



Steven A. Robins
Attorney
301-657-0747
sarobins@lerchearly.com

Elizabeth C. Rogers
Attorney
301-841-3845
ecrogers@lerchearly.com

December 26, 2024

VIA ELECTRONIC DELIVERY

Artie Harris, Planning Board Chair
And Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
2425 Reedie Drive, 14th Floor
Wheaton, Maryland 20902

Re: Request for Adjustment of Interim Adequate Public Facilities Phasing Schedule
and Extension of Preliminary Plan Validity Period
Falkland North – Preliminary Plan No. 12007056B

Dear Mr. Harris,

Our firm represents Falkland North LLC, an affiliate of True Ground Housing Partners (formerly Arlington Partnership for Affordable Housing) (the “Applicant” or “True Ground”), a non-profit affordable housing developer, founded in 1989. The Applicant is the owner of the property located in the northeast quadrant of 16th Street and East-West Highway in Silver Spring, Maryland, commonly referred to as “Falkland North” (the “Property”). In accordance with the Montgomery County Subdivision Regulations, Sections 50.4.3.J.7 and 50.4.2.H, we are requesting an adjustment of the Adequate Public Facilities (“APF”) phasing schedule and an extension of the validity period for the above-referenced Preliminary Plan. The overall APF validity period will remain unchanged by this request.

I. Prior Approvals

On September 10, 2015, the Montgomery County Planning Board (“Planning Board”) approved a Sketch Plan, Preliminary Plan Amendment, and Site Plan Amendment for up to 1,276,329 square feet of total development, including up to 1,250 dwelling units and 120,000 square feet of nonresidential uses on the Property. Condition No. 29 of the Preliminary Plan (Resolution date of mailing: September 28, 2015) establishes the APF validity period, which

allows for: (1) an 85-month APF validity period for Phase 1, which consists of up to 368 dwelling units and up to 96,000 square feet of non-residential use (*i.e.* October 28, 2022) and a 145-month APF validity period for all subsequent phases of the development (*i.e.* October 28, 2027). However, the APF validity period was subsequently extended through Subdivision Regulation Amendment 20-01, which provided a two year legislative extension to all valid approvals. As such, the APF validity period was extended to October 28, 2024 for Phase 1, and October 28, 2029 for all subsequent phases.

Pursuant to Subdivision Ordinance Section 50.4.2.G.2, the Preliminary Plan remained valid for 60 months from the initiation date (*i.e.* October 28, 2020). Similarly, the Preliminary Plan validity period was extended for two years by SRA 10-01, or until October 28, 2022. Most recently, the Planning Board approved a Preliminary Plan validity period extension for two additional years (Preliminary Plan Amendment No. 12007056B, date of mailing January 30, 2023). As such, the Preliminary Plan is valid until March 1, 2025.¹

II. Request for Extension

The Applicant is requesting an extension of the Preliminary Plan validity period and an adjustment to the interim APF phasing schedule, to align with the outside APF approval date. The Applicant purchased the Property on September 20, 2023 and is eager to move forward with the planned redevelopment. However, True Ground intends to amend the underlying approvals or process a Mixed-Income Communities Plan (the “Future Amendments”) to better conform with a predominately affordable, mixed-income residential community (as opposed to the mixed-use, market-rate development previously approved). The requested extension and phasing adjustment are necessary to afford True Ground sufficient time to build its capital stack for the Project and thereafter obtain these approvals.

Given the planned Future Amendments, it would be burdensome on True Ground’s financial resources to record the Plat, simply to vest the Preliminary Plan, when the Plat is likely to change and require re-recordation in connection with the Future Amendments. In addition, given that the recordation of the Plat will likely trigger an increase in the property taxes, it is most logical for the Applicant to postpone the recordation of the Plat until the Applicant is closer to commencing construction. While True Ground is eager to process these Future Amendments, there are several factors outside of the Applicant’s control, which have slowed down that process.

As the Planning Board is aware, the confluence of high interest rates and high construction costs have significantly slowed new construction starts in the region. While

¹ Condition No. 30 of Preliminary Plan Amendment No. 12007056B provides a Preliminary Plan Extension for two (2) years from its initiation date. The Preliminary Plan Amendment resolution was dated January 30, 2023. Therefore, the two year extension runs for the initiation date of March 1, 2023.

affordable housing developments have been less impacted, given their access to alternative funding sources, these projects are not immune from these economic pressures, particularly given that the requests for gap funding from the County's Housing Initiative Fund far exceed the County resources currently available. These economic factors are certainly beyond the Applicant's control and have slowed the Applicant's ability to process the Future Amendments.

