

Montgomery Planning
FALKLAND NORTH

PRELIMINARY PLAN AMENDMENT NO. 12007056C



Request to extend the plan validity period for the approved Preliminary Plan from March 1, 2025 to October 28, 2029, and to amend the Adequate Public Facilities phasing schedule.

COMPLETED: 1/20/2025

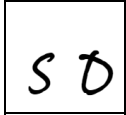
PLANNING BOARD HEARING DATE: 1/30/2025

MCPB ITEM NO. 6

Planning Staff



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LOCATION/ADDRESS

Northeast quadrant of the intersection of 16th Street and East-West Highway, Silver Spring

MASTER PLAN

2022 *Silver Spring Downtown and Adjacent Communities Plan*

ZONE

CR-3.0, C-3.0, R-3.0, H-175 and Downtown Silver Spring Overlay Zone

PROPERTY SIZE

9.77 acres

APPLICANT

Falkland North, LLC

ACCEPTANCE DATE

October 4, 2024

REVIEW BASIS

Chapter 50

Summary:

- Staff recommends approval of Preliminary Plan Amendment No. 12007056C to extend the validity period of the Preliminary Plan from March 1, 2025 to October 28, 2029, and to consolidate development phasing from two phases to a single phase.
- The requested validity period extension will allow for completion of Purple Line construction impacting the Property prior to recordation of a plat.
- The Planning Board previously approved Preliminary Plan 12007056A to create one lot for up to 1,250 dwelling units and up to 120,000 square feet of non-residential uses, and to create one outlot for dedication to the Purple Line.
- In January 2023 the Planning Board approved Preliminary Plan 12007056B to extend the validity period of the Preliminary Plan through March 1, 2025.
- As of the date of this Report, Staff received no community correspondence regarding the Application.

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EXECUTIVE SUMMARY

Preliminary Plan Amendment No. 12007056C (the Subject Application) is brought forth by a new owner of the Falkland North Property and proposes to extend the validity period of the Preliminary Plan from March 1, 2025 to October 28, 2029, and to consolidate the approved development phasing program from two phases to a single phase. This Application does not propose modifications to any other aspect of the previously approved subdivision plan. These requests are in response to lingering development complexities and uncertainties stemming from the COVID-19 pandemic and the continuation of Purple Line construction impacting the Property, which is anticipated to be completed in late 2027. The requested validity extension would provide approximately two years beyond the expected 2027 completion of the Purple Line for the Applicant to validate the Plan.

SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 12007056C

Staff recommends approval with conditions of the Preliminary Plan Amendment to extend the validity period of the Preliminary Plan and consolidate development phasing from two phases to one phase. All site development elements shown on the latest electronic version of Preliminary Plan No. 12007056C as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. The Amendment modifies previously approved Condition 29 and Condition 30. All other conditions, as shown in Preliminary Plan No. 12007056A and Preliminary Plan No 12007056B, remain in full force and effect:

Modified Conditions¹

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 Planning Board Resolution No. 15-39.~~
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, 2029~~ 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.

¹ APF and Preliminary Plan Validity Periods have been automatically extended by the Montgomery County Council.

SECTION 2: SITE DESCRIPTION

VICINITY

The Subject Site is located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410) within the 2022 *Silver Spring Downtown and Adjacent Communities Plan* area as shown in Figure 1 and Figure 2. Properties adjacent to the Site include a mix of uses, including multi-family residential to the west and south, and commercial and office uses to the north and east. A railway corridor abuts the northeastern Property boundary. The rail corridor is utilized by Metro, MARC, and freight trains. The Purple Line bi-county light rail project is under construction along this corridor. The Site is within walking distance of local and regional public transportation options and other amenities within downtown Silver Spring.

