

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

October 11, 2024

MCPB No. 24-082

Preliminary Plan Amendment No. 12019009B

850 Sligo Avenue

Date of Hearing: September 12, 2024

RESOLUTION

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

WHEREAS, on May 15, 2019, the Planning Board, by Resolution MCPB No. 19-038, approved Preliminary Plan No. 120190090, creating one 0.45 acre lot on a tract measuring 0.63 acres of land for up to 85 age-restricted multifamily residential units and up to 6,912 square feet of non-residential uses in the CR-3.0 C-2.0 R-2.75 H-60T zone and Fenton Village Overlay Zone, located at the southeast quadrant of the intersection of Fenton Street and Sligo Avenue (“Subject Property”), in the Silver Spring CBD Policy Area and 2000 *Silver Spring Central Business District Sector Plan* area; and

WHEREAS, on October 16, 2019, the Planning Board approved an amendment to Preliminary Plan No. 12019009A (MCPB No. 19-119) to remove the age-restriction from the multifamily component of the Project on the Subject Property; and

WHEREAS, on April 24, 2024, Moonlight, Inc., (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plans to extend the validity period of the Preliminary Plan for two years; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12019009B, 850 Sligo Avenue, (“Preliminary Plan,” “Amendment,” or “Application”), which Application is within the 2022 *Silver Spring Downtown and Adjacent Communities Plan* area (“Sector Plan”), superseding the 2000 *Silver Spring Central Business District Sector Plan*.; 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 August 30, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

WHEREAS, on September 12, 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 Linden, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12019009B to extend the validity period of the Preliminary Plan by two years, subject to the following new conditions:¹

11. 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 June 15, 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.
12. At the time of any future Site Plan amendment, Staff shall evaluate and adjust, if necessary, the previously approved streetscape improvements along the Site's three frontages on Sligo Avenue, Fenton Street, and Gist Street to comply with the Silver Spring Streetscape Guidelines, or other streetscape policy, as applicable.
13. Prior to the issuance of a building permit, the Applicant shall obtain approval of a Site Plan Amendment to conform with the applicable requirements of the Downtown Silver Spring (DSS) Overlay Zone, unless DPS determines that the DSS Overlay Zone does not apply.

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 (Pursuant to Section 50.4.2.H)***
 - 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.***

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.

The Applicant submitted a timely plan validity extension request to the Planning Board which was filed on April 24, 2024 and accepted on May 22, 2024. Planning Board Resolution No. 19-038 established a 36-month validity period for the Preliminary Plan, with an original expiration date of June 15, 2022 (based on the initiation date as defined in Section 50.4.2.G of the Subdivision Ordinance). The validity period was extended by an additional two years in 2020 with the County Council's issuance of Ordinance No. 19-12, resulting in an expiration date of June 15, 2024.

- 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 requirement is not applicable because the request is being approved by the Planning Board not the Director.

- 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 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 because of market conditions related to the COVID-19 pandemic, contract cancellations and property rezoning. The current validity period for Preliminary Plan No. 120190090, as amended with Preliminary Plan No. 12019009A, would have expired on June 15, 2024. A timely request to extend the validity period was filed as noted in Finding 1.a. above. The Applicant states the two-year extension request is the minimum time necessary to record a plat.

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

Not applicable because the extension request was received in a timely manner.

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 received multiple entitlement approvals for their proposed development prior to the onset of the COVID-19 pandemic, which brought significant and unforeseen challenges, and an extended timeline to the realization of the approved Project. Sketch Plan No. 320180090 was approved by the Planning Board in May 2018. This Preliminary Plan and Site Plan No. 820190050 were approved by the Planning Board in May 2019, with an amendment to both Plans approved by the Planning Board in October 2019. By March 2020, the World Health Organization declared the COVID outbreak a pandemic. 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 to complete the Project, and slowed its realization. The Applicant's statement of justification supporting the validity extension request states that despite their best efforts, including obtaining certification of the Preliminary and Site Plans, the significant, unusual, and unanticipated events rooted in the COVID-19 pandemic, were beyond their control and not caused by the Applicant but have impaired their ability to record the plat and validate the plan. Further, the Property was rezoned as part of the 2022 Sector Plan including imposition of a new overlay zone. . The requested extension to the Preliminary Plan validity period is necessary to allow for continued efforts towards validation and undue hardship would result if the validity period were not extended to allow for the Applicant to move the Project forward.

- 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 notes the Applicant's efforts to proceed with the Project., even with potential purchasers electing not to move forward.

In addition to the grounds noted in the Applicant's statement of justification, the Applicant has made good-faith efforts to move forward through the entitlement process pursuing and receiving certification of the Preliminary Plan on October 10, 2019, receiving approval of a Site Plan (No. 820190050) and certifying the Site Plan on October 10, 2019. Amendments to the Preliminary Plan and Site Plan were also sought by the Applicant and approved by the Planning Board in 2019. Further, the

approved, amended Preliminary Plan No. 12019009A and Site Plan No. 82019005A were certified on October 16, 2019 and December 11, 2019, respectively. Completion of these tasks shows investment in the Project and intention to move forward under these approved entitlements.

