

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

February 20, 2025

MCPB No. 25-022

Preliminary Plan Amendment No. 12007056C

Falkland North

Date of Hearing: January 30, 2025

RESOLUTION

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

WHEREAS, on December 14, 2010, the Planning Board, by Resolution MCPB No. 10-163, approved Preliminary Plan No. 120070560, creating 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 on 9.77 acres of land in the CBD-R1 zone, located at the northeast quadrant of the intersection of 16th Street and East-West Highway (“Subject Property”), in the Silver Spring CBD Policy Area and Silver Spring Sector Plan (“Sector Plan”) area; and

WHEREAS, on September 28, 2015, the Planning Board approved an amendment to Preliminary Plan No.12007056A (MCPB 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 for the Purple Line on the Subject Property; and

WHEREAS, on January 30, 2023, the Planning Board approved an amendment to Preliminary Plan No.12007056B (MCPB No. 23-003) to extend the validity period of the Preliminary Plan from October 28, 2022 to March 1, 2025; and

WHEREAS, on September 27, 2024, Falkland North LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan(s) 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, on the Subject Property; and

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Approved as to
Legal Sufficiency:

/s/ Emily Vaias
M-NCPPC Legal Department

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12007056C, 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 20, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 30, 2025, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Pedoeem, seconded by Commissioner Linden, with a vote of **5-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12007056C to 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, by modifying the following conditions:¹

Modified Conditions²

29. The Adequate Public Facilities ("APF") review for the Preliminary Plan 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 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.

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:

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. See also Montgomery County Code §50.2.2.A ("applicant").

² APF and Preliminary Plan Validity Periods have been automatically extended by the Montgomery County Council.

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

In accordance with Section 50. 4.2.H of the County Code, the Planning Board makes the following findings:

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, prior to the validity tolling date of 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.*

A request to amend APF phasing was reviewed by the Planning Board concurrently with the Applicant's request to extend the validity period of the Preliminary Plan itself, which required Planning Board review.

The request was timely filed on September 27, 2024 and accepted for review on October 4, 2024, in conformance with the timeliness standard of this requirement. As previously approved, Phase 1 expired on October 28, 2024 and Phase 2 would expire October 28, 2029.

- 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 supporting extension of the Plan's validity period from March 1, 2025 to October 28, 2029. The Applicant certified that this extension is the minimum additional time required 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 date of this Resolution, Purple Line construction was estimated to be completed 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 significant and long-lasting economic difficulties posed by the COVID-19 pandemic, including market uncertainty, rising interest rates, and rising construction costs, have slowed the realization of this development. The Applicant acquired the Property in September 2023 and filed this Application in September 2024 as a first step towards Preliminary Plan validation.

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 a justification statement 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 qualify as a significant, unusual and unanticipated events, 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 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 Planning Board finds the Project is still viable and could be realized 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 Planning Board finds this extension of the Preliminary Plan validity period from March 1, 2025, to October 28, 2029, 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.*

This Preliminary Plan validity period extension, to October 28, 2029, aligns with, and is within, the Plan's APFO validity period, which expires on October 28, 2029.

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

This is the second extension of the validity period of this Preliminary Plan.

- 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, the Planning Board approves a minor amendment to previously approved phasing schedule under Section 4.3.J.7.

In accordance with Section 50.4.3.J.7 of the County Code, the Planning Board makes the following findings:

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 on September 27, 2024 and accepted for review on October 4, 2024, prior to the expiration of Phase 1 APFO validity on October 28, 2024, in conformance with this requirement.

The Planning Board approves of the requested consolidation of 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 new phasing program consolidates the previously approved 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 permissive and not required or applicable in this situation. The Applicant is a new property owner proposing one development phase without extending the APF validity period.

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

February 20, 2025

(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 Vice Chair Pedoeem, seconded by Commissioner Linden, with a vote of 3-0; Chair Harris, Vice Chair Pedoeem and Commissioner Linden voting in favor of the motion, Commissioner Bartley and Hedrick necessarily absent at its regular meeting held on Thursday, February 6, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board