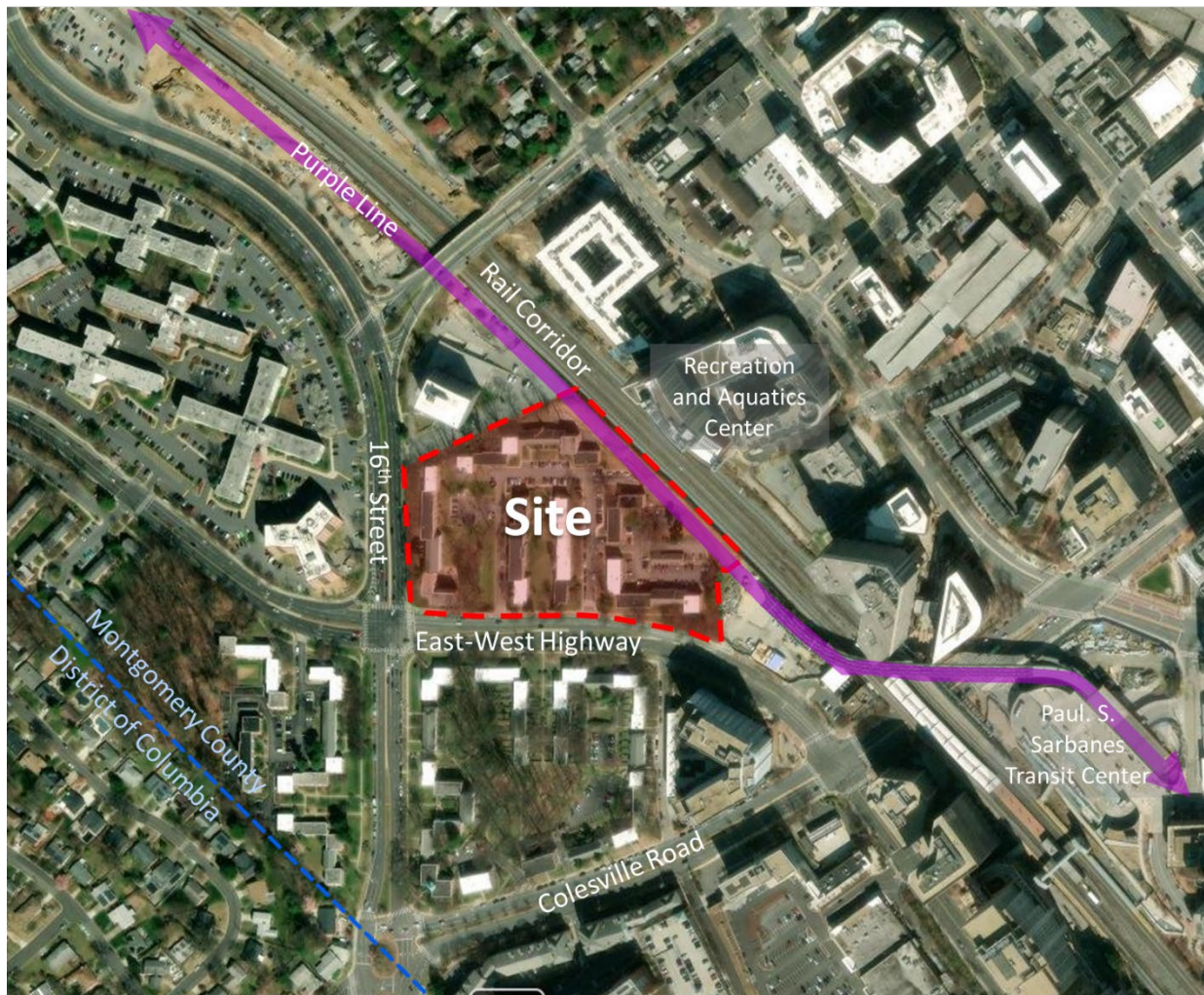


Figure 1 – Vicinity Map

Map 3: Plan Districts

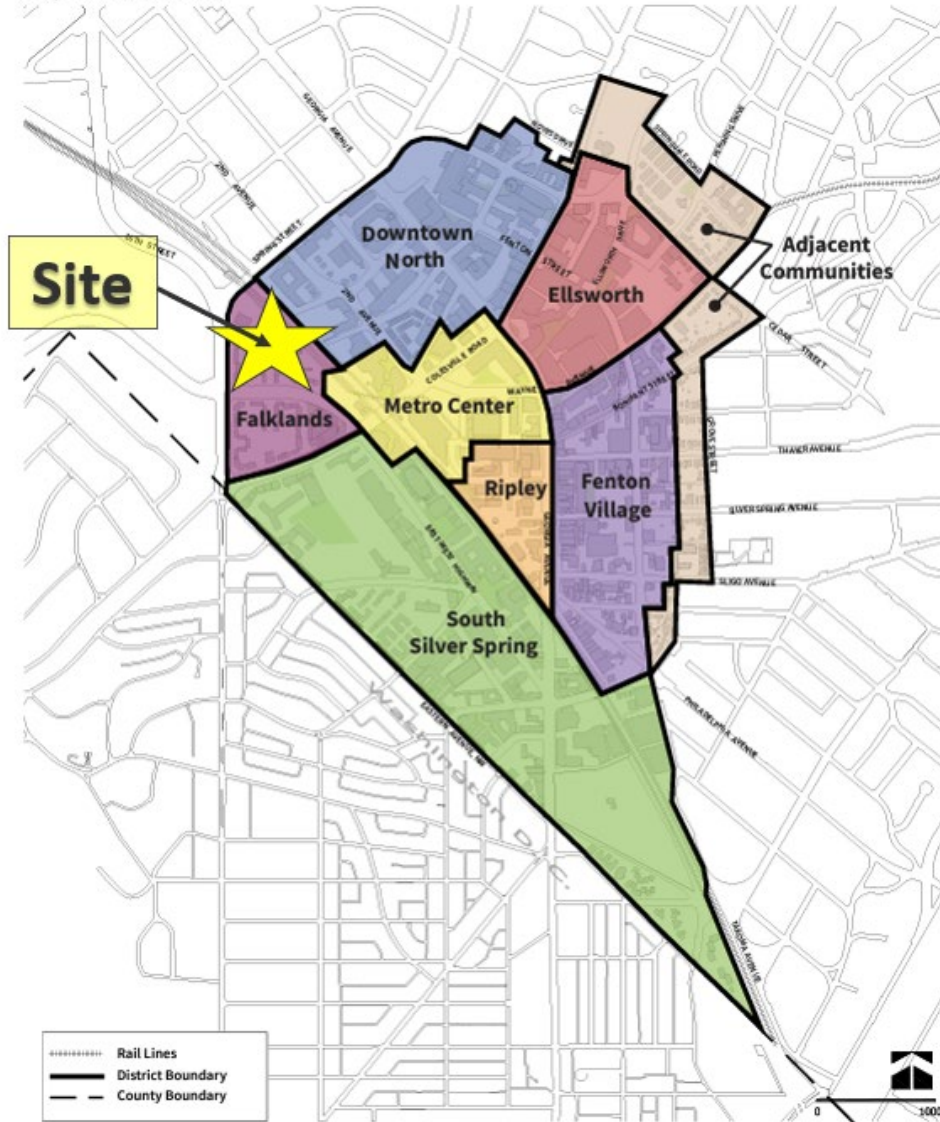


Figure 2 – Silver Spring Downtown & Adjacent Communities Plan Area

PROPERTY DESCRIPTION

The Site is developed with multiple low-rise, multi-family residential buildings and associated surface parking. Access to the Site's internal, one-way road (Falkland Lane) is from East-West Highway. Multiple sidewalk connections exist on the Site's 16th Street and East-West Highway frontages. There

are numerous trees on-site, including specimen trees, but no forested area, streams, or wetlands, are found on the Property. The Site is located within the Rock Creek watershed, a use I watershed².

The northeast portion of the Property abutting the railroad corridor is encumbered by Purple Line construction, as illustrated in Figure 3, and to be dedicated to the Maryland Transportation Administration for this purpose. Purple Line construction was active at the Property (Figure 4) at the time of writing of this Staff Report. The Maryland Transportation Administration currently estimates completion of the light rail project by the end of 2027 (Figure 5).



Figure 3 – Subject Property with Purple Line

² Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply and industrial water supply.