Additionally, we would note that the Property remains encumbered by a 22,394 square foot temporary construction easement for construction of the Purple Line. The Purple Line construction has required numerous modifications of the Property by the Maryland Transit Authority. In a letter dated July 30, 2020, the State Highway Administration informed the Applicant's predecessor in title that they would continue to need the temporary construction easements. The latest projection, according to Maryland Department of Transportation's website, is that Purple Line construction will last through 2027. As such, the Applicant anticipates that the construction easement will need to remain in place for at least the next several years.

The Applicant is seeking to consolidate the Project into a single phase, at this time. As discussed above, the Applicant will seek Future Amendments to reflect the predominately-affordable, residential community proposed. Accordingly, the Applicant is requesting that the interim APF phasing schedule be adjusted to coincide with the outside APF validity period, to provide the Applicant with the necessary time and flexibility to move forward with the Project and Future Amendments. The Applicant anticipates that the outside APF validity period will be re-evaluated in connection with the Future Amendments. For all these reasons, the Applicant respectfully requests a four year adjustment of the interim APF validity period for Phase 1, so as to coincide with the outside APF validity period and a corresponding adjustment to the Preliminary Plan Validity period. Specifically, the Applicant is requesting that Conditions No. 29 and 30 be modified as follows:

- 29. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid ~~according to the following schedule:~~
 - o ~~Phase 1, consisting of up to 368 dwelling units and up to 96,000 square feet of non-residential use, will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution. All remaining phases beyond Phase 1, consisting of all of the remaining development, will remain valid~~ for one-hundred and forty-five (145) months from the date of mailing of the Planning Board resolution.²
- 30. The Preliminary Plan as amended will remain valid ~~for two (2) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G)~~ until October 28, 2028, and before the expiration date of this validity period, a final record plat for

² This condition does not reflect any automatic extensions granted by the Montgomery County Council.

all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

III. Findings for Approval

a. Preliminary Plan Validity Extension

Section 50.4.2.H.3.a.i of the Subdivision Regulations allows the Planning Board to extend the validity period of a preliminary plan if the Board finds that:

- (1) 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*
- (2) 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.*

There have been both delays by governmental entities and the occurrence of significant, unanticipated events that are beyond the Applicant's control, which collectively have prevented the Applicant from validating the plan. As noted above, the Maryland Transit Administration is using a portion of the Property to facilitate the construction of the Purple Line. As the Board is well aware, there have been significant delays in the Purple Line construction, far beyond what was initially anticipated, which have impacted the redevelopment of the Property. Additionally, the confluence of high-interest rates, constrained access to capital, scarce governmental resources, and high construction costs have substantially impaired the Applicant's ability to move forward with the planned redevelopment. These economic conditions are certainly beyond the Applicant's control. As noted above, in order to validate the Plan, the Applicant would need to record the Plat for the entire Property. This would require True Ground to waste substantial economic resources, as the Plat is likely to change with the Future Amendments and require re-recording at that time. This would result in an undue hardship on the Applicant, a non-profit affordable housing developer.

b. APF Phasing Adjustment

Subdivision Section 50.4.3.J.7.a allows the Planning Director to approve an amendment to any validity period phasing schedule, so long as the length of the total validity period is not extended. Pursuant to this provision, the Applicant is requesting approval of an adjustment to the interim phasing schedule to coincide with the outside APF validity period, which will allow for a

single APF date for this project.³ Importantly, the Applicant is not requesting any adjustment to the outside APF Validity period at this time.

IV. Conclusion


For all of the reasons discussed above, and given that the overall validity period for the APF Approval is not due to expire until October 28, 2028, the Applicant respectfully requests approval of this adjustment to the interim APF phasing schedule and extension of the Preliminary Plan validity period. These modifications will serve to eliminate the substantial hardship the Applicant will experience if the additional time is not granted. We would note that these extensions will not negatively impact any other development applications in the County, given that there is no school moratoriums under the Growth and Infrastructure Policy (and currently no Utilization Premium Payments required for the schools serving the Property) and the Property is located in a Red Policy Area, which does not require a vehicular analysis under the Local Area Transportation Review. Rather, these extensions will allow the Applicant sufficient time to process required Future Amendments, to facilitate the construction of a significant amount of additional affordable housing at this transit-accessible location.