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.**

At the time of the 2018 and 2019 approvals of the Sketch, Preliminary and Site Plan Applications, and associated amendments, the Property was zoned CR-3.0, C-2.0, R-2.75, H-60T and Fenton Village Overlay Zone and located within the *2000 Silver Spring Central Business District Sector Plan* area. Since that time, the zoning and guiding sector plan for the Property changed. In 2022, the County adopted the *Silver Spring Downtown and Adjacent Communities Plan*, superseding the *2000 Silver Spring Central Business District Sector Plan*. The new Sector Plan updated goals and recommendations for the Plan area that did not substantially change the general development vision for the Subject Property.

The Planning Board does not require any revisions to this Preliminary Plan with this extension to further align the approval with any new requirements; however, the applicable requirements of the Downtown Silver Spring Overlay Zone will need to be determined as provided in Condition 13.

- *Rezoning of the Property to CR-3.0, C-3.0, R-3.0, H-70*

The approved Preliminary Plan supports the development of up to 85 multifamily residential units and ground floor retail uses with a total FAR of 3.0. The previously approved development plan adaptively reuses the existing 99-foot-tall building on-site and expands its gross floor area with an addition with a maximum height of 60 feet. The approved uses, density and heights of the development program conform with the updated zoning of the Property.

- *Inclusion of the Property in the newly created Downtown Silver Spring (DSS) Overlay Zone.*

This Overlay Zone contains development standards to guide implementation of the Sector Plan that did not exist at the time of approval of the Preliminary Plan and Site Plan associated with the Property. The development standards of this Overlay Zone focus on building height, density, MPDUs, public benefit points, and public open space. However, as mentioned above, new Condition 13

provides that prior to building permit an assessment must be made as to the need for modifications to the Site Plan to comply with applicable provisions of the DSS Overlay Zone. The potential issues under the DSS Overlay Zone may include the following:

- *MPDUs* – The original approval includes a minimum of 12.5 percent MPDUs, or 11 of the 85 dwelling units approved, as was required at the time of Preliminary Plan approval. The DSS Overlay Zone establishes a minimum of 15 percent MPDUs, or 13 of the 85 dwelling units approved. New condition 13 requires a site plan amendment to address the Downtown Silver Spring Overlay Zone requirements.
- *Public Benefit Points* – The approved development program provides public benefits totaling over 100 points (119.2 points approved). Points were granted in the public benefit categories of Transit Proximity, Connectivity and Mobility, Quality of Building and Site Design, and Protection and Enhancement of the Natural Environment. The DSS Overlay Zone modified the public benefit points schedule by eliminating points for Transit Proximity and requiring achievement of 10 points for Exceptional Design. The approved development program received five points for Exceptional Design and received public benefit points for Transit Proximity. New condition 13 requires a site plan amendment to address the Downtown Silver Spring Overlay Zone requirements.
- *Public Open Space* – The approved development program provides five percent (970 square feet) of the site area as public open space in an offsite area, directly adjacent to the southwest corner of the Property. The required quantity of public open space to be provided by this proposal is unchanged by the DSS Overlay Zone. However, when a property is not recommended in the Sector Plan for new public space, it should contribute to the creation of new or improvement of existing public parks as recommended by the Sector Plan. New condition 13 requires a site plan amendment to address the Downtown Silver Spring Overlay Zone requirements.
- *Revisions to the development standards for the Fenton Village Overlay Zone*

The development standards for the Fenton Village Overlay Zone have generally been made less prescriptive since the 2019 approval of this Preliminary Plan and its associated Site Plan. Current development standards in the Fenton Village Overlay Zone focus on building height, retail bays, site plan requirements and existing buildings. The development program, as previously approved, is in conformance with the updated development standards for the Fenton Village Overlay Zone.

Additionally, Staff identified and Planning Board concurs, an opportunity exists for consideration of minor revisions to the streetscape layout as approved by Site Plan No. 820190050 to bring these features into conformance with the desired streetscape dimensions recommended by the 2022 Sector Plan, and to allow for consistency in the redevelopment of key elements in the public realm, and establishment of the Green Loop. The approved widths of streetscape elements and the current widths specified by the Sector Plan and associated Design Guidelines are noted in the table below.

Table - Previously Approved and Recommended Widths for Streetscape Elements

| Roadway | Approved Preliminary Plan No. 120190090 | | | 2022 Silver Spring Downtown & Adjacent Communities Plan | | |
|---------------|---|----------|---------|---|----------|----------------|
| | Street Buffer | Sidewalk | Bikeway | Street Buffer | Sidewalk | Bikeway |
| Sligo Avenue | 6ft | 6ft | None | 6ft | 8-10ft | None |
| Fenton Street | 15ft (tree pits & sidewalks) | | None | 6ft | 10ft | West side only |
| Gist Street | 7.5ft | 4ft | None | 6ft | 6ft | None |

Adjusting the widths of these streetscape elements as noted in the table would not require additional dedication of right-of-way nor would it necessitate revision to any major elements of the approved Site Plan. As such, the Planning Board has added Condition 12 related to these minor streetscape element width adjustments if and when the Applicant seeks a future amendment to the Site Plan.

- 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 states that the Project is still viable and as noted in Finding 3.b above, significant effort has been made to move the Project forward.

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 (APF) period expiring on June 15, 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 APF approval was granted for five years from the initiation date of Planning Board Resolution No. 19-038, with an expiration of June 15, 2026. The requested validity extension would align with the existing APF 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. 120190090.

- 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, as the project is proposed to be completed in one 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

October 11, 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 **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, October 3, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board