Figure 4 – Purple Line Construction at Falkland North December 4, 2024

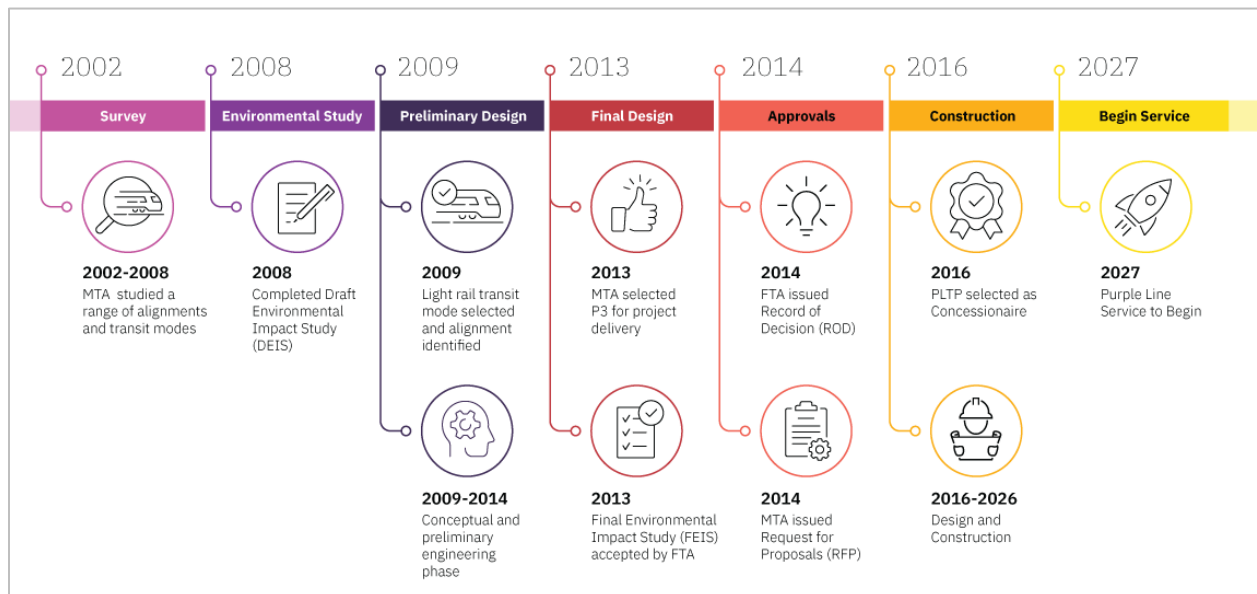


Figure 5 – MTA Purple Line Development Schedule (www.purplelinemd.com, accessed December 5, 2024)

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

Project Plan No. 920070080

On December 13, 2010, the Planning Board approved Project Plan No. 920070080 (MCPB Resolution No. 10-162) for a mixed-use, multi-building development with a total of 1,276,329 gross square feet, including 70,000 square feet of retail uses and 1,250 dwelling units, with 12.5 percent MPDUs and 4.72 percent workforce housing. This approval is no longer in effect and is superseded by Sketch Plan No. 320150020.

Preliminary Plan No. 120070560

On December 14, 2010, the Planning Board approved Preliminary Plan No. 120070560 (MCPB Resolution No. 10-163) to create one lot for a maximum of 1,250 multi-family residential units, with a minimum of 12.5 percent MPDUs and 4.72 percent Workforce Housing Units, and up to 70,000 square feet of retail uses. This approval is no longer in effect and is superseded by Preliminary Plan No. 12007056A.

Sketch Plan No. 320150020

On September 28, 2015, the Planning Board approved Sketch Plan No. 320150020 (MCPB Resolution No. 15-38) for a maximum of 1,276,329 square feet of total development, including up to 1,250 dwelling units, including 12.5 percent MPDUs and 4.72 percent other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses. This Sketch Plan superseded Project Plan No. 920070080.

Preliminary Plan No. 12007056A

On September 28, 2015, the Planning Board approved Preliminary Plan No. 12007056A (MCPB Resolution No. 15-39) to create one lot for a maximum of 1,250 multi-family residential units, including a minimum of 12.5 percent MPDUs and 4.72 percent Workforce Housing Units, and up to 120,000 square feet of retail uses, and to create one outlot for dedication to the Purple Line. This Plan is illustrated in Figure 6. The conditions of approval of this Preliminary Plan Amendment superseded those of Preliminary Plan No. 120070560. Condition No. 29 of this approval established a two-phase validity period associated with the Plan's Adequate Public Facilities (APF) findings; with Phase 1, consisting of up to 368 dwelling units and up to 96,000 square feet of non-residential use to be valid for 85 months (October 28, 2022), and all remaining phases beyond Phase 1 to remain valid for 145 months (October 28, 2027).