We appreciate your consideration of this request.

Sincerely,



Steven A. Robins



Elizabeth C. Rogers

Cc: Mr. Elza Hisel-McCoy
Ms. Stephanie Dickel
Mr. Charles Sims
Mr. Danny Ross

³ To utilize Staff's resources efficiently, the Applicant is consolidating this request into one Preliminary Plan Amendment, instead of processing a separate Director Level Amendment.



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 28 2015

MCPB No. 15-39
Preliminary Plan No. 12007056A
Falkland North
Date of Hearing: September 10, 2015

RESOLUTION

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

WHEREAS, on November 18, 2010, the Planning Board, by Resolution MCPB No. 10-163, approved Preliminary Plan No. 120070560, creating one lot on 9.77 acres of land for a maximum of 70,000 square feet of retail uses and a maximum of 1,250 multi-family residential units, including a minimum of 12.5% moderately priced dwelling units ("MPDUs") and 4.72% workforce housing units ("WFHUs") in the CBD-R1 zone, located in the northeast quadrant of the intersection of 16th Street and East West Highway ("Subject Property"), in the Silver Spring CBD Policy Area, *Silver Spring Central Business District and Vicinity Sector Plan* ("Sector Plan") area; and

WHEREAS, on December 3, 2014, Falkland Road Residential, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to create one lot and one outlot for a maximum of 1,156,329 square feet of multi-family residential uses, consisting of up to 1,250 multi-family units including 12.5% MPDUs and 4.72% other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12007056A, Falkland North ("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 August 28, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency

8787 George Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mcppc-mc.org

MCPB No. 15-39
Preliminary Plan No. 12007056A
Falkland North
Page 2

WHEREAS, on September 10, 2015, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board approves Preliminary Plan No. 12007056A to create one lot and one outlot for a maximum of 1,156,329 square feet of multi-family residential uses, consisting of up to 1,250 multi-family units including 12.5% MPDUs and 4.72% other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses on the Subject Property, subject to the following conditions:¹

1. All conditions imposed by the approval of Preliminary Plan No. 120070560 in Planning Board Resolution MCPB No. 10-163 dated December 14, 2010, are superseded by the conditions contained herein.
2. Approval is limited to one lot for a maximum of 1,276,329 square feet of total development, including up to 1,250 dwelling units, including 12.5% moderately priced dwelling units (MPDUs) and 4.72% other affordable housing units, as described in the amended Declaration of Restrictive Covenant with M-NCPPC that is attached to the August 28, 2015, Falkland North Staff Report as Attachment C, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses, and one outlot for future Purple Line dedication.
3. The Applicant must comply with the binding elements and conditions of approval for Sketch Plan No. 320150020.
4. Prior to issuance of an associated Sediment Control Permit from the Montgomery County Department of Permitting Services ("MCDPS"), the Applicant must obtain approval of a revised Final Forest Conservation Plan ("FFCP") from the Planning Department, subject to the following:
 - a. The Applicant must revise the FFCP to clarify the mitigation planting requirements of at least 199.5 caliper inches of replacements.
 - b. The tree save component of the FFCP addressing impacted trees and transplanting specifications must be prepared by a Maryland licensed tree care expert who is also an ISA certified arborist.

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.

5. The certificate of compliance that satisfies the 1.25-acre total afforestation requirement (or as determined by the approved revised FFCP) must be submitted by the Applicant and approved by M-NCPPC Office of the General Counsel prior to any clearing, grading or demolition within the project area.
6. Prior to certification of any site plan, the Applicant must provide Staff with a noise analysis that identifies existing and 20-year-projected noise contours showing any portions of the Subject Property under that site plan that are subject to noise levels exceeding 65 dBA.
7. Prior to issuance of any above-grade building permit, the Applicant must provide certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn and must commit to construct the units in accordance with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.
8. Prior to certification of any site plan, the Applicant must submit for Staff approval the details for and location of noise mitigation techniques to attenuate current noise levels to no more than 65 dBA Ldn for areas of common outdoor activity.
9. After construction is complete, and prior to issuance of final residential occupancy permits, the Applicant must provide Staff with a certification from an engineer specializing in acoustics confirming that the dwelling units were constructed in accordance with the approved specifications for noise attenuation.
10. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("MCDHCA") in its letter dated August 27, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDCHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated January 28, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

12. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 30, 2014, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
13. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
14. The Applicant must show on the applicable final record plat(s) the following right-of-way dedications, Public Improvement Easements, or Public Access Easements consistent with the 2000 Approved and Adopted *Silver Spring Central Business District and Vicinity Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
 - a. East-West Highway (MD 410): Dedication necessary to provide:
 - i. A minimum of 59 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 118 feet within 300 feet of the 16th Street intersection.
 - ii. A minimum of 55 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 110 feet for the remainder of the Subject Property's East-West Highway frontage.
 - b. 16th Street (MD 390): Dedication necessary to provide 60 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 120 feet.
15. The Applicant must install short term public bicycle parking along the retail frontages and near public open space. Secure long-term bicycle parking must be installed internal to the residential buildings or garages for residents' use.
16. The Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT to participate in the Silver Spring Transportation Management District and must execute the TMAg prior to the release of any above grade building permit for development on the Subject Property, exclusive of any sheeting and shoring permit. The TMAg must include trip mitigation measures recommended by MCDOT.
17. Prior to recordation of the plat, the Applicant must record a deed of easement covering the driveway at the eastern boundary of the Subject Property, as shown on the Preliminary Plan, granting the adjoining property owner and any successors and assigns the non-exclusive right to use the driveway for public access from East-West Highway to the adjoining property upon that property's

- redevelopment. The deed of easement must be reviewed and approved by the M-NCPPC General Counsel's Office prior to recordation, and its liber and folio number must be reflected on the record plat.
18. Prior to recordation of the plat, the Applicant must record a covenant stating that, at the Maryland Transit Administration's ("MTA") request, the Applicant will dedicate to MTA for public use for the Purple Line Locally Preferred Alternative (LPA), at no cost, the area designated on the certified Preliminary Plan as "Future Dedication" or any such lesser area within the designated area as is determined by MTA to be necessary. The covenant may specify that such dedication shall be made when the County or State has incorporated the Purple Line improvements in an adopted County Capital Improvements Program ("CIP") or State Consolidated Transportation Program ("SCTP") which provides for appropriation of funds equal to the estimated costs of designing and constructing any portion of the Purple Line improvements. The covenant will remain in effect for 15 years from the date of the mailing of the Planning Board resolution. The record plat must include a reference to the recorded covenant.
 19. The Applicant must grant and the record plat must show an access easement on the Subject Property to the MTA, as referenced in a letter dated November 3, 2010, from MTA, between 16th Street and the proposed Purple Line Locally Preferred Alternative alignment. The access easement must be shown on the certified Preliminary Plan.
 20. The certified Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
 21. The record plat must show necessary easements.
 22. The final number of MPDUs and other affordable housing units as per condition #2 above will be determined at the time of site plan(s) approval.
 23. Prior to recordation of the plat, the Applicant must record in the land records the executed amended Declaration of Restrictive Covenant. The liber and folio of the recorded document must be referenced on the plat.

24. No clearing, grading or recording of plats prior to certified site plan approval.
25. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
26. Include the stormwater management concept approval letter and Preliminary Plan resolution on the approval or cover sheet(s).
27. The Applicant must construct all road and frontage improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.
28. Prior to recordation of any plat, Site Plan No. 82012005A must be certified by Staff.
29. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid according to the following schedule:

Phase 1, consisting of up to 368 dwelling units and up to 96,000 square feet of non-residential use, will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution. All remaining phases beyond Phase 1, consisting of all of the remaining development, will remain valid for one-hundred and forty-five (145) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearing and 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. *The Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property is within the boundaries of the *Silver Spring Central Business District and Vicinity Sector Plan*. The Sector Plan contains six themes that guide the vision for the Silver Spring CBD: (1) a transit-oriented downtown, (2) a commercial downtown, (3) a residential downtown, (4) a civic downtown, (5) a green downtown, and (6) a pedestrian friendly downtown.

1. TRANSIT-ORIENTED DOWNTOWN. The Sector Plan's land use and development recommendations strive to balance the needs of commuter and

local traffic, of walkers and drivers, and to maximize the investment in Silver Spring's transit infrastructure.

