Wisler ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to extend the validity period by an additional twelve (12) months from the initiation date of this Preliminary Plan Amendment; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12017029A, Old Angler's Cove ("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 July 8, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 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 Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor to approve.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12017029A to extend the Preliminary Plan's validity period by an additional 12 months from the initiation date of this Preliminary Plan Amendment by

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

adding the following condition:¹

18. Plan Validity Period

The Preliminary Plan will remain valid for 12 months from the initiation date of this Preliminary Plan Amendment (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 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.

Per Section 50.4.2.H of the County Code, the Planning Board makes the following findings:

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

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.

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 Planning Board finds the Applicant has experienced significant, unusual, and unanticipated events beyond the Applicant's control, and not caused by the Applicant, which have substantially impaired their ability to record a record plat. Specifically, following the approval of the Preliminary Plan in 2019, the Applicant faced substantial delays in preparing and recording the final plat during the height of the COVID-19 pandemic in 2020. The pandemic created widespread operational disruptions and logistical challenges, severely impacting the Applicant's coordination with their civil engineer and delaying essential steps towards plat recordation. Additionally, the Applicant experienced unexpected hardships related to the project engineer, who also managed the development team and who experienced a period of personal hardship during the post-approval phase, resulting in extended delays.

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.***

The Planning Board did not impose additional conditions requiring that the Preliminary Plan conform to the current requirements of the Subdivision Regulations with this Amendment. Since the approval of the Preliminary Plan, the Subdivision Regulations have been amended to include additional criteria for the approval of flag lots. Under Section 50.4.3.C.1.B, the Board must find that "unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide" and must determine that appropriate separation of at least 80 feet between building envelopes can be achieved, as detailed in Section 50.4.3.C.1.B.i.

The Planning Board finds that requiring the Applicant to revise the Preliminary Plan to conform to the current requirements of Section 50.4.3.C.1.B.i would likely require the reconfiguration of the Preliminary Plan from a three-lot to a two-lot subdivision and that the Preliminary Plan, as approved, provides adequate separation between the proposed building envelopes to achieve the intended goal of the current setback requirements. Therefore, the Planning Board finds that it is not necessary to condition the approval of the extension on a requirement that the Applicant revise the Preliminary Plan to conform to the flag lot provisions of Chapter 50 adopted after its initial approval.

- 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 Planning Board finds that the project remains viable, as approved and conditioned. As no changes have been made to the approved Preliminary Plan and the Applicant expressed the intention to validate the Preliminary Plan within 12 months, the Board finds that the project is capable of completion within a reasonable 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.***

A public hearing complying with the notice requirements of Chapter 50 was held on July 18, 2024, at which time the Board considered and granted the Preliminary Plan Amendment.

- 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 Planning Board finds that a 12-month extension is the minimum amount of time necessary for the Applicant to complete recordation of the record plat.

- 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 Planning Board finds that this requirement is met because the Preliminary Plan's Adequate Public Facilities approval expires on February 21, 2026.

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

This is the first validity extension requested and approved for Preliminary Plan No. 120170290.

- 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 because the approved Preliminary Plan consists of a single phase.

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

July 26, 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 Linden, seconded by Commissioner Bartley, with a vote of **3-0**; Chair Harris, and Commissioners Bartley, and Linden, voting in favor of the motion, Vice Chair Pedoeem and Commissioner Hedrick necessarily absent, at its regular meeting held on Thursday, July 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board