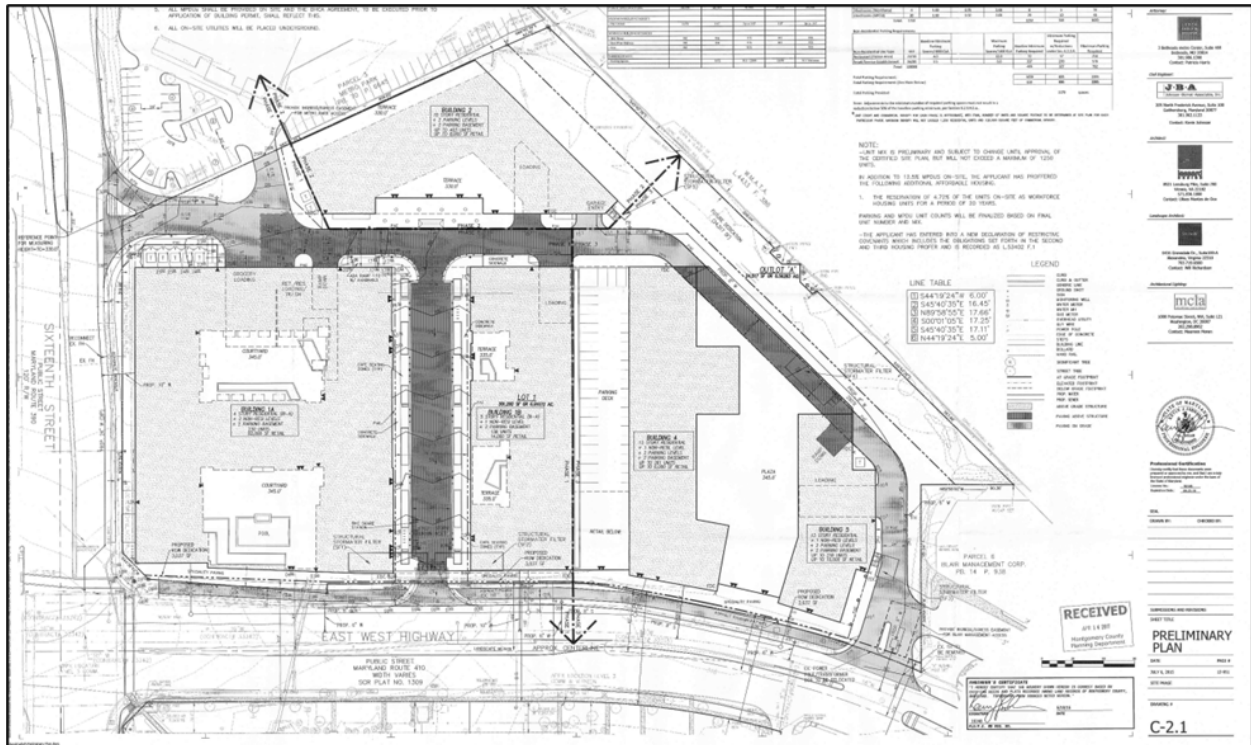


Figure 6 – Approved Preliminary Plan No. 12007056A

Site Plan No. 82012005A

On September 28, 2015, the Planning Board approved Site Plan No. 82012005A (MCPB Resolution No. 15-40) for a maximum of 337,610 square feet of residential development consisting of up to 368 multi-family units, including 12.5 percent MPDUs and 4.72 percent other affordable housing units, and up to 96,000 square feet of retail, restaurant, or service uses. This Site Plan implements Phase 1 of the larger redevelopment associated with Sketch Plan No. 320150020 and Preliminary Plan No. 12007056A.

Subdivision Regulation Amendment 20-01

On July 28, 2020, the County Council adopted Subdivision Regulation Amendment 20-01, providing a two-year legislative extension for all unexpired subdivision applications approved prior to July 28, 2020. As a result, the validity period for Preliminary Plan No. 12007056A was extended from October 28, 2020 to October 28, 2022. The APF validity period for the Plan was also automatically extended, from October 28, 2022 to October 28, 2024 for Phase 1, and from October 28, 2027 to October 28, 2029 for development beyond Phase 1.

Preliminary Plan No. 12007056B

On January 30, 2023, the Planning Board approved Preliminary Plan No. 12007056B (MCPB Resolution No. 23-003) to extend the validity period of the Preliminary Plan from October 28, 2022 to March 1, 2025; with no changes to the previously approved development program or APF validity periods.

PROPOSAL

The preliminary plan validity period is the time in which an approved plan of subdivision must be recorded on a plat in the Land Records of Montgomery County. If the plan is not recorded on a plat within its validity period, it expires, and platting does not occur. Without a valid plat, building permits cannot be released. Recording a plat is a critical step for redevelopment of a property.