The Subject Property, by virtue of its location within the CBD, is convenient to various public transportation resources including the Silver Spring Metro and MARC station and various bus lines and the future Silver Spring Purple Line station. The Application also provides streetscape improvements, a new shared use path along East West Highway and is in close proximity to the Capital Crescent Trail as a benefit to walkers and bicyclists. The private internal drives provide safe and efficient on-site circulation for both pedestrian and vehicles. Given the nature of the development and the location of the Subject Property, it is reasonable to anticipate that residents and visitors will make use of multiple modes of transportation when accessing the Subject Property.

2. COMMERCIAL DOWNTOWN. Silver Spring's location, infrastructure, and position in the metropolitan area market will continue its role as an employment center. New retail development will serve the local community with a mix of chain and independent businesses offering convenience and specialty shopping, restaurants, and entertainment.

The Application provides for the development of up to 120,000 square feet of retail use that will provide opportunities for various types of commercial uses. The ground-floor retail and restaurant uses provided for, in combination with a possible large grocery store, will create a diverse offering that will serve the surrounding residential uses, as well as the existing and future residents of the Subject Property.

3. RESIDENTIAL DOWNTOWN. The Sector Plan seeks to create a mix of housing choices, including low-rise high-density apartments and townhouses, supported by parks, shopping, cultural, civic, and employment uses with transit and Beltway access to make a convenient and thriving community.

The Application will provide greater housing opportunities in the Silver Spring CBD and will allow residents to live near their work. The Application provides for the development of up to 1,250 new residential units in the CBD, within walking distance of the Silver Spring Metro Station and several bus routes. These new residences will help support the existing commercial and office uses in the CBD, as well as the non-residential component of the Application.

The Application contains diverse housing opportunities by including a variety of market rate unit sizes and layouts to facilitate the availability of new housing in a range of types and rents within walking distance of the Metrorail and Metro Bus stops. The Application provides both mid-rise and high-rise multi-

family residential development. This, in combination with the adjacent garden style apartments, creates a mix of housing choices. Because the Application includes a significant number of MPDUs and other affordable housing units, it will facilitate economic diversity located near transit and important services.

4. **CIVIC DOWNTOWN.** The Sector Plan views civic facilities as partners in economic revitalization. New and regenerated facilities will draw people downtown, returning it to the center of community life and creating opportunities for economic and social connections.

The on-site public open space and amenities respond to the need for community facilities, including civic spaces, within the CBD. The Application facilitates a variety of opportunities for people to gather and socialize, including outdoor café seating areas, pedestrian walkways, benches and private courtyards. The design of the public open space and amenities, including the streetscape improvements and Market Street², will appeal to a diverse population seeking varied experiences.

5. **GREEN DOWNTOWN.** The Sector Plan envisions shaded, tree-lined streets and well-placed green parks and plazas, creating a comprehensive system of open spaces that provide economic, environmental, and aesthetic benefits through downtown.

A minimum of 10% public open space will be provided on-site after completion of all phases of development. The Application will provide diverse public open spaces that collectively create a vibrant and active pedestrian environment. In connection with phase two of the development, the Applicant will also restore the stream on the South Parcel. This stream restoration and beautification will provide an important amenity for residents and for the Silver Spring CBD.

6. **PEDESTRIAN FRIENDLY DOWNTOWN.** The Sector Plan encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. They will become a defining feature downtown, and will support activity, creating the setting for community.

The combination of residential and ground-floor commercial uses on the Subject Property will serve to activate the streets. The Application has been designed to create a space that allows for internal vehicular circulation but favors the pedestrian experience. As such, streetscape improvements, in accordance

² Although not officially a street, the internal driveway that enters the property from East West Highway has been named "Market Street" by the Applicant for their promotional purposes.

with the Silver Spring Streetscape Plan, will be implemented to create a more attractive pedestrian environment. Market Street will be lined with trees and on-street parking to promote safe and efficient internal circulation of vehicles, pedestrians and bicyclists.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

A traffic study (dated August 2014) was submitted for the Application per the *Local Area Transportation Review ("LATR")/Transportation Policy Area Review ("TPAR") Guidelines* since the Application was estimated to generate more than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

Trip Generation

A site trip generation summary for the Application, provided in the Staff Report, shows that the Application will generate 369 peak-hour trips during the weekday morning peak period and 608 peak-hour trips during the weekday evening peak period. When compared to existing uses, the Application will result in an increase of 328 peak-hour trips during the morning peak period and 549 peak-hour trips during the evening peak period.