The Applicant acquired the Subject Property in September 2023, and this Application is seeking to extend the validity period of the Preliminary Plan from March 1, 2025 to October 28, 2029, and to consolidate the previously approved two-phase APF schedule into a single-phase program.

The current Preliminary Plan is valid through March 1, 2025 and its APF validity period remains effective through October 28, 2029. Phase 1 of the APF validity period expired on October 28, 2024. The request to amend the APF phasing was received in a timely manner, prior to the Phase 1 APF tolling date. The requested extension for the Preliminary Plan validity period aligns it with the existing, approved APF validity period of October 28, 2029. The APF phasing amendment removes the 85-month APF validity period for Phase 1 and consolidates all approved development into a single phase aligned with the existing, approved APF validity period (through October 28, 2029). No extension of the APF validity period is requested.

The Applicant presented justification (Attachment A) relevant to delays in recording a plat for the Property caused by significant, unusual, and unanticipated events, beyond the Applicant's control. These factors include on-going, on-site construction for the Purple Line, which is expected to continue through 2027, and market factors, as discussed in Section 5 of this Report. The Applicant's statement of justification also discusses intent to bring forth future amendments to the Property's underlying development approvals or submission of a new Mixed-Income Communities Plan.

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. As of date of this Staff Report, no correspondence has been received.

SECTION 5: PRELIMINARY PLAN 12007056C FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 12007056A (MCPB Resolution No. 15-39) to create one lot for a maximum of 1,250 multi-family residential units, including a minimum of 12.5 percent MPDUs and 4.72 percent Workforce Housing Units, and up to 70,000 square feet of retail uses, and to create one outlot for dedication to the Purple Line. The Planning Board subsequently approved Preliminary Plan No. 12007056B (MCPB Resolution No. 23-003) to extend the validity period of the Preliminary Plan from October 28, 2022 to March 1, 2025; with no changes to the previously approved development program or APF validity periods.

The Subject Application for Preliminary Plan Amendment No. 12007056C requests to extend the validity period of the Preliminary Plan from March 1, 2025 to October 28, 2029, and to consolidate development phasing from two phases to a single phase. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable, except as modified below.

In accordance with Section 4.2.H of Chapter 50, to approve a Preliminary Plan validity extension, the Board must make the following analysis and findings as part of its approval:

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 filed a timely preliminary plan validity extension request with the Planning Department on September 27, 2024. The Application was accepted for review on October 4, 2024. The Preliminary Plan is currently valid through March 1, 2025.

- 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.***

In addition to requesting an extension to the validity period for the Preliminary Plan, this Application requests to consolidate the previously approved APF phasing program from two phases to a single phase, to align with the existing validity period of October 28, 2029. The request was filed with the Planning Department on September 27, 2024 and accepted for review on October 4, 2024, in conformance with the timeliness standard of this requirement. As approved, Phase 1 expired on October 28, 2024.

The request to amend APF phasing is being made under this single Application, concurrently with the Applicant's request to extend the validity period of the Preliminary Plan itself, which requires Planning Board review.

- 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 (Attachment A), which requests to extend the Plan's validity period by approximately four years and eight months, from its current expiration date of March 1, 2025 to October 28, 2029. A timely request to extend the validity period was filed as noted in Finding 1.a. above. The Applicant states this extension request is the minimum time necessary for them, as new owners of the Property, to complete their due diligence, process future entitlement amendments, allow Purple Line construction impacting the Property to be completed, and to record a plat.

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

The 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

A portion of the Property has been, and continues to be, occupied and in use by the Maryland Transportation Administration to facilitate the construction of the Purple Line bi-county light rail project. The timeline for completion of the Purple Line has been delayed by multiple years, contributing to delays in validating the Preliminary Plan. As of the writing of this Report, Purple Line construction is estimated to be completed, and rail line open for service, by the end of 2027.

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.

In addition to the substantial and unusual challenges posed by Purple Line construction on the Site, the Applicant contends that 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 acquired the Property in

September 2023 and filed this Application in September 2024 as a first step towards Preliminary Plan validation.

This Preliminary Plan will expire March 1, 2025. Purple Line construction delays impacting the Property are significant, unusual, and unanticipated events beyond the Applicant's control that have impacted the timeline for validation of the Preliminary Plan. Denying the extension would result in undue hardship to the Applicant, as it would allow the Preliminary Plan to expire, invalidating multi-year efforts to bring forth an otherwise approved, large, complex redevelopment project on the Property.