LATR Review

A summary of the capacity analysis/Critical Lane Volume ("CLV") analysis for the weekday morning and evening peak-hour periods, presented in the Staff Report, shows that the total (Build) condition will remain within the policy area congestion standard of 1,800 CLV. Based on the analysis presented in the traffic study, the Application will satisfy the LATR requirements of the APF test.

TPAR Review

Since the Subject Property is within the Silver Spring CBD Policy Area, the Application is exempt from both the roadway and transit tests set forth in the *2012-2016 Subdivision Staging Policy*. As a result, the Applicant is not required to pay transportation impact tax to satisfy the TPAR requirement.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in

effect and will be adequate to serve the Subject Property. The Subject Property is within the Einstein High School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. The Application substantially conforms to the Sector Plan. The Application complies with the land use recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the mix of uses.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The preliminary forest conservation plan addresses the Subject Property and portions of the fronting rights-of-way that are being modified by the Application. Although there is no existing forest on or near the Subject Property, an afforestation requirement of 1.25 acres is triggered by the associated forest conservation worksheet requirements. The afforestation plantings will be satisfied in an offsite forest conservation bank since there is no priority planting area present, and most of the onsite tree plantings must be designated toward satisfying the variance mitigation requirements

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 31 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Subject Property is located in a CBD near a Metrorail station and transit center where greater density is recommended by the Sector Plan. Any redevelopment of this site would require similar levels of disturbance and tree loss. Some of the impacts and removals are required to provide offsite pedestrian connections and safety upgrades. Therefore, the variance would be granted to any applicant in a similar situation.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Variance is based on development allowed under the existing zoning and the need to achieve adequate pedestrian safety upgrades. Furthermore, the distribution of trees throughout the Subject Property and next to existing buildings increases the difficulty of retaining the trees. The Variance can be granted if the impacts are avoided or minimized and that any necessary mitigation is provided.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The Variance is a result of the site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this Variance will not violate State water quality standards or cause measurable degradation in water quality. Stream restoration providing water quality benefits will be performed in the Falklands South Parcel as part of the Application. On and offsite tree plantings will provide additional benefits towards water quality. The Subject Property currently has no stormwater management, whereas the MCDPS issued a letter accepting the Stormwater Management Concept for the Subject Property on January 28, 2015. Stormwater management goals met onsite via the use of green roof and micro-biofiltration and structural filtration. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will further ensure that appropriate standards are met.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Planning Board approved replacement of Protected Trees at a ratio of approximately one inch DBH for every four inches DBH removed. No mitigation is required for Protected Trees impacted but retained.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on January 28, 2015. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of green roof, micro-biofiltration, and structural filtration.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 28 2015 (which is the date that this Resolution is mailed to all parties of record); and


MCPB No. 15-39
Preliminary Plan No. 12007056A
Falkland North
Page 13

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).

* * * * *

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 Presley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, September 10, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-003
Preliminary Plan Amendment No. 12007056B
Falkland North
Date of Hearing: January 19, 2023

JAN 30 2023

RESOLUTION

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

WHEREAS, on November 18, 2010, the Planning Board, by Resolution MCPB No. 10-163, approved Preliminary Plan No. 120070560, to create one lot on 9.77 acres of land in the CBD-R1 zone (current zone is CR-3.0 C-0.75 R-3.0 H-45T), located at the northeast corner, intersection of 16th Street and East-West Highway, Silver Spring CBD ("Subject Property"), in the Silver Spring CBD Policy Area and Silver Spring Downtown and Adjacent Communities Sector Plan ("*Sector Plan*") area; and

WHEREAS, on September 10, 2015, the Planning Board approved an amendment to Preliminary Plan No. 12007056A (MCPB No. 15-39) to create one lot and one outlot (Outlot A) on the Subject Property; and

WHEREAS, on September 22, 2022, JBG Smith ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to obtain a two-year extension of the preliminary plan validity period for the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12007056B, Falkland North ("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 January 9, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 19, 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 Branson, seconded by Commissioner Hill, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill and Piñero voting in favor.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320
www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

MCPB No. 23-003
Preliminary Plan No. 12007056B
Falkland North
Page 2

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12007056B to extend the preliminary plan validity period for the Falkland North development by adding the following conditions:¹

30. The Preliminary Plan as amended will remain valid for two (2) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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.