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

The Applicant provided justification (Attachment A) outlining the validity extension request and the necessary justifications. Grounds for the extension are associated with Purple Line construction delays directly impacting the Property and development challenges stemming from the COVID-19 pandemic. These factors are further discussed in Finding 3 and qualify as a "significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant".

4. Planning Board considerations for extension.

a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.

There have been no recent updates to Chapter 50, the Subdivision Ordinance, that would require changes to the Preliminary Plan. It is noted that at the time of site plan, or amendment thereto, or building permit the Applicant will need to satisfy relevant Sector Plan and zoning requirements.

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 is contemplating amendments to existing entitlements to enable realization 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.**

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 presented that an extension of the validity period from March 1, 2025, to October 28, 2029, would be the minimum necessary to validate Preliminary Plan. An October 28, 2029 expiration date would align the Plan's validity period with its approved Adequate Public Facilities validity period, also to expire on October 28, 2029.

The requested extension would allow approximately two years beyond (to October 28, 2029) the anticipated late 2027 completion of Purple Line construction for the Applicant to validate the Preliminary Plan. This timeframe is the minimum necessary for Purple Line construction impacts to the Property to be completed, and for the Applicant to complete any necessary due diligence, process any entitlement amendments and validate the Preliminary Plan.

- 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.**

In approving Preliminary Plan No. 12007056A, the Planning Board approved an APFO validity period of 145 months (12 years) from the initiation date of Planning Board Resolution No. 15-39, which equated to an expiration date of October 28, 2027. The APFO validity period was extended for two additional years, to its current validity period of October 28, 2029 by the County Council's adoption of Subdivision Regulation Amendment 20-01. The requested Preliminary Plan 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 second request for a Preliminary Plan validity extension. Preliminary Plan Amendment No. 12007056B was approved on January 30, 2023 and extended the validity period of the Preliminary Plan to March 1, 2025. This Application requests a further extension of the Preliminary Plan validity period, through October 28, 2029 as construction of the Purple Line on-site remains active, with completion anticipated in late 2027.

- 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.***

As discussed below, this Application includes a request to consolidate the previously approved development program from two phases to a single phase, to align with existing APF validity period tolling October 28, 2029. This phasing adjustment is made under Section 4.3.J.7.

In accordance with Sections 4.3.J.7 of Chapter 50, regarding extensions of APF validity periods, the following findings are relevant for consideration of this Application's request to amend the APF validity period phasing schedule.

Section 4.3.J.7.a:

Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

- i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.***

This Application was filed with the Planning Department on September 27, 2024 and accepted for review on October 4, 2024, in conformance with this requirement. As approved, Phase 1 expired on October 28, 2024.

This Application requests to consolidate the previously approved development program from two phases to a single phase, to align with existing validity period of October 28, 2029. The APFO phasing adjustment request could have been reviewed by the Planning Director but was combined with the Preliminary Plan validity extension to follow a single path forward through the approval process with the Planning Board.

- ii. The applicant must submit a new development schedule or phasing plan for completion of the project for approval.***

The Applicant requests to consolidate the two-phase development program into a single phase, to be completed within the existing, approved validity period to expire on October 28, 2029.

Section 4.3.J.7.b:

The Board may approve an amendment to the new development schedule approved under Section 4.3.J.7.a.ii if the applicant shows that financing has been secured for either:

- i. Completion of at least one new building in the next stage of the amended development schedule; or***
- ii. Completion of infrastructure required to serve the next stage of the amended development schedule.***

This standard is not applicable in this situation. The Applicant is a new property owner who has taken control of this Preliminary Plan, which has a validity period and APF development schedule that are no longer viable. With this Application, the development schedule is requested to be consolidated from two phases to a single phase. The Applicant's statement of justification indicates that further development scope and schedule amendments may be brought forth for consideration to advance the realization of redevelopment of the Property.

SECTION 6: CONCLUSION

As conditioned, the Preliminary Plan Amendment applications satisfies the applicable findings of the Subdivision Regulations. Therefore, Staff recommends approval of Preliminary Plan No. 12007056C with the conditions specified at the beginning of this Report.

ATTACHMENTS

Attachment A: Applicant's Statement of Justification

Attachment B: Prior Approvals

MCPB Resolution No. 15-39, Preliminary Plan No. 12007056A

MCPB Resolution No. 23-003, Preliminary Plan Amendment No. 12007056B