31. Before recording the plat, the Applicant must amend the previously approved Forest Conservation Plan (FCP) to account for the current Property conditions, including any tree removals.

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 amended, and all findings not specifically addressed remain in effect.

Per Section 50.4.2.H of the County Code, the 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*

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.

MCPB No. 23-003
Preliminary Plan No. 12007056B
Falkland North
Page 3

- 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 worked diligently with the Maryland Department of Transportation Maryland Transit Authority (MTA) in connection with MTA's acquisition of a portion of the Falkland North property to accommodate construction of the Purple Line. These negotiations culminated in 2018 with the recordation of a deed reflecting the Applicant's conveyance of 25,115 square feet of land area, in fee simple, to MTA and the granting of a Temporary Construction Easement involving 22,394 square feet of land area to facilitate the construction of the Purple Line on the Property.

Subsequent to reaching an agreement between the two parties, MTA issued the Property Owner a letter dated July 30, 2022, explaining that they would need to continue the temporary construction easements. Given that the Purple Line construction within and adjacent to the temporary construction easement has not yet been completed, it is anticipated that the construction easements will need to remain in place for at least the next two years.

MTA is an agency of the Maryland State Government, and the Purple Line light rail transit line is a State infrastructure project expanding across two counties. In this case, the status of the State infrastructure project is preventing the Applicant from recording a plat for the Site and moving forward with pulling building permits. The Applicant has and continues to comply with the requests of MTA. The status of the Purple Line construction is outside of the control of the Applicant. Therefore, findings 50-4.2.H.3.a.(i) and 50-4.2.H.3.a.(ii) have been met. The MTA has not indicated how much additional time is needed for the construction of the Purple Line on and within the vicinity of the Subject Site; however, because the plan validity cannot be extended beyond the Adequate Public Facilities (APF) validity, two years is both the minimum and the maximum time period allowed for this extension.

MCPB No. 23-003
Preliminary Plan No. 12007056B
Falkland North
Page 4

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.*

None of the recent changes to the Subdivision Ordinance (Chapter 50) are pertinent to the scope of the Subject Application. Therefore, no revisions to the previously approved Preliminary Plan Amendment are needed for compliance with the Subdivision Ordinance. However, the approved Condition 31 requires the Applicant to update the Forest Conservation Plan to reflect the current Property conditions.

- 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 has indicated that the Preliminary Plan project is still viable, and the approved development will be marketable once the Purple Line construction is complete, and even more so once the light rail transit line is operational.

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 Applicant has complied with all noticing requirements as set forth in Chapter 50 and the Administrative Procedures for Development Review.

- b) *If voting to approve an extension, the Board must only grant the minimum time it deems necessary for the applicant to validate the plan.*

The latest publicly accessible information on the Purple Line indicates that the rail line is projected to open for service by 2026, but construction within the vicinity of the Site may be completed before then. Section 50-4.2.H.5.c limits extensions to a preliminary plan to within the plan's APF validity period, therefore, the request for a two-year extension is the minimum time permitted for the Applicant to validate the preliminary plan.

MCPB No. 23-003
Preliminary Plan No. 12007056B
Falkland North
Page 5

- 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.*

Accounting for all Council-approved legislative extensions, the Adequate Public Facilities (APF) validity period is set to expire October 28, 2024. The request of the Subject Application is to align the preliminary plan validity period to the same expiration date. Therefore, as approved the Subject Application meets the requirements of this finding.

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

The Subject Application is the first request for an extension of the plan validity period. Another extension request may be required in the future if construction of the Purple Line within the vicinity of the Site is not completed prior to October 28, 2024. According to 4.2.H.5.c, the Board may only grant an extension to a preliminary plan within the plan's APF validity period. Granting an extension through October 28, 2024 meets that requirement.

- 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.

MCPB No. 23-003
Preliminary Plan No. 12007056B
Falkland North
Page 6

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 30 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).

* * * * *

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 Presley, seconded by Commissioner Branson, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, January 26, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

Attachment B

Samantha Martino
4747 Bethesda, Suite 200
Bethesda, MD 20814

Patricia Harris
7600 Wisconsin Avenue, Suite 700
Bethesda, MD

Andrew Bradshaw
205 N. Frederick Ave. S. 100
Rockville, MD

12007056B
Falkland North
Preliminary Pan Amendment